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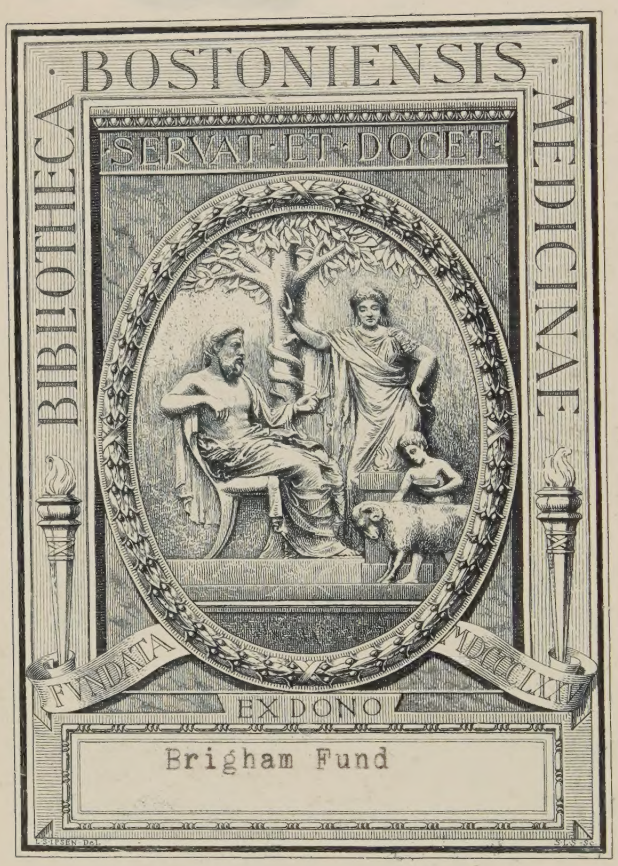
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Dunn's
Food and Drug Laws

FEDERAL AND STATE
(Annotated)

IN THREE VOLUMES

Prepared and Edited by
CHARLES WESLEY DUNN, M. A.
Of the New York Bar

FIRST EDITION—1927-1928

VOLUME III

STATES
New Jersey—Wyoming

Appendix—Index

Published by
UNITED STATES CORPORATION COMPANY
150 Broadway
New York

Copyright, 1927
by
United States Corporation Company

25224 Bx.

32. K. 67.

MacCrellish & Quigley Company
Printers
Trenton, New Jersey

To My Wife

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NEW JERSEY.*

PART I.

General Food and Drug Law.

1. **Sale, Manufacture, Etc., of Adulterated or Misbranded Food or Drugs Prohibited.**—No person shall distribute or sell, or manufacture for distribution or sale, or have in his possession with intent to distribute or sell, any article of food or drug which under any of the provisions of this act is or shall be deemed to be adulterated or misbranded. (C. S. 1910, p. 2564 et seq.; L. 1907, c. 217, § 1.)

2. **"Food" and "Drug" Defined.**—The term "drug," as used in this act, shall include all medicines and preparations recognized in the United States Pharmacopœia or National Formulary for internal or external use, and any substance or mixture of substances intended to be used internally or externally for the cure, mitigation or prevention of disease of man or animal; the term "food," as used in this act, shall include every article used for food or drink by man or animal, and every ingredient of such article, and all confectionery and condiments. (Id. § 2.)

3. **Adulterated Articles.**—For the purposes of this act an article shall be deemed to be adulterated—

Drugs.—In the case of drugs:

First. If when a drug is sold under or by a name recognized in the United States Pharmacopœia, or National Formulary, or is contained in a bottle, box or other container, bearing a name recognized in the United States Pharmacopœia or National Formulary, it differs from the standard of strength, quality or purity laid down in the United States Pharmacopœia or National Formulary, official at the time of investigation; provided, that no drug sold under or by a name recognized in the United States Pharmacopœia or National Formulary, or contained in a bottle, box or other container, bearing a name recognized in the United States Pharmacopœia or National Formulary, except any drug sold under or by the name of any preparation of opium, iodine, camphor, ginger or peppermint, or contained in a bottle, box or other container bearing the name of any such preparation, shall be deemed to be adulterated under this section if the standard of strength, quality or purity be plainly and correctly stated upon the bottle, box or other container thereof, although the standard may differ from that laid down in such United States Pharmacopœia or National Formulary.

Second. If its strength or purity fall below the professed standard or quality under which it is sold.

Confectionery.—In the case of confectionery:

If it contains terra alba, barytes, talc, chrome yellow or other mineral substance, or poisonous color or flavor, or other ingredient deleterious or detrimental to health, or any vinous, malt or spirituous liquor, or compound or narcotic drug.

Food.—In the case of food:

First. If any substance has been mixed or packed with it so as to reduce or lower or injuriously affect its quality or strength.

Second. If any substance has been substituted wholly or in part for the article.

Third. If any valuable constituent of the article has been wholly or in part abstracted.

Fourth. If it be mixed, colored, powdered, coated or stained in a manner whereby damage or inferiority is concelead.

Fifth. If it contain any added poisonous or other added deleterious ingredient which may render such article injurious to health; provided, that when in the preparation of food products for shipment they are preserved by any external application appplied in such manner that the preservative is necessarily removed mechanically or by maceration in water, or otherwise, and directions for the removal of said preservative shall be printed on the covering or the package, the provisions of this act

*CITATIONS: "C. S. 1910" refers to the Compiled Statutes of New Jersey, 1910, published by authority of the Act of April 12, 1910. "Supp. 1924" refers to the 1924 supplement thereto, published by authority of the Act of March 12, 1923. "L." refers to the session laws of the year cited.

shall be construed as applying only when said products are ready for consumption.

Sixth. If it consists in whole or in part of a filthy, decomposed or putrid animal or vegetable substance, or any portion of an animal unfit for food, whether manufactured or not, or if it is the product of a diseased animal, or one that has died otherwise than by slaughter. (Id. § 3, as amended L. 1909, c. 156.)

4. **"Misbranded" Defined.**—The term "misbranded" as used herein shall apply to all drugs or articles of food, or articles which enter into the composition of food, the package or label of which shall bear any statement, design or device regarding such article, or the ingredients or substances contained therein, which shall be false or misleading in any particular, and to any food or drug product which is falsely branded as to the State, Territory or country in which it is manufactured or produced.

For the purpose of this act an article shall also be deemed to be misbranded—

In the case of drugs:

First. If it be an imitation of or offered for sale under the name of another article.

Second. If the contents of the package as originally put up shall have been removed, in whole or in part, and other contents shall have been placed in such package, or if the package fail to bear a statement on the label of the quantity or proportion of any alcohol, morphine, opium, cocaine, heroin, alpha or beta eucaine, chloroform, cannabis indica, chloral hydrate, acetanilide, acet-phenetidine, phenacetin or antipyrin, or any derivative or preparation of any such substance contained therein; provided, that nothing in this subdivision contained shall be construed to apply to such preparations as are specified and recognized by the United States Pharmacopœia or National Formulary, which are in accordance therewith, or to the compounding of family or domestic recipes, or the filling of prescriptions furnished by practicing physicians, dentists or veterinarians, the original of which recipes and prescriptions are retained and filed by the druggists compounding or filling the same; and provided, further, however, that nothing in this act contained shall be construed to apply to such drugs or medicines as are personally dispensed by legally licensed physicians, dentists or veterinarians in the course of their practice as such physicians, dentists or veterinarians.

Third. If its package or label shall bear or contain any statement, design or device regarding the curative or therapeutic effect of such article or any of the ingredients or substances contained therein which is false or fraudulent.

In the case of food:

First. If it be in imitation of or offered for sale under the distinctive name of another article.

Second. If it be labeled or branded so as to deceive or mislead the purchaser, or purport to be a foreign product when not so, or if the contents of the package as originally put up shall have been removed, in whole or in part, and other contents shall have been placed in such package, or if it fail to bear a statement on the label of the quantity or proportion of any morphine, opium, cocaine, heroin, alpha or beta eucaine, chloroform, cannabis indica, chloral hydrate, acetanilide, acet-phenetidine or phenacetin or antipyrin, or any derivative or preparation of any such substances contained therein.

Third. If in package form, the quantity of the contents be not plainly and conspicuously marked on the outside of the package in terms of weight, measure or numerical count; provided, however, that reasonable variations shall be permitted, and that the State Board of Health shall, by resolution, fix such tolerances and exemptions as to small packages as shall have been or may hereafter be fixed by the Secretary of the Treasury, the Secretary of Agriculture and the Secretary of Commerce and Labor of the United States of America, and such tolerances and exemptions shall be published at the end of the session laws of the Legislature next thereafter published after the adoption of said resolution, and such tolerances and exemptions as fixed in said resolution shall take effect when so published; provided, however, that if any such tolerance or exemption so adopted shall be changed by the three secretaries above mentioned, it shall not continue in effect in this State after such change has become effective.*

Fourth. If the package containing it, or its label shall bear any statement, design or device regarding the ingredients or the substances contained therein, which statement, design or device shall be false or misleading in any particular. (Supp. 1924, p. 1396 et seq.; L. 1907, c. 217, § 4, as amended L. 1915, c. 73.)

5. **Preparation of Articles for Foreign Markets Not Deemed an Adulteration or Misbranding; Exception; Use of Certain Preservatives.**—No article shall be deemed to be adulterated or misbranded within the meaning of this act when spe-

*See No. 583 et seq.

cially prepared for export to any foreign country, if such article shall be prepared and packed according to the directions of the foreign purchaser, and if no substance is used in the preparation or packing of such article which is prohibited by the laws of the foreign country for export to which said article was prepared; provided, that if such article shall be sold or offered for sale for use or consumption within the United States of America, then all the provisions of this act, with regard to adulteration and misbranding, shall apply thereto; and provided further, that all food products manufactured in this State during the years one thousand nine hundred and seven and one thousand nine hundred and eight, in which preservatives are used, which preservatives are not now specifically prohibited by the Department of Agriculture of the United States, shall be exempt from the provisions of this act; provided, the use of such preservatives is stated upon the label or in branding such products, and also the date of their manufacture. (C. S. 1910, p. 2566; L. 1907, c. 217, § 5, as amended L. 1908, c. 242.)

6. Samples for Inspectors—How Taken—Preservation for Identification—Analysis—Use of Samples and Analysis as Evidence—Inspection and Destruction of Milk.—Every person who shall distribute or sell, or offer for distribution or sale, or have in his possession with intent to distribute or sell, any article of food or drug, shall, on the request therefor and the tender of the value thereof by any chief or other inspector appointed under the authority of this act, deliver to such chief or other inspector so much of any such article of food or drug as said chief or other inspector may request; if such request shall not be immediately granted, said chief or other inspector shall thereupon have the power to demand and take so much of any such article of food or drug as such chief or other inspector may think proper, he, at time of said demand and taking, tendering to the person in charge of such article of food or drug what he may deem to be the reasonable value thereof; said chief or other inspector shall, at the time of the delivery to him of such article of food or drug, or of his demanding or taking the same, divide the sample so delivered or demanded and taken in the presence of the person of whom the request or demand was made, or of a witness or witnesses, into two or more parts, and shall duly seal two or more of said parts each in a suitable can, vessel or package, and, at the time of taking such sample, shall tender, and, if accepted, shall deliver one part to the person of whom the request or demand was made, with a statement in writing, signed by said chief or other inspector, that such sample is taken for the purpose of examination; and in any prosecution of any person for the violation of any provision of this act no proof of any analysis thereof shall be given in evidence by the prosecutor unless a part of the sample shall have been sealed up and tendered, with such writing as aforesaid, to the person of whom the request or demand was made; provided, however, that in any prosecution for the sale of food or drug in violation of this act, proof of the analysis of the article so sold may be given in evidence on the part of the prosecutor, notwithstanding the fact that the purchase of such article may have been made by some person other than the chief or other inspector appointed under the authority of this act, if such article so sold in violation of this act shall immediately after such sale be delivered by the person so purchasing said article to the chief or any other inspector appointed under the authority of this act, and said chief or other inspector shall, upon such delivery to him, in the presence of the person from whom the request or demand was made, or of a witness or witnesses, which witness may be the person who made the said purchase, divide the said article into two or more parts, and shall duly seal two or more of said parts, each in a suitable can, vessel or package, and shall tender, and, if accepted, shall deliver to the person who sold the said article one part of such sample, with a statement, in writing, signed by said chief or other inspector, that such sample is taken for the purpose of examination; the chief and every other inspector appointed under the authority of this act, whenever he has reason to believe that any of the provisions of this act concerning the sale or distribution of milk or cream, or the offering or exposing of milk or cream for sale, or the having of milk or cream in possession for the purpose of sale, is being violated, shall have power to open any can, vessel or package containing such suspected milk or cream, whether the can, vessel or package be sealed or locked or not, and whether it be in transit or not; and if, upon inspection, he shall believe that such milk or cream is being distributed or sold, or had in possession with intent to distribute or sell, or offered or exposed for sale, contrary to any of the provisions of this act, he may, in the presence of one or more witnesses, take a sample thereof and seal it in a can, vessel or package, and send the sample thus enclosed and sealed for analysis to any chemist appointed under the authority of this act; provided, however, that when any such chief or other inspector shall seize or take for inspection any milk in transit from the dairy to the receiving station or creamery, he shall proceed to take the same to such receiving station or creamery and cause all of such milk so seized to be poured in one vessel and thoroughly mixed and take a composite sample of the same for such

analysis; he may also, in any such case, condemn such milk or cream, and pour it upon the ground. (Supp. 1924, p. 1402 et seq.; L. 1907, c. 217, § 25, as amended L. 1920, c. 227.)

7. Entry of Premises and Examination of Articles of Food, Etc.; Samples for Examination.—The members of the State Board of Health and all chemists, inspectors and employes appointed by said board under authority contained in this act, shall have full and free access, ingress and egress to all places of business, factories, farms, buildings, hotels, restaurants, boarding houses, carriages, cars, cans, vessels and containers used in the manufacture, sale, distribution or transportation of any article or product of food or drug; they shall also have power to examine and open any package, can or vessel containing or believed to contain any article of food or drug which may be manufactured or sold, or exposed for sale, or had in possession with intent to sell in violation of any of the provisions of this act, and may inspect the contents therein and may take therefrom samples for examination. (C. S. 1910, p. 2571 et seq.; L. 1907, c. 217, § 26.)

8. Interference With Performance of Official Duties.—No person shall obstruct or in anywise interfere with any analyst, chemist, chief or other inspector or employee of the State Board of Health in the performance of any duty under this act. (Id. § 27.)

9. Standards of Purity; Adoption.—Any standard of purity, quality or strength of any food or drug, the purity, quality or strength of which is not fixed by any law of this State, which standard has been or hereafter may be established and published by the Secretary of the Department of Agriculture of the United States of America, may be adopted by the Board of Health of this State by resolution duly adopted at a regular meeting of said board, which resolution shall be certified to the Secretary of State by the Secretary of the State Board of Health, and shall be published at the end of the session laws of the Legislature next thereafter published after the adoption of said resolution, and the standard of purity, quality or strength of any food or drug as fixed in said resolution shall take effect when so published; provided, however, that if any such standard so adopted shall be changed by the Secretary of said Department of Agriculture it shall not continue in effect in this State after such change has become effective. (Id. § 28.)

10. Selling or Exposing Non-Standard Articles Unlawful.—No person shall sell, or offer or expose for sale, or have in his possession with intent to sell, or manufacture for sale, any article of food or drug which differs in purity, quality or strength from the standard adopted and published in accordance with section twenty-eight of this act. (Id. § 29.)

11. Enforcement of Act by Municipalities—Appointment, Power and Duties of Municipal Inspectors—Appointment of Analysts.—The board of health of any municipality in this State shall enforce the provisions of this act within said municipality, and shall have the power to designate from among its sanitary inspectors one or more inspectors who shall be known as inspector or inspectors of foods and drugs of such municipality, and whose duties shall be, besides the usual duties of a sanitary inspector in such municipality, to aid in the enforcement of this act in such municipality, and who shall have within the limits of such municipality all the powers and authority given to any inspector appointed under the provisions of this act. Such board may also appoint one or more analysts. (Supp. 1924, p. 1404; L. 1907, c. 217, § 30, as amended L. 1915, c. 243.)

12. Enforcement of Act by State Board of Health; Rules and Regulations; Analysts, Chemists, Chief Inspector, Inspectors and Employees; Appointment; Terms of Office; Compensation; Investigations of Violations of Act.—The State Board of Health shall enforce the provisions of this act and shall have the power from time to time to adopt, promulgate and publish, by circular or otherwise, such general rules and regulations for the government of the analysts, chemists, chief inspector and such other inspectors and employees appointed by the said board as they may deem proper; they shall also have the power to give to any analysts, chemists or chief inspector, or other inspector or employee appointed by the said board, such orders concerning any performance of duty as they from time to time may deem proper; they shall also have the power from time to time to appoint such analysts, chemists, chief inspector and other inspectors and employees as they may deem proper who shall hold their respective positions during the pleasure of said board and perform such general or special services as said board may by their general rules and regulations or by their special orders require, and to fix and allow to said analysts, chemists, chief inspector and other inspectors and employees, respectively, such salaries, fees or compensation as the said board shall deem to be reasonable, which salaries, fees and compensation shall be paid out of the appropriations from time to time made by the Legislature for carrying out the provisions of this act; the said board shall have the power, and it shall be their duty, through said analysts, chemists, chief

inspector and other inspectors and employees, and in such other ways as the said board may deem practicable, to make inquiries and investigations concerning alleged or probable violations of any of the provisions of this act, to cause any and all persons guilty of any violation thereof to be prosecuted under the provisions of this act, and, generally, to adopt, carry out and enforce such rules and regulations as shall promote the purposes of this act. (C. S. 1910, p. 2572 et seq.; L. 1907, c. 217, § 31.)

13. **Penalties for Violations of Sections 1, 8, 11, 16-24.**—Every person who shall violate any of the provisions of the first, eighth, eleventh, sixteenth, seventeenth, eighteenth, nineteenth, twentieth, twenty-first, twenty-second, twenty-third or twenty-fourth sections of this act shall be liable to a penalty of fifty dollars for the first offense, one hundred dollars for the second offense and two hundred dollars for the third and each subsequent offense. (Id. § 32.)*

14. **Penalties for Violations of Section 27.**—Every person who shall violate any of the provisions of the twenty-seventh section of this act shall be liable to a penalty of one hundred dollars for the first offense and to a penalty of two hundred dollars for the second and each subsequent offense. (Id. § 33.)†

15. **Penalties for Violations of Sections 7, 9, 10, 15, 29.**—Every person who shall violate any of the provisions of the seventh, ninth, tenth, fifteenth or twenty-ninth sections of this act shall be liable to a penalty of twenty-five dollars for the first offense and to a penalty of fifty dollars for the second and each subsequent offense. (Id. § 35.)‡

16. **Payment of Penalties Equivalent to Conviction.**—Payment of a penalty for any alleged violation of this act, either before or after the institution of proceedings for the collection thereof, shall, for the purposes of this act, be deemed equivalent to a conviction of the violation for which such penalty was claimed. (Id. § 38.)

17. **Separate Violations of Act.**—When any person shall violate any of the provisions of this act by manufacturing or producing any article of food or drug for distribution or sale, or by having any such article in possession with intent to distribute or sell, or by offering or exposing any such article for sale at different manufactories or places of business or in different wagons or conveyances on the same day or at the same time, the manufacture or production for distribution or sale; or possession with intent to distribute or sell, or offering or exposing for sale of any such article in violation of any of the provisions of this act at each such manufactory, place of business, or in each such wagon or conveyance, on the same day or at the same time, shall be deemed a separate and distinct violation of this act. (Id. § 39.)

18. **Penalties; Action; How Brought; Pleadings; Amendment.**—Any and all penalties prescribed by any of the provisions of this act shall be recovered in an action of debt by and in the name of the Board of Health of the State of New Jersey, or by and in the name of any board of health of any municipality of this State, as the case may be, as plaintiff. The pleadings shall conform, in all respects, to the practice prevailing in the court in which any such action shall be instituted, but no pleading or process shall be set aside or invalidated by reason of any formal or technical defects therein if the same contain a statement of the nature of the alleged violation and of the section of this act alleged to have been violated, and upon the attention of the court being called to any such formal or technical defect the same shall be immediately corrected and the said pleading or process amended as a matter of course, and as to all other defects in pleadings or process the same may be amended, in the discretion of the court, as in any other action or proceeding in said court. (Id. § 40.)

19. **Penalties; Execution; Imprisonment to Enforce.**—When judgment shall be rendered against any defendant other than a body corporate execution shall be issued against his goods and chattels and body without any order of the court for that purpose first had and obtained. If the officer executing any such writ shall be unable to find sufficient goods and chattels of said defendant in his bailiwick to make the amount of said judgment he shall take the body of the said defendant and deliver him to the keeper of the common jail of said county, there to be detained until discharged by the court in which such judgment was obtained, or by one of the justices of the Supreme Court when such court of justice shall be satisfied that further confinement will not result in the payment of the judgment and costs. In case judgment shall be rendered against a body corporate execution shall be issued against the goods and chattels of such body corporate as in other actions of debt. (Id. § 41.)

20. **Penalties—Disposition.**—Any penalty recovered in any action brought under the provisions of this act shall be paid to the plaintiff therein. When such plaintiff is the State Board of Health, such penalty shall be paid by such board into the treasury of the State. When such plaintiff is a local board of health, such pen-

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*For said sections, see Nos. 1, 103, 106, 336, and 375-382.

†For section 27, see No. 8.

‡For said sections, see Nos. 10, 102, 104, 105, and 110.

alty shall be paid by such local board into the treasury of the township, city, borough, town or other local municipal government within which such local board has jurisdiction. (Supp. 1924, p. 1404; L. 1907, c. 217, § 42, as amended L. 1911, c. 353.)

21. United States Pharmacopœia as Evidence.—The book printed and published under the authority of the United States Pharmacopœial Convention, known as the United States Pharmacopœia, or any of the printed copies of such book, shall in any action or proceeding brought under any of the provisions of the act to which this act is a supplement, or any of the supplements or amendment thereof, be received as evidence of the contents of the United States Pharmacopœia in any court of this State, or before any magistrate, and the court or magistrate may determine whether the book offered as such was so printed and published, either from inspection or the knowledge of the judge, judges or magistrates, or from testimony, and no error shall be assigned, or judgment reversed because of the admission of such book, unless it be shown by the party assigning such error or seeking to reverse such judgment that the book so offered in evidence was not, in fact, printed and published as such United States Pharmacopœia under the authority of such convention, or was not, in fact, the edition of such United States Pharmacopœia which it purported to be. (C. S. 1910, p. 2574; L. 1908, c. 253.)*

22. "Person" Defined; Responsibility for Acts of Officers, Agents, Etc.—The word "person," as used in this act, shall be construed to import both the plural and the singular, as the case may demand, and shall include corporations, companies, societies and associations, as well as individuals. When construing and enforcing any provision of this act, the act, omission or failure of any officer, agent or other person acting for or employed by any individual, corporation, company, society or association within the scope of his employment or office, shall in every case be deemed to be the act, omission or failure of such individual, corporation, company, society or association, as well as that of the person. (C. S. 1910, p. 2574 et seq.; L. 1907, c. 217, § 43.)

23. Injunction to Restrain Violations of Act.—Whenever any person shall violate any of the provisions of this act it shall be lawful for the State Board of Health, either before or after the institution of proceedings for the collection of the penalty imposed by this act for such violation, to file a bill in the Court of Chancery in the name of the State at the relation of such board for an injunction to restrain such violation and for such other or further relief in the premises as the Court of Chancery shall deem proper, but the filing of such bill, nor any of the proceedings thereon, shall not relieve any party to such proceeding from the penalty or penalties prescribed by this act for such violation. (Id. § 44.)

24. Condemnation and Destruction of Food, Etc.—Whenever any member of the State Board of Health, or local board of health, or any chemist, inspector or other employee of said boards shall find any meat, milk, fish, bird, fowl, vegetable or other food of a perishable nature exposed or offered for sale, or had in possession with intent to sell, in violation of any of the provisions of this act, or in a state of rottenness or putrefaction, or in any condition which renders it, in his opinion, unwholesome or unfit for use for human food, he shall condemn the same, and cause it to be destroyed or disposed of in such a manner as to make it impossible to be thereafter used for human food. Any article of food or drug that is offered or exposed for sale, or had in possession with the intent to distribute or sell, or is intended for sale or distribution in violation of any of the provisions of this act, or in any condition which renders it unwholesome or unfit for use as food, whether such article is in the custody of a common carrier or of any other person or corporation, such article not being in transit from one State to another, may be proceeded against in the Circuit Court or Court of Common Pleas, or District Court having jurisdiction in the county in which such food is exposed or offered for sale or had in possession or in custody as aforesaid, or before any judge of any court, or before any justice of the peace in any such county, and seized for condemnation and confiscation, and authority and jurisdiction are hereby vested in the several courts above mentioned and in the judges thereof in vacation and in the several justices of the peace to issue the warrant and to hear and determine in a summary manner the proceedings herein provided for. Such proceedings shall be by complaint, verified by affidavit, which may be made on information and belief, and in the name of the Board of Health of the State of New Jersey or the local board of health, against the article or articles proceeded against, particularly describing the same, the place where they are located, the name of the person, firm or corporation in whose possession or custody they are found, if such name is known to the person making such complaint or can be ascertained by reasonable effort, and the respect in which such articles are adulterated or misbranded or the characteristics of the said articles which render the sale there-

*Chapter 253, Laws of 1908, supplements Chapter 217, Laws of 1907, quoted in No. 1 et seq.

of illegal. Upon the filing of such complaint, verified as aforesaid, said court, judge or justice of the peace shall issue a warrant, directed to the sheriff or to any constable of the county commanding such officer to seize and take in his possession the article or articles described in the complaint, and bring the same before the court, judge or justice of the peace who issued the warrant, and to summon the person, firm or corporation named in the warrant, and any other person who may be found in possession of said article or articles, to be and appear at the time and place therein specified; such person shall be summoned by service of a copy of said warrant in the same way and manner as a summons issuing out of the court in which such warrant has been issued, is served, and when such warrant is issued by a justice of the peace, it shall be served upon such person in the same way and manner as a summons issuing out of the small cause court is served. The hearing upon such complaint shall be at the time and place specified in the warrant, which time shall not be less than five days or more than fifteen days from the date of issuing the said warrant; provided, however, that if the execution and service of the warrant, as aforesaid, has been less than three days before the return day of the warrant, then either party shall be entitled to a reasonable continuance. Upon the hearing the complaint may be amended, and any person, firm or corporation that appears and claims the said article or articles shall be required to file a claim in writing. If upon the hearing it shall appear that the goods seized under such warrant were offered or exposed for sale, or had in possession with intent to distribute or sell, were intended for sale or distribution in violation of any provision of this act, or in any condition which rendered them unwholesome or unfit for food, the same shall be confiscated and disposed of by destruction or sale as the court, judge or justice of the peace may direct, and the proceeds thereof, if sold, less the legal costs and charges, shall be paid to the Board of Health of the State, which board shall pay the same into the treasury of this State, or the local board of health for the use of the municipality, but such articles shall in no instance be sold contrary to the provisions of this act. In case the articles so seized, as aforesaid, are not injurious to health, and are of such a character that, when properly marked or branded, their sale is not prohibited by this act, the court, judge or justice of the peace, upon the payment of the costs of the proceedings above mentioned and the execution and delivery to the Board of Health of the State of New Jersey, or to the local board of health, as obligee of a good and sufficient bond to the effect that such articles so seized as aforesaid, shall not be sold or otherwise disposed of contrary to the provisions of this act or by the laws of any State, Territory or district of the United States or of any of the laws of the United States, may, by order, direct that such articles be delivered to the owner thereof. (Supp. 1924, p. 1405 et seq.; L. 1907, c. 217, § 45, as amended L. 1913, c. 136.)

25. **Exemption of Dealers From Prosecutions Under Act; Guaranty of Purity From Wholesaler, Jobber or Manufacturer; Goods on Hand.**—No dealer shall be prosecuted under the provisions of this act for distributing or selling, or having in his possession with intent to distribute or sell, any article of food or drug which under any of said provisions shall be deemed to be adulterated or misbranded; provided, that said article of food or drug is distributed or sold or had in possession with intent to distribute or sell in the original unbroken package in which it was received by said dealer, and that in case said article was purchased by said dealer from a wholesaler, jobber, manufacturer, or other person residing in this State, and said dealer can establish a guarantee signed by such wholesaler, jobber, manufacturer or other person from whom he purchased such article, to the effect that the same is not adulterated or misbranded within the meaning of this act, designating it; or in case said article was purchased by said dealer from a wholesaler, jobber, manufacturer or other person residing in the United States of America, but outside of this State, and said dealer can establish a guarantee, signed by such wholesaler, jobber, manufacturer or other person from whom he purchased such article, to the effect that the same is not adulterated or misbranded, within the meaning of an act of the Congress of the United States of America, entitled "An act for preventing the manufacture, sale or transportation of adulterated or misbranded, or poisonous or deleterious foods, drugs, medicines and liquors, and for regulating traffic therein, and for other purposes," approved June thirtieth, one thousand nine hundred and six, and the supplements and amendments thereof. Such guaranty, to afford protection, shall contain the name and address of the person making the sale of such article to such dealer, and in such case said person, if he is a resident of this State, shall be amenable to the prosecution, fines and other penalties which would attach in due course to the dealer under the provisions of this act. If the guaranty is signed by a person who resides outside of this State, then the Board of Health of this State shall report the facts in the case to the Secretary of Agriculture of the United States, or the proper officer appointed for the enforcement of the above-mentioned act of Congress; and provided further, that no guarantee that any article is not adulterated

or misbranded within the meaning of the above-mentioned act of Congress, shall be effective to exempt any dealer from prosecution under this act, unless the provisions of the above-mentioned act of Congress and of this act covering the adulteration and misbranding of such guaranteed article are identical.

The provisions of the act relating to misbranding shall not apply to the distribution or sale or to the possession with intent to distribute or sell by any dealer of such proprietary foods and medicines as were in such dealer's stock in this State on October first, nineteen hundred and eight; provided, that the package or other container in which such foods or medicines shall be contained shall be plainly and conspicuously marked with the words and figures "On hand Oct. 1st, 1908." (C. S. 1910, p. 2575 et seq.; L. 1907, c. 217, § 46, as amended L. 1908, c. 308.)

26. Sale, Etc., of Patent Medicines Not Authorized.—Nothing in this act contained shall be taken or construed to authorize or legalize, the selling, giving away, furnishing or disposing, of any article, substance, admixture or patent or proprietary remedy, the sale, gift, furnishing or disposition of which is prohibited, except upon the prescription, by any statute of this State. (C. S. 1910, p. 2576; L. 1908, c. 308, § 4.)*

27. Act Not Impaired by This Act; Collection of Penalties Thereunder.—Nothing in this act contained shall be construed to repeal, affect or impair the provisions of an act¶ of the Legislature of this State entitled "A further supplement to an act entitled 'An act to secure the purity of foods, beverages, confectionery, condiments, drugs and medicines, and to prevent deception in the distribution and sales thereof,' approved March twenty-first, one thousand nine hundred and one," approved April twentieth, one thousand nine hundred and six, but said act shall continue in force as if this act had not been passed. All penalties imposed by said act shall be collected by an action of debt brought by and in the name of the board of health of the State of New Jersey, in accordance with the provisions of the fortieth and forty-first sections of this act. (C. S. 1910, p. 2576; L. 1907, c. 217, § 47.)

28. Act Not Impaired by This Act.—Nothing in this act contained shall be construed to repeal, affect or impair the provisions of an act of the Legislature of this State entitled "An act to prevent deception in the sale of oleomargarine, butterine or any imitation of dairy products, and to preserve the public health," approved March twenty-second, one thousand eight hundred and eighty-six, or the acts supplementary thereto or amendatory thereof, but said act and its supplements and amendments shall continue in force as if this act had not been passed. (Id. § 48.)†

29. Invalidity of One Section Not to Affect Others.—In case for any reason any section of any provision of this act shall be questioned in any court, and shall be held to be unconstitutional or invalid, the same shall not be held to affect any other section or provision of this act. (Id. § 49.)

30. Annual Expenditures for Enforcement of Act; Appropriation.—The State Board of Health may expend annually, for the purposes of carrying out the provisions of this act, a sum not exceeding twenty thousand dollars, which sum shall be paid by the Treasurer of this State upon the warrants of the Comptroller; provided, however, that an appropriation therefor shall first be made by the Legislature. (Id. § 50.)

Miscellaneous General Provisions.

31. Sale of Unwholesome Provisions.—Any butcher or other person who shall sell, offer or expose to sale, the flesh of any animal dying otherwise than by slaughter, or slaughtered while diseased, or any contagious or unwholesome flesh; or any baker, brewer, distiller, or other person who shall sell unwholesome bread, drink, or liquor, shall be guilty of a misdemeanor. (C. S. 1910, p. 1777; L. 1898, c. 235, § 97.)

32. Ordinances, Etc.—The said local boards of health‡ shall have power to pass, alter or amend ordinances, adopt and ordain the same in the form of a code or each ordinance may be separate and apart by itself, and make rules and regulations in regard to the public health within their several jurisdictions for the following purposes, but no such code, ordinance or ordinances shall be finally passed unless the same have been read in substantially their final form at a meeting held at least one week prior to final passage and have been published in a newspaper published and circulating in the said municipality, and if there be no newspaper published and circulating in said municipality then in at least one newspaper published and circu-

*Chapter 308, Laws of 1908, amends chapter 217, Laws of 1907, quoted in No. 1 et seq.

¶Included in No. 141 et seq.

†See No. 224 et seq.

‡Boards of health in cities, boroughs, towns and other local municipal governments.

lating in the county in which such municipality is located at least two days prior to final passage. Such publication shall contain a notice stating the time and place when and where the local board of health will consider the final passage thereof. Before any such code, ordinance or ordinances shall take effect, such code, ordinance or ordinances, or the title thereof, shall be published at least once in a newspaper published and circulating as in this act hereinbefore provided.

Adulteration of Food. I.—To aid the enforcement of the law as to the adulteration of all kinds of food and drink, and to prevent the sale or exposure for sale of any kind of meat or vegetable that is unwholesome or unfit for food; . . .

Animals. IV.—To regulate, control and prohibit the keeping or slaughtering of all kinds of animals; . . .

Protect Water Supply. XII.—To protect the public water supply and prevent the pollution of any stream of water or well, the water of which is used for domestic purposes, and to order not to be used or closed any well, the water of which is polluted or detrimental to the public health, . . . (Supp. 1924, p. 1473 et seq.; L. 1887, c. 68, § 12, as amended L. 1924, c. 136.)

32a. Penalty for Violation of Ordinances; Prosecutions for Violations.—Any such board of health may prescribe a penalty for the violation of any of their ordinances or sections of any code they make and ordain as aforesaid, not to exceed one hundred dollars and not less than ten dollars; and every District Court in any city, and every justice of the peace in any county, and any police justice or recorder in any city, is hereby empowered, on oath or affirmation made according to the law that any person or persons has or may have violated any section of the code, or any of the ordinances of any such board as aforesaid to issue process at the suit of any such board as aforesaid, either in the nature of a summons or warrant, against the person or persons so charged which process shall, when in the nature of a warrant, be returnable forthwith, and when in the nature of a summons shall be returnable in not less than one nor more than ten entire days; such process shall state what section of the code or ordinance of any such board is alleged to have been violated by the defendant or defendants; and on the return of such process, or at any time to which the trial shall have been adjourned, the said court, justice of the peace, police justice or recorder shall proceed to hear the testimony and to determine and give judgment in the matter, without the filing of any pleadings, and a copy of the ordinance or section of the code alleged to have been violated, certified to under the hand of the clerk or president of the board, and under the seal of such board, if it have a seal, shall be taken as full and legal proof of the existence of such ordinance or code, and that all requirements of law in relation to the ordaining, publishing and making of the same, so as to make the same legal and binding, have been complied with, unless the contrary be shown; and the said court, justice of the peace, police justice or recorder shall, if judgment be rendered for the plaintiff, forthwith issue execution against the goods and chattels and persons of the defendant or defendants, and said court, justice of the peace, police justice or recorder is further empowered to cause such defendant who may refuse or neglect to pay the amount of the judgment rendered against him, and all costs and charges incident thereto, unless an appeal is granted, to be committed to the county jail for any period not exceeding ninety days; and said court, justice of the peace, police justice or recorder is further empowered in case any such defendant shall have been twice convicted, within the space of six months, of the violation of the same ordinance, and due proof of the same is made, in addition to the payment of the appropriate penalty, to cause said defendant to be imprisoned in the county jail or county workhouse, with or without hard labor, for any number of days not exceeding one for each dollar of the penalty. (C. S. 1910, p. 2666 et seq.; L. 1887, c. 68, § 18.)

32b. Ordinances.—Said board* may and shall have power, at any special, regular or adjourned meeting thereof, to pass, alter, amend or repeal ordinances in relation to the public health and the keeping of a registry of vital facts or statistics in said county, and in so doing—

Adulteration of food, etc.—I. To provide against the adulteration of all kinds of foods and drinks, or any kind of meat or vegetable not fit for human food, sold, for sale, or exposed for sale or brought into said county for sale; . . .

Keeping of animals, etc.—IV. To regulate, control or prohibit the keeping of all kinds of animals, birds and beasts and the slaughter of the same, in said county or any part thereof; . . . (C. S. 1910, p. 2687 et seq.; L. 1884, c. 193, § 4.)

32c. Penalties for Violations of Ordinances; Actions to Recover; Process; Service; Arrest Without Warrant; Adjournments.—Said board may prescribe a penalty for the violation of any of their ordinances or sections of any code they make and ordain as aforesaid, not to exceed one hundred dollars, and not less than ten dol-

*County board of health.

lars, and every District Court in any city in such county, and every justice of the peace in such county, and every police justice or recorder in any city in such counties, is hereby empowered on oath or affirmation made according to law, that any person or persons has or have violated any of the ordinances of any such board as aforesaid, to issue process in an action of debt at the suit of any such board as aforesaid, either in the nature of a summons or warrant, against the person or persons so charged, which process shall, when in the nature of a warrant, be returnable forthwith, and when in the nature of a summons, shall be returnable in not less than one nor more than ten entire days, such process shall state what ordinance or section thereof of any such board is alleged to have been violated by the defendant or defendants, and the penalty demanded, and on the return of such process or at any time to which the trial shall have been adjourned, the said court, justice of the peace, police justice or recorder shall proceed to hear testimony and to determine and give judgment in the matter, without the filing of any pleadings; and a copy of the ordinance alleged to have been violated, certified to under the hand and seal of the clerk or president of such board, shall be taken as full and legal proof of the existence of such ordinance, and that all requirements of law in relation to the ordaining, publishing and making of the same, so as to make the same in all respects a legal and binding ordinance, have been complied with, unless the contrary be shown; and the said court, justice of the peace, police justice or recorder shall, if judgment be rendered for the plaintiff forthwith issue execution against the goods and chattels and person of the defendant or defendants; and said court, justice of the peace, police justice or recorder is further empowered to cause any such defendant, who may refuse or neglect to pay the amount of the judgment rendered against him or her, and all costs and charges incident thereto, unless an appeal is granted, to be committed to the county jail for any period not exceeding ninety days, and said court, justice of the peace, police justice or recorder is further empowered, in case any defendant shall have been twice convicted within the space of six months of a violation of the same ordinance, and due proof of the same made, in addition to the payment of the appropriate penalty, to cause said defendant to be imprisoned in the county jail of the county, or the county workhouse with or without hard labor, for any number of days not exceeding one (....) for each dollar of the penalty; the officers to serve and execute all process under this act shall be the officers authorized by law to serve and execute process in said courts and before such magistrates and officers as aforesaid, including the constables of such counties and all police officers of said cities, members of said boards; all police officers, constables and health inspectors shall have the right to arrest, without warrant, any person in their presence violating any of the ordinances of such boards and to take the same forthwith before any police justice, justice of the peace or recorder in said city or county, who shall proceed to hear testimony and give judgment for or against such person so arrested, without any pleadings being filed; provided, such person be shown and have read to him the ordinance for the alleged violation of which he has been so summarily arrested; and provided, further, that defendants, in case of an adjournment or postponement of the trial or hearing, may be required to enter into a bond or recognizance in a reasonable sum, not to exceed one hundred dollars in any one case, for their future appearance to answer any charge made against them or any of them in pursuance of this act. (Id. § 7.)

33. Analyses of Food, Drugs, Etc.—Charges.—The Department of Health, of the State of New Jersey may, in its discretion, cause to be made, in the State Laboratory of Hygiene, analyses and examinations of samples of water, food, drugs, pathological materials and similar substances, when requested to do so by any person, private or municipal corporation or institution in this State. Said department shall fix the charges to be made for such analyses and examinations, and shall make such rules and regulations governing the collection and examination of such samples as they may deem proper. (Supp. 1924, p. 1441; L. 1918, c. 39, § 1.)

34. Receipts Paid Into Treasury.—All moneys received for the analyses of such samples as aforesaid shall be paid by the Department of Health to the Treasurer of the State. (Id. § 2.)

35. Establishment in Cities of First Class; Appropriation for.—It shall be lawful for the municipal board or body having charge of the finances of any city of the first class in this State, in their discretion, by resolution, approved by the mayor, to appropriate and set aside annually to the credit of the board or body having charge of the public health, or performing the functions of a board of health of said city, a sum of money, not exceeding ten thousand dollars, to be used by the said board or body for the establishment and maintenance of medical dispensaries for the free distribution of medicines among the poor of any such city; said sum of money so appropriated as aforesaid shall be annually levied and collected in the same manner as other taxes are levied and collected in said city. (C. S. 1910, p. 2734; L. 1902, c. 199, § 1.)

35a. Location; Rules and Regulations; Limitation of Expenses.—It shall be the duty of the board or body having charge of the public health of any such city, provided the municipal board or body having charge of the finances shall appropriate moneys as provided in the first section of this act, to establish, in suitable locations in such city, dispensaries for the free distribution of medicines among the poor, authorized by this act, and for that purpose to procure suitable rooms or places where medicines and medical attendance can be given to the poor of such city; and said board or body is hereby empowered to pass acts and alter and amend ordinances, and make rules and regulations for the proper conduct and management of such dispensaries, and to appoint for that purpose any and all necessary officers or employees and to fix their salaries and terms of office, and to provide medicines and medical attendance, and, in general, to supervise and direct the affairs of such dispensaries so established; provided, the expense of the same shall not exceed the said sum of ten thousand dollars in any one year. (Id. § 3.)

36. Food, Dolls' or Children's Clothing Not Made in Tenement.—No articles of food, no dolls, dolls' clothing and no article of children's or infants' wearing apparel shall be manufactured, altered, repaired or finished in whole or in part for a factory, either directly or through the instrumentality of one or more contractors or third persons in a tenement house, in any portion of an apartment, any part of which is used for living purposes. (Supp. 1924, p. 1683; L. 1917, c. 229, § 3.)

37. Penalty for Violations.—Any person, firm or corporation, being the owner, lessee or occupant of the place or places to which the preceding sections or any part thereof relate, shall, for the violation of any of the provisions herein, be liable to a penalty of fifty dollars for the first offense and one hundred dollars for each succeeding offense. (Id. § 4.)

37a. Expenses of Station, and of Printing Bulletins, Etc.—The Board of Managers of the New Jersey Agricultural Experiment Station be authorized each year to incur expenses not exceeding fifteen hundred dollars for printing the bulletins issued from said station containing analyses of fertilizers, fodders, feeds and soils, the results of investigations in feeding animals, in testing the adaptability of soils and manures for the various cereal, fruit and vegetable crops, and such other results and investigations as may be deemed by the Board of Managers to be of immediate usefulness to the citizens of the State; expenses not exceeding three thousand dollars for carrying out the provisions of "An act concerning the regulation of the sale of concentrated commercial feeding stuffs;" and expenses not exceeding twenty thousand dollars in otherwise conducting and managing the said station, which expenses shall upon warrant of the Comptroller be paid out of the State treasury; provided, that the same shall first be certified by the President and Secretary of the Board of Managers; and provided, further, that the Legislature shall annually make appropriation for such purposes. (C. S. 1910, p. 29; L. 1904, c. 25, § 1.)

37b. When Doors, Windows, Etc., Walled Up.—All doors, transoms and windows opening into public halls from any portion of a tenement house where paint, oil, spirituous liquors or drugs are stored for the purposes of sale or otherwise, shall be removed and closed up as solidly as the rest of the wall. (Supp. 1924, p. 3605; L. 1904, c. 61, § 72, as amended L. 1919, c. 228.)

37c. Penalty.—Every person who shall violate or assist in the violation of any provision of this act shall be subject to a penalty of one hundred dollars, if such violation be willful or to a penalty of fifty dollars, if such violation be not willful. (Supp. 1924, p. 3622; L. 1904, c. 61, § 189, as amended L. 1917, c. 95.)

NOTE: See also Nos. 420 and 452 et seq.

PART II.

Special Food Laws.

Beverages.

38. Purity of Nonalcoholic Drinks.—No person shall distribute or sell, or manufacture for distribution or sale, or have in his possession with intent to distribute and sell, any beverage which is a nonalcoholic drink within the meaning of this act, which contains any boric acid or borate, salicylic acid or salicylate, formaldehyde, hydrofluoric acid, or fluoride, fluoborate, fluosilicate or other fluorine compound, dulcin, glucin, saccharin, betanapthol, hydronapthol, abrastol, asaprol, compound of copper, pyroligneous acid, coal-tar dye (except the certified colors now

permitted by the United States Department of Agriculture, to-wit: Amaranth, ponceau 3 R., erythrosin, orange I, napthol yellow S., light green S. F. yellowish, indigo disulfo acid), saponin, except derived from soap bark or other substance deleterious to health. (Supp. 1924, p. 1401 et seq.; L. 1915, c. 357, § 1.)*

39. Imitations Marked on Bottle.—No person shall distribute or sell, or have in possession with intent to distribute or sell, any nonalcoholic drink within the meaning of this act which is an imitation of any other nonalcoholic drink, unless the bottle or other container in which the same is contained is plainly marked with the word imitation or artificial on the label or cap thereof, in letters of the same size and type as those of the name of such nonalcoholic drink under which the same is distributed or sold, or had in possession with intent to distribute or sell. (Id. § 2.)

40. "Nonalcoholic Drink" Defined.—The term "nonalcoholic drink" as used in this act shall include carbonated beverages of all flavors, sarsaparilla, ginger ale, soda water of all flavors, lemonade, orangeade, root beer, grape juice, and all other beverages of any kind or character, whether similar or not to the beverages specifically above mentioned, either containing no alcohol at all or containing not more than one per centum of alcohol. (Id. § 3.)

41. False Signs as to Drink.—No person shall distribute or sell, or have in possession with intent to distribute or sell, any nonalcoholic drink at any place where false or fraudulent statements or designs are displayed concerning such nonalcoholic drink. (Id. § 4.)

42. Penalties—Recovery of Penalties.—Any person who shall violate any of the provisions of this act, or any of the rules and regulations made under authority contained in this act, shall be liable to a penalty of fifty dollars for the first offense, and to a penalty of one hundred dollars for the second offense, and to a penalty of two hundred dollars for the third and each subsequent offense; such penalties may be sued for and recovered by the same boards and officials, and in the same manner, as provided for the recovery of penalties in the act to which this act is a supplement, and such penalties, when recovered, shall be paid to the board or official recovering the same in the same manner as penalties recovered under the provisions of the act to which this act is a supplement. (Id. § 5.)

43. License to Engage in Bottled Water or Soft Drinks.—No person now engaged or who may hereafter engage in the business of bottling water for drinking purposes or in the business of bottling any nonalcoholic drink within this State shall sell or deliver any such water or nonalcoholic drink until a license shall have been issued to such person by the Director of Health of New Jersey, authorizing him to engage in the business of bottling water for drinking purposes or to engage in the business of bottling any nonalcoholic drink. (Supp. 1924, p. 1407; L. 1924, c. 122, § 1.)†

44. Licensed by Department of Health—Rules and Regulations.—The Director of Health is hereby authorized to issue licenses to persons engaged in the business of bottling water within this State for drinking purposes, or in the business of bottling any nonalcoholic drink; no license shall be issued for more than one year, and all licenses shall expire June thirtieth of each year. The Department of Health of the State of New Jersey shall make and the Director of Health shall enforce rules and regulations for the conduct of bottled water establishments and nonalcohol drink establishments, and no license shall be issued to any person to operate such establishments until the rules and regulation promulgated by the Department of Health of the State of New Jersey have been complied with. (Id. § 2.)

45. Penalty—Revocation of License.—Any person who shall violate any of the provisions of this act or any of the rules and regulations made by the Department of Health of the State of New Jersey under authority contained in this act shall be liable to a penalty of fifty dollars ($50) to be recovered in the manner prescribed for the recovery of penalties in the act to which this is a supplement. The Director of Health may, after a hearing upon notice, revoke the license issued to any person to bottle water or any nonalcoholic drink if any of the rules and regulations made under authority contained in this act have been violated. (Id. § 3.)

46. Manufacture, Sale, Etc., of Adulterated Liquors.—Any person who shall manufacture, or import already manufactured, or barter or sell, or keep in his possession for barter or sale, any rum, brandy, wine or spirits of any kind, or any other liquid of which distilled spirits of any kind shall form a component part to be used as a beverage, that shall be adulterated or manufactured with spurious or poisonous ingredients of any description, shall be guilty of a misdemeanor. (C. S. 1910, p. 1777; L. 1898, c. 235, § 98.)

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*Chapter 357, Laws of 1915, supplements chapter 217, Laws of 1907, quoted in No. 1 et seq.

†Chapter 122, Laws of 1924, also supplements chapter 217, Laws of 1907.

47. Adulterating, Mixing, Compounding or Poisoning Liquors; Sale Thereof.—Any person who shall adulterate, mix, compound or poison any malt liquors, with intent to barter or sell the same, or shall mix, compound or poison any malt or vinous or spirituous liquors, the one with the other, or in any way whatever, or give, barter or sell the same, with intent to make greater profit, or with intent to produce intoxication or stupefaction, shall be guilty of a misdemeanor. (Id. § 99.)

NOTE: See also Nos. 31, 32, 33-34, 365 et seq., 384 et seq., 457 et seq., 556 et seq., 571 et seq., and 593.

Bread—Bakeries.

48. Bread to be Sold by Weight; Specification of Weight to Purchaser; Purity of Bread Sold.—Hereafter all bread sold in this State shall be sold by weight, and the weight of all loaves of bread offered for sale shall be specified by the baker or dealer to the consumer, if said consumer require it; all bread sold shall be free from all impure or foreign substances or any material injurious to health. (C. S. 1910, p. 2586; L. 1896, c. 178, § 1.)

49. Penalty for Violations of Act.—Any person offending against the provisions of this act by refusing to specify the weight when so required, or by falsely specifying said weight intentionally or by wilfully inserting in bread made or sold by him any impure or foreign substance or material injurious to health, shall, upon conviction therefor, be punished by a fine not exceeding the sum of twenty-five dollars for each offense, in the discretion of the court. (Id. § 2.)

50. Jurisdiction of Prosecutions Under Act.—Any offences under this act shall be cognizable in cities before recorders or police magistrates exclusively where there are such magistrates, and in towns, cities and other places where there is no such magistrate, before a justice of the peace. (Id. § 3.)

51. Sanitation of Bakeries, Etc.—Openings Screened—Spitting—Tobacco Forbidden—Notices Posted—Cellars Not to be Used.—All buildings or rooms where biscuits, pies, bread, crackers, cakes, macaroni and other food stuffs, confectionery, candy, ice cream or frozen sweets are manufactured or made for the purpose of sale, shall be drained and plumbed in a manner that will conduce to the proper and healthful sanitary condition thereof and shall have air shafts, windows or ventilating pipes sufficient to insure ventilation and sufficient light to prevent any place being operated entirely by artificial light, and all doors, windows and other openings shall be thoroughly screened so as to prevent the entrance of flies or other insects, between the first day of April and the thirty-first day of October. Expectorating is prohibited within any building or room used for the aforesaid purposes, except into a proper receptacle provided for that purpose. The smoking, snuffing or chewing of tobacco in any building or room used for aforesaid purposes is prohibited. Plain notices shall be posted in every such place forbidding any person to use tobacco or spit on the floor of such place. No cellar, basement or place which is below the street level shall hereafter be used or occupied as a place in which to manufacture or make for the purpose of sale any of the abovementioned articles, except where the same was used for such purposes on the fourth day of July, nineteen hundred and five; provided, however, that this act shall not prevent the use, for the manufacture of candy, ice cream or frozen sweets only, of any cellar or basement which shall, after due inspection and examination by representatives of the Department of Labor, be certified to by the Commissioner of Labor as sanitary in all respects and proper to be used for such purposes, which certificate may be revoked at any time. (Supp. 1924, p. 1743 et seq.; L. 1912, c. 127, § 1.)

52. Height of Rooms—Character of Floor—Walls—Furniture and Utensils—Cleaning.—Every room used for the purpose of making or manufacturing for the purpose of sale, any of the articles mentioned in section one of this act shall be at least eight feet in height; provided, however, that this requirement shall not apply to rooms used for the making or manufacturing, for the purpose of sale, of nothing but candy, ice cream or frozen sweets, but such rooms used for the making or manufacturing for the purpose of sale, of candy, ice cream or frozen fruits, shall in all cases be at least seven feet in height, except that any room now used for the making, for the purpose of sale, of nothing but candy, ice cream or frozen sweets need not be altered to conform with this provision unless so ordered by the Commissioner of Labor to improve lighting, ventilation or drainage facilities. Every room used for the purpose of making or manufacturing for the purpose of sale any of the articles mentioned in section one shall have, if required by the Commissioner of Labor, an impermeable floor constructed of wood properly saturated with linseed oil, or of cement or other suitable material; the side walls of every such room shall be well plastered, wainscoted or ceiled with metal or lumber and all interior wood work in such room shall be kept well oiled or painted with oil paint and shall be kept in a clean and sanitary condition at all times. The furniture and utensils in all such

rooms shall be so arranged that such furniture, utensils and floor may at all times be kept in a proper and healthful, sanitary and clean condition. The Commissioner of Labor shall have the power to order that any such room or rooms shall be cleaned in such manner as he shall direct; no domestic animal except cats shall be allowed to remain in any such room. Every such room or rooms shall be kept clean at all times and free from rats, mice or vermin and from all matter of an infectious and contagious disease. No person who has consumption, scrofula or any venereal disease or any contagious or infectious disease or any communicable or loathsome skin disease shall work in any such room or rooms, and no owner, manager or person in charge of any such room or rooms shall knowingly require or suffer such a person to be employed in such room or rooms, nor shall any such room or rooms communicate with or have doors communicating directly with a stable or stable yard. (Id. § 2.)

53. Keeping Food—Receptacles for Ashes and Garbage.—Biscuits, pies, bread, crackers, cake, macaroni and other foodstuffs and confectionery after the same are made or manufactured for the purpose of sale shall be kept in dry and airy rooms; the floors, shelves, pans, trays and every kind of appliances used for storing the same shall be so arranged that they can be easily and thoroughly cleaned; proper receptacles for holding coal and ashes and covered garbage pails shall be provided by the proprietor of any place where any of said articles are made or manufactured for the purpose of sale. All baked goods on display in the sales rooms must be well protected from flies, dust and dirt. All vehicles from which any of the articles specified in section one are sold shall be kept in a clean condition and all baskets or other containers in which any of the said articles are conveyed to the streets shall be closely covered in a way to exclude flies, dust or other sources of contamination. (Id. § 3.)

54. Toilet Facilities—Washing—Clothing.—Whoever shall conduct a place where any of the articles specified in section one are made or manufactured for the purpose of sale shall provide proper washing facilities which shall include a sufficient supply of hot water, clean towels, soap and nail brushes, and shall also provide water-closets separate and apart from the room or rooms in which the manufacture for the purpose of sale of any of the articles specified in section one is carried on; no water-closet, earth closet or privy shall be within or communicate directly with the room in which said articles are made or manufactured. Operatives, employees, clerks and all persons who handle any of the material from which any of the articles specified in section one are made or manufactured for purpose of sale or who handle the finished product, before begining work and immediately after visiting the toilet or lavatory shall wash their hands and arms thoroughly in clean water. The outer clothing of all operatives while employed in any such room or place shall be made of washable material, shall be kept clean at all times and shall be worn by such operatives only when at work in any such room or place. The street clothing worn by any such operatives shall not be kept in any room used for the manufacture of the articles mentioned in section one of this act; the Commissioner of Labor may, in his discretion, order the installation of metal lockers in any such place to be used for the clothing of operatives. (Id. 4.)

55. Sleeping Apartments Separate.—Sleeping places for persons employed in any room or place used for the making or manufacturing for the purpose of sale of any of the articles specified in section one, shall be kept separate from the room or rooms used for the making or manufacturing of any such article, and the commissioner or assistant commissioner or any inspector may inspect such sleeping places, if they are on the same premises as the room used for making or manufacturing for the purpose of sale of any such article, and order them cleaned or changed, in compliance with sanitary principles. (Id. § 5.)

56. Quarterly Inspection—Action on Complaints.—The Commissioner of Labor shall be required to enforce compliance with all the provisions of this act, and for that purpose it shall be his duty to have all places used for the purposes specified in section one visited and inspected at least once in three months; and whenever a complaint in writing, signed by an employe in any such place or by any officer or representative of any labor union in the county wherein the same is located, shall be received by the said commissioner, stating that any provision of this act is being violated in any such place, it shall be the duty of the said commissioner forthwith to have the said place, concerning which the complaint is made, visited and inspected. The visits of inspection shall be made in the presence of those then working or employed in said place, and during the usual hours of employment therein. All such places shall be kept at all times in a clean and sanitary condition. (Id. § 6.)

57. No Night Work by Children—Hours of Service—Extra Work.—No person under the age of sixteen years shall be employed or allowed or permitted or required to work in any place where any of the articles mentioned in section one are manufactured or made for the purpose of sale, between the hours of seven

o'clock in the afternoon and seven o'clock of the forenoon following; no employe in any such place shall be required, permitted or suffered to work in any such place more than sixty hours in any one week or more than ten hours in any one day, unless for the purpose of making a shorter workday on the last day of the week, nor more hours in any one week than will make an average of ten hours per day for the whole number of days in which such employe shall so work during such week, but it shall be lawful, in cases of emergency, for an employer to permit any employe to work an additional time, not exceeding two hours per day, such extra work to be remunerated at the rate of weekly wages paid to such employe for his week of sixty hours; no employe in any such place shall be discharged by his employer for having made any truthful statement as a witness in a court, or to the Commissioner of Labor, assistant Commissioner of Labor, or any inspector in pursuance of this act, or any act amendatory hereof or supplementary hereto. (Id. § 7.)

58. Serving Notices.—All notices given under or pursuant to this act, or any act supplementary thereof or amendatory thereto, shall be in writing, signed by the Commissioner of Labor, and may be served upon the owner or proprietor of the place wherein such violation occurred either by delivering the same to him in person or by sending it to him by mail at his last known post-office address, with postage prepaid; if his post-office address is not known, then the said notice may be mailed to the address of the place wherein such violation shall have been committed; the notice providing for the doing of any act or the abating of anything forbidden by this act shall fix the time within which such act shall be done or such thing abated, and if the order shall not be obeyed within the time therein fixed the person so failing to obey shall be liable to the penalty herein fixed for the violation hereof. (Id. § 8.)

59. Bakeries, Etc., Licensed—Application—Place of Business—Revocation of License—Renewal of License—License Fee.—No person or corporation shall hereafter engage or continue in the business of making or manufacturing biscuits, pies, bread, crackers, cakes, macaroni and other food stuffs, candy, ice cream, confectionery or frozen sweets for the purpose of sale, unless he shall first obtain from the Commissioner of Labor of this State a license so to do. The applicant for any such license shall state in his application the location of the place at which he intends to engage in such business and such license shall not be issued unless the said commissioner is satisfied that such place conforms to all the requirements of this act. Such license shall specify the place at which such business is authorized to be carried on, and shall not authorize the engaging in such business at any other place. When it shall be made to appear to the said commissioner that any place at which such business is carried on under a license as aforesaid is not kept in accordance with or does not conform to the requirements of this act, or that any provision of this act is being violated therein, said commissioner may, after giving not less than forty-eight hours' notice in writing, which notice may be served by any representative of the Department of Labor, either personally on the proprietor of such place or by affixing the same on the inside of said place, revoke the license of the person engaging in such business at such place. Such license if not revoked as aforesaid shall remain in force for one year from the date of its issuance at which time it shall expire. Any such license may be renewed upon application of the holder thereof upon payment of the fee below prescribed if the place named in the application for such renewal is conducted in accordance with the terms of this act. No person, whose license to engage in such business has expired or been revoked, shall engage or continue in such business in this State until he has procured a renewal or a new license in accordance with the terms of this act. Any applicant for any such license or a renewal thereof shall pay to the Commissioner of Labor a license fee of one dollar, which fee shall be returned to such applicant in case the license is not granted. No other license shall be required by any other State or municipal authority. (Id. § 9, as amended L. 1918, c. 9.)

60. Penalties for Violations.—Any person violating any of the provisions of this act, or any owner or proprietor of any place coming within the provisions of this act who fails to obey any order of this act, shall be liable to a penalty of fifty dollars for the first offense and one hundred dollars for each subsequent offense. Any person who shall, after conviction for violation of any provision of this act, continue such violation shall be liable to a penalty of one hundred dollars. (Supp. 1924, p. 1746 et seq.; L. 1912, c. 127, § 10.)

61. Fines Paid Into State Treasury.—Any penalty recovered in any action brought under the provisions of this act shall be paid to the plaintiff therein, who shall pay the same into the treasury of this State. (Id. § 11.)

62. Recovery of Penalties.—Any and all penalties prescribed by any of the provisions of this act shall be recovered in an action of debt by and in the name of

the Commissioner of Labor of the State of New Jersey, as plaintiff. The pleadings shall conform in all respects to the practice prevailing in the court in which any such action shall be instituted, but no pleading or process shall be set aside or invalidated by reason of any formal or technical defects therein if the same contain a statement of the nature of the alleged violation and of the section of this act alleged to have been violated, and upon the attention of the court being called to any such formal or technical defect the same shall be immediately corrected and the said pleading or process amended as a matter of course, and as to all other defects in pleadings or process the same may be amended, in the discretion of the court, as in any other action or proceeding in said court. (Id. § 12.)

63. Execution Issued on Judgment Rendered.—When judgment shall be rendered against any defendant other than a body corporate execution shall be issued against his goods and chattels and body without any order of the court for that purpose first had and obtained. If the officer executing any such writ shall be unable to find sufficient goods and chattels of said defendant in his bailiwick to make the amount of said judgment he shall take the body of the said defendant and deliver him to the keeper of the common jail of said county, there to be detained until discharged by the court in which such judgment was obtained, or by one of the justices of the Supreme Court, when such court or justice shall be satisfied that further confinement will not result in the payment of the judgment and costs. In case judgment shall be rendered against a body corporate execution shall be issued against the goods and chattels of such body corporate as in other actions of debt. (Id. § 13.)

64. Injunction to Restrain Violations.—Whenever any person shall violate any of the provisions of this act it shall be lawful for the Commissioner of Labor, either before or after the institution of proceedings for the collection of the penalty imposed by this act for such violation, to file a bill in the Court of Chancery in the name of the State, at the relation of such commissioner, for an injunction to restrain such violation and for such other or further relief in the premises as the Court of Chancery shall deem proper, but the filing of such bill, nor any of the proceedings thereon, shall not relieve any party to such proceedings from the penalty or penalties prescribed by this act for such violation. (Id. § 14.)

65. Former Legislation Not Affected by This Act.—Nothing in this act contained shall be construed to repeal, impair or in anywise affect the provisions of an act* of the Legislature of this State, entitled "A further supplement to an act entitled 'An act to secure the purity of foods, beverages, confectionery, condiments, drugs and medicines, and to prevent deception in the distribution and sales thereof,' approved March twenty-first, nineteen hundred and one," approved April twentieth, nineteen hundred and six, or the provisions of an act† entitled "A supplement to an act entitled 'An act to secure the purity of foods, beverages, confectionery, condiments, drugs and medicines, and to prevent deception in the distribution and sales thereof (Revision of 1907), approved May twentieth, nineteen hundred and seven," approved April twenty-first, nineteen hundred and nine, but said acts shall continue in force in all respects the same as if this act had not been passed. Nothing in this act shall be construed to repeal, affect or in anywise impair the provisions affecting places where biscuits, pies, bread, crackers, cakes, macaroni and other foodstuffs, confectionery, candy, ice cream or frozen sweets are manufactured, or any other provisions of an act entitled, "An act regulating the age, employment, safety, health and work hours of persons, employees and operatives in factories, workshops, mills and all places where the manufacture of goods of any kind is carried on, and to establish a department for the enforcement thereof," approved March twenty-fourth, one thousand nine hundred and four. (Id. § 15.)

66. Unconstitutionality of One Section Not to Impair Others.—In case for any reason any section or any provision of this act shall be questioned in any particular and shall be held to be unconstitutional or invalid, the same shall be held to be severable from the other portions of this act and shall not be held to affect any other section or provision of this act. (Id. § 16.)

67. Bakeries.—No bakery or place of business in which fat is boiled shall be maintained in any tenement which is not fireproof throughout, unless the ceilings and sidewalls of such bakery or of the said place where fat boiling is done are made safe by fireproof materials around the same; and there shall be no openings either by door or by window, dumbwaiter, shafts or otherwise between said bakery or said place where fat is boiled in any tenement house and any other part of the said building. (Supp. 1924, p. 3605; L. 1904, c. 61, § 71, as amended L. 1919, c. 228.)‡

NOTE: See also Nos. 31 and 384 et seq.

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*Included in No. 141 et seq.

†Included in No. 384 et seq.

‡For penalty, see No. 37c.

Canned Tomatoes.

68. Canning Tomatoes.—It shall be unlawful for any person, firm or corporation knowingly to can or prepare in any way at any factory or plant of any kind in this State any tomatoes with which there is used or introduced into the canning any liquid substance of any kind whatever except the juice or juices arising from said tomatoes themselves after they have been peeled, trimmed, cored and prepared for canning as food. (Supp. 1924, p. 1441 et seq.; L. 1921, c. 162, § 1.)

69. No Deception.—It shall be unlawful for any person, firm or corporation to can or prepare in any way any goods or vegetable product purporting to be canned tomatoes or having anything on the label or advertised in any way likely to deceive prospective customers into believing that they are canned tomatoes except when prepared in accordance with the provisions of this act. (Id. § 2.)

70. Sale of Goods Falsely Represented.—It shall be unlawful for any person, firm or corporation knowingly to sell or offer for sale within this State, either retail or wholesale, any canned tomatoes or goods purporting in any way to be canned tomatoes or having anything on the label or advertised in any way likely to deceive prospective customers into believing that they are canned tomatoes if such canned tomatoes have had at any time any liquid substance of any kind whatever introduced into the cans except the juice or juices arising from the tomatoes after they have been properly peeled, trimmed, cored and prepared for canning as food. (Id. § 3.)

71. Penalty.—Any person, firm or corporation or the agent of any person, firm, corporation or corporations violating the provisions of this act shall be guilty of a misdemeanor. (Id. § 4.)

Canneries.

See No. 384 et seq.

Cider.

See Nos. 477 and 556 et seq.

Cold Storage.

72. Food Defined.—The term food as used in this act shall include any article used for food, except liquid food. (Supp. 1924, p. 1431 et seq.; L. 1911, c. 189, § 1.)*

73. Goods Placed in Cold Storage Must be Dated—Articles From Other States Must Bear Date of Storage.—It shall hereafter be unlawful for any person, persons or corporation engaged in the business of cold storage warehousemen, or in the business of refrigerating, or who own, operate, control or lease any cold storage or refrigerating plant to receive, nor shall any such person, persons or corporation place therein any article of food unless said food or the package containing the same is branded, stamped, or marked in some conspicuous place, upon the receipt thereof, with the day, month and year when the same was received for storage or refrigerating, and it shall be unlawful for any such person, persons or corporation to receive any article of food which has been kept in cold storage without the State, unless at the time of such receipt such article offered is branded, stamped or marked with the day, month or year when it was placed in the cold storage in such other State, or such person, persons or corporation as shall have obtained the consent of the State Board of Health to receive such article of food. (Id. § 2.)

74. Goods Taken From Storage Must Bear Date of Receipt.—It shall be unlawful for any person, persons or corporation engaged in the business of cold storage warehousemen or in the business of refrigerating, or who own, operate, control, or lease any cold storage or refrigerator plant, to permit any article of any kind whatsoever used for food now in the possession of any person, persons, or corporation now engaged in the business of cold storage warehousemen or refrigerating, or who own, operate, control or lease any cold storage or refrigerating plant, to be taken from their possession without first having branded, stamped or marked on said article of food or the package containing the same, in a conspicuous place, the day, month and year when said article of food or package was received by any such person, persons or corporation engaged in the business aforesaid, or by any person, persons or corporation owning, operating, controlling or leasing any cold storage plant. (Id. § 3.)

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*The 1924 Supplement to the Compiled Statutes includes both chapter 189, Laws of 1911, quoted in No. 72 et seq., and chapter 101, Laws of 1916, quoted in No. 84 et seq.

75. Maximum Period for Keeping Goods.—It shall hereafter be unlawful for any person, persons or corporation engaged in the business of cold storage warehousemen or refrigerating, or who own, operate, control or lease any cold storage or refrigerating plant, to keep in storage for preservation or otherwise any article of food a longer period than ten calendar months without the consent, as herein provided, of the State Board of Health or its duly authorized agents or officers, or except as hereinafter otherwise provided. (Id. § 4.)

76. Inspection and Supervision of Plants—Rules and Regulations—Inspectors.—The State Board of Health is hereby vested with full power and authority, and it shall be the duty of said board, to inspect and supervise all places in this State now or hereafter used for cold storage or refrigerating purposes; the members of the State Board of Health or its duly authorized agents or employees of said board shall be permitted access to such place or places and all parts thereof at all times for the purpose of seeing that said place or places are kept and maintained in a clean and sanitary condition, and for the purpose of determining whether or not the provisions of this act or any other act relating to articles of food are being complied with. The State Board of Health is hereby granted power and authority to adopt such reasonable rules and regulations as may be essential to the proper protection of the consumer of the commodities kept and preserved in such place or places, and the State Board of Health may appoint and designate from time to time such person or persons as said board may deem fit for the purpose of making such inspection. (Id. § 5.)

77. Quarterly Reports Made to State Board of Health.—All persons or corporations engaged in the business of cold storage warehousemen or in the business of refrigerating, or who own, operate, control or lease any cold storage or refrigerating plant, shall submit a quarterly report to the State Board of Health, upon printed forms to be provided by said State Board of Health, setting forth in itemized particulars the quantity of each and every article of food in storage, or in the control of said person or persons, corporation or corporations; said quarterly report shall be filed on or before the twenty-fifth day of January, April, July and October of each year, and reports so rendered shall show conditions existing upon the first day of the month in which said report is filed. (Id. § 6.)

78. If Food Kept More Than Ten Months Report Made—Extension of Time May be Granted.—In the event of any food, or any article used for food, being kept or maintained in refrigerating or cold storage places for a longer period than ten months, report of such fact shall be filed by the person, persons or corporation operating such cold storage or refrigerating place, or by those owning, operating, controlling or leasing any cold storage or refrigerating plant with the State Board of Health, upon blanks to be provided by said State Board of Health upon application, and no such food or article used for food shall, after the expiration of said period of ten months, be delivered to any person, persons or corporation without a certificate from the State Board of Health first had and obtained authorizing such delivery. Power is hereby given to said State Board of Health, or its proper agents, to extend the time when any particular foodstuff or article used for food may be kept, maintained or preserved in such place or places. (Id. § 7.)

79. As to Transfer of Goods.—The transfer of any food from one cold storage or refrigerating warehouse to another, for the purpose of evading any provision of this act, is hereby prohibited. (Id. § 8.)

80. Restorage Prohibited.—When food which has been in cold storage is released therefrom for the purpose of placing on the market for sale, it shall be a violation of the provisions of this act to knowingly again place such food in cold storage. (Id. § 9.)

81. Disposition of Food Kept Beyond Specified Time—Sold Publicly—Unless Condemned.—Any article of food kept or preserved in any cold storage warehouse or refrigerating place for a longer period than herein provided, after at least twenty days' notice to the owner or consignor of such article of food to remove the same, shall be sold at public auction by the person, persons or corporation having the custody of the same, and at the place where the same is kept or preserved; such sale shall be within thirty days after the time limited for the keeping or preserving thereof, and the proceeds of such sale shall be paid to the owner or consignor thereof after deducting storage or other charges thereon, unless said food has been condemned as unfit for use by the State Board of Health, in which case it shall be destroyed or otherwise disposed of under such conditions as the State Board of Health may prescribe. (Id. § 10.)

82. Penalties.—Any person or persons, corporation or corporations, or officer or officers thereof violating any of the provisions of this act, shall, upon conviction, be subject to a penalty of not exceeding five hundred dollars for the first offense.

Any such person or persons, corporation or corporations, or officer or officers thereof, having once been convicted of violating any provision of this act, shall, upon a second offense, be held guilty of a misdemeanor. The conviction of any corporation shall not operate to relieve any officer or officers, agents or employees of such corporation from prosecution under the provisions of this act. (Id. § 11.)

83. Validity of Sections.—If any paragraph or provision of this act shall be questioned in any court and held to be invalid, the remainder of this act shall not be invalidated thereby, but shall remain in full force and effect. (Id. § 12.)

84. Definitions—"Articles of Food" Within Meaning of Act.—For the purpose of this act, "cold storage" shall mean the storage or keeping of articles of food, at or below a temperature above zero, of forty-five degrees Fahrenheit, in a cold storage warehouse; "cold storage warehouse" shall mean any place artificially cooled to or below a temperature above zero, of forty-five degrees Fahrenheit, in which articles of food are placed or held for thirty days or more; "articles of food" shall mean fresh meat and fresh meat products, except in process of manufacture, and all fish, game, poultry, eggs, milk and milk products, and edible fats and oils.

The terms "article of food" and "articles of food" as used in this act shall be construed to mean and include fresh meat and fresh-meat products, except in process of manufacture, fresh food fish, game, poultry, eggs, milk and milk products and edible fats and oils. (Supp. 1924, p. 1434 et seq.; L. 1916, c. 101, § 1.)

85. Application to Operate Cold Storage Warehouse—License—Fee.—Any person, firm or corporation desiring to operate or to continue to operate a cold storage warehouse shall make application in writing to the State Director of Health for that purpose, stating the location of his plant or plants. On receipt of the application the State Director of Health shall cause an examination to be made into the sanitary condition of said plant or plants, and, if found by him to be in a sanitary condition and otherwise properly equipped for the business of a cold storage warehouse, he shall cause a license to be issued authorizing the applicant to operate such cold storage warehouse or warehouses for and during the period of one year. The license shall be issued upon payment by the applicant of a license fee of ten dollars to the State Department of Health for each such warehouse. (Id. § 2.)

86. If Plant Unsanitary Operation Prohibited.—In case any cold storage warehouse, or any part thereof, covered by a license, under the provisions of this act shall at any time be deemed by the State Director of Health to be in an unsanitary condition, it shall be his duty to notify the licensee of such condition, and upon the failure of the licensee to put such cold storage warehouse, or the specified part thereof, in a sanitary condition within a time to be designated by him, it shall be the duty of the State Director of Health to prohibit the use under his license of such cold storage warehouse, or part thereof, as he deems in an unsanitary condition until such time as it may be put in a sanitary condition. (Id. § 3.)

87. Records of Receipts and Withdrawals—Monthly Report—Summary of Report Open to Public.—It shall be the duty of any person, firm or corporation licensed to operate a cold storage warehouse to keep an accurate record of the receipts and the withdrawals of the articles of food, and the State Director of Health and all chemists, inspectors and employees of the State Department of Health shall have free access to those records at any time. Every such person, firm or corporation shall, furthermore, submit a monthly report to the State Director of Health, setting forth in itemized particulars the quantity of articles of food products held in cold storage warehouse. Such monthly reports shall be filed on or before the fifth day of the following month, and the reports so rendered shall show the conditions existing on the last day of the month reported, and a summary of such reports shall be prepared by the Director of Health and shall be open to public inspection on or before the tenth day of each month. (Id. § 4.)

88. Inspection of Plants—Access to Proper Officers.—It shall be the duty of the State Director of Health to inspect and supervise all cold storage warehouses in the State, and to make such inspection of the entry of articles of food therein as he may deem necessary to secure the proper enforcement of this act. The State Director of Health and all chemists, inspectors and employees of the State Department of Health shall be permitted access to such cold storage warehouses, and all parts thereof, at all reasonable times for purposes of inspection and enforcement of the provisions of this act. The State Director of Health may also appoint and designate such person or persons as he deems qualified to make the inspection herein required. (Id. § 5.)

89. Improper Food Not so Stored—Articles Not for Human Food so Marked.—No article of food intended for human consumption shall be placed, received or kept in any cold storage warehouse if apparently diseased, tainted

or so deteriorated in any other way as to injure its keeping. Any article of food, if intended for use other than human consumption, shall be marked by the owner before being placed, received or kept in any cold storage warehouse in accordance with the forms prescribed or to be prescribed by the State Director of Health, under authority hereinafter conferred, in such a way as to plainly indicate the fact that such article is not to be sold for human food. (Id. § 6.)

90. Date of Storage Marked—Date of Withdrawal Marked.—No person, firm or corporation shall place or store in any cold storage warehouse in this State articles of food as herein defined unless the same shall be plainly marked, stamped or tagged, either upon the container in which they are packed or upon the article of food itself, with the date when placed therein.

No person, firm or corporation shall remove such articles of food from any cold storage warehouse unless the same shall be plainly marked, stamped or tagged, either on the container in which it is enclosed or upon the article of food itself, with the date when it is removed from such cold storage warehouse. (Id. § 7.)

91. Limit of Storage.—No person, firm or corporation shall keep in any cold storage warehouse any article of food for a longer period than twelve calendar months, except with the consent of the State Director of Health as hereinafter provided. The State Director of Health shall, upon application during the twelfth month, extend the period of storage beyond twelve months for any particular articles of food; provided, the same are found upon examination to be in proper condition for further storage. The length of time for which further storage is allowed shall be specified in the order granting the permission. A report on each case in which such extension of storage shall be permitted, including information relating to the reason for the action of the State Director of Health, the kind and amount of articles of food for which the storage period was extended and the length of time for which the continuance was granted, shall be included in the annual report of the State Director of Health. (Id. § 8.)

92. Storage Goods for Sale Placarded.—It shall be unlawful to sell, or to offer or expose for sale, articles of food which have been held in any cold storage warehouse for a period of thirty days or over without notifying persons purchasing, or intending to purchase the same, that they have been so kept by the display of a placard conspicuously marked "Cold Storage Goods," on the bulk mass or articles of food, and it shall be unlawful to represent or advertise as fresh articles of food which have been held in any cold storage warehouse for a period of thirty days or over. (Id. § 9.)

93. Released Goods Not to be Restored.—It shall be unlawful to return to any cold storage warehouse any article of food which has once been released from such storage and placed on the market for sale to consumers, but nothing in this section shall be construed to prevent the transfer of goods from one cold storage warehouse to another; provided, that all prior stamping, marking and tagging shall remain thereon, and that such transfer is not made for the purpose of evading any provision of this act. (Id. § 10.)

94. Rules and Regulations.—The State Director of Health may make all necessary rules and regulations to carry into effect the provisions of this act. (Id. § 11.)

95. Penalties for Violations.—Any person who shall violate any of the provisions of section nine of this act shall be liable to a penalty of not less than ten nor more than fifty dollars for the first offense, and to a penalty of not less than fifty nor more than one hundred dollars for the second offense, and to a penalty of two hundred dollars for the third and each subsequent offense. Any person who shall violate any of the provisions of this act except the provisions of section nine, shall be liable to a penalty of one hundred dollars for the first offense and to a penalty of two hundred dollars for the second offense and to a penalty of five hundred dollars for the third and each subsequent offense. (Id. § 12.)

96. Recovery of Penalties—Pleadings—as to Technical Defects.—Any and all penalties prescribed for violation of any provision of this act shall be recovered in an action of debt by and in the name of the Department of Health of the State of New Jersey, or by and in the name of any board of health of any municipality of this State, as the case may be, as plaintiff. The pleadings shall conform in all respects to the practice prevailing in the court in which any such action shall be instituted, but no pleading or process shall be set aside or invalidated by reason of any formal or technical defects therein if the same contain a statement of the nature of the alleged violation and of the section of this act alleged to have been violated, and upon the attention of the court being called to any such formal or technical defect, the same shall be immediately corrected and the said pleading or process amended as a matter of course, and as to all other defects in pleadings or process the same

may be amended, in the discretion of the court, as in any other action or proceedings in said court. (Id. § 13, as amended L. 1918, c. 13.)

97. Execution Against Defendant—If Judgment Against Corporation.—When judgment shall be rendered against any defendant other than a body corporate, execution shall be issued against his goods and chattels and body without any order of the court for that purpose first had and obtained. If the officer executing any such writ shall be unable to find sufficient goods and chattels of said defendant in his bailiwick to make the amount of said judgment, he shall take the body of said defendant and deliver him to the keeper of the common jail of said county, there to be detained until discharged by the court in which such judgment was obtained, or by one of the justices of the Supreme Court, when such court or justice shall be satisfied that further confinement will not result in the payment of the judgment and costs. In case judgment shall be rendered against a body corporate, execution shall be issued against the goods and chattels of such body corporate as in other actions of debt. (Supp. 1924, p. 1437; L. 1916, c. 101, § 14.)

98. Penalty Recovered Paid to Plaintiff.—Any penalty recovered in any action brought under the provisions of this act shall be paid to the plaintiff therein. When such plaintiff is the State Department of Health, such penalty shall be paid by such department into the treasury of this State. When such plaintiff is a local board of health, such penalty shall be paid by such local board into the treasury of the township, city, borough, town or other local municipal government within which such local board has jurisdiction. (Id. § 15.)

99. Act Does Not Apply to Grocers.—The provisions of this act shall not apply to ice boxes or refrigerators maintained by wholesale or retail grocers. (Id. § 16.)

100. Retaining Markings on Food Placed in Cold Storage.—Any person or persons, firm or corporation changing, altering, obliterating, mutilating, destroying, removing or eradicating any brand, stamp, tag or mark placed upon any article of food or its container to indicate the day, month and year such article was received for storage or refrigerating either in or out of the State and any person or persons, firm or corporation branding, stamping, tagging or marking such article of food or its container with a date other than the one on which it is in fact received for storage or refrigerating shall be guilty of a violation of the act to which this act is a supplement and subject to the penalties or punishment therein provided. (Supp. 1924, p. 1437 et seq.; L. 1921, c. 71, § 1.)*

NOTE: See also No. 293 et seq.

Confectionery.

See Nos. 3, 51 et seq., and 384 et seq.

Dairy Products—Substitutes for Dairy Products.

101. Sale, Etc., of Other Than Standard Milk—Modified Milk.—No person shall distribute or sell, or have in his possession with intent to distribute or sell, any milk which contains less than eleven and one-half per centum of milk solids, or more than eighty-eight and one-half per centum of watery fluids, or less than three per centum of milk fats; provided, however, that it shall not be unlawful for any person to distribute or sell; or have in his possession with intent to distribute or sell, in a container having a capacity of not more than twelve fluid ounces, milk especially prepared for infant or invalid feeding by adding thereto pure water, lime water, milk sugar, cereal starches or other substances which shall not differ in purity, quality or strength from the standard fixed by this act, or by removing therefrom the sugar or any part thereof, if every such container have blown or moulded in it the words "modified milk" in letters which shall not be less than one-quarter inch in height and the several lines of which shall not be less than one-sixteenth of an inch in width; and provided, also, that the milk in such container before modification shall have been milk of the standard fixed by this act. (Supp. 1924, p. 1398; L. 1907, c. 217, § 6, as amended L. 1911, c. 40.)†

102. Sale, Etc., of Other Than Standard Cream.—No person shall distribute or sell, or have in his possession with intent to distribute or sell, any cream which contains less than sixteen per centum of milk fats, unless the amount of milk fat

*Chapter 71, Laws of 1921, supplements Chapter 101, Laws of 1916, quoted in No. 84 et seq.

†See No. 1 et seq.

contained therein is plainly and legibly marked on the outside of every can, bottle, vessel or container in which such cream is kept, stored, shipped, transported, or from which it is sold. (C. S. 1910, p. 2567; L. 1907, c. 217, § 7.)

103. Sale, Etc., of Adulterated or Treated Milk; Modified Milk; Care, Housing and Feeding of Cows; Sale, Etc., of Milk or Cream Taken From Cows Within Certain Time Before and After Parturition.—No person shall distribute or sell or have in his possession with intent to distribute or sell any milk or cream which contains any water, drug, chemical, preservative, coloring matter, condensed milk or any substance of any kind or character which has been added thereto or mixed therewith; provided, however, it shall not be unlawful for any person to distribute or sell or have in his possession with intent to distribute or sell, any milk or cream modified especially for infant or invalid feeding, by adding thereto or mixing therewith pure water, lime water, milk sugar, cereal starches or other substances, as provided for in section six of this act, if such modified milk shall be in a container having a capacity of not more than twelve fluid ounces, which container shall be marked as provided for in section six of this act. No person shall distribute or sell, or have in his possession with intent to distribute or sell any milk or cream which is the product in whole or in any part of any animal kept in a crowded, uncleanly or unhealthy place or condition, or which is the product in whole or in part of any animal fed on swill, or any substance in a state of rottenness or putrefaction, or on any substance of an unwholesome nature, or on any food or substance which may produce diseased or unwholesome milk. No person shall distribute or sell, or have in his possession with intent to distribute or sell, any milk or cream which is produced in whole or in part from any animal within fifteen days before or five days after parturition. (Id. § 8, as amended L. 1908, c. 260.)*

104. Sale, Etc., of Skimmed Milk; Labels.—No person shall sell, or offer or expose for sale, or have in his possession for the purpose of sale, any milk from which the cream or any part thereof has been removed, unless every can, vessel or package containing such milk shall have a metal label or tag of metal distinctly, durably and permanently soldered in a conspicuous place upon the outside, and not more than six inches from the top thereof, with the words "skimmed milk" stamped, indented or engraved on the label or tag in letters not less than two inches in height, and the several lines of which shall not be less than three-eighths of an inch in width; provided, however, that every glass bottle, in lieu of such label or tag, may have blown in it the words "skimmed milk" in letters which shall not be less than one inch in height, and the several lines of which shall not be less than one-eighth of an inch in width; such milk shall only be sold or shipped in or retailed out of a can, bottle, vessel or package so marked. (C. S. 1910, p. 2567 et seq.; L. 1907, c. 217, § 9.)

105. Pure Water for Cows, and Cleansing of Utensils.—No person shall distribute or sell, or offer for distribution or sale, or have in possession with intent to distribute or sell, any milk which has been produced in whole or in part by any animal which is not daily supplied with pure and wholesome water; and no person shall wash or attempt to cleanse any can, bottle, vessel or utensil used for handling or transporting milk which is intended for distribution or sale in water which is polluted, contaminated or impure. (Id. § 10.)

106. Sale, Etc., of Contaminated Milk.—No person having the possession or care of any milk which is intended for sale or distribution shall permit it to be exposed to, or contaminated by, the emanations, discharges or exhalations from any person sick with any contagious disease; and no person shall distribute or sell, or offer to distribute or sell, or have in his possession with intent to distribute or sell, any milk which has been so exposed or contaminated. (Id. § 11.)*

107. Placing Substances Other Than Milk in Cans, Bottles, Etc.—No person having custody of a milk can, bottle or other vessel used as a container for milk intended for sale or distribution shall place or permit to be placed therein any article or substance other than milk or its products, or water or other agent used for cleansing such can, bottle or vessel. (Id. § 12.)

108. Sending, Etc., Cans, Bottles, Etc., Containing Articles or Substances Other Than Milk.—No person shall send, ship, return or deliver or cause or permit to be sent, shipped, returned or delivered to any producer, wholesaler or retailer of milk within this State any can, bottle or other vessel used as a container for milk containing any article or substance other than milk or its products. (Id. § 13.)

109. Cleansing of Cans Used for Shipping Milk Before Shipment and on Return.—It shall be the duty of any person, persons or corporation to whom milk is shipped

*For penalty, see No. 13.

by any person in this State, before returning to such shipper the can or vessel used for transporting such milk, to remove all milk from such can or vessel and to thoroughly rinse such can or vessel with pure water or to cause the same to be done; and it shall be the duty of any person, persons or corporation shipping milk to any point or points within or without this State to thoroughly cleanse, or cause to be cleansed, the can or vessel used for transporting such milk before the milk is placed therein. (Id. § 14.)

110. Erasure, Etc., of Marks, Etc., on Milk Containers Prohibited.—No person shall in any way or manner erase, cancel, obliterate, deface, cover, remove or alter any brand, tag, label or other marking required by any of the provisions of this act to be attached or affixed to any can, vessel, package or other container. (Id. § 15.)

111. Penalties for Violations of Section 6; Notice of Analysis Made; When Action for Penalty Not to be Brought; Notice of Analysis Made for Violations of Section 6; Sufficiency.—Every person who shall violate any of the provisions of the sixth section* of this act shall be liable to a penalty of twenty-five dollars for the first offense and to a penalty of fifty dollars for the second and each subsequent offense; provided, however, that in any such case it shall be the duty of the Board of Health of the State of New Jersey or the local board of health, as the case may be, within forty-eight hours after making an analysis to cause to be mailed to the person charged with such violation a notice, stating that an analysis of the milk taken from the possession of such person has shown the same to be below the statutory standard with regard to solids, and that therefor such person is guilty of a violation of this act, and stating the liability incurred by such person by reason of such violation. In case the person charged with such violation has not previous thereto paid a penalty for any alleged violation of this act, or has not been convicted of any violation of this act, and shall within fifteen days after the mailing of said above-mentioned notice pay to the Attorney-General of this State, for the use of the State, or to the local board of health, for the use of the municipality, as the case may be, a penalty of fifteen dollars, no action for the recovery of a penalty shall be commenced against such person for said violation; provided, further, that hereafter the payment of a penalty for an alleged violation of this act, either before or after the institution of proceedings for the collection thereof, shall for the purposes of this subdivision be deemed equivalent to a conviction of the violation for which such penalty was paid.

It shall be a sufficient mailing of the notice required by this subdivision if the same is deposited in the post office, postage prepaid, addressed to the name and address given by the person in charge of the milk from which such sample was taken, to the inspector or other person who took the said sample, as the name and address of the owner of the said milk from which such sample was taken. (C. S. 1910, p. 2572 et seq.; L. 1907, c. 217, § 34.)

112. Penalties for Violations of Sections 7, 9, 10, 15, 29.—Every person who shall violate any of the provisions of the seventh, ninth, tenth, fifteenth or twenty-ninth sections of this act shall be liable to a penalty of twenty-five dollars for the first offense and to a penalty of fifty dolars for the second and each subsequent offense. (Id. § 35.)†

113. Penalties for Violations of Section 14.—Every person who shall violate any of the provisions of the fourteenth section‡ of this act shall be liable to a penalty of ten dollars for each can, bottle or vessel returned or used in violation of said section or any of its provisions. (Id. § 36.)

114. Penalties for Violations of Sections 12, 13.—Every person who shall violate any of the provisions of the twelfth or thirteenth sections of this act shall be liable to a penalty of twenty-five dollars for each offense. (Id. § 37.)¶

115. Adulterated or Skimmed Milk Not to be Sold in Cities of the First Class.—That no milk which has been watered, adulterated, or changed in any respect by the addition of water, or other substances, or by removal of cream, or any part thereof, shall be kept or offered for sale in any city of the first class in this State. (C. S. 1910, p. 2586; L. 1883, c. 185, § 1.)

116. Penalty for Violations of Act.—That any person who shall violate any of the provisions of this act shall be liable to a penalty of fifty dollars for the first offense and one hundred dollars for a second or subsequent offense, and that such penalties shall be recovered upon like evidence, by like procedure, and in the

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*See No. 101.
†For said sections, see Nos. 10, 102, 104, 105 and 110.
‡See No. 109.
¶For said sections, see Nos. 107 and 108.

same method now provided for the collection of fines and penalties, under the act entitled "An act to prevent the adulteration and to regulate the sale of milk," approved March fourteenth, one thousand eight hundred and eighty-two. (Id. § 2.)

117. Cans Containing Skimmed Milk so Marked.—Every person who sells or offers or exposes for sale or has in his possession for the purpose of sale, any milk or condensed milk contained in any can or package having a capacity of forty quarts or more, from which milk or condensed milk the cream or any part thereof has been removed, shall securely fix a label or tag in a conspicuous place upon the outside of every such can or package containing such milk or condensed milk, and such label or tag shall have the words "skimmed milk" or "condensed skimmed milk," as the case may be, printed thereon in letters not less than one inch in height, and the several lines of which letters shall not be less than one-eighth of an inch in width, and such milk or condensed milk shall only be sold, or offered or exposed for sale, or had in possession with intent to sell, or shipped in a can or package so marked; provided, however, that this act shall in no way affect the requirements of section nine* of an act entitled "An act to secure the purity of foods, beverages, confectionery, condiments, drugs and medicines, and to prevent deception in the distribution and sales thereof (Revision of 1909)," approved May twentieth, one thousand nine hundred and seven, relative to the sale of skimmed milk at retail. (Supp. 1924, p. 1416 et seq.; L. 1912, c. 138, § 1.)

118. Penalties.—Every person who shall violate any of the provisions of section one of this act shall be liable to a penalty of twenty-five dollars for the first offense, and to a penalty of fifty dollars for the second and each subsequent offense, and each can or package sold or offered or exposed for sale, or had in possession with intent to distribute or sell in violation of the provisions of the aforesaid section one shall be deemed to constitute a separate and distinct offense. (Id. § 2.)

119. Penalties, How Recovered—Pleadings.—Any and all penalties prescribed by section two of this act shall be recovered in an action of debt by and in the name of the Board of Health of the State of New Jersey, or by and in the name of any board of health of any municipality of this State, as the case may be, as plaintiff. The pleadings shall conform in all respects to the practice prevailing in the court in which any such action shall be instituted, but no pleading or process shall be set aside or invalidated by reason of any formal or technical defects therein if the same contain a statement of the nature of the alleged violation and of the section of this act alleged to have been violated, and upon the attention of the court being called to any such formal or technical defect the same shall be immediately corrected and the said pleading or process amended as a matter of course, and as to all other defects in pleadings or process the same may be amended, in the discretion of the court, as in any other action or proceeding in said court. (Id. § 3.)

120. Execution Issued—If Goods Insufficient, Body Taken—Against Corporations.—When judgment shall be rendered against any defendant other than a body corporate execution shall be issued against his goods and chattels and body without any order of the court for that purpose first had and obtained. If the officer executing any such writ shall be unable to find sufficient goods and chattels of said defendant in his bailiwick to make the amount of said judgment he shall take the body of the said defendant and deliver him to the keeper of the common jail of said county, there to be detained until discharged by the court in which such judgment was obtained, or by one of the justices of the Supreme Court, when such court or justice shall be satisfied that further confinement will not result in the payment of the judgment and costs. In case judgment shall be rendered against a body corporate execution shall be issued against the goods and chattels of such body corporate as in other actions of debt. (Id. § 4.)

121. Disposition of Fines Recovered.—Any penalty recovered in any action brought under the provisions of this act shall be paid to the plaintiff therein. When such plaintiff is the State Board of Health, such penalty shall be paid by such board into the treasury of this State. When such plaintiff is a local board of health, such penalty shall be paid by such local board into the treasury of the township, city, borough, town or other local municipal government within which such local board has jurisdiction. (Id. § 5.)

122. Milk Dealers Licensed—Fee—Bond, Etc.—On or after July first, nineteen hundred and seventeen, no person, firm, association or corporation, unless exempted by the Secretary for Agriculture, as hereinafter provided, shall engage in or carry on the business of buying milk or cream in this State for the purpose of shipping or for sale, resale or manufacture, unless such business be regularly transacted or conducted at an office or station within the State and unless such person,

*See No. 104.

firm, association or corporation be duly licensed as provided hereinafter. Every such person, firm, association or corporation before engaging in the business of buying milk or cream for the purposes aforesaid, shall, annually, on or before June first, file an application with the Secretary for Agriculture for a license to transact such business. The application shall state the nature of the business, as hereinabove set forth, the full name or names of the person or persons or corporation applying for the license, and, if the applicant be a firm or association, the full name of each member of such firm or association, the city, town or village and street number at which the business is to be conducted, and such other facts as the Secretary for Agriculture shall prescribe. The applicant shall further satisfy the Secretary for Agriculture of his or its character, financial responsibility and good faith in seeking to engage in such business. The Secretary for Agriculture shall thereupon issue such applicant, on payment of ten dollars, a license entitling the applicant to conduct the business of buying milk and cream from producers for the purpose aforesaid at an office or station at the place named in the application until the first day of July next following; provided, however, that if applications be made subsequent to July first in any year, said license shall run until the first of July next following. The Secretary for Agriculture may, at his discretion, exempt from the provisions of this act any dealers who do not make purchases from more than two producers, or those whose total monthly purchases of milk or cream do not exceed in value the sum of two hundred dollars. A license shall not be issued, however, to any applicant if, during the year preceding the application, a complaint from any producer and seller of milk and cream shall have been filed with the Secretary for Agriculture against such applicant for any grounds specified in section three hereof, and such complaint shall have been established as true and just to the satisfaction of the Secretary for Agriculture after such complaint shall have been investigated by the Secretary for Agriculture in the manner provided for in section two hereof. A license shall not be issued as provided in this section unless and until the applicant shall file with the Secretary for Agriculture as herein provided, a good and sufficient surety bond executed by a surety company duly authorized to transact business in this State, in a sum not less than one and one-half times the estimated maximum monthly indebtedness of the applicant to the parties or persons from whom he may purchase or receive, or may have purchased or received, milk or cream, or unless the applicant shall be relieved from such requirement as hereinafter provided. Such bond shall be approved as to its form and sufficiency by the Secretary for Agriculture.

Such applicant may in lieu of such bond deposit with the Secretary for Agriculture money or securities in which banks may invest the moneys deposited therein, as provided by law, in an amount equal to the sum secured by the bond required to be filed as herein provided.

The bond required to be filed hereunder shall be given to the Secretary for Agriculture in his official capacity and shall be conditioned for the faithful compliance by the licensee with the provisions of this act and for the payment of all amounts due to persons who have sold milk or cream to such licensee, during the period that the license is in force. The money or securities deposited with the Secretary for Agriculture as above provided shall constitute a separate fund, and shall be held in trust for, and applied exclusively to, the payment of claims against the licensee making such deposit, arising from the sale of milk or cream to such licensee.

Upon default by the licensee in the payment of any money due for the purchase of milk or cream, which payment is secured by a bond or a deposit of money or securities as hereinbefore provided for, the creditor may file with the Secretary for Agriculture, upon a form prescribed by him, a verified statement of his claim. If such creditor shall have reduced such claim to judgment, or shall thereafter and before the commencement of the action by the Secretary for Agriculture, as hereinafter provided for, reduce such claim to judgment, a transcript of such judgment shall also be filed with the Secretary for Agriculture.

Such statements may be filed at any time during the period of the license for purchases made during such period and within ninety days from the termination of such period.

After the expiration of ninety days from the termination of any license period the Secretary for Agriculture shall, by proper action wherein all such creditors and any surety upon any bond given as hereinbefore provided for and the licensee shall be parties, proceed to determine the amount due each creditor, and the judgment rendered in such action shall be enforced ratably for such creditors against the surety on the bond, if one there be, or against the moneys or securities deposited as hereinbefore provided for. If any creditor shall have reduced his claim to judgment such judgment shall be presumptive proof of the amount due such creditor in any action brought by the Secretary for Agriculture as hereinbefore provided for.

Every bond given pursuant to the provisions hereof shall be applicable, in the first instance, to the payment of all claims arising during the license period for which such bond shall continue, and filed either during such period or within ninety days after the expiration thereof. If all such claims shall be paid the balance available upon such bonds shall be devoted to the extinguishment ratably of claims arising during such license period, but for which statements shall not have been filed until after ninety days after the expiration of such period.

All moneys and securities, deposited as herein provided for, shall be applicable in the first instance, to the extinguishment of claims, properly filed, arising during the license period for which such moneys or securities were originally deposited, and if, after the extinguishment of such claims, there shall be a surplus remaining, such surplus shall be devoted to the extinguishment of claims arising during any preceding license period which were properly filed as hereinbefore provided, all claims for any one license period to be of a parity. Any surplus remaining after the extinguishment of such prior claims shall be added to the moneys or securities then on deposit with the Secretary for Agriculture, or, if there be at that time on file with the Secretary for Agriculture a bond given pursuant to this section, or if there be then on deposit with the Secretary for Agriculture additional moneys or securities deposited as herein provided for, and if such bonds or such moneys or securities, as the case may be, shall, in the opinion of the Secretary for Agriculture, be sufficient, such surplus shall be returned to the licensee.

A person or corporation licensed hereunder shall make a verified statement of his or its disbursements during a period to be prescribed by the Secretary for Agriculture, containing the names of the persons from whom such products were purchased, and the amount due to the vendors thereof. Such statement shall be submitted to the Secretary for Agriculture when requested by him and shall be in form as prescribed by the Secretary for Agriculture if it appears from such statement or other facts ascertained by the Secretary for Agriculture, upon inspection or investigation of the books and papers of such licensee as authorized by section two of this act, that the security afforded to persons selling milk or cream to such licensee by the bond executed or deposit made by such licensee as herein provided does not adequately protect such vendors, the Secretary for Agriculture may require such licensee to give an additional bond or to deposit additional money or securities, to be executed or deposited as above provided, in a sum to be determined by the Secretary for Agriculture, but not exceeding by more than fifty per centum the maximum amount paid out by such licensee to sellers of milk in any one month; provided, however, that the maximum amount of the bond or deposit required from any applicant under the provision of this section shall be one hundred thousand dollars; and that any applicant filing a bond or depositing money or securities in such maximum amount may be exempted from filing either the statements of milk purchased, or the statements of disbursements in this section provided for.

The Secretary for Agriculture may, notwithstanding the provisions of this section, if satisfied from an investigation of the financial condition of any applicant for a license under this section, that such person or corporation is solvent and possessed of sufficient assets to reasonably assure compensation to probable creditors, by an order filed with the Department of Agriculture relieve such person or corporation from the provisions of this section requiring the filing of a bond.

The term "station" or "milk gathering station," as used in this and ensuing sections of this act shall include any established office where the business of buying milk or cream as herein provided for is carried on with or without a place or premises in connection therewith for the physical handling of milk or cream, provided that such station or office shall be a suitable place for keeping such records and accounts and for posting such notices and statements as are required or as may hereafter be ordered under the provisions of this act, and for keeping for inspection as hereinafter provided, a copy of the license under which the business of a licensee is conducted. (Supp. 1924, p. 1422 et seq.; L. 1917, c. 74, § 1, as amended L. 1918, c. 160.)

123. Investigation of Complaints—Copy of Complaint Served—Hearing.—The Secretary for Agriculture and his assistants shall have power to investigate upon the complaint of any interested person, or of his own motion, the record of any person, firm or corporation applying for or holding a license, or any transaction involving the purchase of milk for shipment as provided in section one; and for such purpose may examine the ledgers, books of account, memoranda or other documents of any such person, firm, association or corporation applying for or holding a license and may take testimony therein under oath; but information relating to the general business of any such person, firm, association or corporation, disclosed by such investigation and not relating to the immediate purpose thereof, shall be deemed of a confidential nature by the Secretary for Agriculture, his assistants, representatives and employees. When a complaint is filed with the Secretary for Agriculture, he shall attempt to secure an explanation or adjustment, and, failing this within ten days, he

shall cause a copy of the complaint, together with a notice of the time and place for a hearing thereon, to be served personally or by mail upon said applicant or licensee. If served by mail, such complaint and notice shall be directed to the applicant or licensee at his place of business, with postage fully prepaid thereon. Such service shall be made at least seven days before the hearing. At the time and place appointed for such hearing, the Secretary for Agriculture or his assistants shall hear the parties to the complaint, shall have power to administer oaths and shall enter in the records of the office of the Secretary for Agriculture a decision either dismissing such complaint or specifying the facts which he deems established on such hearing. (Supp. 1924, p. 1425 et seq.; L. 1917, c. 74, § 2.)

124. Causes for Refusing or Revoking License—Judgment Entered—Failure to Settle.—The Secretary for Agriculture may decline to grant a license or may revoke a license already granted when he is satisfied of the existence of the following cases or either of them:

(1) Where a money judgment has been secured by any milk producer and has been entered against such applicant or licensee and remains unsatisfied of record.

(2) Where there has been a failure to make prompt settlements to persons from whom he buys milk, with intent to defraud.

(3) Where there have been combinations to fix prices.

(4) Where there has been a continual course of dealing of such nature as to satisfy the Secretary for Agriculture of the inability of the applicant or licensee to properly conduct the business or of an intent to deceive or defraud creditors.

(5) Where there has been a continued and persistent failure to keep records required by the Secretary for Agriculture or by law; or where there is a refusal on the part of the licensee to produce books, accounts or records of transactions in the carrying on of the business for which such license was granted. (Id. § 3.)

125. Review by Court.—The action of the Secretary for Agriculture in refusing to grant a license, or in revoking a license granted under section one, shall be subject to review by any court of competent jurisdiction, and if such proceedings are begun to review the revocation of license, the license shall be deemed to be in full force and effect until the final determination of said proceedings of review. (Id. § 4.)

126. Record of Transactions—Itemized Statement—Schedule of Prices Paid Posted.—Every proprietor of a milk gathering station shall keep, in such form as the Secretary for Agriculture may prescribe, a record of transactions of purchases of milk or cream by him, and he shall, at least semimonthly, deliver to each person from whom he receives or purchases milk or cream and in the unit of measure used in computing the amount due therefor, an itemized statement of the several amounts or quantities of such milk or cream so received or purchased at such milk station from such person during the prior half month, or, if statements are delivered more frequently than semimonthly, during the period of time which has elapsed since the delivery of such last prior statement. If the milk or cream is purchased or received on a butter fat basis, such statements shall include the percentage, or average percentage, of butter fat contained in said milk or cream as determined by tests periodical or otherwise. Every such proprietor of a milk gathering station shall post in a conspicuous place in such milk station a schedule of the prices being paid for milk or cream, including the premiums paid or deductions made, if any, for milk or cream containing milk fat either in excess or in lesser amount than the agreed standard, and shall keep a correct account of all the milk or cream daily received or purchased from each person at such milk station, which account shall be open to inspection by said person. (Id. § 5.)

127. Copy of License Posted.—Every person, firm, association or corporation licensed under the provisions of this act and carrying on or conducting business under such license shall post in a conspicuous place in or at the place of business of such licensee a copy of such license to be furnished by the Secretary for Agriculture, to be kept so posted and exposed for inspection by any person or persons who may properly make such inspection. (Id. § 6.)

128. If Dissatisfaction, Investigation Made.—If either party to the transaction of purchase and sale between a milk producer or a milk seller and a licensed buyer of milk shall be dissatisfied relative to any transaction of purchase and sale of milk between a milk seller and a licensed buyer of milk, he may apply to the Secretary for Agriculture, in writing, within sixty days after the delivery of such milk to the licensed buyer, for investigation. The Secretary for Agriculture shall treat such application as a complaint and shall cause a full investigation of the transaction complained of to be made either by himself or one of his assistants, in the manner provided for in section two. (Id. § 7.)

129. Penalty.—Any person who, being a buyer of milk for the purposes set forth in section one, and not being licensed, shall conduct the business of buying milk as provided in section one, shall be liable to a penalty of twenty-five dollars

for the first offense and fifty dollars for the second and each subsequent offense, to be sued for and recovered by and in the name of the Department of Agriculture. (Id. § 8, as amended L. 1925, c. 101.)

130. License Milk Dealers—Fee.—Any local board of health organized and existing under the provisions of any law of this State shall, in addition to the powers now vested in them, have power to pass, alter or amend ordinances and rules for the licensing and regulating of all persons engaged, either as principals or agents, in the production, sale or distribution of milk or cream within the limits of the jurisdiction of such local board of health, and to fix an annual license fee, not to exceed two dollars, for each wagon or vehicle used in the distribution and sale of milk or cream, which said license fee shall be paid by the person, firm or corporation conducting said business. (Supp. 1924, p. 1418 et seq.; L. 1914, c. 78, § 1.)

131. Requirements as to Source of Supply.—Any such local board of health may include in any ordinance or rule passed under the authority of the first section of this act a provision requiring any person or persons applying to such board for a license to sell milk or cream within the limits of the jurisdiction of said board, setting forth the locality from which such person or persons procure the milk or cream sold or distributed by him or them, and also a full and complete list of the names and addresses of all persons from whom he purchases milk or cream, and requiring said blanks, when properly filled in as aforesaid, to be signed by said person or persons applying for said license. Said board may also provide, by ordinance, that any person or persons engaged in the sale of milk or cream within the limits of the jurisdiction of said board shall notify, in writing, said board, immediately upon changing the source of supply of said milk or cream, of such change, and said notice shall also state the name or names of the person or persons or corporation supplying said milk or cream, and the locality from which said milk or cream is procured. (Id. § 2.)

132. Causes for Refusing License.—Any such board of health may also provide by ordinance that no license shall be granted to any person selling or distributing milk or cream which contains any unhealthful or unclean ingredient, constituent or substance, or which has been transported or stored in an unclean manner or place, or which has been produced wholly or in part, from any cow which is fed on swill, or any substance of an unwholesome nature, or on any food or substance which may produce diseased or unwholesome milk or cream, or which has been produced wholly or in part from any cow which is diseased, or which is kept or stabled under unhealthful or unclean conditions, or in a stable or place which is not provided with at least two square feet of window light to each five hundred cubic feet of air space in said stable, and ventilation adequate and sufficient for the number of animals kept therein, or which is not provided with a pure and unpolluted water supply for the use of such animals and for the cleansing of vessels used for containing or transporting milk or cream as aforesaid. (Id. § 3.)

133. Revocation of License.—Any such local board of health may further provide, by ordinance, that if any person licensed to sell or distribute milk or cream by said board, shall sell any milk or cream containing any unhealthful or unclean ingredient, constituent or substance, or which has been transported or stored in an unclean manner or place, or which has been produced wholly or in part from any cow which is fed on swill, or any substance in a state of rottenness or putrefaction, or on any substance of an unwholesome nature, or on any food or substance which may produce diseased or unwholesome milk or cream, or which has been produced wholly or in part from any cow which is diseased, or which is kept or stabled under unhealthful or unclean conditions or in a stable or place not provided with at least two square feet of window light to each five hundred cubic feet of air space in said stable, and ventilation adequate and sufficient for the number of animals kept therein, or which is not provided with a pure and unpolluted water supply for the use of such animals and for the cleansing of vessels used for containing or transporting milk or cream, that the license held by such person may be revoked by said board. (Id. § 4.)

134. Annual Certificate of Healthfulness of Cows.—Any person, firm or corporation who keeps cows for the production and sale of milk or cream shall file at least once a year in the office of the Board of Health of the State of New Jersey a certificate, signed by a duly licensed veterinary surgeon, stating that such cows have passed a physical examination, and such certificate shall state the results of the examination of said cows with reference to the existence of any disease with which they may be afflicted. (Id. § 5.)

135. Inspection of Dairies.—It shall be the duty of the Board of Health of the State of New Jersey, when so requested by any local board of health in this State, to inspect any or all dairies supplying the municipality within the jurisdiction

of any local board of health and to furnish said local board of health a record showing the sanitary conditions under which milk or cream is produced for sale or distribution within the limits of the municipality so requesting it. (Id. § 6.)

136. Penalty—How Recovered—Use of Penalties.—Any board of health which provides by ordinance for the licensing of dealers of milk or cream under the provisions of this act may provide, by ordinance, for a penalty not exceeding fifty dollars to be incurred by any person engaging either as principal or agent, in the sale or distribution of milk or cream within the limits of the jurisdiction of said board, who shall not be duly licensed to engage in such business by said board. Said penalty shall be recovered by said board in an action of debt by said local board of health or by the Board of Health of the State of New Jersey, and said penalty, when recovered shall be paid to the local board of health when the action was instituted by said local board of health, and to the State of New Jersey, when the action was instituted by the Board of Health of the State of New Jersey. All penalties collected for the violation of any ordinance passed pursuant to the provisions of this act shall be used by the local board of health to which the same shall be paid, for the purpose of defraying the expenses of carrying into effect the ordinance or ordinances adopted by virtue of the provisions of this act. (Id. § 7.)

137. Prohibition of Sale of Milk on Notification.—It shall be the duty of the Board of Health of the State of New Jersey, whenever it shall ascertain that milk or cream is produced for sale or distribution that contains any unhealthful or unclean ingredient, constituent or substance, or which is stored in an unclean manner or place, or which is produced wholly or in part from any cow which is fed on swill, or any substance in a state of rottenness or putrefaction, or on any substance of an unwholesome nature, or on any food or substance which may produce diseased or unwholesome milk or cream, or which has been produced wholly or in part from any cow which is diseased or which is kept or stabled under unhealthful or unclean conditions, or in a stable or place which is not provided with at least two square feet of window light to each five hundred cubic feet of air space, in said stable, and ventilation adequate and sufficient for the number of animals kept therein, or which is not provided with a pure and unpolluted water supply for the use of such animals and for the cleansing of vessels used for containing or transporting milk or cream, to notify the local board of health having jurisdiction over the place where such milk or cream is distributed or sold, and it shall be the duty of such local board of health receiving such notice from the Board of Health of the State of New Jersey to prohibit the sale of such milk or cream within its jurisdiction. (Id. § 8.)

138. Right to Enter Premises for Inspection Purposes.—The officers, agents or employees of the Board of Health of the State of New Jersey by virtue of the authority contained in this act shall have full and free access, ingress and egress to all barns, stables, and places of every kind or character in which milk or cream is stored or had in possession for the purpose of distribution or sale, and shall have power to enter and inspect the premises used in connection with any such barns, stables or places, and to inspect the utensils and fixtures which are in any way used in the production or storage of milk or cream for distribution or sale as aforesaid. (Id. § 9.)

139. Penalty for Interference.—Every person who shall in anywise interfere with any officer, agent or employee of the Board of Health of the State of New Jersey in the discharge of his duties under this act shall be liable to a penalty of one hundred dollars, to be recovered in an action of debt by the Board of Health of the State of New Jersey, said penalty when recovered to be paid into the treasury of this State. (Id. § 10.)

140. Agents Exempt From Liability.—No officer, agent or employee of the Board of Health of the State of New Jersey shall be liable to damages, arrest or imprisonment for the enforcement of any of the provisions of this act. (Id. § 11.)

140a. Milk Inspector; Appointment; Licenses to Milk Dealers.—It shall be lawful for the common council, board of aldermen, or other governing body of any city, incorporated borough, police, sanitary or improvement commission, incorporated camp meeting association or seaside resort, to provide for the appointing of a milk inspector or of milk inspectors for their respective municipal corporations, to prescribe their duties and to fix their salaries, and further to provide for the licensing and regulating of all persons engaged, either as principals or as agents, in the sale of milk within their respective corporate limits, and to require as a prerequisite to engaging in such business a yearly license fee to be paid by the person, firm, or corporation conducting said business. (C. S. 1910, p. 3496 et seq.; L. 1882, c. 74, § 1.)

140b. License to Sell Milk; Effect.—Each license shall allow the person, firm or corporation licensed, or his or their agent or agents named in such license, to sell milk within the corporate limits of the municipal corporation granting the license from one store or stand, from one cart or wagon, or from one pail or other receptacle

carried in the hand; provided that nothing herein contained shall limit the number of licenses which may be granted to any person, firm or corporation. (Id. § 2.)

140c. Penalties for Selling Milk Without License.—The aforesaid municipal corporations shall have power to fix and establish fines and penalties, not exceeding fifty dollars for each offense, for the selling of milk without a license, and for the violation of any rule, regulation or ordinance established for the regulating of the sale of milk within their respective corporate limits; and that such fines and penalties shall be recovered as other fines and penalties are or may be recovered in the respective municipal corporations. (Id. § 3.)

140d. Milk Inspectors; Compensation From License Fees.—At least two-thirds of the sum collected in any municipal corporation in one year from milk license fees shall in that year be expended in paying the salaries and expenses of a competent inspector or competent inspectors of milk for said municipal corporation. (Id. § 4.)

140e. Milk Inspector; Powers and Duties.—It shall be the duty of each inspector, in addition to the duties imposed upon him by the municipal corporation appointing him, to keep a complete record of all his daily doings and proceedings as inspector, giving a full account of each inspection or examination of milk made by him, including the name of the person, firm or corporation owning or claiming to own the milk inspected, the names of the agents in charge, the place and manner in which the said milk was offered for sale, together with the results of each test and analysis; that said records shall be the property of the respective municipal corporations and shall at all times be subject to their control. (Id. § 5.)

140f. Milk Inspector; Complaint Against Persons Violating Ordinance.—It shall be the duty of each inspector to make complaint against all persons discovered by him in the violation of any rule, regulation or ordinance which may be passed in conformity to the provisions of this act. (Id. § 6.)

140g. Milk Inspector to Have Same Power and Authority as State Inspector.—Each inspector appointed by a municipal corporation shall have the same power, authority, rights and privileges, and shall perform the same duties within the corporate limits of the municipal corporation for which he is appointed as are now or may hereafter be possessed and performed by the State Inspector of Milk; provided, that all penalties collected in any suit instituted by him under the laws of this State governing and regulating the adulteration of milk and the sale of milk, shall be paid into the treasury of the municipal corporation for which he acts, and the expense of such suits shall be borne by said municipal corporation. (Id. § 7.)

140h. Persons Twice Convicted of Violation of State Law Governing Sale, Etc., of Milk Not Allowed for Two Years to Engage in Business, and License to be Void.—No person twice convicted of knowingly violating the State law governing the sale of milk or the adulterating of milk, for the space of two years, be allowed to conduct or be engaged in the business of selling milk within any municipal corporation in this State; that his license, if he have one, shall be void, and no new license shall be granted to him for the space of two years. (Id. § 8.)

140i. Repealer.—All other acts and parts of acts authorizing the imposition of a license fee upon any person engaged in the milk business, and all acts and parts of acts inconsistent with this act be and the same are hereby repealed. (Id. § 9.)

141. Creameries—Cleanliness of Buildings and Utensils—Not to be Used for Dwelling Purposes.—No person or corporation buying or receiving milk or cream for the purpose of selling the same as such, or for manufacturing the same into butter, cheese, condensed milk, ice cream or other food for human beings, shall place, keep or store the same in any vat, tank, can, bottle, vessel, utensil or other receptacle which is unclean, and every building or structure in which milk or cream is received, and which milk or cream is intended for sale or for manufacturing into food for sale for human beings, shall be provided with an abundant supply of pure and wholesome water, and shall be provided with adequate facilities for the cleansing of all receptacles and utensils employed in handling milk or cream. The interior surfaces of the walls and ceilings of such buildings and structures shall be smooth and be kept free from dust. The floors of all rooms in such buildings in which milk is received or kept or handled shall be impervious to water, and the surfaces shall be so graded that waste fluids will flow into a water-tight drain, and be finally disposed of in a manner which will not create a nuisance. No portion of any creamery building shall be used as a dwelling nor as a laundry or kitchen; provided, however, that the prohibition last mentioned shall not apply to any creamery or ice cream factory which at the time of the taking effect of this act is located in a building, a portion of which is, at said time, used as a dwelling, if the sanitary conditions and arrangements of such ice cream factory and of such dwelling are approved by the Board of Health of this State. (Supp. 1924, p. 1413; L. 1906, c. 139, § 1, as amended L. 1911, c. 59.)*

*See No. 27.

142. License to Conduct Creamery From State Board of Health.—No person or corporation shall operate or conduct any creamery for the reception of any milk or cream intended for sale or distribution, or for the manufacture of the same into butter, cheese, condensed milk, ice cream, or other food for human beings, unless a license shall first have been granted by the Board of Health of the State of New Jersey to such person or corporation, authorizing such person or corporation to engage in said business at the place designated in said license. Said license shall be granted by the said board under such rules and regulations as the said board may from time to time adopt. (Id. § 2.)

143. License Forfeited for Violations of Act.—If any such person, so licensed, shall violate any of the provisions of this act, or any of the rules and regulations provided for in section two of this act, he or they shall forfeit his or their license, and no new license shall be granted to the said party or parties until the requirements of this act and of the said rules and regulations shall have been complied with. (C. S. 1910, p. 2592 et seq.; L. 1906, c. 139, § 3.)

144. Notices to Local Boards of Health of Unsanitary Condition of Creameries.—It shall be the duty of the State Board of Health to notify, in writing, the local board of health of every sanitary district in which milk or cream is sold, and which milk or cream is found to be collected, stored, transported or distributed under unclean or unwholesome conditions. (Id. § 4.)

145. Penalties for Violations of Act—How Recovered.—Any person or persons who shall operate or conduct a creamery or establishment for receiving milk or cream for sale or distribution, or for manufacturing the same into butter, cheese, condensed milk, ice cream or other food for human beings, without holding a license as provided for in section two of this act, shall be liable to a penalty of two hundred dollars, said penalty to be recovered in the same way and manner as similar penalties are recovered under the provisions of the act to which this act is a further supplement. (Supp. 1924, p. 1414; L. 1906, c. 139, § 5, as amended L. 1911, c. 59.)

146. "Creamery" Defined.—The word "creamery" as used in this act shall be construed to mean any establishment where milk or cream is received or stored for sale or distribution by wholesale, or for the manufacture of the same into butter, cheese, condensed milk, ice cream or other food for human beings. (Id. § 6.)

147. Injunction to Prevent Keeping Milch Cows in Unwholesome Places; Improper Feeding.—Whenever any person shall keep cows for the production of milk in a crowded or unhealthy place or condition, or feed any cows kept for the production of milk on swill or any substance in a state of putrefaction or rottenness, or on any substance of an unwholesome nature, or on any substance that may produce disease or unwholesome milk; or who shall sell or distribute, or offer to sell or distribute, or have in possession with intent to sell or distribute any milk which is the produce of cows so kept or fed, then it shall be lawful for the State Board of Health to file a bill in the Court of Chancery in the name of the State, on the relation of such board for an injunction to prohibit the keeping of cows for the production of milk in such crowded or unhealthy place or condition, or the feeding of cows on swill or any substance in a state of putrefaction or rottenness, or any substance of an unwholesome nature, or on any food or substance that may produce disease or unwholesome milk, or the continuance of the sale, distribution or transportation of such milk as the case may be, and for such other or further relief in the premises as the Court of Chancery shall deem proper. (C. S. 1910, p. 2660 et seq.; L. 1904, c. 99, § 1.)

148. Prohibiting Sale of Milk, Etc., Handled by Person With Communicable Diseases—Continuation of Prohibition—Penalty—Recovery of Penalty.—When the State Board of Health, or any officer or employee thereof duly authorized in writing by such board to act for or in its behalf, shall have reason to believe that any milk, cream, skimmed milk or other dairy product of any kind or character, has been contaminated by the emanations, exhalations, or discharges of any person affected with any communicable disease, or that any milk, cream, skimmed milk, or other dairy product of any kind or character, has been or is produced, stored or kept on any premises upon which any infection which may cause a communicable disease exists, it shall be lawful for the said State Board of Health, or officer or employee authorized to act in the premises, as aforesaid, to issue an order in writing, prohibiting the transportation or sale of any such milk, cream, skimmed milk or other dairy product. Every person upon whom any such order may be served shall be bound by such prohibition, and the said prohibition shall continue until the said board of health, or the officer or employee authorized to act in the premises, as aforesaid, shall have had an opportunity to examine into said matter, and shall have removed the prohibition by the service of another order in writing signed by any officer of the said board of health or by the officer or employee authorized to act in the premises, as aforesaid. Any person who shall, after having been served with such order of pro-

hibition as aforesaid, prior to the removal of said prohibition transport or sell any milk, cream, skimmed milk, or other dairy product of any kind or character, the sale and transportation of which has been prohibited, as aforesaid, shall be subject to a penalty of one hundred dollars; any other person who shall knowingly transport or sell any milk, cream, skimmed milk or other dairy product, the sale and transportation of which has been prohibited, as aforesaid, shall be subject to a penalty of one hundred dollars.

Any penalty incurred under the provisions of this act shall be sued for, recovered and collected by the Board of Health of this State in the manner provided for the recovery of penalties in an act entitled "An act to prevent deception in the sale of oleomargarine, butterine or any imitation of dairy products and to preserve the public health," approved March twenty-second, eighteen hundred and eighty-six,* and the acts amendatory thereof and supplementary thereto. (Supp. 1924, p. 1421 et seq.; L. 1915, c. 339, § 1.)

149. Physicians to Report Diseases at Dairies.—Every physician who shall attend any person sick with typhoid fever, dysentery, scarlet fever, diphtheria or tuberculosis, on any dairy premises where milk is produced for sale or distribution, shall report to the Secretary of the State Board of Health within twelve hours after he first ascertained that any such person is sick with any of said diseases, which report shall be in writing, and shall state the nature of the disease, the name of the person who is ill with said disease and the location of the place where such person is ill as aforesaid, and the name of the owner or manager of said dairy premises if the same can be ascertained. (Supp. 1924, p. 1501 et seq.; L. 1911, c. 380, § 1.)

150. Further Report.—Every physician who shall attend any person sick with any of the diseases mentioned in section one who shall have knowledge of the fact that any member of the family of such person ill as aforesaid, or any person living in the same family is employed on any dairy premises where milk is produced for sale or distribution, shall report to the Secretary of the State Board of Health in writing, within twelve hours after he first ascertained that any such person is sick as aforesaid, or within twelve hours after gaining the information above mentioned as aforesaid, which report shall state the name of the person who is ill with said disease, the nature of the disease and the location of the place where such person is sick as aforesaid, and shall further specify the name of the member of the family of such person or of the person living in the same family as the person ill as aforesaid, who is employed on dairy premises as aforesaid, and the name of the owner or manager thereof if the same can be ascertained and the location of the dairy premises where said person is employed. (Id. § 2.)

151. Penalty.—Every person who shall fail to make the report provided for by sections one and two of this act in the manner and within the time therein mentioned, shall, for every such failure, forfeit the sum of fifty dollars, to be recovered in the manner provided for the recovery of penalties in the act to which this act is a supplement. (Id. § 3.)†

152. Registry of Cattle in Cities May be Required by Local Board of Health; Duties of Owners.—The local board of health of any city of this State shall by ordinance require, from time to time, a registry of all cattle kept within the limits of said city, which registry shall state the place of keeping, the number in each case kept, and the number of these intended, or used, as milch cows; and it shall be the duty of the owner of any such cattle to make registry thereof at the time, place and in the manner that the board of health of said city may direct, under a penalty not exceeding fifty dollars for any neglect of the same; provided, that no such registry shall be made by any board of health until after the examination of the stables and place in which said cattle are kept, and until it is known to the satisfaction of said board that they are in good sanitary condition. (C. S. 1910, p. 79; L. 1893, c. 207, § ..)

153. Inspection May be Ordered by Local Board of Health in Case of Suspected Disease; Payment of Expenses.—Whenever any local board of health of any city shall have reason to suspect the existence of any contagious diseases among cattle, or such as may be a risk or danger to the food or milk supply, or whenever they may deem it necessary, in order to prevent the occurrence of such risk or danger, they shall order the inspection of all cattle that are kept or intended for meat or milk production, by a competent veterinarian chosen by them, and may for such inspection require so much payment for such service as may be necessary for the expenses attending such inspection; it being, however, provided, that in no case shall the amount charged exceed fifty cents a head per year for dairies of ten cows or

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*See No. 224 et seq.

†This act supplements chapter 260, Laws of 1895. See Nos. 437-438.

under, and for all dairies above ten cows, twenty-five cents per head per year; provided, further, that no charge shall be made against anyone keeping a single cow for family use. (Id. § 2.)

154. State Dairy Commissioner to be Notified, and His Duties.—Whenever any local board of health, or any veterinary inspector appointed by said board, shall find or suspect any disease in any cow, or in any herd of milk producing cattle, which may prove harmful to the meat or milk supply, the State Board of Health and the State Dairy Commissioner shall be notified, and it shall be the duty of the Dairy Commissioner to investigate the same, and he shall prohibit the sale or use of the milk from any such milch cow, but he, or the owner of said milch cow, may ask, through the State Board of Health, a report from some veterinarian appointed by the State Board of Health as to whether, or how long, it will be necessary to continue the prohibition of the use of said milk, and the Dairy Commissioner or the State Board of Health may prohibit the use of said milk or of meat of any animal declared by a veterinarian of the State Board to be unfit for use. (Id. § 3.)

155. Method of Testing for Butter Fat—Approval of Test Glass.—No person purchasing milk or cream and paying for the same on the basis of the percentage of butterfat contained therein shall, if the percentage of butterfat is ascertained by the method commonly known as the "Babcock test," use any test glassware except standard Babcock test glassware, which has been previously inspected and approved by the Director of the New Jersey Agricultural Experiment Station. If the proportion of butterfat is determined by any method other than the Babcock method, no utensil or instrument shall be used in such determination until the same has been inspected and approved by the Director of the New Jersey Agricultural Experiment Station. (Supp. 1924, p. 1428 et seq.; L. 1920, c. 75, § 1.)

156. Permit for Dealers—To Whom Issued—Permit Good for Year.—Every creamery, shipping station, milk factory, cheese factory, ice cream factory or milk condensery, or person receiving or buying milk or cream on the basis of the butterfat contained therein, shall be required to hold a permit to purchase milk or cream on the basis of its butterfat content. This permit shall be issued to such creamery, shipping station, milk factory, condensery, ice cream factory, cheese factory or person by the Director of the New Jersey Agricultural Experiment Station. The permit shall be valid for a term of one year, and shall be revoked by the Director of the New Jersey Agricultural Experiment Station if the provisions of this act are violated; provided, however, that this provision shall not apply to individuals, hotels, restaurants and boarding houses buying milk or cream for their own use. (Id. § 2.)

157. Handlers Licensed.—No person purchasing milk or cream and paying for the same on the basis of the percentage of butterfat contained therein, or no employee or any such person shall test any milk or cream purchased or to be purchased by such person on the basis of the percentage of butterfat contained therein, unless such person making such test shall first have procured a license from the Director of the New Jersey Agricultural Experiment Station autohorizing him to make such test. (Id. 3.)

158. License for Official Test.—No person testing milk or cream for the percentage of butterfat, when the result of such test is used for official inspection or public record, shall test milk or cream for such purpose, unless such person shall have first secured from the director of the New Jersey Agricultural Experiment Station a license authorizing him to make such a test. (Id. § 4.)

159. Application and Examination for License—Revocation of License.—Applications for such license shall be made to the director of the New Jersey Agricultural Experiment Station in writing; such application shall state the name of the test which the applicant intends to apply to such milk or cream. Any such applicant shall be examined by the director of the New Jersey Agricultural Experiment Station for the purpose of determining his ability to accurately make such test, and upon his demonstration of such ability a license shall be issued to him authorizing him to make the test named in his application. Any such license may be revoked by the director of the New Jersey Agricultural Experiment Station upon proof of the incompetency of the person holding such license or upon proof of the violation by such person of any of the provisions of this act. (Id. § 5.)

160. Contents Mixed Before Taking Sample.—Any person taking a sample or samples of milk or cream, either from the aliquot part of each lot of milk sampled or from the composite lot of milk or cream sampled, shall thoroughly stir and mix each and every container immediately before such sample or samples are taken in such manner that the milk and cream are thoroughly mixed in each container before the sample is taken. (Id. § 6.)

161. No Fraudulent Reading of Scale.—No person purchasing milk or cream and paying for the same on the basis of the percentage of butterfat contained therein, and no employee of any such person and no person testing milk or cream for the

percentage of butterfat when the results of such test are to be used for official inspection or public record, shall fraudulently underread, overread or otherwise fraudulently manipulate the test known as the "Babcock test" or any other test used for determining the proportion of butterfat in milk or cream, or shall falsify the record thereof, or shall read the test known as the Babcock test at any temperature except the temperature of not less than one hundred and thirty degrees Fahrenheit and not more than one hundred and fifty degrees Fahrenheit. (Id. § 7.)

162. Approval of Person Taking Sample.—No sample of milk or cream taken for the purpose of ascertaining the per centum of butterfat to be used as a basis of payment for milk or cream purchased or for the purpose of official inspection or public record shall be taken by any person who has not first been approved by the director of the New Jersey Agricultural Experiment Station, to be a person competent to weigh and sample milk and cream. (Id. § 8.)

163. As to Samples.—No per centum of fat ascertained from a sample containing milk or cream that has been so treated as to cause it to test lower than the test of the milk or cream from which it was taken, or that is more than fifteen days old, shall be used by any person, firm or corporation receiving or purchasing the same as a basis of payment for milk or cream; provided, however, that nothing in this paragraph contained shall be construed to apply to any test made by the director of the New Jersey Agricultural Experiment Station or his deputies. (Id. § 9.)

164. Two Tests on Premises.—All samples of milk or cream that are taken for the purpose of ascertaining the per centum of butterfat to be used as a basis of payment for milk or cream purchased shall be tested on the premises where they are taken. Two tests shall be made of each such sample, and these tests must not have a variation of more than two-tenths of one per centum before they can be used as a basis for payment. (Id. § 10.)

165. Taking and Retaining Samples.—Any person purchasing milk or cream and paying for the same on the basis of the percentage of butterfat contained therein shall take and retain on his premises an aliquot part of each lot of milk purchased and sampled. A composite sample to which a suitable preservative has been added shall be made up of the aliquot parts taken from the several lots of milk purchased from any one person, and the milk or cream purchased from each person shall be represented by a composite sample. The same composite sample or samples shall be kept intact for a period of not less than ten days after payment is made for the several lots of milk or cream represented by each sample, and the director of the New Jersey Agricultural Experiment Station, and his deputies, shall have the authority to examine and analyze such composite samples for the purpose of determining whether payment had been correctly made on the basis of the percentage of butterfat in the milk or cream purchased. (Id. § 11.)

166. Result of Tests Given Seller.—Every person, firm or corporation affected by the provisions of this act shall within five days after the day on which the test herein provided for has been made notify the seller of such milk or cream or his agent of the result of such test and the amount of milk or cream sold or delivered by said seller, covering the period of time during which said composite sample was taken. Notice under this section shall be given either personally, in writing or by registered mail to the seller of such milk or cream, or his agent. (Id. § 12.)

167. True Weight Used for Payment.—No person purchasing milk or cream by weight, and no employee of any such person, shall fraudulently use as the basis of payment for such purchase any weight other than the true weight of the milk or cream so purchased. (Id. § 13.)

168. Inspection of Premises and Records.—The Director of the New Jersey Agricultural Experiment Station, or his deputies, shall have the authority to enter and inspect the premises of any person purchasing milk and cream and paying for the same on the basis of the percentage of butterfat contained therein. The said director and his deputies shall have the authority to examine the books and records of any person purchasing milk or cream and paying for the same on the basis of the percentage of butterfat contained therein. (Id. § 14.)

169. Penalties for Violations—Recovery of Penalties.—Any employee of a firm, company, association, corporation or person buying milk or cream on the basis of the amount of butterfat contained therein, or any person testing milk or cream for percentage of butterfat to be used for official inspection or public record violating any of the provisions of this act, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined not less than twenty-five (25) dollars or more than five hundred (500) dollars, or be imprisoned in the county jail for not less than sixty (60) days or more than twelve (12) months, or both. Any firm, company, association, corporation or person buying or paying for milk or cream on the basis of the butterfat contained therein, violating any provisions of this act, shall be guilty of a misdemeanor, and upon conviction thereof shall be fined in the sum of one hun-

dred (100) dollars for the first offense and in the sum of not less than one hundred (100) dollars nor more than one thousand (1,000) dollars for each subsequent offense. Any such penalty shall be sued for and recovered by and in the name of the director of the New Jersey Agricultural Experiment Station in an action of debt. Such penalty, when recovered, shall be paid by said director into the treasury of the State of New Jersey. When judgment is obtained for any penalty under this act in any court of this State against any individual, execution may issue against the goods, chattels and body of such individual. (Id. § 15.)

170. Appropriation.—That in order to insure sufficient funds to execute the provisions of this act, and to protect the dairy farmers of this State against fraud and deception in the weighing, sampling and testing of milk and cream for butterfat, the following sums of money are hereby annually appropriated to the New Jersey Agricultural Experiment Station for exclusive use of the New Jersey Agricultural Experiment Station, when included in any annual or supplemental appropriation act of this State. For the fiscal year ending June thirtieth, one thousand nine hundred and twenty-three, three thousand dollars, and three thousand dollars annually thereafter, when included in any annual or supplemental appropriation act, the same to be expended for the purpose of providing the necessary equipment and paying the expenses of conducting the inspection of creameries, the examination of testing glassware, the examination of candidates for licenses and instruction by means of publication. (Id. § 16.)

171. Certified Milk Commissions; How Constituted; Certificate; Filing.—Any five or more physicians duly authorized to practice medicine under the laws of this State who shall desire to associate themselves together for the purpose of supervising the production of milk intended for sick room purposes, infant feeding and for use in hospitals, may make, record and file a certificate in writing in the manner hereinafter mentioned. (C. S. 1910, p. 2593 et seq.; L. 1909, c. 237, § 1.)

172. Certified Milk Commissions; Certificate; Contents.—Such certificate shall set forth:

Name of association.—(I) The name of such association which shall be as hereinafter designated.

Purpose of association.—(II) The purposes for which the association shall be formed.

Names and residence of directors.—(III) The names and the residences of the medical directors who shall manage the affairs of the association for the first year of its existence.

County of location of association.—(IV) The county in this State where such association shall operate. (Id. § 2.)

173. Certified Milk Commissions; Certificate; Record in County Clerk's Office; Filing in Office of Secretary of State; Evidence.—Such certificate shall be proved or acknowledged and recorded as required of deeds of real estate in a book to be kept for the recording of certificates of incorporation in the office of the clerk of the county where the purposes of such association are to be carried out and after being so recorded, shall be filed in the office of the Secretary of State; said certificate or a copy thereof duly certified by the said clerk or Secretary of State shall be evidence in all courts or places. (Id. § 3.)

174. Certified Milk Commissions; Body Politic; Powers and Duties.—Upon making such certificate and causing the same to be recorded and filed as aforesaid, the said physicians so associating themselves together and their successors shall by virtue of this act be a body politic and corporate in fact and in law by the name stated in such certificate and by that name they and their successors shall have perpetual succession with power to sue and be sued, plead and be impleaded, answer and be answered unto in all courts and places whatsoever and to make and use a common seal at pleasure. (Id. § 4.)

175. Certified Milk Commissions; Corporate Name.—The name of such association shall be the "The Medical Milk Commission of ..... (designating name of county), county, of New Jersey," and in case more than one association shall be organized under this act or otherwise, such subsequent association or associations shall use the name designated herein, but shall indicate in such name its proper sequence in organization or incorporation by adding thereto the words: "Number Two," "Number Three," "Number Four," or as the case may be. (Id. § 5.)

176. Certified Milk Commissions; Powers of Directors; Certification of Milk.—Such medical directors shall have the power from time to time to make, alter and amend by-laws not inconsistent with the constitution and laws of the United States and of this State, fixing or altering the number of its medical directors and providing for the mode of filling vacancies and removing any member from their number and prescribing qualifications for membership in the association and the

appointment of such agents and officers as shall in their judgment tend to promote or advance any purpose or purposes of such commission, and to prescribe their respective duties; and for the regulating of the conditions under which milk shall be produced by any dairyman or dairymen under contract with such commission.

Such medical milk commissions shall have power to certify to any milk produced under their supervision which shall meet the requirements hereinafter mentioned. (Id. § 6.)

177. Directors of Association Not to Receive Compensation From Dairymen; Penalty.—No medical director of any association organized under this act shall receive, directly or indirectly, from such association or dairyman or dairymen producing milk under agreement with such commission any salary or emolument or any compensation of any kind or character for any services rendered under the provisions of this act, and any medical director who shall receive any salary, emolument, or compensation of any kind or character for such services, shall be liable to a penalty of one hundred dollars ($100.00), to be recovered in an action of debt by the association of which he is a member, and in addition thereto shall be removed from his office as a member of said association and thereafter disqualified from becoming a member of any association incorporated under the provisions of this act. (Id. § 7.)

178. Agreements With Dairymen for Production of Milk Under Supervision of Association—Terms.—Every such association shall have power to enter into agreement in writing with any dairyman or dairymen for the production of milk under the supervision of such association for the purposes enumerated in section one hereof and to prescribe in such agreement the conditions under which such milk shall be produced which conditions, however, shall not be inconsistent with the rules and regulations governing the production, distribution and sale of certified milk adopted or which may hereafter be adopted by the Department of Health of the State of New Jersey under authority contained in this act. In any contract entered into by any such commission with any dairyman or dairymen it may be provided that any such medical milk commission may designate any analysts, chemists, bacteriologists, veterinarians, medical inspectors or other persons who, in its judgment, may be necessary for the proper carrying out of the purposes of such commission for employment of such dairyman or dairymen and to prescribe and define their powers and duties, and that such persons so employed by such dairyman or dairymen may be discharged from employment whenever such medical milk commission may request such discharge or removal in writing. (Supp. 1924, p. 1414 et seq.; L. 1909, c. 237, § 8, as amended L. 1920, c. 156.)

179. Certificates Attached to Milk Containers.—All containers of any kind or character used in the carrying or distribution of milk produced by any dairyman or dairymen under contract with any medical milk commission shall have attached thereto or placed thereon a certificate or seal bearing the name of the medical milk commission with which such dairyman or dairymen producing such milk shall be under contract, which certificate shall have printed, stamped or written thereon the day or date of the production of the milk contained in any such container and the words "Certified Milk" in plain and legible form. (C. S. 1910, p. 2595; L. 1909, c. 237, § 9.)

180. Supervision of Associations by State Board of Health.—The State Department of Health shall adopt rules and regulations which shall govern the production, distribution and sale of certified milk, and shall fix standards of purity and quality for such milk, and such regulations and standards, when adopted, shall become a part of the State Sanitary Code. The work and methods of any medical milk commission organized under this act and of the dairies on which milk is produced under contract with any such commission shall at all times be subject to investigation and scrutiny by the Department of Health of the State of New Jersey. The director of said State Department of Health shall be an ex officio member of every milk commission organized under this act. (Supp. 1924, p. 1415; L. 1909, c. 237, § 10, as amended L. 1920, c. 156.)

181. Sale of Milk as Certified Milk—Penalty.—No person, firm or corporation shall sell or exchange, or offer or expose for sale or exchange as and for certified milk, any milk which is not produced in conformity with the rules, regulations and standards adopted by the State Department of Health under authority contained in this act, or which does not bear the certification of a medical milk commission incorporated pursuant to the provisions of this act or of a medical milk commission incorporated in some other State for the purposes specified in section one hereof; provided, however, that in the case of a medical milk commission incorporated in another State, before the milk produced under the supervision of such a commission may be sold in this State, such commission must have received a permit from the Department of Health of the State of New Jersey to certify

to milk sold in this State, which permit shall be revokable at any time for cause. Any person, firm or corporation violating any of the provisions of this act shall be liable to a penalty of not less than twenty-five nor more than one hundred dollars, to be sued for and recovered by and in the name of the director of health or by the local health officer, local board of health or other board or officer exercising the powers of a local board of health, of any local jurisdiction within which such violations may occur, in the same manner as penalties incurred for violation of an act entitled "An act to secure the purity of foods, beverages, confectionery, condiments, drugs and medicines, and to prevent deception in the distribution and sales thereof" (Revision of 1907), and approved May twentieth, one thousand nine hundred and seven,* are sued for and recovered. (Id. § 11.)

182. Unlawful to Sell Unpasteurized Milk or Cream; Exceptions.—No person shall purchase, distribute or sell, or have in his possession with intent to distribute, sell or give away, for human consumption, any milk or cream which has not been pasteurized, excepting milk or cream which has been produced by cows which have successfully passed a tuberculin test within one year of the sale of such milk or cream; provided, however, that it shall not be unlawful to sell or deliver milk or cream produced by cows which have not passed a tuberculin test to a person or firm licensed by the Department of Health of the State of New Jersey to pasteurize milk or cream; and provided, that it shall not be unlawful to sell or deliver milk or cream produced by cows which have not passed a tuberculin test if an application for an initial test of such cows by the Department of Agriculture of the State of New Jersey under the laws of the State of New Jersey is on file with the Department of Agriculture. (L. 1927, c. 233, § 1.)

183. Same.—In the case of milk or cream which is produced in States other than New Jersey, and which is shipped into this State for distribution and sale, all such milk or cream shall be pasteurized before being offered for sale, distributed or sold, or given away for human consumption, excepting that produced by cows which have successfully passed a tuberculin test within one year, made by a licensed veterinarian of the State where the cows are maintained. (Id. § 2.)

184. Containers to be Marked.—All containers in which pasteurized milk or cream is shipped, distributed, sold or given away for human consumption shall be plainly marked with the words "pasteurized milk" or "pasteurized cream," as the case may be, upon the tags, caps or labels. All containers in which milk or cream from tuberculin tested cows, excepting certified milk, is shipped, distributed or sold shall be plainly marked with the words "raw milk produced by tuberculin tested cows," or "raw cream produced by tuberculin tested cows," as the case may be, upon the tags, caps or labels. (Id. § 3.)

185. Tuberculin Test Records.—All tuberculin tested cattle producing milk or cream which is sold as "raw milk produced by tuberculin tested cows," or "raw cream produced by tuberculin tested cows," shall be made by veterinarians employed by the Department of Agriculture of the State of New Jersey or by licensed veterinarians. A complete record of the last tuberculin test of each animal shall be kept on file on the premises where the cattle are maintained. Such records shall be open to inspection by State or local officials authorized to make dairy inspections. (Id. § 4.)

186. Sale of Milk From Cattle Affected With Disease Prohibited.—All cattle which have reacted to the tuberculin test or which are affected with any disease or condition which may render the milk injurious to health or abnormal in composition shall be separated from the dairy herd, and no milk from such cattle shall be sold, offered for sale or distributed or given away for human consumption. (Id. § 5.)

187. "Raw Milk."—No cow shall be admitted to a herd producing milk intended for sale or distribution as "raw milk" unless it has successfully passed a tuberculin test within a period of one year of the sale of the milk. (Id. § 6.)

188. Penalties.—Every person who shall violate any of the provisions of this act shall be liable to a penalty of twenty-five dollars for the first offense and to a penalty of fifty dollars for the second and each subsequent offense. Payment of a penalty for any alleged violation of this act, either before or after the institution of proceedings for the collection thereof, shall, for the purpose of this act, be deemed equivalent to a conviction of the violation for which such penalty was claimed. (Id. § 7.)

189. Enforcement of Act.—This act shall be enforced by the Department of Health of the State of New Jersey and by the local board of health of any municipality in this State, in the same manner as the act to which this act is a supplement, and all penalties incurred under this act shall be sued for and recovered by and in the name of the Department of Health of the State of New Jersey, or by and in

*See No. 1 et seq.

the name of any board of health of any municipality in this State, in accordance with the provisions of the act to which this act is a supplement.* (Id. § 8.)

190. Act, When Effective.—This act shall take effect January first, one thousand nine hundred and twenty-eight. (Id. § 9.)

191. Pasteurizing Milk—License Necessary.—No person, firm or corporation, producing, buying or receiving milk or cream for the purpose of selling the same shall sell or offer for sale as pasteurized milk or cream any milk or cream unless it has been pasteurized in accordance with the rules and regulations adopted by the Board of Health of the State of New Jersey under authority contained in section two of this act. No person, firm or corporation shall operate or conduct an establishment for the pasteurization of milk or cream until a license shall first have been granted by the Board of Health of the State of New Jersey to such person, firm or corporation, authorizing such person, firm or corporation to engage in the business of pasteurizing milk or cream at a place designated in said license. Said license shall be granted by said board under such rules and regulations as the said board may from time to time adopt. (Supp. 1924, p. 1421; L. 1915, c. 285, § 1.)

192. Rules for Pasteurizing Milk.—The Board of Health of the State of New Jersey shall have the power to adopt, promulgate and enforce rules and regulations regarding the pasteurization of milk and cream, and said board may fix the temperature at which such milk and cream shall be pasteurized, and the time at which such milk or cream shall be held at such temperature. (Id. § 2.)

193. Temperature to be Maintained—Penalty.—After milk, cream or other milk products have been pasteurized they shall be immediately cooled and kept at a temperature of fifty degrees Fahrenheit or below until distributed or sold. Any person, firm or corporation who shall violate any of the provisions of this act or who shall disobey any rule or regulation adopted by the Board of Health of the State of New Jersey, under authority contained in this act shall be liable to a penalty of fifty dollars for each offense, to be recovered in an action of debt by the Board of Health of the State of New Jersey, said penalty when recovered to be paid into the treasury of this State. (Id. § 3.)

194. Pasteurizing By-Products of Milk Before Delivery.—Every owner, operator or manager of a cheese factory, creamery, skimming station or other place where milk is received and the by-products distributed, shall, before returning to or delivering to any person or persons any skim milk, whey, buttermilk, or other milk by-products to be used for feeding purposes for farm animals, cause such skim milk, whey, buttermilk, or other milk by-products to be thoroughly pasteurized by heating the same to one hundred and forty-five degrees Fahrenheit and holding at that temperature for not less than thirty minutes, or to one hundred eighty-five degrees without holding; provided, that the provisions of this act shall not apply to cheese factories or creameries that pasteurize the milk or cream prior to manufacture. (Supp. 1924, p. 1427 et seq.; L. 1917, c. 261, § 1.)

195. Penalty—Recovery and Disposition of Penalty.—Any person or persons violating any of the provisions of this act shall, upon conviction, be subject to a penalty of not exceeding fifty dollars for the first offense, and to a penalty of not exceeding one hundred dollars for the second and each subsequent offense. Any penalty incurred under the provisions of this act shall be sued for and recovered in an action of debt by and in the name of the Department of Agriculture of the State of New Jersey. All penalties collected under this act shall be paid by said department into the treasury of the State of New Jersey. (Id. § 2.)

196. Cattle Affected With "Vesicular Stomatitis" to be Slaughtered; Condemned Milk; Compensation to Owner.—The Director of the State Department of Health shall appoint three persons, citizens and taxpayers of this State, of whom the President of the State Board of Agriculture shall be one; who shall, with the assistance of the Director of the Department of Health, investigate the existence and effects of said disease in this State, called "vesicular stomatitis," and if said disease is found to have existed, and said cattle to have been slaughtered, and milk destroyed at the direction or instigation of the Department of Health, or some other State agency; then to appraise the loss of any animals which may have been ordered slaughtered, and also to appraise the value of any milk which was condemned or made unmarketable by reason of said disease; and if said committee think proper, to pay to the owner or owners of such cattle or animals a sum not to exceed fifty per centum of such appraised value and fifty per centum of the value of the milk which was found unmarketable and destroyed by reason of the existence of said disease. (L. 1927, c. 180, § 1.)

197. Compensation, How Paid.—The amount so determined upon by said committee shall be paid by the State of New Jersey to the owner or owners of such

*See No. 1 et seq.

animals upon said owner or owners filing with the Comptroller of the Treasury a verified bill, approved by the Director of the Department of Health. (Id. § 2.)

198. Expenses.—The committee so appointed shall be entitled to receive their expenses for the performance of their duties herein provided. (Id. § 3.)

199. Appropriation.—There is hereby appropriated the sum of twenty thousand dollars ($20,000), for the purpose of carrying out the provisions of this act, when included in any annual or supplemental appropriation bill. (Id. § 4.)

200. Additional Authority to Pass Ordinances, Etc.; Sale of Milk.—Any local board of health organized or created under the provisions of the act to which this is a supplement, in addition to the powers already possessed, shall have power to adopt and alter ordinances prohibiting the sale of or having in possesion for sale, any milk containing any unhealthy ingredient, constituent or substance, or which has been transported or stored in an unclean manner or place, or which is produced from cows which are diseased or which are kept or stabled under unhealthful conditions. (C. S. 1910, p. 2674; L. 1897, c. 152, § 1.)

201. Additional Authority to Pass Ordinances, Etc.; Sale of Milk.—Said local boards of health are further empowered to adopt and alter ordinances requiring any person or persons engaged in the sale of milk within the municipalities in which such boards of health are organized, to furnish forthwith when so requested by said boards of health, or any inspector or officer thereof, a true statement in writing, upon blanks to be supplied by said boards of health, setting forth the locality from which, said milk was procured, and also a full and complete list of the names of persons from whom said milk was purchased, and the names and addresses of all customers or persons to whom he or they may sell or deliver milk in any city, borough or other municipality in which said board of health may be organized, and said blanks, when filled-in as aforesaid, shall be signed by the person selling said milk to whom the said blank shall be tendered; and said ordinance may require the person or persons engaged in the sale of milk, as aforesaid, to notify, in writing, said board of health immediately upon changing the source of supply of said milk of such change, and said notice shall also state the name or names of persons supplying said milk and the locality from which such milk is procured. (Id. § 2.)

202. Penalty for Violation of Ordinances Relating to Sale of Milk.—Said boards of health are further empowered to prescribe a penalty for the violation of the ordinances aforesaid of not less than ten dollars nor more than one hundred dollars, which shall be collected in the same manner provided for by the act to which this a supplement.* (Id. § 3.)

202a. Additional Authority to Pass Ordinances, Etc.; Licenses to Milk Dealers.—All local boards of health of boroughs, towns, townships and villages shall, in addition to the powers now vested in them, have power to pass, alter or amend ordinances and rules within their respective jurisdictions; to license and regulate persons or corporations to engage in the business of selling or vending milk or cream; to fix a fee to be charged when such board shall deem it necessary for each license granted, not exceeding two dollars for each dealer; to prohibit unlicensed persons or corporations from engaging in said business, and to require all vehicles and conveyances used in said business to carry thereon such identification marks as may be approved by the local board of health of the jurisdiction in which the same may be used. (C. S. 1910, p. 2676; L. 1910, c. 11, § 1.)

202b. Additional Authority to Pass Ordinances, Etc.; Term and Revocation of Licenses to Milk Dealers.—Each license granted under the provisions of the foregoing section shall continue for the term of one year from the date of granting the same; provided, that if any person or corporation licensed as aforesaid, or any of his or its employees, servants or agents, shall violate any ordinance or rule of said board in selling, vending or otherwise disposing of, having, holding or keeping milk or cream, such license may, in the discretion of the board which granted the same, be revoked by said board. (Id. § 2.)

203. Condensed, Etc., Milk.—Definition—Contents.—For the purpose of this supplement condensed, evaporated or concentrated milk is defined as the product resulting from the elimination of a considerable portion of the water from the fresh, clean lacteal secretion, colostrum free, obtained by the complete milking of cows properly fed and kept; said product to contain, when made from whole milk without added sugars, all tolerances allowed, at least twenty-five and five-tenths per centum of milk solids including at least seven and eight-tenths per centum of milk fat; provided, however, that the sum of the percentages of milk fat and total milk solids be not less than thirty-three and seven-tenths (33.7) when made from whole milk with added sugars, all tolerances allowed, at least twenty-eight per centum of milk solids including at least eight per centum of milk fat; when made from skimmed

*Chapter 152, Laws of 1897, supplements chapter 68, Laws of 1887.

milk to contain, all tolerances allowed, at least twenty per centum of milk solids or, if sugar has been added, at least twenty-eight per centum of total milk solids. (Supp. 1924, p. 1399; L. 1922, c. 110, § 1, as amended L. 1924, c. 234.)*

204. Conditions Governing Sale of Condensed Milk.—No person shall distribute or sell or manufacture for distribution or sale or have in his possession with intent to distribute or sell any condensed, evaporated or concentrated milk which shall not conform to the minimum standard set forth respectively in section one hereof, and which, if contained in hermetically sealed cans, does not bear stamped or labeled thereon the name and address of the manufacturer or distributor thereof. (Supp. 1924, p. 1399 et seq.; L. 1922, c. 110, § 2, as amended L. 1925, c. 245.)

205. Milk Fats Only to be Used.—No person shall distribute or sell or manufacture for distribution or sale or have in his possession with intent to distribute or sell any milk, cream, skimmed milk, condensed, evaporated or concentrated milk, powdered, dried or desiccated milk or ice cream or any of the fluid derivatives of any of them, to or with which has been added, blended or compounded any fats or oils other than milk fats, either under the name of said products or articles or the derivatives thereof or under any fictitious or trade names whatsoever; provided, however, that nothing in this act shall be construed to prohibit in the manufacture of ice cream the use of fresh eggs, pure gelatin or vegetable gums or the sale of ice cream so manufactured. (Supp. 1924, p. 1400 et seq.; L. 1922, c. 110, § 3.)

206. Marking Containers.—No person shall distribute or sell or manufacture for distribution or sale or have in his possession with intent to distribute or sell, any condensed, evaporated or concentrated skimmed milk, whether with or without the addition of sugar, and whether as such or compounded with any other substance, in hermetically sealed cans or receptacles, unless each said can or container shall contain at least five (5) pounds net weight and bear the name and address of the manufacturer or distributor distinctly branded, indented, labeled or printed thereon, together with the words "Condensed Skimmed Milk Sweetened," or "Evaporated Skimmed Milk Unsweetened," or "Concentrated Skimmed Milk," as the case may be, and immediately thereunder the words "Unfit for Infants" which required words shall be printed in dark block type at least one-half inch in height upon a light colored background which required words shall be within a surrounding line at least one-sixteenth inch in width and no matter whatsoever shall be printed or appear within such surrounding line and where the size of the can or receptacle will permit the foregoing words within the designated surrounding line are to be shown on the label twice on opposite sides at equidistant points. And no such condensed, concentrated or evaporated skimmed milk shall be labeled under any fictitious or coined or trade name whatsoever. (Id. § 4, as amended L. 1924, c. 234.)

207. Penalties—Payment of Penalty Deemed Conviction.—Every person who shall violate any of the provisions of this act shall be liable to a penalty of fifty dollars for the first offense and to a penalty of one hundred dollars for the second and each subsequent offense. Payment of a penalty for any alleged violation of this act, either before or after the institution of proceedings for the collection thereof, shall, for the purposes of this act, be deemed equivalent to a conviction of the violation for which such penalty was claimed. (Supp. 1924, p. 1400 et seq.; L. 1922, c. 110, § 5.)

208. Enforcement of Act.—This act shall be enforced by the same boards and in the same manner as the act to which this act is a supplement and all penalties incurred under this act shall be sued for and recovered by the same manner as penalties incurred under the provisions of the act to which this act is a supplement. (Id. § 6.)

209. Selling, Etc., Impure Ice Cream Illegal.—No person shall distribute or sell, or have in possession with intent to distribute and sell, any ice cream or ice cream mixtures or compounds which are adulterated or misbranded within the meaning of this act. (Supp. 1924, p. 1398 et seq.; L. 1922, c. 5, § 1.)†

210. Ice Cream Defined.—Ice cream is hereby defined as the frozen product made from cream with the addition of milk or milk products or eggs, fruit juices, or nuts with or without sugar or artificial flavoring or colors. It shall contain not less than eight per centum of milk fats, except when the ingredients include fruit, nuts or eggs, in which case it shall contain not less than six per centum of milk fats. (Id. § 2.)

211. Quality of Ingredients.—All ingredients used in ice cream mixtures or preparations shall be of good quality and free from rancid or harmful properties,

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*Chapter 110, Laws of 1922, supplements chapter 217, Laws of 1907, quoted in No. 1 et seq.

†Chapter 5, Laws of 1922, supplements chapter 217, Laws of 1907, quoted in No. 1 et seq.

and no artificial color shall be used except those certified by the United States Department of Agriculture. (Id. § 3.)

212. Adulteration.—Ice cream shall be deemed to be adulterated within the meaning of this act if in substance or quality it fails to meet the provisions and standards herein set forth, or if it shall contain boric acid, salicylic acid, formaldehyde, saccharine, or any other substance or compound known or likely to be harmful to health; provided, that nothing in this act shall be construed to prohibit the use of condensed or evaporated milk, milk powder, homogenized milk fats, gelatine or vegetable gums. (Id. § 4.)

213. Misbranding.—Any mixture which contains substances or materials other than those enumerated in section two of this act, or which does not conform to the standards therein set forth, shall be deemed to be misbranded if marked or labeled "ice cream" if represented to be ice cream. (Id. § 5.)

214. Penalties.—Any person who violates any of the provisions of this act shall be liable to a penalty of fifty dollars ($50.00) for the first offense and to a penalty of one hundred dollars ($100.00) for the second and each subsequent offense, such penalties to be recovered by the State Department of Health or by any local board of health in the manner prescribed for the recovery of penalties in the act to which this is a supplement. (Id. § 6.)

215. Permit to Bring Ice Cream Into State.—No ice cream or other frozen product resembling ice cream shall be brought into the State of New Jersey for sale without a permit therefor issued by the Director of Health of the State of New Jersey, or otherwise than in accordance with the terms of said permit, and in compliance with the regulations governing the issuance of such permits, which shall be adopted by the Department of Health of the State of New Jersey. (Id. § 7.)

216. Unlawful Use or Sale of Milk Cans.—It is hereby declared to be unlawful for any person or persons, without the written consent of the owner or owners, or shipper or shippers, or his, her or their agent, to use or sell, dispose of, buy or traffic in any milk or cream can or cans, belonging to any dealer or dealers, shipper or shippers, of milk or cream residing in the State of New Jersey or elsewhere, who may ship milk or cream to any city, town or place within this State, or who may buy or sell milk or cream within this State, having the name or initials of the owner or owners, dealer or dealers, shipper or shippers, stamped, marked or fastened on such can or cans, or to willfully mar, erase or change by remarking or otherwise said name or initials of any such owner or owners, or dealer or dealers, or shipper or shippers, so stamped, marked or fastened upon said can or cans. (C. S. 1910, p. 298; L. 1902, c. 210, § 1.)

217. Penalty for Violation of Act.—Any person or persons who shall, in violation of this act, either use, sell, dispose of, buy, traffic in or have in his, her or their possession, or in, on or about his, her or their premises any such can or cans, or who shall willfully mar, erase, or change by re-marking or otherwise the said name or initials of any such owner or owners, dealer or dealers, shipper or shippers, so stamped, marked or fastened upon said can or cans, or who shall have any such cans on, in or about his, her or their premises as in this act provided, shall be liable to a penalty of fifty dollars for each and every such can either so used, sold, disposed of, bought, trafficked in, or found in his, her or their possession or in, on or about his, her or their premises. (Id. § 2.)

218. Recovery of Penalty; Action.—The penalty provided by this act shall be recovered by an action to be styled "An action in contract for a penalty," in any court of this State having cognizance thereof, with cost of suit and such reasonable disbursements as any such shipper or shippers, owner or owners, dealer or dealers, or his, her or their agent may incur in retaking any such can or cans to be determined in the said action, which said action shall be brought in the name of the said owner or owners, shipper or shippers. (Id. § 3, as amended L. 1905, c. 248.)

219. Presumption if no Written Consent be Had.—The fact of any person or persons, without the written consent of the owner or owners, dealer or dealers, shipper or shippers thereof, or his, her or their agent, either using, selling, disposing of, buying, trafficking in or having in his, her or their possession, or under his, her or their control, or having on, in or about his, her or their premises any such milk or cream can or cans, shall be presumptive evidence of the unlawful use, purchase of or traffic in such can or cans. (C. S. 1910, p. 298; L. 1902, c. 210, § 4.)

220. Agent of Railroad to Care for Cans.—The superintendent of any railroad over which milk or cream shall be carried or shipped to any place within this State, shall have the power to appoint an agent for the collection, protection and care of any milk or cream cans shipped over such railroad, on such terms of compensation as may be arranged between the said railroad company and any such agent. (Id. § 5, as amended L. 1905, c. 248.)

221. **Cans Unlawfully Used May be Emptied; Notice Required.**—Such can or cans, full or partly full of milk or cream, used in violation of this act, may be emptied into the street or elsewhere of their contents by the owner or owners, dealer or dealers, shipper or shippers, or his, her or their agent, and taken possession of by any of said several parties, who shall not be liable for damages therefor; provided, that any of said several parties entitled to the possession of such can or cans shall first give notice to the party or parties having the possession of such can or cans to empty the same. (C. S. 1910, p. 298 et seq.; L. 1902, c. 210, § 6.)

222. **Complaint of Unlawful Use or Secretion of Cans; Search Warrant; Arrest of Person Having Possession of Cans; Costs; Commitment for Non-Payment.**—If any such owner or owners, dealer or dealers, shipper or shippers, his, her or their agent has reason to believe, and does believe, that any of such can or cans so stamped or marked is or are being used, or has or have been unlawfully used as aforesaid, by any person or persons, or that any person or persons have any such can or cans secreted in or upon his, her or their premises, or any other place or places, any such owner or owners, dealer or dealers, shipper or shippers, or his, her or their agent, may go before any justice of the peace or magistrate having criminal jurisdiction in the city, town or place or any part thereof wherein such offenses may be or have been committed, and make complaint thereof under oath, which complaint may be wholly information and belief, whereupon said justice of the peace or magistrate, before whom such complaint shall have been made, shall issue a process in the nature of a search warrant, directed to any constable, marshal or other executive officer of any city, town or place, which shall recite the complaint, or the substance thereof, and shall command the said constable, marshal or other executive officer to search immediately the premises, place or places mentioned in said complaint, and if any milk or cream cans be found, to bring the same, together with the body of the person or persons in whose possession they may be found, before such justice of the peace or magistrate, who shall summarily inquire into the ownership of said can or cans, and upon being satisfied that the same belong to the said owner or owners, dealer or dealers, or shipper or shippers, or that the said agent is entitled to the possession thereof, he shall deliver the said can or cans to the said owner or owners, dealer or dealers, or shipper or shippers or the said agent, and shall have the costs of the proceedings from the person or persons so illegally having the said can or cans in his, her or their possession, and the said justice or magistrate shall be entitled for his own use to the same costs as are allowed to justices of the peace for similar services in criminal matters, and in cases of the refusal of the person or persons so illegally having the said can or cans in his, her or their possession to pay the same, the said magistrate shall commit the said person or persons to the county jail of the county wherein he shall be arrested until the said costs are paid. (Id. § 7.)

223. **Misrepresentation of Butter and Other Dairy Products.**—Any person, firm, corporation or association who, with intent to sell or in anywise dispose of any oleomargarine or butterine or suine, or any substance in imitation or semblance of natural butter or cheese, or any substance that is rendered, made, manufactured or compounded out of any animal or vegetable or mineral fat or oil not produced from pure milk or cream from pure milk, or with intent to increase the consumption thereof, or to induce the public in any manner to enter into any obligation relating thereto or to acquire title thereto or interest therein, makes, publishes, disseminates, circulates or places before the public, or causes directly or indirectly to be made, published, disseminated, circulated or placed before the public, in this State, in a newspaper or other publication, or in the form of a book, notice, handbill, poster, bill, circular, pamphlet or letter, or in the form of a label or designation upon any tub, pail, box, carton, wrapper, or other container, or in any other way, an advertisement which contains the word "Holstein," "Jersey," or "Guernsey," or any other word which is commonly used as designating a breed of cows, or bearing any representation or picture of a cow, or the word creamery or butter, shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine in a sum not to exceed one thousand dollars or imprisonment in the county jail for a period not exceeding one year, or by both such fine and imprisonment. (Supp. 1924, p. 870; L. 1923, c. 138, § 1.)*

224. **Sale, Etc., of Oleomargarine, Butterine, Etc.; Marking, Etc., of Packages, Etc.**—No person shall offer or expose for sale, or sell, or have in possession for the purposes of sale, any oleomargarine or butterine or suine, or any substance in imitation or semblance of natural butter or cheese, or any substance that is rendered, made, manufactured or compounded out of any animal or vegetable or mineral fat or oil, not produced from pure milk or cream from pure milk, unless

*Chapter 138, Laws of 1923, supplements "An act for the punishment of crimes (Revision of 1898)," approved June 14, 1898.

contained in, or sold out of or in tubs, pails, firkins, vessels or other packages marked and labeled as required by section three of this act. (C. S. 1910, p. 2579 et seq.; L. 1886, c. 84, § 1.)

225. Sale, Etc., of Mixture or Compound of Butter, Etc.; Marking, Etc., of Packages, Etc.—No person shall offer or expose for sale, or sell, or have in possession for the purposes of sale any mixture or compound of natural butter or cheese with oleomargarine, butterine, suine, or any animal or vegetable or mineral fat or oil, or any substance not the product of pure milk or cream from pure milk, except such mixture or compound shall be sold out of or in or contained in tubs, firkins, pails, vessels or packages marked or labeled as required by section three of this act. (Id. § 2.)

226. Marking, Etc., of Packages, Etc., Containing Oleomargarine, Etc.—No oleomargarine, butterine or suine, or any substance or compound or mixture in imitation or semblance of natural butter or cheese, or any substance that is rendered, made, manufactured or compounded out of animal or vegetable or mineral fat or oil, not the product of pure milk or cream from pure milk, shall be sold or exposed or offered for sale, or held in possession for the purposes of sale, except when contained in tubs, pails, boxes, firkins, vessels or other packages that are marked or labeled as follows, to wit: every such tub, pail, box, firkin or other vessel or package shall have painted on the outside thereof, and midway between the top and bottom thereof, a stripe or band at least three inches wide, and extending completely around said vessel or package, and said stripe or band shall be painted with black paint; every such vessel or package shall have legibly branded and burnt in, by means of a branding or burning iron, on the outside of the cover and on the outside of said vessel or package, in two places as nearly opposite each other as possible, the words "oleomargarine," "butterine," "suine," or "imitation butter," or "imitation cheese," as the case may be, and said name or title shall be composed of Roman letters at least one-half an inch high and at least one-quarter of an inch broad, and said name or title shall be at least ten inches long; and every such tub, pail, box, firkin or other vessel or package shall bear a label or shall have branded on it a mark giving the name and address of the maker of the contents thereof, and the name and location of the manufactory. (Id. § 3.)

227. Sale, Etc., of Oleomargarine, Etc.; Informing Purchaser of Nature of Article Purchased; Notice to be Given Purchaser.—No person shall sell any oleomargarine, butterine, suine or any substance in imitation or semblance of natural butter or cheese, or any substance that is rendered, made, manufactured or compounded out of any animal or vegetable or mineral fat or oil, not produced from pure milk or the cream from pure milk, at retail or in quantities less than the original tub, firkin or other package, unless he shall first inform the purchaser that the substance is not natural butter or cheese, but is imitation butter or cheese, and at the time of sale and with each sale, he shall give to the purchaser a card or notice printed on which shall be the name of the substance sold and the name and address of the seller or vender, and nothing else shall be printed thereon unless it be the weight of the parcel; and said notice or card shall be at least six inches long and at least four inches wide, and the printing thereon shall be in letters at least of the size known as two-line English, and said notice or card shall be printed in black and in the English language, upon white paper, plainly and legibly, and shall be either upon the outside of the outer wrapper in which the substance is delivered to the purchaser or upon a separate card or paper attached thereto; in either case the notice shall be so placed that no part thereof shall be concealed from view. (Id. § 4, as amended L. 1887, c. 149.)

228. Sale, Etc., of Oleomargarine, Etc., Colored, Stained or Mixed With Annotto, Etc.—No person shall offer or expose for sale, or sell, or have in possession for the purposes of sale, any oleomargarine, butterine, suine or any substance in imitation of natural butter or cheese, or any substance that is rendered, made, manufactured or compounded out of any animal or vegetable or mineral fat or oil, not produced from pure milk or cream from pure milk, that is colored, stained or mixed with annotto or any other coloring matter or substance. (C. S. 1910, p. 2580 et seq.; L. 1886, c. 84, § 5.)

229. Words Defined.—For the purposes of this act the terms "natural butter," or "natural butter or cheese," shall be taken to mean the product or products usually known by these names and which are made and manufactured exclusively from milk or cream, or both, with salt or salt and rennet, and with or without coloring matter or sage; and the terms "oleomargarine," "butterine," "suine" or "substance in imitation or semblance of natural butter or cheese," shall be to mean any substance that is rendered, made, manufactured or compounded out of any animal or vegetable or mineral oil or fat, not the product of pure milk or the cream from pure

milk; also, any compound or mixture of natural butter or cheese, or milk or cream, with any of these substances not milk or cream. (Id. § 6.)

230. Evidence of Intent to Sell.—The possession by any person who is either manufacturer, merchant, broker, wholesale or retail dealer, or a hotel, inn, restaurant, or boarding-house keeper, of any oleaginous substance, mixture or compound whatever as defined by this act, not natural butter, that is not contained in a tub, box, pail or vessel, plainly marked and branded in accordance with the provisions of section three of this act, shall be prima facie evidence of intent to sell the same. (Id. § 7.)

231. Erasure, Etc., of Bands, Brands, Etc., on Packages, Etc.—No person shall in any way or manner erase, cancel or obliterate, deface or cover over or remove either the band or stripe of paint, or the brands required by section three of this act to be placed on the tub, box, pail or vessel containing any oleaginous substance, mixture or compound, as defined by this act. (Id. § 8.)

232. Penalties for Violations of Act—Amount.—Every person who shall violate any of the provisions of this act shall be liable to a penalty of fifty dollars for the first offense, and one hundred dollars for each second or subsequent offense. Payment of a penalty for any alleged violation of this act, either before or after the institution of proceedings for the collection thereof, shall, for the purpose of this act, be deemed equivalent to a conviction of the violation for which such penalty was claimed. (Supp. 1924, p. 1409; L. 1886, c. 84, § 9, as amended L. 1912, c. 347, § 1.)

233. Not to Affect Previous Violations.—This act shall take effect immediately, but shall not in anywise affect the amount of the penalty to be recovered in any proceeding to recover a penalty for a violation of the act to which this act is amendatory committed before this act became effective. (Supp. 1924, p. 1409; L. 1912, c. 347, § 2.)*

234. Penalties for Violations of Act—How Recovered.—Every District Court in any city or judicial district and every justice of the peace in any county, and any recorder in any city, is hereby empowered on oath or affirmation made according to law that any person or persons has or have violated any provision of this act, to issue process at the suit of the Board of Health of the State of New Jersey, as plaintiff for the use of the State of New Jersey, or at the suit of the board of health of any municipality in which such offense is alleged to have been committed, for the use of such municipality. Such process shall be either in the nature of a summons or a warrant against the person or persons so charged, which process shall, when in the nature of a warrant be returnable, forthwith, and when in the nature of a summons shall be returnable in not less than one or more than ten entire days; such process shall state what provision of the law is alleged to have been violated by the defendant or defendants, and on the return of such process, or at any time to which the trial shall have been adjourned, the said court, justice of the peace or recorder shall proceed to hear testimony and to determine and give judgment in the matter without the filing of any pleadings for the plaintiff, for the recovery of such penalty with costs, or for the defendant; and the said court, justice of the peace or recorder shall, if judgment be rendered for the plaintiff, forthwith issue execution against the goods and chattels and person of the defendant or defendants; and the said court, justice of the peace or recorder is further empowered to cause any such defendant who may refuse or neglect to pay the amount of the judgment rendered against him, and all the costs and charges incident thereto, unless an appeal is granted, to be committed to the county jail for any period not exceeding ninety days. (Supp. 1924, p. 1409; L. 1886, c. 84, § 10, as amended L. 1912, c. 122.)

235. Penalties for Violations of Act; How Recovered.—The officers to serve and execute all process under this act shall be the officers authorized to serve and execute process in said courts, and before such magistrates and officers as aforesaid, including the constables of such counties and all police officers of such cities. (C. S. 1910, p. 2582; L. 1886, c. 84, § 11.)

236. Penalties for Violations of Act; How Recovered.—Said District Court, justice of the peace or recorder shall have power to adjourn the hearing or trial in any case, from time to time, not exceeding thirty days from the return of the summons or warrant, and to bail the person so charged in such sum as he shall deem proper for his appearance at such time and place as said trial or hearing shall be adjourned to, and in default of bail to commit the person so charged to the common jail of said county, to be there detained until the trial or hearing of said charge. (Id. § 12.)

237. Penalties for Violations of Act—How Recovered.—Either the complainant or defendant, if dissatisfied with any judgment given under the provisions of

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*Chapter 347, Laws of 1912, amends § 9 of chapter 84, Laws of 1886. See the preceding No.

this act may appeal to the Court of General Quarter Sessions of the Peace of the county in which the judgment appealed from shall have been rendered, which appeal shall be taken by filing with the court, justice of the peace, or recorder who gave the judgment, a notice of such appeal in writing signed by the appealing party or his attorney within ten days after the rendering of such judgment; provided, however, that no appeal shall be allowed to or taken by any defendant from any judgment against any such defendant unless with such notice of appeal such defendant shall also file a bond with at least one sufficient surety, to be approved by the court, justice of the peace or recorder, who shall have given the judgment, in double the amount of the judgment on condition that the appellant shall appear and prosecute the appeal in said Court of General Quarter Sessions of the Peace and shall stand to and abide the judgment of said Court of General Quarter Sessions of the Peace and shall pay such costs as shall be taxed against the appellant or appellants if the judgment appealed from be affirmed. Such bond shall be made to the plaintiff as obligee. (Supp. 1924, p. 1409 et seq.; L. 1886, c. 84, § 13, as amended L. 1912, c. 122.)

238. Penalties for Violations of Act—Disposition.—All penalties imposed under this act shall be, immediately on receipt, paid into the treasury of this State by the Board of Health of the State of New Jersey when such penaltics have been collected by said board, or into the treasury of the municipality when such penalties have been collected by the board of health of any municipality of this State. (Id. § 14.)

239. State Dairy Commissioner; Appointment; Term of Office; Compensation; Removal; Assistants, Etc.—The State Board of Health shall appoint a commissioner, who shall be known as the State Dairy Commissioner, who shall be a citizen of this State and who shall hold his office for the term of three years and until his successor shall be appointed, and said commissioner shall be paid a salary of two thousand dollars per annum and his traveling and other expenses, payable by the Treasurer of this State on warrant of the Comptroller, in quarterly payments; and said commissioner shall be appointed within fifteen days after the passage of this act and shall be charged with the enforcement of the various provisions thereof; and said commissioner may be removed for just cause by the appointing power conferred by the act; provided, that charges shall be first made in writing and he be given time to reply thereto; and the said commissioner shall make annual reports to the legislature not later than the fifteenth day of January in each year, and also to the State Board of Health at its annual meeting; and said commissioner is hereby authorized and empowered to appoint or employ such assistants, chemists, agents, clerks and counsel as may be deemed necessary for the proper enforcement of this act, their compensation to be fixed by the commissioner. (C. S. 1910, p. 2582 et seq.; L. 1886, c. 84, § 15.)*

240. State Dairy Commissioner; Expenditures; Amount; How Paid.—The said Commissioner shall be authorized to expend for the purposes of this act an amount not exceeding ten thousand dollars in any one year, and all expenses shall be paid by the treasurer of this State on warrant of the Comptroller, upon presentation of properly-certified accounts made by said commissioner, but such expenses shall not exceed in any one year the amount stated in this section. (Id. § 16.)

241. State Dairy Commissioner and Assistants—Powers and Duties.—The members of the State Board of Health and all chemists, inspectors or other employees employed by said board shall have full and free access, ingress and egress to all places of business, factories, farms, buildings, hotels, restaurants, boarding houses, vehicles, automobiles, cars, vessels and cans used in the manufacture and sale of any dairy products, or any imitation thereof; they shall also have the power to open any package, can or vessel containing such articles which may be manufactured, sold or exposed for sale in violation of the provisions of this act, if they have reason to believe it is being violated, and may inspect the contents therein, and may take therefrom samples for analysis. The members of the local board of health of any municipality, all chemists, inspectors and employees employed by said board shall have like power of entry, inspection and taking of samples within the limits of the territorial jurisdiction of such local board of health. No person shall obstruct or anywise interfere with any member or employee of the State Board of Health or of a local board of health in the performance of any duty under this act. (Supp. 1924, p. 1410; L. 1886, c. 84, § 17, as amended L. 1912, c. 122.)

242. Purpose of Act.—This act and each section thereof is declared to be enacted to prevent deception in the sale of oleomargarine, butterine or any imitation of any dairy product, and to preserve the public health. (C. S. 1910, p. 2583; L. 1886, c. 84, § 18.)

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*See No. 249.

243. Sale, Etc., of Oleomargarine, Etc., Colored, Stained, or Mixed With Annotto, Etc.—Nothing in said act* shall be so construed as to permit the sale or the offering or exposing for sale, or the having in possession for the purposes of sale, of any oleomargarine or butterine, or any substance in imitation of natural butter, that is colored, stained or mixed with annotto or any other coloring matter or substance. (C. S. 1910, p. 2583 et seq.; L. 1887, c. 149, § 1.)

244. State Dairy Commissioner; Enforcement of Certain Act.—The State Dairy Commissioner is hereby directed and empowered to aid in the enforcement of the provisions of an act entitled "An act to prevent the adulteration of food or drugs," approved March twenty-fifth, one thousand eight hundred and eighty-one, and said commissioner and his assistants and agents are hereby clothed with the same powers as are conferred on inspectors or officers by the provisions of said act, and the expenses of such enforcement shall be paid out of the appropriation made for the purposes of the act to which this is a supplement. (Id. § 3.)†

245. State Dairy Commissioner; Appointment of Chemists or Analysts.—The State Dairy Commissioner may appoint the chemist or chemists, analyst or analysts required by the provisions of this act or the act to which this is a supplement, and fix the compensation to be paid such chemists or analysts. (Id. § 4.)

246. Forms of Convictions in Prosecutions for Violations of Act; Papers on Appeal.—The conviction in prosecutions under the act to which this is a supplement shall be in the following or similar form:

State of New Jersey, } ss.
County of A, }

Be it remembered that on this ..... day of ....., at ....., in said county, C. D., defendant, was, by the District Court of the City of J. (or by the recorder, or as the case is), convicted of violating the.....section of "An act to prevent deception in the sale of oleomargarine, butterine or any imitation of dairy products, and to preserve the public health," approved March twenty-second, one thousand eight hundred and eighty-six,‡ in a summary proceeding at the suit of A. B., State Dairy Commissioner, who sues for the use and benefit of the State of New Jersey, plaintiff, upon a complaint made by E. F.; and, further, that the witnesses in said proceeding who testified for the plaintiff were (name them), and the witnesses who testified for the defendant were (name them); wherefore the said court (or recorder, or as the case is) doth hereby give judgment that the plaintiff recover of the defendant one hundred dollars penalty, and.....dollars costs of this proceeding;

The said conviction shall be signed by the judge of the District Court, recorder or other magistrate before whom the conviction is had; in case of the infliction of a penalty of two hundred dollars the conviction shall contain a statement that it appeared that the defendant had been previously convicted of violating the said act; when an appeal is taken there shall be sent to the Appellate Court a copy of the complaint, summons, conviction or judgment and notice of appeal; the costs in prosecutions under the act to which this is a supplement shall be the same as costs in the District Courts in actions on contract. (Id. § 5.)

247. Manufacture, Etc., of Imitation Butter Prohibited; Exception.—No person, by himself or his agents or servants, nor as an agent or servant, shall render or manufacture, sell, offer for sale, expose for sale, or have in his possession with intent to sell, any article, product or compound made wholly or partly out of any fat, oil or oleaginous substance or compound thereof, not produced from unadulterated milk or cream from the same, which shall be artificially colored in imitation or semblance of yellow butter produced from pure unadulterated milk or cream of the same; provided, that nothing in this act shall be construed to prohibit the manufacture or sale of oleomargarine in the manner regulated by the act to which this is a supplement, and in such manner as will advise the consumer of its real character, free from artificial color that cause it to look like butter. (C. S. 1910, p. 2584 et seq.; L. 1895, c. 332, § 1.)¶

248. Manufacture, Etc., of Imitation Butter; Penalty.—Any person or persons who shall sell any article mentioned in the preceding section of this act representing the same as butter made from unadulterated milk or cream or any product other than it really is except in the manner provided in existing laws, shall be guilty

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*Chapter 84, Laws of 1886, quoted in No. 224 et seq., which chapter 149, Laws of 1887, supplements.

†The act referred to in this section was repealed by L. 1901, p. 198.

‡See No. 224 et seq.

¶Chapter 332, Laws of 1895, supplements chapter 84, Laws of 1886, quoted in No. 224 et seq.

of a misdemeanor, and upon conviction thereof be punished by imprisonment not exceeding six months or a penalty of two hundred dollars in the discretion of the committing magistrate or court. (Id. § 2.)

249. **Powers and Duties of State Dairy Commissioner Transferred to State Board of Health; Pending Actions Continued.**—The Board of Health of the State of New Jersey shall hereafter perform and exercise all of the duties and powers formerly imposed, prescribed or conferred on the State Dairy Commissioner by the provisions of the act to which this act is a further supplement, and process in any suit, action or proceeding for the recovery of a penalty for violation of any of the provisions of said act, to which this act is a further supplement, or any act supplementary thereto or amendatory thereof, shall be issued at the suit and in the name of said Board of Health of the State of New Jersey as plaintiff. Any action which may have heretofore been commenced in the name of the Chief Inspector of the Board of Health of the State of New Jersey, and which may now be pending, shall be continued by said board in the name of said Chief Inspector, as plaintiff. (C. S. 1910, p. 2585; L. 1906, c. 140, § 1, as amended Laws of 1909, c. 28.)*

250. **Analysis of Samples of Milk, Butter, Etc.; Expenses; How Paid.**—The chemist or chemists of the State Agricultural Experiment Station shall analyze all samples of milk, butter or other farm products, or the imitations thereof, that may be sent to said station by the State Dairy Commissioner and his assistants and agents, and shall report to the said commissioner the results of such analyses, and the costs thereof shall be paid out of the appropriation made to said station. (C. S. 1910, p. 30; L. 1888, c. 307, § 2.)

NOTE: See also Nos. 6, 24, 51 et seq., 72 et seq., 293 et seq., 384 et seq., 396-397, 556 et seq., 634 et seq., and 687 et seq.

Edible Fats and Oils.

See No. 84 et seq.

Eggs.

251. **License to Break Eggs—Revocation of License.**—No person shall operate or conduct any establishment where the business of breaking eggs is carried on, whether such eggs are broken for use as food or for other purposes, unless a license has first been issued by the Board of Health of the State of New Jersey to the owner, operator or manager of said establishment to conduct and operate an establishment for the breaking of eggs. Any such license issued by said board may be revoked if the establishment for which it is issued is not conducted in accordance with the requirements of law and the rules and regulations made by the State Board of Health under authority conferred by section two of this act, and no establishment for the breaking of eggs shall continue to be operated after the revocation of such license by the State Board of Health. (Supp. 1924, p. 1439 et seq.; L. 1914, c. 30, § 1.)

252. **Rules and Regulations.**—The State Board of Health shall have power to make rules and regulations for the enforcement of the provisions of this act and for the conduct of the business of breaking eggs; said board shall also cause inspections to be made of all places where eggs are broken, stored, had in possession with intent to sell or sold. (Id. § 2.)

253. **Forbidden Eggs.**—No eggs shall be broken for use as food which are of the grades commonly known as "rots" or "spots." For the purpose of this act, the term "rot" shall be held to mean any egg which has decomposed to such an extent that it has a putrefactive odor, and the term "spot" shall be held to mean any egg which is wholly or partly decomposed, mouldy or sour, or which is partially hatched or contains blood rings or veins or in which the yolk is broken. (Id. § 3.)

254. **Denatured Eggs—Labeled.**—All eggs which are broken for manufacturing purposes shall be denatured at the time of breaking by the addition of some substance to the eggs which will make their use for food impossible, and such eggs shall be plainly and legibly labeled with the words "For manufacturing purposes only," and all broken eggs not so denatured nor so labeled shall, for the purposes of this act, be held to be had in possession with intent to sell or use for food. (Id. § 4.)

255. **Containers Plainly Marked.**—No person shall have in possession any broken eggs of the grades defined in section three of this act as "rots" or "spots" unless the containers in which such eggs are held shall be plainly and legibly marked

*Chapter 140, Laws of 1906, supplements Chapter 84, Laws of 1886, quoted in No. 224 et seq.

on at least two sides with the words, "rots and spots, unfit for food" in solid black letters at least one and one-half inches in height, and the several lines of which are at least one-fourth of an inch in width. (Id. § 5.)

256. Penalty.—Any person who shall conduct or operate any establishment where eggs are broken without holding a license as provided in section one of this act, or who shall conduct or operate or continue to conduct or operate any such establishment after revocation by said State Board of Health of the license to conduct or operate the same and after notice in writing has been served on said person, or who shall violate any of the other provisions of this act, shall be liable to a penalty of one hundred dollars. (Id. § 6.)

257. Recovery of Penalties—Pleadings.—All penalties prescribed by the provisions of this act shall be recovered in an action of debt by and in the name of the Board of Health of the State of New Jersey as plaintiff. The pleading shall conform in all respects to the practice prevailing in the court in which any such action shall be instituted, but no pleading or process shall be set aside or invalidated by reason of any formal or technical defects therein if the same contain a statement of the nature of the alleged violation and of the section of the act alleged to have been violated. (Id. § 7.)

258. Issue of Execution.—When judgment shall be rendered against any defendant other than a body corporate execution shall be issued against his goods and chattels and body without any order of the court first had and obtained. If the officer executing any such writ shall be unable to find sufficient goods and chattels of said defendant in his bailiwick to make the amount of said judgment, he shall take the body of the said defendant and deliver him to the keeper of the common jail of said county, there to be detained until discharged by the court in which said judgment was obtained, or by one of the justices of the Supreme Court, when such court or justice shall be satisfied that further confinement will not result in the payment of the judgment and costs. In case judgment shall be rendered against a body corporate execution shall be issued against such body corporate as in other actions of debt. All penalties collected under this act shall be paid into the treasury of the State of New Jersey. (Id. § 8.)

259. Injunction to Restrain Violations.—Whenever any person shall violate any of the provisions of this act it shall be lawful for the State Board of Health, either before or after the institution of proceedings for the collection of the penalty imposed by this act for such violation, to file a bill in the Court of Chancery in the name of the State at the relation of such board for injunction to restrain such violation, and for such other or further relief in the premises as the Court of Chancery shall deem proper, but the filing of such bill, or any of the proceedings thereon, shall not relieve any party to such proceedings from the penalty or penalties prescribed by this act for such violation. (Id. § 9.)

NOTE: See also Nos. 72 et seq., 293 et seq., and 384 et seq.

Feeding Stuffs.

260. Definition.—The term "commercial feeding stuffs" shall be held to include all feeding stuffs used for feeding live stock and poultry, except whole seeds or grain sold as such and the unmixed meals made directly from and composed of the entire grains of corn, wheat, rye, barley, oats, buckwheat, flaxseed, Kafir and milo; neither shall it include whole hays, straws, cottonseed hulls and corn stover when unmixed with other materials, nor shall it include wet brewers' grains. (Supp. 1924, p. 45 et seq.; L. 1912, c. 218, § 1, as amended L. 1923, c. 30.)

261. Parcels Labeled—Statement.—Every lot or parcel of commercial feeding stuffs sold, offered or exposed for sale or distributed in this State shall have affixed thereto a tag or label, in a conspicuous place on the outside thereof, containing a legible and plainly printed statement in the English language, clearly and truly certifying:

(a) The net weight of the contents of the package, lot or parcel;

(b) The name, brand or trade-mark;

(c) The name and principal address of the manufacturer or person responsible for placing the commodity on the market;

(d) The minimum per centum of crude protein;

(e) The minimum per centum of crude fat;

(f) The maximum per centum of crude fiber;

(g) The specific name of each ingredient used in its manufacture.

The crude protein, crude fat and crude fiber shall be determined by the methods in force at the time by the Association of Official Agricultural Chemists of North America. (Supp. 1924, p. 46 et seq.; L. 1912, c. 218, § 2.)

262. Information Furnished State Chemist—Certificate of Registration.—Each and every manufacturer, importer, jobber, firm, association or person desiring to sell, offer or expose for sale or distribute in this State any commercial feeding stuff, he or they shall file annually, on the first day of January of each year, a certified statement on blanks furnished by the chemist of the New Jersey State Agricultural Experiment Station, and herein termed the State Chemist, giving the information required in section two, with the exception of the net weight of the package, together with a list of the principal agents or dealers throughout the State, with their addresses, and also a permit allowing the State Chemist or his deputy to examine the books of the party registering the brand or brands in order to verify, if necessary, the reports of said party as to the tonnage sold. Should a manufacturer, importer, jobber, firm, association, corporation or person desire in any year to sell, offer for sale or distribute a new brand of commercial feeding stuff and the statement was not filed on the first day of January, as required by this section, he or they may proceed to sell the same after the requirements of this act have been complied with. Each application for registration must be accompanied by a registration fee of fifty cents for each brand enumerated. On receipt of the certified statement for each brand of commercial feeding stuff described in this section, and after compliance with all the requirements of this act, the State Chemist shall issue a certificate of registration for each brand, and said certificate shall be in force for the fiscal year, which ends on the thirty-first day of December. A brand name once registered shall not be changed to a lower grade at any subsequent registration. The certified statement shall be accompanied, when the State Chemist shall so request, by a sealed package containing at least one pound of the commercial feeding stuff to be sold, offered or exposed for sale or distributed in this State, and the company or person furnishing said sample shall thereupon make affidavit that the said sample is representative of the commercial feeding stuff ordered for registration. (Id. § 3, as amended L. 1919, c. 111.)

263. Semi-Annual Statements Filed—Fee Paid Experiment Station.—For the purpose of defraying the expenses connected with the inspection of commercial feeding stuffs sold or offered for sale in this State and experiments relative to the value thereof, all corporations, firms or persons engaged in the manufacture or sale of commercial feeding stuffs shall, on July first and January first of each year, make a statement, under oath, in due form of law, which shall be filed with the State Chemist, and which shall set forth the number of net tons of such feeding stuffs sold during the preceding six months; and upon such statement shall pay to the New Jersey State Agricultural Experiment Station the sum of eight cents per net ton of two thousand pounds. Nothing contained in this section shall interfere with commercial feeding stuffs passing through the State in transit. (Id. § 4.)

264. As to Registration of Trade-Marks—Cancellation of Registration—Change of Ingredients.—The State Chemist shall have power to refuse to register any commercial feeding stuff under a name, brand or trade-mark which would be misleading or deceptive, or which would tend to mislead or deceive as to the materials of which it is composed, or when the specific name of each and all ingredients used in its manufacture are not stated. He shall also have the power to refuse to register more than one commercial feeding stuff under the same name or brand when offered by the same manufacturer, importer, jobber, firm, association, corporation or person. Should any commercial feeding stuff be registered in this State and it is afterwards discovered that such registration is in violation of any of the provisions of this act, the State Chemist shall have power to cancel such registration. The State Chemist shall have power to refuse to allow any manufacturer, importer, jobber, firm, association, corporation or person to change the ingredients of any brand of his or their commercial feeding stuff after it has been registered unless satisfactory reasons are presented for making such change or changes. (Supp. 1924, p. 47 et seq.; L. 1912, c. 218, § 5.)

265. Only One Statement and Fee.—Whenever a manufacturer, importer, jobber, firm, association, corporation or person manufacturing or selling a brand of commercial feeding stuff shall have filed the statement required by section three and paid the inspection fees as required by section four of this act, no other agent, importer, jobber, firm, association, corporation or person shall be required to file such statements or pay such fees upon such brand. (Id. § 6.)

266. State Chemist to Have Right of Entry—Secure Samples.—The State Chemist is authorized, in person or by deputy, to have free access to all places of business, mills, buildings, carriages, cars, vessels and parcels of whatsoever kind used in the manufacture, transportation, importation, sale or storage of any commercial feeding stuff, and shall have the power and authority to open any parcel containing or supposed to contain any commercial feeding stuff, and upon tender and full payment of the selling price of said sample, to take therefrom, in the manner prescribed in section eight, samples for analysis, and said State Chemist shall

annually cause to be analyzed at least one sample so taken of every commercial feeding stuff that is found sold, offered or exposed for sale or distributed in this State. (Id. § 7.)

267. Sample Taken in Presence of Witness—Results of Analysis Published.—A representative sample of each brand of commercial feeding stuff found sold, offered or exposed for sale shall be taken by the said State Chemist or his duly authorized representative in the presence of at least one witness whenever the circumstances permit. No action shall be maintained for a violation of the provisions of this act, based upon an analysis of a sample taken from less than five separate original packages, unless there be less than five separate original packages in the lot, in which case portions of the official sample shall be taken from each original package; if the commercial feeding stuff is in bulk, portions shall be taken from not less than five different places in the lot; provided, that this does not exclude sampling in bulk when not exposed sufficiently to take portions from five different places, in which case portions are to be taken from as many places as practicable. If the sample thus secured is larger than is required, it shall be mixed and quartered until a sample of suitable size remains. If the said witness desires a portion of the sample and furnishes a suitable receptacle for it, the State Chemist or his representative taking the sample must seal and deliver a portion as requested. The other sample must be sealed, properly marked and forwarded to the laboratory of the State Chemist. The results of the analysis, together with such additional information as the said State Chemist may deem advisable, shall be transmitted to the manufacturer or person responsible for the placing of the commodity on the market, and shall be published in reports or bulletins from time to time. If the manufacturer or person responsible for the placing of the commodity so sampled upon the market be unable to secure the sample delivered to the person apparently in charge of the feeding stuff sampled, he shall, upon request to the State Chemist, be furnished with a portion of the official sample referred to in this section. The methods of analysis shall be those in force at the time by the Association of Official Agricultural Chemists of North America. (Id. § 8.)

268. Report Sent to Manufacturer—Hearing in Case of Violations.—The report of the State Chemist on official samples shall be forwarded to the manufacturer or person responsible for the placing of the commodity upon the market, at least ten days before the report is submitted to the purchaser, and if no word is received from the manufacturer or person responsible for the commodity before the expiration of the ten days, the report shall become official. In case of violations, any party so notified shall be given an opportunity to be heard in his defense under such rules and regulations as may be prescribed by the State Chemist before the facts shall be certified to the proper person. If it appears that any provision of this act has been violated, a statement of the State Chemist, when duly sworn to, giving the results of his analysis or other examination, or those results obtained under his direction, shall be prima facie evidence of the fact or facts therein certified. (Id. § 9.)

269. Violations a Misdemeanor—Penalty—Injurious Adulterations—Release of Feeding Stuff Seized.—Any manufacturer, importer, jobber, firm, association, corporation or person who has sold, offered or exposed for sale or distributed in this State any commercial feeding stuff for which the required statement of tonnage sold has not been made nor the fees paid, has rendered a false statement and paid fees in accordance therewith, or has impeded, obstructed, hindered or otherwise prevented or attempted to prevent said State Chemist or his authorized agent in the performance of his duty in connection with the provisions of this act, or who has sold, offered or exposed for sale or distributed in this State any commercial feeding stuff as defined in section one, without complying with the requirements of the provisions of this act, or who has sold, offered or exposed for sale or distributed in this State any commercial feeding stuff which contained a smaller per centum of crude protein or crude fat or a larger per centum of crude fiber than has been certified to be contained therein, or who has failed to properly state the specific name of each and every ingredient used in its manufacture shall be deemed guilty of a violation of the provisions of this act, and upon conviction thereof shall be deemed guilty of a misdemeanor, and shall be fined in the sum of one hundred (100) dollars for the first offense, and in the sum of not less than one hundred (100) dollars, nor more than one thousand (1,000) dollars for each subsequent offense. Any such penalty shall be sued for and recovered by and in the name of the Director of the New Jersey State Agricultural Experiment Station in an action of debt. Such penalty, when recovered, shall be paid by said director into the treasury of the State of New Jersey. When judgment is obtained for any penalty under this act in any court of this State against any individual, execution may issue against the goods, chattels and body of such individual. Any manufacturer, importer, jobber, firm, association, corporation or person who shall mix or adulterate

any feeding stuff with any substance or substances injurious to the health of live stock or poultry shall be deemed guilty of a violation of the provisions of this act, and the lot of feeding stuff shall be subject to seizure, condemnation and sale as the court may direct; the proceeds from such sale to be paid to the Treasurer of the State of New Jersey. The court may, in its discretion, release the feeding stuff so seized when the requirements of the provisions of this act have been complied with, and upon payment of all costs and expenses incurred by the State in any proceedings connected with such seizure. (Id. § 10, as amended L. 1919, c. 111.)

270. Disposition of Inspection Fees.—The registration fees paid for brands that are not accepted for registration are to be returned to the party making the application for registration, and all other fees collected by the New Jersey State Agricultural Experiment Station shall be paid to the State Treasurer, and after being appropriated as now provided by law the money thus accounted for shall be expended under the authority of the Director of the New Jersey State Agricultural Experiment Station in defraying the expenses of the inspection, chemical and other examination of commercial feeding stuffs, in printing of bulletins giving the results of the inspection, for experiments and other agricultural activities as may seem to be to the greatest advantage, and to publish bulletins giving the results of these activities. (Id. § 11.)

271. State Chemist to Enforce Act.—The State Chemist is hereby empowered to enforce the provisions of this act and to prescribe such rules and regulations relating to the sale of commercial feeding stuffs as he may deem necessary to carry into effect the full intent and meaning of this act. (Supp. 1924, p. 49; L. 1912, c. 218, § 12, as amended L. 1916, c. 69.)

272. Metal Fasteners Forbidden.—No person, firm or corporation shall sell within the State of New Jersey feed for live stock in bags to which bags there is attached a tag or tags by means of wire or other metal fasteners. (Supp. 1924, p. 84; L. 1920, c. 121, § 1.)

273. Penalty.—Any person violating the terms of this act shall be guilty of a misdemeanor. (Id. § 2.)

NOTE: See also No. 37a.

Fish.

274. Quality of Herring; Packing; Casks; Branding.—All herring designed for exportation, which shall be packed after the passing of this act, shall be sound and merchantable, well packed and well secured, with a proper quantity of salt and pickle, in tight casks, made of good, sound, well-seasoned white oak timber, hooped with at least fourteen good and substantial hoops, secured at each bilge with three pins, and at each head or chime hoop with at least three nails; and the casks shall be of the following dimensions, viz.: the length of the stave, when in the cask, shall be twenty-seven and a half inches; the head, seventeen and a half inches; the bilge, twenty inches; and to contain twenty-eight gallons, wine measure; and every half-barrel containing herring designed for exportation shall be of the gauge of fourteen gallons of the measure aforesaid; and each and every barrel or half-barrel of herring designed for exportation shall be branded with the initial letters of the Christian name, and the surname at full length, of the person or persons putting up the same, or of the person selling such herring, under the penalty of fifty cents for each and every barrel or half-barrel sold and delivered, not branded as aforesaid; and in case the aforesaid barrels or half-barrels of herring, not being branded as aforesaid, and after the fine being paid, the inspector appointed by virtue of this act may brand them with his name, in the manner hereafter described, for which he shall demand and receive from the person selling the same, the sum of six cents for each barrel or half barrel. (C. S. 1910, p. 2742 et seq.; Rev. 1877, p. 478 et seq.)

275. Packing Casks.—Herring designed for exportation may be packed in tight casks made of any kind of timber, if sound and merchantable, well packed and secured with a proper quantity of dry salt, the casks to be of the same size and dimensions as is designated by the first section of this act, and secured by being hooped with at least twelve good and sufficient hoops, and nailed or pinned as directed in the first section. (Id.)

276. Inspection and Branding.—Every barrel or half-barrel of herring designed for exportation shall, before the exportation thereof, be carefully examined by an inspector appointed by virtue of this act, who shall pass as merchantable, and brand with the brands hereinafter described, each and every barrel or half-barrel, being of the materials hereinbefore directed and described, which shall respectively contain the proper quantity of sound and merchantable herring, and be secured in manner aforesaid; and the said inspector shall erase and effectually deface the brand, mark, or marks off and from each and every barrel and half-barrel containing herring designed for exportation as aforesaid, which shall not be of the dimensions, and made in the way hereinbefore described, and which shall not be of

the quality, and packed and secured in the manner hereinbefore directed and described; and if the same cannot be rendered merchantable, according to the requisitions and meaning of this act, by salting, pickling, repacking, and coopering thereof, then the said inspector shall impress and brand a cross thus, X, each stroke of said cross being at least two and a half inches in length, upon one head of each and every barrel or half-barrel containing herring so as aforesaid incapable of being rendered merchantable. (Id.)

277. Penalty for Selling Without Inspection.—Each and every person or persons, who shall sell and deliver any barrel or half-barrel of herring for exportation to the purchaser or purchasers thereof, before the same has been duly examined by an inspector appointed by virtue of this act, and branded with the brands herein directed for branding the same, or who shall lade or ship on board of any vessel or vessels for exportation, or who shall refuse to allow or suffer the said inspector, in the cases aforesaid, to erase and effectually deface the brand, mark, or marks off and from every barrel and half-barrel of herring, and if need be, to impress and brand thereon the said mark of a cross as aforesaid, shall forfeit and pay for each and every barrel or half-barrel so sold or delivered, and for each and every barrel or half-barrel so laden or shipped on board any vessel or vessels as aforseaid, and for each and every barrel or half-barrel from which he, she, or they shall refuse to allow or suffer the said brand, mark, or marks to be erased and effectually defaced as aforesaid, and for each and every barrel or half-barrel whereon he, she, or they do refuse to allow or suffer the said mark of a cross to be impressed and branded as aforesaid, the sum of one dollar and twenty-five cents; and all and every person or persons who shall, by any means whatsoever, willfully erase or deface the said mark of a cross, after the same has been duly impressed and branded by the said inspector upon any barrel or half-barrel as aforesaid, shall forfeit and pay the sum of twenty dollars for each and every barrel and half-barrel off and from which the said mark of a cross shall be erased or defaced, the said sums of money or forfeitures to be recovered and applied in the manner hereafter provided and declared. (Id.)

278. Compensation for Inspection; Allowance for Cooperage.—The inspectors appointed by virtue of this act, may lawfully demand, receive, and take from the person or persons selling the same, the sum of twenty-five cents for each and every barrel or half-barrel of herring he may repack; and for each and every barrel or half-barrel of herring he shall fill up and head, the sum of eight cents; and for inspecting, examining and branding every barrel or half-barrel of herring, the sum of eight cents; and for each and every barrel or half-barrel of herring exported from any port in this State, the customary allowance and compensation for the expense and trouble of coopering and putting the same into good and merchantable order and condition; provided, that it shall and may be lawful to and for the owner, owners or sellers of such herring to employ any person or persons, other than the said inspector, to do, execute and perform the cooperage necessary to put the same in good and merchantable order and condition as aforesaid; and in that case the said inspector shall not be entitled to have or receive any allowance or compensation whatsoever, for or on account of said cooperage. (Id.)

279. Reinspection.—Each and every barrel and half-barrel of herring, inspected and branded as is by this act required, shall, if lying on hand and unsold, and not exported from this State for six months from and after such inspection and branding before sale or delivery, be again examined by the said inspector, and if found sound and merchantable, agreeably to the intent and meaning of this act they shall or may be exported as aforesaid, but if unsound, they shall be subject to the same regulations as stated in the third section of this act; and the said inspector shall have and receive, from the person or persons selling the aforesaid barrels or half-barrels of herring for his expense and trouble for opening, examining and heading each and every barrel as aforesaid, the sum of three cents. (Id.)

280. Recovery and Disposition of Penalties.—All and singular the forfeitures and penalties in and by this act imposed, shall be collected by the said inspector, with costs of suit, in any court having cognizance thereof, one-half thereof to and for his own use, the other half, when recovered, to be paid by the said inspector to the overseers of the poor of the town or place where the offense shall be committed, for the use of the poor thereof. (Id.)

281. Inspectors; Appointment.—The Governor, or person administering the government of this State for the time being, on the application and recommendation of the common council of any city or town corporate, or on the application and recommendation of twelve respectable freeholders of any other town within this State, may appoint and commission one or more inspectors and repackers of herring (who shall not be dealers in said articles) in such parts of the State as may be deemed necessary and expedient. (Id.)

282. Oath of Office.—Each and every inspector and repacker of herring, appointed and commissioned as aforesaid, shall, before he enters upon the execution of said office, take and subscribe the following oath or affirmation, before one of the justices of the Supreme Court of this State, or before one of the judges of the Court of Common Pleas in and for the county in which the duties of such office are to be exercised, viz.: I, A. B., do solemnly swear (or affirm), that I will faithfully, truly and impartially, according to the best of my judgment, skill and understanding, execute the office and duty of an inspector and repacker of herring, according to the true intent and meaning of the laws of this State relative to the same; and that I will not directly or indirectly brand, or suffer to be branded, any casks of herring but what shall be sound and merchantable, agreeably to the said laws; a copy of which said oath or affirmation, subscribed by the person appointed as aforesaid, and signed by the officer by whom it was administered, shall be filed in the office of the clerk of the county where the said inspector and repacker usually resides. (Id.)

283. Term of Office.—The said inspectors shall hold their offices for the term of five years from the time of their appointment, and no longer, but upon being again recommended as aforesaid, may be reappointed. (Id.)

284. Casks; How Branded.—The said inspectors and repackers shall provide themselves with, and brand every barrel and half-barrel of herring, as follows: "New Jersey herring"; and also the initial letter of his Christian name and his surname at full length, together with the name of the place where inspected or repacked. (Id.)

285. Penalty for Using Casks a Second Time.—No person or persons shall use casks which have been emptied, after being branded as aforesaid, a second time, unless they shall first erase and effectually deface the repacker's brand off and from every such cask, under the penalty of twenty dollars for every such cask so used. (Id.)

286. Penalty for Neglect or Delay.—If any inspector or repacker of herring shall neglect or delay to inspect or repack any herring, when thereunto required by the owner or possessor thereof, for the space of forty-eight hours, every such inspector or repacker shall, for each neglect, pay to such owner or possessor the sum of two dollars per barrel or half-barrel. (Id.)

287. Penalty for Offenses by Inspectors.—For every offense which the said inspectors and repackers shall commit against the true intent and meaning of this act, and be thereof convicted, he or they so offending shall forfeit the sum of twenty dollars, and be rendered incapable of serving again in said office. (Id.)

288. Disputes to be Settled by Referees.—If any dispute shall happen between the said inspectors or repackers and the possessor of such herring, concerning the soundness or package of the same, or the soundness or contents of the casks, it shall be lawful for any justice of the peace of the city or county where the said dispute arises, upon application to him made, and he is hereby required to issue his warrant to two indifferent, judicious persons of skill and integrity, to view and search the said herring together with the cask in which they are contained, and make report forthwith, after having examined the same, to the said justice (which report shall be in writing, and to which they shall swear or affirm), according as they find the same; and the said justice is hereby empowered and required to give judgment accordingly; and in case the said herring shall be found to be unfit for exportation, the said justice shall order them not to be exported, under the penalty of forfeiting all such herring, and also award the owner or possessor to pay the said inspector and repacker the sum of twenty-five cents per cask, for all such herring as shall be judged not fit for exportation as aforesaid, with reasonable charges; but in case the said herring, upon trial as aforesaid, shall be found good and merchantable, according to the directions of this act, the charges of prosecution shall be paid by the inspector. (Id.)

289. Inspectors Authorized to Board Vessels.—The said inspectors shall have full power by virtue of this act, and without any further or other warrant, to enter on board any ship, sloop or vessel whatsoever, lying or being in any port or place in this State, to search for and make discovery of any herring shipped for exportation, and if the owner or possessor, or their servants or others, shall deny him or them entrance, or if the said inspectors shall be in any way molested in making such discovery as aforesaid, every such person shall forfeit and pay the sum of twenty dollars; or if any person or persons shall ship off any cask or casks of herring, not branded as is hereinbefore required, every such person so offending shall forfeit and pay the sum of one dollar and twenty-five cents for every cask so shipped. (Id.)

290. Foreign Herring Not Subject to Inspection.—Salted herring, in barrels or half-barrels, which shall have been brought or imported from any place or places

without the bounds and limits of this State, with the name of the State, town or place from which the same shall have been brought or imported, branded or marked at full length, and in plain legible manner thereon, and which shall be exported with the same name so as aforesaid branded or marked thereon, and not as the herring of New Jersey, shall not be liable to examination by the inspectors herein appointed, but the same may be lawfully exported without inspection. (Id.)

291. Unlawful to sell Certain Fish Measuring Less Than Prescribed Length.—It shall be unlawful to purchase, sell, offer for sale or expose for sale any codfish or striped bass measuring less than ten inches in length, any bluefish, or weakfish measuring less than nine inches in length, any sea bass or kingfish measuring less than eight inches in length, any blackfish, mackerel or porgie measuring less than seven inches in length, any flounder or butterfish measuring less than six inches in length, under a penalty of five dollars for each such fish purchased, sold, offered for sale or exposed for sale. (L. 1927, c. 38, § 1.)

292. Enforcement of Act.—This act shall be enforced by the persons authorized, and in accordance with the provisions of an act entitled "An act to provide a uniform procedure for the enforcement of all laws relating to fish, game and birds, and for the recovery of penalties for violations thereof," approved March twenty-ninth, eighteen hundred and ninety-seven, and the acts amendatory thereof and supplementary thereto. (Id. § 2.)

NOTE: See also Nos. 24, 72 et seq., 305, 364a et seq., and 384 et seq.

Flavoring Extracts.

See No. 477.

Fruits, Vegetables, Etc.

293. Authority Granted—Furnish Information—Markets—Co-operation—Investigate Costs—Buying—Delays, Transportation, Storage, Etc.—Economies.—In order to promote more economical methods of marketing and distributing farm products, the State Department of Agriculture, acting through the Bureau of Lands, Crops and Markets, or otherwise, as provided for in the act to which this act is a supplement, is hereby vested with authority:

(a) To collect and diffuse timely information relative to the seasonal supply, demand and prevailing prices of farm products, both at wholesale and retail, the movement of farm products through commercial channels, and in co-operation with the State Department of Health, the quantities and conditions of farm products in common and cold storage.

(b) To assist and advise in the organization and maintenance of public markets, both for wholesale and retail selling, and to enter into agreements with municipalities for supplying daily or seasonal production and marketing information and requiring from them reports on the public market activities.

(c) To assist and advise in the organization and maintenance of producers' and consumers' co-operative selling and buying associations.

(d) To investigate the cost of distributing farm products, both in a wholesale way and at retail, and to publish such finding as may be of practical interest to the public.

(e) To furnish advice and assistance to the public with reference to buying of farm products and other matters relative thereto.

(f) To investigate delays, embargoes and other conditions, charges, rates and practices in the handling, transportation, storage, buying and selling of farm supplies and farm products, which appear to retard the free and efficient movement of such supplies and products from the point of production, storage, manufacture, packing and repacking, to the ultimate consumer.

(g) To take such lawful measures as may be deemed advisable to prevent waste or uneconomical use of farm products. (Supp. 1924, p. 14; L. 1921, c. 83, § 1.)*

294. May Establish Standards.—The State Department of Agriculture may, from time to time, establish and promulgate standards that may be used by producers and distributors under the provisions of this act for the grading and other classification of farm products, and in co-operation with the Department of Weights and Measures establish and promulgate standards for receptacles for farm products. (Id. § 2, as amended L. 1923, c. 24.)

295. As to Markings—Enforcement.—Whenever any standard for the grading or other classification of farm products becomes effective under this act, no per-

*Chapter 83, Laws of 1921, supplements chapter 268, Laws of 1916, which relates to the internal organization of the Department of Agriculture. Omitted herein.

son thereafter shall mark or label any product or package containing it in such a way as to indicate or to make it appear upon ordinary observation that the product conforms to the standard, unless, in fact, such product actually does conform to the standard for grading or classifying such product.

The Secretary of Agriculture is authorized at any time to cause such investigations, classifications and tests to be made as he may deem necessary to enforce the provision of this section. (Supp. 1924, p. 14 et seq.; L. 1921, c. 83, § 3.)

296. Investigation—Fee for Services.—The secretary may designate any competent employee or agent of the State Department of Agriculture to make, upon request, investigations, inspections and classifications of farm products in accordance with standards which have become effective under this act. When any such investigations, inspection or classification is made, the employee or agent shall issue a certificate of the grade or other classification of the farm product involved.

The Secretary of Agriculture is authorized to fix, assess and collect or cause to be collected, fees for such services, when they are performed by employees or agents of the State Department of Agriculture. (Id. § 4, as amended L. 1923, c. 24.)

297. Appeals—Fee for Appeal.—Any interested party, within a reasonable time, to be prescribed in the regulations made under this act, may appeal to the Secretary of Agriculture from the grading or classification of any farm product authorized under this act, and the Secretary of Agriculture shall thereupon cause such investigation to be made, and such tests to be applied, as he may deem necessary to determine the true grade or classification thereof.

Whenever an appeal shall be taken to the Secretary of Agriculture under this act, he shall charge and assess and collect, or cause to be collected, a reasonable fee, to be fixed by him, which shall be refunded if the appeal is sustained. (Supp. 1924, p. 15 et seq.; L. 1921, c. 83, § 5.)

298. Certificate in Evidence.—A certificate, when not superseded by a finding of the grade or other classification of any farm products, issued under this act, shall be accepted in any court of this State as prima facie evidence of the true grade or other classification of such farm product at the time of its classification. (Id. § 6.)

298a. Fees Paid Into State Treasury.—All fees and other moneys collected under this act by the Secretary of Agriculture, and by his employees or agents in their official capacity, shall be paid into the State treasury, which fees shall be appropriated for use of the department in carrying out the provisions of this act when authorized by any appropriations act. (Id. § 7.)

299. Reports Required—Verification of Report—Name of Informant Not Divulged.—It shall be the duty of any person in this State engaged in marketing farm products to prepare and submit to the State Department of Agriculture, upon request, at such regular intervals and in such form as may be prescribed, reports of the quantity and conditions of any farm product held by, or for, such person in commercial or other storage in this State. Any person in this State shall furnish the department, upon request, on such date or dates, and in such form as may be prescribed, special reports, orally or in writing, concerning the demand for, and the supply, consumption, cost, value, price and condition and period of the holding of any farm product, which is, or has been held by or for, such person in storage or otherwise. The Secretary of Agriculture is authorized to verify the accuracy of the reports provided for in this section. When making public any information received in the reports provided for in this section, the Secretary of Agriculture, his employees or agents, shall not divulge the name of the person owning or reporting upon a farm product without the consent of such person, or except pursuant to legal processes. (Id. § 8.)

300. Right of Entry.—In carrying out the provisions of this act, the Secretary of Agriculture, his employees or agents are authorized to enter, on any business day during the usual hours of business, any storehouse, warehouse, cold storage plant, packing house, stockyard, railroad yard, railroad car, or any other building or place where farm products are kept stored by any person engaged in storing, handling or marketing. (Id. § 9.)

301. Witnesses, Oath, Records, Etc.—In carrying out the provisions of this act, the Secretary of Agriculture, or his employees designated by him for the purpose, may require the attendance before him, or any of them, of any person from whom reports have been requested, or of any employee of such person, may administer oaths to, and take testimony of, any such person, or his employee, and may require the production by such person, or his employee, of any books, records and other documental evidence relating to the farm products about which reports have been requested. (Id. § 10.)

302. Violation a Misdemeanor.—Any person who violates any provision of this act, or the regulations made under this act for carrying out said provision,

or who fails or refuses to comply with, or with intent to deceive, answers or reports falsely in response to any requirements of this act, or who willfully interferes with the Secretary of Agriculture, his employees or agents, in the carrying out of his duties prescribed in this act shall be guilty of a misdemeanor. (Id. § 11.)

303. Regulations.—The Secretary of Agriculture is authorized to make and promulgate such regulations as may be necessary to carry out the provisions of this act. (Id. § 12.)

304. Penalty.—Any person convicted of a misdemeanor under this act shall be punished by a fine of not exceeding one hundred dollars, or by imprisonment in the county jail for a term not exceeding one year, or both, at the discretion of the court. Any violations of the provisions of this act relating to standard receptacles, which may be established as herein provided for, shall be prosecuted in the appropriate courts of the Commonwealth by superintendents of weights and measures of the respective cities and counties, and the Superintendent of the State Department of Weights and Measures. (Id. § 13.)

305. "Person"—"Farm Product"—"Marketing."—The term "person" as used in this act includes individuals, partnerships, associations and corporations.

"Farm product" means any agricultural or horticultural product, any fresh or salt water food product, or any product designed for food purposes, manufactured or prepared principally from any agricultural or horticultural product or products.

"Marketing" includes preparing for market, transporting, storing, consigning, buying for purposes of manufacture, or sale, offering for sale, selling, soliciting consignments or receiving consignments. (Id. § 14.)

306. Repealer—Constitutionality.—All acts or parts of acts inconsistent herewith are repealed. If any clause, sentence, paragraph, or part of this act shall for any reason be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, or part thereof directly involved in the controversies in which such judgment shall have been rendered. (Id. § 15.)

307. Affidavit as to Probable Violation—Summons—Right of Search.—When allegation is made, in writing, on oath or affirmation, before any judge of a District Court, or judicial district, justice of the peace, police justice, or recorder, that the affiant has reason to believe, and does believe, that any provision of the act to which this act is a supplement, or any provisions of the acts of which the Department of Agriculture is charged with enforcing, are being violated, such judge of the District Court or judicial district, justice of the peace, police justice or recorder on being fully satisfied that probable cause exists for such relief, shall issue a summons, which shall be returnable within three days, requiring the person or corporation to whom the same is addressed to show cause why the affiant as the agent of the Department of Agriculture should not be permitted to enter and search, examine or inspect any building of any kind whatsoever except a human dwelling, or to enter on any public or private lands or premises, and if upon the return of such summons, and the hearing thereon, the judge of the District Court or judicial district, justice of the peace, police justice or recorder, shall be satisfied that reasonable grounds exist, he shall thereupon issue a search warrant authorizing the affiant to so enter and search as in this act provided. (Supp. 1924, p. 17; L. 1922, c. 261, § 1.)*

308. Name and Address of Packer on Receptacles.—Any person who shall pack or cause to be packed fruits or vegetables in crates, covered baskets and carriers, for the purpose of selling, offering or exposing for sale said fruits or vegetables so packed, shall plainly and conspicuously mark or stamp in lettering not less than three-eighths of an inch in size, on the outside or top of the said crates, baskets or carriers his name and address. (Supp. 1924, p. 1438 et seq.; L. 1920, c. 223, § 1.)

309. Other Marks Removed.—Before so marking or stamping his name and address on any basket, crate or carrier, said packer shall remove all other names and addresses therefrom, excepting the name and address of the manufacturer of said basket, crate or carrier. (Id. § 2.)

310. Penalties—Recovery of Penalties—Authority to Bring Proceedings—Disposition of Penalties.—Any person, firm or corporation violating any of the provisions of this act shall for the first offense be liable to a penalty of not less than twenty-five dollars and not more than fifty dollars, and for the second offense shall be liable to a penalty of not less than fifty dollars and not more than one hundred dollars, and for each subsequent offense shall be liable to a penalty of not less than one hundred dollars and not more than two hundred dollars.

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*Chapter 261, Laws of 1922, supplements chapter 268, Laws of 1916, which relates to the internal organization of the Department of Agriculture. Omitted herein.

An action for the recovery of a penalty for violation of the provisions of this act shall be in the nature of an action in debt, and may be brought in the District Court of any city, or judicial district in the small cause court of any county, and before the police magistrate and recorder of any city, town, township, borough or village, and jurisdiction is hereby conferred upon the District Court, the small cause court, the police court and the recorder's court of any city, town, township, borough or village to hear and determine actions brought as aforesaid.

County superintendents and assistant county superintendents of weights and measures, municipal and assistant municipal superintendents of weights and measures, are authorized to bring proceedings within their respective jurisdictions, in their official capacities, for the use of the county or municipality which they represent. Penalties, when recovered in the name of a county or assistant county superintendent of weights and measures, shall be payable to the county collector of such county, and when recovered by a municipal or assistant municipal superintendent of weights and measures shall be payable to the municipality which such official represents. (Id. § 3, as amended L. 1921, c. 93.)

311. "Person" Defined.—The word "person" as used in this act shall include corporations, co-partnerships and associations. (Supp. 1924, p. 1439; L. 1920, c. 223, § 4.)

312. Venders of Farm or Garden Products Not to Allow Baskets or Packages, Marked With Name or Mark of Owner, to Go Out of Their Possession Without Receiving Value Thereof, to be Refunded on Return of Same.—It shall not be lawful for any person or persons engaged in selling the products of a farm or garden, either on commission or otherwise, to allow the basket or other package containing any of the said products to go out of his or her possession without first demanding and receiving a sum of money equal to the full value of the said basket or other package; said sum of money to be refunded to the purchaser of the aforesaid products upon the return of the basket or other package in as good condition as when he or she received it; provided, the owner or owners shall have his, her or their name or names, mark or marks, distinctly branded, stamped or painted upon the aforesaid basket or other package. (C. S. 1910, p. 296 et seq.; L. 1887, c. 75, § 1.)

313. Payment of Money Collected on Baskets and Packages Not Returned.—The money collected on baskets or other packages not returned shall be paid to the farmer or owner at the end of each month. (Id. § 2.)

314. Penalty for Violation of Act.—Any person or persons who shall violate the provisions of either of the foregoing sections, or shall, without the written permission of the owner or owners thereof, sell, dispose of, buy or traffic in, mar or erase the brands or marks on, wilfully break, destroy or otherwise injure, fill or use for any other purpose than the sale of the original contents of any of the aforesaid baskets or other packages, shall be liable to a penalty of twenty dollars, with costs, for each and every offense; said penalty may be sued for and recovered, with costs, by any person in any court of competent jurisdiction. (Id. § 3.)

315. Definition.—The term legume inoculant, or legume inoculants, when used in this act shall be construed to mean any material which contains the nitrogen-gathering organism known as Bacillus radicicola and which is sold, offered or exposed for sale in this State for the purpose of conveying organisms of Bacillus radicicola. (Supp. 1924, p. 53 et seq.; L. 1919, c. 88, § 1.)

316. Information Given on Label on Goods for Sale.—Every package of legume inoculant sold, offered or exposed for sale in this State shall have attached or affixed to the outside of the container of such inoculant a printed tag or label giving the following information:

1. The brand name.
2. The kind or kinds of legume crops for which the contents may be used.
3. Month and year in which inoculant was prepared.
4. Probable date beyond which inoculant would be of doubtful value.
5. Quantity of material in terms of amount of seed or acreage for which contents may be used.
6. Name and address of manufacturer. (Id. § 2.)

317. Annual Statement Filed With Director of Experiment Station.—Every person, firm or corporation selling, offering or exposing for sale legume inoculants in this State shall file annually with the Director of the New Jersey Agricultural Experiment Station, a statement showing the brand or brands of legume inoculants which it intends to sell, offer or expose for sale in this State, together with the name and address of the manufacturer of such inoculant. (Id. § 3.)

318. Samples Taken and Tested.—For the purpose of carrying out the provisions of this act, the Director of the New Jersey Agricultural Experiment Station, or his deputy, shall take or cause to be taken, as samples, packages of legume inoculants sold, offered or exposed for sale in the State, and shall have free access at all

reasonable times, upon and into any premises or structure for this purpose. Payment for samples shall be made at the market price. The Director of the New Jersey Agricultural Experiment Station shall make or cause to be made an examination, analysis or test of such samples to determine the conditions of the inoculant; and the results of such examination, analysis or test shall be published in an annual bulletin. (Id. § 4.)

319. Rules Regarding Sales.—The Director of the New Jersey Agricultural Experiment Station shall have authority to establish such rules and regulations, in regard to inspection, analysis and sale of legume inoculants as shall not be inconsistent with the provisions of this act. (Id. § 5.)

320. Penalty for Improper Compliance With Law.—Any person, firm or corporation who sells, offers or exposes for sale any package of legume inoculant which does not comply with the provisions of this act, or who interferes with any official employed in the enforcement of this act, shall be liable to a penalty of not less than twenty-five dollars, nor more than one hundred dollars for each offense, which penalty shall be recovered in action of debt in the name of the State, together with the cost of prosecution to be taxed. All moneys recovered under this act shall be paid into the treasury of this State. (Id. § 6.)

321. Prosecution for Violations.—The director of the New Jersey Agricultural Experiment Station shall send to the Attorney-General the evidence obtained of violations of this act and prosecutions for the penalties herein provided for shall be conducted by the Attorney-General, in the name of the State. (Id. § 7.)

322. Free Examination of Samples.—Any citizen of the State of New Jersey may, in accordance with regulations prescribed by the New Jersey Agricultural Experiment Station for this purpose, and by prepaying the transportation charges, send a sample or samples of legume inoculants to the New Jersey Agricultural Experiment Station for examination and analysis, and such examination or analysis shall be reported upon free of charge. (Id. § 8.)

323. Appropriation.—The sum of two thousand dollars is hereby appropriated for the purpose of this act; provided, that no payment shall be made pursuant to this act until the amount shall have been included in the supplemental or regular annual appropriation bill. (Id. § 9.)

NOTE: See also Nos. 24, 32, 68 et seq., 384 et seq., 444 et seq., 589, 591-592, 636 et seq., 655 et seq., and 681 et seq.

Grain.

See Nos. 334 et seq., 589 and 678 et seq.

Honey.

324. Label or Brand to be Affixed to Package Containing Any Article of the Semblance of Honey and Not the Product of the Hive.—Every person or persons who shall manufacture, sell or cause to be sold any article or substance having the semblance of honey, and yet not the real product of the hive, whether in shape of liquid or comb honey, shall to each package or vessel of such manufactured article or substance, affix on the outside the package, in a conspicuous place, a distinct printed or written label or brand stating that it is a mixture, and naming the constituent elements used, whether glucose, grape sugar or other adulterant; and every sale of such article or substance not so branded, marked or labeled is declared to be unlawful, and no action shall be maintained in any of the courts of this State to recover upon any contract for the sale of any such article or substance not so branded, marked or labeled. (C. S. 1910, p. 2585; L. 1879, c. 149, § 1.)

325. Penalty for Violations of Act—Recovery by Civil Action.—Every person who shall knowingly sell, or offer to sell, or have in his or her possession, with intent to sell, contrary to the provisions of this act, any of the said article or substance required by the first section of this act to be branded, marked or labeled as therein stated, not so branded, marked or labeled, shall for each such offense forfeit and pay a penalty of thirty dollars upon the first suit, and fifty dollars upon the second and each subsequent suit, for such offense, to be recovered with costs in any of the courts of this State, in an action of debt, to be prosecuted in the name of the State of New Jersey, one-half of such penalty to be paid to the informer and the residue shall be paid to the collector of the county in which such suit shall be brought, for the support of the poor of the county. (Id. § 2, as amended L. 1881, c. 138.)

326. Penalty for Violations of Act—Criminal Prosecution.—Every person who shall knowingly sell, or offer or expose for sale, or who shall cause or procure to be sold, or offered or exposed for sale, any article or substance required by the first section of this act to be branded, marked or labeled, not so branded, marked

or labeled, shall be guilty of a misdemeanor, and on trial for such misdemeanor, proof of the sale, or offer or exposure alleged, shall be presumptive evidence of knowledge of the character of the article so sold or offered, and that the same was not branded, marked or labeled as required by this act. (C. S. 1910, p. 2585 et seq.; L. 1879, c. 149, § 3.)

Ice.

327. Cutting or Sale of Ice Without Permit From Boards Prohibited.—No ice shall be cut for the purpose of being sold or used in any city of this State from any pond, creek or river within the limits of any such city, unless a permit therefor shall be first obtained from the board of health of such city, and no person or persons shall sell or deliver any ice in any city in this State without first obtaining a permit therefor from the board of health of such city, and it shall be lawful for any such board of health to refuse a permit and to revoke any granted by them as aforesaid when in their judgment the use of any ice cut or sold, or to be cut or sold, under the same is or would be detrimental to the public health. (C. S. 1910, p. 2676 et seq.; L. 1885, c. 88, § 1.)

328. Prohibition of Sale or Use of Impure Ice.—The Board of Health of any city may prohibit the sale and use of any ice within the limits of such city when in their judgment the same is unfit for use, and the use of the same would be detrimental to the public health, and the said board may prohibit and through its officers stop, detain and prevent the bringing of any such ice for the purpose of sale or use into the limits of any such city, and also in the same manner stop, detain and prevent the sale or use of any such ice found within the limits of such city. (Id. § 2.)

329. Violations of Act Relating to Cutting and Sale of Ice; Punishment.—Any person or persons who shall violate any of the provisions of this act or who shall attempt to cut, sell or bring into any city any such ice after being notified by said board of health or its officers not to do so, shall be guilty of a misdemeanor, and on conviction shall be sentenced to imprisonment in the county penitentiary for a term not to exceed six months, or to pay a fine of five hundred dollars, or both, in the discretion of the court; and it shall be lawful for the officers of said board of health or the police officers of any such city to arrest on sight any person or persons who shall be found violating any of the provisions of this act. (Id. § 3.)

330. Provisions of Act Relating to Cutting and Sale of Ice Extended.—The provisions of the act* to which this act is a supplement, be and the same hereby are extended to all boroughs, townships, towns and other local municipal governments in the State. (C. S. 1910, p. 2677; L. 1888, c. 122, § 1.)

331. Permits to Sell and Deliver Ice in Cities; Revocation; Appeal to State Board of Health.—No person, firm or corporation shall sell or deliver ice in any city of this State unless a permit therefor shall be first obtained by such person, firm or corporation from the board of health of such city, and it shall be lawful for any such board of health to revoke any permit granted by it as aforesaid, when in its judgment the use of any ice that is to be sold or delivered under such permit is, or would be detrimental to the public health; which revocation or any declination of the local board to grant a permit shall be subject to appeal to the board of health of the State of New Jersey, which last named board may order a permit to be granted or a revocation of a permit to be set aside and a new permit to be granted, which order shall be binding and effective on such local board. (C. S. 1910, p. 2682; L. 1909, c. 204, § 1.)

332. Ordinances Relative to Sale and Delivery of Ice; Sale of Ice From Impure Source Prohibited; Penalty.—Any board of health in any city in this State may adopt an ordinance prohibiting the sale or delivery of ice in said city without a permit therefor from said board, and empowering said board to revoke any permit issued by it when in its judgment the use of any ice which is sold or delivered under said permit is, or would be detrimental to the public health, and to prohibit the use in said city of any ice which is impure or taken from any polluted source, and to prescribe in such ordinance a penalty not exceeding two hundred dollars for a violation thereof, which penalty shall be enforced and collected in the same manner fixed by an act entitled, "An act to establish in this State boards of health and a bureau of vital statistics, and to define their respective powers and duties," approved March thirty-first, one thousand eight hundred and eighty-seven, and the several supplements thereto. (Id. § 2.)

333. Authority of Board to Prohibit Sale or Use of Impure Ice; Penalty.—The board of health of each of the cities of the first class in this State shall have authority to provide by ordinance for the prohibition of the use or sale of impure

*Chapter 88, Laws of 1885, quoted in No. 327 et seq.

ice or ice cut from polluted ponds or streams, and in order to properly carry out and enforce the provisions of such ordinance to provide that all dealers in ice for domestic or public use shall obtain from the health authorities of such cities a permit, and to fix in such ordinance a penalty for the violation of the same, which shall not exceed a fine of fifty dollars for each offense. (C. S. 1910, p. 2683; L. 1895, c. 353, § 1.)

NOTE: See also No. 642 et seq.

Meal.

334. Adulteration of Meal or Grain; Penalty.—Any person who shall adulterate any kind of meal or ground grain with milling or manufacturing offals, or any other substance whatever, for the purpose of sale, unless the true composition, mixture or adulteration thereof is plainly marked or indicated upon the package containing the same, or in which it is offered for sale; or any person who knowingly sells or offers for sale any meal or ground grain which has been so adulterated, unless the true composition, mixture, or adulteration is plainly marked or indicated upon the package containing the same, or in which it is offered for sale, shall be fined not less than twenty-five dollars nor more than one hundred dollars for each offense. (C. S. 1910, p. 2590; L. 1900, c. 29, § 6.)*

335. Toll Allowed to Millers.—Every miller shall be allowed, for toll, one-tenth part of a bushel, and no more, out of every bushel of grain which he shall grind, including bolting; except malt, out of each bushel of which he shall be allowed one quart and no more. (C. S. 1910, p. 3396; Rev. 1877, p. 699 et seq.)

335a. Penalty for Taking Unlawful Toll.—If any miller shall take or receive a greater toll for grinding than is allowed by this act, he shall, for every such offense, forfeit and pay three dollars, to be recovered by action of debt, with costs, by any person who shall sue for the same. (Id.)

335b. Millers to Keep Toll Measures.—Every miller shall keep in his mill an exact measure of one-tenth part of a bushel, and of one-twentieth part of a bushel, for his toll measures, with a fit instrument to strike the said measures, which shall be stricken whenever toll is taken; and if he fail in any of these particulars, he shall forfeit and pay three dollars, to be recovered as aforesaid. (Id.)

Meat—Meat Products.

336. Bob Veal.—No person shall kill or aid in killing for human food any calf less than four weeks old. No person shall sell, or offer for sale, or have in his possession with intent to sell, any calf which has been killed when less than four weeks old, or any of the meat of any such calf. (C. S. 1910, p. 2570; L. 1907, c. 217, § 24.)†

337. Meat Chemically Treated.—No person shall distribute or sell, or have in his possession with intent to distribute or sell, any meat or meat product to which any sodium sulphite, sodium bisulphite, or any drug, chemical, chemical compound or preservative, from which sulphur dioxide can be liberated, has been added thereto or mixed therewith. (Supp. 1924, p. 1406 et seq.; L. 1915, c. 74, § 1.)‡

338. Penalty.—Every person who shall violate any of the provisions of this act shall be liable to a penalty of fifty dollars for the first offense and to a penalty of one hundred dollars for the second and each subsequent offense. Payment of a penalty for any alleged violation of this act, either before or after the institution of proceedings for the collection thereof, shall, for the purposes of this act, be deemed equivalent to a conviction of the violation for which such penalty was claimed. (Id. § 2.)

339. Enforcement of Act.—This act shall be enforced by the same boards and in the same manner as the act to which this act is a supplement,* and all penalties incurred under this act shall be sued for and recovered by the same boards and in the same manner as penalties incurred under provisions of the act to which this act is a supplement. (Id. § 3.)

340. Improper Use of "Kosher"—Penalty.—Any person or persons who with intent to defraud sells or exposes for sale any meat or meat preparation or any fowl

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*Query: Is this section now effective?

†For penalty, see No. 13.

‡Chapter 74, Laws of 1915, supplements chapter 217, Laws of 1907, quoted in No. 1 et seq.

or preparations from fowl, and falsely represents the same to be "Kosher" or as having been prepared under, and of a product or products sanctioned by, the orthodox Hebrew religious requirements, or falsely represents any food products or the contents of any package or container to be so constituted and prepared by having or permitting to be inscribed thereon the word "Kosher" in any language, or who, selling both Kosher and non-Kosher food, does not so indicate on his stationery, advertisements and window signs, is guilty of a misdemeanor, punishable by a fine of not more than five hundred dollars, or by imprisonment of not less than twenty days or not more than six months, at the discretion of the court. (Supp. 1924, p. 1438; L. 1920, c. 182, § 1, as amended L. 1921, c. 298.)

341. Manufacture, Sale, Etc., of Adulterated Lard Without Labeling Same.—Any person who shall knowingly sell or exchange, or expose for sale or exchange, any impure or adulterated lard, or who shall manufacture or refine lard, adding thereto fat of other animals than swine, water, liquid or any chemical substance, and offer the product thereof for sale, without plainly stamping upon the firkin, package, box or parcel containing the same, in plain and durable letters, the words "adulterated and impure lard," shall be guilty of a misdemeanor. (C. S. 1910, p. 1777; L. 1898, c. 235, § 100.)

342. Rendering or Selling Fat of Diseased Swine.—Any person who shall render, or cause to be rendered, swine or the fat of swine that have died a natural death by disease or in transportation to market, and expose or offer the product of the same for sale or exchange as lard, shall be guilty of a misdemeanor. (Id. § 101.)

343. Licenses to Conduct Slaughterhouse.—No person or persons shall operate or conduct any slaughterhouse, abattoir or place where animals are slaughtered for sale for human food unless a license has first been issued by the Board of Health of the State of New Jersey to the owner or owners, manager or operator of said slaughterhouse, abattoir or place where animals are slaughtered for sale for human food, authorizing said person or persons to operate and conduct a slaughterhouse, abattoir or place where animals are slaughtered for sale for human food, and no person shall conduct or operate, or continue to conduct or operate, any slaughterhouse, abattoir or place where animals are slaughtered for sale for human food, after the revocation of any such license, and the said board is hereby empowered to cause inspections to be made of every building and premises in or upon which animals are slaughtered for human food, and to grant licenses for the operation of the same when, in the judgment of the board, the business conducted in said buildings or upon said premises is managed in a sanitary manner, and in accordance with the requirements of law. (C. S. 1910, p. 2596 et seq.; L. 1910, c. 295, § 1.)

344. Rules and Regulations for Issue of Licenses.—Every license granted under the provisions of section one of this act shall be issued under such rules and regulations as the said board may establish, but no license shall be granted to conduct or operate a slaughterhouse, abattoir or place where animals are slaughtered for sale for human food, unless, in the judgment of the said State Board of Health, the said building is so located and constructed that the business of slaughtering animals can be there conducted in a cleanly manner, and without creating a nuisance. (Id. § 2.)

345. Revocation of Licenses; Violations of Law; Penalties.—Every license issued under the provisions of this act may be revoked by the Board of Health of the State of New Jersey if the provisions of this act or of an act entitled "An act to secure the purity of foods, beverages, confectionery, condiments, drugs and medicines, and to prevent deception in the distribution and sales thereof" (Revision of 1907), approved May twentieth, one thousand nine hundred and seven,* and the amendments thereof and supplements thereto, or rules and regulations established by the said board under authority herein contained, shall be violated; and every person who shall conduct or operate a slaughterhouse, abattoir or place where animals are slaughtered for sale for human food, in violation of the provisions of this act or of an act entitled "An act to secure the purity of foods, beverages, confectionery, condiments, drugs and medicines, and to prevent deception in the distribution and sales thereof" (Revision of 1907), approved May twentieth, one thousand nine hundred and seven,* and the amendments thereof and supplements thereto, or in violation of the rules and regulations herein provided for, or who shall operate or conduct any such establishment without holding a license as herein specified, or who shall conduct or operate, or shall continue to conduct or operate, a slaughterhouse, abattoir or place where animals are slaughtered for sale for human food, after revocation by said board of the license to conduct or operate the same, and after notice in writing of said revocation has been served on said person, shall, upon conviction thereof, be subject to a penalty of two hundred dollars. (Id. § 3.)

*See No. 1 et seq.

346. Penalties; How Recoverable.—All penalties prescribed by the provisions of this act shall be recovered in an action of debt by and in the name of the Board of Health of the State of New Jersey as plaintiff. The pleadings shall conform in all respects to the practice prevailing in the court in which any such action shall be instituted, but no pleading or process shall be set aside or invalidated by reason of any formal or technical defects therein if the same contain a statement of the nature of the alleged violation and of the section of the act alleged to have been violated. (Id. § 4.)

347. Penalties; Execution After Judgment; Imprisonment.—When judgment shall be rendered against any defendant other than a body corporate execution shall be issued against his goods and chattels and body without any order of the court first had and obtained. If the officer executing any such writ shall be unable to find sufficient goods and chattels of said defendant in his bailiwick to make the amount of said judgment, he shall take the body of the said defendant and deliver him to the keep [keeper] of the common jail of said county, there to be detained until discharged by the court in which said judgment was obtained, or by one of the justices of the Supreme Court when such court or justice shall be satisfied that further confinement will not result in the payment of the judgment and costs. In case judgment shall be rendered against a body corporate execution shall be issued against such body corporate as in other actions of debt. All penalties collected under this act shall be paid into the treasury of the State of New Jersey. (Id. § 5.)

348. Injunction to Restrain Violations.—Whenever any person shall violate any of the provisions of this act it shall be lawful for the State Board of Health, either before or after the institution of proceedings for the collection of the penalty imposed by this act for such violation, to file a bill in the Court of Chancery in the name of the State at the relation of such board for an injunction to restrain such violation, and for such other or further relief in the premises as the Court of Chancery shall deem proper, but the filing of such bill, or any of the proceedings thereon, shall not relieve any party to such proceedings from the penalty or penalties prescribed by this act for such violation. (Id. § 6.)

348a. Ordinances, Etc.—Local boards of health shall have power to pass, alter and amend ordinances for the following purposes in addition to the purposes now authorized by law:

Sale, etc., of horses for food.—I. To regulate and control the sale of horses for food, to provide for their inspection both before and after slaughter, and to provide for the granting of permits to carry on the business of slaughtering horses for food;

Slaughterhouses.—II. To regulate and control the manner of constructing, repairing, furnishing and caring for houses and buildings used, or intended to be used, for the slaughter of horses in all matters relating to their sanitary condition, and to regulate and control the locating of such houses and buildings. (C. S. 1910, p. 2677 et seq.; L. 1899, c. 197, § 1.)*

348b. Penalty for Violation of Ordinances Authorized by Preceding Section; How Recovered.—Any local board of health may prescribe a penalty, not exceeding one hundred dollars, for the violation of any ordinance or any section of any ordinance adopted under the authority of this act, which penalty shall be recoverable in the same manner as any penalty may be recovered for the violation of any ordinance adopted under the provisions of the act entitled "An act to establish in this State boards of health and a bureau of vital statistics, and to define their respective powers and duties," approved March thirty-first, eighteen hundred and eighty-seven, and the supplements thereto. (Id. § 2.)

348c. Sale of Horse Flesh; Designation; Penalty for Violations of Section; How Recovered.—No person shall sell, or offer or expose for sale, or in anywise aid in selling, or offering or exposing for sale, any horse flesh unless every carcass, piece and parcel of horse flesh so sold, or offered or exposed for sale, shall have conspicuously attached thereto a label or tag not less than three inches wide and four inches long, on which shall be printed or stamped, in letters not less than one inch in height, the words "horse flesh;" and any person who shall violate any of the provisions of this section shall be liable to a penalty of one hundred dollars; every such penalty may be recovered, with costs, in a summary proceeding either in the name of the Board of Health of the State of New Jersey or in the name of the local board of health of the township, city, borough, town or other local municipal government within whose jurisdiction the penalty may have been incurred; it shall be the duty of any inspector appointed by the State Board of Health, and of any member of

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*Chapter 197, Laws of 1899, is partially superseded by Chapter 295, Laws of 1910, quoted in No. 343 et seq. See Board of Health of New Jersey v. Schwarz Bros. Co., 84 N. J. Law 500, 87 Atl. 147 (1913), affirmed in Schwarz Bros. Co. & Schwarz v. Board of Health of Jersey City, 84 N. J. Law 735, 87 Atl. 463 (1913).

any local board of health, and of any local health inspector, who shall know or be informed of any violation of any of the provisions of this act, to make, and any other person having such knowledge may make, under oath or affirmation, a complaint in writing against the person or persons, copartnership of persons or corporation incurring such penalty, setting forth the facts of such violation, which complaint may be on information and shall be filed with the clerk of any District Court or with any justice of the peace of the county within which the offense may have been committed, or with any police justice or recorder of the city or other municipality within which any local board of health bringing suit shall have jurisdiction; and the clerk of the District Court with whom any such complaint shall be filed, upon the order of the judge thereof, and the justice of the peace, police justice or recorder with whom any such complaint shall be filed, is hereby authorized and required to issue process in the nature of a summons when the complaint is on information, and in other cases either in the nature of a summons or warrant, which process, when in the nature of a warrant, shall be returnable forthwith, and, when in the nature of a summons, shall be returnable in not less than five nor more than fifteen days; on the return of such process, or at any time to which the trial shall have been adjourned, the said court, justice of the peace, police justice or recorder shall proceed to hear the testimony of witnesses and the proofs in the case, and to determine and give judgment in the matter without the filing of any pleadings, and, if judgment shall be given in favor of the plaintiff, execution shall forthwith issue against the goods and chattels and person of the defendant or defendants for the amount of the penalty, with costs; the officers to serve and execute any process or execution, issued as aforesaid, shall be the constables of the county, which service and execution, in the case of any process or execution issued out of a District Court, shall be made in the same manner and under the same liabilities as other processes and executions issued out of said court are served and executed; the officers to serve and execute any process or execution issued by a justice of the peace, police justice or recorder shall be the constables of the county, which service and execution shall be made in the same manner and under the same liabilities as other processes and executions issued out of the courts for the trial of small causes; the costs recoverable in any case prosecuted in a District Court shall be the same as in other cases prosecuted in said court, and in any case prosecuted before a justice of the peace, police justice or recorder they shall be the same as are allowed in cases prosecuted in the court for the trial of small causes; the penalty recovered in any such action shall be paid to the plaintiff therein and applied by such plaintiff to any purpose for which it may be legally authorized to expend money. (Id. § 3.)

348d. Sale of Horse Flesh; Recovery of Penalty for Violations of Provisions Relating to.—The judge of the District Court, justice of the peace, police justice or recorder before whom any case is prosecuted under the next preceding section of this act may adjourn the hearing thereof from time to time, not exceeding thirty days from the return day of the summons or warrant, and in any case where a warrant shall have been issued may require the defendant or defendants to enter into a bond with sufficient surety to the plaintiff in the penal sum of two hundred dollars, conditioned to appear at the time and place of the hearing or trial, and in default of such bond may commit the defendant or defendants to the common jail of the county, to be there detained until the hearing or trial of the complaint; and if the defendant or defendants shall fail to appear at the time and place to which the hearing or trial shall be so adjourned the bond shall be delivered to the plaintiff, who may sue thereon and apply the moneys recovered in such suit to any purpose for which it may be legally authorized to expend money. (Id. § 4.)

348e. Sale of Horse Flesh; Recovery of Penalty for Violations of Provisions Relating Thereto.—The conviction in prosecutions under the next preceding section of this act shall be in the following or similar form:

"State of New Jersey, county of ....., ss.—Be it remembered that on this ..... day of ..... A. D. 18...., at ....., in said county, C. D., defendant, was, by the District Court of the city of T. [or, by me, E. F., justice of the peace, police justice or recorder of the city of ..... or as the case may be], convicted of violating the ..... section of 'An act to provide for the regulation and control of the slaughter of horses and the sale of horse flesh for food,' approved ....., 1899, in a summary proceeding at the suit of the local board of health of the township of A. [or as the case may be]; and further, that the witnesses in said proceeding who testified for the plaintiff were [name them], and the witnesses who testified for the defendant were [name them]; therefore, the said court [or justice of the peace, police justice or recorder, as the case may be] doth hereby give judgment that the plaintiff recover of the defendant one hundred dollars penalty and ..... dollars costs of this proceeding."

The said conviction shall be signed by the judge of the District Court, justice of the peace, police justice or recorder before whom the conviction is had. (Id. § 5.)

349. Disposal of Dead or Slaughtered Animals When Burial Impossible; Disposal of Food, a Misdemeanor; Punishment.—When, by reason of the locality of an infected animal or herd within a city, or by reason of frozen ground or extreme heat, it is, in the judgment of the State Board of Health, or those acting under its authority, inexpedient or impossible to bury any such dead or slaughtered animals on the premises, the board may authorize any veterinarian acting for said board to slash the skin and cut the flesh of the same, and, either under his direct oversight, or that of a city board of health, or contractor for the disposal of dead carcasses, to give over the same to the use of a bone-boiling or glue or other establishment for the disposal of dead animals, but in no case shall the same, or any part thereof, be disposed of for food, and any such disposal of the same shall make the party or parties concerned guilty of a misdemeanor and punishable by a fine not to exceed one hundred dollars, or imprisonment in the county jail for a period not exceeding six months. (C. S. 1910, p. 77; L. 1886, c. 225, § 8.)

350. Definitions—Poultry—Receiving Station.—The terms used in this act shall be construed as follows:

(a) The term "poultry" shall include chickens, roosters, capons, hens, ducks, geese, turkeys, pigeon and guinea fowl;

(b) The term "receiving point or station" shall include railroad yards or sidings, express stations or other points where live poultry are received for immediate slaughter or any other purpose. (L. 1925, c. 80, § 1.)

351. Quarantines Established.—The Department of Agriculture may, in its discretion, establish quarantines of receiving points or stations, railroad yards or sidings, express stations or other points where live poultry are received for immediate slaughter or any other purpose. (Id. § 2.)

352. Proper Facilities Provided for Certain Purposes.—Proper facilities must be provided by the owner or owners of all receiving points or stations, railroad yards or sidings, express stations or other points where live poultry are received for immediate slaughter, slaughtering and distributing points or other premises where live poultry are kept for any purpose, for the handling of healthy poultry and the cleaning and disinfection of all infected or exposed equipment, and the disposition of all dead or diseased poultry. (Id. § 3.)

353. Cleanliness and Sanitation.—The receiving point or station, railroad yard or siding, express station or other point where live poultry are received for immediate slaughter or for any other purpose, including the equipment thereof, and in addition all cars, trucks, wagons or other vehicles, coops, crates, batteries and other containers, used at any time in the handling of live poultry, must be kept in a clean and sanitary condition. (Id. § 4.)

354. Subject to Rules and Regulations.—All receiving points or stations, railroad yards or sidings, except stations or other points where live poultry are received for immediate slaughter, slaughtering and distributing points or other premises where live poultry are kept for any purpose, shall be subject to such rules and regulations of the Department of Agriculture as may be necessary to prevent the spread of the contagious disease known as European fowl pest or any other contagious, infectious or communicable disease. (Id. § 5.)

355. Affected Poultry or Containers Not Admitted to State.—No live poultry affected with or directly exposed to the contagious disease known as European fowl pest or any other contagious, infectious or communicable disease of poultry, and no carcass or carcasses of such poultry which have died from any such disease, or the coops, crates or other containers used in the handling of such diseased or dead poultry, or manure or litter from such diseased poultry or containers shall be shipped, transported or moved from any State in the United States, the District of Columbia or from any province of the Dominion of Canada into or through the State of New Jersey. (Id. § 6.)

356. Movement Within State—Proviso—Disinfecting.—No live poultry affected with or directly exposed to the contagious disease known as European fowl pest or any other contagious, infectious or communicable disease of poultry, and no carcass or carcasses of such poultry which have died from any such disease, or the coops, crates or other containers used in the handling of such diseased or dead poultry, or manure or litter from such diseased poultry or containers, shall be shipped, transported or moved from points within the State of New Jersey except under a permit from the Chief of the Bureau of Animal Industry, of the Department of Agriculture. It is further provided, that all premises upon which poultry is found affected with or directly exposed to the contagious disease known as European fowl pest or any other contagious, infectious or communicable disease of poultry, also poultry houses, crates, coops, containers, troughs, or other accessories, must be thoroughly

cleaned and disinfected by the owner or owners thereof, and the owners must provide for the proper disposition of all dead or diseased poultry under the supervision or direction of a representative of the State Department of Agriculture, Bureau of Animal Industry, or its duly authorized agent. (Id. § 7.)

357. Exposed Poultry Killed.—Live poultry found upon inspection to be exposed to the contagious disease known as European fowl pest or any other contagious, infectious or communicable disease of poultry may be moved for immediate slaughter under a permit from the Chief of the Bureau of Animal Industry of the State Department of Agriculture, to such place or places as such permit shall designate and shall there be slaughtered under the direction or supervision of a representative of the State Department of Agriculture or its duly authorized agent. (Id. § 8.)

358. Co-operation With Federal Authorities.—The Department of Agriculture shall have power to co-operate with the Bureau of Animal Industry of the United States Department of Agriculture in any general national system which may be adopted by such bureau for the prevention of the spread of the contagious disease known as European fowl pest or any other contagious, infectious or communicable disease of poultry, and its eradication in the United States and its Territories. (Id. § 9.)

359. Rules and Regulations.—The Department of Agriculture is hereby authorized to make such rules and regulations as may be necessary for the proper enforcement of the provisions of this act. (Id. § 10.)

360. Penalty for Violations—Recovery of Penalty.—Any person who shall violate the provisions of this act shall be liable to a penalty of not less than one hundred dollars nor more than two hundred dollars for the first offense, and to a penalty of two hundred dollars for the second and each subsequent offense, or by imprisonment not exceeding one year, or both, in the discretion of the court. The penalty herein prescribed shall be sued for and recovered by and in the name of the State Board of Agriculture, and all penalties recovered hereunder, after payment of costs, shall be paid into the treasury of the State of New Jersey. (Id. § 11.)

361. Courts That Have Cognizance—Summary Hearing—Commitment.—Every District Court in any city or judicial district, and every justice of the peace in any county, or police justice or recorder in any city or municipality where the defendant may be apprehended or where he may reside, is hereby empowered upon complaint made under oath or affirmation that any person has violated any of the provisions of this act to issue a summons or warrant, directed to any constable, police officer or member of the State Constabulary, commanding him to cause the person so complained of to be arrested and brought before such District Court, justice of the peace, police justice or recorder, who shall thereupon summarily hear and determine the guilt or innocence of such person, without a jury, and upon conviction shall impose the penalty prescribed in this act, together with costs, and if any person shall fail to pay the penalty so imposed, together with all costs, the said District Court, justice of the peace, police justice or recorder shall commit him to the common jail of the county wherein such conviction is had for a period not exceeding ninety days or until the penalty and costs are paid. (Id. § 12.)

362. Summons—Service.—Such District Court, justice of the peace, police justice or recorder, upon receiving complaint in writing, duly verified, of a violation of the provisions of this act by a corporation, is hereby authorized and required to issue a summons directed to any constable, police officer or member of the State Constabulary, requiring such corporation to be and appear before such District Court, justice of the peace, police justice or recorder, on the day named therein, to answer said complaint, which summons may be served on the president, vice-president, secretary, superintendent or manager of such corporation, and thereafter all proceedings shall be the same as in cases of individuals, except that in case of conviction and imposition of the penalty prescribed, execution shall issue against the goods and chattels of such corporation. (Id. § 13.)

363. Arrest Without Warrant—Detention.—For violation of the provisions of this act done within the view of any constable, police officer or member of the State Constabulary, such officer is hereby authorized to arrest, without warrant, the offender and take him before a District Court, justice of the peace, police justice or recorder in the county wherein such arrest is made. The person so offending shall be detained until the officer making the arrest shall make oath or affirmation, which he shall do forthwith, specifying the provisions of the act alleged to have been violated, whereupon a warrant shall issue returnable forthwith, and such District Court, justice of the peace, police justice or recorder shall proceed summarily to hear or postpone the case as herein provided. (Id. § 14.)

364. Adjourning Hearing—Bond Given.—Any hearing to be held pursuant to this act may, for good cause shown, be adjourned for a period not exceeding thirty days from the return of the summons or warrant, but in such case it shall be

the duty of the District Court, justice of the peace, police justice or recorder to detain the defendant into custody unless he shall enter into bond to the State Board of Agriculture with at least one sufficient surety in double the amount of the penalty to be recovered, conditioned for his appearance on the day to which the hearing shall be adjourned, and thence from day to day until the cause is disposed of. (Id. § 15.)

NOTE: See also Nos. 24, 31-32c, 72 et seq., 293 et seq., 384 et seq., and 679 et seq.

Mill Products.

See No. 334 et seq.

Oysters, Etc.

364a. Size of Clams Taken From Waters of Atlantic County; Penalty for Sale.—It shall not be lawful for any person or persons, to sell, or offer for sale, by the bushel or otherwise, any small clams which may have been taken in the waters of the county of Atlantic, unless the said clams shall be of such a size that a bushel will not contain more than four hundred; and if any person or persons shall so sell, or offer for sale, any such clams, four hundred of which will not make a bushel, such person or persons shall for every such offense forfeit and pay ten dollars, to be recovered, with costs, by action of debt, by any person who shall prosecute for the same, in any court of record in this State having cognizance of that sum, one-half to the overseer of the poor for the use of the poor of the township in which the offense shall have been committed, and the other half to the person who shall sue for the same. (C. S. 1910, p. 1451; Rev. 1877, p. 138.)

364b. Taking and Sale of Hard Mud Clams; Size; Sale of Soft Shell Clams; Size; Penalty.—From and after the passage of this act it shall be unlawful for any person or persons to take from the natural beds beneath the waters of this State, by means of boats, tongs, dredges, rakes or otherwise, or to have in their possession or to buy or sell, or to offer to buy or sell, any clams commonly called hard mud clams, the shells of which will measure less than one inch in width or thickness across the back or hinge; except said clams be taken beneath the waters of Atlantic county, in which case they shall not measure less than one and one-quarter inches in length; or to buy or sell, or to offer to buy or sell, any clams commonly called hard sand clams, the shells of which will measure less than one inch in width or thickness across the back or hinge; except said clams be taken beneath the waters of Atlantic county, in which case they shall not measure less than one and one-quarter inches in length; or to buy or sell, or offer to buy or sell, any clams commonly called soft shell clams the shells of which will measure less than two inches in length; and every person so offending shall be deemed guilty of a misdemeanor, and on conviction thereof shall be punished by a fine of not less than twenty-five dollars nor more than one hundred dollars, at the discretion of the justice of the peace before whom the case is brought, and in default of payment of the fine, the justice shall commit him to the county jail for a period of not less than ten days nor more than thirty days; one moiety of said fine (after deducting therefrom the fees of the justice, and of the officer making the arrest, which fees shall be the same as are allowed for issuing and serving warrant and holding examination or hearing in other causes), to be paid by said justice imposing and collecting the fine to the overseer of the poor, for the use of the poor of the township in which the offense shall have been committed, and the other half or moiety to be paid to the warden, constable or person who made the complaint. (C. S. 1910, p. 1454 et seq.; L. 1899, c. 138, § 1, as amended L. 1900, c. 175, § 1.)

364c. Use of Food Fish for Oil or Fertilizer Unlawful.—It shall be unlawful for any person to have in his possession or to bring into this State any fish generally known as edible or food fish that has been caught and taken from the waters of the Delaware bay or river within the bounds aforesaid, for the purpose of extracting oil therefrom or of converting said fish into fertilizer; and it shall also be unlawful for any person to extract oil, or to convert, or in any manner assist in extracting oil from or in converting such fish into fertilizer. (C. S. 1910, p. 2540; L. 1907, c. 131, § 20.)

364d. Inspection of Oyster and Clam Beds by State Board of Health.—It shall be the duty of the Board of Health of the State of New Jersey to inspect, or cause to be inspected, as often as said board may deem necessary, the various oyster and clam beds and other places within the jurisdiction of or forming a part of the State of New Jersey from which oysters, clams or other shellfish are taken to be distributed or sold for use as food, for the purpose of ascertaining the sanitary conditions of such oyster and clam beds and other places, and the fitness of the oysters, clams or other shellfish in such places, or which are taken therefrom, for use as food. (Supp. 1924, p. 578; L. 1912, c. 24, § 1.)

364e. Beds Dangerous to Health Condemned—Sale Prohibited.—If the State Department of Health discovers that any oyster or clam bed, or other place from which oysters, clams or other shellfish are or may be taken is subject to pollution or to any other condition which may render the oysters, clams or other shellfish in such places or which may be taken therefrom, dangerous to health, it shall be the duty of said board to immediately condemn such oyster or clam bed or other place, and to prohibit the taking of oysters, clams or other shellfish from such places, and also to prohibit the sale, distribution, offering for sale or having in possession any such oysters, clams or other shellfish, without a permit to so take, sell, distribute, offer to sell, or have in possession, first obtained from the State Department of Health under such terms and regulations as they shall adopt. (Id. § 2, as amended L. 1918, c. 165, § 1.)

364f. Evidence of Use as Food.—For the purpose of this act, the distribution, sale, offering for sale, or having in possession with intent to distribute or sell any oysters, clams or other shellfish shall be prima facie evidence that such oysters, clams or other shellfish were intended for use as food. (Supp. 1924, p. 578; L. 1912, c. 24, § 3.)

364g. No Pollution Allowable.—No excremental or other polluting matter of any kind or character whatever shall be discharged into or placed in the waters, or placed or suffered to remain upon the banks of any stream or tributary thereof or body of water in which shellfish grow, or are or may be placed; provided, however, that nothing in this section shall apply to the discharge of effluents from sewage plants heretofore or hereafter installed in accordance with the requirements of law and the orders and regulations of the Department of Health of the State of New Jersey. (Id. § 4, as amended L. 1925, c. 32.)

364h. Rules, Regulations, Etc.—The State Board of Health shall have power to adopt, promulgate and enforce such rules and regulations as shall promote the purposes of this act and they shall also have power to make such specific orders regarding the growing and handling of shellfish and the disposal of polluting matter which may effect the purity of shellfish as they may deem necessary to enforce the provisions of this act. (Supp. 1924, p. 578 et seq.; L. 1912, c. 24, § 5.)

364i. Right of Entry by Authorities.—The members and employees of the State Board of Health shall have free access at all times to all oyster and clam beds, places of business and all other places where oysters, clams or other shellfish are grown, kept, stored, had in possession with intent to distribute or sell, or sold, and also to all streams, tributaries thereof and lands adjacent thereto, the waters draining from which may come in contact with clams, oysters or other shellfish, and shall have power to make such inspections of such places, and to take such samples of oysters, clams, other shellfish or other substances, as they may deem necessary to carry out the purposes of this act. (Id. § 6.)

364j. Not Hinder Officials.—No person shall obstruct or in anywise interfere with any chemist, bacteriologist, inspector or employee of the State Board of Health in the performance of any duty under this act. (Id. § 7.)

364k. Penalty for Certain Offenses Under This Act.—Any person who shall violate any of the provisions of sections four and seven of the act of which this act is amendatory and supplemental, or any of the rules and regulations made under authority contained therein, or who shall disobey any order made by the State Department of Health under the authority contained in section five of the act of which this act is amendatory and supplemental, shall be liable to a penalty of twenty-five dollars for the first offense, and to a penalty of fifty dollars for the second and each subsequent offense. Any person who shall gather any oysters, clams or other shellfish from any oyster or clam beds or other place which has been condemned by the State Department of Health in accordance with the provisions of section two of the act of which this act is amendatory and supplemental, or who shall distribute, sell, offer or expose for sale or have in his possession any oysters, clams or other shellfish taken from any oyster or clam bed or other place which has been condemned by said department, unless he shall first have secured a permit in writing to take oysters, clams or other shellfish from oyster beds, clam grounds or other places which have been condemned by the said Department of Health, or unless he shall have secured a permit from said department to distribute, sell, offer or expose for sale or have in possession oysters, clams or other shellfish which have been taken from said condemned waters, shall be liable to a penalty of one hundred dollars for the first offense, and for the second and each subsequent offense, shall, upon conviction, be committed to the common jail of the county wherein the conviction was had for a period of not less than thirty days. (Id. § 8, as amended L. 1927, c. 212.)

364l. On Complaint Process to Issue—Hearing—Imposition of Penalty—Detention of Defendant on Adjournment of Hearing.—Every District Court in any

city or judicial district, every justice of the peace in any county, and any recorder in any city, upon receiving complaint in writing duly verified, of the violation of any provision of this act, is hereby authorized and required to issue process at the suit of the Department of Health of the State of New Jersey, as plaintiff, which process shall be either in the nature of a summons or warrant against the person so charged, which process, when in the nature of a summons shall be returnable in not less than one nor more than fifteen days, and when in the nature of a warrant shall be returnable forthwith; such process shall state what provision of the law is alleged to have been violated and upon the return of such process or at any time to which the trial shall have been adjourned, the said court, justice of the peace or recorder shall proceed in a summary way to hear and determine the matter without the filing of any pleadings for the plaintiff or for the defendant, and upon conviction shall impose upon the defendant the penalty prescribed, together with the costs of prosecution, and if any person so convicted shall fail to forthwith pay the penalty imposed, together with the cost of prosecution, the said court, justice of the peace or recorder shall, except in a case of a corporation, cause the defendant to be committed to the county jail for a period not exceeding ninety days, or until such penalty and costs are paid. In case judgment shall be rendered against a body corporate execution shall be issued against the goods and chattels of such body corporate.

Any hearing to be held pursuant to this act may for good cause shown be adjourned from time to time, but in such case, except in the case where the first process was a summons, it shall be the duty of the judge of the District Court, justice of the peace or recorder to retain the defendant in safe custody until trial of said charge, unless he shall make a cash deposit or enter into bond to the Department of Health of the State of New Jersey with at least one sufficient surety, in double the amount of the penalty claimed, conditioned for his appearance on the day to which the hearing shall be adjourned, and such bond, if forfeited, may be prosecuted by the said Department of Health, and such cash deposit, if forfeited, shall be paid to said Department of Health. (Supp. 1924, p. 579 et seq.; L. 1912, c. 24, § 9, as amended L. 1921, c. 74, § 2.)

364m. Powers of Officers to Arrest—Court's Action.—Any constable, police officer or inspector of the Department of Health of the State of New Jersey or of a local board of health is hereby empowered to arrest, without warrant, any person who shall within the view of such constable, police officer or inspector, violate any of the provisions of this act, and take such person before a judge of a District Court, justice of the peace or recorder in the county where the offense was committed and said judge of the District Court, justice of the peace or recorder before whom such offender shall be taken is hereby authorized and required, after receiving from said constable, police officer or inspector of the Department of Health of the State of New Jersey or of a local board of health, a complaint in writing, duly verified, setting forth the nature of the offense for which such person was arrested, to proceed to hear and determine the matter and impose the penalty provided in section nine of this act. (Supp. 1924, p. 580; L. 1921, c. 74, § 3, as amended L. 1923, c. 46, § 1.)*

364n. Appeal May be Taken.—Any party to any proceeding instituted under this act may appeal from the judgment or sentence of the District Court, justice of the peace or recorder, to the Court of Common Pleas of the county in which the said proceeding was instituted, provided the party appealing shall file a notice of appeal with the District Court, justice of the peace or recorder within ten days after the date of said judgment, serve a written notice of appeal upon the opposite party within ten days after the date of such judgment, and deliver to the District Court, justice of the peace or police magistrate a bond to the opposite party in double the amount of the judgment appealed from, with at least one sufficient surety, conditioned to prosecute the said appeal and to stand to and abide by such further order or judgment as may be made against said party. (Supp. 1924, p. 580; L. 1921, c. 74, § 4.)

364o. Injunction to Restrain Violations.—Whenever any person shall violate any of the provisions of this act, it shall be lawful for the Board of Health of the State of New Jersey, either before or after the institution of proceedings for the collection of the penalty imposed by this act for such violation, to file a bill in the Court of Chancery in the name of the State, at the relation of said board, for an injunction to restrain such violation and for such other and further relief in the premises as the Court of Chancery shall deem proper, but the filing of such a bill, nor any of the proceedings thereon, shall not relieve any party of such proceedings from the penalty prescribed by this act for such violation. (Supp. 1924, p. 580 et seq.; L. 1912, c. 24, § 10.)

364p. Appropriation.—The sum of seven thousand and five hundred dollars is hereby appropriated for the use of the State Board of Health in enforcing the provisions of this act, and said board is authorized to employ such chemists, bacteriologists and inspectors, and to purchase such apparatus and supplies, including a

*This act supplements that quoted in No. 364d et seq.

suitable boat, as they may deem necessary; provided, that no part of the sum hereby appropriated shall become available until the amount thereof has been included in either a supplemental or regular appropriation bill. (Id. § 11.)

364q. Minimum Size of Oysters Taken.—No oysters which measure less than three inches from hinge to mouth shall at any time be taken from the water of Dennis creek or Bidwell's ditch, in Cape May county, in this State, or be in possession of any person after being so taken; provided, this prohibition shall not apply to spat or blisters adhering so closely as to be impossible to remove without destruction; but in no case shall this exception amount to more than ten per centum of any catch or cargo; and any person violating the provisions of this section shall be guilty of a misdemeanor. (Supp. 1924, p. 589; L. 1919, c. 107, § 3.)

Potable Water.

365. Sale of Potable Water.—No person or corporation now or hereafter engaged in the distribution or sale of water for potable purposes shall deliver to any consumer any water which, in the opinion of the Board of Health of the State of New Jersey, is polluted, contaminated or impure, or which is obtained from any source which, in the opinion of the Board of Health of the State of New Jersey, is or may become polluted, contaminated or impure, unless purification by filtration, or other means acceptable to the Board of Health of the State of New Jersey shall be accommplished before such water is distributed. (C. S. 1910, p. 5813 et seq.; L. 1909, c. 253, § 1.)

366. Dealers to Show Source of Supply of Water.—Every person or corporation intending to furnish water for potable purposes shall submit to the Board of Health of the State of New Jersey a detailed report containing all information regarding the source from which supply is to be derived, and until such source has been approved by the Board of Health of the State of New Jersey it shall be unlawful for said person or corporation to distribute such water to any consumer or consumers for potable purposes. (Id. § 2.)

367. Plans for Purification Plant to be Approved by State Board of Health.—Every person or corporation desiring to install a purification plant for the purification of water intended for potable use shall submit detailed plans and specifications for such purification plant to the Board of Health of the State of New Jersey, and such plant shall not be constructed or operated until the aforesaid plans and specifications shall have been approved by the Board of Health of the State of New Jersey. (Id. § 3.)

368. Supervision of Water Plants—Samples of Water—Penalty for Interfering—Penalty.—The Board of Health of the State of New Jersey shall have the supervision of the operation of all water plants throughout the State with respect to the purity of the supply of potable water furnished by any such water plant, and every person or corporation furnishing water for potable use shall comply with any and all orders of the Board of Health of the State of New Jersey relating to the purity of such waters. The Board of Health of the State of New Jersey shall cause to be collected (by its inspectors, or other authorized agents) as often as they shall deem necessary (but not less than four times a year), a sample or samples of the water supplied by each person or corporation furnishing water for potable use. Any person or corporation failing to allow the sample or samples for analysis to be collected as provided for in this section, or interfering with any member of the Board of Health of the State of New Jersey, or duly authorized agent or employee of said board, in the supervision of any water plant, shall be liable to a penalty of one hundred dollars, to be recovered in an action of debt by the Board of Health of the State of New Jersey. (Supp. 1924, p. 3818; L. 1909, c. 253, § 4, as amended L. 1915, c. 378.)

369. Investigations of Violations of Act.—The Board of Health of the State of New Jersey shall have the power, and it shall be the duty of said board to investigate, any and all violations of any of the provisions of this act. (C. S. 1910, p. 5814; L. 1909, c. 253, § 5.)

370. Injunction to Prohibit Violations of Act.—It shall be lawful for the Board of Health of the State of New Jersey to file a bill in the Court of Chancery, in the name of the State on the relation of said board, for an injunction to prohibit any violation of any of the provisions of this act other than the violations enumerated in section four hereof for which a penalty is provided, and every such action shall proceed in the Court of Chancery according to the rules and practice of bills filed in the name of the Attorney-General on the relation of individuals, and cases of emergency shall have precedence over other litigation pending at the time in the Court of Chancery, and may be heard on final hearing within such time and on such notice as the Chancellor shall direct. (Id. § 6.)

371. Construction of Words.—The word "person," as used in this act, shall be construed so as to mean any firm or copartnership, and the word "corporation" to include any municipal corporation. (Id. § 7.)

372. Changes in Operation of Furnishing Potable Water—Boards of Health Notified.—Whenever any person or corporation furnishing water for potable purposes finds it necessary, for any reason whatever, to make any change, temporary or permanent, in the operation of their plant, or in the manner of furnishing such water, which may in any way, either temporarily or permanently, tend to deteriorate the potable quality of the water so furnished, by pumping directly into reservoirs or supply mains untreated water, when the ordinary supply is subjected usually to some form of purification treatment, or by any other similar or dissimilar change in said supply, the tendency of which is to cause polluted waters to be forced into distributing pipes, the said person or corporation, before making such change, or, in case of emergency, requiring the immediate making of changes in the operation of the plant, or in the manner of furnishing such water, within six hours after making such change, shall notify the local board of health, and shall also notify, by telegraph or telephone, the State Board of Health, as to the character and estimated duration of such change. (Supp. 1924, p. 3818 et seq.; L. 1912, c. 317, § 1.)

373. Penalty.—Every person or corporation violating any of the provisions of this act, either by corporate action or the unauthorized act of an employee, shall be subject to a penalty of one hundred dollars, to be recovered in an action of debt by the local board of health, or, if there is no local board of health, then at the suit of the State Board of Health. (Id. § 2.)

374. Right of Action Not Lost.—Nothing herein contained shall operate to relieve such person or corporation from any suit or action on behalf of any person aggrieved by the action of such person or corporation in making any such change as is referred to in paragraph one of this act. (Id. § 3.)

NOTE: See also Nos. 33-34.

Vinegar.

375. Cider Vinegar; Standard of Purity.—No person shall distribute or sell, or offer for distribution or sale, or have in his possession with intent to distribute or sell, as cider vinegar or apple vinegar, any vinegar which is not produced exclusively by the alcoholic and subsequent acetous fermentations of the juice of apples, or is not laevorotatory, or the total amount of acid in one hundred cubic centimeters of which, calculated as acetic acid, is less than four grams, or which contains less than one and sixth-tenths grams of apple solids or less than twenty-five one-hundredths of one gram of apple ash in one hundred cubic centimeters. The water-soluble ash from one hundred cubic centimeters of the vinegar shall require not less than thirty cubic centimeters of deci-normal acid to neutralize its alkalinity, and shall contain not less than ten milligrams of phosphoric anhydride. (C. S. 1910, p. 2568 et seq.; L. 1907, c. 217, § 16.)

376. Grape Vinegar; Standard of Purity.—No person shall distribute or sell, or offer for distribution or sale, or have in his possession with intent to distribute or sell as wine vinegar or grape vinegar, any vinegar which is not produced exclusively by the alcoholic and subsequent acetous fermentations of the juice of the grape, or the total amount of acid in one hundred cubic centimeters of which, calculated as acetic acid, is less than four grams, or which contains less than one and four-tenths grams of grape solids, or less than thirteen one-hundredths of one gram of grape ash in one hundred cubic centimeters. (Id. § 17.)

377. Malt Vinegar; Standard of Purity.—No person shall distribute or sell or offer for distribution or sale, or have in his possession with intent to distribute or sell, as malt vinegar, any vinegar which is not made exclusively by the alcoholic and subsequent acetous fermentations, without distillation, of an infusion of barley, malt or cereals whose starch has been converted by malt, or is not dextrorotatory, or the total amount of acid in one hundred cubic centimeters of which, calculated as acetic acid, is less than four grams, or which contains less than two grams of solids or less than two-tenths of one gram of ash in one hundred cubic centimeters. The water-soluble ash from one hundred cubic centimeters of the vinegar shall require not less than four cubic centimeters of deci-normal acid to neutralize its alkalinity, and shall contain not less than nine milligrams of phosphoric anhydride. (Id. § 18.)

378. Sugar Vinegar, Etc.; Standard of Purity.—No person shall distribute or sell, or offer for distribution or sale, or have in his possession with intent to distribute or sell, as sugar vinegar, molasses vinegar or syrup vinegar, any vinegar which is not made exclusively by the alcoholic and subsequent acetous fermentations of solutions of a sugar, syrup, molasses or refiners' syrup, or the total amount of acid in one hundred cubic centimeters of which, calculated as acetic acid, is less than four grams. (Id. § 19.)

379. Glucose Vinegar; Standard of Purity.—No person shall distribute or sell, or offer for distribution or sale, or have in his possession with intent to distribute or sell, as glucose vinegar, any vinegar which is not made exclusively by the alcoholic and subsequent acetous fermentations of solutions of starch sugar, glucose or glucose syrup, or is not dextrorotatory, or the total amount of acid in one hundred cubic centimeters of which, calculated as acetic acid, is less than four grams. (Id. § 20.)

380. Spirit Vinegar, Etc.; Standard of Purity.—No person shall distribute or sell, or offer for distribution or sale, or have in his possession with intent to distribute or sell, as spirit vinegar, distilled vinegar or grain vinegar, any vinegar which is not made exclusively by the acetous fermentation of dilute distilled alcohol, or the total amount of acid in one hundred cubic centimeters of which, calculated as acetic acid, is less than four grams. (Id. § 21.)

381. Amount of Acetic Acid in Vinegar.—No person shall distribute or sell, or offer for distribution or sale, or have in his possession with intent to distribute or sell, any vinegar, the total amount of acid in one hundred cubic centimeters of which, calculated as acetic acid, is less than four grams, or which contains any mineral acid, any artificial coloring matter or any preservative. (Id. § 22.)

382. Name and Address of Manufacturer and Kind of Vinegar to be Imprinted on Barrels, Etc.—No person shall distribute or sell, or offer for distribution or sale, or have in his possession with intent to distribute or sell, any vinegar contained in any barrel, vessel, bottle or package, unless such barrel, vessel, bottle or package bears a label or imprint thereon in legible type, designating the name and address of the manufacturer of the vinegar and the name of the particular kind of vinegar contained therein. (Id. § 23.)

383. Penalties for Violations of Sections 1, 8, 11, 16-24.—Every person who shall violate any of the provisions of the first, eighth, eleventh, sixteenth, seventeenth, eighteenth, nineteenth, twentieth, twenty-first, twenty-second, twenty-third or twenty-fourth sections of this act shall be liable to a penalty of fifty dollars for the first offense, one hundred dollars for the second offense and two hundred dollars for the third and each subsequent offense. (Id. § 32.)

NOTE: See also No. 477.

Sanitation.

384. Buildings, Etc., Used for Production, Etc., of Food; Cleanliness, Lighting and Plumbing.—Every building, room, basement or cellar occupied or used as a bakery, confectionery, cannery, packing house, slaughterhouse, dairy, creamery, cheese factory, restaurant, hotel, grocery, meat market, or other place or apartment used for the production, manufacture, preparation, packing, storage, or distribution of food intended for sale or distribution, shall be properly lighted, drained, plumbed and ventilated, and the operations carried on in such building, room, basement or cellar shall be conducted in such a manner that the purity and wholesomeness of the food therein produced, manufactured, prepared, packed, stored, sold or distributed shall not be impaired. (C. S. 1910, p. 2577 et seq.; L. 1909, c. 231, § 1.)*

385. Walls, Floors, Furniture, Machinery, Etc., of Establishment for Production, Etc., of Food; Cleanliness; Protection of Food From Flies and Dirt; Removal of Refuse; Clothing of Employees, Etc.—The floors, sidewalls, ceilings, furniture, receptacles, implements and machinery of every establishment, or place where food intended for distribution or sale is produced, manufactured, prepared, packed, stored, sold or distributed, and all cars, trucks and vehicles used in the transportation of such food products shall at no time be kept in an unclean or unsanitary condition. All food intended for distribution or sale in the process of production, manufacture, preparation, packing, storing, sale, distribution or transportation shall be securely protected from flies, dust, dirt, and, so far as the same is possible, by the use of all reasonable means, from all other foreign or injurious contamination; the refuse, dirt and waste products subject to decomposition or fermentation incident to the production, manufacture, preparation, packing, storing, sale, distribution or transportation of food, shall be removed daily. The clothing worn by all operatives, employees, clerks and other persons while engaged in work in any of the places where food intended for sale or distribution is produced, manufactured, prepared, packed, stored, sold, distributed or transported shall be in a clean condition at all times. No person shall transport any such food in such a manner that the purity or wholesomeness thereof shall be in any wise impaired. (Id. § 2.)

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*Chapter 231, Laws of 1909, supplements chapter 217, Laws of 1907, quoted in No. 1 et seq.

386. Walls, Floors, Etc., of Bakeries, Etc.; Construction.—The sidewalls of every bakery, confectionery, creamery, cheese factory, hotel or restaurant kitchen shall be well plastered, wainscoted or ceiled with metal or lumber, and shall be oil-painted, or kept well lime-washed, and all interior wood work in every bakery, confectionery, creamery, cheese factory, hotel or restaurant kitchen shall be kept well oiled or painted with oil paint, and shall be kept washed clean with soap and water; and every building, room, basement or cellar occupied or used for the preparation, manufacture, packing, storage, sale or distribution of food intended for distribution or sale in which food is exposed shall have a tight floor made of cement, or of tile laid in cement, brick, wood, or other suitable material which can be flushed or washed clean with water. (Id. § 3.)

387. Toilet Facilities for and Personal Cleanliness of Employees of Establishments for Preparation of Food Products.—All operatives, employees, clerks, or other persons who handle the material from which food intended for distribution or sale is prepared, or the finished product, before beginning work and after visiting the toilet, shall wash their hands and arms thoroughly with clean water and soap, and every owner or manager of any place in which food is produced, manufactured, prepared, packed, stored, distributed or sold shall provide adequate facilities for such washing, and it shall be the duty of every such owner or manager to take all reasonable means to compel all operatives, employees, clerks, or other persons handling the material from which such food is prepared, or the finished product, to perform such washing as aforesaid. All toilets, lavatories and washrooms shall be separate and apart from the room or rooms where any processes incident to the production, manufacture, preparation, packing, storage, sale or distribution of such food are carried on, and such toilets, lavatories and washrooms shall, at all times, be kept in a clean and sanitary condition. (Id. § 4.)

388. Cuspidors for Use of Employees of Establishments for Preparation of Food Products.—Cuspidors for the use of operatives, employees, clerks, or other persons, shall be provided wherever necessary, and each cuspidor shall be emptied and thoroughly washed out daily with a disinfectant solution, and at least five ounces of such disinfectant solution shall be left in each cuspidor while the same is in use. No operative, employee, clerk, or other persons shall expectorate anywhere in any building, room, basement or cellar where the production, manufacture, preparation, packing, storage, sale or distribution of any food intended for sale or distribution is conducted, except in cuspidors provided for that purpose. (Id. § 5.)

389. Sleeping in Rooms Used for Preparation of Food Products Prohibited.—No person or persons shall be allowed to live or sleep in any room where food intended for sale or distribution is produced, manufactured, packed, distributed or sold. (Id. § 6.)

390. Employment of Persons With Communicable Diseases Prohibited.—No employer shall require, permit or allow any person to work, nor shall any person work in any building, room, basement, cellar or vehicle, occupied or used for the production, preparation, manufacture, packing, storage, sale, distribution or transportation of food intended for sale or distribution who is affected with any communicable disease. (Id. § 7.)

391. Prosecutions for Violations of Act; by Whom Conducted; Order to Abate Violations.—Whenever any person shall violate any of the provisions of this act, the State Board of Health or the local board of health having jurisdiction over the locality in which said violation occurred shall cause the person so violating this act to be prosecuted for the recovery of the penalty fixed in this act for said violation; provided, however, that in any such case the said State Board or local board may, in their discretion, instead of prosecuting such person for the recovery of such penalty, cause an order to be served on such person, commanding him to discontinue or abate such violation, or to make such improvements as may be necessary to abate such violation, within a reasonable time to be fixed by the said board, and stated in said order. Such order shall be in writing, and the person receiving such order shall have the right to be heard, either in person or by attorney by the board making such order. (Id. § 8.)

392. Penalties for Violations of Act; Recovery.—Any person who violates any of the provisions of this act, or refuses, neglects or fails to comply with any lawful order or requirement of the State Board of Health or of any local boards of health, duly made in writing, as provided in section nine of this act, shall be liable to a penalty not exceeding fifty dollars for the first offense, one hundred dollars for the second offense, and two hundred dollars for the third and each subsequent offense; such penalties to be recovered by an action of debt in the name of the State Board of Health or local board of health, as the case may be, in the manner prescribed for the recovery of penalties in the act to which this is a supplement. (Id. § 9.)

393. Separate Violations of Act.—When any person shall violate any of the provisions of this act, or shall refuse to comply with any orders duly made in writing, as provided for in section nine of this act, each day upon which such violation occurs shall be deemed to constitute a distinct and separate violation, and each day elapsing after the expiration of the time limit fixed for the compliance with the said order in writing shall be deemed to constitute a distinct and separate offense. (Id. § 10.)

394. Rules and Regulations for Enforcement of Act.—The State Board of Health shall make uniform rules and regulations for the carrying out of the provisions of this act, which said rules and regulations shall apply to all boards and persons entrusted with the enforcement of the provisions of this act. (Id. § 11.)

395. Abstract of Law Furnished to Those Concerned; Posting.—An abstract of this law shall be prepared and furnished upon request by the Board of Health to every corporation, firm or person in this State who is affected thereby, and every person engaged in the production, manufacture, preparation, packing, storing, distribution, or transportation of food intended for sale or distribution to whom a copy of such abstract is sent or delivered shall post such abstract of this law, and keep it posted, in plain view in such place that it can be easily read by the employees or operatives in coming in or going from the place where the aforesaid business of such person is conducted. (Id. § 12.)

396. Infectious Persons Not to Handle Food—Not Care Children or sick.—No person having any venereal disease in the infectious stage shall conduct himself in such a manner as to expose others to infection. No such person shall engage in the preparation, manufacture or handling of milk, milk products or other foodstuffs, nor shall such person be employed or permitted to work in any dairy, creamery, milk depot or other place where milk or its products are produced, manufactured or sold, or in any other place or establishment where foods are exposed or handled. No person having a venereal disease in the infectious stage shall engage in the nursing or care of children or of the sick, or in any other occupation of such a nature that his infection may be transmitted to others. (Supp. 1924, p. 1508 et seq.; L. 1918, c. 253, § 4.)

397. Penalty for Violations—Authority to Issue Process—Hearing and Judgment—Commitment—Additional Penalty—Jurisdiction—Officers to Serve—Costs.—Any person who violates any of the provisions of this act shall be punishable by a penalty of not less than ten nor more than one hundred dollars, to be sued for and recovered by the Director of Health of New Jersey or by the local health officer, local board of health, or other board or officer, exercising the powers of a local board of health, of any local jurisdiction within which such violations may occur.

Every District Court in any city or judicial district, and every justice of the peace in any county, and any police justice or recorder in any city, borough, township or village is hereby empowered, on oath or affirmation made according to law that any person or persons have or may have violated any provision of this act, to issue process at the suit of the Director of Health or the local health officer, local board of health, or other board or officer exercising the powers of a local board of health, of any local jurisdiction within which such violation shall have occurred, either in the nature of a summons or warrant, against the person or persons so charged, which process shall, when in the nature of a warrant, be returnable forthwith, and when in the nature of a summons, shall be returnable in not less than one nor more than ten entire days; such process shall state what provision of this act is alleged to have been violated, and on the return of such process, or at any time to which the trial shall have been adjourned, the said court, justice of the peace, police justice or recorder shall proceed to hear the testimony and to determine and give judgment in the matter without the filing of any pleadings; and the said court, justice of the peace, police justice or recorder shall, if judgment be rendered for the plaintiff, forthwith issue execution against the goods and chattels and person of the defendant or defendants, and said court, justice of the peace, police justice or recorder is further empowered to cause any such defendant who may refuse or neglect to forthwith pay the amount of the judgment rendered against him, and all costs and charges incident thereto, to be committed to the county jail for any period not exceeding ninety days; and said court, justice of the peace, police justice or recorder is further empowered in case any such defendant shall have been twice convicted, within the space of six months, of a violation of the same provision of this act, and due proof of the same is made, in addition to the payment of the prescribed penalty, to cause said defendant to be imprisoned in the county jail or county workhouse, with or without hard labor, for any number of days not exceeding one for each dollar of the penalty.

No District Court, justice of the peace, police justice or recorder shall have jurisdiction of any offenses against this act which shall take place outside of the

territorial jurisdiction of such District Court, justice of the peace, police justice or recorder, as such territorial jurisdiction is now or may hereafter be established by law.

The officers to serve and execute any process issued out of any court or by any magistrate under this act shall be the officers authorized by law to serve and execute process in said courts and before such magistrates and officers as aforesaid, including constables and police officers.

The cost taxable in any such proceedings shall be the same costs as are taxable in other proceedings in such courts or before such magistrates, as the case may be. (Id. § 10.)

398. Certain Health Inspectors Exempt From Wearing Uniform.—In cities of the seond class where a sanitary inspector or a food and drug inspector is required to wear a uniform, such person or persons shall be exempt provided he is a regularly licensed and registered physician and surgeon, and also holds a license as health officer granted by the New Jersey State Board of Health. (Supp. 1924, p. 1488; L. 1916, c. 255, § 1.)

398a. Regulation of Sanitary Conditions of Hotels and Eating Places.—Boards of health in any municipality of this State shall be authorized and empowered to pass, amend and repeal an ordinance or ordinances for the licensing and regulation of the sanitary conditions of all hotels, restaurants, cafes and other public eating-houses in such municipalities, and provide for the posting of ratings or scorecards setting forth the sanitary conditions of any such public eating-house, after inspection of the same, and to post the same in some conspicuous or public place in such public eating-house. (Supp. 1924, p. 1481 et seq.; L. 1918, c. 133, § 1.)

398b. Penalty.—Such boards of health are further empowered and authorized to fix and prescribe reasonable penalties for the violation of such ordinance or ordinances, not to exceed one hundred dollars for each offense. (Id. § 2.)

NOTE: See also Nos. 11, 12, 24, 36-37, 43 et seq., 51 et seq., 72 et seq. 101 et seq., 251 et seq., 343 et seq., 364d et seq., and 365 et seq.

PART III.

Special Drug Laws.

Abortifacients and Contraceptives.

399. Obscene or Indecent Publications; Sale, Etc., of Instruments, Etc., Designed to Prevent Conception or Procure Abortion.—Any person who, without just cause, shall utter or expose to the view of another, or have in his possession, with intent so to utter or expose to view, or to sell the same, any obscene or indecent book, pamphlet, picture, or other representation, however made; or any instrument, medicine, or other thing, designed or purporting to be designed for the prevention of conception, or the procuring of abortion, or who shall in any wise advertise, or aid, or assist in advertising the same, or in any manner, whether by recommendation against its use or otherwise, give or cause to be given, or aid in giving any information how or where any of the same may be had or seen, bought or sold, shall be guilty of a misdemeanor. (C. S. 1910, p. 1762 et seq.; L. 1898, c. 235, § 53.)

Caustic Acids or Caustic Alkalies.

400. Labeling Containers of Chemical Preparations for Household Use—"Poison" Displayed—Size of Type.—It shall be unlawful for any person or copartnership or corporation to give away, sell, barter, exchange, or offer for sale at wholesale or retail, within this State, any caustic acids or caustic alkalies, or preparations containing such acids or alkalies, intended for household use, without affixing to the bottle, box, vessel, sack, can, container, package or carton containing the same, a label printed or plainly written, containing the name of the article, the name and place of business of the manufacturer, seller, or distributor of such household acids, alkalies, or preparations thereof, and in addition the word "Poison" running parallel with the main body of the reading matter on said label or sticker, on a clear plain background of a distinctly contrasting color, in uncondensed gothic capital letters, the letters to be not less than 24-point size unless there is on said label no other type so large, in which event the type shall not be smaller than the largest type on the label,

and directions for treatment in case of accidental personal injury by any dangerous caustic or corrosive substance; with the name of two readily obtainable antidotes. (Supp. 1924, p. 1443 et seq.; L. 1924, c. 133, § 1.)

401. Definition—Enumeration of Chemicals.—The words "caustic or corrosive substances" shall, within the intent and purpose of this act, be construed to mean each and all of the acids, alkalies, and substances named below:

(a) Hydrochloric acid and any preparation containing free or chemically unneutralized hydrochloric acid (HCl) in a concentration of ten per centum or more;

(b) Sulphuric acid and any preparation containing free or chemically unneutralized sulphuric acid (H_2SO_4) in a concentration of ten per centum or more;

(c) Nitric acid or any preparation containing free or chemically unneutralized nitric acid (HNO_3) in a concentration of five per centum or more;

(d) Carbolic acid, otherwise known as phenol, and any preparation containing carbolic acid or phenol in a concentration of five per centum or more;

(e) Oxalic acid and any preparation containing free or chemically unneutralized oxalic acid ($H_2C_2O_4$) in a concentration of ten per centum or more;

(f) Any salt of oxalic acid and any preparation containing any such salt in a concentration of ten per centum or more;

(g) Acetic acid or any preparation containing a free or chemically unneutralized acetic acid ($HC_2H_3O_2$) in a concentration of twenty per centum or more;

(h) Hypochlorous acid, either free or combined, including calx chlorinata, bleaching powder, chloride of lime, chlorinated soda, and chlorinated potash, and any preparation containing any of the aforesaid substances so as to yield a concentration of ten per centum or more of available chlorine.

(i) Potassium hydroxide and any preparation containing free or chemically unneutralized potassium hydroxide (KOH), including caustic potash and Vienna paste, in a concentration of ten per centum or more;

(j) Sodium hydroxide and any preparation containing free or chemically unneutralized sodium hydroxide ($NaOH$), including caustic soda and lye, in a concentration of ten per centum or more;

(k) Silver nitrate, sometimes known as lunar caustic, and any preparation containing silver nitrate ($AGNO_3$) in a concentration of five per centum or more.

(l) Ammonia water and any preparation containing free or chemically uncombined ammonia (NH_3) including ammonium hydroxide and "Hartshorn," in a concentration of five per centum or more; and

(m) Any other alkali, acid, salt, or preparation thereof having caustic or corrosive properties equivalent to those of any of the alkali, acids, salts, and preparations named above. (Id. § 2.)

402. Penalty for Violation.—Any person or copartnership or corporation violating any of the provisions of this act shall be guilty of a misdemeanor, and upon conviction thereof, shall be subject to a fine of not exceeding one hundred dollars. (Id. § 3.)

Embalming Fluids.

403. Use of Embalming Fluid Regulated.—No person shall inject any fluid or any substance into any cavity or artery of the body of any person who has come to a sudden, violent, or untimely death, or of any person found dead, the manner of whose death is not known, until permission is obtained from the county physician or the coroner of the county in which the dead body lies. No person shall employ for the purpose of funeral directing or embalming any arsenical or other poisonous agent which may by its presence in the viscera prevent the detection of criminal usage of said poisonous agent before the death of the individual occurred; provided, however, that this provision shall not prohibit the use by any association incorporated under an act entitled "An act to provide for the incorporation of the Pathological and Anatomical Association for the Advancement of Medical Aid and Surgical Science," approved June fifteenth, one thousand nine hundred and seven, of any substance for the preservation of dead bodies which have legally come into the possession of said association. (L. 1927, c. 156, § 18.)

404. Penalty.—Any person, firm or corporation who shall violate any of the provisions of this act, except where a penalty is otherwise herein specifically provided, shall be guilty of a penalty of one hundred dollars for the first offense and for the second and each subsequent offense as hereinafter provided. (Id. § 16.)

405. Penalty, How Recoverable; Subsequent Convictions.—Any penalty incurred by violation of any provision of this act shall be sued for and recovered by and in the name of the Board of Embalmers and Funeral Directors of the State of New Jersey. . . . In case any person shall, after conviction of any violation of

this act, be again convicted of another violation of this act or of continuing the violation for which he was previously convicted, he shall be liable to a penalty of five hundred dollars for each such violation or continuation. . . . (Id. § 17.)

Insecticides.

406. Statement Furnished State Chemist by Dealers—Amount of Arsenic Stated—Statement on Packages.—Every manufacturer of insecticides within this State and every dealer in original packages of insecticides manufactured outside of the State shall each year before selling, offering or exposing for sale, submit to the chemist of the New Jersey Agricultural Experiment Station, who is called in this act the State Chemist, a written or printed statement, on blanks to be furnished by the State Chemist, setting forth the brand or brands of insecticides to be sold, offered or exposed for sale, the name of the manufacturer and the place of manufacturing, also, the minimum amount of total arsenic and maximum amount of water-soluble arsenic which the insecticide contains. If the insecticide does not contain arsenic, the professed standard must be stated. When the registration of any brand is made by the manufacturer or jobber, nothing in this section shall be construed as applying to retail dealers. The statement so furnished shall be printed and attached to each package sold by the retail dealer, and shall be considered a guarantee of the composition of the material. If the material is sold in bulk this guarantee must be attached to the container and a copy of the guarantee given upon a request from the purchaser. (Supp. 1924, p. 36 et seq.; L. 1912, c. 89, § 1.)

407. Certificate Issued by Chemist.—After filing the statement as required in section one, the State Chemist shall issue a certificate stating that the registration has been made, said certificate shall be furnished without charge, and when furnished shall authorize the party receiving the same to deal in the brand of insecticide mentioned. (Id. § 2.)

408. Definitions.—The term "insecticide," as used in this act shall include any substance or mixture of substances intended to be used for preventing, destroying, repelling or mitigating any insects which may infest vegetation. The term "Paris green" as used in this act shall include the product sold in commerce as Paris green and chemically known as the aceto-arsenite of copper. The term "lead arsenate" as used in this act shall include the product or products sold in commerce as lead arsenate, and consisting chemically of products derived from arsenic acid (H_3AsO_4) by replacing one or more hydrogen atoms by lead. (Id. § 3.)

409. Adulteration of Paris Green—Lead Arsenate—Other Insecticides.—For the purpose of this act an article shall be deemed to be adulterated—in case of Paris green: First, if it does not contain at least fifty per centum of arsenious oxide; second, if it contains arsenic in water-soluble forms equivalent to more than three and one-half per centum of arsenious oxide; third, if any substance has been mixed and packed with it so as to reduce or lower, or injuriously affect the quality or strength.

In case of lead arsenate: First, if it contains more than fifty per centum of water; second, if it contains total arsenic equivalent to less than twelve and one-half per centum arsenic oxide (As_2O_5); third, if it contains arsenic in water-soluble forms equivalent to more than seventy-five one-hundredths per centum of arsenic oxide (As_2O_5); fourth, if any substances have been mixed and packed with it so as to reduce, lower, or injuriously affect its quality or strength; provided, however, that extra water may be added to lead arsenate (as described in this paragraph) if the resulting mixture is labeled lead arsenate and water, the percentage of extra water being plainly and correctly stated on the label.

In case of insecticides other than Paris green and lead arsenate: First, if its strength or purity fall below the professed standard of quality under which it is sold; second, if any substance has been substituted wholly or in part for the article; third, if any valuable constituent of the article has been wholly or in part abstracted; fourth, if it is intended for use on vegetation and shall contain any substance or substances which although preventing, destroying, repelling or mitigating insects, shall be injurious to such vegetation when used. (Id. § 4.)

410. Analyses of Various Brands.—The State Chemist shall examine, or cause to be examined, the different brands of insecticides found in the State, and shall publish the analyses so made in the Experiment Station bulletins, together with such other additional information in relation to the character, composition and use thereof, as may seem to be of importance, and issue the same annually or more frequently if deemed advisable. (Id. § 5.)

411. Analysis in Evidence.—In the trial of any suit or action wherein is called in question the composition of any insecticide, a certificate signed by the State

Chemist, and duly attested, setting forth the analysis made by the State Chemist, or under his direction, under provisions of this act, shall be prima facie proof that the insecticide was of the consistency shown by his said analysis; and the said certificate of the State Chemist shall be admissible to evidence to the same extent as if it were his deposition taken in said action in the manner prescribed by law for taking depositions. (Id. § 6.)

412. Penalty.—Any person violating any of the provisions of this act shall be deemed guilty of a misdemeanor and, upon conviction thereof, shall be fined in the sum of fifty (50) dollars. All penalties imposed shall be paid into the treasury of the State. (Id. § 7.)

413. Expenses—Proviso.—The expenses incurred by the State Chemist in carrying out the provisions of this act shall be paid out of the State treasury under the authority of the Director of the New Jersey Agricultural Experiment Station; provided, such expenses do not exceed the sum of one thousand dollars in any year. (Id. § 8.)

Pharmacy, Poisons and Narcotics.

414. State Board of Pharmacy—Members—Terms—Vacancies—Oaths.—There shall be in this State a Board of Pharmacy, to be known as "The Board of Pharmacy of the State of New Jersey," which shall be composed of five members (who shall be registered pharmacists of and engaged in the practice of pharmacy in this State), to be appointed from time to time as hereinafter directed, by the Governor, from among the able and skilled pharmacists in New Jersey, who are not teachers or instructors in any college of pharmacy; each appointee must be a citizen of and have been registered as a pharmacist in New Jersey for at least five years prior to his appointment, and he must be actually engaged in conducting a pharmacy at the time of his appointment and continue in the practice of pharmacy during the term of his office; each of the appointed members to hold office for the term of five years, dating from the first day of June of the year of appointment, and their respective terms of office shall be so arranged that the term of not more than one member shall expire in any one year; if the office of any appointed member shall for any cause become vacant before the expiration of the term for which said member was appointed, the same shall be filled by the Governor for the unexpired term only; and "The New Jersey Pharmaceutical Association" may annually hereafter send to the Governor the names of three registered pharmacists engaged in the practice of pharmacy in this State, who shall have the qualifications required by this act, of whom the Governor may appoint one to fill any vacancy occurring in said board; provided, however, whereas a State Board of Pharmacy has heretofore been created in this State and is now, in fact, constituted and organized (in the manner hereinbefore prescribed), the members of said board heretofore created shall constitute and henceforth be deemed and taken to be "The Board of Pharmacy of the State of New Jersey," established by this act, that the appointed members of said board heretofore created shall respectively continue to hold office as members of the board established under this act, until the thirty-first day of May of the fifth year following each respective appointment, unless previously removed; each person so appointed shall, within thirty days after his appointment, take and subscribe an oath, before any officer authorized to administer oaths in this State, that he will faithfully discharge the duties prescribed by this act, and file the same within sixty days after his appointment, in the office of the Secretary of State, and in default thereof the Governor may fill such vacancy so caused by such failure to take and file said oath, in the manner prescribed by this act; the Governor may remove a member of said board upon proven charges of inefficiency, incompetency, immorality or professional misconduct. (Supp. 1924, p. 2683 et seq.; L. 1901, c. 51, § 1, as amended L. 1918, c. 19.)

415. Registration of Pharmacists Required; Apprentices.—From and after the passage of this act it shall not be lawful for any person not a registered pharmacist, within the meaning of this act, to conduct any store or pharmacy, or to employ any unregistered pharmacist or unregistered assistant for retailing, dispensing or compounding drugs, medicines or poisons, or for any one not a registered pharmacist or registered assistant to prepare and dispense physicians' prescriptions, or to retail or dispense medicines or poisons, except under the immediate supervision of a registered pharmacist; this section shall not be so construed as to prohibit the employment in pharmacies or drug stores, of apprentices, but such apprentices or other unregistered employees shall not be allowed to prepare, compound and dispense prescriptions, or to sell or furnish medicines, prescriptions or poisons, except in the presence of and under the personal supervision of a registered pharmacist of this State, who must either be the proprietor or owner of said store or pharmacy, or in the actual employ of such proprietor or owner; and for the viola-

tion of this section the owner, corporation, association, copartnership or person being the owner or proprietor of said store or pharmacy shall be equally liable as principal for said violation. (C. S. 1910, p. 3944; L. 1901, c. 51, § 2.)

416. Organization of Board—Examinations—Subjects of Examination—Records—Violations—Annual Report—Compensation—Use of Moneys Received.—The Board of Pharmacy shall organize by electing a president, a secretary, who may or may not be a member of the board, and a treasurer, and shall have power to make by-laws and rules for the proper fulfilment of its duties under this act; it shall meet on the third Thursday of January, April, July and October, in the city of Trenton, and at such other places and dates as may be required; it shall examine into all applications for registration, and grant certificates of registration to all persons whom it shall judge on examination to be properly qualified to practice pharmacy; such examination shall include the subjects of materia medica, pharmacy, chemistry and toxicology; it shall keep a book of registration in which shall be entered the names and places of business of all persons registered under this act, and shall also keep a book of record of all its official transactions, which books shall be legal evidence of such transactions in any court of law; it shall have power to examine into all cases of alleged violations of this act and shall cause the prosecution of all persons not complying therewith; and it shall annually report to the Governor and to "The New Jersey Pharmaceutical Association," on or before the first day of November in each year, upon the condition of pharmacy in the State, which report shall embrace a detailed statement of the receipts and expenditures of the board; the members of said board shall receive all traveling and other necessary expenses incurred in the performance of their duties. The secretary of said board shall receive compensation for his services, to be fixed by said board. Each member of said board, other than the secretary, shall receive in addition to the traveling and other necessary expenses incurred in the performance of his duties as a member of said board, the sum of ten dollars for each and every day upon which he is engaged upon the duties of said board. All moneys collected by said board from fees, penalties or otherwise, except such as shall be retained for traveling and other necessary expenses and for the compensation of the secretary and the per diem for members as above provided, shall be paid into the State treasury on or before the tenth day of the month following the month in which such moneys are collected; provided, however, that the said board shall be entitled to retain in addition to the sums above mentioned at least five hundred dollars in the treasury for the purpose of making investigations and preparing and holding examinations of applicants for license to practice the said profession; three members of the board shall constitute a quorum. (Supp. 1924, p. 2684 et seq.; L. 1901, c. 51, § 3, as amended L. 1920, c. 25.)

417. Requirements for Applicant for Registration—Proviso—Fees—Reciprocal Registration—Assistant Pharmacist—Proviso—Fee—Public Display of Certificate—Renewal Fee—Refusal to Renew Certificates—Hearing Given—Right of Appeal—Temporary Absence.—Every person applying for registration as a pharmacist under this act shall not be less than twenty-one years of age, shall be a citizen of the United States or shall have declared his or her intention so to become a citizen of the United States, be of good moral character, and not a chronic or persistent inebriate, and not addicted to the use of any narcotic drug, and shall have not less than four years' practical experience under a registered pharmacist in a pharmacy where prescriptions of medical practitioners are compounded and drugs are sold at retail; at least one year of such experience must have been had in a pharmacy in the United States within five years of the date of the application for registration as a pharmacist; provided, that a credit of not more than two years may be given in lieu of store experience for an equal time spent in a course of study and laboratory instruction in a school of pharmacy, and shall have been duly graduated from a school of pharmacy complying with the rules and regulations of the Board of Pharmacy of the State of New Jersey, and shall present to the board a certificate from the Commissioner of Education of this State showing that such applicant, before entering the school of pharmacy, had obtained an education equivalent to the standard established by the Board of Pharmacy of the State of New Jersey; the requirements of this section of the act relating to the certificate of preliminary education and to a graduation from a school of pharmacy shall not become operative until September first, one thousand nine hundred and twenty, nor shall the requirement of the act relating to the certificate of preliminary education apply to any applicant for registration as a pharmacist who was a graduate of an approved school of pharmacy prior to September first, one thousand nine hundred and twenty; and each applicant before examination shall pay to the secretary of the Board of Pharmacy a fee of ten dollars, and upon passing an examination satisfactory to said board he or she shall receive from said board a certificate of registration to practice pharmacy in this State; the board may waive the examination

of any applicant for registration who is registered in the District of Columbia or any State or Territory or insular possession of the United States, or any foreign country that has an equivalent standard for registration, and if the Board of Pharmacy of the District of Columbia, or such other State or Territory or insular possession of the United States, or such foreign country, shall grant to pharmacists or assistant pharmacists registered in accordance with this act, the same privilege to practice pharmacy in the District of Columbia, or in such other State or Territory or insular possession of the United States, or in such foreign country; such reciprocal registration of certificates shall be subject to such rules and regulations as may from time to time be made by the Board of Pharmacy of the State of New Jersey, and each applicant for such reciprocal registration shall pay a fee of twenty-five dollars for registration; every person applying for registration as an assistant pharmacist shall be not less than eighteen years of age, be of good moral character, and not a chronic or persistent inebriate, and not addicted to the use of any narcotic drug, and shall have successfully completed at least one year's study in a school of pharmacy complying with the rules and regulations of the Board of Pharmacy of the State of New Jersey, and shall present to the board a certificate from the Commissioner of Education of this State showing that such applicant before entering the school of pharmacy, had obtained an education equivalent to the standard established by the Board of Pharmacy of the State of New Jersey, and shall have had at least three years' practical experience under a registered pharmacist in a pharmacy where prescriptions of medical practitioners are compounded and drugs are sold at retail; provided, that a credit of not more than one year be given in lieu of store experience for an equal time spent in a course of study and laboratory instuction in a school of pharmacy complying with the rules and regulations of the Board of Pharmacy of the State of New Jersey; each applicant for such examination shall pay to the secretary of the Board of Pharmacy before examination a fee of ten dollars, and upon passing a satisfactory examination before said Board of Pharmacy he or she shall receive from said board a certificate of registration as an assistant pharmacist, which certificate shall entitle such person to all privileges of a registered pharmacist during the temporary absence of the registered pharmacist in charge, but shall not entitle such assistant to engage in business on his or her own account, or as a manager to conduct a pharmacy or drug store; every pharmacist owning, conducting or employed in any drug store or pharmacy, and every registered assistant pharmacist employed in any drug store or pharmacy, shall conspicuously display his or her certificate of registration and renewal certificate in said pharmacy or drug store, and any failure so to do shall be prima facie evidence that such person is not a registered pharmacist; every pharmacy in this State must have displayed on a sign, so as to be read from the outside, the name of the registered pharmacist who is in charge; and every registered pharmacist and every registered assistant pharmacist shall, once in two years, on such date as the Board of Pharmacy shall prescribe, pay to the Secretary of the Board of Registration renewal fee of one dollar, in return for which he or she shall receive a renewal certificate of registration; the board shall have the power to refuse an applicant for examination; or to suspend or to revoke the certificate of a registered pharmacist or a registered assistant pharmacist for any of the following causes: When the application or the registration is shown to have been obtained by misrepresentation or fraudulent means, or when the applicant or registrant is guilty of chronic or persistent inebriety or addiction to the use of narcotic drugs; two convictions of violation of chapter 197,* P. L. of 1908, entitled "A supplement to an act entitled 'An act for the punishment of crimes (Revision of 1898),' approved June fourteenth, one thousand eight hundred and ninety-eight," and the amendatory acts thereto, commonly known as the antinarcotic act, or two convictions of violations of the provisions of any act relating to the sale of liquors, or has impersonated an applicant for registration before said board, or the holder of the certificate has been found guilty of two or more violations of this or any other statute relating to the practice of pharmacy. Before any certificate shall be refused, suspended or revoked, the accused person shall be furnished with a copy of the complaint and given a hearing before the board. Any person whose certificate shall be refused, suspended, or revoked by the Board of Pharmacy shall have the right to appeal by certiorari to the Supreme Court for a review of such action.

The term temporary absence as used in this section shall mean an absence of not more than four hours in any one day of twenty-four hours. (Supp. 1924, p. 2685 et seq.; L. 1901, c. 51, § 4, as amended L. 1925, c. 174.)

418. Inspectors.—It shall be lawful for the said board to employ suitable persons as inspectors, whose duty it shall be to examine and inspect pharmacies, drug

*See No. 426 et seq.

stores, and all places wherein drugs, medicines and poisons are kept, sold and dispensed at retail for the purpose of detecting violations of the provisions of this act. (C. S. 1910, p. 3945; L. 1901, c. 51, § 5.)

419. Drugs Not Furnished Children, Etc.—Poisons Distinctly Marked—Name and Address of Seller—Inquiry Before Delivery—Record Kept.—It shall be unlawful for any person in this State to sell or deliver to any minor under twelve years of age or to any person known to be of unsound mind or under the influence of liquor, any of the substances enumerated in schedule A or schedule B appended to this section or any other poisonous drug, chemical, or medicinal substance.

It shall not be lawful for any person to sell at retail, give away, or dispense any of the poisons enumerated in "Schedule A," appended to this section or any other substance commonly recognized as a deadly poison, or any substance which, according to standard works on medicine, materia medica, or toxicology, is liable to be destructive of adult human life in doses of five grains or less, without distinctly labeling with a red label the package, bottle, box, can, or container or wrapper in which said poison is contained, with the name of the article in English and the word "poison" and the name and place of business of the dispenser, and before delivery shall be made, the seller must first learn by inquiry that the person to whom delivery is made is aware of the dangerous character of the poison and is a proper person to purchase such poison, and that it is desired for a legitimate purpose, and, before making such delivery, the seller shall record in a book kept solely for that purpose the date and hour, the name of the article, the quantity delivered, the use stated by the purchaser, and the name and address of the purchaser, which poison record shall be preserved for at least five years after the date of the last entry, and shall at all times be open to the inspection of any member or agent of the Board of Pharmacy of the State of New Jersey, or to any proper officer of the law.

Inquiry as to use and knowledge of drugs before delivery—package marked "poison." It shall be unlawful for any person to sell at retail or to dispense any of the poisons enumerated in "Schedule B" appended to this section, or any other substance recognized by standard authorities on medicine, materia medica, or toxicology as poisonous without first learning by inquiry that the person to whom delivery is made is aware of the poisonous character of the substance, and is a proper person to purchase such drugs, and that it is desired for a legitimate purpose, and before making such delivery the package, bottle, box, can or container or wrapper in which said poison is contained, must be labeled with a red label with the name of the article in English and the word "poison," and the name and place of business of the dispenser.

It shall be unlawful for any person to give a fictitious name or to make any false representations to the seller in order to procure any poison.

Poisons and antidotes. Printed schedules of all such named poisons, and the antidotes approved by the board shall be given to all registered pharmacists with the next following renewal of their certificate of registration and to any person applying for same. It shall be the duty of the Board of Pharmacy of the State of New Jersey, upon request, to furnish any dealer with a list of articles, preparations and compounds, the sale of which is prohibited or regulated by this act.

Schedule of antidotes. It shall be the duty of the Board of Pharmacy of the State of New Jersey to adopt a schedule of what in their judgment are the most suitable antidotes for the various poisons. After the board has adopted the schedule of antidotes as herein provided for, they shall have the same printed and shall forward by mail one copy to each person registered upon their books, and to every other person applying for same. The particular antidotes may be printed upon the labels of pharmacists as being those officially approved by the board. The board shall have power to revise and amend the schedule of antidotes recommended, from time to time, as to them may seem advisable; provided, that the provisions of this section of this act shall not apply to poisons sold or dispensed upon prescription directed by a registered practitioner of medicine, dentistry, or veterinary medicine, and all such prescriptions shall be filed by the dispenser and kept for a period of at least five years; provided, further, that the provisions of this section of this act shall not apply to sales of poisons made to registered practitioners of medicine, dentistry, pharmacy, or veterinary medicine, or to sales made by any manufacturer, wholesale dealer or licensed pharmacist to another manufacturer, wholesaler, licensed pharmacist, or to a manufacturer of proprietary medicine, or to a hospital, college, school, or scientific or public institution, or to the sale of such poisons as are used in the arts, agriculture, or in manufacturing, to persons known to be engaged in such pursuits and believed to be making the purchase for legitimate use, if such poisons are properly labeled with a red label, stating the name of the article in English, the word "poison" and the name and address of the seller.

Schedule "A."

Enumeration of poisons. Arsenic and the compounds and chemical derivatives of arsenic, corrosive sublimate and other poisonous compounds and derivatives of mercury, phosphorus and its poisonous compounds and derivatives, tartar emetic or other poisonous salts or compounds of antimony, hydrocyanic acid, prussic acid, potassium cyanide, other cyanides and prussiates or other poisonous compounds and derivatives of cyanogen, oil of bitter almonds containing hydrocyanic acid, opium and its preparations and derivatives, aconite and its preparations, belladonna and its preparations, calabar bean and its preparations, scopola and its preparations, strophanthus and its preparations, the following organic principles: aconitine, apomorphine, atropine, brucine, cantharidin, cocaine, codeine, coniine, digitalin, emetine, eucaine, gelsemine, homatropine, hyoscine, hyoscyamine, morphine, diacetyl-morphine or heroin, ethyl morphine or dionin, physostigmine or eserine, scopolamine, strophanthin, strychnine, veratrine or any of their chemical compounds, salts or derivatives, or any other drug, chemical substance, or preparation which, according to standard works on medicine, materia medica, or toxicology, is liable to be destructive to adult human life in doses of five grains or less; provided that the provisions of this act shall not be construed to apply to the sale, distribution, giving away, dispensing or possession of preparations or remedies which do not contain more than two grains of opium, or more than one-fourth of a grain of morphine, or more than one-eighth of a grain of heroin, or more than one grain of codein, or any salt or derivative of any of them in one fluid ounce, or, if a solid or semi-solid preparation, in one avoirdupois ounce; or to plasters, liniments, ointments, or other preparations which are prepared for external use only; provided, that such remedies and preparations are sold, distributed, given away or dispensed or possessed as medicines and not for the purpose of evading the intentions and provisions of this act.

Schedule "B."

Enumeration of drugless poisons. Cannabis, cantharides, Chinese blistering beetle, coculus indicus, colchicum, cotton root bark, digitalis, ergot, gelsemium, hellebore, henbane, ignatia amara, phytolacca, nux vomica, veratrum, stramonium, savin, chloroform, ether, wood or methyl alcohol, white precipitate, red precipitate, silver nitrate, copper salts, salts of barium, lead salts, oxalic acid, mineral acids, arsenical solutions, iodine, tincture of iodine, carbolic acid, creosote, croton oil, oils of pennyroyal, rue, savin, or tansy or any other drug, chemical, substance, or preparation which according to standard works on medicine, materia medica, or toxicology, while not considered as toxic in doses of five grains or less is, nevertheless, liable to be destructive of adult human life in doses of sixty grains or less. (Supp. 1924, p. 2687 et seq.; L. 1901, c. 51, § 6, as amended L. 1919, c. 248.)

420. Penalty for Violations; Adulteration or Fraud.—Any person or persons who shall establish or conduct any pharmacy or drug store for the retailing, dispensing or compounding of drugs, medicines, physicians' prescriptions or poisons, not being a duly registered pharmacist of this State, or shall be engaged as clerk or assistant or apprentice in any store or pharmacy, and retailing, dispensing or compounding drugs, medicines or physicians' prescriptions, not having first obtained a certificate of registration as a pharmacist or registered assistant in accordance with the provisions of this act; or, being a duly registered pharmacist or registered assistant or an appprentice, shall violate any of the provisions of this act, or shall adulterate or sell any adulterated drug, medicine or chemical; or any person who shall procure or attempt to procure registration for himself or herself or any other person under this act, by making or causing to be made any false representations, or shall fraudulently represent himself or herself to be registered in accordance with this act, or any person who shall violate any of the provisions of this act, shall forfeit and pay for each and every offense the sum of one hundred dollars (together with costs) as a penalty therefor; to be sued for and recovered by and in the name of "The Board of Pharmacy of the State of New Jersey." (C. S. 1910, p. 3946 et seq.; L. 1901, c. 51, § 7.)

421. Jurisdiction and Practice.—Any justice of the peace in the county, or any District Court in the city, where the offense shall have been committed, under any section of this act, shall have authority and jurisdiction to hear and determine said action, and to render judgment therein, with costs, according to the laws and practice governing said courts in similar actions; and execution may thereupon be issued against the goods and chattels of said defendant, and in default of sufficient goods and chattels whereof to make said judgment and costs then against the body of said defendant as in summary actions. (Id. § 8.)

422. **Professional Pursuits of Physicians; Sale of Patent Medicines; Ownership of Pharmacy.**—Nothing in this act shall be so construed to apply to or in any manner interfere with the strictly professional pursuits of any physician, nor with the making and vending of non-poisonous patent or proprietary medicines, nor with the sale of simple non-poisonous domestic remedies by retail dealers in rural districts, nor with the ownership of any pharmacy or store, in whole or in part, by any person not a registered pharmacist; provided, such pharmacy or store be at all times in charge of a registered pharmacist; and any person holding any certificate of registration granted under any former act, with the renewal certificate thereof, shall be considered a registered pharmacist within the meaning of this act. (Id. § 9.)

423. **Payment of Penalty.**—Each and every penalty imposed under the provisions of this act shall be paid to the Treasurer of "The Board of Pharmacy of the State of New Jersey." (Id. § 10.)

424. **Practice of Pharmacy by Registered or Licensed Physician.**—From and after the passage of this act it shall and may be lawful for any duly registered or licensed physician, authorized by the laws of this State to practice medicine and surgery therein, and located as a practitioner of medicine and surgery in any city, town, borough or village of this State, not exceeding one thousand in population, to engage in the practice of pharmacy in such city, town, borough, or village, and he shall be deemed and taken to be and shall possess all the rights, powers and privileges of a registered pharmacist, subject, however, to all the regulations and restrictions imposed by law upon a registered pharmacist. (C. S. 1910, p. 3947; L. 1893, c. 159, § 1.)

425. **Sale of Poisons Without Labels.**—Any person who shall sell, either at wholesale or retail, any of the drugs usually denominated poisons, without distinctly labeling each and every box or package thereof with the name of the drug therein, and the word "poison," together with the name and place of business of the seller, shall be guilty of a misdemeanor. (C. S. 1910, p. 1776; L. 1898, c. 235, § 96.)

426. **Sale, Etc., of Certain Narcotics Without Prescription—Penalty.**—It shall be unlawful for any person, firm or corporation to sell, furnish, give away or deliver any cocaine, beta eucaine, alpha eucaine, tropococaine, novocaine, stovaine, alypin, or any salt, derivative or chemical compound of any of these substances, or any preparation, admixture or compound containing any of these substances or their salts, derivatives or chemical compounds, except upon the original written order or prescription of a duly licensed practitioner of medicine, dentistry or veterinary medicine, which order or prescription, if ordered by a practitioner of veterinary medicine, shall state the kind of animal for which ordered. Such written order or prescription must be signed by the prescriber.

It shall be unlawful for any person, firm or corporation to sell, furnish, give away or deliver any chloral hydrate, opium, morphine, heroin, codeine, ethylmorphine (dionin), diacetyl morphine (heroin), or any salt, derivative or chemical compound of any of the foregoing substances, or any preparation, admixture or compound containing any of the foregoing substances or their salts, derivatives or chemical compounds, except upon the original written order or prescription of a duly licensed practitioner of medicine, dentistry or veterinary medicine, which order or prescription, if ordered by a practitioner of veterinary medicine, shall state the kind of animal for which ordered. Such written order or prescription must be dated and signed by the prescriber, and he must write thereon the name and the address of the patient, and it may be again compounded or dispensed only if each fluid ounce, if a liquid, or each avoirdupois ounce, if solid, contains not more than two (2) grains of opium, or not more than one-quarter (¼) grain of morphine, or not more than one (1) grain of codeine, or not more than one-eighth (⅛) grain of diacetyl morphine (heroin), or not more than forty (40) grains of chloral hydrate, or not more than one of any salt or derivative of any drug herein named; provided, that the above provision shall not apply to preparations sold or dispensed without a physician's prescription that contain not more than two (2) grains of opium, or not more than one-quarter (¼) grain of morphine, or one (1) grain of codeine, or one-eighth (⅛) grain of diacetyl morphine in one fluid ounce, if a liquid, or if a solid preparation, in one avoirdupois ounce, and not more than one of any salt or derivative of any drug herein named; provided, also that the above provisions shall not apply to liniments, ointments or plasters containing opium and plainly marked "for external use."

Any person violating any provision of this section shall be guilty of a high misdemeanor, and punished by a fine not exceeding ten thousand dollars, or imprisonment at hard labor not exceeding thirty years, or both. (Supp. 1924, p. 853 et seq.; L. 1908, c. 197, § 1, as amended L. 1924, c. 107.)

427. **Filling Prescriptions for Certain Narcotics More Than Once; Failure to Retain and Preserve or Take Copies of Such Prescriptions.**—Any person who shall fill a prescription for any of the substances, admixtures, or remedies mentioned in the first section hereof, more than once, or who shall fail to retain and preserve

any such prescription after dispensing the same, for at least five years, or who shall take or permit another to take a copy of any such prescription, shall be guilty of a misdemeanor. (C. S. 1910, p. 1776; L. 1908, c. 197, § 2.)

428. Bringing Into State Certain Narcotics Wrongfully Obtained in Other States.—Any person who shall bring into this State, or have in his possession any of the substances, admixtures or remedies mentioned in the first section hereof, which may have been purchased or otherwise obtained in another State contrary of the law of that State shall be guilty of a misdemeanor. (Id. § 3.)

429. Legitimate Use of Drugs—What Constitutes Violation.—It shall not be unlawful for any duly licensed practitioner of medicine, dentistry or veterinary medicine to use, sell or give away any of the substances, salts, derivatives or admixtures or compounds mentioned in section one of this act, for a legitimate or necessary purpose in the practice of his profession. Any licensed practitioner of medicine, dentistry or veterinary medicine who shall give to any person a prescription or order for, or sell or give away any of the substances, salts, derivatives, admixtures or compounds mentioned in section one of this act, except for a legitimate and necessary purpose in the practice of his profession shall be guilty of a high misdemeanor. (Supp. 1924, p. 854 et seq.; L. 1908, c. 197, § 4, as amended, L. 1924, c. 107.)

430. As to Wholesale—"Poison" Label—Record of Sales Kept—Unlawful Handling of Drugs—Penalty.—It shall not be unlawful for any manufacturing chemist, wholesale druggist regularly engaged in the business of selling drugs, or any registered pharmacist, to sell, supply or deliver any of the substances, salts, derivatives, admixtures or compounds mentioned in section one of this act upon the written order of another manufacturing chemist, wholesaler regularly engaged in selling drugs, or of a registered pharmacist, licensed practitioner of medicine, dentistry or veterinary medicine, or to sell to hospitals, colleges, scientific or public institutions, or to the sale of opium and the preparations thereof, or its alkaloids, their salts and derivatives, upon the written order of a known manufacturer or of proprietary medicine for the purpose of such manufacture; provided, that such manufacturing chemist, wholesaler or registered pharmacists shall affix or cause to be affixed to each bottle, box or vessel or package containing any such article sold, and upon the outer wrapper of the package as originally put up, a red label distinctly displaying the name and quantity of the article sold, and the word "poison" with the name and place of business of the seller, and before making delivery of any such article make or cause to be made, in a book kept for that purpose, an entry of the sale thereof, stating the date of the sale, quantity, name and form in which sold, the name and address of the person purchasing the same, and by whom the same is made, and the said book shall be always open for inspection by the proper authorities, and shall be preserved for at least five years after the date of the last entry made therein.

It shall be unlawful for any person who is not a licensed practitioner of medicine, or dentistry or veterinary medicine, or a manufacturing chemist, or a wholesale dealer regularly engaged in selling drugs, or a registered pharmacist, or a common carrier when engaged in the legitimate discharge of such public service, to bring into this State or have in possession any of the substances, salts, derivatives, admixtures or compounds mentioned in section one of this act, except by reason of a prescription of a registered practitioner of medicine, dentistry or veterinary medicine, or upon the written order of a registered pharmacist, manufacturing chemist, wholesale dealer in drugs; provided, the possession of opium and preparation thereof or the alkaloids or derivatives of opium by a known manufacturer of proprietary or patent medicines for the purpose of such manufacture shall not be unlawful. Any person violating any of the provisions of this section shall be guilty of a high misdemeanor. (Id. § 5.)

431. Taking to or From Inmates Prohibited Articles a Misdemeanor.—Any person who conveys into or takes from any prison, reformatory, penitentiary, county, jail, workhouse, house of correction, jail, hospital for the insane, village for epileptics, institution or colony for the feeble-minded, or upon or from any land or lands set apart or authorized by law for use in connection with any such prison, reformatory, penitentiary, county jail, workhouse, house of correction, jail, hospital for the insane, village for epileptics, institution or colony for the feeble-minded, or other place of detention, or of any person convicted of crime or other offense, or of any person committed or admitted to a hospital for the insane, village for epileptics, or institution or colony for the feeble-minded, or who personally, or through any other person or persons, gives, sells, furnishes or otherwise delivers to any prisoner, inmate or patient in custody, any drug, liquor, knife, dagger, pistol, explosive matter or any article prohibited by law or by the rules of the agent, warden, superintendent, keeper, sheriff, board of managers, chief executive officer, or other person or officer having charge or control thereof, shall be guilty of a misdemeanor. (Supp. 1924, p. 840; L. 1919, c. 196, § 2.)

432. Liquor and Matches.—No employee or other person shall attempt to enter any explosives plant with matches or other flame-producing devices, except electric incandescent flash lights; or with liquor or narcotics in his or her possession or control, or while under the influence of liquor or narcotics, or to partake of intoxicants or narcotics while within the plant, under penalty of misdemeanor. . . . (L. 1925, c. 87, § 23.)

NOTE: See also Nos. 37b-37c and 556 et seq.

Serum, Antitoxin, Tuberculin, Vaccine, Etc.

433. Sale or Giving of Certain Serums Under License—Revocation of License.—It shall be unlawful for any person, firm or corporation to sell, give away, or distribute to any person, firm or corporation within the State of New Jersey any tuberculin, mallein, serum, virus, vaccine, bacterin or analogous product for diagnostic or therapeutic purposes for animals without license or written permission therefor being granted by the Chief of the Bureau of Animal Industry of the Department of Agriculture. The Chief of the Bureau of Animal Industry is authorized to make rules and regulations for the enforcement of the provisions of this act and failure to comply with the same shall be sufficient cause for him to revoke the license granted or permission given. (Supp. 1924, p. 19; L. 1918, c. 250, § 1, as amended L. 1926, c. 164.)

434. Sales, Etc., of Tuberculin, Etc., Reported—What Report to Contain.—Each sale, donation or distribution of tuberculin or mallein and each injection or test made with tuberculin or mallein within this State shall be reported in writing to the Chief of the Bureau of Animal Industry at the State House in the city of Trenton within seven days immediately after such sale, donation, distribution or test. Such report shall be signed by the person making the same, and shall give the name of the purchaser or receiver of said tuberculin or mallein, the amount, the date of sale, donation or distribution, the name and address of the owner or owners of the animals to be injected or tested, the locality where such test or injection has been made, the description of the animal or animals tested and a complete record of the test in detail upon blanks supplied by the Department of Agriculture. (Supp. 1924, p. 19 et seq.; L. 1918, c. 250, § 2.)

435. Permission to Administer Necessary.—It shall be unlawful for any person to inject or otherwise administer to any domestic animal any virus or other disease producing substance, or substance containing pathogenic or disease producing germs of a kind that is virulent for domestic animals, unless specific permission for the purpose shall be granted by the Chief of the Bureau of Animal Industry, in writing, upon blanks provided by the Department of Agriculture for that purpose. (Id. § 3.)

436. Penalty for Violations.—Any person or persons violating any of the provisions of this act shall be subject to a penalty of one hundred dollars for each offense, to be recovered by the State Board of Agriculture in an action of debt. (Id. § 4, as amended L. 1926, c. 164.)

437. Sale and Use of Impure Vaccine Virus, Antitoxin, Etc., Prohibited; Penalty.—If the Board of Health of the State of New Jersey shall ascertain any vaccine virus, anti-toxin or other animal product sold, or offered for sale, or held for sale or use within this State for prophylactic or remedial purposes, to be dangerous to human health, or so impure or inert as to be inefficacious in rendering immune or less susceptible to disease any person in whom such product may be used, it shall be lawful for the said Board of Health of the State of New Jersey to prohibit the further sale or use within this State of any vaccine virus, anti-toxin or other animal product, as aforesaid, manufactured or produced by the party who shall have manufactured or produced such dangerous, inert, impure or inefficacious product; any person who shall, after such prohibition, and with knowledge thereof, sell, or offer for sale, or use, or offer for use within this State any such prohibited product shall be liable to a penalty of one hundred dollars. (C. S. 1910, p. 2725 et seq.; L. 1895, c. 260, § 4.)

438. Penalties for Violations of Preceding Sections; Recovery; Procedure.—Any penalty incurred under any of the provisions of this act may be recovered, with costs, in a summary proceeding, either in the name of the Board of Health of the State of New Jersey or in the name of the local board of health of the township, city, borough, town or other local municipal government within whose jurisdiction the penalty may have been incurred; it shall be the duty of any health inspector, registrar of vital statistics or member of any local board of health, who shall know or be informed of any violation of this act, whereby any penalty may have been incurred, to make, and any other person having such knowledge may make, under oath

or affirmation, a complaint against the person incurring such penalty, setting forth the facts of such violation, which complaint shall be filed with the clerk of the District Court or any justice of the peace of the county within which the offense may have been committed, or with any police justice or record of the township, city or municipality within which any local board bringing suit shall have jurisdiction, and the clerk of the District Court, the justice of the peace, police justice or recorder with whom any complaint shall be filed as aforesaid, setting forth facts sufficient to show that any penalty prescribed by this act has been incurred, is hereby authorized and required to issue process, either in the nature of a summons or warrant, which process, when in the nature of a warrant, shall be returnable forthwith, and, when in the nature of a summons, shall be returnable in not less than five nor more than fifteen days; on the return of such process, or at any time to which the trial shall have been adjourned, the said court, justice of the peace, police justice or recorder shall proceed to hear the testimony and to determine and give judgment in the matter without the filing of any pleadings, and, if judgment shall be given in favor of the plaintiff, execution shall be forthwith issued against the goods and chattels of the defendant for the amount of the penalty, with costs; the officers to serve and execute any process or execution issued as aforesaid shall be the constables of the county, which service and execution, in the case of any execution issued out of a District Court, shall be made in the same manner and under the same liabilities as other executions issued out of said court are served and executed; the officers to serve and execute any process or execution issued by a justice of the peace, police justice or recorder shall be the constables of the county, which service and execution shall be made in the same manner and under the same liabilities as prescribed in cases of the service and execution of process and executions by the act entitled "An act constituting courts for the trial of small cases," and the supplements thereto; all moneys recovered in any such proceeding shall be paid to the plaintiff therein and applied by such plaintiff to any purpose for which it may be legally authorized to expend money. (Id. § 5, as amended L. 1898, c. 101.)

439. Diphtheria Antitoxin Supplied to Indigent Patients.—The State Board of Health shall enter into a contract with some responsible manufacturer to supply free of charge, upon the certificate of the attending physician to such indigent patients as shall require the same such anti-toxine as may be necessary for their proper relief, at a cost of not exceeding four thousand dollars per annum. (C. S. 1910, p. 2661; L. 1904, c. 232, § 1.)

440. Appropriation to Carry Out Provisions of Preceding Section.—For the purposes aforesaid the State Board of Health is hereby authorized to expend, and the State Treasurer to pay out on warrants duly approved by the Comptroller on the order of said board, such sums of money as may be necessary to carry out the provisions of this act, not to exceed seven thousand dollars, for permanent equipment, and six thousand dollars for annual expenditures. (Id. § 2.)

441. Sale of Diphtheria Anti-toxin Manufactured by Boards.—Where the board of health of any city in this State shall have established or shall hereafter establish a plant for the production of diphtheria anti-toxin serum, and shall be engaged in the production of diphtheria anti-toxin serum, that such board of health shall have power from time to time and at such price as they shall determine, to sell to any other municipality or to any person desiring to purchase the same, such surplus diphtheria anti-toxin serum as they may have and which is not needed in the city in which such health board is located. (C. S. 1910, p. 2681; L. 1895, c. 180, § 1.)

442. Laboratory Supplies Furnished by State Board of Health.—The Board of Health of the State of New Jersey may prepare, or cause to be prepared, in the State Laboratory of Hygiene such culture media, stains, solutions, cultures, cultural products, and other laboratory supplies as may be useful to the county or municipal laboratories, physicians or pharmacists in this State. Such substances so prepared may be sold at prices to be fixed by the board to county and municipal laboratories, physicians and pharmacists in this State, under such rules and regulations as may from time to time be made by said board. (Supp. 1924, p. 1472; L. 1914, c. 13, § 1.)

443. Disposition of Receipts.—All moneys received from the sale of such laboratory supplies shall be paid by the Board of Health of the State of New Jersey to the Treasurer of the State and shall be added to the amount appropriated for the support of the bacteriological laboratory, and shall be expended by said board for the maintenance of said laboratory. (Id. § 2.)

444. Study Diseases in Animals, Insects and Plants—Duties as to Diseases —Penalty.—The Board shall have power to determine the existence of contagious and infectious diseases in animals or poultry, of dangerous plant diseases and of dangerously injurious insects and to declare the same to be epidemic; to establish and enforce general or local quarantine; to provide and distribute, with or without charge as they may determine, serums for the prevention and cure of such diseases

in animals or poultry, as in their judgment are capable of prevention or cure by such treatment. These powers and duties shall be in addition to and not in limitation of any similar powers or duties hereinbefore conferred upon said board by the specific provisions of any of the statutes referred to in this act, but shall be in extension thereof. All powers and duties conferred upon said board with reference to any specific contagious or infectious disease of animals, or poultry, or to any specific dangerous plant disease or to any specifically dangerously injurious insect, the said board shall likewise have and perform with reference to any other contagious or infectious disease of animals or poultry, or any other dangerous plant disease or any other dangerously injurious insect not specifically designated or referred to in said statute but determined by said board to be such contagious or infectious disease of animals or poultry or such dangerous plant disease or such dangerously injurious insect under and by virtue of the jurisdiction hereby conferred. Any person who shall violate or refuse or neglect to comply with the requirements of any order of the State Board of Agriculture, or its duly constituted agent, made pursuant to the provisions of this section, shall be liable to a penalty of not less than fifty nor more than one hundred dollars for each violation, refusal or neglect to comply to be sued for and recovered by the Secretary of the State Board of Agriculture in the name of the State of New Jersey. The proceeds of such action, after the payment of costs, shall be paid into the treasury of the State. (Supp. 1924, p. 11 et seq.; L. 1916, c. 268, § 15, as amended L. 1925, c. 81, § 1.)

445. Courts Having Jurisdiction—Summons—Hearing—Penalty. — Every District Court in any city or judicial district and every justice of the peace in any county, and every police justice or recorder in any city or municipality where the defendant may be apprehended or where he may reside, is hereby empowered, upon complaint made under oath or affirmation that any person has violated any of the requirements of any order of the State Board of Agriculture, or its duly constituted agent, pursuant to the provisions of section fifteen of the act,* of which this act is amendatory and supplemental, to issue a summons or warrant, directed to any constable, police officer, or member of the State Constabulary, commanding him to cause the person so complained of to be arrested and brought before such justice, District Court, police justice or recorder, and shall thereupon summarily hear and determine the guilt or innocence of such person, without a jury, and upon conviction shall impose upon the person so convicted the penalty prescribed in this act, together with the costs of prosecution, and if any person shall fail to pay the penalty so imposed, together with all costs, the said District Court, justice of the peace, police justice or recorder shall commit him to the common jail of the county wherein such conviction is had for a period of not exceeding ninety days, or until the penalty and costs are paid. (L. 1925, c. 81, § 2.)

446. Complaints and Process in Case of Corporation.—Such District Court, justice of the peace, police justice or recorder, upon receiving complaint in writing, duly verified, of the violation of section fifteen of the act of which this act is amendatory and supplemental, by a corporation is hereby authorized and required to issue a summons directed to any constable, police officer or member of the State Constabulary, requiring such corporation to be and appear before such District Court, justice of the peace, police justice or recorder, on the day named therein, to answer said complaint, which summons may be served on the president, vice-president, secretary, superintendent or manager of such corporation, and thereafter all proceedings shall be the same as in cases against individuals, except that in case of conviction and imposition of the penalty prescribed, execution shall issue against the goods and chattels of such corporation. (Id. § 3.)

447. On Refusal Arrest Without Warrant—Detention—Warrant.—For violation of or refusal or neglect to comply with the requirements of any order of the State Board of Agriculture or its duly constituted agent, made pursuant to the provisions of this act, done within the view of any constable, police officer or member of the State Constabulary, such officer is hereby authorized to arrest, without warrant, the offender and take him before a District Court, justice of the peace, police justice or recorder of the county wherein such arrest is made. The person so offending shall be detained in office of the justice of the peace, police justice, recorder or before the District Court until the officer making the arrest shall make oath or affirmation, which he shall do forthwith, specifying the provisions of the act alleged to have been violated, whereupon a warrant shall issue returnable forthwith, and said District Court, justice of the peace, police justice or recorder shall proceed summarily to hear or postpone the case as provided in sections two and five of this act. (Id. § 4.)

*See No. 444.

448. Adjourned Hearing—Bond for Appearance.—Any hearing to be held pursuant to this act may, for good cause shown, be adjourned for a period not exceeding thirty days from the return of the summons or warrant, but in such case it shall be the duty of the District Court, justice of the peace, police justice or recorder to detain the defendant into custody unless he shall enter into bond to the State Board of Agriculture with at least one sufficient surety in double the amount of the penalty to be recovered, conditioned for his appearance on the day to which the hearing shall be adjourned, and thence from day to day until the cause is disposed of. (Id. § 5.)

NOTE: See also No. 315 et seq.

Venereal Disease Drugs.

449. Physicians or Nurses Treating Venereal Diseases to Report Them to State Board of Health—Details in Report—Penalty for Not Reporting.—Every physician, nurse or other person treating or attempting to treat by prescription, formula, patented or proprietary medicine or compound or otherwise, and every physician, nurse or other person selling or giving away any prescription, formula, patented or proprietary medicine or compound, which either by itself or in connection or conjunction with any other treatment, medicine or compound is claimed to be useful, or to cure, relieve or to arrest in any way or manner any venereal disease such as chancroid, gonorrhea, syphilis or any of the varieties or stages thereof, shall report immediately to the Department of Health of this State the name, sex, address, color and nationality of the said person so infected with such disease, and the age as nearly as practicable, together with the character of the disease and the probable source of infection and whether previously reported or not, and if so, when, where and by whom; and every physician, nurse or other person treating or attempting to treat in any manner any of the venereal diseases or varieties or stages thereof, and every physician, nurse or other person selling or giving away any prescription, formula, patented or proprietary medicine or compound for the uses and purposes mentioned in this section who shall fail to perform the above mentioned duty at the time and in the manner named, shall be liable to a penalty of fifty dollars for each such failure. (Supp. 1924, p. 1470 et seq.; L. 1917, c. 232, § 2.)

450. Examination and Treatment—Tests—Furnish Specific.—The Department of Health of this State shall provide facilities for the free bacteriological examination of discharges for the diagnosis of gonorrheal infections, and also shall provide, at cost, vaccines or antitoxins for the treatment of such infections. And the said department shall make, at the expense of the State, the Wasserman or other approved tests or examine smears for the diagnosis of syphilis; and shall furnish the treatment known as "Salvarsan" or other accredited specific treatment at cost. But such diagnosis and treatment shall not be furnished until the data required for the registration of the case has been furnished by the physician, nurse or institution treating the patient. (Id. § 4.)

451. Appropriation.—For the expenses of carrying into effect the purposes of this act, the sum of two thousand dollars is hereby appropriated annually, when included in any annual or supplemental appropriation bill. (Id. § 5.)

Wood Alcohol.

452. Sale or Possession of Wood Alcohol.—No person shall sell, or offer or expose for sale, or have in his possession with intent to distribute or sell, any food, drug, preparation or mixture of any kind whatsoever, intended for internal use, which contains methyl or wood alcohol; nor shall any person sell, or offer or expose for sale, or have in his possession with intent to distribute or sell, or use upon or apply to the body of another, any drug, hair tonic, bay rum or similar preparation intended for external use, which contains methyl or wood alcohol. (Supp. 1924, p. 1442; L. 1912, c. 286, § 1, as amended L. 1920, c. 158.)

453. Penalties.—Any person who shall violate any of the provisions of this act shall be liable to a penalty of one hundred dollars for the first offense, and to a penalty of two hundred dollars for the second offense, and to a penalty of three hundred dollars for the third and each subsequent offenses. (Supp. 1924, p. 1442 et seq.; L. 1912, c. 286, § 2.)

454. Recovery of Penalties—Pleadings.—Any and all penalties prescribed by section two of this act shall be recovered in an action of debt by and in the name of the Board of Health of the State of New Jersey, or by and in the name of any board of health of any municipality of this State, as the case may be, as plaintiff.

The pleadings shall conform in all respects to the practice prevailing in the court in which any such action shall be instituted, but no pleading or process shall be set aside or invalidated by reason of any formal or technical defects therein if the same contain a statement of the nature of the alleged violation and of the section of this act alleged to have been violated, and upon the attention of the court being called to any such formal or technical defect the same shall be immediately corrected and the said pleading or process amended as a matter of course, and as to all other defects in pleading or process, the same may be amended, in the discretion of the court as in any other action or proceeding in said court. (Id. § 3.)

455. Issue of Execution—If Goods Insufficient Body to be Taken.—When judgment shall be rendered against any defendant other than a body corporate, execution shall be issued against his goods and chattels and body without any order of the court for that purpose first had and obtained. If the officer executing any such writ shall be unable to find sufficient goods and chattels of said defendant in his bailiwick to make the amount of said judgment he shall take the body of the said defendant and deliver him to the keeper of the common jail of said county, there to be detained until discharged by the court in which such judgment was obtained, or by one of the justices of the Supreme Court, when such court or justice shall be satisfied that further confinement will not result in the payment of the judgment and costs. In case judgment shall be rendered against a body corporate execution shall be issued against the goods and chattels of such body corporate as in other actions of debt. (Id. § 4.)

456. Disposition of Penalty.—Any penalty recovered in any action brought under the provisions of this act shall be paid to the plaintiff therein. When such plaintiff is the State Board of Health, such penalty shall be paid by such board into the treasury of this State. When such plaintiff is a local board of health, such penalty shall be paid by such local board into the treasury of the township, city, borough, town or other local municipal government within which said local board has jurisdiction. (Id. § 5.)

Intoxicating Liquors.

457. Sale of Wines and Spirits by Druggists—Prescribing Liquor—Prescription Not Refilled—Quantity—Prescription Kept Two Years.—On and after the passage of this act, it shall not be lawful for any druggist, except a pharmacist registered as such in accordance with the law of this State and engaged at the time in the actual practice of pharmacy, to sell at retail distilled spirits and wines and the sale shall be made only on a bona fide prescription written by a licensed practitioner of medicine engaged at the time in the practice of his medical profession. Distilled spirits and wines may be prescribed by such medical practitioner when in good faith he believes that the use of alcoholic liquors as a medicine is indicated and only after a personal physical examination of the patient or after consultation with another practitioner who has made a personal physical examination of the patient, and the prescription shall be written in duplicate, the prescriber retaining one copy, and there shall be written thereon the name and address of the patient for whom prescribed, and the name and address of the prescriber, and the prescription shall not be filled more than once, and there shall not be prescribed for the same patient for internal administration more than one pint of distilled spirits within any period of ten days, and the liquor prescribed can be consumed only by the patient named in the prescription, and the pharmacist filling the prescription shall preserve it for at least two years on a separate file kept for prescriptions for distilled spirits and wines, and all such files and records shall be open at all time to the inspection of any authorized officer of the law. (Supp. 1924, p. 1609 et seq.; L. 1920, c. 293, § 1.)

458. Acts Connected Herewith Legal.—The prescribing and dispensing of alcoholic liquors on bona fide prescriptions in accordance with the provisions of this act shall be deemed and is hereby defined as in performance of the professional duty of the medical practitioner and the pharmacist, and the pharmacist shall not by reason of such professional duty be classified as a dealer in alcoholic beverages nor shall he be subject to the license fees that are exacted of dealers in alcoholic beverages, nor shall the dispensing of alcoholic liquors in the discharge of his professional service be contrued [construed] as violating the provisions of the enactments of this State or of any political subdivision thereof enacted for the purpose of restricting and controlling the sale and use of alcoholic liquors as beverages and commonly spoken of as local option and prohibition laws; provided, that nothing in this act shall be construed as preventing the sale and use of alcohol when properly medicated and sold in accordance with the regulations of the Bureau of Internal Revenue of the Treasury Department of the United States nor with the manufacture, sale

and use of denatured alcohol, nor with manufacture, sale and use of wines for sacramental and like religious rites in accordance with the Federal statutes. (Id. § 2.)

459. Penalty for Violations.—Any person violating any of the provisions of section one of this act shall be guilty of a misdemeanor and upon conviction shall be subject to a fine of not more than one hundred dollars, and any medical practitioner or any pharmacist who is convicted more than once of violating the provisions thereof may have his license to practice in this State revoked. (Id. § 3.)

460. Short Title.—The short title of this act shall be the "Nonbeverage Liquor Act." (Supp. 1924, p. 1610 et seq.; L. 1921, c. 150, § 1.)

461. Liquor Defined—Amount of Alcohol.—The word "liquor" and the words "intoxicating liquor" shall each be construed to mean and to include alcohol and brandy, whiskey, rum, gin, beer, ale, porter, wine and any other spirituous, vinous, malt, brewed or fermented liquor, mixed liquors, and all liquids, admixtures and compounds, whether medicated, proprietary, patented or not and by whatever name called, which contain one-half of one per centum, or more, of alcohol by volume, and which are fit for use for beverage purposes. (Id. § 2, as amended L. 1922, c. 241.)

462. "Fit for Beverage."—The words "fit for use for beverage purposes" shall be construed to mean any liquid which is suitable for a drink, or adapted, or intended by the manufacturer thereof or dealer therein to be used as a drink. (Supp. 1924, p. 1611 et seq.; L. 1921, c. 150, § 3.)

463. "Person."—The word "person" shall be construed to mean and include natural male or female persons, both singular and plural, firms, copartnerships, corporations and all associations of natural persons, and the servants, agents or employees of such natural persons, firms, copartnerships, corporations or associations. (Id. § 4.)

464. "Officer."—The word "officer" shall be construed to mean any sheriff, deputy sheriff, constable, police officer, or any other person having power under the laws of this State to execute a warrant for arrest. (Id. § 5.)

465. "Board of Pharmacy."—The words the "Board of Pharmacy" as used in this act shall mean "The Board of Pharmacy of the State of New Jersey." (Id. § 5a.)

466. "Regulation."—The word "regulation" shall mean any regulation prescribed under or by virtue of the laws of the United States for carrying into effect the Eighteenth Amendment of the Federal Constitution. (Id. § 9.)

467. "Commissioner."—The words "commissioner" or "Commissioner of Internal Revenue" shall mean the Commissioner of Internal Revenue of the United States, or other Federal officer empowered by the laws of the United States to perform the duties and exercise the authority now imposed upon or given to the Commissioner of Internal Revenue under the "National Prohibition Act." (Id. § 10.)

468. "County Clerk."—The words "county clerk" shall mean the clerk of the county. (Id. § 11.)

469. "Permit."—The word "permit" shall mean the written authorization by the commissioner or other Federal officer duly authorized to issue permits under the National Prohibition Act, setting forth specifically therein the things that are authorized. (Id. § 12.)

470. "Permit Holder."—The words "holder of a permit" or "permit holder" shall mean the person to whom a basic or specific permit then in force has been lawfully issued. (Id. § 13.)

471. "Basic Permit."—The words "basic permit" shall mean a "permit" authorizing the holder thereof to engage in the business of manufacturing, using, purchasing, selling, transporting, or prescribing liquor, or selling wine for sacramental purposes, or manufacturing liquor or liquor preparations or compounds for nonintoxicating beverage purposes for a prescribed, definite period of time. (Id. § 14.)

472. "Specific Permit."—The words "specific permit" shall mean a "permit" authorizing one or more particular transactions of the purchase or transportation of liquor; provided, that this section shall not be construed to apply to permits known as blanket withdrawal permits authorizing purchases of alcohol from time to time for industrial uses only during a period of ninety days from the date of their issue lawfully issued and approved by authority of the Commissioner of Internal Revenue in accordance with the provisions of the "National Prohibition Act" and regulations thereunder, or any amendments thereto. (Id. § 15.)

473. "Alcohol."—The word "alcohol" shall mean ethyl alcohol; provided, however, that this act shall not apply to ethyl alcohol lawfully denatured in accordance with formulas prescribed by the Commissioner of Internal Revenue under the provisions of section ten of title three of the National Prohibition Act, or any amendments thereto. (Id. § 16.)

474. "Pharmacist."—The words "retail druggist" or "pharmacist" shall be construed to mean a person authorized by this act, in the exercise of his professional

duties, to dispense liquor on a physician's prescription. (Id. § 17, as amended L. 1922, c. 241.)

475. "Wholesale Druggist."—The words "wholesale druggist" as used in this act shall be construed to mean a person who, after examination and investigation, shall be duly registered by the Board of Pharmacy, as provided for in this act, and who is engaged in the business of selling drugs, medicinal chemicals, pharmaceuticals, proprietary medicines and druggists' sundries to duly registered pharmacists, hospitals, dispensaries or physicians who are holders of basic permits, and whose stock of such drugs, medicinal chemicals, pharmaceuticals, proprietary medicines and druggists' sundries shall be maintained in such assortments and quantities as will enable such person to supply regularly from said stock, through selling service and credit extension, the usual and immediate requirements thereof to retail druggists and pharmacists, hospitals and dispensaries and whose business for at least one year shall have been primarily and principally the selling of such commodities to pharmacists, hospitals, dispensaries and physicians; provided, however, that this shall not preclude a druggist, who shall have been established and shall have been doing a bona fide wholesale drug business in this State for more than one year, and who shall have incorporated, or who shall hereafter incorporate his said business in such a manner that the controlling interest and management of said business shall be unchanged by such incorporation, from being registered hereunder as a wholesale druggist. (Id. § 18.)

476. Basic Permit Necessary to Sell, Etc.—It shall be unlawful, except as hereinafter provided, for any person, after thirty days from the passage of this act, to manufacture, use, sell, purchase, transport or prescribe liquor, to sell wine for sacramental purposes, or to manufacture liquor or liquor preparations or compounds for non-beverage purposes, or to manufacture liquor or liquor preparations or compounds for non-intoxicating beverage purposes, unless such person shall first have obtained the appropriate basic permit from the commissioner to manufacture, use, sell, purchase, transport or prescribe liquor, or to sell wine for sacramental purposes, or to manufacture liquor preparations or compounds for nonbeverage purposes, or to manufacture liquor or liquor preparations or compounds for nonintoxicating beverage purposes, respectively, and shall also have said basic permit countersigned by the county clerk, as hereinafter in this act provided. (Supp. 1924, p. 1612 et seq.; L. 1921, c. 150, § 19.)

477. Purposes for Which Liquor May be Dealt in.—It shall be lawful to manufacture, sell, barter, transport, import, export, deliver, furnish, receive, give away, prescribe, possess, solicit or advertise liquor under and according to the conditions prescribed by this act and by the laws of the United States and the regulations of the Commissioner for the following uses and purposes:

Sacramental. (a) Wine for sacramental purposes;

Medicinal. (b) Liquor for medicinal purposes;

Manufacturing. (c) Liquor for manufacturing and scientific purposes;

Denatured. (d) Denatured alcohol and denatured rum, produced and used as provided by the laws of the United States and the regulations of the commissioner;

Medicinal preparations. (e) Medicinal preparations manufactured in accordance with formulas prescribed by the United States Pharmacopœia or National Formulary, or the American Institute of Homœopathy, that are unfit for use for beverage purposes;

Patent medicines. (f) Patented, patent and proprietary medicines that are unfit for use for beverage purposes;

Toilet articles. (g) Perfumes, and toilet, medicinal and antiseptic preparations and solutions that are unfit for use for beverage purposes;

Flavoring extracts. (h) Flavoring extracts and sirups that are unfit for use as a beverage, or that are unfit for intoxicating beverage purposes;

Cider and Vinegar. (i) Vinegar and preserved sweet cider.

Any person who shall knowingly sell any of the articles mentioned in this section, except flavoring extract or sirup, for beverage purposes, or who shall sell any flavoring extract or sirup for intoxicating beverage purposes, or who shall sell any beverage containing one-half of one per centum or more of alcohol by volume, in which any flavoring extract, sirup or other article is used as an ingredient, shall be guilty of a misdemeanor. (Id. § 20, as amended L. 1922, c. 241.)

478. Basic Permit Countersigned by County Clerk.—It shall be the duty of the clerk of the county in which any holder of a basic permit has his office or place of business, upon presentation of such basic permit to said county clerk, or upon receipt of such basic permit by said county clerk, to countersign said basic permit in his own proper hand, if he shall find the same authentic, regular and valid as hereinafter provided. (Supp. 1924, p. 1613 et seq.; L. 1921, c. 150, § 21.)

479. Form of Basic Permit.—All such basic permits now outstanding or hereafter issued, shall be presented by the permit holder to said county clerk for such countersignature, together with an affidavit in substantially the form following, viz:

State of New Jersey, } ss.
County of ..... }

....., being duly sworn upon his/her oath, according to law, says: I reside at .....; and that the accompanying permit, dated ..... numbered ..... issued to ..... of ..... street, New Jersey, was issued to me, for the purpose of authorizing me to ..... (Purchase, sell, use, prescribe, or as the case may be), liquor for the purpose of .....

Said permit states the true purpose for which the liquor to be procured thereunder is to be used; none of said liquor is to be used for beverage purposes, and the said permit was duly issued and is still in force and effect.

(Signed), ...

Subscribed and sworn to before me this ..... day of ....., 19....

Upon receipt of said basic permit and affidavit said county clerk, if he shall find the same to be authentic, regular and valid, shall countersign and index said permit as in this act provided; and no basic permit shall be valid or effective in this State unless countersigned by the county clerk. (Id. § 22.)

480. False Affidavit, Perjury.—Any person knowingly making any false affidavit, wherever an affidavit is required by this act, shall be guilty of perjury. (Id. § 23.)

481. Affidavits Filed.—All affidavits required by this act to be filed with the county clerk shall be retained in the office of said county clerk, and shall be given serial numbers, which said clerk shall endorse thereon, with the date of receipt and the name of the holder of the basic permit; and such serial number shall also be endorsed upon the basic permit when the county clerk countersigns the same. (Id. § 24.)

482. County Clerk Not to Sign in Doubt.—No county clerk shall countersign any basic permit when he shall know, or have reason to believe, that such basic permit is not authentic, or that the person claiming the right to such basic permit is not the person to whom the basic permit is issued. (Id. § 25.)

483. If in Doubt to Retain Permit.—It shall be the duty of the county clerk, in case he has reason to believe that any basic permit is not valid, or that the person claiming the right to such basic permit is not the person to whom it is issued, to retain the same until he has satisfied himself of its true nature, and in such case he shall notify the Federal officer, whose name is purported to be signed thereto, and give said Federal officer opportunity to pass upon its authenticity. (Id. § 26.)

484. Clerk's Fee.—The person presenting for countersignature any basic permit shall pay, and the clerk shall receive, for such countersignature, and indexing, the fee of two dollars, to be applied as are other fees received by such clerk. (Id. § 27.)

485. Must Have Permit—Blanket Withdrawals.—It shall be unlawful for any person to purchase, sell, receive, transport, or carry, liquor for nonbeverage purposes without having in his possession at the time of such purchase, sale, receiving, transporting, or carrying, a lawful specific permit concerning such liquor; provided nothing in this section shall apply to liquor lawfully obtained on a physician's prescription; and provided, further, that the provisions of this section shall not be construed to apply to the lawful purchase, sale, transportation and delivery of alcohol under permits known as blanket withdrawal permits authorizing purchases of alcohol from time to time for industrial uses only during a period of ninety days from the date of their issue, issued and approved by authority of the Commissioner of Internal Revenue, in accordance with the provisions of the National Prohibition Act and regulations thereunder and amendments thereto; but persons transporting or delivering alcohol under authority of such permits known as blanket withdrawal permits shall have in their possession at the time of such transportation or delivery a copy of their basic permit allowing such transportation or delivery. (Id. § 28.)

486. Physicians Must be Licensed.—No basic permit to any physician shall be countersigned and indexed by the county clerk, unless such physician shall be licensed or authorized by law to practice medicine in this State, and shall be engaged in the active practice of medicine in this State. (Id. § 29.)

487. Pharmacists Must be Registered.—No basic permit to any pharmacist shall be countersigned by the county clerk unless such pharmacist shall be duly registered as a pharmacist according to the laws of this State, and shall be conducting

an established pharmacy or retail drug store, or shall be employed as a pharmacist at the address named in such permit. (Id. § 30.)

488. Wholesale Druggists Registered.—It shall be unlawful for any wholesale druggist within this State to sell liquor without being duly registered by the Board of Pharmacy as herein provided. (Id. § 31.)

489. Wholesaler's Application.—Any wholesale druggist desiring to sell liquor shall apply to the Board of Pharmacy for registration, as a wholesale druggist entitled, under this act, to sell liquor, and shall at the same time deposit with said board a registration fee of twenty-five dollars. Said application shall set forth that the applicant is a duly qualified wholesale druggist under this act and is the holder of a basic permit to sell liquor, and said application shall be duly verified. (Id. § 32.)

490. Registration of Wholesalers.—If the Board of Pharmacy shall be satisfied that the applicant is a duly qualified wholesale druggist under this act, and is otherwise a proper person to be registered, and is the holder of a basic permit to sell liquor, said board shall register said person as a wholesale druggist under this act, and shall issue to said applicant a certificate certifying the fact of such registry and shall send a certified copy of such certificate to each county clerk in this State. (Id. § 33.)

491. Application of Fee.—In case said application for registration be granted, said registration fee shall be applied as is provided by law for registration fees of pharmacists,—otherwise said fee shall be returned. (Id. § 34.)

492. Registration Personal.—Such registration shall be personal and shall not be assignable or transferable. (Id. § 35.)

493. Certificate Filed and Evidence.—Upon receipt of such copy of such certificate each county clerk shall file and keep the same as evidence of the right of such wholesale druggist to do business within that county. (Id. § 36.)

494. Conviction to Void Permit.—Any basic permit though countersigned by the county clerk as provided in this act, shall be null and void in this State, and all rights and privileges granted hereunder by reason thereof shall terminate and cease if the holder of any basic permit shall be convicted of any violation of any Federal or State law or of any regulation of the Commissioner of Internal Revenue, relating to liquor; and thereafter for at least one year no basic permit to any such permit holder so convicted shall be countersigned by any county clerk in this State. (Id. § 37.)

495. Cancellation of Registration—County Clerks Notified.—The Board of Pharmacy may cancel the registration and certificate of any wholesale druggist found guilty of any violation of any Federal or State law, or of any regulation of the Commissioner of Internal Revenue Department relating to liquor; provided, the said wholesale druggist be given a hearing before said board to show cause why the said registration and certificate should not be canceled, and if upon said hearing no sufficient cause be shown why said registration and certificate should not be canceled, the said board shall cancel the said registration and certificate. And upon such cancellation said Board of Pharmacy shall forthwith send written notice thereof to each county clerk of the State, who thereupon shall strike from his files the certified copy of the registration of such wholesale druggist. (Id. § 38.)

496. Revocations.—The Board of Pharmacy, whenever it shall, for any reason, revoke the registration of any retail druggist or pharmacist, shall forthwith send written notice of such revocation to the county clerk of the county in which said retail druggist or pharmacist shall be doing business, and said county clerk, if such retail druggist or pharmacist shall have had a basic permit countersigned by such county clerk, shall note on the papers filed, and in the index in the office of such county clerk in which the name of said retail druggist or pharmacist appears, the fact that the registration of said retail druggist or pharmacist has been revoked, and thereafter such county clerk shall not countersign or file any permit issued to such retail druggist or pharmacist. (Id. § 39.)

497. Action by County Clerks on Violations.—The county clerk shall also strike from his files and from his index the record of his countersignature of the basic permit of any retail druggist or pharmacist found guilty of violating any law of the United States or of this State, or of any regulation of the Commissioner of Internal Revenue, relating to liquor, upon receipt of a copy of the record of such conviction, duly certified by the clerk of the Federal or State court in which such conviction was had, or upon receipt of an official report of such violation from the commissioner; and thereafter such county clerk shall not countersign or file any permit issued to such retail druggist or pharmacist. (Id. § 40.)

498. As to Specific Permits.—Any person who is the holder of a basic permit, after having such permit countersigned by the county clerk, as in this act provided, shall not be required to have countersigned or indexed the specific permits

issued to him from time to time; provided, the holder of such basic permit shall file a duplicate or copy of each specific permit, as hereinafter provided, in the office of said county clerk. (Id. § 41.)

499. Filing Copy of Specific Permit.—The holder of a basic permit shall file, or cause to be filed, such duplicate or copy of the specific permit as follows: He shall either cause a duplicate or copy of each specific permit to be mailed direct to the said county clerk by the federal officer issuing the same, or such specific permit holder within forty-eight hours after receiving the specific permit, shall file in the office of said county clerk a duplicate or a copy of such specific permit, to which duplicate or copy shall be attached a sworn statement by such permit holder, to the effect that the copy is a true copy of the specific permit issued. (Id. § 42.)

500. Records Kept by County Clerk.—It shall be the duty of the county clerk to index in an alpabetical index; (a) in case of a basic permit, the serial number thereof, the name and address of the holder thereof, the date of issuance appearing on the basic permit, the date of expiration of the basic permit, and the authorized use of the liquor referred to in the basic permit; (b) in case of a specific permit, the serial number of the basic permit, the name and address of the holder of such specific permit, the date of issuance appearing on the specific permit, the kind, quantity and authorized use of the liquor as set forth in the specific permit. No specific permit shall be filed or indexed by the clerk unless it shall have been issued as shown by its date, within five days previous to its receipt by said clerk; nor shall any specific permit be accepted by the county clerk if he has reason to believe such specific permit is not authentic. (Id. § 43.)

501. Prescribing Liquor.—No physician shall prescribe liquor except under and according to the conditions prescribed by this act and by the laws of the United States and the regulations of the commissioner, and for a legitimate and necessary medical purpose in the practice of his profession. (Id. § 44.)

502. Filling Prescriptions.—No retail druggist shall fill any prescriptions of a physician for liquor except under and according to the conditions prescribed by this act and by the laws of the United States and the regulations of the commissioner. (Id. § 45, as amended L. 1921, c. 216.)

503. Certified Copy of Regulations in Evidence.—In all proceedings under this act, a copy of any regulation of the Commissioner of Internal Revenue, shall be admissible in evidence to prove the regulation, if such copy be certified by the Commissioner of Internal Revenue or by his authorized representative in the district where such proceedings are had. (Supp. 1924, p. 1617 et seq.; L. 1921, c. 150, § 46.)

504. Investigating Beverage Class of Medicines, Etc.—The Board of Pharmacy is hereby authorized to conduct investigations and make determinations to carry out the purposes of this act upon the request in writing of any magistrate or prosecutor of the pleas for the purpose of determining whether any patented, patent or proprietary remedy or preparation, or any perfume, medicinal or antiseptic preparation or solution should be classified as being fit for use for beverage purposes and not in the nonbeverage class. Upon such request in writing, said board shall fix a time and place for conducting such investigation, and if the name and address of the manufacturer of the preparation to be investigated is known to said board or can be ascertained from the original container of such preparation, said board shall give notice in writing to such manufacturer at the address so known, stating that an investigation is to be made at the time and place fixed and that said manufacturer may apply within fifteen days after the mailing of such notice by said board for a hearing before said board in relation to such pending investigation; and if such application be made by such manufacturer, said board shall fix a time and place for such manufacturer, to show cause why the preparation under investigation should not be classified by said board as being fit for use for beverage purposes. (Id. § 47.)

505. Determination Filed.—The said board after investigation and hearing, if a hearing be applied for as herein provided, shall have power to determine whether the preparation shall be classified as fit for use for beverage purposes and if the said board shall determine that the preparation investigated as aforesaid, shall be classified as fit for use for beverage purposes, said board shall file in the office of the Secretary of State of New Jersey, a copy of such determination signed by the president and attested by the secretary of said board, and it shall thereafter be unlawful to sell or manufacture said preparation in this State, except in the same manner as provided in this act for liquor. (Id. § 48.)

506. Compensation of Board for Investigating.—The members of the Board of Pharmacy when performing the duties required of them under this act, shall receive compensation at the same rate as is provided by law for their compensation, as members of said Board of Pharmacy, and also shall receive payment for any

proper expense incurred in connection with action taken hereunder. The compensation herein provided for members of the Board of Pharmacy of New Jersey and the necessary expenses incurred in making any investigation provided for in this act shall be paid to said members and to any other person rendering such necessary service out of the fees received under this act or if there be no such funds available by the Treasurer of the State out of any funds appropriated for that purpose by the Legislature. (Id. § 49.)

507. Records Open to Inspection.—All records provided for or referred to in this act as records required to be kept by druggists of the selling or dispensing of liquors, by physicians prescribing liquor, or by any other permit holders, as aforesaid, whether such records are specifically required by the laws of the United States or by this State, or by the regulations of the Internal Revenue Commissioner, shall be open to the inspection of all police, peace or other law enforcing officers, empowered to act hereunder, during the ordinary hours of the business of such permit holder. (Id. § 50.)

508. Use of Word "Liquor."—In any complaint, warrant, accusation, allegation or indictment the word "liquor" shall be a sufficient description of any or all of the liquids included in the definition in section two of the act to which this act is an amendment. (Id. § 58, as amended L. 1922, c. 241.)

509. Separate Offenses in One Complaint.—In any affidavit, information, or indictment for the violation of this act, separate offenses may be united in separate counts and the defendant may be tried on all at one trial and the penalty for all offenses may be imposed. It shall not be necessary in any affidavit, information or indictment to give the name of the purchaser or to include any defensive negative averments, but it shall be sufficient to state that the act complained of was then and there prohibited and unlawful, but this provision shall not be construed to preclude the trial court from directing the furnishing the defendant a bill of particulars when it deems it proper to do so. (Id. § 59.)

510. As to Incriminating Testimony.—No person shall be excused on the ground that it may tend to incriminate him or subject him to a penalty or forfeiture, from attending and testifying or producing books, papers, documents, and other evidence in obedience to a subpœna of any court in any suit or proceeding based upon or growing out of any alleged violation of this act; but no answer made by any witness to any such question shall be used or admitted in evidence in any proceeding against such witness, except in a prosecution for perjury in respect to any such answer. (Id. § 60.)

511. Penalty for Violations.—Any person who shall violate any of the provisions of this act, or of the act to which this act is an amendment, shall be guilty of a misdemeanor and shall be punished for a first violation by a fine not exceeding five hundred dollars, or by imprisonment for any term not exceeding three months or both; and for any subsequent violation shall be punished by a fine not exceeding one thousand dollars, or by imprisonment for any term not exceeding three years, or both. (Id. § 67.)

512. Short Title.—The short title of this act shall be the "Prohibition Enforcement Act." (Supp. 1924, p. 1621 et seq.; L. 1922, c. 255, § 1.)

513. Liquor Defined.—The word "liquor" and the words "intoxicating liquor" shall each be construed to mean and to include:

(A) Alcohol, and brandy, whiskey, rum, gin, beer, ale, porter, wine and any other spirituous, vinous, malt, brewed or fermented liquor or mixed liquors, which contain one-half of one per centum or more of alcohol, by volume, and which are used or to be used for beverage purposes;

(B) All liquids, admixtures and compounds, whether medicated, proprietary, patented or not, and by whatever name called, which contain one-half of one per centum, or more, of alcohol, by volume, and which are fit for use for beverage purposes.

In any complaint, warrant, accusation, allegation or indictment, the word "liquor" shall be a sufficient description of any or all of the liquors or liquids defined herein. (Id. § 2.)

514. Fit for Beverage.—The words "fit for use for beverage purposes" shall be construed to mean any liquid which is suitable for a drink, or is adapted, or is intended by the manufacturer thereof or the dealer therein to be used as a drink. (Id. § 3.)

515. Person.—The word "person" shall mean and include natural persons, associations, copartnerships, and corporations. (Id. § 4.)

516. Private Dwelling.—The term "private dwelling" shall be construed to mean any building or any part thereof used as a private residence, and any room or rooms used or occupied, not transiently, but solely as a residence, in any apartment house, hotel or boarding house. (Id. § 5.)

517. Officer.—The word "officer" shall be construed to mean any sheriff, deputy sheriff, constable, police officer, member of the State constabulary, or any other person having power, under the laws of this State to execute a warrant for arrest. (Id. § 6.)

518. Guest.—The word "guest" shall be construed to mean a person who receives hospitality for which he is not expected to pay a money or other valuable consideration, directly or indirectly, and for which in fact he does not pay such consideration. (Id. § 7.)

519. Magistrate.—For the purposes of this act, the word "magistrate" shall be taken to mean and include a justice of the Supreme Court, a judge of the Court of Common Pleas in and for any county, a Supreme Court Commissioner, a judge of a city Criminal Court, a police justice or recorder of any municipality of this State; provided, however, that nothing in this act contained shall be construed in anywise to confer jurisdiction upon a justice of the peace. Every Supreme Court Commissioner of this State shall have and possess under this act all the powers of a committing magistrate, in the same manner and with like effect as a judge of the Court of Quarter Sessions when acting as a committing magistrate. The "magistrate" shall be the official charged with the taking of any complaint, the issuing of any warrant or search warrant hereunder, the hearing upon the return of any warrant or search warrant so as aforesaid issued, the admission to bail, the commitment of a person so charged in default of bail, the detention, return or disposal of any property seized by virtue of any search warrant issued hereunder or the performing of any judicial act prior to the indictment of a violator hereof.

Costs and fees. In any proceeding or action commenced under the proceedings of this act, the same fees and costs shall be allowed therein as in other criminal proceedings, except as herein otherwise provided. Supreme Court Commissioners shall be entitled to receive for their services, to the exclusion of fees otherwise provided by law, the following fees and no more, to be paid by the treasurer of the county wherein the proceedings are instituted, on the certificate of the prosecutor of the pleas of such county. Such fees, except the fees for stenographic services, shall be included in the taxable costs of the State in the event of the conviction of the defendant.

For taking and filing every complaint, ... $3.00
For the issuance of any warrant or any search warrant, ... 3.00
For conducting and concluding any hearing upon the return of any warrant or search warrant, ... 10.00
to which shall be added the fees otherwise provided by law for any necessary stenographic services in such hearing.
For the admission of any person to bail, ... 3.00
For the commitment of a person so charged in default of bail, ... 3.00
For conducting and concluding any hearing on the return or disposal of any property seized by virtue of any search warrant issued hereunder, ... 10.00
including any necessary stenographic fees as aforesaid. (Id. § 9.)

520. Acts Forbidden.—On and after the date when this act goes into effect, no person shall manufacture, sell, barter, transport, import, export, deliver, furnish, or possess, any intoxicating liquor, and all the provisions of this act shall be liberally construed to the end that the use of intoxicating liquor as a beverage may be prevented; provided, that nothing in this section shall be construed to prevent any person from keeping, carrying, conveying or transporting lawfully acquired liquor in, into, through or within the State while such person is in the act of changing his residence; provided, further, that nothing in this section shall apply to liquor lawfully acquired and possessed in a private dwelling and used only for the personal consumption of the owner of such liquor or his family, residing in such dwelling, or of his guests therein. (Id. § 10.)

521. No Advertising.—It shall be unlawful to advertise or publish anywhere, or by any means or methods, liquor, or the manufacture, sale, keeping for sale or furnishing of the same, or where, how, from whom, or at what price the same may be obtained. No one shall permit any sign or billboard, containing such advertisement to remain upon one's premises. (Id. § 11.)

522. Implements, Substances, Recipes, Not Advertised.—It shall be unlawful to advertise, manufacture, sell or possess, either for use or for sale, any utensil, contrivance or machine, in whole or in part, or any preparation, compound, tablet, substance or combination of substances or ingredients, or any direction, formula or recipe, advertised, designed or intended for use in the unlawful manufacture of liquor. (Id. § 12.)

523. Purchasing or Ordering Liquor.—It shall be unlawful for any person to solicit, receive or transmit, or knowingly permit any employee or agent to solicit,

receive or transmit, from any person, any order for the purchase, sale, shipment or delivery of liquor in violation of this act. (Id. § 13.)

524. Liquor Analyzed and May be Used Medicinally.—In all cases in which intoxicating liquors may be subject to be destroyed under the provisions of this act, the court having jurisdiction to order the destruction thereof may, in its discretion, before such liquor is ordered destroyed, direct the State Department of Health to analyze such liquor and the said liquor if found to be of a required standard suitable for medicinal purposes shall be preserved in bond by the State of New Jersey for the use of the State's institutions and all free hospitals. Application for liquor for the use of State institutions and free hospitals shall be made to the State Department of Health, which shall provide by regulation for the use of the same. (Id. § 32.)

525. Penalties for Violations.—Any person who manufactures or sells liquor in violation of this act shall be guilty of a misdemeanor and shall be punished for the first offense by a fine of not more than one thousand dollars or by imprisonment for any term not exceeding six months; and for any subsequent offense shall be punished by a fine of not less than two hundred dollars nor more than two thousand dollars, and by imprisonment for any term not less than one month, nor more than five years.

Any person who violates any of the provisions of this act other than the manufacture or sale of liquor in violation thereof, shall be guilty of a misdemeanor and shall be punished for a first offense by a fine of not more than five hundred dollars; for a second offense by a fine of not less than one hundred dollars nor more than one thousand dollars, or by imprisonment for any term not exceeding ninety days; and for any subsequent offense by a fine of not less than five hundred and by imprisonment for any term not less than three months nor more than two years. (Id. § 33.)

526. As to Incriminating Evidence.—No person shall be excused on the ground that it may tend to incriminate him or subject him to a penalty or forfeiture, from attending and testifying or producing books, papers, documents, and other evidence in obedience to a subpœna of any court in any suit or proceeding based upon or growing out of any alleged violation of this act, but no answer made by any witness to any such question shall be used or admitted in evidence in any proceeding against such witness, except in a prosecution for perjury in respect to any such answer. (Id. § 34.)

527. Delivery of Liquor.—In case of a sale of liquor where the delivery thereof was made by a common or other carrier, the sale and delivery shall be deemed to be made in the county wherein the delivery was made by such carrier to the consignee, his agent or employee, or in the county wherein the sale was made, or in the county from which the shipment was made, and prosecution for such sale or delivery may be had in any such county. (Id. § 35.)

528. Separate Offenses United—Averments.—In any affidavit, information, or indictment for the violation of this act, separate offenses may be united in separate counts and the defendant may be tried on all at one trial and the penalty for all offenses may be imposed. It shall not be necessary in any affidavit, information, or indictment to give the name of the purchaser or to include any defensive negative averments, but it shall be sufficient to state that the act complained of was then and there prohibited and unlawful, but this provision shall not be construed to preclude the trial court from directing the furnishing the defendant a bill of particulars when it deems it proper to do so. (Id. § 36.)

529. Presumption for Beverage.—In any proceeding under this act or at the trial of any indictment for any violation of this act, the liquor or liquors mentioned in paragraph (A) of section two shall be presumed to be for beverage purposes and to contain more than one-half of one per centum of alcohol by volume. (Id. § 37.)

530. No Licenses Granted.—No court, judge, board, body, commission, commissioner or public official heretofore at any time having power and authority to grant and issue licenses for the sale of spirituous, vinous, malt or brewed liquors shall hereafter grant or issue any licenses, or any permit in the nature of a license, for the sale, in any quantity, of spirituous, vinous, malt or brewed liquors for beverage purposes. (Id. § 41.)

531. Licenses Null and Void.—Every such license, and every permit in the nature of such license, heretofore granted or issued shall at all times and for all purposes be null and void and every such license, or permit in the nature of a license, hereafter granted or issued shall all times and for all purposes be null and void. (Id. § 42.)

532. Constitutionality of Act.—If any provision of this act shall be held invalid, it shall not be construed to invalidate any other provision of the act. (Id. § 43.)

PART IV.

Miscellaneous Laws.

Convict-Made Goods.

533. Goods Made by Prisoners to be Marked.—All goods, wares, and merchandise made by convict labor in any jail, penitentiary, prison, reformatory, or other establishment in this State, and all goods, wares, and merchandise made by convict labor in any other State, and introduced, imported, or brought into this State, shall be branded, labeled, or marked as hereinafter provided before being exposed for sale, and shall not be so exposed without such brand, label or mark. (L. 1926, c. 83, § 1.)

534. How Goods Marked.—The brand, label or mark required by the next preceding section shall contain at the head or top thereof the words "convict made," followed by the year and name of the penitentiary, prison, reformatory, or other establishment in which it was made, in plain English lettering of the style known as great primer Roman capitals. Such brand or mark, if the article will permit, shall be placed upon it and when such branding or marking is impossible, the label shall be used. (Id. § 2.)

535. Where Placed.—Such brand, mark or label shall be placed outside of and upon the most conspicuous part of the finished article and its box, crate or covering. (Id. § 3.)

536. Sale or Possession.—A person dealing in convict-made goods, wares or merchandise as described in this act, shall not knowingly have them in possession for the purpose of sale, or offering them for sale without the brand, label or mark required by this act, or remove, conceal or deface the brand, label or mark thereon. (Id. § 4.)

537. Penalty.—Any person, firm or corporation violating the provisions of this act shall be deemed guilty of a misdemeanor and upon conviction, shall be fined not less than twenty-five or more than fifty dollars for the first offense, and not less than fifty or more than two hundred dollars for each subsequent offense. (Id. § 5.)

537a. Sale of Surplus—Goods Stamped.—Any surplus product* may be sold in the open market under such terms and conditions that it shall not compete unfairly with the product of free labor. Any non-perishable articles so marketed shall be stamped in a legible, and conspicuous manner "Manufactured in the New Jersey .....," naming the institution of manufacture; provided, that whenever from the nature of the articles made or manufactured it shall be impracticable to stamp each article, or if such articles are usually put up in packages, it shall be sufficient for the purpose of this act to put a stamp, label or tag upon such package, showing where such articles are made, provided that said stamp, label or tag shall be put on said package in a good lasting and permanent manner. (Supp. 1924, p. 346; L. 1918, c. 147, § 706.)

False Advertising.

538. Fraudulent Representation in Advertising a Misdemeanor—Penalty.—Any person, firm, corporation or association who, with intent to sell or in anywise dispose of merchandise, securities, service, or anything offered by such person, firm, corporation or association, directly or indirectly, to the public for sale or distribution, or with intent to increase the consumption thereof, or to induce the public in any manner to enter into any obligation relating thereto, or to acquire title thereto, or an interest therein, makes, publishes, disseminates, circulates, or places before the public or causes, directly, or indirectly, to be made, published, disseminated, circulated, or placed before the public, in this State, in a newspaper or other publication, or in the form of a book, notice, handbill, poster, bill, circular, pamphlet or letter or in any other way, an advertisement of any sort regarding merchandise, securities, service, or anything so offered to the public, which advertisement contains any assertion, representation or statement of fact which is untrue, deceptive or misleading, shall be guilty of a misdemeanor, and upon conviction thereof shall be fined in a sum not to exceed one thousand dollars ($1,000) or imprisoned in the county jail for a period not exceeding one year, or by both such fine and imprisonment. (Supp. 1924, p. 867 et seq.; L. 1913, c. 318, § 1.)

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*Refers to the product of institutional labor.

Flag Desecration.

539. Use of Flag for Advertising; Mutilation or Defilement of Flag.—Any person who in any manner, for exhibition or display, places or caused to be placed, any inscription, design, device, symbol, name, advertisement, words, characters, marks or notice whatever upon any flag, standard, color or ensign of the United States or State flag of this State, or ensign evidently purporting to be either of said flags, standards, colors or ensigns; or who, in any manner appends, annexes or affixes or causes to be appended, annexed or affixed to such flag, standard, color or ensign any inscription, design, device, symbol, name, advertisement, words, marks, notice or token whatever, or who displays, or exhibits, or causes to be displayed or exhibited any flag, standard, color or ensign of the United States or flag of this State, or flag, standard, color or ensign evidently purporting to be either of said flags, standards, colors or ensigns, upon which shall, in any manner be placed attached, annexed or affixed any inscription, design, device, symbol, name, advertisement, words, marks, notice or token whatever, or who publicly mutilates, tramples upon or otherwise defaces or defiles any of said flags, standards, colors or ensigns, whether any of said flags, standards, colors or ensigns are public or private property, shall be deemed guilty of a misdemeanor. (C. S. 1910, p. 1745; L. 1904, c. 16, § 1.)

540. Flag, Etc., Defined.—The words flag, standard, color or ensign, as used in this act, shall include any flag, standard, color, ensign, or any picture or representation of either thereof, made of any substance or represented on any substance, and of any size, evidently purporting to be a flag, standard, color or ensign of the United States of America, or State flag of this State, or a picture, or a representation of either thereof, upon which shall be shown the colors, the stars and the stripes, in any number of either thereof, or by which the person seeing the same, without deliberation may believe the same to represent the flag, colors, standard or ensign of the United States of America or State flag of this State; but this act shall not apply to any act permitted by the statutes of the United States of America, or by the United States army and navy regulations, nor shall it be construed to apply to a newspaper, periodical, book, pamphlet, circular, certificate, diploma, warrant or commission of appointment to office, ornamental picture, or stationery for use in correspondence, on any of which shall be printed, painted or placed said flag disconnected from any advertisement. (Id. § 2.)

Matches.

541. Shipment of Packages, Etc., of Explosives Without Disclosing Nature Thereof.—Any person who shall deliver, or cause to be delivered, to any canal, railroad, steamboat or other transportation company, or to any person, firm or corporation engaged in the business of transportation, any nitro-glycerine, dualin, dynamite, gunpowder, mining or blasting powder, gun-cotton, phosphorus, friction matches, or other explosive or dangerous material of any nature whatsoever, under any false or deceptive invoice or description, or without previously informing such person, firm or corporation, in writing, of the true nature of such article, and without having the box, keg, barrel, can or package containing the same plainly marked with the name of the explosive or dangerous material therein contained, shall be guilty of a misdemeanor. (C. S. 1910, p. 1774; L. 1898, c. 235, § 89.)

Tobacco—Tobacco Products.

542. Sale, Etc., of Cigarettes or Cigarette Paper to Minors—Punishment.—Hereafter no person shall furnish cigarettes made of tobacco or of any other matter or substance which can be smoked, or cigarette paper or tobacco in any form, by sale, gift, acting as agent, directly or indirectly, or otherwise, to any minor under the age of eighteen years, and any person so offending may be tried, on the complaint of any person interested in the welfare of the said minor, before a police magistrate or official having criminal jurisdiction in any city, borough, town, township, village or other municipality where such offense was committed, and on conviction thereof shall be punished by a fine not exceeding ten dollars ($10) for the first offense and not exceeding twenty-five dollars ($25) for each succeeding offense. (Supp. 1924, p. 856; L. 1904, c. 163, § 1, as amended L. 1917, c. 63.)

Trade-Marks, Etc.

543. Adoption of Labels, Etc.; Purposes.—It shall be lawful for any person, association, organization or corporation to adopt for their protection and file for registry, or cause to be filed for registry, as herein provided, any label, trade-mark,

term or design that has been used or is intended to be used for the purpose of designating, making known or distinguishing any goods, wares, merchandise or products of labor that have been or may be wholly or partly made, manufactured, produced, prepared, packed or put on sale by any person, association, organization or corporation, or to or upon which any work or labor has been applied or expended by any person or by any member or members of any association, organization or corporation that has adopted and filed for registry, or that may adopt and file for registry, any such label, trade-mark, term or design as aforesaid, or announcing or indicating that the same have been made in whole or in part by any such person, association, organization or corporation or by any member or members thereof. (C. S. 1910, p. 5643 et seq.; L. 1898, c. 50, § 1.)

544. Rights Secured.—Whenever any person, association, organization or corporation shall adopt and file for registry, or cause to be adopted and filed for registry, any label, trade-mark, term or design pursuant to the provisions of this act, the property, privileges, rights, remedies and interests in and to any such label, trade-mark, term or design, and in and to the use of the same, provided or given by this act, to or otherwise conferred upon or enjoyed by, the person, association, organization or corporation filing the same, or causing the same to be filed, for registry, shall be fully and completely secured, preserved and protected as the property of those entitled to the same, before any such label, trade-mark, term or design has been actually applied to any goods, wares, merchandise or product of labor and put upon the market for sale or otherwise, and before any use or appropriation of any such label, trade-mark, term or design has been made in connection with any such goods, wares, merchandise or product of labor, as well as after the same has been used or applied to designate, make known or distinguish any such goods, wares, merchandise or product of labor and they have been put upon the market. (Id. § 2.)

545. Filing With Secretary of State; Affidavit; Fees.—Any person, association, organization or corporation that has heretofore adopted and used, or shall hereafter adopt and use, any label, trade-mark, term or design as herein provided, may file the same for registry in the office of the Secretary of State by leaving two copies, facsimiles or counterparts thereof, with the said secretary, and filing therewith a statement in the form of an affidavit, subscribed and sworn to by any such person, or by any officer, agent or attorney of any such association, organization or corporation, specifying the person, association, organization or corporation by whom, or on whose behalf, any such label, trade-mark, term or design is filed, and the class or character of the goods, wares, merchandise or product of labor to which the same has been, or is intended to be, appropriated or applied, and that the person, association, organization or corporation so filing the same, or on whose behalf the same is so filed, has the right to the use of the said label, trade-mark, term or design, and that no other person, firm, association, organization or corporation has the right to such use, either in the identical form or in any such near resemblance thereto as may be calculated to deceive, without the permission or authority of the person, association, organization or corporation filing the same, or causing the same to be filed, and that the copies, facsimiles or counterparts filed therewith are true and correct copies, facsimiles or counterparts of the genuine label, trade-mark, term or design of the person, association, organization or corporation filing the same or causing the same to be filed; and there shall be paid for such filing and registry a fee of one dollar to the Secretary of State for the use of the State. (Id. § 3.)

546. Filing With Secretary of State; Duties; Certificates; Assignments.—The Secretary of State, upon the filing of any such label, trade-mark, term or design that is not in conflict with the next section hereof, shall register the same, and shall deliver to the person, association, organization or corporation filing the same, or causing the same to be filed, as many certified copies thereof, with his certificate of such registry, as any such person, association, organization or corporation may request, and for every such copy and certificate there shall be paid to the Secretary of State, for the use of the State, a fee of one dollar; and any such certified copy and certificate shall be admissible in evidence and competent and sufficient proof of the adoption, filing and registry of any such label, trade-mark, term or design by any such person, association, organization or corporation, in any action or judicial proceeding in any of the courts of this State, and of due compliance with the provisions of this act; provided, however, that such certificate shall not be assignable or transferable by the person, association, organization or corporation to whom the same is issued by the Secretary of State. (Id. § 4.)

547. Similar or Identical Labels, Etc., Not to be Filed.—It shall not be lawful for the Secretary of State to register, or permit to be registered, for any person, association, organization or corporation any label, trade-mark, term or design that is in the identical form of any other label, trade-mark, term or design heretofore filed by or on behalf of any other person, association, organization or cor-

poration, or that bears any such near resemblance thereto as may be calculated to deceive, or that would be liable to be mistaken therefor; and any person, association, organization or corporation who shall file or procure the filing and registry of any label, trade-mark, term or design in the office of the Secretary of State, under the provisions of this act, by making any false or fraudulent representations or declarations, with fraudulent intent, shall be liable to pay any damages sustained in consequence of any such registry, to be recovered by or on behalf of the party injured thereby in any court of law of this State having jurisdiction in civil causes. (Id. § 5.)

548. Counterfeiting or Imitating.—Whenever any person, association, organization or corporation has heretofore adopted and filed for record or registry, or shall hereafter adopt and file for registry, any label, trade-mark, term or design, or cause the same to be done, as herein provided, and the same shall have been registered pursuant to this act, it shall be unlawful, and a violation of this act, for any other person, association, organization or corporation to manufacture, use, sell, offer for sale, or in any way utter or circulate, any counterfeit or imitation of any such label, trade-mark, term or design; or have in possession, with intent that the same shall be sold or disposed of, any goods, wares, merchandise or product of labor to which or on which any counterfeit or imitation of any such label, trade-mark, term or design is attached, affixed, printed, painted, stamped, impressed or displayed; or to sell or dispose of, or offer to sell or dispose of, or have in possession with intent that the same shall be sold or disposed of, any goods, wares, merchandise or product of labor contained in any box, case, can or package to which or on which any such counterfeit or imitation is attached, affixed, printed, painted, stamped, impressed or displayed. (Id. § 6.)

549. Unlawful Use of Genuine Labels, Etc.; Permission to Use; Revocation.—Whenever any person, association, organization or corporation has heretofore adopted and filed for record or registry, or shall hereafter adopt and file for registry, any label, trade-mark, term or design as herein provided, it shall be unlawful, and a violation of this act, for any other person or persons, association, organization or corporation, to make any use, sale, offer for sale or display of the genuine label, trade-mark, term or design of any such person, association, organization or corporation, filing the same; or to have any such genuine label, trade-mark, term or design in possession with intent that the same shall be used, sold, offered for sale or displayed, or that the same shall be applied, attached or displayed, in any manner whatever to or on any goods, wares or merchandise; or to sell, offer to sell, or dispose of or have in possession with intent that the same shall be sold or disposed of, any goods, wares or merchandise in any box, case, can or package to or on which any such genuine label, trade-mark, term or design of any such person, association, organization, or corporation is attached affixed, or displayed; or to make any use whatever of any such genuine label, trade-mark, term or design, without first obtaining, in every such case, the license, consent or authority of the person, association, organization or corporation adopting, filing and registering the same, or causing the same to be adopted, filed and registered; and any such license, consent or authority may be revoked and terminated at any time upon notice, and thereafter any use thereof shall be a violation of this act, and subject those violating the same to all the liabilities and penalties herein provided against any violation thereof. (Id. § 7.)

550. Refiling of Labels, Etc.—It shall be lawful for any person, association, organization or corporation that has adopted and filed, or caused to be filed and recorded or registered in the office of the Secretary of State, at any time before the passage of this act, any label, trade-mark, term or design, to refile the same for registration by the Secretary of State pursuant to the provisions of this act, upon payment of the fees herein provided for filing and registering any label, trade-mark, term or design, and for copies and certificates thereof, and any person, association, organization or corporation so re-filing any such label, trade-mark, term or design shall have and be entitled to all the rights, remedies, privileges and protection given by this act to any person, association, organization or corporation originally filing any label, trade-mark, term, or design under the provisions of this act, and subject to the same liabilities. (Id. § 8.)

551. Chancery Court to Have Jurisdiction of Cases, Etc.; Enjoining Manufacture, Sale, Etc.; Award of Damages, Etc.—The Court of Chancery shall have jurisdiction in all cases arising or commenced therein under this act for the violation of any of the provisions thereof, and any person, association, organization or corporation filing, or causing to be filed for registry, any label, trade-mark, term or design pursuant to the provisions of this act, shall have the right to an action in the said court against any person, or persons, association, organization or corporations, for the violation of any of the provisions of this act; and upon the filing of any bill or complaint therefor, the law and practice regulating proceedings in that court shall be applicable thereto; and the said court is hereby empowered and

required to enjoin the manufacture, counterfeiting, imitation, display, use, sale, offer of sale, circulating or uttering of any counterfeit or imitation of any such label, trade-mark, term or design of any such person, association, organization or corporation; and the sale or disposal of any goods, wares, merchandise or product of labor to which, or on which, any such counterfeit or imitation label, trade-mark, term or design is attached, affixed, printed, painted, stamped, impressed or displayed; or any goods, wares, merchandise or product of labor contained in any box, case, can or package to or on which any such counterfeit or imitation is attached, affixed, printed, painted, stamped, impressed or displayed; and further to enjoin the manufacture, use, sale, offer of sale, or display, of any genuine label, trade-mark, term or design of any such person, association, organization or corporation filing the same as aforesaid; or having in possession any such genuine label, trade-mark, term or design with intent that the same shall be used, sold, offered for sale or displayed, or the same applied, attached or displayed in any manner whatever to or on any goods, wares, merchandise or product of labor; or the selling, or offer to sell or dispose of, or having in possession with intent that the same shall be sold, offered for sale or disposed of, any goods, wares or merchandise in any box, case, can or package to or on which any such genuine label, trade-mark, term or design of any such person, association, organization or corporation is attached, affixed or displayed; and from making any other, or any, use whatever of any such genuine label, trade-mark, term or design, without having first obtained, in any and every such case, the consent and authority of the person, association, organization or corporation adopting, filing and registering the same, or causing the same to be filed and registered, as herein provided; and the said Court of Chancery is hereby empowered to make such other orders and direct such other proceedings as the court may deem necessary and proper for the due protection of the rights of complainants, effecting the purposes of this act, the prevention of any violation of any of the provisions of the same, and secure and protect any and all persons, associations, organizations or corporations in all the rights, privileges, property and interests to which they or any of them are or may be entitled in any such label, trade-mark, term or design under any of the provisions of this act or otherwise; and it shall be the duty of the said Court of Chancery to award to the complainant or complainants in any such action any and all damages resulting from any such wrongful use of any such label, trade-mark, term or design by any defendant or defendants, or for any violation of any of the provisions of this act; and to require any such defendant or defendants to pay to such complainants any and all such damages, together with all costs and expenses incurred by any such complainant in any such action or proceeding; and the said court shall also order and decree that the defendants pay to the complainant or complainants any and all profits obtained, received or derived from any such wrongful use, or any violation of the provisions of this act; or both profits and any such damages, and that any and all such counterfeits or imitations of any such labels, trade-marks, terms or designs in the possession or under the control of the defendant or defendants in any such action shall be delivered up to an officer of the court, or to the complainant, to be destroyed, and that any such genuine labels, trade-marks, terms or designs in the possession or under the control of any such defendant or defendants shall be delivered up to the complainant. (Id. § 9.)

552. Penalties for Violation of Act; Procedure; Injunction.—Any person or persons, association, organization or corporation, that shall violate any of the provisions of this act, shall be liable to a penalty of two hundred dollars, to be recovered in an action of debt in any court of law of this State having jurisdiction in civil causes, by any such person, association, organization or corporation, that has adopted and filed, or caused the same to be done as aforesaid, any such label, trade-mark, term or design; which action may be commenced by summons as in ordinary cases, and shall be proceeded with therein as in other civil actions, in said courts, and in case any execution shall be issued upon any judgment obtained against the defendant or defendants in any such action at law, and the same be returned unsatisfied, the court, on application and two days' notice to the defendant, may award an execution to take the body of the defendant or defendants as in other cases where a capias may issue out of the Circuit or Supreme Courts of this State; and thereafter the rights, remedies and liabilities of the parties, and the proceedings in the case shall be the same, or as nearly as may be, as in other actions in the said courts where an execution to take the body of the defendant or defendants has been issued; and it shall be the duty of the court in which any such action at law may be brought to make all proper and necessary orders to restrain and prevent any defendant or defendants from continuing the committing of any violation of any of the provisions of this act. (Id. § 10, as amended L. 1906, c. 26.)

553. Unincorporated Associations May Bring Suit, Etc.—In any suit or proceeding in equity, or in any action at law, brought by or on behalf of any such

association or organization that is not incorporated, for any violation of any of the provisions of this act, the same may be brought in the recognized name of any such association or organization, or in the proper name of the president or the secretary or the treasurer of any such association or organization who has been or may be given authority to bring any action or actions for or in behalf of any such association or organization, and if for any reason such authority is not given before the commencement of any such suit or action, the same may be given thereafter at any time before the trial of the same; and any such suit in equity or action at law may be brought as aforesaid in the recognized name of any branch or local or sub-association, affiliated or connected with any national or international association or organization, or in the name of the president, or the secretary, or the treasurer, thereof; and such authority to bring the same may be given by any board of directors, executive board, or executive committee, of any such association or organization, elected, chosen, or appointed by any such association or organization; and any such person or persons bringing any such action or proceeding in any court of law or equity in this State shall have the right to receive any and all moneys, property or other valuable thing recovered by or adjudged to the complainant or plaintiff in any such suit or action, for the use and benefit of the association or organization entitled to the same; and whenever any such suit or action shall be brought by or on behalf of any such branch or local or sub-association or organization as herein provided instead of by or on behalf of any such national or international association or organization, such branch or local or sub-association bringing the same shall be entitled to the same rights, privileges, remedies and advantages, in the prosecution of such suit or action, as any other party or parties authorized by this act to bring such suit or action would have been entitled to if any such suit or action had been brought by them, or in their behalf as herein provided. (C. S. 1910, p. 5647 et seq.; L. 1898, c. 50, § 11.)

554. Construction of Act.—This act shall be construed by all courts at all times, in all suits, actions and proceedings, in the most liberal manner for effecting the objects and purposes thereof and protecting the claims, rights, interests, use and property of every person, association, organization or corporation in and to any label, trade-mark, term or design filed and registered pursuant to the provisions of this act. (Id. § 12.)

555. Counterfeiting Trade-Marks, or Selling Same Without Notice.—Any person who shall knowingly and wilfully forge or counterfeit, or cause or procure to be forged or counterfeited, upon any goods, wares or merchandise, the private stamps or labels of any mechanic or manufacturer, with intent to defraud the purchasers or manufacturers of any goods, wares or merchandise whatsoever, or who shall vend any goods, wares or merchandise, having thereon any forged or counterfeited stamps or labels, purporting to be the stamps or labels of any mechanic or manufacturer, knowing the same to be forged or counterfeited, without disclosing the fact to the purchaser, shall be guilty of a misdemeanor. (C. S. 1910, p. 1802 et seq.; L. 1898, c. 235, § 196.)

556. Designation of Act.—This act shall be known and designated as "the New Jersey bottle act," and may be so cited and referred to in all process and proceedings taken under it, and in all courts and places. (L. 1925, c. 246, § 1.)

557. Trade-Marks on Bottles, Siphons, Tins, Kegs or Other Articles.—Any person or corporation engaged in manufacturing, bottling or selling soda waters, mineral or aerated waters, porter, ale, beer, cider, ginger ale, milk, cream, small beer, lager beer, weiss beer, white beer or other beverages or medicines, medical preparations, perfumery, oils, compounds or mixtures, in bottles, siphons, tins, kegs or other articles, with his or its name or other marks or devices branded, stamped, engraved, etched, blown, embossed, impressed or otherwise produced upon such bottles, siphons, tins, kegs or the boxes used by him or it, may file in the office of the clerk of the county in which his or its principal place of business is situate, or if such person or corporation shall manufacture or bottle out of this State, then in any county in this State, and also in the office of the Secretary of State, a description of the name, marks or devices so used by him or it, and cause such description to be printed once in each week, for two weeks successively, in a newspaper published in the county in which said notice may have been filed as aforesaid, and he, it or they shall thereupon be deemed the proprietor of such name, mark or device and of every vessel or receptacle upon which it may be branded, stamped, engraved, etched, blown, impressed, embossed or otherwise produced. (Id. § 2.)

558. Unlawful Use of Trade-Marked Articles.—It is hereby declared to be unlawful for any person or corporation to fill or cause to be filled with soda water, mineral or aerated waters, porter, ale, cider, ginger ale, milk, cream, beer, small beer, lager beer, weiss beer, white beer, or other beverages, or with medicine, medical preparations, perfumery, oils, compounds, or mixtures, any bottle, box, siphon, tin or keg

so marked or distinguished as aforesaid, with or by any name, mark or device, of which a description shall have been filed and published, as provided in the second section of this act, or to deface, erase, obliterate, cover up or otherwise remove or conceal, any such name, mark or device thereon, or to sell, buy, use, give, take or otherwise dispose of or traffic in the same, without the written consent of, or unless the same shall have been purchased from, the person or corporation whose mark or device shall be or shall have been in or upon the bottle, box, siphon, tin, keg or other article so filled, trafficked in, used or handled as aforesaid. (Id. § 3.)

559. Unlawfully Used Articles May be Taken.—Any such bottles, boxes, siphons, tins or kegs full or partly full of soda waters, mineral or aerated waters, porter, ale, cider, ginger ale, milk, cream, beer, small beer, lager beer, weiss beer, white beer or other beverages or with medicine, medical preparations, perfumery, oils, compounds or mixtures, and any empty articles used in violation of this act may be taken possession of by the owner or owners or his, her or their agent or agents, who shall not be liable for damages therefor. And if the party or parties having the possession of such article or articles refuse to empty the same of the contents contained therein upon notice and demand by the party entitled to the possession thereof, then the party entitled to the possession thereof, either as owner or agent, may empty such article or articles of the contents and not be liable for damages therefor. (Id. § 4.)

560. Copy of Description as Evidence in Court.—A copy of the description duly certified by the clerk of the county where said description has been filed, as provided for in section two of the act of which this act is a supplement, and where a person or corporation shall manufacture or bottle outside of the State, then, in addition, a copy of the description duly certified by the Secretary of State, shall be received as evidence in all courts and places. (Id. § 5.)

561. Evidence of Publication.—The affidavit of the printer or publisher of a newspaper published within this State, or of his foreman or principal clerk, showing the publication of the notice required by this act, annexed to a printed copy of the notice as published, shall be received as evidence of the publication, and also of the matters therein stated, in all courts and places. (Id. § 6.)

562. Penalty for Offenses Against Act.—Any person or corporation offending against the provisions of this act shall be punished for the first offense by imprisonment not less than ten days nor more than one year, or by a fine of fifty cents for each and every such bottle, box, siphon, tin or keg so filled, sold, used, disposed of, bought or trafficked in, or by both such fine and imprisonment, and for each subsequent offense by imprisonment not less than twenty days nor more than one year, or by a fine of not less than one dollar, nor more than five dollars, for each and every such bottle, box, siphon, tin or keg, so filled, sold, used, disposed of, bought, or trafficked in, or by both such fine and imprisonment, in the discretion of the court or magistrate before whom the offense shall be tried. (Id. § 7.)

563. Complaint of Violation of Act, and Proceedings Thereon.—Whenever any person shall complain, on oath or affirmation, to any criminal court or police justice in any city of the first class, or to any recorder or other police magistrate or justice of the peace, in any other city, town, or in any borough or township, or other municipality, that any person or corporation has violated any of the provisions of this act, the court or magistrate to whom such complaint shall be presented shall issue process at the suit of the State, which process may be either a summons or a warrant against the person or corporation so charged, which process, when in the nature of a warrant, shall be returnable forthwith, and when in the nature of a summons shall be returnable in not less than two nor more than ten days, and shall be served at least one day before its return; such process shall state generally a violation of this act, and on the return thereof, or at any time to which the trial of the case shall be adjourned, the court or magistrate issuing the same shall proceed in a summary manner to hear testimony and to determine and give judgment in the case without the filing of any pleadings, and if the defendant or defendants shall be convicted, may impose the penalty or penalties by this act provided; it shall not be necessary to take or keep any record of the evidence or testimony taken on such trial; service of summons upon a person, other than a corporation, may be made either personally or by leaving a copy at his dwelling house or usual place of abode; service upon a corporation may be made by delivering a copy of the summons to any officer or employee of such corporation who may be found in this State. (Id. § 8.)

564. Recovery of Bottles, Boxes, Et Cetera, Unlawfully Used, Et Cetera, or Held in Possession; Search Warrant and Proceedings Thereon.—Whenever any person shall make oath before any Criminal Court or police justice in any city of the first class, or any recorder, police justice or justice of the peace in any other city, town, borough or township, that he has reason to believe and does believe that any of the bottles, boxes, siphons, tins, kegs or other articles, the property of any

person or corporation who shall have complied with the provisions of section two of this act, are being unlawfully used or filled or trafficked in, or possessed by any person or corporation engaged in manufacturing, dealing in or selling soda waters, mineral or aerated waters, porter, ale, beer, cider, ginger ale, milk, cream, small beer, lager beer, weiss beer, white beer, or other beverages or medicines, medical preparations, perfumery, oils, compounds, or mixtures, or that any junk dealer or dealer in second hand articles, or any person or corporation, has any such bottles, boxes, siphons, tins, kegs or other articles in his or its possession or secreted in any place, such court or magistrate shall issue a search warrant to discover and obtain the same, and to bring before such court or magistrate the person or persons in whose possession such bottles, boxes, siphons, tins, kegs or other articles may be found, and if any such are found unlawfully in the possession of any such person or persons the court or magistrate who issued the process shall proceed to trial and judgment in the manner provided for in section five of this act, and, upon judgment, shall also award possession of the property so taken under such warrant. (Id. § 9.)

565. Disposition of Fines and Costs.—All fines and costs imposed and collected upon any convictions under this act in any city of the first class shall be paid into the treasury of such city and be disposed of as fines and cost in indictable cases are now disposed of, and all fines and costs imposed and collected in any other city, town, borough or township shall be disposed of as now provided by law. (Id. § 10.)

566. Presumptive Evidence of Unlawful Use.—The use by any person other than the person or corporation whose device, name or mark shall be or shall have been upon the same without such written consent or purchase as aforesaid, of any such marked or distinguished bottle, box, siphon, tin, keg or other article, a description of the name, mark or device whereon shall have been filed and published, as herein provided, for the sale therein of soda waters, mineral or aerated waters, porter, ale, cider, ginger ale, milk, cream, beer, small beer, lager beer, weiss beer, white beer, or other beverages, or any article of merchandise, medicines, medical preparation, perfumery, oils, compounds, mixtures or preparations, or for the furnishing of such or similar beverages to customers or the buying, selling, using, disposing of, or trafficking in any such bottles, boxes, siphons, tins, kegs or other articles by any person other than said persons or corporations having a name, mark or device thereon of such owner without such written consent, or the possession of any such bottles, boxes, siphons, tins, kegs or other articles, a description of the marks, names or devices, whereon shall have been so filed and published as aforesaid, by any junk dealer or dealers in second hand articles or by any person, firm or corporation who uses the article in the ordinary conduct of its business, without the written consent of the owner, shall and is hereby declared to be presumptive evidence of the said unlawful use or purchase of and traffic in such bottles, boxes, siphons, tins, kegs or other articles. (Id. § 11.)

567. Deposit on Delivery of Such Marked Bottle, Box, Et Cetera, Not to be Deemed a Sale Thereof.—The requiring, taking or accepting of any deposit upon the delivery of any bottle, box, siphon, tin, keg or other article, the name, mark or device upon which has been filed and published as provided for in section two of this act, shall not be deemed to constitute a sale thereof either optional or otherwise. (Id. § 12.)

568. Refiling and Publication of Description of Name or Mark Filed and Published Under Previous Law, Not Required.—Any person or corporation having heretofore filed in any of the offices mentioned in section two of this act a description of the name or names, marks or devices, upon his or its property therein mentioned, and having also caused the same to be published according to the law existing at the time of such filing and publication, shall not be required to again file and publish such description in order to be entitled to the benefits of this act. (Id. § 13.)

569. Civil Penalty.—Any person or corporation offending the positions of such act, or any of the amendments thereof, or supplements thereto, shall be liable to a penalty of fifty cents for the first offense, for each bottle, box, siphon, tin or keg so filled, sold, used, disposed of, bought, trafficked in, or found in his, her or its possession without the written consent of the owner thereof, and a double penalty for the second and each subsequent offense, which penalty may be recovered in an action at law, as formerly in an action of debt, by the owner of such bottle, box, siphon, tin or keg or his agent in any court of this State having cognizance thereof. The pleadings shall conform in all respects to the practice prevailing in the court in which any such action shall be instituted, but no pleading or process shall be set aside or invalidated by reason of any formal or technical defects therein if the same contain a statement of the nature of the alleged violation and of the section of this act alleged to have been violated, and upon the attention of the court being called to any such formal or technical defect the same shall be immediately corrected and the said pleading or process amended as a matter of course, and as to all other defects in

pleadings or process the same may be amended, in the discretion of the court, as in any other action or proceeding in said court. (Id. § 14.)

570. Penalty, Execution, Imprisonment to Enforce.—When judgment shall be rendered against any defendant other than a body corporate, execution shall be issued against his goods and chattels and body without any order of the court for that purpose first had and obtained. If the officer executing any such writ shall be unable to find sufficient goods and chattels of said defendant in his bailiwick to make the amount of judgment, he shall take the body of said defendant and deliver him to the keeper of the common jail of said county, there to be detained until discharged by the court in which such judgment was obtained, or by one of the justices of the Supreme Court, when such court or justice shall be satisfied that further confinement will not result in payment of the judgment and costs. In case judgment shall be rendered against a body corporate, execution shall be issued against the goods and chattels of such body corporate as in other actions of debt. (Id. § 15.)

571. Use, Sale, Etc., of Stamped or Branded Receptacles for Malt Liquors Without Permission of Owner.—It shall be unlawful for any person or persons hereafter, other than the lawful owner or owners to fill with malt liquor or liquors or other substance, for any purpose whatever, or to use, traffic in, purchase, sell, dispose of, detain, convert, mutilate or destroy; or to wilfully or unreasonably refuse to return or deliver to such owner, upon demand being made for the same, any butt, hogshead, barrel, half-barrel, cask, half-cask, quarter-cask or keg or other packages which may be branded or stamped with the name of such lawful owner, or from which such brand or stamp has been removed, cut off, defaced or obliterated; or to remove, cut off, deface or obliterate the name stamped thereon; or to brand or stamp other brands or stamps on the same without the written permission of the original or lawful owner or owners thereof, unless there shall have been a sale in express terms of any such package, exclusive of the malt liquor contained therein, to such person or persons by the original or lawful owner or owners thereof. (C. S. 1910, p. 297; L. 1893, c. 209, § 1.)

572. Penalties for Violations of Act; Recovery.—Any person or persons who shall violate any of the provisions of section one of this act shall be liable to the penalty of fifty dollars, to be recovered in an action of debt with costs in any court of this State having cognizance thereof; said action to be brought by the owners of such packages, and execution against the goods and chattels and the person of the defendant shall issue for the penalty and costs so recovered. (Id. § 2.)

573. Penalties for Violations of Act; Disposition.—One-half of all the penalties recovered under this act shall be for the use of the poor of the city, borough, town, township wherein such violation shall have been committed, and the other half shall be for the use of the owner in whose name the complaint is made; and the officer collecting the same shall immediately upon receipt thereof pay over the same, as aforesaid, to the officer of such city, borough, town or township, who is by law charged with the care of the poor and to the said owner. (Id. § 3.)

574. Punishment for Violations of Act.—Any person who shall violate any of the provisions of section one of this act shall also be deemed guilty of a misdemeanor, and on conviction thereof shall be punished by a fine not exceeding one hundred dollars or by imprisonment not exceeding six months, or both, at the discretion of the court. (Id. § 4.)

575. Search Warrants; Issue; Service.—On probable cause shown on oath or affirmation of the owner of any such butts, hogsheads, barrels, casks or other packages upon which said owner's name is branded or stamped, or of his agent thereunto specially authorized, that any person has in his possession any such packages in violation of the provisions of section one of this act, or with intent to violate the same, a search warrant shall issue to discover and obtain the said packages; and said search warrant shall be issued and served or executed by any of the several officers now authorized under the laws of this State to issue, serve or execute search warrants, and the same proceedings shall be had thereon as is now required by law in cases where search warrants are issued. (Id. § 5.)

NOTE: See also Nos. 216 et seq., 312 et seq., 581-582, and 634 et seq.

Trading Stamps.

576. Money Value to be Stated on Face of Stamp.—No person shall sell or issue any stamp, trading stamp, cash discount stamp, check, ticket, coupon or other similar device which will entitle the holder thereof, on presentation thereof, either singly or in definite number, to receive, either directly from the vendor or indirectly through any other person, money or goods, wares or merchandise, unless each of said stamps, trading stamps, cash discount stamps, checks, tickets, coupons or other similar

devices shall have legibly printed or written upon the face thereof the redeemable value thereof in lawful money of the United States. (C. S. 1910, p. 5648 et seq.; L. 1905, c. 265, § 1.)

577. Redemption in Money or Merchandise; Amount.—Any person who shall sell or issue to any person engaged in any trade, business or profession any stamp, trading stamp, cash discount stamp, check, coupon or other similar device which will entitle the holder thereof, on presentation thereof, either singly or in definite number, to receive, either directly from the vendor or indirectly through any other person, money or goods, wares or merchandise, shall, upon presentation, redeem the same either in goods, wares or merchandise or in lawful money of the United States at the option of the holder thereof, at the value in lawful money printed on the face thereof; provided, the same be presented for redemption in number or quantity aggregagating money value not less than five cents in each lot. (Id. § 2.)

578. Merchant to be Liable for Redemption of Stamps.—Any person engaged in any trade, business or profession who shall distribute, deliver or present to any person dealing with him, in consideration of any article or thing purchased, any stamp, trading stamp, cash discount stamp, check, ticket, coupon or other similar device which will entitle the holder thereof, on presentation thereof, either singly or in definite number, to receive, either directly from the person issuing or selling the same as set forth in the second paragraph hereof, or indirectly through any other person shall, upon the refusal or failure of the said person issuing or selling same to redeem the same as set forth in the second paragraph hereof, be liable to the holder thereof for the face value thereof, and shall, upon presentation of the same in lots or number aggregating in money value not less than five cents in each lot, redeem the same either in goods, wares or merchandise, or in lawful money of the United States, at the option of the holder thereof, at the value in lawful money printed upon the face thereof. (Id. § 3.)

579. Violations of Section One a Misdemeanor.—Any person, firm or corporation who shall violate section one of this act shall be deemed guilty of a misdemeanor. (Id. § 4.)

580. Application of Act.—This act shall not apply to tickets, coupons or other vouchers placed by any manufacturer in or upon packages or goods manufactured by him nor to those so placed by any merchant, if such tickets, coupons or other vouchers are to be redeemed by such merchant. (Id. § 5.)

Unfair Competition.

581. Dealers Must Not Use Name, Trade-Mark, Etc., of Others—Not Depreciate Value Unfairly.—It shall be unlawful for any merchant, firm or corporation to appropriate for his or their own use a name, brand, trade-mark, reputation or good will of any maker in whose product said merchant, firm or corporation deals, or to discriminate against the same by depreciating the value of such products in the public mind, or by misrepresentation as to value or quality, or by price inducement, or by unfair discrimination between buyers, or in any other manner whatsoever, except in cases where said goods do not carry any notice prohibiting such practice, and except in case of a receiver's sale, or a sale by a concern going out of business. (Supp. 1924, p. 3777; L. 1913, c. 210, § 1, as amended L. 1916, c. 107.)

582. Liability.—Any person, firm or corporation violating this act shall be liable at the suit of the maker of such branded or trade-marked goods, or any other injured person, to an injunction against such practices, and shall be liable in such suit for all damages directly or indirectly caused to the maker by such practices, which said damages may be increased threefold, in the discretion of the court. (Supp. 1924, p. 3778; L. 1913, c. 210, § 2.)

Weights and Measures.

583. Net Contents Indicated.—No person shall distribute or sell, or have in his possession with intent to distribute or sell, any article of food in package form unless the net quantity of the contents be plainly and conspicuously marked on the outside of the package in terms of weight, measure or numerical count; provided, however, that reasonable variations and tolerances and exemptions as to small packages shall be permitted, and that the State Superintendent of Weights and Measures shall by order fix such tolerances and exemptions as to small packages as shall have been or may hereafter be fixed by the Secretary of the Treasury and the Secretary of Agriculture and the Secretary of Commerce and Labor of the United States of America, and such tolerances and exemptions shall be published at the end of the session laws

of the Legislature next thereafter published after the making of said order, and such tolerances and exemptions as fixed in said order shall take effect when so published; provided, further, that if any such tolerance or exemption so adopted shall be changed by the three secretaries above named, it shall not continue in effect in this State after such change has become effective. Any such order may be prima facie proven in any court by the mere production of the volume of such laws containing the publication thereof. (Supp. 1924, p. 3855 et seq.; L. 1916, c. 181, § 1.)

584. Penalties for Violations—Recovery of Penalties—Authority to Bring Proceedings—Disposition of Penalties Recovered.—Any person, firm, copartnership or corporation violating any of the provisions of this act shall, for the first offense, be liable to a penalty of not less than twenty-five dollars nor more than fifty dollars; and, for the second offense shall be liable to a penalty of not less than fifty dollars and not more than one hundred dollars; and for each subsequent offense shall be liable to a penalty of not less than one hundred dollars nor more than two hundred dollars. An action for the recovery of a penalty for violation of the provisions of this act shall be in the nature of an action in debt, and may be brought in the District Court of any city, or judicial district in the small cause court of any county, and before the police magistrate and recorder of any city, town, township, borough or village, and jurisdiction is hereby conferred upon the District Court, the Small Cause Court, the Police Court and Recorder's Court of any city, town, township, borough or village to hear and determine actions brought as aforesaid. County superintendents and assistant county superintendents of weights and measures, municipal and assistant municipal superintendents of weights and measures, are authorized to bring proceedings in their respective jurisdictions, in their official capacities, for the use of the county or municipality which they represent. Penalties, when recovered in the name of a county or assistant county superintendent of weights and measures, shall be payable to the county collector of such county, and when recovered by a municipal or assistant municipal superintendent of weights and measures shall be payable to the municipality which such official represents. (Id. § 2, as amended L. 1921, c. 95.)

585. Publication With Session Laws.—The publication of the tolerances and exemptions provided for in the act to which this act is a supplement shall be published at the end of the session laws for the year one thousand nine hundred and eighteen,* and when so published shall have the same force and effect as if such tolerances and exemptions had been published as provided in the act to which this act is supplement. (Supp. 1924, p. 3856; L. 1918, c. 47, § 1.)†

586. Exemptions—Net Weight Container Law.—The following shall be the exemptions on small packages, from the provisions of the law requiring the quantity of the contents to be marked on the outside of the package, fixed by the State Superintendent of Weights and Measures in accordance with the tolerances and exemptions fixed by the Secretary of the Treasury, the Secretary of Agriculture and the Secretary of Commerce and Labor of the United States of America, viz.:

(1) A package containing two (2) avoirdupois ounces of food, or less, is "small" and shall be exempt from marking in terms of weight.

(2) A package containing one (1) fluid ounce of food or less, is "small" and shall be exempt from marking in terms of measure.

(3) A package wherein the units of food are six (6) or less, is deemed "small" and shall be exempt from marking in terms of numerical count.

The foregoing is prescribed in accordance with the provisions of chapter 47,‡ Laws of 1918, approved February 14, 1918, supplementing chapter 181, P. L. 1916. (L. 1918, p. 1279.)

587. Weights and Measures Defined—Superintendent—Assistant.—The words "weight and measure" or "weights and measures" as used in this act shall be deemed to mean and to include any weight, measure, scale, beam, patent balance, spring scale, steelyard, tape, counter measure, receptacle of any kind, or any other instrument or apparatus and accessories connected therewith used in weighing or measuring any commodity, fluid, or article of merchandise.

The word "superintendent" as used in this act shall be deemed to mean in all instances superintendents of weights and measures.

The word "assistant" shall be deemed to mean assistant superintendent of weights and measures. (Supp. 1924, p. 3840 et seq.; L. 1911, c. 201, § 1.)

588. Standards.—The standards of weights and measures in this State shall be those recognized or furnished by the United States. (Id. § 2.)

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*See No. 586.

†Chapter 47, Laws of 1918, supplements chapter 181, Laws of 1916, quoted in No. 583 et seq.

‡See No. 585.

589. Pounds Per Bushel of Various Commodities.—All commodities hereinafter named in this section shall be sold either by the bushel or by weight, and when sold by the bushel, the bushel shall consist of the number of pounds hereinafter stated; and whenever such commodities as hereinafter named are sold in the subdivisions of the bushel, the number of pounds in such subdivisions shall consist of the fractional part of the number of pounds as hereinafter set forth for the bushel, namely:

	Pounds Per Bus.		Pounds Per Bus.
Alfalfa seed,	60 pounds	Grass seed, native blue,	14 pounds
Apples,	48 pounds	Grass seed, orchard,	14 pounds
Apples, dried,	25 pounds	Hemp seed,	44 pounds
Barley,	48 pounds	Herds grass seed,	45 pounds
Beans,	60 pounds	Hickory nuts,	50 pounds
Beans, Lima,	56 pounds	Horseradish,	50 pounds
Beans, shell,	28 pounds	Kale,	12 pounds
Beans, green or string,	24 pounds	Millet seed,	50 pounds
Beans, wax,	24 pounds	Oats,	32 pounds
Beets,	60 pounds	Onions,	57 pounds
Beet greens,	12 pounds	Onion sets, top,	28 pounds
Bran,	20 pounds	Parsnips,	50 pounds
Buckwheat,	48 pounds	Peas, dried,	60 pounds
Cabbage,	50 pounds	Peas, unshelled, green,	28 pounds
Carrots,	50 pounds	Peaches,	48 pounds
Castor beans,	46 pounds	Peaches, dried,	33 pounds
Charcoal,	20 pounds	Peanuts, green,	22 pounds
Chestnuts,	50 pounds	Peanuts, roasted,	20 pounds
Clover seed,	60 pounds	Pears,	58 pounds
Coal, anthracite,	75 pounds	Plums,	64 pounds
Coal, bituminous,	76 pounds	Potatoes, Irish,	60 pounds
Coke,	40 pounds	Potatoes, sweet,	54 pounds
Corn, on cob,	70 pounds	Quinces,	48 pounds
Corn, shelled,	56 pounds	Red top seed,	14 pounds
Corn, kaffir,	56 pounds	Rice, rough,	45 pounds
Corn, cracked,	50 pounds	Rutabagas,	60 pounds
Corn meal,	50 pounds	Rye,	56 pounds
Cotton seed, upland,	30 pounds	Rye meal,	50 pounds
Cotton seed, sea island,	44 pounds	Shorts,	20 pounds
Cranberries,	32 pounds	Spinach,	12 pounds
Cucumbers,	48 pounds	Timothy seed,	45 pounds
Currants,	40 pounds	Tomatoes,	56 pounds
Dandelions,	12 pounds	Turnips,	55 pounds
Flaxseed,	56 pounds	Walnuts,	50 pounds
Gooseberries,	40 pounds	Wheat,	60 pounds
Grass seed, Hungarian,	50 pounds		

provided, however, that apples, cabbage, cucumbers, peaches and pears may be sold by numerical count. (Id. § 3, as amended L. 1918, c. 11.)

590. Standard Ton.—The standard gross ton shall consist of two thousand two hundred and forty (2,240) pounds. The standard net ton shall consist of two thousand (2,000) pounds. (Supp. 1924, p. 3842; L. 1911, c. 201, § 4.)

591. Dimensions of Cranberry Barrel.—The standard barrel to be used for buying or selling cranberries in this State, or for transporting the same outside of this State shall be of the following size when measured without distention of its parts, to wit: head, sixteen and one-quarter ($16^1/_4$) inches diameter; staves twenty-eight and one-half ($28^1/_2$) inches long, and not more than four-tenths ($^4/_{10}$) of an inch thick; bilge, fifty-eight and one-half ($58^1/_2$) inches outside circumference; distance between heads, twenty-five and one-quarter ($25^1/_4$) inches. Such barrels shall be branded or stenciled in a durable manner "standard." (Id. § 5, as amended L. 1914, c. 84.)

592. Cranberry Bushel and Crates.—The standard measure for a bushel of cranberries shall be thirty-two (32) quarts, rounded measure; that crates (or boxes) to be used for buying or selling cranberries in this State or for transporting the same outside of this State shall be of the following size, to wit: twenty-two (22) inches in length, twelve (12) inches in depth and seven and one-half ($7^1/_2$) inches in width inside clear measure. (Supp. 1924, p. 3842 et seq.; L. 1911, c. 201, § 6.)

593. Use of Liquid Measures.—No person shall use a liquid measure in the purchase or sale of other than liquid commodities. (Id. § 7.)

594. Grain, Coal, Etc., Sold by Weight—Delivery Ticket—Proviso—What Tickets to Show—Disposition of Tickets—Proviso—Containers of Small Lots

Marked.—All grain, coal, coke, charcoal, coal briquets or other patent fuel, regardless of quantity, shall be sold by weight. No person, firm or corporation shall deliver or cause to be delivered any grain, coal, coke, charcoal, coal briquets or other patent fuel, without each sale or delivery being accompanied by a delivery ticket and duplicate thereof; provided, that there shall be a delivery ticket and duplicate thereof delivered with each load or part of load of grain, coal, coke, charcoal, coal briquets or other patent fuel, sold and delivered. On both tickets there shall be distinctly and indelibly expressed, in ink or otherwise, the quantity or quantities in pounds of grain, coal, coke, charcoal, coal briquets or other patent fuel, contained in the cart, wagon or other vehicle or container used in such delivery, the name of the purchaser thereof, and the name of the dealer from whom purchased. One of such tickets shall be delivered to the person receiving such grain, coal, coke, charcoal, coal briquets or other patent fuel, and the other ticket shall be retained by the seller of the grain, coal, coke, charcoal, coal briquets or other patent fuel; provided, however, that the provisions of this section shall not apply to grain, coal, coke, charcoal, coal briquets or other patent fuel, sold to be delivered by the entire car or cargo direct from the vessels, boats or cars containing the same to one destination, and accepted by the purchaser on the original bill of lading or invoice as proof of weight; provided, further, that grain, coal, coke, charcoal, coal briquets or other patent fuel, sold or offered for sale in this State in quantities of thirty pounds or less, in paper bags, sacks or similar containers, where the name of the dealer and the net contents in terms of avoirdupois weight are distinctly marked on such paper bags, sacks or similar containers in Gothic type not less than one-half of an inch in height, shall be exempt from the provisions of this section requiring delivery tickets and duplicates thereof. (Id. § 8, as amended L. 1926, c. 203.)

595. Organization.—The Department of Weights and Measures shall consist of a State Superintendent, of Assistant State Superintendents, of county superintendents and assistant county superintendents and of a municipal superintendent and assistant municipal superintendents of weights and measures, as hereinafter provided. Each person appointed as hereinafter provided as either superintendent or assistant superintendent shall, before entering upon his duties, take an oath of office, as provided by law. (Supp. 1924, p. 3843; L. 1911, c. 201, § 9.)

596. Appointment of State and County Superintendents—Municipal Superintendents—Office—Record of Appointment—Tenure.—The Governor, by and with the advice and consent of the Senate, shall appoint a State Superintendent for a term of five years. The governing bodies of the respective counties shall designate the county superintendent. The governing body of any municipality having a population of sixty thousand or over shall by ordinance provide for the office of municipal superintendent of weights and measures and shall designate the municipal superintendent. When such municipal body shall have adopted such ordinance, and shall have designated such superintendent the clerk of such municipality shall file with the State Superintendent a certified copy of such ordinance and such designation, which shall be entered upon the records of the State Superintendent. The governing body of any municipality, other than municipalities above referred to, may by ordinance provide for the office of municipal superintendent of weights and measures and may designate the municipal superintendent. When such municipal body shall have adopted such ordinance the clerk of such municipality shall forthwith file with the State Superintendent a certified copy, and the person so designated shall forthwith be entered upon the records of the State Superintendent as the municipal superintendent of weights and measures. Any person now holding office as a county or municipal superintendent of weights and measures, and all persons appointed as in this act provided, shall hold their said offices under and by virtue of the provisions of an act* entitled "A supplement to an act entitled 'An act to establish a uniform standard of weights and measures in this State, to establish a Department of Weights and Measures and to provide penalties for the use of other than standard or legal weights and measures,' approved April twenty-fourth, one thousand nine hundred and eleven," which said supplement was approved March twenty-first, one thousand nine hundred and twelve. (Id. § 10, as amended L. 1920, c. 209.)

597. Assistants.—The State Superintendent may appoint three assistant State Superintendents. The respective county and municipal superintendents may, upon resolution of the respective governing bodies of said counties or municipalities, appoint assistant county or municipal superintendents. The number of such superintendents and assistant superintendents for such county or for such municipality shall be fixed by the governing body of such county or such municipality. No other persons shall be engaged within the State for compensation in the capacity of superintendent, sealer or inspector of weights and measures; nor shall any other person act

*See No. 632.

in any official capacity as such superintendent, sealer or inspector, provided that the State Superintendent may at his discretion temporarily appoint honorary or special superintendents with all the powers of the regular county or municipal superintendents. Such honorary or special superintendents shall serve without compensation. (Supp. 1924, p. 3843 et seq.; L. 1911, c. 201, § 11.)

598. Qualifications for Superintendents.—The State Superintendent shall possess scientific and technical knowledge of the construction and use of standards of weights and measures. All county and municipal superintendents and all assistant superintendents shall be persons of sufficient scientific knowledge to properly inspect, examine and report on the technical condition of said standards. All county superintendents of weights and measures now holding such positions, in counties which have adopted the provisions of the Civil Service Act, shall be placed in the classified service thereof, and shall continue in such positions, and all municipal superintendents of weights and measures, in municipalities which have adopted the provisions of the Civil Service Act, shall continue in said positions, subject to the provisions of the Civil Service law. (Id. § 12, as amended L. 1925, c. 157.)

599. Salaries of Superintendents.—The salary of the State Superintendent of Weights and Measures shall be forty-five hundred dollars per annum. The salaries of the Assistant State Superintendents shall be fixed by the State Superintendent of Weights and Measures in accordance with the schedules provided by the State Civil Service Commission. The salary of the county and assistant county and municipal and assistant municipal superintendents shall be fixed by the governing body of such county or municipality, as the case may be; such salary shall be paid in the manner and at the time now or hereafter provided by law, but the salary of no county or assistant county or municipal or assistant municipal superintendents, now in office, shall be decreased or diminished during his incumbency of such office or position. (Supp. 1924, p. 3844; L. 1911, c. 201, § 13, as amended L. 1920, c. 333.)

600. Expense of County Superintendents Met.—In addition to the salary provided by law or by the governing bodies appointing a county superintendent of weights and measures, the said county superintendents shall be entitled to have and receive the actual expenses incurred by them personally in performing the duties of their office, such as transportation, livery, telephone, telegraph and postal charges, to be paid by the board of chosen freeholders of their respective counties on bills itemized and properly sworn to. (Supp. 1924, p. 3844; L. 1912, c. 311, § 1.)*

601. Authority of Superintendents.—The State Superintendent and all assistant State Superintendents, county and municipal superintendents and their assistants, shall have full power and authority to weigh or have weighed grain, coal, or other commodities while in transit from the dealer therein to the purchaser thereof, either at the request of the buyer or on the initiative of the superintendent or his assistant, either State, county or municipal, and it shall be the duty of the State Superintendent to send his assistant into any county of the State where county superintendent had not been appointed, and said superintendent may send said assistant into any county of the State, and the expenses of said assistant inspectors while making said tour of inspection shall be paid out of the fund provided by law for the Department of Weights and Measures. (Supp. 1924, p. 3844 et seq.; L. 1911, c. 201, § 14.)

602. Possession, Keeping, and Certification of Standards.—It shall be the duty of each county and municipal superintendent to take charge of all copies of the standards adopted by this act as the standards of the State, which shall be by order of the State Superintendent entrusted to his care as the official standard of such county or municipality; and shall take all other precautions necessary for their safekeeping and for their maintenance in good order. The State Superintendent shall be the custodian of all standards now the property of the State received by law from the Federal government or which may hereafter be legally procured from or certified to by the National Bureau of Standards, and he shall submit all standards of said State once in ten years to the said National Bureau of Standards for certification. He shall correct the standards of the several counties and municipalities, and shall at least once in five years compare the same with those in his possession.

Supervising authority. The State Superintendent shall have general supervision of the administration of the provisions of this act, shall make such rules for the administration of the affairs of his office and of the offices of the county and municipal superintendents as may be necessary for its proper enforcement. He shall have general supervision over the work of the said county and municipal superintendents. The Assistant State Superintendents shall be under the direct control of the State Superintendent; the assistant county and assistant municipal superintendents shall be under the direct control of the superintendent of their respective counties or munici-

*Chapter 311, Laws of 1912, supplements chapter 201, Laws of 1911, quoted in No. 587 et seq.

palities, and shall have all the powers and authority of a superintendent of weights and measures in making inspections and measurements. (Id. § 15.)

603. Jurisdiction of County Officers.—The jurisdiction of the county superintendents of weights and measures and their assistants shall extend throughout the county for which they were appointed except there be appointed municipal superintendents as above provided, in which case the jurisdiction of the county superintendents will not extend to such municipalities. But nothing in this act shall prevent any county or municipal superintendent or assistant from making official inspections in any municipality in this State upon the designation of the State Superintendent. (Id. § 16.)

604. Tests—Seal of Correctness.—Upon the request of any citizen, firm, corporation or other interested party made to the State Superintendent or any municipal or county superintendent, such superintendent shall cause test to be made of any weights or measures; and if such weight or measure be found correct, or be made correct, such superintendent or assistant shall affix thereto the seal of the department certifying to the correctness thereof.

Weights and measures tested and sealed annually. It is the purpose of this act that all the weights and measures used in trade within this State shall be tested and sealed at least once in each year; and it hereby becomes the duty of every county or municipal superintendent to cause such inspection of the weights and measures used within his jurisdiction to be made as heretofore provided. (Id. § 17, as amended L. 1918, c. 11.)

605. Inspections and Rules for Sales—Official Badge.—Whenever any weight or measure has been duly tested as herein provided for, and has been found correct, the superintendent or assistant making the test shall properly seal the same. If such weight or measure shall not be found correct or it shall not be possible to make it correct, said weight or measure shall not be used, but shall be disposed of as hereinafter provided. It shall be the duty of the State Superintendent and his assistants to direct and assist the county and municipal superintendents in making inspections, and such State Superintendent may also make rules and regulations which shall govern the sale of commodities. Every person so employed under any section of this act shall devote all his time to the duties of the office. Each superintendent and assistant superintendent shall be furnished with a badge displaying his official number, and shall exhibit the same when demanded at any time during the performance of his duties. It shall be the duty of the State Superintendent to design, number, register and issue such badges. (Supp. 1924, p. 3846 et seq.; L. 1911, c. 201, § 18.)

606. Information Supplied.—It shall also be the duty of the State Superintendent to disseminate such information to the citizens of this State as will tend to protect them from the use of false weights and measures.

Records. Every superintendent shall keep a complete record of all standards examined by him, and every municipal and county superintendent shall once in each month, not later than the fifth day thereof, send to the State Superintendent of Weights and Measures, upon blanks furnished by said State Superintendent, a report.

What to show. Such report shall contain: (1) the number of tests made since the last preceding report, (2) the number of weights, measures and balances found by such tests to be correct, (3) the number of weights, measures and balances found by such tests to be false, (4) the number of prosecutions instituted by such superintendents since the last preceding report, together with the name and address of the accused, the name of the court where proceedings were instituted, and the result of such prosecutions, (5) such other matters as the State Superintendent may from time to time prescribe.

Annual reports. Every municipal and county superintendent shall also make an annual report in writing of his work to the State Superintendent, which annual report shall be duly subscribed and sworn to by such superintendent making report and shall be forwarded to the State Superintendent within ten days after the last day of the State fiscal year. Such annual report shall contain a transcript of the reports of all inspections; and the State Superintendent shall within thirty days after the last day of the State fiscal year make a report to the Legislature, which shall contain, besides any recommendations or suggestions deemed necessary or desirable, an abstract or digest of the reports of the municipal and county superintendents.

Annual tests in State Departments. The State Superintendent or one of his assistants shall at least once annually test all weights and measures used in checking the receipt or disbursement of supplies in any department or institution maintained wholly or in part by the State. He shall keep a complete record of all the orders and rules of his department, of all the standards, balances and other apparatus in his custody belonging to the State, and shall take an itemized receipt from his successor in office of all such standards, balances and other apparatus. (Id. § 19, as amended L. 1918, c. 11.)

607. National Standard Procured—Standard for County and Municipalities —Exclusive Use of Standards.—It shall be the duty of the State Superintendent to procure a set of standards properly certified by the National Bureau of Standards, which shall be paid for out of the funds of the State.

It shall be the duty of the superintendent of each county or municipality to procure such standards, and the necessary testing and sealing apparatus, to be paid for out of the funds of the county or municipality, as the case may be.

In no case shall said standards, whether furnished by the United States or duly certified by them, be used by any superintendent for any other purpose than proving or adjusting standards of weights and measures as provided for in this act, and all assistant superintendents shall be provided with suitable standards or copies thereof for use in the performance of their duties. (Supp. 1924, p. 3847 et seq.; L. 1911, c. 201, § 20.)

608. Official Seal—Certificates of Authority.—The State Superintendent shall provide a suitable official seal to be used by him during his term of office and duly surrendered by him to his successor.

He shall also provide for himself and for the use of the county and municipal superintendents, seals or certificates of proper form and wording to be attached to standards of weights and measures which shall have been approved in pursuance of the provisions of this act. (Id. § 21.)

609. If Tests Show Deviation.—Whenever any inspection of weights and measures has been made as hereinbefore provided upon the request of the owner thereof, if any weights and measures so inspected shall be found not to conform to the legal standard, the superintendent or assistant superintendent shall notify such owner in writing that the use of such weight or measure is illegal. Within fifteen days after the serving of such notice the owner thereof shall have such weight or measure corrected or substituted for another, and notify in writing the superintendent of such county or municipality to that effect, or shall deliver to such superintendent within said time the defective weight or measure for confiscation; and for his failure to so do, he shall be liable to a fine of twenty-five dollars. (Id. § 22.)

610. Correction of Error if Slight.—Upon the first official inspection of any weight or measure, except where the inspection is made upon the request of the owner thereof as provided for in the preceding section, if such weight or measure shall be found to deviate from the legal standard, and the deviation shall be of such nature as not to be easily known or ascertained by the owner thereof, it shall be lawful for the owner to correct such weight or measure, so that it may conform to the legal standard, and upon failing to do so, within two days after such inspection it shall be lawful for the superintendent to take possession of and destroy such weight or measure. If the said deviation or the causes thereof shall be patent or easily seen or easily capable of being known by the owner thereof, it shall become the duty of the superintendent or assistant superintendent to immediately take possession of and destroy such weight or measure, and the owner thereof shall be liable to a penalty of five dollars in addition to any other penalties and punishments herein provided. (Id. § 23.)

611. Incorrectness After Sealing.—If any weights or measures theretofore sealed and certified as correct shall be found thereafter to be incorrect, the owner thereof shall be liable to a penalty of ten dollars. (Id. § 24.)

612. After a Year All Weights and Measures Must be Tested.—After one year from the passage of this act it shall be unlawful for any person to buy or sell goods by the use of any weight or measure which has not been tested and sealed according to the provisions of this act, under penalty of twenty-five dollars; provided, that no contract shall be declared void unless one of the contracting parties has been injured by the use of the weight or measure not tested and sealed. (Id. § 25.)

613. Penalties—Recovery of.—Any person who injures or defrauds another by using, or causes to be used, or has in his possession a false weight, measure or other apparatus for determining the quantity of any commodity, or article of merchandise, or sells or exposes for sale less than the quantity he represents, shall for the first offense be liable to a penalty of not less than twenty-five dollars nor more than fifty dollars, and for a second offense be liable to a penalty of not less than fifty dollars nor more than one hundred dollars, and for each subsequent offense shall be liable to a penalty of not less than one hundred dollars nor more than two hundred dollars, or imprisoment for not less than thirty days nor more than ninety days, or both, the amount of said penalty to be determined, as aforesaid, in the discretion of the District Court or police magistrate having jurisdiction, and if any person or persons shall fail to pay the penalty or penalties as imposed, together with the cost of prosecution, the said court or police magistrate shall issue execution against the goods and chattels and body or bodies of the defendant or defendants as provided in section thirty-nine hereof with the same force and effect; provided, however, that

the period of detention of ten days provided therein shall in this case be extended to a period not exceeding ninety days. (Id. § 26, as amended L. 1918, c. 11.)

614. Retention of False Scales a Misdemeanor.—A person who retains in his possession any weight or measure, knowing it to be false, unless it appears beyond a reasonable doubt that it was so retained without intent to use it, or permit it to be used in violation of the last section, is guilty of a misdemeanor. (Supp. 1924, p. 3848 et seq.; L. 1911, c. 201, § 27.)

615. Improper Marking.—A person who knowingly marks or stamps false or short weights, or false tare on any cask or package, or knowingly sells or offers for sale any cask or package so marked, is guilty of a misdemeanor. (Id. § 28.)

616. Deviation Allowable.—The State Superintendent of Weights and Measures shall fix tolerances or allowable deviations from the standards as herein prescribed, and he may change the same from time to time, but in no case shall such allowable deviation be less than one-half of one per centum. No penalty shall be imposed for such an allowable deviation. It shall be the duty of the inspector, however, to cause all weights and measures to conform as nearly as possible to the standard before sealing. (Id. § 29.)

617. Each Piece a Separate Violation.—The use, ownership or possession of each separate weight or measure in violation of any of the provisions of this act shall be deemed as separate violations thereof. Nothing herein shall be construed to create a penalty for any deviation in weights or measures from the standard as herein set forth when such deviation shall be to the disadvantage of the owner thereof. (Id. § 30.)

618. Scale of Penalties.—Any deviations from the official standards herein prescribed, either in weights or measures or in packages, crates, barrels or other receptacles in which any commodity is sold or offered for sale, which shall exceed the allowable error as set forth in section twenty-nine hereof by more than three times the amount of such allowable error, shall be punished by a penalty double that otherwise prescribed, and should such deviation exceed such allowable error by more than five times such allowable error, the penalty shall be three times that otherwise provided. The penalty or punishment for an offense or penalty incurred under any of the provisions of this act shall be double that otherwise prescribed herein, upon its being shown that such person has heretofore been fined, punished or convicted under the same or any other section of this act, providing the act, or omission upon which such second penalty or offense is based shall have occurred after the conviction or recovery for such first offense. (Id. § 31.)

619. Presence of Scales Presumption of Use.—For the purposes of this act, proof of the existence of weights or measures in or about any building, inclosure, stand or vehicle in or from which it is shown buying or selling is commonly carried on, shall be presumptive proof of their regular use for such purposes and of their ownership by the person so using or possessing them, and such facts shall be deemed to remain established until disproved beyond reasonable doubt. (Id. § 32.)

620. As to Authenticity of Standards.—Each weight or measure used by any superintendent or assistant superintendent as a standard for testing the weights and measures used in buying or selling shall be stamped or marked by the superintendent of such county or municipality in such manner as he may determine. A certificate which certifies to the correctness of such weight or measure, designating the same by number, and giving the date of its comparison with any of the standard weights and measures deposited with any State, county or municipal superintendent as in this act provided, shall be presumptive evidence that such weight or measure has continuously since the date of such comparison conformed with the said standards and the national and State standards. Such certificate shall be signed by the Superintendent of the State or the superintendent of such county or municipality, and any certificate substantially setting forth the above facts and purporting to be so signed by such a superintendent shall upon its production be admitted as such presumptive evidence, without further proof of its authenticity. (Id. § 33.)

621. Penalty for Hindering Official.—No person shall in any way or manner hinder or molest any duly authorized superintendent or assistant superintendent in the performance of the duties herein imposed upon him, under penalty of one hundred dollars for every such offense. (Id. § 34.)

622. Penalty for Refusing to Exhibit Weights, Etc.—Penalty for Altering Sealed Weights.—No person shall refuse to exhibit any weights or measures to any of said superintendents or assistant superintendents for the purpose of being so inspected and examined, nor shall any person refuse to admit such officer to his store, or place of business, during the usual hours for business, nor shall any person who may be buying, selling or delivering goods, liquids or commodities from any wagon or conveyance refuse to permit such officer to examine any weights or measures which may be in or about such conveyance, under the penalty of twenty-five dol-

lars for every such offense. No person shall alter or change in any manner any weight or measure, or allow the same to be done after the same has been tested and sealed by any officer or inspector under the authority of this act, so that the same shall weigh or measure incorrectly, under penalty of one hundred dollars for each such offense. (Id. § 35.)

623. General Penalty.—Any person violating any of the provisions of this act for which a specific penalty has not been provided shall be liable to a penalty of twenty-five dollars. (Id. § 36, as amended L. 1926, c. 203.)

624. New Scales to be Standard—Penalty for Selling False Scales.—Whenever any weight or measure is sold or delivered after sale to any person within this State for the purpose of use in the purchase of or in the sale of commodities, such weight or measure shall be of the legal or true standard as heretofore provided in this act, and any person selling a false weight or measure with knowledge that it is to be used in weighing or measuring commodities shall be liable to a penalty of fifty dollars. (Supp. 1924, p. 3850 et seq.; L. 1911, c. 201, § 37.)

625. Action if Scale Easily Arranged to Defraud.—Whenever any superintendent shall find that a particular weight or measure is so constructed as to facilitate the perpetration of fraud, he may decline to seal the same, and in such case shall report his act to the State Superintendent, who shall thereupon make an investigation, and if satisfied that its use is prejudicial to the best interests of the public, shall make an order that such standard shall be treated as an unlawful standard. Such order may be reviewable both as to the law and to the fact upon application to the Supreme Court. (Id. § 38.)

626. Recovery of Penalties—Arrest of Defendant—Prosecution—Disposition of Penalties.—An action to recover any penalty incurred under the provisions of this act may be brought in the name of the State of New Jersey by any duly appointed superintendent or any assistant superintendent by complaint in writing, duly verified by such superintendent or such assistant superintendent, which verification may be upon information and belief, or may be verified by the complaining witness, to be filed with the police magistrate or the District Court of any municipality in this State alleging the violation in said municipality of any of the provisions of this act or acts supplementary thereto or amendatory thereof, who is hereby authorized to issue a summons returnable in from one to ten days from the date thereof, same to be served not less than two days prior to the return thereof, or a warrant directed to any superintendent or to any assistant superintendent, or to any constable or police officer commanding him to cause person or persons so complained of to be summoned or arrested and brought before such judge or magistrate, who shall at the return of the said summons or warrant forthwith in a summary way hear and determine the guilt or innocence of such person or persons, and upon conviction shall impose upon the person or persons so convicted the penalty or penalties prescribed for such offense, together with the costs of prosecution of the proceedings in said court, or before such magistrate, and if any person or persons shall fail to pay the penalty or penalties so imposed, together with the costs of prosecution, execution shall be issued against his or their goods and chattels, body or bodies without any order of the court for that purpose first had and obtained. If the officer executing any such writ shall be unable to find sufficient goods and chattels of said defendant or defendants in his bailiwick to make the amount of said judgment and costs, he shall take the body of the defendant or defendants and deliver him or them to the keeper of the common jail of said county for a period not to exceed ten days, except as may be otherwise in this act in this respect provided; or until said penalty and costs are sooner paid; provided, however, that the defendant or defendants may be released upon order of the judge or magistrate before the expiration of any imprisonment prescribed in default of payment of any judgment, upon the written order of the committing magistrate or a justice of the Supreme Court, in the discretion of said judicial officer, after one day's notice of time and place of application for such order to the State Superintendent of Weights and Measures. It shall be the duty of the city attorney of any municipality wherein such violation shall take place to assist in the prosecution of the same, unless such municipality has no such municipal superintendent of weights and measures, as provided for in section ten hereof in which case the public prosecutor of the county wherein such violation shall take place, shall assist in such prosecution. All fines and penalties collected from persons offending against the provisions of this act shall be paid by the magistrate receiving the same into the county treasury of such county, unless such penalty was incurred within a municipality or municipalities having a municipal superintendent, as provided in section ten, in which case such penalty shall be paid into the treasury of said municipality or municipalities pro rata. (Id. § 39, as amended L. 1913, c. 194.)

627. Arrest Without Warrant—Summary Hearing.—For violation of any of the provisions of the act to which this act and section is supplementary, done within

the view of any superintendent or assistant superintendent of weights and measures, such superintendent or assistant superintendent is authorized, without warrant, to arrest the offender or offenders and to conduct him or them before the judge or police magistrate having jurisdiction in said municipality wherein such arrest is made and offense committed, and such judge or police magistrate is hereby authorized and required on verified complaint in writing, setting forth the nature of the offense for which said arrest was made, to be filed then and there with such judge or police magistrate, before the commencement of the hearing, to hear and determine in a summary way the guilt or innocence of such person or persons, and inflict the penalties provided by law. (Supp. 1924, p. 3852; L. 1911, c. 201, § 39a, added L. 1913, c. 194.)

628. Right of Appeal—Appeal Acts as Stay of Execution.—Any party to any proceeding instituted under this act may appeal from the judgment or sentence of the District Court or police magistrate to the Court of Common Pleas of the county in which the said proceedings take place; provided, that the party appealing shall, within ten days after the date of the said judgment, file a written notice of appeal with the District Court or police magistrate, pay the costs of such proceedings, and deliver to such District Court or police magistrate a bond to the opposite party in double the amount of the judgment appealed from, with at least one sufficient surety, conditioned to prosecute the said appeal and to stand to and abide by such further order or judgment as may hereinafter be made against said party, which appeal shall act as a stay of execution, unless said appeal shall be dismissed for want of jurisdiction in the court appealed to, in which case the District Court or police magistrate may issue execution as in this act provided upon the remanding and dismissal of the appeal papers to said District Court or magistrate with certified copy of the order of dismissal as aforesaid. (Id. § 39b, as amended L. 1918, c. 11.)

629. Transcript Sent to Court of Common Pleas.—Whenever an appeal shall be taken as aforesaid, it shall be the duty of the District Court or police magistrate to send all papers, together with a transcript of the proceedings in the case to the next term of the Court of Common Pleas of the said county, if at least five days shall intervene between the rendition of said judgment and the commencement of said term of court; but, if otherwise, then said proceeding shall be brought on and heard at the next subsequent term of said court, which court shall hear and determine such appeal in the same way and manner as said case was heard and determined by such District Court or police magistrate, who shall render final judgment therein, upon which judgment in case of affirmance of conviction, execution directed to the sheriff as provided in the first instance in sections twenty-six and thirty-nine hereof may issue; provided, however, that if the defendant shall be committed to jail under any execution provided for in this act, on failure to pay the amount due of penalty and costs, such commitment shall be construed as a waiver and release of any appeal bond previously given in the proceeding. (Supp. 1924, p. 3852 et seq.; L. 1911, c. 201, § 39c, added L. 1913, c. 194.)

630. Act How Construed.—This act shall be deemed a public act, and shall be liberally construed. Should any section or provision thereof be held unconstitutional or invalid, it shall not be held to affect any other section or provision hereof. (Supp. 1924, p. 3853; L. 1911, c. 201, § 40.)

631. Prevailing Party to Have Costs—Provision in County and Municipal Budgets.—In all actions brought, pursuant to the provisions of the act to which this act is a supplement,* where such action is brought in the District Court of any city or judicial district, or in the Small Cause Court of any county, the prevailing party in any such action shall be entitled to recover his taxed costs, which said costs shall be taxed according to the practice and procedure prevailing in the court in which the action is instituted. The several boards of freeholders, in the counties of this State, and the several municipalities, shall provide in their budgets, or from other sources, a sum sufficient for the purposes of this act. (L. 1926, c. 128, § 1.)

632. Tenure of County and Municipal Superintendents.—The county superintendents and municipal superintendents of weights and measures appointed by the governing body of the respective counties or the governing body of any municipality or other governing bodies, and the secretaries and assistant superintendents appointed by the respective governing bodies or by the respective county or municipal superintendents of weights and measures, upon resolution of said governing bodies, shall hold their office during good behaviour, and shall not be removed, discharged or reduced in pay or position except for inefficiency, in capacity, conduct unbecoming an employee or other just cause, and until the said officials shall have been furnished with the written statements of the reasons for such removal, discharge or reduction, and shall have been given a reasonable time to make written answer thereto. Nor

*Chapter 201, Laws of 1911, quoted in No. 587 et seq.

shall such removal, discharge or reduction be made until the charge or charges shall have been examined into and found true in fact by the governing board or body of such county or municipality appointing the said superintendent or superintendents, secretaries or assistant superintendents at a hearing, upon reasonable notice to the person charged, at which time he may be represented by counsel and offer testimony of witnesses or any other evidence in his own behalf. (Supp. 1924, p. 3853; L. 1912, c. 119, § 1, as amended L. 1920, c. 210.)*

633. Clerical Assistants to State Superintendent.—The State Superintendent of Weights and Measures is hereby authorized to appoint not more than two clerical assistants as he may deem necessary, the salary of such clerical assistants to be paid out of the treasury of this State, in such amounts as fixed and determined upon by said State Superintendent, in accordance with the schedules provided by the Civil Service Commission. (Supp. 1924, p. 3853; L. 1912, c. 142, § 1, as amended L. 1921, c. 94.)†

634. Capacity of Milk and Cream Bottles—Trade-Mark—Designating Number.—Bottles used for the sale of milk and cream shall be of the capacity of half-gallon, three pints, one quart, one pint, half-pint, and one gill, filled full to the bottom of the cap ring or stopple. The following variations on individual bottles or jars may be allowed: Six drams above and six drams below on the half-gallon; five drams above and five drams below on the three pints; four drams above and four drams below on the quart; three drams above and three drams below on the pint; two drams above and two drams below on the half-pint, and two drams above and two drams below on the gill. Bottles or jars used for the sale of milk shall have clearly blown, or otherwise permanently marked, in the sides or bottom of the bottle the name, initials or trade-mark of the manufacturer and a designating number, which designating number shall be different for each manufacturer and may be used in identifying the bottles. The designating number shall be furnished by the State Superintendent of Weights and Measures upon application by the manufacturer, and a record of the designating numbers and to whom furnished shall be kept in the office of the Superintendent of Weights and Measures. (Supp. 1924, p. 3853 et seq.; L. 1912, c. 362, § 1.)‡

635. Penalty for Noncompliance—Dealer's Responsibility.—Any manufacturer who sells milk and cream bottles to be used in this State that do not comply as to size and marking with the provisions of this act shall suffer a penalty of five hundred dollars, to be recovered in an action of debt to be brought by the State Superintendent of Weights and Measures, and the penalty, when recovered, shall be paid into the treasury of this State. Any dealer who knowingly uses for the purpose of selling milk or cream jars or bottles purchased after this law takes effect that do not comply with this section as to marking and capacity shall be guilty of a misdemeanor. (Id. § 2.)

636. Capacity of Container.—No person shall sell or deliver, or have in possession with intent to sell or deliver, any fruit or fruits, berries or vegetables, contained in any basket, box or other container, unless such basket, box or other container shall be of the capacity, in standard dry measure, of thirty-two, twenty, sixteen, eight, four or two quarts, or one quart or one pint; provided, however, that nothing in this act contained shall be construed to apply to the sale or delivery, or the possession, with intent to sell or deliver, of any fruit or fruits, berries, or vegetables contained in any sealed can, jar or bottle, or which are sold by the barrel, except cranberries, which may be sold in standard crates or barrels of the standard measure as provided by the act to which this act is a further supplement. (Supp. 1924, p. 3854 et seq.; L. 1914, c. 248, § 1.)¶

637. Capacity of Container Plainly Marked.—No person except as hereinbefore provided shall sell or deliver or have in possession with intent to sell or deliver, any fruit or fruits, berries or vegetables, contained in any basket, box or other container, unless such basket, box or other container shall have legibly marked on the outside thereof, by the manufacturer thereof, in English letters or Arabic numerals, the exact capacity of said basket, box or other container, and unless said basket, box or other container shall also contain the name and address of the manufacturer thereof, painted or written thereon, legibly in the English language; provided, however, that any manufacturer of any such baskets, boxes or other containers may

*Chapter 119, Laws of 1912, supplements chapter 201, Laws of 1911, quoted in No. 587 et seq.

†Chapter 142, Laws of 1912, also supplements chapter 201, Laws of 1911.

‡Chapter 362, Laws of 1912, supplements chapter 201, Laws of 1911, quoted in No. 587 et seq.

¶Chapter 248, Laws of 1914, also supplements chapter 201, Laws of 1911.

mark thereon, in lieu of his name and address, a sign or symbol furnished him by the Superintendent of Weights and Measures of this State. (Id. § 2.)

638. Penalty.—Any person violating any of the provisions of this act shall be liable to a penalty of not less than five nor more than one hundred dollars for each offense. Such penalty may be sued for and recovered by the State Superintendent of Weights and Measures or by the county or municipal superintendents of weights and measures of the county or municipality in which such violation occurred. The proceedings for the collection of such penalty shall be in all respects the same as the proceedings for the collection of penalties under and by virtue of the provisions of the act to which this act is supplemental, with the amendments and supplements thereof, including any amendments and supplements which may hereafter be passed or become effective. (Id. § 3.)

639. "Person" Defined.—The word "persons," as used herein, shall include copartnerships and corporations. (Id. § 4.)

640. Minimum Size of Vegetable Baskets.—Hereafter it shall be unlawful for any person or corporation in this State to sell any fruit, vegetables and the like by the basket, which basket shall contain less than half a bushel. (Supp. 1924, p. 3855; L. 1912, c. 282, § 1.)

641. Penalty—Proviso.—Any person or corporation violating any of the provisions of this act shall be liable to a penalty of twenty-five dollars for each offense, to be recovered in an action of debt by the Board of Health of the State of New Jersey, in the name of the State; provided, however, nothing in this act shall prevent the selling of a larger or smaller measure than that denominated in this act. (Id. § 2.)

642. Sale of Ice by Avoirdupois Weight—Scales Tested.—Every person, firm or corporation selling or offering for sale any ice, shall at the time of the delivery thereof, weigh by avoirdupois weight the quantity of ice delivered, and for this purpose shall have a scale tested and sealed by the State Department of Weights and Measures, or by any county or municipal superintendent of weights and measures. (Supp. 1924, p. 3856 et seq.; L. 1919, c. 215, § 1.)

643. Weight of Tongs Deducted.—Each and every set of tongs used for the delivery of ice shall have permanently stamped thereon the exact and true avoirdupois weight thereof by the State Department of Weights and Measures or by a county or municipal superintendent of weights and measures, and such weight, stamped as aforesaid, shall be deducted from the total weight of ice as determined on the scale by which the same is weighed. (Id. § 2.)

644. Penalties for Cheating.—Any person, firm or corporation, engaged in the business of selling ice who shall deliver any ice without first having weighed the same, or who sells less than the quantity represented, shall be liable to a penalty of twenty-five dollars for the first offense, fifty dollars for the second offense, and to a penalty of one hundred dollars for each subsequent offense. (Id. § 3.)

645. Recovery of Penalties—Authority to Bring Proceedings.—An action for the recovery of a penalty for violation of the provisions of this act shall be in the nature of an action in debt, and may be brought in the District Court of any city, or judicial district, in the Small Cause Court of any county, and before the police magistrate and recorder of any city, town, township, borough or village, and jurisdiction is hereby conferred upon the District Court, the Small Cause Court, the Police Court and Recorder's Court of any city, town, township, borough or village to hear and determine actions brought as aforesaid. County superintendents and assistant county superintendents of weights and measures, municipal and assistant municipal superintendents of weights and measures, are authorized to bring proceedings within their respective jurisdictions in their official capacities, for the use of the county or municipality which they represent. Penalties, when recovered in the name of a county or assistant county superintendent of weights and measures, shall be payable to the county collector of such county, when recovered by a municipal or assistant municipal superintendent of weights and measures, shall be payable to the municipality which such official represents. (Id. § 4, as amended L. 1921, c. 92.)

646. Public Weighmaster—Appointment—Oath—Certificate of Appointment.—All firms, corporations, copartners or individuals engaged in the business of weighing for hire, who shall weigh or measure any commodity, produce or article, and issue therefor a weight certificate which shall be accepted as the accurate weight upon which the purchase or sale of such commodity, produce or article is based, shall be known as a public weighmaster, and all such weighmasters shall be appointed by the State Superintendent of Weights and Measures; provided, that any firm, corporation or individual not engaged in the business of weighing for hire, but to whom the services of a certified weigher are necessary for the proper conduct of any business in which they may be engaged, may, upon application to the State Superintendent of Weights and Measures, have one or more of their employees, or some other

suitable person, designated by the said State Superintendent of Weights and Measures to act as weighmaster for such firm, corporation or individual. Each weighmaster shall, before entering upon his duties, make oath faithfully to execute his trust as a weighmaster. Said State Superintendent of Weights and Measures shall issue a certificate of such appointment or designation and shall keep a record of the same. (Supp. 1924, p. 3857 et seq.; L. 1920, c. 200, § 1.)

647. Duties.—The rights and duties of all weighmasters shall be prescribed by said State Superintendent of Weights and Measures, and such weighmasters shall not receive compensation from the State for the duties so performed. (Id. § 2.)

648. Form of Certificate.—The State Superintendent of Weights and Measures shall also prescribe the form of weight certificate to be used by all public weighmasters in this State. Such certificate shall state thereon the kind of commodity, produce or article, the number of units of the same, the date of receipt of the commodity, produce or article, the owner, agent or consignee, the total weight of the commodity, produce or article, the vessel, railroad, team, truck or other means by which the commodity, produce or article was received, and any trade or other mark thereon, and such other information as may be necessary to distinguish or identify the commodity, produce or article from a like kind. No certificate other than the one herein prescribed shall be used by any public weighmaster in this State, and such certificate, when so made and properly signed, shall be prima facie evidence of such weights. (Id. § 3.)

649. Seal.—It shall be the duty of every weighmaster in this State to provide himself with a seal, at his own expense, which seal shall have inscribed on the outer margin thereof his name and the words "New Jersey," with the words "Public Weigher" inscribed in center of said seal, which seal shall be impressed upon each and every weight certificate issued by such weighmaster, and said seal, when applied to weight certificates, shall be a recognized authority of accuracy. (Id. § 4.)

650. Record Kept.—All public weighmasters shall keep and preserve correct and accurate records of all public weighings as provided by this act, which records shall be open at all times for inspection by the State Superintendent of Weights and Measures or his assistants. (Id. § 5.)

651. Correct Weight—Penalty for False Certificate.—All certificates of weights and measures as provided by this act shall contain the accurate and correct weight of any and all commodities weighed when issued by the public weighmaster.

Any weighmaster who shall issue a certificate of weights and measures, giving a false weight or measure of any article or commodity weighed or measured by him or his representative to any person, firm or corporation, shall, upon being found guilty of such offense, pay a fine of not less than one hundred dollars nor more than five hundred dollars, and, in addition, shall forfeit his certificate as weighmaster, which certificate, when so forfeited, shall be turned over to the State Superintendent of Weights and Measures. (Id. § 6.)

652. Penalty for Requesting False Weighing.—Any person, firm or corporation who shall request a weighmaster to weigh any product, commodity or article falsely or incorrectly, or who shall request a false or incorrect certificate of weight or measure, or any person issuing a certificate of weights and measures who is not a weighmaster as provided for in this act, shall, upon being found guilty, pay a fine of not less than one hundred dollars nor more than five hundred dollars. (Id. § 7.)

653. Reweighing on Complaint.—When doubt or differences arise as to the correctness of the net or gross weight of any amount or part of any commodity, produce or article for which a certificate of weights and measures has been issued by a public weighmaster the owner, agent or consignee may, upon complaint to the State Superintendent of Weights and Measures, or his assistants, have said amount or part of the amount of any commodity, produce or article reweighed by the State Superintendent of Weights and Measures or his assistants, or a public weighmaster designated by him, the services for which reweigh, when performed by the said State Superintendent of Weights and Measures or his assistants, shall be gratis. (Id. § 8.)

654. Term—Fee.—The term of appointment for weighmasters shall be for three years, and a fee of five dollars shall be paid by each person appointed or designated as weighmaster to the State Superintendent of Weights and Measures, which fee shall be turned over to the Treasurer of the State by the said State Superintendent of Weights and Measures; provided, that a similar fee as provided in this section shall be required for all renewals of appointments or designations as weighmasters, which fee shall also be turned into the treasury of the State by the State Superintendent of Weights and Measures. (Id. § 9.)

655. Standards for Climax Baskets.—Standards for Climax baskets for grapes and other fruits and vegetables shall be the twelve-quart basket, four-quart basket and two-quart basket, respectively:

12-quart basket. (a) The standard twelve-quart Climax basket shall be of the following dimensions: Length of bottom piece, sixteen inches; width of bottom piece, six and one-half inches; thickness of bottom piece, seven-sixteenths of an inch; height of basket, seven and one-sixteenth inches, outside measurement; top of basket, length, nineteen inches, width, nine inches, outside measurement. Basket to have cover nine inches by nineteen inches, when cover is used.

4-quart basket. (b) The standard four-quart Climax basket shall be of the following dimensions: Length of bottom piece, twelve inches; width of bottom piece, four and one-half inches; thickness of bottom piece, three-eighths of an inch; height of basket, four and eleven-sixteenths inches, outside measurement; top of basket, length, fourteen inches; width, six and one-fourth inches, outside measurement. Basket to have cover six and one-fourth inches by fourteen inches, when cover is used.

2-quart basket. (c) The standard two-quart Climax basket shall be of the following dimensions: Length of bottom piece, nine and one-half inches; width of bottom piece, three and one-half inches; thickness of bottom piece, three-eighths of an inch; height of basket, three and seven-eighths inches, outside measurement; top of basket, length, eleven inches, and width, five inches, outside measurement. Basket to have a cover five by eleven inches, when a cover is used. (Supp. 1924, p. 3859 et seq.; L. 1924, c. 20, § 1.)

656. Baskets as Specified.—No person, firm, copartnership or corporation shall sell or deliver, or have in possession with intent to sell or deliver, any fruit or fruits, berries or vegetables, contained in any Climax basket or baskets unless such Climax basket or baskets shall be of the capacities and dimensions as in this act specified; provided, however, that nothing in this act contained shall be construed to apply to the sale or delivery, or the possession with intent to sell or deliver, of any fruit or fruits, berries or vegetables contained in any basket, box or other container the capacities of which are specified in an act* entitled "A further supplement to an act entitled 'An act to establish a uniform standard of weights and measures in this State, to establish a Department of Weights and Measures and to provide penalties for the use of other than standard or legal weights and measures,' approved April twenty-fourth, nineteen hundred and eleven, and to repeal a certain supplement thereto, approved March twelfth, nineteen hundred and thirteen," as same was approved April seventeenth, one thousand nine hundred and fourteen. (Id. § 2.)

657. Marking of Baskets.—No person, firm, copartnership or corporation shall sell or deliver, or have in possession with intent to sell or deliver, any fruit or fruits, berries or vegetables, contained in any Climax basket or baskets, unless such Climax basket or baskets shall have legibly marked on the outside thereof, by the manufacturer thereof, in English letters or Arabic numerals, the exact capacity of said Climax basket or baskets and unless said Climax basket or baskets shall also contain the name and address of the manufacturer thereof, painted or written thereon, legibly in the English language: Provided, however, that any manufacturer of any Climax basket or baskets as in this act specified may mark thereon, in lieu of his name and address, a sign or symbol furnished him by the Superintendent of Weights and Measures of this State. (Id. § 3.)

658. Baskets Must Conform to Law.—It shall be unlawful to manufacture for shipment, or to sell for shipment any Climax basket or baskets for fruits, berries or vegetables, whether filled or unfilled, which do not conform with the provisions of this act. (Id. § 4.)

659. Examination and Test.—The examination and test of Climax baskets for fruits, berries or vegetables for the purpose of determining whether such baskets comply with the provisions of this act, shall be made by the State Department of Weights and Measures, and the State Superintendent of Weights and Measures shall establish and promulgate rules and regulations allowing such reasonable tolerances and variations as may be found necessary. (Id. § 5.)

660. Penalties for Not Complying—Recovery of Penalty.—Any person, firm, copartnership, corporation or association violating any of the provisions of this act, shall, for the first offense, be liable to a penalty of not less than twenty-five dollars nor more than fifty dollars, and for a second offense be liable to a penalty of not less than fifty dollars nor more than one hundred dollars, and for each subsequent offense shall be liable to a penalty of not less than one hundred dollars nor more than two hundred dollars. An action for the recovery of a penalty for the violation of any of the provisions of this act shall be in the nature of an action in debt and the same may be instituted and the penalty recovered either in the District Court of any city or judicial district or in the Small Cause Court of any county or before the police magistrate or the recorder of any city, town, township, borough or village. Jurisdiction is hereby conferred upon the District Court, and the Small Cause Court,

*See No. 636 et seq.

and on the Police Court and the Recorder's Court of any city, town, township, borough or village of this State to hear and determine actions instituted under this act, it being the intent hereof to confer jurisdiction upon the said Small Cause Court, the Police Court, and the Recorder's Court in jurisdictions where a District Court exists, notwithstanding any law of this State providing that no justice of the peace or Small Cause Court shall have jurisdiction over any case or proceeding cognizable before a District Court where the defendant or defendants reside within any city or judicial district where a District Court is established and notwithstanding any law of the State prohibiting any justice of the peace resident within the limits of any city or judicial district where a District Court is established from exercising any civil jurisdiction. (Id. § 6.)

661. **Proceedings Brought by Officials—Payment of Penalties.**—The State Superintendent of Weights and Measures or his assistants, county or assistant county superintendents of weights and measures, municipal or assistant municipal superintendents of weights and measures, are authorized to bring proceedings within their respective jurisdictions, in their official capacities, for the use of the State or of the county or municipality which they represent. Penalties when recovered in the name of the State Superintendent of Weights and Measures or his assistants shall be payable to the State Treasurer, and when recovered by the county or assistant county superintendent of weights and measures shall be payable to the county collector of such county, and when recovered by a municipal or assistant municipal superintendent of weights and measures, shall be payable to the municipality which such official represents. (Id. § 7.)

662. **Commodities Sold by Weight Instead of Dry Measure.**—All commodities heretofore commonly offered for sale, or sold by dry measure or by basket, barrel or container of any kind, except as hereinafter provided, shall be offered for sale or sold upon the basis of avoirdupois net weight or by numerical count only, and it shall thereafter be unlawful for anyone to use or employ any dry capacity measure, basket, barrel or container of any kind as a means of determining the amounts or quantities of any such commodities offered for sale, or sold; provided, however, that the provisions of this act shall not be construed to apply to fruits and vegetables sold in the original standard container, nor to vegetables which by common custom are offered for sale, or sold by the bunch; nor shall the provisions of this act be construed to apply to fresh berries and to other small fruits which are customarily offered for sale, and sold by the box, basket or other receptacle, except, however, when such fresh berries or such other small fruits are offered for sale, or sold in bulk, in which case the provisions of this act shall apply to the extent that such fresh berries and such other small fruits shall be offered for sale, and sold by avoirdupois net weight only; provided, further, however, that all fresh berries and such other small fruits when offered for sale, or sold shall be so offered or sold in boxes, baskets or receptacles of uniform size to hold one quart or one pint dry measure only, which said boxes, baskets or other receptacles shall be uniformly and evenly filled throughout. (Supp. 1924, p. 3861 et seq.; L. 1924, c. 59, § 1.)

663. **Enforcement of Act.**—The State Superintendent of Weights and Measures, his duly authorized assistants and all county and municipal superintendents of weights and measures are hereby charged with the enforcement of the provisions of this act. (Id. § 2.)

664. **Penalty for Violation.**—Any person, firm, copartnership, corporation or association violating any of the provisions of this act shall, for the first offense, be liable to a penalty of not less than twenty-five dollars nor more than fifty dollars, and for a second offense be liable to a penalty of not less than fifty dollars nor more than one hundred dollars and for each subsequent offense shall be liable to a penalty of not less than one hundred dollars nor more than two hundred dollars. An action for the recovery of a penalty for the violation of any of the provisions of this act shall be in the nature of an action in debt and the same may be instituted and the penalty recovered either in the District Court of any city or judicial district or in the Small Cause Court of any county or before the police magistrate or the recorder of any city, town, township, borough or village. Jurisdiction is hereby conferred upon the District Court, and the Small Cause Court, and on the Police Court and the Recorder's Court of any city, town, township, borough or village of this State to hear and determine actions instituted under this act, it being the intent hereof to confer jurisdiction upon the said Small Cause Court, the Police Court and the Recorder's Court in jurisdiction where a District Court exists, notwithstanding any law of this State providing that no justice of the peace or Small Cause Court shall have jurisdiction over any case or proceeding cognizable before a District Court where the defendant or defendants reside within any city or judicial district where a District Court is established and notwithstanding any law of the State prohibiting any justice

of the peace resident within the limits of any city or judicial district where a District Court is established from exercising any civil jurisdiction. (Id. § 3.)

665. Official Proceedings.—County superintendents and assistant county superintendents of weights and measures, municipal and assistant municipal superintendents of weights and measures, are authorized to bring proceedings within their respective jurisdictions, in their official capacities, for the use of the county or municipality which they represent. Penalties when recovered in the name of a county or assistant county suprintendent of weights and measures shall be payable to the county collector of such county, and when recovered by a municipal or assistant municipal superintendent of weights and measures, shall be payable to the municipality which such official represents. (Id. § 4.)

666. "Commodities" Defined.—The term "commodities" as used in this act shall be construed to mean articles of food, other than liquids, which are capable of being measured by dry capacity measure and which have been at any time prior to the passage of this act sold by dry capacity measure in this State.

"Dry capacity measure." The term "dry capacity measure" within the meaning of this act shall be construed to be the bushel, half-bushel, peck, half-peck, quarter-peck, quart, pint, half-pint and similar measures.

"Original standard container." The term "original standard container" as used in this act shall be construed to mean and include only barrels, boxes, baskets, hampers or similar containers, the dimensions or capacity of which is established by law of this State or by act of Congress, the contents of which have not been removed or repacked, and upon which is plainly and conspicuously marked the net quantity of contents thereof in terms of weight, measure or numerical count. (Id. § 5.)

667. "Commodity" Defined.—The term "commodity" as used in this act shall, for the purpose of this act, be taken to mean and include anything which is commonly sold by weight or measure or other apparatus for determining quantity. (Supp. 1924, p. 3128 et seq.; L. 1919, c. 197, § 1.)

668. Penalty for Selling Underweight—Recovery of Penalty.—Any person, firm, corporation or association that sells or exposes for sale less than the quantity represented of any commodity, as defined in this act, shall, for the first offense, be liable to a penalty of not less than twenty-five dollars nor more than fifty dollars, and for a second offense be liable to a penalty of not less than fifty dollars nor more than one hundred dollars, and for each subsequent offense shall be liable to a penalty of not less than one hundred dollars nor more than two hundred dollars. An action for the recovery of a penalty for violation of the provisions of this act shall be in the nature of an action in debt, and may be brought in the District Court of any city, or judicial district, in the Small Cause Court of any county, and before the police magistrate and recorder of any city, town, township, borough or village, and jurisdiction is hereby conferred upon the District Court, the Small Cause Court, the Police Court and Recorder's Court of any city, town, township, borough or village to hear and determine actions brought as aforesaid. (Id. § 2, as amended L. 1921, c. 91.)

669. Bringing Proceedings—Disposition of Penalties Recovered.—County superintendents and assistant county superintendents of weights and measures, municipal and assistant municipal superintendents of weights and measures, are authorized to bring proceedings within their respective jurisdictions, in their official capacities, for the use of the county or municipality which they represent. Penalties, when recovered in the name of a county or assistant county superintendent of weights and measures, shall be payable to the county collector of such county, and when recovered by a municipal or assistant municipal superintendent of weights and measures shall be payable to the municipality which such official represents. (Id. § 3.)

670. Actions to Have Precedence.—Actions instituted for the recovery of penalties, under the provisions of this act, shall be given precedence over cases set for hearing on the day when actions under this act are to be tried. (Id. § 4.)

671. Standard Weights and Measures.—Weights, measures and balances which have been or may hereafter be received from the United States, under a resolution of Congress, approved June fourteenth, one thousand eight hundred and thirty-six, and such new weights, measures and balances as shall be received from the United States as standard weights, measures and balances in addition thereto or in renewal thereof, shall be the authorized standards by which all county and municipal standards of weights and measures in this State shall be tried, proved and sealed. (C. S. 1910, p. 5847 et seq.; L. 1908, c. 259, § 1.)

672. Standards to be Deposited With Secretary of State and County Clerks; Comparison.—Such standards shall be deposited in the office of the Secretary of State at Trenton and in the offices of the clerks of the several counties of this State. The said Secretary of State and clerks of the several counties, and their successors in office, are hereby required to preserve and care for such standards and

to keep them in proper condition for comparison with those used by the inhabitants of this State, when required by the provisions of this act. (Id. § 2.)

673. **Bushel; Enumerated Products.**—The standard bushel shall contain two thousand one hundred and fifty and forty-two one-hundredths (2,250.42) cubic inches which capacity shall apply to all articles usually sold by the bushel and not weighed. . . . (Id. § 3.)

674. **Gallon and Quart.**—The standard gallon shall contain two hundred and thirty-one (231) cubic inches. The standard liquid quart shall contain fifty-seven and seventy-five one-hundredths (57.75) cubic inches. (Id. § 4.)

675. **Pound; Avoirdupois; Troy.**—The standard avoirdupois pound shall contain seven thousand (7,000) grains Troy which shall be the standard for all commodities usually sold by weight except gold, silver, jewels and drugs. In the sale of gold, silver, jewels and drugs the standard pound shall contain five thousand seven hundred and sixty (5,760) grains Troy. (Id. § 6.)

676. **Penalties for Short Weights and Measures; Actions Therefor, Disposition of Proceeds.**—If any person or persons, corporation or corporations within this State shall willfully vend or sell any wares or merchandise or any commodity whatever by any weight or measure, of a less length, weight or capacity than those hereinbefore mentioned, for the purpose of defrauding the person or persons purchasing the same, the person or persons so offending shall on conviction thereof, forfeit and pay for every offense a sum of not less than two or more than five times the value of the article so illegally sold. Such sums shall be recovered by action of debt, with costs, in any court having cognizance of that sum, one-half of said penalty to go to the prosecutor and the other half to the educational fund of the township, or other municipality in which the offense may have been committed. (Id. § 7.)

677. **Comparison of Weights and Measures With Standards to Avoid Prosecution; Fees for Inspection.**—For the protection of any person or persons, corporation or corporations against prosecution for violating this act, he, she or they may have access to the standard weights or measures which now are, or may hereafter be, deposited in the clerk's office of their respective counties, for the purpose of comparing the several weights and measures by them used with those so deposited. The said clerks shall be entitled to receive one cent for every weight, two cents for every measure and ten cents for every scale compared, adjusted or corrected, to be paid by the person by whom application is made. (Id. § 8.)

678. **Live Stock, Hay and Grain; Gross and Net Ton.**—The standard gross ton by which hay shall be weighed shall consist of two thousand two hundred and forty (2,240) pounds. The standard net ton by which hay shall be weighed shall consist of two thousand (2,000) pounds. (Id. § 17.)

679. **Live Stock, Hay and Grain; Penalties for False Weights; Fine and Imprisonment; Double Damages.**—If any person or persons, corporation or corporations owning or keeping or having charge of any scales or steelyards for the purpose of weighing live stock, hay or grain shall knowingly and wilfully report any false or untrue weight whereby any other person or persons, corporation or corporations may be defrauded, deceived or injured, such person or persons, upon conviction thereof, shall be fined in any sum not exceeding fifty dollars, or be imprisoned in the county jail not exceeding thirty days, or both, at the discretion of the court, and also be answerable to the party defrauded in double damages, to be collected in an action of debt before any court having competent jurisdiction. (Id. § 18.)

680. **Live Stock, Hay and Grain; Report of Weights; Record Book.**—Whenever the person or persons, corporation or corporations keeping such scales or steelyards shall weigh any of the aforesaid articles for hire or reward, he or they shall, on demand of the party interested, report the weight of such article or articles, in writing, to the owner thereof, and shall keep a record of the same in a suitable book to be kept for that purpose. (Id. § 19.)

681. **Peach Basket; Marking; Nonstandard Baskets to be Marked With Number of Quarts They Will Contain.**—The standard size of peach baskets shall be sixteen (16) quarts Winchester half-bushel measure. The height of the basket shall be twelve and one-quarter ($12^1/_4$) inches, the width across the top shall be thirteen and one-half ($13^1/_2$) inches; that the inside measurement shall contain one thousand and seventy-five and ten one hundredths ($1075^{10}/_{100}$) cubic inches. Each basket shall be marked "Standard N. J." upon the staves just below the rim in Roman letters, which marking shall be burned on or printed thereon with permanent red paint in a straight line. Each of them shall not be less than one inch (1) in length, and not less than one-half ($^1/_2$) inch in width. All person or persons, corporation or corporations who shall manufacture for sale, or who shall offer or expose for sale any basket to be used for shipping or selling peaches, not standard, shall distinctly and durably stamp, brand or mark upon such basket upon the stave just below the rim the number of quarts such basket contains. (Id. § 20.)

682. Peach Basket; Penalties for Using Baskets Not Properly Stamped; Action Therefor; Disposition of Proceeds.—All person or persons, or corporation or corporations who shall manufacture, sell or offer or expose for sale, or have in his, her or their possession with intent to sell, or to use any peach basket or baskets not stamped, branded or marked as required thereby, shall, for every such offense, forfeit and pay a fine of not less than twenty-five dollars and not more than fifty dollars, to be recovered, with costs, in any of the courts of this State having cognizance thereof, in any action to be prosecuted by any prosecutor of the pleas in the name of the State. The one-half of such recovery shall be paid to the informer, and the residue shall be applied to the support of the poor in the county where such recovery is had. (Id. § 21.)

683. Sealer; Appointment by Local Authorities; Deputies.—It shall be lawful for the common council or other governing body of any city, town, village, township or other municipal corporation of this State to appoint a sealer of weights and measures and such deputy or deputies as may be deemed necessary. (Id. § 27.)

684. Sealer; Duties; Police Power.—It shall be the duty of the sealer to faithfully devote his time to the performance of the duties of his office, and to test all weights, measures, scales, beams and steelyards used in trade or other machinery used for weighing or measuring within his jurisdiction at least once in every year. He shall also test all scales, balances, computing scales and other devices having a device for indicating or registering the value as well as the weight of the commodity offered for sale. All such computing devices shall be tested as to the correctness of both weights and values indicated by them. Upon being notified in writing by any person that any weight, measure, scale, beam and steelyard, used in trade, or other machinery for weighing or measuring any article intended to be purchased, or sold, is inaccurate, or believed to be so, or not according to the standard, the said sealer of weights and measures shall at once make an examination of the same. In the exercise of such duties he shall have full police power to enforce any and all reasonable measures for testing such weights and measures, and also in ascertaining whether false or short weights and measures are being given in any sales or transfer of articles or merchandise taking place within his jurisdiction. (Id. § 28.)

685. Local Authorities; Power to Regulate by Ordinance; Particular Powers Specified.—The said common council or other governing body shall have power to regulate by ordinance,

(a) The tenure of office, salary, or other compensation, bond and sufficiency of surety of the sealer of weights and measures and of his deputy or deputies.

(b) The proper sealing and marking of all weights and measures and periods of inspection thereof, including computing scales and other devices for indicating or registering the value as well as the weight of the commodity offered for sale.

(c) The supplying of appliances necessary to make examinations.

(d) The manner in which all records of the office of sealer of weights and measures shall be kept.

(e) The methods necessary to secure adjustment of weights and measures.

(f) The exhibiting of all weights and measures when required.

(g) The standard by which fruits, vegetables or nuts shall be sold from cups, cans or other receptacles.

(h) The method by which wagon or cart loads of goods, wares, merchandise, or other commodities shall be sold.

(i) The fixing and collecting of penalties for violations of the terms of such ordinance. (Id. § 29.)

686. Municipal Power Not Impaired.—Nothing in this act shall be construed to abrogate or impair the power of the common council or other governing body of any city, town, village, township or other municipal corporation of this State or of the courts to enforce any provision now existing or hereafter adopted in a city charter or an ordinance of regulation, not inconsistent with this act, or to prevent or punish violations thereof. (Id. § 31.)

687. Brands for Packages of Butter or Cheese; Name of Manufacturer and Weight of Vessel; Penalties.—Every cooper or manufacturer of firkins, tubs, or other vessels for the package of butter or cheese, shall brand in legible letters and characters, upon every such firkin, tub or vessel by him manufactured, his name, together with the actual and true weight of such firkin, tub or vessel, and if any cooper or manufacturer shall dispose of any such firkin, tub or vessel without such brand, or shall falsely brand the same, he shall forfeit and pay to such person, as shall prosecute for the same, the sum of twenty-five dollars; to be recovered by action of debt in any court of competent jurisdiction. (C. S. 1910, p. 5854 et seq.; L. 1864, c. 370, § 1.)

688. Brands; Penalties for Defacing, Alteration, Etc.—It shall not be lawful for any person to sell and dispose of any butter or cheese packed or placed in

any firkin, tub or vessel manufactured or made for such purpose in this State, unless such firkin, tub or vessel shall be branded in the manner provided in the first section of this act, and if any person shall disregard this provision or shall alter or purposely deface the brand which may be made under the direction of this act, every such person shall forfeit and pay the sum of twenty-five dollars to such person as shall sue for the same, to be recovered in an action of debt, in any court of competent jurisdiction. (Id. § 2.)

689. Standard Measure for Sale of Milk.—No person or corporation shall hereafter sell, offer for sale, or receive for the purpose of sale, any milk, skimmed milk or cream, except such sale, offer or receipt for sale, shall as to quantity be based upon the liquid gallon, containing two hundred and thirty-one cubic inches, or the liquid quart, containing fifty-seven and seventy-five one-hundredths cubic inches, or the proper and complete liquid subdivisions thereof. (C. S. 1910, p. 5855; L. 1907, c. 150, § 1.)

690. Marking Milk Cans.—Any cans originally containing more or less than forty quarts of milk or cream shall be labeled or tagged, naming in quarts the original capacity of liquid measure of such cans of milk or cream, but no can originally containing forty quarts liquid measure shall be labeled or tagged. (Id. § 2.)

691. Sale of Milk, Etc., by Weight or on Butterfat Basis Not Affected by Act.—Nothing in this act shall be construed as prohibiting the buying or selling of milk or cream either by weight or on the butterfat basis. (Id. § 3.)

692. Penalties for Violations of Act; Action Therefor; Procedure; Execution; Imprisonment for Nonpayment.—Any person violating any of the provisions of this act shall be liable to a penalty of fifty dollars, to be recovered in an action of debt, before the Small Cause Court or District Court, by any person who may desire to sue therefor, who shall be designated in the State of demand and summons as plaintiff, and when recovery is had such penalty shall be paid to the county collector of the county in which the said violation occurred. It shall be unnecessary in proceedings brought under the provisions of this act to note the commencement of said suit or to endorse the process as in ordinary qui tam or actions brought by a common informer. When judgment shall be rendered against any defendant other than a body corporate, execution shall be issued against his goods and chattels and body without any order of the court for that purpose first had and obtained. If the officer executing any such writ shall be unable to find sufficient goods and chattels of the said defendant in his bailiwick whereof to make the amount of said judgment and costs of said suit, he shall take the body of the said defendant and deliver him to the keeper of the common jail of said county, there to be detained until discharged by the court in which such judgment was obtained or by one of the justices of the Supreme Court, when such court or justice shall be satisfied that further confinement will not result in the payment of the said judgment and costs. In case judgment shall be rendered against a body corporate, execution shall issue against the goods and chattels of such body corporate as in other actions of debt. (Id. § 4.)

693. Millers to Keep Toll Measures.—Every miller shall keep in his mill an exact measure of one-tenth part of a bushel, and of one-twentieth part of a bushel, for his toll measures, with a fit instrument to strike the said measures, which shall be stricken whenever toll is taken; and if he fail in any of these particulars, he shall forfeit and pay three dollars, to be recovered as aforesaid. (C. S. 1910, p. 3396; Rev. 1877, p. 700.)

NOTE: See also Nos. 4, 48-50, 155 et seq., 274 et seq., 293 et seq., and 364a et seq.

PART V.

Cases.

1. General Food and Drug Law.

Action for Penalty—Jurisdiction of Court of Common Pleas: Department of Health of New Jersey v. Monheit, 90 N. J. Law 448, 101 Atl. 413 (1917).

Appeal From Conviction—Sufficiency of Notice: State Board of Health v. McCue, 60 Atl. 1094 (1905).

Municipal Boards of Health—Powers as to Milk Limited by Pure Food Law: Mayor and Aldermen of Jersey City v. Hennessey, 92 N. J. Law 606, 106 Atl. 405 (1919).

2. Special Food Laws.

Beverages—Whiskey—Adulteration: State v. Solomon, 97 N. J. Law 252, 117 Atl. 260 (1922), reversing Same, 96 N. J. Law 124, 114 Atl. 354 (1921).

Fruit—Container to be Marked to Indicate Capacity, Etc.—Justice of Peace Has No Jurisdiction: Fort v. Dilks, 93 N. J. Law 307, 108 Atl. 305 (1919).

Meat—Inspection Before and After Slaughter: *Feld v. Board of Health of Passaic, 86 N. J. Law 95, 90 Atl. 672 (1914).

Meat—Slaughterhouse: *Schwarz Bros. Co. & Schwarz v. Board of Health of Jersey City, 83 N. J. Law 81, 83 Atl. 762 (1912); *Board of Health of New Jersey v. Schwarz Bros. Co., 86 N. J. Law 170, 90 Atl. 1061 (1914) and *Schwarz Bros. Co. & Schwarz v. Board of Health of Jersey City, 84 N. J. Law 735, 87 Atl. 463 (1913), affirming *Board of Health of New Jersey v. Schwarz Bros. Co., 84 N. J. Law 500, 87 Atl. 147 (1913); Doben v. Board of Health of Paterson et al., 3 N. J. Misc. Rep. 38 (1924).

Meat—Slaughterhouse—Chicken Abbatoir: Garber v. Board of Health of Paterson et al., 4 N. J. Misc. Rep. 83 (1926); *Greenstein v. Bigelow et al., 5 N. J. Misc. Rep. 124 (1927).

Meat—Unwholesome—Bringing Into City Prohibited: Silverman v. Board of Health of Bridgeton, 85 N. J. Law 45, 88 Atl. 622 (1913).

Milk—Adulteration—Knowledge: *Vandegrift v. Meihle, 66 N. J. Law 92, 49 Atl. 16 (1901); Board of Health of New Jersey v. Vandruens, 77 N. J. Law 443, 72 Atl. 125 (1909).

Milk—Adulteration—Maximum Watery Fluids and Minimum Milk Solids Standard: *Shivers v. Newton, 45 N. J. Law 469 (1883); State v. Breece, 7 N. J. Law J. 352 (1884); *Vandegrift v. Meihle, 66 N. J. Law 92, 49 Atl. 16 (1901); Board of Health of New Jersey v. Vandruens, 77 N. J. Law 443, 72 Atl. 125 (1909).

Milk—Bottling Plants—Zoning Ordinance: Sonntag v. Schmidt et al., 3 N. J. Misc. Rep. 959, 130 Atl. 361 (1925).

Milk—Inspector—Power to Condemn and Destroy Adulterated Milk: *Shivers v. Newton, 45 N. J. Law 469 (1883).

Milk—License: *Blanke v. Board of Health of Hoboken, 64 N. J. Law 42, 44 Atl. 847 (1899); *Driscoll v. Mayor and Common Council of Salem, 67 N. J. Law 113, 50 Atl. 475 (1901).

Milk—Purity and Standard—Municipal Boards of Health—Powers Limited by Pure Food Law: Mayor and Aldermen of Jersey City v. Hennessey, 92 N. J. Law 606, 106 Atl. 405 (1919).

Milk—Sale of Milk From Diseased Cows Prohibited: *Borden's Condensed Milk Co. v. Board of Health of Montclair, 81 N. J. Law 218, 80 Atl. 30 (1911).

Milk—Tuberculin Test: *Borden's Condensed Milk Co. v. Board of Health of Montclair, 81 N. J. Law 218, 80 Atl. 30 (1911).

Oleomargarine: Newton v. Connell, 9 N. J. Law J. 316 (1886); *Newton v. Reed, 10 N. J. Law J. 175 (1887); Carter Bros. v. Camden District Court, 49 N. J. Law 600, 10 Atl. 108 (1887); Hoeberg v. Newton, 49 N. J. Law 617, 9 Atl. 751 (1887); *Waterbury v. Newton, 50 N. J. Law 534, 14 Atl. 604 (1888); Ammon v. Newton, 50 N. J. Law 543, 14 Atl. 610 (1888); Waterbury v. Newton, 50 N. J. Law 545, 14 Atl. 609 (1888); Bayles et al. v. Newton, 51 N. J. Law 553, 19 Atl. 174 (1889), affirming Same, 50 N. J. Law 549, 18 Atl. 77 (1888); Harvey v. Newton, 52 N. J. Law 369, 19 Atl. 793 (1890); McGuire v. Ammon & Person, 16 N. J. Law J. 185 (1893); Feigen v. McGuire, 64 N. J. Law 152, 44 Atl. 972 (1899); McGuire v. Doscher, 65 N. J. Law 139, 46 Atl. 576 (1900); Maguire v. Goldberger, 71 N. J. Law 173, 58 Atl. 167 (1904).

Refreshment Stand—License: Reidler v. Borough of Rockaway & Hannon, 3 N. J. Misc. Rep. 493 (1925).

Restaurant—Municipality—Power to Regulate: *Thorne v. Casale, 101 N. J. Law 418 (1925), affirming *Thorne v. Town of Kearny, 100 N. J. Law 228, 126 Atl. 613 (1924).

Restaurant—Sanitation: Cohen v. Thompson et al., 101 N. J. Law 503, (1925).

3. Special Drug Laws.

Abortifacients: See State v. Murphy, 27 N. J. Law 112 (1858); State v. Mandeville, 89 N. J. Law 228, 98 Atl. 398 (1916), affirming Same, 88 N. J. Law 418, 96 Atl. 398 (1916).

Narcotics: State v. Norwood, 87 N. J. Law 82, 93 Atl. 683 (1915).

Pharmacy: *Campbell v. Board of Pharmacy of New Jersey, 45 N. J. Law 241 (1883); Mayer v. State, 64 N. J. Law 323, 45 Atl. 624 (1900), affirming Same, 63 N. J. Law 35, 42 Atl. 772 (1899); Harman v. Board of Pharmacy of State of New Jersey, 67 N. J. Law 117, 50 Atl. 662 (1901).

Pharmacy—Poisons—Lysol: Board of Pharmacy v. Morhauser, 96 N. J. Law 16, 114 Atl. 552 (1921).

Pharmacy—Tincture of Iodine—Sale by Grocer: Board of Pharmacy of State of New Jersey v. Braunstein, 2 N. J. Misc. Rep. 454 (1924).

4. Civil Action to Recover Damages for Injury Alleged to Have Been Caused by Consumption or Use of Product.

Bottle—Explosion: Noonan & Noonan v. Great Atlantic and Pacific Tea Co. & Fairmount Bottling Co., 5 N. J. Misc. Rep. 201 (1927).

Drugs: See Neff v. Daniel, 4 N. J. Adv. Rep. 331, 131 Atl. 900 (1926).

Food: Tomlinson v. Armour & Co., 75 N. J. Law 748, 70 Atl. 314, 19 L. R. A. (N. S.) 923 (1908), reversing Same, 74 N. J. Law 274, 65 Atl. 883 (1907); De Groat et al. v. Ward Baking Co., 3 N. J. Adv. Rep. 1580, 130 Atl. 540 (1925); Rudolph v. Coca-Cola Bottling Co., 4 N. J. Misc. Rep. 318, 132 Atl. 508 (1926); Nisky & Nisky v. Childs Co., 5 N. J. Adv. Rep. 177, 135 Atl. 805 (1927).

Paint: Cravenette Co., U. S. A. v. C. A. Woolsey Paint & Color Co., 4 N. J. Adv. Rep. 1740 (1926).

Water: Jones v. Mount Holly Water Co., 87 N. J. Law 106, 93 Atl. 860 (1915).

Whiskey: See State v. Solomon, 97 N. J. Law 252, 117 Atl. 260 (1922), reversing Same, 96 N. J. Law 124, 114 Atl. 354 (1921).

5. Miscellaneous.

False Advertising: State v. Rubin, 1 N. J. Misc. Rep. 506 (1923).

Gift Enterprise: State v. Shorts et al., 32 N. J. Law 398, 90 Am. Dec. 668 (1868).

Trading Stamps: Sperry & Hutchinson Co. v. Vine & Vine, 66 N. J. Eq. 339, 57 Atl. 1036 (1904); Sperry & Hutchinson Co. v. Hertzberg, 69 N. J. Eq. 264, 60 Atl. 368 (1905).

Trade-Marks: Pool et al. v. Boylan et al., 1 N. J. Law J. 158, 181 (1878); Bowden v. Overseer of Randolph Township & Wood, 41 N. J. Law 462 (1879); Brant et al. v. Froehlich, 49 N. J. Law 336, 8 Atl. 283 (1887); Schneider, Reichman & Wernecke v. Williams, 44 N. J. Eq. 391, 14 Atl. 812 (1888); Wirtz v. Eagle Bottling Co., 50 N. J. Eq. 164, 24 Atl. 658 (1892); Clark Thread Co. v. Wm. Clark Co., 56 N. J. Eq. 789, 40 Atl. 686 (1898), reversing Same, 55 N. J. Eq. 658, 37 Atl. 599 (1897); *Schmalz v. Wooley & Crane, 57 N. J. Eq. 303, 41 Atl. 939, 43 L. R. A. 86, 73 Am. St. Rep. 637 (1898), reversing *Same, 56 N. J. Eq. 649, 39 Atl. 539 (1898); Stirling Silk Mfg. Co. v. Sterling Silk Co. et al., 59 N. J. Eq. 394, 46 Atl. 199 (1900); Gottlob et al. v. Schmidt, 66 N. J. Law 180, 48 Atl. 588 (1901); Woolley v. Bell, 69 N. J. Law 581, 55 Atl. 66 (1903); Smith v. Brand & Co., 67 N. J. Eq. 529, 58 Atl. 1029 (1904); *Cigar Makers International Union of America v. Goldberg, 72 N. J. Law 214, 61 Atl. 457, 70 L. R. A. 156, 111 Am. St. Rep. 662 (1905), reversing *Same, 70 N. J. Law 488, 57 Atl. 141 (1904); Medlar & Holmes Shoe Co. v. Delsarte Mfg. Co. et al., 68 N. J. Eq. 706, 46 Atl. 1089, 61 Atl. 410 (1905); Eureka Fire Hose Co. v. Eureka Rubber Mfg. Co., 71 N. J. Eq. 300, 71 Atl. 1134 (1906), affirming Same, 69 N. J. Eq. 159, 60 Atl. 561 (1905); Perlberg v. Smith, 70 N. J. Eq. 638, 62 Atl. 442 (1905); Standard Table Oil Cloth Co. v. Trenton Oil Cloth & Linoleum Co., 71 N. J. Eq. 555, 63 Atl. 846 (1906); O'Grady v. McDonald, 72 N. J. Eq. 805, 66 Atl. 175 (1907); Corbett Bros. Co. v. Reinhardt Meding Co., 77 N. J. Eq. 7, 76 Atl. 243 (1910); Taylor Provision Co. v. Edwards, 79 N. J. Eq. 222, 81 Atl. 1120 (1911); affirming Same, 79 N. J. Eq. 142, 81 Atl. 1120 (1911); National Biscuit Co. v. Pacific Coast Biscuit Co. et al., 83 N. J. Eq. 369, 91 Atl. 126 (1914); Seiler et al. v. Adams Express Co., 99 Atl. 312 (1916). See also: "The Mrs. G. B. Miller & Co. Tobacco Manufactory" v. Commerce, 45 N. J. Law 18, 46 Am. Rep. 750 (1883); Wilcoxen v. McCray, 38 N. J. Eq. 466 (1884); Fay's Adm'rs. v. Fay, 6 Atl. 12 (1886); Coogan et al. v. Van Horn, 52 N. J. Eq. 588, 33 Atl. 50 (1894), affirming Van Horn v. Coogan et al., 52 N. J. Eq. 380, 28 Atl. 788 (1894); Newark Coal Co. v. Spangler, 54 N. J. Eq. 354, 34

Atl. 932 (1896); Levi v. Schoenthal, 57 N. J. Eq. 244, 41 Atl. 105 (1898); St. Patrick's Alliance of America v. Byrne et al., 59 N. J. Eq. 26, 44 Atl. 716 (1899); Glucose Sugar Refining Co. v. American Glucose Sugar Refining Co., 22 N. J. Law J. 147 (1899); Centaur Co. v. Link et al., 62 N. J. Eq. 147, 49 Atl. 828 (1901); Edison Storage Battery Co. & Edison v. Edison Automobile Co. of Washington, D. C., 67 N. J. Eq. 44, 56 Atl. 861 (1904); Edison Mfg. Co. v. Gladstone, 58 Atl. 391 (1903); International Silver Co. v. Wm. H. Rogers Corporation, 67 N. J. Eq. 646, 60 Atl. 187, 110 Am. St. Rep. 506 (1905), reversing in part and affirming in part, Same, 66 N. J. Eq. 119, 140, 57 Atl. 1037, 725 (1904); Charles R. DeBevoise Co. v. H. & W. Co., 69 N. J. Eq. 114, 60 Atl. 407 (1905); Barclay v. Charles Roome Parmele Co., 70 N. J. Eq. 218, 61 Atl. 715 (1905); Perlberg v. Rosenstone, 62 Atl. 446 (1905); Busch v. Gross et al., 71 N. J. Eq. 508, 64 Atl. 754 (1906); Johnson & Johnson v. Seabury & Johnson, 71 N. J. Eq. 750, 67 Atl. 36, 12 L. R. A. (N. S.) 1201, 124 Am. St. Rep. 1007 (1907), reversing Same, 69 N. J. Eq. 696, 61 Atl. 5 (1905); Eureka Fire Hose Co. v. Eureka Rubber Mfg. Co., 72 N. J. Eq. 555, 65 Atl. 870 (1907); International Silver Co. v. Rogers, 72 N. J. Eq. 933, 67 Atl. 105, 129 Am. St. Rep. 722 (1907), reversing Same, 71 N. J. Eq. 560, 63 Atl. 977 (1906); Bear Lithia Springs Co. v. Great Bear Springs Co., 72 N. J. Eq. 871, 68 Atl. 86 (1907), affirming Same, 71 N. J. Eq. 595, 71 Atl. 383 (1906); Edison et al. v. Mills-Edisonia, 74 N. J. Eq. 521, 70 Atl. 191 (1908); United Garment Workers of America v. Davis, 74 Atl. 306 (1909); L. Martin Co. v. L. Martin & Wilckes Co., 75 N. J. Eq. 257, 72 Atl. 294, 21 L. R. A. (N. S.) 526 (1909), reversing Same, 75 N. J. Eq. 39, 71 Atl. 409 (1908); New York & N. J. Lubricant Co. v. Young, 77 N. J. Eq. 321, 77 Atl. 344, 140 Am. St. Rep. 560 (1910); Mississippi Wire Glass Co. v. Continuous Glass Press Co., 79 N. J. Eq. 277, 81 Atl. 374 (1911); Rosenthal et al. v. Blatt, 80 N. J. Eq. 90, 83 Atl. 387 (1912); Rubber & Celluloid Harness Trimming Co. v. Rubber-Bound Brush Co. et al., 81 N. J. Eq. 519, 88 Atl. 210, Ann. Cas. 1915 B, 365 (1913), affirming Same, 81 N. J. Eq. 419, 88 Atl. 210, Ann. Cas. 1915 B, 365 (1912); Hill Bread Co. v. Goodrich Baking Co., 89 Atl. 863 (1913); Munn & Co. v. Americana Co. et al., 83 N. J. Eq. 309, 91 Atl. 87, L. R. A. 1916 D, 116 (1914) and Same, 83 N. J. Eq. 679, 92 Atl. 344 (1914), modifying in part and reversing in part Same, 82 N. J. Eq. 63, 88 Atl. 330 (1913) and Same, 82 N. J. Eq. 443, 89 Atl. 529 (1914); Rubber & Celluloid Harness Trimming Co. v. Rubber-Bound Brush Co. et al., 83 N. J. Eq. 510, 91 Atl. 641 (1914); Huff et al. v. Wallace, 93 Atl. 702 (1914); Ingersoll et al. v. Goldstein, 84 N. J. Eq. 445, 93 Atl. 193 (1915); New York & N. J. Lubricant Co. v. Young, 84 N. J. Eq. 469, 94 Atl. 570 (1915); Huff v. Wallace, 88 N. J. Law 452, 97 Atl. 45 (1916); Mumford Molding Machine Co. v. E. H. Mumford Co., 88 N. J. Eq. 178, 102 Atl. 9 (1917); Hilton v. Hilton, 89 N. J. Eq. 182, 104 Atl. 375, L. R. A. 1918 F, 1174 (1918), modifying Same, 89 N. J. Eq. 149, 102 Atl. 16 (1917); Hilton v. Hilton, 89 N. J. Eq. 417, 422, 105 Atl. 65 (1918); Hilton v. Hilton, 90 N. J. Eq. 564, 107 Atl. 263 (1919), affirming Same, 89 N. J. Eq. 472, 106 Atl. 139 (1919); Taxi & Yellow Operating Co. v. Martin, Same v. Harvey, Same v. Dunn, 91 N. J. Eq. 233, 108 Atl. 763 (1919); Auto Hearse Mfg. Co. v. Bateman et al., 109 Atl. 735 (1920); United Cigar Stores Co. of America v. United Confectioners, & Geitzeiler, 92 N. J. Eq. 449, 113 Atl. 226, 17 A. L. R. 779 (1921), affirming Same, 92 N. J. Eq. 56, 111 Atl. 603 (1920); Surprise Store v. Mintz, 1 N. J. Misc. Rep. 191 (1923); Yellow Cab Co. v. Marks et al., 2 N. J. Misc. Rep. 852 (1924); Evening Journal Ass'n v. Jersey Publishing Co. et al., 96 N. J. Eq. 54, 124 Atl. 767 (1924); Hildebrant & Hildebrant v. Wright et al., 2 N. J. Misc. Rep. 1001, 126 Atl. 459 (1924); Reardon Laundry Co. v. Reardon, 97 N. J. Eq. 356 (1925), affirming Same, 2 N. J. Misc. Rep. 550 (1924); National Grocery Co. v. National Stores Corporation, 97 N. J. Eq. 360, 127 Atl. 925 (1925), affirming Same, 95 N. J. Eq. 588, 123 Atl. 740 (1924); Supreme Lodge of the World, Loyal Order of Moose et al. v. Improved, Benevolent & Protective Order of Moose et al., 98 N. J. Eq. 598, 131 Atl. 219 (1925); Safety Storage Co. v. Lupenski & Shapiro, 5 N. J. Adv. Rep. 336 (1927).

Weights and Measures: Hoffman v. Mayor and Common Council of Jersey City, 34 N. J. Law 172 (1870); *Raffetto v. Mott et al., 60 N. J. Law 413, 38 Atl. 857 (1897); Bowlby v. Board of Chosen Freeholders of Morris County, 85 N. J. Law 725, 91 Atl. 1068 (1914), affirming Same, 83 N. J. Law 346, 85 Atl. 229 (1912); Burtis v. Haines, 92 N. J. Law 248, 103 Atl. 1054 (1918), affirming Same, 91 N. J. Law 4, 102 Atl. 355 (1917); Fort v. Dilks, 93 N. J. Law 307, 108 Atl. 305 (1919). See also: Joralemon v. Pomeroy, 22 N. J. Law 271 (1849); City of Newark v. East Side Coal Co., 77 N. J. Law 732, 73 Atl. 484 (1909), reversing Same, 74 N. J. Law 68, 70 Atl. 734 (1906); State v. Mor, 85 N. J. Law 558, 89 Atl. 755 (1914).

NEW MEXICO.*

PART I.

General Food and Drug Law.

1. Adulteration.—No person within the State of New Mexico shall mix, color, stain or powder or permit any other person to mix, color, stain or powder any article of food or drugs with any ingredient or material so as to render the article injurious to health, or manufacture any article of food which shall be composed in whole or in part of diseased, decomposed, offensive or unclean animal or vegetable substance, with the intent that the same may be sold in the said State, and no person shall sell in the State of New Mexico any such article so mixed, colored, stained, powdered or manufactured. Any person violating this section shall be guilty of a misdemeanor, and for each offense to be fined not exceeding two hundred dollars for the first offense, and for each subsequent offense not exceeding three hundred dollars, or imprisonment not exceeding one year, or both in the discretion of the court. (Stats. Annot. 1915, § 2363.)

2. Adulteration of Drugs; Sale.—No person shall, within the State of New Mexico, except for the purpose of compounding as hereinafter described, mix, color, stain or powder, or order or permit any other person to mix, color, stain or powder, any drug with any ingredient or material so as to affect injuriously the quality or potency of such drug, with intent that the same may be sold in the said State of New Mexico, and no person shall sell any such drug so mixed, colored, stained or powdered under the same penalty in each case respectively as in the preceding section for a first and subsequent offense. (Id. § 2364.)

3. Same; Defenses.—No person shall be liable to be convicted under either of the two last foregoing sections in respect to the sale of any article of food or of any drug if he shows to the satisfaction of the court before whom he is charged that he did not know of the article of food or drug sold by him being so mixed, colored, stained or powdered as in either of those sections mentioned, and that he could not, with reasonable diligence, have obtained that knowledge. (Id. § 2365.)

4. Illegal Sales.—No person shall sell in the State of New Mexico any article of food or drug which is not of the nature, substance and quality of the article demanded by any purchaser, and any person violating this section shall be guilty of a misdemeanor, and for the first offense be fined, not exceeding fifty dollars, and for each subsequent offense not exceeding one hundred dollars, or imprisonment not exceeding six months, or both in the discretion of the court; provided, that an offense shall not be deemed to be committed under this section in the following cases, that is to say:

First. Where any matter or ingredient not injurious to health has been added to the food or drugs because the same is required for the production or preparation thereof as an article of commerce in a state fit for carriage or consumption and not fraudulently to increase the bulk, weight or measure of the food or drug, or conceal the inferior quality thereof.

Second. Where the drug or food is a proprietary medicine.

Third. Where the food or drug is compounded as authorized by this chapter.

Fourth. Where the food or drug is unavoidably mixed with some extraneous matter in the process of collection or preparation. (Id. § 2366.)

5. Illegal Sales.—No person shall sell in the State of New Mexico any compound article of food or compounded drug which is not composed of ingredients in accordance with the demand of the purchaser. Any person violating this section shall be guilty of a misdemeanor and fined not exceeding fifty dollars: provided, that no person shall be guilty of any such offense as aforesaid in respect of the sale of an article of food or a drug mixed with any matter or ingredient not

*CITATIONS: "Stats. Annot. 1915" refers to the New Mexico Statutes Annotated, 1915, published by authority of the legislature. "L." refers to the session laws of the year cited.

injurious to health and not intended, fraudulently to increase its bulk, weight or measure, or conceal its inferior quality, if at the time of delivering such article or drug he shall supply to the person receiving the same a notice by a label distinctly and legibly written or printed on or with the article or drug, to the effect that the same is mixed. (Id. § 2367.)

6. Food; Changing Quality by Abstraction.—No person shall in the State of New Mexico, with the intent that the same may be sold in its altered state without notice, subtract from any article of food any part of it so as to affect injuriously its quality, substance or nature, and no person shall sell any article so altered without making disclosure of the alteration, and any person violating the provisions of this section shall be guilty of a misdemeanor and fined not exceeding one hundred dollars. (Id. § 2368.)

7. Prosecutions; Defenses.—In any prosecution under sections 2363 to 2374, inclusive, where the fact of an article having been sold in a mixed state has been proved, if the defendant shall desire to rely upon proviso contained in said sections, it shall be incumbent upon him to prove the same. (Id. § 2369.)

8. Prosecutions; Defenses.—If the defendant in any prosecution under the said sections, prove to the satisfaction of the court that he has purchased the article in question as the same in nature, substance and quality as that demanded of him by the purchaser, and with a written warranty to that effect; that he had no reason to believe at the time when he sold it that the article was otherwise; and that he sold in the same state as when he purchased it, he shall be discharged from the prosecution. (Id. § 2370.)

9. Same; Forgery of Warranty.—Any person who shall forge, or shall after knowing it to be forged, use any certificate or any writing purporting to contain a warranty, as provided in the preceding section, shall be guilty of a misdemeanor and be punishable on conviction, by imprisonment for a term not exceeding one year with hard labor. (Id. § 2371.)

10. False Warranties.—Every person who shall willfully apply to any article of food or a drug, a certificate of warranty given in relation to any other article or drug, or who shall give a false warranty in writing to any purchaser in respect of an article of food or a drug sold by him as principal or agent, or who shall willfully give a label with any article sold by him which shall falsely describe the article sold shall be guilty of a misdemeanor, and on conviction be fined not to exceed one hundred dollars. (Id. § 2372.)

11. Definition of "Food" and "Drug."—The term "food" as used in sections 2363 to 2374 inclusive, shall include every article used for food or drink by man other than drugs or water. The term "drug" as used therein shall include all medicines for internal or external use. (Id. § 2373.)

12. Governor May Exempt Articles.—The Governor may from time to time declare certain articles or preparations to be exempt from the provisions of sections 2363 to 2374, and it shall be the duty of the Secretary of State to prepare and publish from time to time a list of the articles, mixtures or compounds declared to be exempt from the provisions of said sections in accordance with this section. (Id. § 2374.)

Miscellaneous General Provisions.

13. Sale of Damaged Food or Drink.—If any person knowingly shall sell any kind of damaged, spoiled, or unhealthy provisions either for food or drink, without giving sufficient notice to the purchaser of the same, he shall be fined in a sum not exceeding five hundred dollars, or by imprisonment in the county jail not exceeding six months. (Stats. Annot. 1915, § 2361.)

14. State Chemical Laboratory Established.—There is hereby established a State Chemical Laboratory for the analysis and examination of such foods, drugs, feeds, fertilizers, and other material as the interests of the State may demand. The said State Chemical Laboratory shall be established at the New Mexico College of Agriculture and Mechanic Arts, and shall be in charge of a professor of chemistry at the said college, who shall be known as the State Chemist of New Mexico. All chemical work which the public interests of the State may demand shall be done by or be under the supervision of the said State Chemist. All charges for the work done by the said State Chemist shall be just and equitable, and all money collected for such work shall go into a fund for the maintenance of the said State Chemical Laboratory. (L. 1919, c. 169, § 1.)

15. Methods of Analysis.—The methods of analysis employed by the State Chemist of New Mexico shall be those prescribed by the Association of Official Agricultural Chemists, and those of the United States Pharmacopœia. (Id. § 2.)

16. Methods of Collecting Samples.—All samples of material for analysis and examination shall be collected under the direction from the State Chemical Laboratory and must be sealed and shipped in accordance with instructions set forth in such directions for taking samples. (Id. § 3.)

17. Official Seal of the State Chemist.—The official seal of the State Chemist of New Mexico shall bear the words "The Official Seal of the State Chemist of New Mexico" in a circle around the State Seal of New Mexico. (Id. § 4.)

17a. Powers.—The State Department of Public Welfare shall have supervision over the health of the people of the State and possess all powers necessary to fulfill the duties prescribed by law with respect thereto, and to bring actions in courts for the enforcement of health laws and the rules, regulations and orders promulgated thereunder by the State Board of Public Welfare. It shall be the superior health authority of the State and have power to investigate, control and abate the causes of disease, especially epidemics, sources of mortality and the effect of localities, employments and other conditions upon the public health; to inspect public buildings, institutions and premises and industries; to establish, maintain and enforce isolation and quarantine; to close theaters, schools and other public places and to forbid gatherings of people when necessary to protect the public health; to abate nuisances; to regulate the plumbing, drainage, water supply, sewage and waste disposal, lighting, heating and ventilation and sanitation of public buildings; to regulate the sanitation of schools, hospitals and sanitoria, maternity homes, asylums, orphanages, hotels, lodging houses and tenements, factories, workshops, industrial and labor camps, recreational resorts and camps, barber shops, swimming pools and public baths, places of public amusement, and public conveyances and stations; to collect, compile and tabulate reports of marriages, births, deaths and morbidity and to require any person having information with regard to the same to make such reports and submit such information as it shall by regulation provide; to co-operate with Federal health authorities and other health agencies in carrying out measures for the protection of the public health and to incur expenditures in that behalf; to regulate the disposal, transportation interment and disinterment of the dead; to make laboratory investigations of public health matters and maintain facilities for that purpose; to disseminate public health information; to prevent infant mortality; to prescribe prophylactic treatment for the prevention of infant blindness; to promote child hygiene; to regulate the practice of midwifery; to regulate the sanitation and safety for consumption of milk; meats and other foods; to supervise the work of local health officers, to promulgate rules and regulations governing the same, and to perform the said work, at the expense of the county or municipality affected, in case the local health or governing authorities fail, neglect or refuse to perform said work or make proper provision therefor. (L. 1919, c. 85, § 10, amended by L. 1921, c. 145.)

17b. County Health Officers.—Each board of county commisisoners shall appoint and employ one county health officer, whose appointment and employment shall be subject to approval by the State Board of Public Welfare. He shall receive such compensation for his services as the Board of County Commissioners shall determine, and in addition he shall receive, and the board of county commissioners shall provide for, all actual and necessary travel, office and other expenses incurred in enforcing the health laws and regulations within his jurisdiction. The board of county commissioners shall provide a suitable office for the county health officer at the county seat.

The jurisdiction and powers of the county health officer shall extend to all incorporated municipalities within the county, as well as to the unincorporated area of the county. He shall possess the same powers with respect to the preservation of the public health and the administration and enforcement of the health laws as those conferred upon the State Department of Public Welfare, except that said powers shall be exercised within his jurisdiction only and in subordination to and with the approval of the State Department of Public Welfare. He shall be charged with the execution within his jurisdiction of the health laws and all rules and regulations promulgated by the State Board of Public Welfare, be under its supervision and control and make such reports to the State Department of Public Welfare as it may direct.

Every county health officer appointed or employed in accordance with the provisions of this section, shall hold office until his successor is appointed and approved, except that in case of death, removal for cause or disability the board of county commissioners shall within thirty days from and after such death, removal or disability hold a meeting to appoint a county health officer; provided, that in case the office of county health officer shall remain vacant for more than thirty days, the Director of Public Health, with the approval of the State Board of Pub-

lic Welfare, shall appoint a county health officer in and for such county, at a compensation not to exceed the compensation paid to the previous incumbent; such appointment shall have the same validity and effect as an appointment duly made by the Board of County Commissioners and approved by the State Board of Public Welfare. (Id. § 12.)

17c. Violation of Laws and Regulations.—Any person, firm or corporation violating any State health law, or order, rule, or regulation of the State Board of Public Welfare or the county health officers to enforce any State health law, where the punishment is not specifically prescribed by law, shall be punished by a fine of not less than five dollars ($5.00) nor more than one hundred dollars ($100.00) or by imprisonment in the county jail for not less than five (5) days nor more than ninety (90) days, or by both such fine and imprisonment in the discretion of the court. (Id. § 18.)

NOTE: See also Nos. 27 and 85.

PART II.

Special Food Laws.

Beverages.

17d. Adulteration of Liquor.—Any person who shall adulterate any wine, spirits, or other intoxicating liquor, which are for sale, by the mixture of any deleterious substance or fluid therewith; and any person who shall sell or offer for sale any wine, spirits or other intoxicating liquors that have been adulterated as aforesaid, shall be, upon conviction thereof, fined in any sum not less than five dollars nor more than fifty dollars. (Stats. Annot. 1915, § 2362.)

NOTE: See also Nos. 13 and 50 et seq.

Bread.

See No. 74.

Dairy Products—Substitutes for Dairy Products.

17e. Appointment of State Dairy Commissioner and Deputies.—There is hereby created, the office of State Dairy Commissioner, and on or before July 1, 1927, the president of the State Agricultural College, by and with the consent of the State Board of Regents of same, shall appoint a State Dairy Commissioner to carry out the provisions of this act. Such appointment shall be nonpolitical, and the Dairy Commissioner shall have a practical knowledge of and experience in the manufacture of dairy products, the production of dairy products on the farm, and the feeding and handling of dairy cows. The county agricultural agents of the several counties of the State of New Mexico, shall act as deputy dairy commissioners and shall work in conjunction with the State Dairy Commissioner. The State deputy commissioners shall make such reports as required by the State Dairy Commissioner, and it shall be the duty of said State Dairy Commissioner to make an annual report to the Governor, not later than January 1 of each year, and he shall be furnished an office at the seat of the New Mexico Agricultural College by the Board of Regents of said college. The salary of the State Dairy Commissioner shall be set by the Board of Regents of the State Agricultural College. (Act of Mar. 14, 1927, § 1.)

17f. Duties.—The State Dairy Commissioner under the direction of the Regents of the Agricultural College of New Mexico shall perform the duties hereinafter prescribed and such other duties as may be prescribed by said regents. It shall be the duty of the State Dairy Commissioner, to inspect or cause to be inspected, all the creameries, public dairies, butter, cheese and ice cream factories, or any place where milk or cream or their products are handled or stored within the State, at least once a year, or oftener if possible, and in connection with the

Board of Regents and the president of the State Agricultural College to formulate and prescribe such reasonable rules and regulations for the operation of creameries, butter, cheese and ice cream factories and public dairies, as shall be deemed necessary by such board to fully carry out the provisions of this act, and of laws now in force or that may hereafter be enacted relative to dairy products, and for the promotion and maintenance of the public health and safety, and also for advancing the value to the outside world of New Mexico dairy products. He shall act on such reports and complaints as he may receive from owners and managers of public dairies, creameries, butter, cheese and ice cream factories, or other persons, wherein is reported to him the names and locations of one or more producers of milk, cream, butter, cheese or ice cream, who are offering for sale milk, cream, butter, cheese, or ice cream that is not fresh and clean, and in such instances he may inspect barns or farm houses, creameries, factories or other places where dairy products or utensils are produced, kept, handled or sold, give advice and instructions of the proper performance of the work, and where such instructions are disobeyed, to prevent the sale of unclean or unwholesome milk, cream, butter, cheese or ice cream, until such time as his instructions are complied with. It shall further be his duty to condemn for food purposes, unclean or unwholesome milk, cream, butter, cheese or ice cream, wherever he may find them. He shall compile and publish annually statistics and information concerning all phases of the dairy industry in this State, and the manufacturers of dairy products, upon his request, shall furnish the Dairy Commissioner, such reports and statistics as he may require, and such reports shall be used for the purpose of compiling statistical reports of general dairy interest. He shall co-operate with the State Agricultural College, in the holding of farm institutes and special dairy meetings in so far as it will not conflict with the performance of his official duties, and in general strive for the promotion of the best interests of the dairy industry in the State. He shall preserve in his office, all correspondence, records, documents and property of the State pertaining thereto and turn over the same to his successor. The State Dairy Commissioner shall devote his whole time to the duties of his office and during his term of office, shall hold no other official or business position, nor any professorship in any educational institution. (Id. § 2.)

17g. Powers of Commissioner and Deputies.—In the performance of their official duties the State Dairy Commissioner and his deputies are hereby authorized and empowered to enter, during business hours, all creameries, public dairies, cheese and ice cream factories, or other places where dairy products are manufactured, produced, stored, sold or kept for sale or transportation, for the purpose of inspecting the same; to take samples anywhere of any dairy products or imitation thereof suspected of being made or sold in violation of law, and cause the same to be analyzed or satisfactorily tested by the State Chemist office or such other department of the State Agricultural College having charge of such work. Such analyses or tests shall be preserved and recorded as evidence, and the certificate of such test, when sworn to by such chemist or such other officer having charge of such work, shall be admitted in evidence in all prosecutions that may result under the operation of this act. They shall also have power to examine, under oath or otherwise, any person whom they believe has knowledge concerning the unlawful operation of any creamery, public dairy, butter, cheese or ice cream factory. The Dairy Commissioner shall have power to issue subpœnas requiring the appearance of witnesses, and the production of books and papers, and to administer oaths with like effect as is done in courts of law in this State. It shall be the duty of any district court or the judge thereof, upon the application of said State Dairy Commissioner to issue an attachment for such witnesses, and compel him or them to attend before the commissioner and give testimony upon such matters as he or they shall be lawfully required to give by such commissioner, and said court or judge shall have power, in cases of refusal, to punish for contempt, as in other cases of refusal to obey the orders and process of the court. (Id. § 3.)

17h. Wholesomeness of Products.—The term "creameries, public dairies, butter, cheese and ice cream factories," for the purposes of this act, shall be considered to mean such as produce or manufacture for sale dairy products, either at wholesale or retail. All milk or cream, butter, cheese, ice cream, or dairy products sold or offered for sale shall be delivered pure and fresh and handled with clean utensils. In all cases it shall be unlawful to sell or offer for sale, milk or cream from diseased or unhealthy animals or handled by any person suffering from or coming in contact with persons afflicted with any contagious disease. In all prosecutions and proceedings for the enforcement in any of the courts of this State of all laws and regulations of whatsoever nature now in force, or which may hereafter be enacted, pertaining to the production, sale and distribution of dairy products

of any kind whatsoever, the standards of purity and the definition of said products shall be such as are hereafter stated, and whosoever shall sell or offer or expose for sale anywhere in this State, milk, cream, butter, cheese or ice cream containing any foreign substance or preservatives of any kind whatsoever except common salt, or the milk or cream of any diseased or unhealthy animal, or that shall not comply with the standards hereinafter provided, shall be guilty of a misdemeanor. (Id. § 4.)

17i. Apparatus for Babcock Test.—It shall be unlawful for any person or persons engaged in buying, selling, testing, or handling, or engaged in determining the value of milk, cream or other dairy products by the use of the Babcock test, to give any false readings or in any way manipulate the test so as to give a higher or lower per cent of butter fat than the milk, cream or other dairy products actually contain, or to cause any inaccuracy in reading the per cent of butter fat by securing inaccurate samples from any quantity of milk, cream or other product for the test. All test tubes, bottles, pipettes or other instruments used in connection with testing or determining the value of milk, cream or other dairy products by the use of the Babcock test shall be approved by the State Dairy Commissioner or his deputies, and they shall cause the same to be tested and shall certify to their accuracy before being used, and shall have inscribed thereon the initials "N. M. S. D. C." It shall be unlawful for any person or persons to use any test tubes, bottle, pipette or instrument in connection with such test which is not perfectly clean; and for the purpose of this act, any unclean test bottle, tube or pipette is declared inaccurate. The marking, "N. M. S. D. C." will not apply to centrifuge or scales, but only such centrifuge scales shall be used as meets the approval of the State Dairy Commissioner. All tests shall be maintained at a temperature of 120° F. for at least ten minutes before the reading of the per cent of butter fat is made and recorded. (Id. § 5.)

17j. Accuracy of Testing.—It shall be the duty of the Dairy Commissioner and his deputies and they are hereby authorized to test milk, cream and other dairy products for the purpose of ascertaining the percentage of butter fat or other ingredients contained therein; and if said Dairy Commissioner, or any of his deputies shall find upon test that there is a variance of more than one per cent between his test and that made by any person engaged in testing, buying or selling milk, cream or other dairy products, said commissioner or deputy commissioner shall cause his test to be verified and substantiated by the chemist of the New Mexico Agricultural College and if such chemist shall find that the test made by such commissioner or deputy commissioner is correct, the test thus made and verified shall, in all prosecutions for violations of the provisions of this act, be prima facie evidence that the test made by the person engaged in testing, buying or selling such milk, cream or other dairy products was falsely and fraudulently made. (Id. § 6.)

17k. Sanitary Requirements.—It shall be unlawful for any person, persons, company, partnership, corporation or association or any manager, employee or agent thereof, to handle milk, cream, butter, ice cream or other dairy products in unclean or unsanitary places, or in any unsanitary manner, or to keep, store or handle or care for the same in any room, building or enclosed place in which oils, vegetables, eggs, poultry or other strongly flavored products are kept or handled, or to keep, store or handle milk, cream or other dairy products in any place opening upon or connected with any cow, horse or hog barns or sheds, or other places where live stock is kept, housed or handled, and the State Dairy Commissioner and his deputies shall have the power and they are hereby authorized to forbid the handling of cream, milk, butter, ice cream or other dairy products, in such places or in any other places that will in any way injure the flavor or market value thereof. It shall be unlawful for any person, persons, firm, partnership, company, corporation or association to handle, test or ship milk, cream or ice cream or other dairy products in unclean or unsanitary vessels, or to expose milk, cream or other dairy products to flies or other contaminating influences liable to convey pathogenic or other injurious bacteria to such milk, cream, ice cream or other dairy products; and it shall be unlawful for any common carrier to neglect or fail to remove or ship from any railroad, depot on the day of its arrival there for shipment, any milk, cream or other dairy products left at such depot for transportation and it shall be unlawful for any person, firm, partnership, company, corporation or association using cans in which milk or cream is shipped to allow the same to remain at a railroad depot longer than three days from the date of their arrival, or to allow them to stand more than three days without removing the covers and inverting the cans in pure air. It shall be unlawful to use, lend or lease for use any cream or milk can or ice cream packer or container for any other purpose than the handling, storing or shipping of milk, cream or ice cream. (Id. § 7.)

171. Standards of Dairy Products.—(A) 1. Milk is the whole, fresh, clean, lacteal secretion obtained by the complete milking of one or more healthy cows, properly fed and kept, excluding that obtained within fifteen days before and five days after calving, or such longer period as may be necessary to render the milk practically colostrum-free.

2. Pasteurized milk is milk that has been subjected to a temperature not lower than 145 degrees Fahrenheiit for not less than thirty minutes, after which it is promptly cooled to 50 degrees Farenheit [Fahrenheit], or lower.

3. Homogenized milk is milk that has been mechanically treated in such a manner as to alter its physical properties with particular reference to the condition and appearance of the fat globules.

4. Skimmed milk is milk from which substantially all of the milk fat has been removed.

5. Buttermilk is the product that remains when fat is removed from milk or cream, sweet or sour, in the process of churning. It contains not less than eight and five-tenths per cent (8.5%) of milk solids not fat.

6. Goat's milk, ewe's milk, et cetera, are the fresh, clean, lacteal secretions, free from colostrum, obtained by the complete milking of healthy animals other than cows, properly fed and kept, and conform in name to the species of animals from which they are obtained.

7. Evaporated milk, is the product resulting from the evaporation of a considerable portion of the water from milk, or from milk with adjustment, if necessary, of the ratio of fat to nonfat solids by the addition or the abstraction of cream. It contains not less than seven and eight-tenths per cent (7.8%) of milk fat, nor less than twenty-five and five-tenths per cent (25.5%) of total milk solids; provided, however, that the sum of the percentages of milk fat and total milk solids be not less than thirty-three and seven-tenths per cent (33.7%).

8. Sweetened condensed milk is the product resulting from the evaporation of a considerable portion of the water from the whole, fresh, clean, lacteal secretion obtained by the complete milking of one or more healthy cows, properly fed and kept, excluding that obtained within fifteen days before and five days after calving, to which sugar (sucrose) has been added. It contains not less than eight per cent (8.0%) of total milk solids, and not less than eight per cent (8.0%) of milk fat.

9. Evaporated skimmed milk is the product resulting from the evaporation of a considerable portion of the water from skimmed milk, and contains not less than twenty per cent (20.0%) of milk solids.

11. Dried milk is the product resulting from the removal of water from milk, and contains not less than twenty-six per cent (26.0%) of milk fat, and not more than five per cent (5.0%) of moisture.

12. Dried skimmed milk is the product resulting from the removal of water from skimmed milk, and contains not more than five per cent (5.0%) of moistrue.

(B)—1. Cream is that portion of milk rich in butter fat which rises to the surface of the milk on standing or is separated from it by centrifugal force, and contains not less than eighteen per cent of butter fat.

2. Cream to be used in the manufacture of butter that is not delivered to point of shipment within twenty-four hours after milking must contain not less than twenty-five per cent butter fat and shall be delivered in wholesome condition. No part of any shipment of cream to be used in the manufacture of food products shall be more than four days old when delivered at the point of shipment during the months of May to October, inclusive, and five days old during November to April, inclusive. Such cream must not be delivered at the point of shipment more than one hour before the schedule time of the train on which it is to be shipped, unless kept in a protected, cool and sanitary place, free from foul odors.

(C)—1. Butter is the product made by gathering, in any manner, the fat of fresh or ripened milk or cream into a mass which also contains not less than eighty per cent of butter fat and less than sixteen per cent of water, or such test as shall be established by the Department of Agriculture of the United States; provided, that the amount of butter fat or water in the product of any one manufacturer, or in any given quantity of butter, shall be determined as hereinafter provided with reference to renovated or process butter; butter may also contain a harmless vegetable coloring matter.

2. Renovated or process butter is the product made by melting butter and reworking, without the addition or use of chemicals or any substance except milk, cream or salt, and contains not less than eighty per cent of butter fat and less than sixteen per cent of water, or such test as shall be established by the Department of Agriculture of the United States; provided, that the amount of butter fat or water in the product of any one manufacturer, or in any given quantity of but-

ter, renovated or process butter, shall be ascertained in the following manner, to-wit: five samples shall be taken from five different packages of any one manufacturer, or from any one tub or churning of butter, and a careful analysis made by the official method adopted by the Association of Agricultural Chemists. If this analysis, shall show less than eighty per cent of butter fat or sixteen per cent or more of water, butter or process butter thus analyzed shall be deemed adulterated butter, and shall be condemned for food purposes by the commissioner. Renovated or process butter may also contain a harmless vegetable coloring matter.

(D)—1. Cheese is the solid and ripened product made by coagulating the casein of milk by means of rennet or acids, with or without the addition or ripening ferments or seasoning; cheese may also contain harmless vegetable coloring matter.

2. Whole milk or full-cream cheese is cheese made from milk from which no portion of the fat has been removed, and contains not less than fifty per cent of butter fat in proportion to total solids.

3. Skim milk cheese, is cheese from milk from which any portion of the fat has been removed.

(E)—1. Ice cream is a frozen product made from cream, or cream and milk, or the sweet, pure products of cream and milk, and sugar, with or without natural flavoring and with or without pure, fresh, sweet, wholesome eggs and with or without the addition of gelatine, vegetable gums, or such other wholesome stabilizers as may be approved by the Dairy Commissioner, and contains not less than 12% of milk fat and not less than a total of 20% of milk solids.

2. Fruit ice cream is a frozen product made from cream or cream and milk, or the sweet, pure products of cream and milk, and sugar, and sound, clean, mature fruits, with or without the addition of pure sweet, fresh, wholesome eggs and with or without the addition of gelatine, vegetable gums, or such other wholesome stabilizer as may be approved by the Dairy Commissioner and contains not less than 10% of milk fat.

3. Nut ice cream is a frozen product made from cream, or cream and milk, or the sweet, pure, products of cream and milk, and sugar and sound, nonrancid nuts, with or without the addition of pure, fresh, sweet, wholesome eggs and with or without the addition of gelatine, vegetable gums or such other wholesome stabilizers as may be approved by the Dairy Commissioner and contains not less than 10% of milk fat. (Id. § 8.)

17m. Examinations and Permits.—A. It shall be unlawful after January 1st, 1928, for any person to sample or test milk, cream or other dairy products without first having a permit granted by the State of New Mexico signed by the Dairy Commissioner, bearing the seal of his office and such permit shall conspicuously be displayed at said place of business. This permit shal lbe granted to those who have a certificate from some recognized college or dairy school where the art of testing dairy products is taught, or to those who have passed a satisfactory examination under the direction of the State Dairy Commissioner, this permit shall be granted for a period of two years from date of issue, subject to concellation [cancellation] by the State Dairy Commissioner, at any time that he shall find that the person holding said permit is guilty of violating any of the provisions of this section or the regulations passed thereon. The provisions of this section shall not apply to farmers or others who are testing the milk or cream of their own cows for the purpose of keeping a record of the same, or those who test milk or cream for any other purpose than to determine its value when bought or sold. The State Dairy Commissioner shall collect the sum of $5.00 for each and every permit so issued. He shall hold examinations for persons desiring to secure permits as required by this section at such times and places as shall be convenient and shall collect a fee of two ($2.00) dollars from each person applying for such examination.

B. After January 1, 1928, it shall be unlawful for any person, firm or corporation to operate a creamery, cream buying station, cheese factory or ice cream factory or to retail ice cream within the State of New Mexico or for any person, firm or corporation to ship into the State of New Mexico for the purpose of selling or distributing within the State any butter, cheese or ice cream without having first secured a permit signed by the Dairy Commissioner and bearing the seal of his office. Such permit shall be displayed conspicuously at said place of business. Permits shall be issued for one year and shall be cancelled and withdrawn by the Dairy Commissioner for failure to comply with any of the provisions of this act. The Dairy Commissioner shall collect for such permits as follows: For a permit for a creamery, cheese factory or ice cream factory or for a single establishment manufacturing one or more dairy products whether located within the State of New Mexico or located outside of said State and shipping such dairy products into the State for sale or distribution the sum of twenty-five ($25.00) dollars for

each calendar year; provided, that persons within the State of New Mexico making butter or cheese or ice cream from milk produced by their own herds only, shall not be required to secure such permits, and provided, further, that persons manufacturing ice cream for their own retail trade exclusively shall not be required to secure a permit other than for retailing ice cream; for a permit to operate a cream buying station the sum of ten ($10.00) dollars for each calendar year if such cream buying station is operated by any one other than the bona fide owner of such station; for a permit to retail ice cream the sum of one ($1.00) dollar for each calendar year.

C. All fees for permits or examinations collected by the Dairy Commissioner under the provisions of this act shall be deposited by said Dairy Commissioner with the accountant of the New Mexico College of Agriculture and Mechanic Arts and shall be kept in a separate account to be known as the Dairy Commissioner's fund. Expenditures from this fund shall be made in the same manner as from other funds in the hands of said accountant but such expenditure shall be made only for the maintenance and support of the Dairy Commissioner's office and the necessary expenses connected therewith. The Dairy Commissioner shall make a full and complete accounting for such funds in his annual report provided for by this act. (Id. § 9.)

17n. Appropriations.—For the purpose of carrying into effect the provisions of this act, there is hereby appropriated out of any money in the State treasury not otherwise appropriated for the purpose of paying the salary of the State Dairy Commissioner and his deputies as hereinbefore provided, the necessary expenses of the said Dairy Commissioner and his deputies as hereinbefore provided for the sixteenth fiscal year the sum of three thousand dollars, or so much thereof as may be necessary, and for the seventeenth fiscal year 1928 the sum of three thousand dollars, or so much thereof as may be necessary. Such moneys shall be paid by the State Treasurer to the secretary-treasurer of the Regents of the Agricultural College upon proper requisition upon the Auditor of the State and shall be held in a separate account by the said secretary-treasurer and expended only for the enforcement of the provisions of this act, and in the same manner as other State funds in the custody of said secretary-treasurer. (Id. § 10.)

17o. Penalty.—Any person, company or corporation or any agent of any company or corporation violating any of the provisions of this act shall be guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not less than twenty-five nor more than two hundred dollars for each offense. (Id. § 11.)

17p. Emergency Declared.—It is necessary for the preservation of the public peace, health and safety of the inhabitants of the State of New Mexico that the provisions of this act shall become effective at the earliest possible time and therefore an emergency is hereby declared to exist and this act shall take effect and be in full force and effect from and after its passage and approval. (Id. § 12.)

NOTE: See also Nos. 17a and 81 et seq.

Eggs.

See No. 17k.

Feeding Stuffs.

See No. 14.

Fruits and Vegetables.

See Nos. 17k, 75, 79-80, and 83.

Ice.

See No. 84.

Meat.

18. Dressed Meat Not to be Exposed.—It shall be unlawful for any person to permit any dressed meat or carcass of any animal to be exposed for sale or as an advertisement, or for any other purpose, outside the walls of his or her place of business or residence in any town of the State which contains one thousand or more inhabitants. (Stats. Annot. 1915, § 553.)

19. Penalties.—Any person who shall violate any of the provisions of sections 552, 553, shall be deemed guilty of a misdemeanor, and all justices of the peace shall have jurisdiction to try such offender within their respective counties,

and upon conviction such person shall be punished by a fine of not less than twenty-five dollars nor more than one hundred dollars, or by imprisonment not more than thirty days in the county jail, or by both such fine and imprisonment. (Id. § 554.)

19a. **Slaughterhouses Prohibited Near Towns.**—It shall be unlawful for any person or corporation to erect, maintain or operate any slaughterhouse, or to kill or prepare for sale any animals within three miles of the plaza of any town in this State which contains one thousand or more inhabitants, unless the written consent of the town council and the officer or officers constituting the board of health of said town shall be obtained. (Id. § 552.)

NOTE: See also Nos. 17a and 17k.

Mill Products.

See No. 87.

Olive Oil.

See No. 77.

Sanitation.

See Nos. 17a and 17e et seq.

PART III.

Special Drug Laws.

Abortifacients.

See Nos. 36 and 41.

Pharmacy, Poisons and Narcotics.

20. **Drug Stores, etc.; Unlawful Conducting of.**—It shall be unlawful for any person or persons not registered pharmacists within the meaning of this chapter to conduct any drug store, pharmacy, apothecary shop or store for the purpose of retailing, compounding or dispensing medicines, physicians' prescriptions, selling, retailing or compounding poisons of any kind in the State of New Mexico, except as hereinafter provided. (Stats. Annot. 1915, § 4052.)

21. **Filling Prescriptions; When Unlawful; Penalty.**—It shall be unlawful for the proprietor or owner, or proprietors or owners, of any store, drug store or pharmacy, to allow any person except a registered pharmacist, to compound, dispense, fill physicians' prescriptions, sell or compound poisons, except as an aid to and under the immediate supervision of a registered pharmacist. Any person violating the provisions of this section shall be deemed guilty of a misdemeanor and shall upon conviction be fined in a sum of not less than one hundred dollars ($100), nor more than two hundred dollars ($200), or imprisonment in the county jail for not less than one month nor more than two months, or both fine and imprisonment, at the discretion of the court, and, upon any second conviction or proof thereof, shall be fined in a sum not less than two hundred dollars ($200), nor more than four hundred dollars ($400), or imprisonment in the county jail for not less than three months, nor more than six months, or both fine and imprisonment, in the discretion of the court. (Id. § 4053.)

22. **Board of Pharmacy; Organization; Term; Powers; Vacancies; Compensation.**—The Governor shall appoint five persons, all of whom shall have been residents of the State, and actively engaged in the drug business, for three or more years, and of at least eight years' practical experience as druggists or pharmacists, who shall be known and styled the Board of Pharmacy for the State of New Mexico, one of whom shall hold office for five years, one for four years, one for three years, one for two years and one for one year in the first instance; and thereafter the Governor shall annually appoint one person to serve as a member of the board for five years. The persons so appointed shall constitute the Board of Pharmacy, and shall hold office for the term for which they were

appointed, or until their successors are duly appointed and qualified. They, the said board and each of them, shall, within ten days after their appointment, or being apprised of the same, take and subscribe the usual official oath, before a properly qualified officer of the county in which they reside. The said board shall organize within thirty days from and after their appointment and annually thereafter, by the election of a president and secretary. A majority of the board shall constitute a quorum for the transaction of business. Said board shall have power to make by-laws and all necessary regulations for the proper fulfillment of their duties under this chapter, without expense to the State. Any vacancy occurring in said board shall be filled by an appointment by the Governor for the unexpired term. Each member of the board shall be entitled to receive as compensation for his service the sum of five dollars ($5) per day while in actual session and for such time as is actually consumed in going to and returning from sessions of the board to his place of business, and also his actual expenses while en route to and from sessions, upon presentation of itemized account approved by a majority of the board; said accounts to be paid out of the treasury of the board. (Id. § 4054.)

23. **Registered Pharmacists; Eligibility.**—The Board of Pharmacy shall register in a suitable book, a duplicate of which shall be kept in the office of the Secretary of State, the names and places of residence of all persons to whom they issue certificates and the dates thereof. (Id. § 4055.)

24. **Registered Pharmacists; Examinations; Qualifications; Annual Certificates; Fees; Revocation.**—The Board of Pharmacy shall, upon application, and at such time and place and in such manner as they may determine, examine each and every person who shall desire to conduct the business of selling at retail, compounding or dispensing drugs, medicines or chemicals for medical use, or compounding or dispensing physicians' prescriptions as pharmacists in the State of New Mexico, and if a majority of said board shall be satisfied that said applicant is competent and fully qualified to conduct said business of compounding or dispensing drugs, medicines or chemicals for medical use, or to compound and dispense physicians' prescriptions, they shall enter the name of such person as a registered pharmacist, in the book provided for in the preceding section. Provided, no such person shall be so registered unless he, or she, is not less than twenty-one years of age, and shall have attended a high school for at least one full school year; and shall have had not less than three years practical experience in a retail drug store where physicians' prescriptions are compounded. The Board of Pharmacy may, in their discretion, issue certificates of registration without examination to applicants who are graduates from schools or colleges of pharmacy which are recognized by the New York State Board of Pharmacy as belonging to Class A and Class B, of their classification, and to issue certificates of registration without examination to applicants who have been granted certificates upon examination by other State Boards of Pharmacy. Provided, an average of not less than seventy-five per cent and not less than sixty per cent in any one branch has been attained by the applicant in an examination held by such State Board of Pharmacy in regular session, and a certificate from the secretary of said Board of Pharmacy, certifying to the above facts, shall accompany such application for registration without examination, according to the rules laid down by the National Association Boards of Pharmacy. Twenty years actual and continual practice of pharmacy shall entitle any person to registration without examination, upon good and sufficient proof being submitted to the Board of Pharmacy of such actual and continued practice. The Board of Pharmacy shall issue an appropriate certificate to each person registered, which certificate must be conspicuously displayed in every store or place described in this section. Said certificate must be renewed on or before the first day of May in each and every year, and the Board of Pharmacy is hereby entitled to demand and receive the sum of three dollars ($3.00) for every certificate of renewal issued under this section. Any one failing or refusing to pay said renewal fee within sixty days after the first of May in each and every year, shall have his certificate as a registered pharmacist revoked and shall not be reinstated, except on a new application accompanied by the fee of ten dollars ($10.00), payable to said board, and should he have been originally registered by priority of right and never have been examined by said Board of Pharmacy it shall be necessary for him to appear before said board for examination. (Id. § 4056.)

25. **Registered Pharmacist; Application Fee.**—The Board of Pharmacy shall be entitled to demand and receive from each person whom they register, upon lawful application made, the sum of ten dollars ($10.00), which shall be in full for all services, including two examinations. In case the applicant shall prove defective and his examination unsatisfactory in the first instance, he shall be

permitted to present himself for re-examination at the next regular meeting of the board, and no additional charge shall be made for said second examination, but should the applicant fail and a third examination be required, the said board shall be entitled to demand and receive an additional fee of five dollars. (Id. § 4057.)

26. Board of Pharmacy; Meetings; Temporary Certificates.—The Board of Pharmacy shall hold semi-annual sessions at such times and places as the board may determine, and other sessions of the board may also be held upon call of the president whenever and wherever a quorum of the board is present. In the interim of the sessions of the board, and upon satisfactory evidence of the fitness of an applicant, any one member of the board may, in his discretion, grant a temporary certificate, which shall authorize the holder to conduct a drug store or pharmacy. Such temporary certificate must be signed by the secretary and have the imprint of the seal of the board affixed and shall expire and terminate at the date of the next succeeding session of the board after the granting thereof. (Id. § 4058.)

27. Drugs and Medicines; Adulterating; Penalty.—Every owner of a drug store in the State of New Mexico shall be held responsible for the quality of all drugs, chemicals and medicines he may sell or dispense, with the exceptions of those sold in the original package of the manufacturer, or by wholesale dealers, in original packages, and also those known as proprietary, or patent medicines; and should he knowingly, intentionally or fraudulently adulterate, or cause to be adulterated, such drugs, chemicals or medicinal preparations, he shall be deemed guilty of a misdemeanor, and upon conviction thereof, his license as a registered pharmacist shall be revoked, and he shall be liable, in addition to the revocation of his license, to a fine of not less than one hundred dollars ($100.00), nor more than five hundred dollars ($500.00). (Id. § 4059.)

28. Registered Pharmacist; False Representations.—Any person who shall procure or attempt to procure registration for himself or for another under this chapter by making or causing to be made false representations, shall be deemed guilty of a misdemeanor, and shall, upon conviction thereof, be liable to a penalty of not less than one hundred dollars, nor more than two hundred dollars, or imprisonment in the county jail for not less than one month, nor more than three months, or both fine and imprisonment, in the discretion of the court, and his name, together with the name of the person so registered, shall be stricken from the register. (Id. § 4060.)

29. Drug Stores; Unlawful Conducting of; Prescriptions; Unlawfully Compounding.—Any person not a registered pharmacist, as provided in this chapter, who shall conduct a store, or a pharmacy, or place for retailing, compounding or dispensing drugs, medicines or poisons, or chemicals, for medical use, or for compounding or dispensing physicians' prescriptions in the State of New Mexico, or who shall take, use or exhibit the title of registered pharmacist, shall be deemed guilty of a misdemeanor, and upon conviction thereof, be liable to a penalty of not less than one hundred dollars, nor more than two hundred dollars, or imprisonment in the county jail for not less than one month, nor more than three months, or both fine and imprisonment, in the discretion of the court, and upon any second conviction or proof thereof, shall be fined in a sum of not less than two hundred dollars, nor more than four hundred dollars, or imprisonment in the county jail for not less than three months, nor more than six months, or both fine and imprisonment, in the discretion of the court, and any member of the Board of Pharmacy is hereby empowered and authorized to demand and inspect any prescription, prescription file, or poison register, in any drug store, pharmacy, or other store in the State of New Mexico; provided, that any person or persons not a registered pharmacist may own and conduct said store if he or they constantly keep a registered pharmacist employed; provided, that this chapter shall not apply to any practitioner of medicine who does not keep open shop for retailing, dispensing, or compounding medicines, nor prevent him from administering or supplying to his patients such articles as he may deem proper.

Any itinerant vendor of any drug, medicine, nostrum, ointment, lotion, or preparation, or appliance of any kind for the treatment of any disease, injury, or bodily defect, or for toilet purposes, shall pay to the county clerk of the county in which he, or she, wishes to pursue his, or her, occupation as itinerant vendor, an annual license fee of one hundred dollars, upon receipt of which the county clerk shall issue a license for one year from its date, authorizing such itinerant vendor to pursue his, or her, occupation as itinerant vendor, within said county, and such license shall not be transferable. Any itinerant vendor who shall pursue such occupation without first obtaining a license as aforesaid, or who shall upon demand

of any sheriff, constable, or householder, of the county, refuse to produce his, or her license and permit the same to be read, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined in a sum of not less than fifty nor more than one hundred dollars for each offense, or be sentenced to the county jail for a term not less than fifty nor more than one hundred days, or both, in the discretion of the court. All sums received by the county clerk for itinerant vendor's licenses or fines, shall by him be deposited with the county treasurer and covered into the general fund for the use of the county, except that the clerk shall receive the sum of fifty cents as fees for each license issued. (Id. § 4061.)

30. Registered Pharmacist; Retiring From Business; Expiration of Certificate.—If any registered pharmacist shall go out of the drug business, and remain out for a period of twelve months, his certificate as registered pharmacist shall thereupon expire, and he shall not be reinstated without examination, unless that he has been continuously engaged as a registered pharmacist, and that his original certificate was granted after examination by the said New Mexico Board of Pharmacy. (Id. § 4062.)

31. Prosecutions.—All suits for recovery of the several penalties prescribed in this chapter shall be prosecuted in the name of the State of New Mexico, in any court having jurisdiction, and it shall be the duty of the district attorney of the district, in which such offense is committed, to prosecute all persons violating the provisions of this chapter, upon proper complaint being made, and the district attorney shall be allowed the sum of ten dollars ($10) as fees in each case which he prosecutes, to be paid as other district attorney's fees are paid.

Upon conviction of either of the offenses mentioned in this chapter, the court shall as a part of the judgment, order that the defendant be committed to the common jail of the county until the fine and costs are paid, and upon failure to pay the same immediately, the defendant shall be committed under said order; provided, that either party may appeal in the same time and manner as appeals may be taken in other cases, except that when an appeal is prayed in behalf of the State, no appeal bond shall be required to be filed, whether the appeal be from a justice of the peace, or from the District Court, or from the Appellate Court, but it shall be sufficient in behalf of the State of New Mexico for the use of the Board of Pharmacy to pray an appeal, and thereupon appeal may be had without bond security. (Id. § 4063.)

32. Board of Pharmacy; Meetings; Annual Report.—The meetings of the Board of Pharmacy shall be open to registered pharmacists, who shall be permitted to be present at the examination of applicants for registration, and the secretary of the said Board of Pharmacy shall render an accurate annual statement to the Governor of the State, of all moneys received and expended by said board during each year, and he shall also report upon the general condition of pharmacy throughout the State. (Id. § 4064.)

33. Board of Pharmacy; Removals; Vacancies.—Any member of the Board of Pharmacy who shall violate any of the provisions of this chapter, or who shall neglect or refuse to report any of the violations of the provisions of this chapter that may be within his knowledge, without delay, shall be removed from office by the Governor upon such showing as may be deemed satisfactory by the executive, and such vacancies shall be filled by the Governor as provided by law. (Id. § 4065.)

34. Pharmacists; Addicted to Drugs.—The Board of Pharmacy is hereby given authority to refuse to register any otherwise qualified pharmacist upon sufficient evidence that the said applicant is addicted to the use of morphine, cocaine, or narcotic of any kind, or that he is an habitual drunkard, and the board shall revoke the certificate of any registered pharmacist upon satisfactory evidence that the said pharmacist is addicted to the use of said drug or has become an habitual drunkard: Provided, that no such certificate shall be revoked, except upon ten days written notice to the person whose certificate is sought to be revoked, and any person whose certificate is thus revoked shall have the right to appeal from such action by said board to the District Court. (Id. § 4066.)

35. Poisons; Sale Unlawful.—It shall be unlawful for any person, not a registered pharmacist, to sell or dispense any poison enumerated in schedules "A" and "B," except as hereinafter provided. (Id. § 2375.)

36. Opium and Emmenagogues; Sale Unlawful.—It shall be unlawful for any person to sell, or dispense, any of the articles enumerated in Schedule "C" or any emmenagogue or abortive, except that registered pharmacists may dispense such articles upon written prescription of a regularly licensed physician of the State of New Mexico. Any person violating the provisions of this section shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished

by a fine of not less than one hundred dollars, nor more than five hundred dollars, or imprisonment in the county jail for a period of not less than one hundred days, nor more than five hundred days, or both, in the discretion of the court. (Id. § 2376.)

37. Opium Joints; Unlawful.—It shall be unlawful for any person to keep or maintain a place for the purpose of furnishing opium to others, or what is commonly known as a hop, or opium, joint: Provided, however, that druggists may dispense or sell opium upon the prescription of a regularly licensed physician.

Any person violating the provisions of section 2375 or of this section shall be deemed guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not less than fifty dollars, nor more than one hundred dollars, or by imprisonment in the county jail for a period not less than fifty days, nor more than one hundred days, or both, in the discretion of the court. (Id. § 2377.)

38. Poisons; Sales; Label; Record.—Any articles enumerated in schedules "A" and "B" may be sold by registered pharmacists if upon due inquiry it be found that the purchaser is well aware of the poisonous character of the article purchased and represents that it is to be used for a legitimate purpose, stating the particular purpose, and all such articles shall be distinctly labeled with the name of the article, and the word poison printed or written upon the label, and a record of said poison sale shall be made which shall state the date of the sale, the name and address of the purchaser, the name of the article sold, the particular purpose for which it is represented by the purchaser to be required and the name of the dispenser; the said record shall be made in a suitable book, which shall be open to inspection by any member of the Board of Pharmacy, or any peace officer, and shall be preserved for at least four years. (Id. § 2378.)

39. Poisons Enumerated.—Schedule A shall comprise: Arsenic, mercury, and all preparations and salts of mercury, arsenic, copper, silver, lead, zinc and phosphorous, chloroform, chloral hydrate, ether, hydrocyanic acid, cyanide of potassium or any other cyanide, all mineral acids, oxalic and carbolic acid. (Id. § 2379.)

40. [Same].—Schedule B shall comprise: All vegetable poisonous drugs and their pharmaceutical preparations and alkaloids. (Id. § 2380.)

41. [Same].—Schedule C shall comprise: Opium, or its preparations containing more than two grains of opium to the ounce, or its alkaloids, ergot and cotton-root or their preparations, cocoa or its preparations or alkaloids, oil of tansy, oil of pennyroyal, oil of savine, or any emmenagogue or other abortive agent. (Id. § 2381.)

42. Poisons; Sale For Mining Purposes and by Physicians.—Nothing in sections 2375 to 2381 inclusive shall be so construed as to prevent the sale of such poisonous articles as are directly used in mining or for the reduction or concentration of ores, nor shall said sections apply to regularly licensed physicians dispensing poisons to their patients. (Id. § 2382.)

43. Fines and Penalties; Recovery.—All suits for recovery of the several penalties of sections 2376 and 2377 shall be prosecuted in the name of the State of New Mexico, in any court having jurisdiction, and it shall be the duty of the prosecuting attorney of the district in which such offense is committed to prosecute all persons violating the provisions of said sections, upon proper complaint being made, and the prosecuting attorney shall be allowed the sum of ten dollars as fees in each case which he prosecutes, to be paid as other district attorney's fees are paid. (Id. § 2383.)

44. Conditions Governing Sale of Patent Medicines, etc., Where There is No Registered Pharmacist.—Under the conditions hereinafter imposed merchants and storekeepers in towns, villages and camps where there is no registered pharmacist may and they are hereby authorized and permitted to sell at retail, patent or proprietary medicines, chemicals used in mining, the reduction of ores and assaying, poisons for the destruction of insect and animal pests and predatory animals and common household drugs; but all sales of poisons shall be subject to the provisions of section 2378 of the codification of 1915.* (L. 1921, c. 168, § 1.)

45. Proviso if Drug Store be Afterward Established.—It is further provided that in the event a drug store employing or having a registered pharmacist is established or commences to do business in any town, village or country store, wherein merchants have heretofore sold such patent medicines as hereby authorized, such drug store or registered pharmacist shall be required to buy from such merchant or stores the stock of patent or proprietary medicines, chemicals, poisons and drugs on hand or owned or kept for sale by such merchant, and such drug

*See No. 38.

store shall pay such merchant the prevailing wholesale prices for such goods; and provided, further, that in the event such druggist cannot, does not, fails or refuses to buy the stock of said merchant or storekeeper, then and in such event the merchant or storekeeper shall have the right to continue the sale of such patent or proprietary medicines, chemicals, poisons and drugs as he may have on hand or in stock at the time said drug store commenced to do business. (Id. § 2.)

46. Importation of Cannibas Indica Unlawful; Exception.—It shall be unlawful to import into the State of New Mexico cannibas indica, also known as hashish and mariguana in any form or any preparation or derivative thereof; provided, that cannibas indica, also known as hashish and mariguana, may be imported for medicinal purposes only, and then only by licensed pharmacists and licensed physicians of the State of New Mexico. (L. 1923, c. 42, § 1.)

47. Fraudulent Possession, etc.; Penalty.—If any person shall fraudulently or knowingly import or bring into the State of New Mexico, or assist in so doing, any cannibas indica or any preparation or derivative thereof contrary to law, or shall receive, conceal or in any manner facilitate the transportation or concealment of such cannibas indica or preparation or derivative thereof, after importation, such cannibas indica or preparation or derivative thereof shall be forfeited, and shall be destroyed, and the offender shall be fined in any sum not exceeding $500 and not less than $100, or by imprisonment for any time not exceeding three years and not less than one year, or both. Whenever, on trial for a violation of this section, the defendant is shown to have, or to have had, possession of such cannibas indica or preparation or derivative thereof, such possession shall be deemed sufficient evidence to authorize conviction unless the defendant shall explain the possession to the satisfaction of the jury. (Id. § 2.)

48. Unlawful to Produce or Sell Cannibas Indica; Exception.—It shall be unlawful for any person, association or corporation within this State to plant, cultivate, produce, sell, barter or give any cannibas indica, be it known by whatever name, or preparation or derivative thereof, or offer any such cannibas indica, or preparation or derivative thereof, for sale, gift, barter or trade. Provided, nothing in this section shall be held to apply to such sale, gift, barter or trade of cannibas indica by licensed physicians, or licensed pharmacists upon the written prescription of regular licensed physicians, when the same is intended for medicinal or scientific purposes only. (Id. § 3.)

49. Penalty.—Any person violating any of the provisions of the preceding section shall, for the first offense, be imprisoned for a period of not less than one year nor more than three years, and for the second and any subsequent offense shall be imprisoned for not less than three years and not more than five years. (Id. § 4.)

49a. Prisoners; Furnishing Liquor or Drugs to.—If any person or persons shall sell or give to any person confined in a jail, penal institution, road camp or prison ranch, or other place of confinement within this State, or shall send by mail, express or otherwise to any such person so confined, any morphine, cocaine, whisky or other drug or form of liquor of any character whatever, except upon the prescription or order of a regularly licensed and employed physician, upon conviction shall be punished by confinement in the penitentiary for a term of not less than one year nor more than seven years. (Stats. Annot. 1915, § 3039.)

Intoxicating Liquors.

50. Manufacture, Etc., of Intoxicating Liquors Unlawful; Wood Alcohol and Wine for Certain Purposes Excepted.—It shall be unlawful for any person, association, or corporation within this State to manufacture for sale, barter, or gift, any ardent spirits, ale, beer, alcohol, or for any person, association, or corporation to import into this State any such intoxicating liquors or beverages for sale, barter, or gift, or sell, or barter, or keep for sale or barter any of such liquors or beverages or offer any such intoxicating liquors or beverages for sale, barter or trade; providing nothing in this section shall be held to apply to denatured or wood alcohol or grain alcohol when intended and used for medicinal, mechanical, or scientific purposes only, or to wine when intended and used for sacramental purposes only. (Act of Mar. 14. 1927, § 1.)

51. Same; Eighteenth Amendment Recognized.—New Mexico hereby recognizes the requirements of the Eighteenth Amendment to the Constitution of the United States for its concurrent enforcement of the Eighteenth Amendment by the Congress and of the several States.

It shall be unlawful for any person, association or corporation within this State to manufacture, sell, barter, transport into this State, import, export, furnish, or possess for sale, any ardent spirits, ale, beer, alcohol, wine, or any intoxicating liquors of any kind whatsoever, or any still or other apparatus, mash or wert containing alcohol for distillation for the purpose of manufacturing any intoxicating liquors; provided, nothing in this section shall be held to apply to denatured or wood alcohol, or grain alcohol when intended and used for medicinal, mechanical, or scientific purposes only, or to wine when intended and used for sacramental purposes only, or to possession of intoxicating liquors in a private dwelling that were lawfully possessed prior to February 1, 1920, and legally certified to under the provision of United States statute. (Id. § 2.)

52. Penalty.—Any person violating any of the provisions of the preceding sections shall be guilty of a misdemeanor and for the first offense be fined not less than fifty dollars nor more than one thousand dollars or be imprisoned in the county jail for a period of not less than ninety days, nor more than six months, or both, and for the second and any subsequent offense shall be fined not less than two hundred dollars nor more than two thousand dollars, or be imprisoned in the State Penitentiary for not less than two months nor more than five years, or both. . . . (Id. § 4.)

53. Definitions.—When used in this act the word "liquor" or "liquors"; the phrase "intoxicating liquor" or "intoxicating liquors" shall be construed to include alcohol, brandy, whiskey, rum, gin, beer, ale, porter, and wine, and in addition thereto any spirituous, vinous, malt or fermented liquors, liquids, and compounds whether medicated, proprietary, patented, or not, and by whatever name called, containing one-half of one per cent or more alcohol by volume which are intended or sold for beverage purposes. (Id. § 13.)

54. Sale, Etc., of Intoxicating Liquors to Minors a Felony; Penalty.—It shall be unlawful for any person, other than parent or guardian, to sell, give or otherwise dispose of any intoxicating liquor to any person under the age of twenty-one years.

Any person violating the provisions of this act shall be deemed guilty of a felony and shall, upon conviction, be punished by a fine of not more than five thousand dollars, or by imprisonment in the State Penitentiary for not more than fifteen years, or by both such fine and imprisonment in the discretion of the court. (L. 1923, c. 10, § 1.)

PART IV.

Miscellaneous Laws.

Flag Desecration.

55. Desecration of United States Flag, Etc., a Misdemeanor; Penalty.—Any person who in any manner, for exhibition or display, shall place or cause to be placed, any word, figure, mark, picture, design, drawing or any advertisement of any nature upon any flag, standard, color or ensign of the United States of America, or shall expose or cause to be exposed to public view any such flag, standard, color or ensign upon which shall be printed, painted or otherwise placed, or to which shall be attached, appended, affixed or annexed any word, figure, mark, picture, design or drawing, or any advertisement of any nature, or who shall expose to public view, manufacture, sell, expose for sale, give away or have in possession for sale, or to give away or for use for any purpose, any article or substance being an article of merchandise or a receptacle of merchandise upon which shall have been printed, painted, attached or otherwise placed a representation of any such flag, standard, color or ensign, to advertise, call attention to, desecrate, mark or distinguish the article or substance on which so placed, or who shall publicly mutilate, deface, defile, jeer at or defy, trample upon or cast contempt, either by words or acts, upon such flag, standard, color or ensign, shall be deemed guilty of a misdemeanor, and shall be punished by a fine not exceeding five hun-

dred dollars or by imprisonment for not more than six months in the county jail. (L. 1919, c. 33, § 1.)

Trade-Marks, Etc.

56. Trade Names and Marks; Description; Filing; Fees.—Any person or persons, firm, corporation or association who manufacture or deal in articles of a commercial nature and wish to retain the exclusive right to the use of a trade-name, trade-mark or label shall make a description of the same in writing, accompanied by a facsimile of such trade-name, trade-mark or label, which description and application must set forth the class or classes of merchandise to be covered by such trade-name, trade-mark or label, together with a statement that the applicant claims by priority of adoption and employment of the same, exclusive right to the use thereof. Such instrument shall be signed by at least one of the persons or by the officials of the company making application for registration, the whole duly acknowledged and filed in the office of the Secretary of State. For the filing of each application and issuing certificate thereof, the secretary shall collect a fee of $5.00. The secretary shall keep a record of each trade-name, trade-mark or label, and it shall be unlawful for any other person, firm, corporation or association to adopt a trade-name, trade-mark or label identical with or similar to one previously registered. A copy of such description of any trade-name, trade-mark or label, certified under the great seal of the State of New Mexico, shall be prima facie evidence of the facts therein stated. (Stats. Annot. 1915, § 5556.)

57. Trade-name or Mark; Branding Packages.—The proprietor of each trade-name, trade-mark or label shall cause the same to be plainly marked, printed, stamped or branded upon each article or original package covered by the same. (Id. § 5557.)

58. Using Branded Packages, Etc.—It shall be unlawful for any person or persons, firm, corporation or association to use or refill any barrel, sack, package or bottle bearing any registered trade-name, trade-mark or label with any article for purposes of deceit. (Id. § 5558.)

59. Trade-names and Marks; Offenses Concerning.—It shall be unlawful for any person or persons, firm, corporation or association to make, forge or counterfeit any trade-name, trade-mark or label previously registered in accordance with this chapter; have in his or their possession, except with written permission of the owner thereof, any die, stamp, stencil or model of such trade-name, trade-mark or label; vend or keep for sale any drugs, goods, wares or merchandise intended to represent the drugs, goods, wares or merchandise covered by such trade-name, trade-mark or label, or affix any general design identical with or similar to such trade-name, trade-mark or label when not the first to employ or use the same. (Id. § 5559.)

60. Penalties.—Any person or persons, firm, corporation or association violating the provisions of the two preceding sections shall be deemed guilty of a misdemeanor and shall be subject to a fine in a sum not less than $50.00 nor more than $200.00 for each offense, at the discretion of the court, together with the damages as they may appear. (Id. § 5560.)

61. Former Registration.—The provisions of this chapter, in so far as they may be applicable, are hereby extended to any person or persons, firm, corporation or association who may have registered a trade-name, trade-mark or label in good faith prior to March 2, 1905. (Id. § 5561.)

Weights and Measures.

62. U. S. Weights and Measures Standards in New Mexico.—All the weights and measures accepted and used by the government of the United States at the present time, except as herein provided, shall be deemed the lawful standard weights and measures of the people of this State. (Stats. Annot. 1915, § 5819.)

63. Public Weighmaster; Deputies; Appointment; Oath.—The office of public weightmaster is hereby established, and the sheriffs are hereby declared to be ex-officio public weighmasters for their respective counties.

The public weighmaster shall appoint one or more deputy weighmasters for his county, who may be regular deputy sheriffs, which deputies shall have all the powers conferred upon the public weighmaster, and shall be liable to all the penalties to the same extent as the public weighmaster for violation of the provisions of this chapter. All such deputies shall keep a record of their transactions as herein prescribed for the public weighmaster, which record shall be

open at all times to public inspection, and all deputy weighmasters appointed under the provisions of this chapter shall, before entering upon the duties of their offices, take and subscribe to an oath for the faithful performance of their duties. (Id. § 5821.)

64. Office at County Seat; Records; Expenses.—The public weighmaster shall keep his office at the county seat of his county, and the county shall provide record books and blanks, and actual expenses incurred in connection with his office shall be paid out of the county current expense fund, upon warrants drawn by the county commissioners, supported by verified itemized statements of the weighmaster. All books, reports or other records in the office of such public weighmaster shall be delivered to his successor in office. (Id. § 5822.)

65. Records; Certificate of Inspection.—It shall be the duty of the public weighmaster to procure a record book for his office and a record book for each deputy weighmaster, such book to contain blank certificates, and upon the inspection of any scales herein required to be inspected it shall be the duty of the weighmaster or the deputy, in case said scales be found to conform to the standard of weights for this State, to deliver to the owner thereof a certificate to that effect. A copy of such certificate shall be preserved as a permanent record in the office of the public weighmaster. (Id. § 5823.)

66. Weighmaster; Duties; Reports.—It shall be the duty of the public weighmaster of each county, in person or by his deputy, to inspect and test all scales used by any and all merchants or persons engaged in the business of buying and selling commodities, and such scales shall be tested with the standard weights of this State. Such test shall be made once each six months upon all scales so used, and said public weighmaster or deputy shall make a report in writing, setting forth the date of such test, the result thereof and specifying the scales so tested. Such report shall be filed in the office of the public weighmaster within thirty days after such inspection. Said public weighmaster, or the deputy making such test, shall verify each report so filed, stating that the same is a correct, true and exact report of the condition of the scales mentioned therein. (Id. § 5824.)

67. Petition for Inspection.—Whenever as many as five citizens sign a written request to the public weighmaster for an official inspection of any such scales, such public weighmaster shall forthwith comply with such request and make or have made such inspection and test, not oftener, however, than once each thirty days; or, if the public weighmaster has reasonable cause to believe that any such scales have been altered after inspection he shall thereupon inspect the same; but if found unaltered no charge for such inspection shall be made. (Id. § 5825.)

68. Weighmasters; False Reports.—Any public weighmaster or deputy making a misstatement of facts, or who reports any scale to be in a condition other than its true condition, or who knowingly omits from inspection any scale or violates any of the provisions of this chapter, shall be deemed guilty of a misdemeanor, and upon conviction shall be punished by a fine of not less than fifty dollars ($50.00) nor more than five hundred dollars ($500.00), or by imprisonment for not less than thirty days nor more than ninety days or both such fine and imprisonment. (Id. § 5826.)

69. Standard of Weights and Measures; Secretary of State to Keep.—The Secretary of State shall procure and keep in his office the following standards of weights, which shall conform in every particular to the United States standards of weights: One fifty-pound weight, one twenty-five-pound weight, one ten-pound weight, one five-pound weight, one one-pound weight, one one-half-pound weight, one one-quarter-pound weight, one one-eighth-pound weight, one one-sixteenth-pound or one-ounce weight; one set of apothecaries weights from one pound to one grain, which weights are hereby declared to be the legal standards of weights for this State. Said Secretary of State shall be charged with the custody and be accountable to the State for the proper use and care of the same. Such standards shall be used only for testing the standards provided for in this chapter. (Id. § 5827.)

70. Standard Weights; Duplicates for Counties.—The Secretary of State shall procure, test, and deliver to each county duplicates of said standard weights. (Id. § 5828.)

71. Standard Weights; Duplicates for Weighmasters.—The board of county commissioners of each county shall procure from the Secretary of State a sufficient number of such duplicates of weights as may be necessary for the use of the public weighmaster and deputies in such county, which duplicate weights shall be paid for by the county, and be delivered to the public weighmaster. Any failure upon the part of the county commissioners to comply with the provisions of this section shall be deemed a misdemeanor, and upon conviction shall subject any such offending

official to a fine of not less than twenty dollars ($20.00) nor more than two hundred dollars ($200.00). (Id. § 5829.)

72. Standard Weights; Duplicates for Deputies.—The public weighmaster is hereby required to deliver to each deputy such duplicate weights as may be necessary for making the tests required by this chapter, and shall be responsible under his bond as sheriff for their delivery to his successor in office. (Id. § 5830.)

73. Deputy Weighmaster—Fees.—The deputy public weighmaster shall be entitled to demand and receive to his own use for the inspection provided for in this chapter the following fees:

For inspecting railroad and track scales of capacity of 20 tons and upwards, each	$1.50
For inspecting scales of from 3 to 20 tons capacity, each	1.00
For inspecting dormant scales, each	1.00
For inspecting movable platform scales, each	.25
For inspecting beams weighing 100 lbs. and upwards, each	.25
For inspecting hopper scales, each	1.00
For inspecting counter scales, each	.25
For inspecting each balance, beam, steelyard or other instrument used for weighing other than those above enumerated	.25

(Id. § 5831.)

74. Sale of Bread; Regulation.—The council of any city, town or village shall have power to regulate the sale of bread and prescribe the weight and quality in the loaf. (Id. § 5833.)

75. Bushel Measure Defined.—Whenever the articles hereinafter named shall be sold by the bushel, and no special contract or agreement shall be made to the contrary, the bushel shall consist of the following number of pounds, viz.:

Alfalfa seed	60	Lime, unslacked	80
Apples	45	Millet seed	50
Apples, dried	24	Oats	32
Barley	48	Onions	57
Beans	60	Onion bottom sets	32
Beets	56	Onion top sets	30
Bermuda grass seed	40	Orchard grass seed	14
Blue grass seed	14	Parsnips	42
Bran	20	Peaches	48
Buckwheat	52	Peaches, dried	33
Carrots	50	Peanuts	22
Castor beans	46	Pears	48
Cement	80	Peas	60
Charcoal	20	Pop corn in the ear	70
Clover seed	60	Pop corn, shelled	56
Coal, mineral	80	Potatoes	60
Coke	40	Potatoes, sweet	50
Corn in the cob	70	Quinces	48
Corn in the ear, unhusked	72	Rape	50
Corn meal	50	Rutabagas	50
Corn, shelled	56	Rye	56
Cucumbers	48	Sand	130
Cotton seed	32	Sorghum seed	50
Flax seed	56	Timothy seed	45
Hemp seed	44	Tomatoes	50
Hungarian grass seed	50	Turnips	56
Indian corn	56	Wheat	60
Kaffir corn	56		

(Id. § 5834.)

76. Definition of Ton; Short Weight; Penalty.—When any commodity is sold by the ton, unless otherwise agreed upon, a ton shall consist of two thousand (2,000) pounds.

Whoever shall sell or deliver a less quantity than prescribed in section 5836* for a ton shall be deemed guilty of a misdemeanor. (Id. § 5839.)

77. Gallon Measure Defined; Short Measure; Penalty; Test Samples of Gasoline.—Whenever any of the following-named articles shall be sold or delivered by wholesale or in the original package within the State of New Mexico, unless otherwise provided by contract, such sale and all computations for payment and

*Entitled, "Ton of hay defined."

settlement therefor shall be by weight. The weight per gallon shall be not less than as follows:

Naphtha	6⅓ pounds	Cod liver oil	7½ pounds
Kerosene oil	6½ "	Whale oil	7½ "
Paraffine oil	7½ "	Lard oil	7½ "
Castor oil	8 "	Neat's foot oil	7½ "
Olive oil	7⅝ "	Sperm oil	7¼ "
Linseed oil, raw	7½ "	Turpentine	7 "
Linseed oil, boiled	7½ "	Miner's oil	7½ "
Menhaden oil	7½ "	Gasoline	6 1-25 "

Whoever in selling by retail or wholesale any of the said articles shall sell or deliver any less number of pounds to the gallon than is prescribed in this section shall be deemed guilty of a misdemeanor and upon conviction shall be fined not less than fifty dollars ($50.00) and not more than five hundred dollars ($500.00) for each offense, and shall be liable to the injured party in double the amount of the damages sustained to be recovered in any court of competent jurisdiction.

The public weighmaster of each county shall procure, by purchase in the open market of his county, once each year, a sample of gasoline, not less than four ounces, which he shall immediately transmit to one of the public inspectors. The expense of the purchase and transmission of said samples shall be paid by the county wherein they are procured. (Id. § 5840.)

78. Sale of Dry Commodities.—All dry commodities not otherwise specified in this chapter shall be sold only by standard dry measure, standard weight or numerical count, except where parties otherwise agree. (Id. § 5841.)

79. Size of Fruit Boxes.—The standard size of an apple box shall be eighteen (18) inches long, eleven and one-half (11½) inches wide, ten and one-half (10½) inches deep, inside measurement.

The standard size of a pear box shall be eighteen (18) inches long, eleven and one-half (11½) inches wide, and eight (8) inches deep, inside measurement. (Id. § 5842.)

80. Size of Boxes For Small Fruits.—Berries and small fruits whenever sold in boxes shall be sold in boxes each containing a standard liquid quart or liquid pint, and, if any such box contains less than this quantity the information must be given to the purchaser by such package being labeled with a statement of the net contents. (Id. § 5843.)

81. Milk Measure; Other Liquid Measures.—All milk or cream that shall be sold in bottles shall be sold only in bottles containing quarter pints, half pints, pints, quarts, half-gallons or gallons. All other liquid commodities shall be sold only by standard liquid measure or standard weight, except where parties otherwise agree. (Id. § 5844.)

82. Butter Weight.—A print or package of butter shall contain sixteen ounces avoirdupois, and when a print or package of butter containing less than sixteen ounces avoirdupois shall be sold its net weight shall be disclosed by the seller to the buyer by such package being labeled with a statement of the net weight. (Id. § 5845.)

83. Violation of Chapter; Penalty.—Any violation of the five preceding sections shall be deemed a misdemeanor, and upon conviction shall subject any such offender to a fine not less than ten dollars ($10.00) nor more than one hundred dollars ($100.00) for each offense, or by imprisonment of not less than thirty days nor more than ninety days, or both such fine and imprisonment. (Id. § 5846.)

84. Ice Weights.—Any dealer in ice who neglects to provide scales for each wagon used by him for the delivery of ice, or who refuses or neglects to weigh the same when delivering to purchaser, or gives false weight, shall for each such offense be punished by a fine of not more than fifty dollars ($50.00). (Id. § 5847.)

85. False Weights and Adulterated Goods; Penalty.—Every person selling any hops, cotton, hay or other goods sold in bags, bales, boxes, barrels or packages, by weight, who puts into or conceals therein anything whatever for the purpose of increasing the weight or adulterating the contents of such bag, bale, box, barrel or package, is punishable by a fine of not less than twenty-five dollars ($25.00) nor more than one hundred dollars ($100.00) for each such offense. (Id. § 5850.)

86. Public Scales; Examination; When; Use Unlawful.—All scales used for the weighing of property in public warehouses shall be subject to examination and test by any duly authorized public weighmaster, the expense of such tests to be paid by such warehouseman, and no scales shall be used for the weighing of grain or any other article after having been found incorrect, until put in order and found accurate and approved for further use by an authorized public weigh-

master, and any person violating any of the provisions of this section shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined not less than fifty dollars ($50.00) nor more than five hundred dollars ($500.00). (Id. § 5851.)

87. Milk [Mill] Products; Package to be Labeled; Penalty.—The correct name and true weight of the contents of each and every barrel, sack, bale, cask, box or package of any and all mill products, whether sold in single packages or lots, shall be plainly marked, branded or stenciled in letters and figures not less than one inch in length and not less than one-sixteenth of an inch in width, upon the exterior of such barrel, box, sack, bale, cask or package, in a conspicuous place on the head in case of barrel, and the front or branded side in case of sacks, bales, boxes or packages, and it shall be unlawful for any person, to sell or exchange any such product so packed or contained until the provisions hereof have been complied with.

If any person shall violate the provisions of this section, he shall be guilty of a misdemeanor, and upon conviction shall be punished by a fine of not less than twenty-five dollars ($25.00), nor more than one hundred dollars ($100.00), and each violation shall be deemed a separate offense. (Id. § 5852.)

88. Interfering With Weighmaster; Using False Scales, etc.; False Marks on Packages; Penalty.—Any person who shall impede, obstruct, hinder or interfere with any public weighmaster or other person in the performance of his duties as prescribed by this chapter; who shall conceal from the public weighmaster any scales in his possession; who shall knowingly mark or stamp false or short weight or false tare on any cask or package, or knowingly sell or offer for sale any cask or package so falsely marked or which contains less than the quantity which he represented to contain, or who shall knowingly use any false balance or weight or measure in the weighing or measuring of anything whatever that is purchased, sold, bartered, shipped or delivered for sale or barter, or that is pledged or given in payment shall be deemed guilty of a misdemeanor, and upon conviction shall be punished by a fine of not less than twenty-five dollars ($25.00), nor more than five hundred dollars ($500.00), or by imprisonment for not less than thirty days nor more than ninety days, or by both such fine and imprisonment. (Id. § 5853.)

89. Owners to Notify Weighmaster of Uninspected Scales.—Any person owning or having in his possession any scale used for weighing, which scale has not been inspected as provided in this chapter, shall immediately notify the public weighmaster that he owns or has in his possession such a scale which has not been inspected as herein provided. Should any person fail to so notify the public weighmaster when owning or having in his possession such a scale, he shall be deemed guilty of a misdemeanor, and upon conviction shall be punished by a fine of not less than twenty dollars ($20.00) nor more than two hundred dollars ($200.00) or by imprisonment for not less than thirty days nor more than ninety days, or by both such fine and imprisonment. (Id. § 5854.)

90. "Person" Defined.—The word "person" as used in this chapter shall be construed to include a person, firm, company, corporation or association, whether acting as principal, agent, or employee. (Id. § 5855.)

91. Weighmasters May Make Arrests; Seizure and Destruction of False Scales.—Every public weighmaster or his deputy is authorized and required to arrest any person violating any of the provisions of this chapter, and to seize any false scales, weights or measures being used by any such person and to deliver the same to the magistrate before whom the person so arrested is taken.

The magistrate to whom any scale, weight or measure is delivered pursuant to this section shall cause the same to be tested by comparison with standards required by this chapter; and, if he finds it to be false, shall cause it to be destroyed, if the case against the person accused of using the same has been disposed of, otherwise to be delivered to the district attorney of the county in which the accused is liable to indictment or trial.

Upon conviction of the accused, such district attorney shall cause any scale, weight or measure in respect whereof the accused stands convicted, and which remains in the possession or under the control of such district attorney, to be destroyed. (Id. § 5856.)

92. Public Weigher.—The office treated of in this title shall be styled the "Office of Public Weigher." (L. 1921, c. 158, § 1.)

93. Appointment.—The board of county commissioners of any county in the State of New Mexico, when presented by a petition signed by twenty (20%) per cent of the qualified voters of any justice precinct in the county praying for the appointment of a public weigher or public weighers for said precinct, shall

appoint one or more suitable persons for public weighers for said justice precinct; the number of public weighers shall be determined by said board. (Id. § 2.)

94. Same.—No person shall be appointed a public weigher, unless he shall be a qualified elector in the justice precinct for which he is appointed. (Id. § 3.)

95. Same.—No person shall be appointed public weigher, or deputy weigher, who is interested in the purchase or sale of live stock, cotton, wool, grain, or coal to be weighed, either as principal, agent, factor, commission merchant or employee. (Id. § 4.)

96. Petition to Abolish.—After the office of public weigher has been established for two years, the board of county commissioners of said county shall upon petition to abolish said office signed by qualified voters at least one-half in number of the whole vote cast for Governor at the last preceding election in the public weigher's precinct, declare such office abolished to be effective within thirty (30) days after presentation of such petition; and no public weigher shall be appointed in such precinct for two years thereafter. (Id. § 5.)

97. Oath.—Every person appointed public weigher, shall take the oath of office prescribed by the constitution for other officers, and shall execute a bond with good and sufficient sureties in the sum of two thousand ($2,000.00) dollars, to be approved by the board of county commissioners of such county, and payable to the State of New Mexico, conditioned upon the faithful and impartial performance of the duties of the office. (Id. § 6.)

98. Duties.—When a person is appointed public weigher and shall have qualified as provided in section 3, he shall enter upon the duties of his office and weigh, without unnecessary delay, all grain, cotton, wool, hay, coal, live stock or other commodities required to be weighed by him. He shall provide suitable and convenient place or places of easy access to the public in which to perform his duties. He shall deliver to the owner, a certificate or statement, written in ink or indelible pencil, setting forth the gross and net weight of such grain, hay, wool, live stock or other commodities weighed by him, over his official signature. He shall keep in a well bound book a record of all articles weighed by him, giving the name of owner and weight of article or load, which book shall be open at all reasonable hours for the inspection of the public; and he shall, upon application therefor by anyone, issue certified copies of such certificates, for which he may charge the sum of ten ($0.10) cents, including certificate thereto. The provisions of this article shall also apply to private weighers who are engaged in weighing for the public, as well as public weighers. (Id. § 7.)

99. Powers.—The public weigher shall have the power and authority to appoint as many deputies for his weighers precinct as may be necessary to enable them to expeditiously weigh all grain, wool, live stock, coal or other commodities offered to be weighed in the weigher's or justice precinct, for which they are appointed. The public weigher shall be responsible to the county for the faithful performance of the duties of deputies appointed by him. He may require of them a bond with good and sufficient surety in the sum of one thousand ($1,000.00) dollars, and conditioned for the faithful performance of their duties; and the public weigher shall have the right to recover in any court having jurisdiction satisfaction on said bonds for any damage sustained by reason of said deputy or deputies for any failure to properly perform the duties of the office. (Id. § 8.)

100. Shall Keep Accurate Scales.—All public weighers appointed under the provisions of this chapter shall keep accurate and well adjusted scales and balances and give accurate weights, and shall keep the same tested and certified to as provided by law. Each public weigher shall be held responsible for the official acts of the deputies, and shall be liable to suits for all damages that may be accrued to any person or persons by reason of the failure to perform the official duties, or the violation of any of the provisions of this chapter; and the bonds shall not be void upon the first recovery, but may be sued on from time to time, in the name of the person or persons injured until the whole thereof is recovered. (Id. § 9.)

101. Other Public Weigher Not to be Used.—It shall not be lawful for any factor, commission merchant, or other person or persons, to employ any other public weigher or his deputies, to weigh any hay, grain, wool or any other product sold or offered for sale in any city or justice precinct having a public weigher duly qualified; and any person or persons violating the provisions of this section shall be liable to the suit of the public weigher of such city or justice precinct, to damages in any sum not less than five ($5.00) dollars for each ton of hay, grain, coal, sack of wool, bale of cotton, so unlawfully weighed to be recovered in any court having jurisdiction thereof. (Id. § 10.)

102. Exceptions.—Nothing in this chapter shall prevent any person, firm, or corporation from weighing his own produce in person, provided, that in places

where there are no public weighers appointed any person who shall weigh cotton, wool, grain, hay and other products for compensation shall be required before weighing such product to enter into a bond with at least two good and sufficient sureties in the sum of two thousand ($2,000.00) dollars, approved and payable as in the case of the public weigher referred to in this section, and conditioned that he will faithfully perform the duties of his office and turn over all property weighed by him on demand of the owner; provided, that this section shall not apply to merchant flouring mills. (Id. § 11.)

103. Penalties.—Any weigher who qualifies under the preceding section and shall violate any of the provisions or fail to comply with any of such provisions, shall be liable at the suit of any person injured upon his bond for damages that may have accrued to such person by such violation or failure. (Id. § 12.)

104. Fees.—Public weigher shall receive the following fees:

For each bale of cotton, not exceeding	10 Cts.
For each load of wool, not exceeding	10 Cts.
For each load or part of load of hay or grain	10 Cts.
For each bale of hides	10 Cts.
For each loose hide	02 Cts.
For each load or part of load of coal	10 Cts.
For each barrel	05 Cts.
For each load or part of load of broom corn	10 Cts.
For each load or part of load of live stock	10 Cts.

And he shall not be obliged to deliver any such article so weighed until the same therefor shall have been paid. (Id. § 13.)

105. Office of Public Weighmaster Established in Certain Cities, Etc.—The office of the public weighmaster be, and the same is hereby, established in such cities, towns and villages of the State of New Mexico, as shall by ordinance avail themselves of the provisions of this act. (L. 1921, c. 16, § 1.)

106. Public Weighmasters, How Nominated and Confirmed.—Such public weighmaster shall be nominated by the mayor and confirmed by the city council or board of trustees of the several municipalities of said State, which avail themselves of the provisions of this act, as provided in section 1 hereof, as other appointive officers are nominated and confirmed in the municipal corporations of said State. (Id. § 2.)

107. Powers, Duties and Fees.—The powers and duties of such municipal public weighmaster shall be the same as those now provided by law in Chapter CXVI of the New Mexico Statutes, Codification of 1915* for Public Weighmasters, and he shall receive the same fees as are therein provided for public weighmasters. (Id. § 3.)

108. Location of Office.—The municipal public weighmaster shall keep the office at such place in the municipality as may be provided by the city council or board of trustees of such municipality. (Id. § 4.)

109. Duplicates of Necessary Standard Weights to be Procured from Secretary of State.—The city council or board of trustees of such municipality shall procure from the Secretary of State such duplicates of standard weights as may be necessary for the use of such public weighmaster in such municipality, which duplicate weights shall be paid for by the municipality and delivered to the municipal public weighmaster. (Id. § 5.)

110. Testing of Weights and Measures.—The municipal public weighmaster shall have exclusive jurisdiction in the matter of testing weights and measures within such municipality, to the exclusion of the public weighmaster, provided for in said Chapter CXVI.* (Id. § 6.)

111. Public Weighmaster May Appoint Needed Deputies.—Said municipal public weighmaster may appoint such deputies as may be needed, by and with the consent of the city council or board of trustees of such municipality, which has availed itself of the provisions of this act as provided in section 1 hereof. (Id. § 7.)

PART V.

Cases.

None.

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*See Nos. 62-91.

NEW YORK.*

PART I.

General Food and Drug Law.

General Food Law.

1. Short Title.—This chapter shall be known as the agriculture and markets law. (C. L. 1923, c. 19, art. 1, § 1; L. 1927, c. 207, § 2.)

2. Definitions.—When used in this chapter, unless otherwise expressly stated, or unless the context or subject matter otherwise requires:

1. "Department" means the State Department of Agriculture and Markets;
2. "Council" means the Council of Agriculture and Markets;
3. "Commissioner" means the Commissioner of Agriculture and Markets;
4. The terms "food," "foods," and "food products," shall include all articles used for food, drink, confectionery or condiment by man or other animals, whether simple, mixed or compound;
5. The production of foods means the producing of food upon the farm or elsewhere by the tillage of the soil, or other agricultural, horticultural or dairying processes and shall also include the manufacture of foods.
6. "Farm product" means any agricultural, dairy or horticultural product, or any product designed for food manufactured or prepared principally from an agricultural, dairy or horticultural product. (C. L. 1923, c. 19, art. 1, § 2; L. 1927, c. 207, § 3.)

3. Matters of Public Interest.—The production, manufacturing, marketing, storing and distribution of food, and of all the instrumentalities used in the production thereof, including fertilizers, feeding stuffs, materials, apparatus and machinery used or needed in connection therewith, are matters of public interest and proper subjects for investigation, encouragement, development and regulation by the State to secure an abundant supply of pure and wholesome food, to protect the health of the inhabitants of the State, to secure the exchange of such food and instrumentalities upon a fair basis and at market prices uncontrolled by speculation, to prevent frauds in the traffic therein, and so far as may be to eliminate waste and loss in distribution thereof. (C. L. 1923, c. 19, art. 1, § 3.)

4. Department of Agriculture and Markets.—There shall continue to be in the State government a Department of Agriculture and Markets. (C. L. 1923, c. 19, art. 2, § 4; L. 1927, c. 207, § 5.)

5. Council of Agriculture and Markets; Appointment.—The head of the department shall be the Council of Agriculture and Markets, to consist of one member from the State at large and one member from each of the judicial districts. All vacancies in the council, either for full or for unexpired terms, shall be so filled that there shall always be in the membership of the council at least one resident of each of the judicial districts.

The members of the existing Council of Agriculture and Markets shall constitute, and its members are hereby continued in office as members of, the Council of Agriculture and Markets, until the expiration of their present terms and until their successors are appointed and have qualified. Their successors shall be elected by the Legislature in joint session in the second week in February, on or before the fourteenth day of such month, for terms of ten years beginning on April first following their election. Such election shall be in the manner provided by law for the election of regents of the university.

A vacancy in the office of such members of such council for a cause other than the expiration of term shall be filled for the unexpired term by an election at the session of the Legislature immediately following such vacancy, unless the Legislature is in session when such vacancy occurs, in which case the vacancy shall be filled by the Legislature during such session. The Commissioner of Public Markets, if

*CITATIONS: "C. L. 1923" refers to Cahill's Consolidated Laws of New York, 1923, published by Callaghan and Company. "Supp. 1926" refers to the 1926 supplement thereto. "L." refers to the session laws of the year cited.

any, of the city of New York, appointed or to be appointed pursuant to law, shall be a member of the council officio. (C. L. 1923, c. 19, art. 2, § 5; L. 1927, c. 207, § 6.)

6. Removal of Members of Council.—The members of the council may be removed by the Senate, on the recommendation of the Governor for misconduct of malversation in office, if a majority of all the members elected to the Senate shall concur therein. The proceedings for such removal shall be the same as those prescribed by law for the removal of elective State officers, and the provisions of the public officers law relative thereto shall apply to the removal of members of the council. (C. L. 1923, c. 19, art. 2, § 6.)

7. Organization of Council; Committees.—The council shall elect one of its members as president, and one of its members as vice-president. The president, and in his absence the vice-president, shall preside at all meetings of the council. The council may provide for standing and other committees, to consist of such number of members and to perform such duties as may be prescribed by its rules. (Id. § 7.)

8. Meetings of Council.—The council shall hold regular meetings at such times and places as the council may direct, and special meetings when authorized and called as prescribed in the rules of the council. (Id. § 8.)

9. Powers and Duties of Council.—In addition to the powers and duties specifically prescribed by this chapter, the council shall consider all matters submitted to it by the commissioner in reference to his powers and duties or the general policy of the department, and advise the commissioner with respect thereto. It may also in an advisory capacity make such suggestions to the commissioner with respect to the exercise of his powers or the performance of his duties, or in respect of the affairs of the department, as it deems advisable. (Id. § 9.)

10. Expenses of Members of Council.—The members of the council shall receive no compensation for their services, but each member of the council shall be paid his necessary traveling and other expenses incurred while in attendance at meetings of the council at Albany or elsewhere, or while otherwise engaged in the performance of his official duties. (C. L. 1923, c. 19, art. 2, § 10; L. 1927, c. 207, § 7.)

11. Commissioner of Agriculture and Markets.—The department shall have a chief executive officer, to be known as the Commissioner of Agriculture and Markets who shall be a person qualified by training and experience for the duties of his office. He shall be appointed by and shall hold office during the pleasure of the council. The present Commissioner of Agriculture and Markets shall continue in office until his successor is appointed and has qualified. His successor shall be appointed by the council. The commissioner shall have the supervision and direction of all officers and employees and of the affairs of the department, subject to any rule of the council relating thereto. He shall be responsible for the enforcement and carrying into effect of the laws, rules and orders pertaining to matters as to which the department has functions, powers and duties. (C. L. 1923, c. 19, art. 2, § 11; L. 1927, c. 207, § 8.)

12. Assistant Commissioners.—The commissioner shall appoint and may at pleasure remove two Assistant Commissioners of Agriculture and Markets and assign to such assistant commissioners the work which shall be under their respective supervision. Each of such assistant commissioners shall be a person qualified by training and experience for the performance of the duties so assigned to him. (C. L. 1923, c. 19, art. 2, § 12; L. 1927, c. 207, § 9.)

13. Secretary.—There shall be a secretary of the department to be appointed by the commissioner and who shall serve during the pleasure of the commissioner. (C. L. 1923, c. 19, art. 2, § 13.)

14. Counsel.—There shall be a counsel of the department to be appointed by the commissioner and who shall serve during the pleasure of the commissioner. The counsel of the department shall represent and appear for the department in all actions and proceedings involving any question under this chapter or within the jurisdiction of the department under any general or special law or under or in reference to any act, order or proceeding of or before the commissioner, and shall, when directed, intervene, if possible, in behalf of the department in any action or proceeding involving or relating to any matter within the jurisdiction or powers of the department as herein prescribed, except that the Attorney-General of the State shall continue to have direct charge of and bring such actions as he may deem necessary for any and all violations of this chapter. The said counsel shall, also, act as counsel for any officer of the department in the conduct of a hearing, investigation or inquiry instituted under authority of the department or as provided in this chapter. He shall advise the council, the commissioner or any officer of the department, when so requested, in regard to all matters in connection with their powers and duties, and perform generally all duties and services as counsel of the department which may reasonably be required of him. (Id. § 14.)

15. Bureaus.—Existing bureaus in the department are continued until consolidated or abolished pursuant to this section. The commissioner may establish such bureaus as may be necessary for the administration and operation of the department and the proper exercise of its powers and the performance of its duties, under this chapter, and may, from time to time, consolidate or abolish such bureaus. The commissioner may determine the official functions of each bureau. There shall be a director of each bureau to be appointed by the commissioner and who shall serve during the pleasure of the commissioner. The directors of bureaus in the department who are in office when this chapter takes effect shall continue in office during the pleasure of the commissioner. (Id. § 15.)

16. Confidential Positions.—The assistant commissioners, secretary, counsel and directors of bureaus shall be deemed to occupy confidential positions to the commissioner, and may be appointed without competitive examination. (Id. § 16.)

17. Other Officers and Employees.—There shall be such agents, inspectors, chemists, experts, statisticians, accountants and other assistants and employees, as the commissioner shall deem necessary for the exercise of the powers and the performance of the duties of the department under this chapter. The council, by rule, may require that appointments and removals, or either, of counsel, assistant commissioners and other officers and employees of the department by the commissioner shall be subject to its approval.

Such officers and employees shall be appointed by the commissioner and hold office during the pleasure of the commissioner. The officers and employees of the department who are in office when this chapter takes effect shall continue in office during the pleasure of the commissioner.

The commissioner may transfer officers or employees from their positions to other positions in the department, or abolish or consolidate such positions. (C. L. 1923, c. 19, art. 2, § 17; L. 1927, c. 207, § 10.)

18. Oaths of Office.—Each member of the council, the commissioner, the assistant commissioners, the counsel and the secretary shall, before entering upon the duties of their offices, take and subscribe the constitutional oath of office. Such oaths shall be filed in the office of the Secretary of State. (C. L. 1923, c. 19, art. 2, § 18.)

19. Salaries of Commissioner and Officers; Expenses.—The annual salary of the commissioner shall be twelve thousand dollars. The annual salaries and compensation of the assistant commissioners, the counsel, secretary and all other officers and employees of the department shall be fixed by the commissioner within the limits of appropriations made therefor.

The reasonable and necessary traveling and other expenses of the commissioner, assistant commissioners, secretary, counsel and other officers and employees of the department, while actually engaged in the performance of their duties, outside of the city of Albany, or if any such officer or employee be in charge of or regularly employed at a branch office of the department, the reasonable and necessary traveling and other expenses outside of the place in which such branch office is located, shall be paid from the State treasury upon the audit of the Comptroller, upon vouchers approved by the commissioner. (C. L. 1923, c. 19, art. 2, § 19; L. 1927, c. 207, § 11.)

20. Offices of Department.—The principal office of the department shall be in the city of Albany in rooms to be designated by the trustees of public buildings as provided by law. Branch offices shall be established and maintained by the department in such places as the commissioner may determine. The offices shall be supplied with all necessary books, stationery, office equipment and furniture, to be furnished and paid for in the manner provided by law. (C. L. 1923, c. 19, art. 2, § 20.)

21. Seal of Department.—The department shall have an official seal, to be prepared and furnished by the Secretary of State, as provided by law. Such seal shall be used for the authentication of the orders and proceedings of the commissioner and for such other purposes as the commissioner may prescribe. (Id. § 21.)

22. General Powers and Duties of Department.—The department through the commissioner shall have power to:

1. Execute and carry into effect the laws of the State and the rules of the department, relative to agriculture, horticulture, farm and dairy products, and the production, transportation, storage, marketing and distributing of food; enforce and carry into effect the provisions of the laws of the State relative to weights and measures.

2. Aid in the promotion and development of the agricultural resources of the State and the improvement of the conditions of rural life; the improvement of the fertility and productiveness of farm lands and the restoration to fertility and productiveness of unoccupied and unproductive land; the settlement of farms and the supply of farm labor; the stocking of farms with meat-producing and dairy animals and promoting the production of cereals, fruits and vegetables, and co-operate with county

farm bureaus, and with agricultural, dairying and horticultural associations or corporations and other agencies organized for any or all of such purposes.

3. Investigate the cost of food production and marketing in all its phases.

4. Investigate the sources of food supply for the State, the production, transportation, storage, marketing and distribution of food sold, offered for sale, stored or held within the State, the cost of transportation to the leading centers of population and of distribution to consumers.

5. Collect and disseminate accurate data and statistics as to the food produced, stored or held within the State, the quantities available from time to time and the location thereof, and so far as practicable and available collect such like statistics from without the State, as are of value to producers and consumers within the State.

6. Investigate and recommend useful methods of co-operative production, marketing and distribution of foods within the State.

7. Aid in the organization and operation of co-operative associations and corporations among producers and consumers of farm products, and also aid in the organization and operation of co-operative associations, corporations or other agencies for the purpose of increasing the production, improving the quality, grading or bringing together of farm products for wholesale marketing.

8. Co-operate with and aid farmers and other producers of food, and distributors and consumers thereof, in improving and maintaining economic and efficient systems of production, storage, distribution and marketing, and in reaching advantageous markets.

9. Acquire and disseminate accurate information as to market prices of food products in the markets of the State and any other markets, when in the judgment of the commissioner such information will be valuable to the producers or consumers of the State.

10. Acquire and publish useful information to facilitate transportation, to avoid delays therein and upon request advise shippers or purchasers as to the most direct and expeditious route of shipment to market.

11. Co-operate with the public service commissions with the view of obtaining suitable, expeditious and economical facilities for the shipment of food, and recommend as to the action to be taken by such commissions to avoid and prevent unfair discrimination in such shipment and unreasonable delay in the transportation thereof, and to obtain fair and reasonable rates for such transportation.

12. Investigate delays in transportation, and in case food is likely to spoil for lack of ready market, take such action as seems advisable for facilitating the sale thereof.

13. Investigate restraints of trade or unlawful combinations to fix prices.

14. Investigate as to the needs of terminal, dock and other distributing facilities for the delivery and distribution of foods at the centers of population, and the establishment and operation of co-operative or public abbattoirs for the slaughter of animals and poultry for food purposes; and advise and co-operate with corporations and municipalities or other agencies to promote their establishment, construction or acquisition for the public use and make recommendations as to the conduct thereof.

15. Advise and co-operate in establishing local markets, and warehouses for assembling, grading, packing and storing food or farm products, whenever in the judgment of the commissioner the public interests require such establishment.

16. Co-operate with producers in the conduct of experiments and disseminate information as to producing, assembling, grading, packing, distributing and selling farm products, so as to demonstrate economic and efficient methods, and to standardize the grades of such products and determine the cost of such production, assembling, grading, packing, distribution and sale.

17. Investigate plans to be established by law for the purpose of securing an ample supply of pure milk in centers of population upon an economic basis of distribution and to aid in the accomplishment of such purpose within the provisions of existing law.

18. Ascertain the names and addresses of producers, manufacturers, importers and distributors of food, the kind of food produced, manufactured, imported or distributed by such persons, and to publish the same whenever in the judgment of the commissioner public interests require or, upon request, when in the public interest, supply lists of such persons.

19. Make such recommendations as in the judgment of the commissioner will stimulate and increase the production of food and co-operate with public or private agencies for that purpose.

20. Act as mediator or arbitrator, when jointly invited, in any controversy or issue that may arise between producers and distributors of food.

21. Investigate, when deemed advisable, the conduct and methods of exchanges and boards of trade within the State for the purchase and sale of food.

22. Collect and publish data concerning the purity, wholesomeness, economic value and the nutritious and hygienic properties of food produced, sold or available for sale within the State, and for such purpose to take, examine and analyze samples of such food.

23. Investigate deceptions in the quality, quantity or character of foods produced, stored, sold or offered for sale within the State, including the adulteration and misbranding thereof.

24. Co-operate with local health departments and departments of markets in preventing the production, manufacture, sale or offering for sale of fraudulent, deleterious or unwholesome food.

25. Inspect and determine the grade or condition of farm products at shipping points and receiving centers, and provide for the issuance of certificates of such inspections and enter into co-operative arrangements with State and Federal marketing agencies for joint inspections. The commissioner shall require and receive the payment of fees for such inspection services in amounts not exceeding the estimated cost of the services. The commissioner shall remit to the State Treasurer such fees received monthly.

26. Investigate and take action to prevent illegal acts or practices in the sale or distribution of food or of fertilizers, feeding stuffs, materials, apparatus and machinery or other instrumentalities used or needed for the production, marketing and distribution of food.

27. Seize, destroy or denature so that it cannot thereafter be used for food, any unwholesome food or food products sold or exposed for sale on the markets of this State, or any food or food products consisting in whole or in part of any filthy, decomposed or putrid animal or vegetable substance, or any portion of an animal unfit for food, whether manufactured or not, or if it is the product of a diseased animal or one that has died otherwise than by slaughter. Provided, however, that the Commissioner of Farms and Markets after seizure and before such destruction, shall give the owner, proprietor or custodian of such food ten days' notice in writing, to be served either personally or by mail, of a hearing for the said owner, proprietor or custodian to show cause why such food should not be destroyed in accordance with the provisions of the statute.

28. Provide for holding a State fair and, for the purpose of seeking advice and counsel in relation thereto, designate and, at pleasure, remove, not more than nine persons to act as a State fair advisory board, with which the commissioner may consult. The members of such board shall receive no compensation for their services, but shall be paid their necessary traveling and other expenses when consulted by the commissioner.

29. All the functions of the former Department of Farms and Markets, of the former Council of Farms and Markets and of the former Commissioner of Farms and Markets and all their powers and duties, which were transferred to the Department of Agriculture and Markets by section two hundred and seventy-two of the State departments law or shall have been prescribed by law when this subdivision as hereby enacted takes effect, whether in terms vested in such department, in such council or in such commissioner or in a committee, member or officer thereof, shall continue to be vested in the Department of Agriculture and Markets continued by this chapter and shall continue to be exercised and performed therein by or through the Council of Agriculture and Markets, the Commissioner of Agriculture and Markets or the appropriate division, bureau, board or officer thereof as prescribed by or pursuant to law, together with such functions, powers and duties as hereafter may be conferred or imposed upon such department by law. All the provisions of this chapter shall apply to the Department of Agriculture and Markets continued by this chapter as hereby amended and to the Council of Agriculture and Markets, the Commissioner of Agriculture and Markets and to the divisions, bureaus and officers of such department, in so far as such provisions are not inconsistent with this subdivision. (C. L. 1923, c. 19, art. 2, § 22; Supp. 1926, Id.; L. 1927, c. 207, §§ 12 and 48.)

23. Delegation of Powers.—The commissioner may delegate any of his powers to, or direct any of his duties to be performed by, an assistant commissioner or the director of a bureau and, except where it is otherwise provided in this chapter or the context otherwise requires, may delegate any of such powers to any officer or employee of the department.

Whenever by the education law or other statute the commissioner is made a member by virtue of his office of the board of visitors, managers or trustees or other similar body of a State institution, he may in writing authorize and empower an assistant commissioner, the secretary of the department or the director of a bureau to act in his place and stead at any meeting or meetings of any such board or body. (C. L. 1923, c. 19, art. 2, § 23; L. 1927, c. 207, § 13.)

24. Rules of Department.—Subject and in conformity to this chapter and the constitution and laws of the State, the commissioner may enact, amend and repeal necessary rules which shall

1. Regulate and control the transaction of business by the department, provide for the exercise of the powers and the performance of the duties of the department and prescribe the powers and duties of the bureaus and of the directors of bureaus and other officers and employees thereof;

2. Provide for carrying into effect the provisions of this chapter and of the laws of the State in respect of food and food traffic;

3. Regulate the conduct of investigations, inquiries and hearings authorized by this chapter and prescribe necessary forms and notices;

4. Establish official grades for foods and farm products and prescribe the use of such grades, and provide for the marking, packing and shipping of foods and farm products so graded.

5. Establish uniform tolerances or amounts of reasonable variation for containers of food and provide uniform regulations for carrying out the provisions of this chapter in relation to such containers.

6. Provide generally for the exercise of the powers and performance of the duties of the department as prescribed in this chapter and the laws of the State and for the enforcement of their provisions and the provisions of the rules enacted as herein provided.

The rules of the department in force at the time this chapter takes effect shall continue as the rules of the department, until amended or repealed by the commissioner. (C. L. 1923, c. 19, art. 2, § 24.)

25. Publication of Rules.—Every rule or amendment or repeal of a rule affecting the interpretation, execution or application of this chapter shall be promptly published in the bulletins of the department and once in the State paper. Every such rule, amendment or repeal shall, unless otherwise prescribed by the council take effect twenty days after publication in the State paper, and shall be certified by the commissioner, an assistant commissioner or the secretary of the department and filed with the Secretary of the State. (C. L. 1923, c. 19, art. 2, § 25; L. 1927, c. 207, § 14.)

26. Access to Place of Business.—The members of the council, the commissioner, each assistant commissioner and the directors, counsel, experts, chemists, agents and other officers and employees of the department shall have full access to all places of business, factories, farms, buildings, carriages, cars and vessels used in the production, manufacture, storage, sale or transportation within the State of any dairy products or any imitation thereof, or of any article or product with respect of which any authority is conferred by this chapter on the department. They may examine and open any package or container of any kind containing or believed to contain any article or product, which may be manufactured, sold or exposed for sale in violation of the provisions of this chapter, or of the rules of the department, and may inspect the contents therein, and take therefrom samples for analysis. (C. L. 1923, c. 19, art. 2, § 26.)

27. Power to Administer Oaths and Compel Testimony.—A member of the council, the commissioner, and assistant commissioner, the secretary or counsel of the department, or any other officer or employee duly authorized by the commissioner, may administer oaths and take affidavits in relation to any matter or proceeding in the exercise of the powers and duties of the department under this chapter. The commissioner, or an assistant commissioner may subpœna and require the attendance of witnesses and the production of books, papers and documents pertaining to the investigations and inquiries which such commissioner or assistant commissioner is authorized to conduct, and examine them in relation to any matter to be investigated by them and issue commissions for the examination of witnesses who are out of the State or unable to attend or excused from attendance.

Any person who shall wilfully testify falsely as to any material matter pending in an investigation or proceeding under this chapter shall be guilty of and punishable for perjury.

An officer who serves the subpœnas issued as above provided and witnesses attending in response thereto shall be entitled to the same fees as are allowed to officers and witnesses in civil actions in courts of record, to be audited and paid in the same manner as other expenses of the department. (Id. § 27.)

28. Records, Documents and Papers of Department.—All proceedings, documents, papers and records filed or deposited with the department relating to matters within its jurisdiction and powers shall be public records; except such portions thereof as are received and accepted by the commissioner, as being of a confidential nature which when so received and accepted shall not be subject to subpœna. Copies of all official documents and orders so filed or deposited, certified by the commissioner, an assistant commissioner or the secretary under the seal of the department to be

true copies of the originals, shall be evidence in like manner as the originals. (Id. § 28.)

29. Publication of Department Bulletins, Publications and Reports.—There may be published by the department from time to time bulletins or other publications and reports containing accurate data, statistics and information.

1. As to agriculture, agricultural production, agricultural labor and the agricultural conditions of the State, and the development and improvement thereof, with a view of increasing farm production and values;

2. As to the sources, supply and prices of foods, their storage and accumulation at different places, and the quantities and location of the available supply thereof;

3. As to the market prices of foods;

4. As to facilities afforded for transportation, marketing and distribution of foods within the State;

5. As to matters pertaining generally to the production of foods, the actual food value of articles used as foods, and the sale and distribution thereof to the consumers, which in the opinion of the commissioner will prove valuable or of interest to the public;

6. As to investigations, hearings and inquiries conducted as provided in this chapter, the conclusions reached as to the matters involved therein, and the orders and recommendations made as a result thereof;

7. As to any other matter which the commissioner deems proper.

Such bulletins, publications and reports and the information contained therein shall be published and distributed in the manner deemed best by the commissioner for the dissemination of knowledge as to the agricultural and dairy interests of the State and the production, sale, purchase, storage, marketing and distribution of foods, and the economic and food value of articles used as food. The cost of publishing such bulletins, publications and reports shall be paid in the same manner as other expenses of the department out of appropriations made therefor. Copies of the bulletins, publication and reports of the department may also be sold to the public at the estimated cost thereof, in accordance with a schedule of charges which the commissioner is hereby authorized to adopt. (Id. § 29.)

30. Annual Reports.—The commissioner shall cause to be prepared and submitted to the legislature each year, a report of the transactions of the department, including such part of the acts and proceedings of the department as he deems advisable to include therein, together with such information data and statistics in the possession of the department, as the commissioner shall deem of value to the Legislature and the people of the State. Such report shall contain a general review of the work of the departments and abstracts of investigations and hearings and copies of decisions and orders rendered or issued by the commissioner and contain such recommendations for legislation as in the opinion of the commissioner is required. The commissioner may require all agricultural societies receiving money from the State to make reports to the department, and may prescribe the form of such reports. (Id. § 30.)

31. Investigations and Proceedings.—1. The commissioner, or any officer of the department when authorized by the commissioner, may investigate and report as to all matters within or pertaining to the powers and jurisdiction of the department, and for the purposes of carrying into effect the provisions of this chapter or of any other law relative to matters within its jurisdiction and the rules of the department.

2. Proceedings may be instituted before the commissioner against a corporation, association or person upon the written complaint of any person or corporation aggrieved complaining of practices in the production, sale, transportation, purchase, storage, marketing and distribution of foods, in violation of any provision of law or the rules of the department or of the terms of an order issued pursuant to law by the commissioner, under the provisions of this chapter or of any other law the enforcement of which is within the jurisdiction of the department, or the rules of the department, made in conformity therewith.

3. Upon the presentation of such complaint the commissioner may cause inquiries to be made as to the matters alleged therein and if such complaint appears to present a sufficient cause for investigation a copy of such complaint shall be forwarded to the person, association or corporation complained of and answer may be made thereto in accordance with the rules of the department.

4. The commissioner shall thereupon cause the charges presented by such complaint to be investigated as herein provided, and such action shall be taken as the facts justify and as may be authorized by law. (C. L. 1923, c. 19, art. 3, § 32.)

32. Immunity of Witnesses.—No person shall be excused from testifying or from producing any books or papers in any investigation, hearing or inquiry, conducted pursuant to this chapter or the rules of the department when directed to do so by

the officer presiding at such investigation, hearing or inquiry, upon the ground that the testimony or evidence, books or documents, required of him may tend to incriminate him or subject him to penalty or forfeiture; but no person shall be prosecuted, punished or subjected to penalty or forfeiture, for or on account of any act, transaction, matter or thing concerning which he shall under oath have testified or produced documentary evidence and no testimony so given or produced shall be received against him upon any criminal action, investigation or proceeding, provided, however, that no person so testifying shall be exempt from prosecution or punishment for any perjury committed by him in his testimony. (Id. § 33.)

33. Practice on Hearings; Attendance and Examination of Witnesses.—1. The practice on all investigations and hearings conducted or instituted as provided in this chapter shall be governed by the rules of the department, and in all such hearings or investigations where testimony is taken, the commissioner, or other officer conducting the same, shall not be bound by the technical rules of evidence.

2. All subpœnas shall be signed and issued by the commissioner, assistant commissioner or the secretary of the department and may be served by any person of full age.

The fees of witnesses shall be audited and paid in the same manner as other expenses of the department. Whenever a subpœna is issued at the instance of a complaint, respondent or other party to the proceeding, the cost of the service thereof and the fees of the witness shall be borne by the party at whose instance the witness is subpœnaed.

A subpœna issued as herein provided shall be served in the same manner as a subpœna issued out of a court of record.

3. If a person subpœnaed to attend before the commissioner or other officer of the department, fails to obey the command of such subpœna, without reasonable cause, or if a person in attendance upon an investigation or hearing shall, without reasonable cause, refuse to be sworn or to be examined or to answer a question or to produce a book or paper, when ordered so to do by the officer or officers conducting such an investigation or hearing, or to subscribe and swear to his deposition after it has been correctly reduced to writing, if required so to do, he shall be guilty of a misdemeanor and may be prosecuted therefor in any court of competent criminal jurisdiction.

4. If a person in attendance upon an investigation or hearing refuses without reasonable cause to be examined or to answer a legal and pertinent question or produce a book or paper, when ordered so to do by the officer or officers conducting such investigation or hearing, the commissioner may apply to any justice of the Supreme Court upon proof by affidavit of the facts for an order returnable in not less than two nor more than five days directing such person to show cause before the justice who made the order, or any other justice of the Supreme Court, why he should not be committed to jail; upon the return of such order the justice before whom the matter shall come on for hearing shall examine under oath such person whose testimony may be relevant, and such person shall be given an opportunity to be heard; and if the justice determine that such person has refused without reasonable cause or legal excuse to be examined, or to answer a legal and pertinent question, or to produce a book or paper which he was ordered to bring, he may forthwith, by warrant, commit the offender to jail, there to remain until he submits to do the act which he was so required to do or is discharged according to law.

5. Any person who shall wilfully testify falsely as to any material matter pending in an investigation or proceeding under this chapter shall be guilty of perjury. (Id. § 34.)

34. Proceedings in Court.—If it appear after an investigation or hearing conducted as herein provided that any person, association or corporation is guilty of a violation of the provisions of this chapter or of any other act the enforcement of which is within the jurisdiction of the department, an action or proceeding may be instituted in a court of competent jurisdiction to recover a penalty for such violation or to compel a compliance with such provisions, or prevent a continuance of such violations. (Id. § 35.)

35. Orders and Service Thereof.—1. If it be ascertained after an investigation or hearing conducted as herein provided, that any person, association or corporation has failed to comply with or is guilty of a violation of the provisions of this chapter or of a rule of the department, or of any other general or special law relative to any matter within the jurisdiction of the department, an order may be made by the commissioner, under the seal of the department, compelling a compliance with such law or rule.

2. Every such order shall be served upon every person, association or corporation affected thereby, either by personal delivery of a certified copy thereof, or by mailing a certified copy thereof with postage prepaid to the person affected thereby, or

in case of a corporation or association, to an officer or agent thereof, upon whom a summons may be served in accordance with the provisions of the civil practice act.

3. It shall be the duty of the person, association or corporation upon whom such order is so served to notify the department forthwith, in writing, of the receipt of such order, and in the case of an association or corporation such notification must be signed and acknowledged by a person or officer duly authorized by such association or corporation to admit service. Within a time specified in the order, every person, association or corporation upon whom it is served must, if so required in the order, notify the department in like manner whether the terms of the order are accepted and will be obeyed.

4. Every such order shall take effect at a time therein specified, and shall continue in force either for a period to be designated therein or until changed or abrogated by the commissioner.

5. If such hearing is held before an assistant commissioner, a report shall be made upon the termination of the hearing to the commissioner, with recommendation as to the determination which should be made as to the issues raised on such hearing. If the commissioner find upon such report or upon a hearing conducted by him, that the rule or order complained of is reasonable and valid he shall render his decision ratifying or confirming such rule or order; if he find that such rule or order is unreasonable or invalid, he shall revoke or modify it, or substitute a new rule or order in its place. If such modified or new rule or order is substantially different from the rule or order complained of, the parties affected thereby may bring before the commissioner, by a new petition, in the manner above provided, objections to its reasonableness or validity.

6. The decision of the commissioner shall be final, unless within thirty days after its issuance one of the parties shall institute a proceeding for the review thereof, as provided in the next section. (Id. § 36.)

36. Review by Court.—Any person affected by a decision of the commissioner rendered as provided in the preceding section may institute a proceeding for the review thereof in the Supreme Court of the county of Albany or any county in which the department shall have established a branch office. Such proceeding shall be instituted against the commissioner as respondent by petition and on such notice as the court may prescribe. If reasonable grounds are shown for a review of such decision, the court shall direct that within a specified time a return may be filed with the clerk of the court, containing a certified copy of the testimony taken upon the hearing before the commissioner, together with copies of all papers, documents and records used therein. If the decision sought to be reviewed is one refusing a hearing on the ground that the issues have been determined in a prior proceeding, such return shall include a certified copy of the records of such prior proceeding. The court may of its own motion or upon motion of a party suspend the rule or order sought to be reviewed during the pendency of the review, and unless so suspended the rule or order shall remain in full force and effect.

The court shall thereupon determine the issues raised from the return so made and it may, where questions of fact arise which were not raised or disposed of upon the hearing, take additional evidence as to the matters involved in the proceeding. The court may refer any issue arising in such proceeding to the commissioner for further consideration. At any time during such proceeding the party applying for a review of the commissioner's decision may apply to the court, without notice, for an order directing all questions of fact arising upon one or more specified issues, to be tried and determined by a jury, and the court shall thereupon cause such questions to be plainly stated for trial, and the findings of the jury upon such questions shall be conclusive in the proceeding.

A proceeding instituted as provided in this section shall have precedence over other actions and proceedings in the same court to the same extent and subject to the same conditions as an action or special proceeding brought by or against the people of the State.

Appeals from the Supreme Court to the appellate division of the Supreme Court and to the Court of Appeals may be taken in such cases and subject to the same limitations as in other cases. (Id. § 37.)

37. When Injunction May be Obtained.—In an action in the Supreme Court for the recovery of a penalty or forfeiture incurred for the violation of any of the provisions of this chapter, or of any other law, the enforcement of which is within the jurisdiction of the department, or of the rules of the department, an application may be made on the part of the people to the court or any justice thereof for an injunction to restrain the defendant, his agents and employees from the further violation of such provisions. The court or justice to whom such application is made, shall grant such injunction on proof, by affidavit, that the defendant has been guilty of the violations alleged in the complaint, or of a violation of any such provision

subsequent to the commencement of the action. No security on the part of the plaintiff shall be required, and costs of the application may be granted or refused in the discretion of the court or justice. If the plaintiff shall recover judgment in the action for any penalty or forfeiture demanded in the complaint, the judgment shall contain a permanent injunction, restraining the defendant, his agents and employees from any further violation of such provision of this chapter or of any other law the enforcement of which is within the jurisdiction of the department or of the rules of the department. Any injunction, order or judgment obtained under this section may be served on the defendant by posting the same upon the outer door of the defendant's usual place of business, or where such violation was or is committed, or in the manner required by the civil practice act, and the rules and practice of the court. Personal service of the injunction shall not be necessary when such service cannot be secured with reasonable diligence, but the service herein provided shall be deemed sufficient in any proceeding for the violation of such injunction. (Id. § 38.)

38. Penalties for Violation of Chapter or Other Laws.—Every person violating any of the provisions of this chapter, or of any other law the enforcement of which is within the jurisdiction of the department shall, except where other penalties are hereinafter prescribed, be subject to a penalty in the sum of not less than twenty-five dollars nor more than one hunderd dollars for the first violation, nor more than two hundred dollars for the second and each subsequent violation. When such violation consists of the manufacture or production of any prohibited article, each day during which or any part of which such manufacture or production is carried on or continued, shall be deemed a separate violation. When the violation consists of the sale, or the offering or exposing for sale or exchange of any prohibited article or substance, the sale of each one of several packages shall constitute a separate violation, and each day on which any such article or substance is offered or exposed for sale or exchange shall constitute a separate violation. If the sale be of milk and it be in cans, bottles or containers of any kind and if the milk in any one of such containers be adulterated, it shall be deemed a violation whether such vendor be selling all the milk in all of his containers to one person or not. When the use of any such article or substance is prohibited, each day during which or any part of which such article or substance is so used or furnished for use, shall constitute a separate violation, and the furnishing of the same for use to each person to whom the same may be furnished shall constitute a separate violation. When the storage of any article is prohibited beyond a certain period, each day during which or any part of which any article is so stored beyond the period provided for by this chapter, shall constitute a separate violation.

A right of action for the recovery of, or a liability for, penalties incurred as provided in this chapter, or in any other law the enforcement of which is within the jurisdiction of the department, may be released, settled or compromised before the matter is referred to the Attorney-General, as provided in section forty-four of this chapter, and thereafter may be released, settled or compromised by the Attorney-General, either before or after an action is brought to recover such penalties. (Id. § 39.)

39. Penalty for Violation of Rule or Order.—Every person, association or corporation and all agents, officers and employees thereof, shall obey every order made as provided in this chapter, so long as such order shall be in force. A person, association or corporation who shall fail by himself, itself or through his or its agents, officers and employees, to obey any order of the commissioner, or who shall violate any rule of the department shall be subject to a penalty not exceeding the sum of two hundred dollars for each and every offense. Every violation of such order, or of the rules of the department, shall be a separate and distinct offense, and in case of a continuing violation, every day's continuance thereof shall be a separate and distinct offense. (Id. § 40.)

40. Violation of Chapter or Rule a Misdemeanor.—Except as otherwise provided by the penal law, a person who by himself or another violates any of the provisions of this chapter or of any other law the enforcement of which is within the jurisdiction of the department, or of any lawful rule of the department is guilty of a misdemeanor, and upon conviction shall, except as otherwise provided in this chapter, be punished by a fine of not less than twenty-five dollars, nor more than two hundred dollars, or by imprisonment for not less than one month, nor more than six months, or by both such fine and imprisonment, for the first offense; and by not more than one year's imprisonment for the second offense. (C. L. 1923, c. 19, art. 3, § 41; Supp. 1926, Id.)

41. Act of Officer or Agent Deemed Act of Principal.—In construing and enforcing the provisions of this chapter relating to penalties, the act of a director, officer, agent or other person acting for or employed by a person, association or corporation subject to the provisions of this chapter and acting within the scope of

his employment, shall be deemed the act of such person, association or corporation. (C. L. 1923, c. 19, art. 3, § 42.)

42. Evidence.—The doing of anything prohibited by this chapter shall be evidence of the violation of the provisions of this chapter relating to the thing so prohibited, and the omission to do anything directed to be done shall be evidence of a violation of the provisions of the chapter relative to the thing so directed to be done. The intent of any person doing or omitting to do any such act is immaterial in any prosecution for a violation of the provisions of this chapter. Any person who suffers, permits or allows any violation of the provisions of this chapter in any room or building occupied or controlled by him, shall be guilty of such violation and liable accordingly. Any person who shall keep, store or display any article or product, the manufacture or sale of which is prohibited or regulated by this chapter, with other merchandise or stock in his place of business, shall be deemed to have the same in his possession for sale.

Every certificate, duly signed and acknowledged, of a chemist, analyst or other expert employed by the commissioner or any analysis, examination or investigation made by such analyst, chemist or expert with respect to any matter or product which the commissioner has authority to examine or cause to be examined, shall be presumptive evidence of the facts therein stated. (Id. § 43.)

43. Prosecution for Penalties.—1. Whenever the commissioner shall know or have reason to believe that any penalty has been incurred by any person for a violation of any of the provisions of this chapter, or of any other law the enforcement of which is within the jurisdiction of the department, or of the rules of the department, or that any sum has been forfeited by reason of any such violation, the commissioner may report the facts to the Attorney-General who may cause an action or proceeding to be brought in the name of the people for the recovery of the same. Such action may be brought in the county where the defendant resides or the violation, or any part thereof, occurred.

2. In an action for a penalty or forfeiture incurred by reason of the violation of the provisions of this chapter, or of any other law the enforcement of which is within the jurisdiction of the department, or of the rules of the department, when the complaint charges a violation of any two or more of such provisions, the plaintiff shall not be compelled to elect between the counts under such different provisions but shall be entitled to recover if it is found that a violation of any of such provisions has been committed for which a penalty or forfeiture is imposed.

3. If the defendant in such an action shall prove that during any portion of the time for which it is sought to recover penalties or forfeitures for a violation of a rule or order of the department, the defendant was actually and in good faith prosecuting a suit, action or proceeding before the department or in the courts to set aside such rule or order, the court shall remit the penalties or forfeitures incurred during the pendency of such action or proceeding. (Id. § 44.)

44. Disposal of Fines and Moneys Recovered.—Except as otherwise expressly provided in this chapter, all moneys recovered, either as penalties, forfeitures or otherwise, for the violation of any of the provisions of this chapter, or of any other law the enforcement of which is within the jurisdiction of the department, or of the rules of the department, shall be paid into the treasury of the State. The same disposal shall be made of all moneys recovered upon any bond given by any officer by virtue of the provisions of this chapter. (Id. § 45.)

45. Prohibition as to Adulterated or Misbranded Food.—No person or persons, firm, association or corporation shall within this State, manufacture, produce, compound, brew, distill, have, sell, offer or expose for sale, or serve in any hotel, restaurant, eating house or other place of public entertainment any article of food which is adulterated or misbranded within the meaning of this article. (C. L. 1923, c. 19, art. 17, § 198.)

46. Adulteration of Food, Generally.—Food shall be deemed adulterated

1. If any substance be mixed or packed with it so as to reduce or lower or injuriously affect its quality or strength.

2. If any substance has been substituted wholly or in part for the article.

3. If any valuable constituent of the article has been wholly or in part abstracted.

4. If it be mixed, colored, powdered, coated or stained in a manner whereby damage or inferiority is concealed.

5. If it contain any added poisonous or other added deleterious ingredient which may render such article injurious to health, provided, that when in the preparation of food products for shipment they are preserved by any external application applied in such manner that the preservative is necessarily removed mechanically or by maceration in water or otherwise, and directions for the removal of said preservative shall be printed on the package, the provisions of this article shall be construed as applying only when said products are ready for consumption.

6. If it consists in whole or in part of a filthy, decomposed or putrid animal or vegetable substance, or any portion of an animal unfit for food, whether manufactured or not, or if it is the product of a diseased animal, or one that has died otherwise than by slaughter.

7. If it contains methyl or wood alcohol in any of its forms, or any methylated preparation made from it.

8. If produced or kept in unsanitary surroundings or in any environment or under any condition whatever that is inimical to its healthfulness or wholesomeness; provided, however, that no dealer or distributor shall be held responsible for any unsanitary condition of any premises or property not under his jurisdiction or control. (C. L. 1923, c. 19, art. 17, § 199; Supp. 1926, Id.)

47. Misbranding of Food.—An article of food shall be deemed to be misbranded

1. If it be an imitation of or offered for sale under the distinctive name of another article.

2. If the package containing it or its label shall bear any statement regarding such article, or the ingredients or substances contained therein, which shall be false or misleading in any particular.

3. If the package containing it or its label is falsely branded as to the State, Territory or country in which it is manufactured or produced.

4. If it be contained in or served in or from any bottle or receptacles falsely marked, labeled or branded as to the name of the person or corporation manufacturing the same. (C. L. 1923, c. 19, art. 17, § 200.)

48. When Food Not Deemed Adulterated or Misbranded.—An article of food which does not contain any added poisonous or deleterious ingredients shall not be deemed to be adulterated, or misbranded, in the following cases:

1. In the case of mixtures or compounds which may be now or from time to time hereafter known as articles of food, under their own distinctive names and not an imitation of or offered for sale under the distinctive name of another article, if the name be accompanied on the same label or brand with a statement of the place where such article has been manufactured or produced, and if it is not contained in, or served in, or from any bottle or receptacle falsely marked, labeled or branded as to the name of the person, persons or corporation manufacturing the same.

2. In case of articles labeled, branded or tagged, so as to plainly indicate that they are mixtures, compounds, combinations, imitations or blends; provided that the same shall be labeled, branded or tagged so as to show the character and constituents thereof; and provided further, that nothing in this article shall be construed as requiring or compelling proprietors or manufacturers of proprietary foods which contain no unwholesome added ingredients to disclose their trade formulas, except in so far as the provisions of this article may require to secure freedom from adulteration or imitation. (Id. § 201.)

49. Guaranty Established.—1. No dealer shall be prosecuted under the provisions of this article when he can establish a guaranty signed by the wholesaler, jobber, manufacturer or other party residing or having a place of business within the State from whom he purchased the articles to the effect that the same are not adulterated or misbranded within the meaning of this article. Said guaranty to afford protection shall contain the name and address of the guarantor and in such case the guarantor shall be amenable to the prosecutions, fines and other penalties which would attach in due course to the dealer under the provisions of this article.

2. It shall be the duty of the commissioner immediately upon the discovery of evidence that any article of food is adulterated or misbranded within the meaning of this chapter, to notify in writing the dealer selling the same and no guaranty shall exempt any dealer from prosecution if he shall continue to sell such article after having received such written notice. (Id. § 214.)

50. Samples.—The commissioner is hereby empowered to enact, amend and repeal rules prescribing the number, nature and size of samples of food to be taken in the enforcement of this article. (Supp. 1926, c. 19, art. 17, § 214-a.)

51. Examination of Food Used in State Institutions; Farms at State Institutions.—The commissioner may examine food or food products produced or secured for use in the State institutions and make or cause to be made such other examinations as he may deem wise or as the facts seem to necessitate and warrant relative to such food and food products and relative to the agricultural methods at all farms connected with the State institutions under the jurisdiction and control of the Department of Charities, the Department of Mental Hygiene, the Department of Correction and the Division of Military and Naval Affairs in the executive department and report the results of such examinations and make recommendations thereupon to such departments and division respectively. For the purpose of assisting the commissioner in the performance of duties authorized by this section, the heads of

such departments and division respectively shall secure and transmit to the commissioner such available appropriate information and render such other assistance as the commissioner may call for.

The commissioner shall give such directions as in his judgment are deemed best to each superintendent, warden, or other person in charge of the several farms connected with the State institutions above mentioned as to proper care and development of farm lands and as to kind, production and disposition of crops, stock and produce and all other matters connected with the management of such farms; which directions when issued shall be made effective by such superintendent, warden or other person in charge of such farms.

No land shall hereafter be purchased by the State for farm purposes connected with any of the above institutions without the approval and appraisal of the commissioner. (C. L. 1923, c. 19, art. 23, § 284; L. 1927, c. 207, § 43.)

52. Application of Provisions of Other Laws and of Documents.—Wherever the terms Department of Agriculture, Commissioner of Agriculture, Department of Foods and Markets, Department of Weights and Measures, Department of Health, Commissioner of Agriculture, Commissioner of Foods and Markets, State Superintendent of Weights and Measures, or State Commissioner of Health, shall occur in any law, contract or document, such terms shall be deemed to mean and refer to the Department of Farms and Markets, and the Commissioner of Farms and Markets respectively so far as such law, contract or document pertains to matters which are within the jurisdiction of such department under the provisions of this chapter. Whenever, by the education law or other statute, the Commissioner of Agriculture is made a member by virtue of his office of the board of managers or trustees or other governing body of a State institution, the term Commissioner of Agriculture shall be deemed to mean the Commissioner of Farms and Markets. (C. L. 1923, c. 19, art. 25, § 292.)

53. Existing Rules and Regulations Continued.—The rules and regulations now in force and effect, pertaining to any matter within the jurisdiction of the department, adopted in pursuance of any law, the duty of enforcing which is imposed upon the department as provided herein, shall continue in full force and effect until they are modified, amended or repealed as provided by this chapter. (C. L. 1923, c. 19, art. 25, § 293; L. 1927, c. 207, § 44.)

54. Pending Actions or Proceedings.—This chapter shall not affect pending actions or proceedings brought by or against the Department of Agriculture and Markets or the Department of Farms and Markets, the Commissioner of Agriculture and Markets or the Commissioner of Farms and Markets, the Department of Agriculture, the Commissioner of Agriculture, the Department of Foods and Markets, the Commissioner of Foods and Markets, the State Superintendent of Weights and Measures, the State Commissioner of Health, or any other officer, person or corporation, or by or in behalf of the people of the State, under or in pursuance of any of the provisions of the laws which are to be enforced or carried into effect under the provisions of this chapter by the department, but the same may be prosecuted or defended in the same manner and for the same purpose by the department, or by the proper officer or party, under the provisions of this chapter. Any investigation, examination or proceeding undertaken, commenced or instituted by the Department of Agriculture and Markets or the Department of Farms and Markets, the Commissioner of Agriculture and Markets or the Commissioner of Farms and Markets, the Department of Agriculture, the Commissioner of Agriculture, the Department of Foods and Markets, the Commissioner of Foods and Markets, the State Superintendent of Weights and Measures, the State Commissioner of Health, or any other officer, under the provisions of the laws which are to be enforced or carried into effect as provided in this chapter by the department, may be conducted or continued to a final determination by the department, commissioner, or other proper officer of such department, in the same manner and under the same terms and conditions as though this chapter had not been passed. (C. L. 1923, c. 19, art. 25, § 294; L. 1927, c. 207, § 45.)

55. Department of Agriculture and Markets Continued.—The organization of the Department of Agriculture and Markets is continued, except as provided in this act and as may be changed pursuant to law. (L. 1927, c. 207, § 46.)

56. Department of Agriculture and Markets.—There shall be in the State government a Department of Agriculture and Markets. (Supp. 1926, c. 56a, art. 9, § 270; L. 1927, c. 207, § 49.)

57. Assignment of Functions and Transfer of Powers and Duties.—There are hereby assigned to the Department of Agriculture and Markets all the functions of the Department of Farms and Markets, as now existing, of the Council of Farms and Markets, and of the Commissioner of Farms and Markets, and also all the functions of the existing State Fair Commission; and all their powers and duties, as

now prescribed by law, whether in terms vested in such department, the Council of Farms and Markets, the Commissioner of Farms and Markets or in any division, bureau or office in such department, or in the State Fair Commission, are hereby transferred to the Department of Agriculture and Markets and hereafter shall be exercised and performed therein by or through the Council of Agriculture and Markets, the Commissioner of Agriculture and Markets or the appropriate division, bureau, board or officer thereof, as prescribed by or pursuant to law. (Supp. 1926, c. 56a, art. 9, § 272.)

58. Application of Farms and Markets Law and Other Laws.—The provisions of the farms and markets law in their application to the existing Department of Farms and Markets, the Council of Farms and Markets, the Commissioner of Farms and Markets and the divisions, bureaus, and officers of such department, in so far as they are not inconsistent with this article; and the provisions of article two of the State Boards and Commissions law,* in their application to the State Fair Commission, in so far as they are not inconsistent with this article, shall apply to the Department of Agriculture and Markets, provided for in this article, and to the Council of Agriculture and Markets; the Commissioner of Agriculture and Markets and to the divisions, bureaus and officers in such department. (Id. § 275.)

NOTE: See also No. 360 et seq.

General Drug Law.

See the pharmacy law, No. 261 et seq.; also No. 59 et seq.

Miscellaneous General Provisions.

59. False Labels and Misrepresentations in the Sale of Food Products.—A person who with intent to defraud:

1. Puts upon an article of merchandise, or upon a cask, bottle, stopper, vessel, case, cover, wrapper, package, band, ticket, label, or other thing, containing or covering such an article, or with which such an article is intended to be sold, or is sold, any false description or other indication of or respecting the kind, number, quantity, weight or measure of such article, or any part thereof, or the place or country where it was manufactured or produced or the quality or grade of any such article, if the quality or grade thereof is required by law to be marked, branded or otherwise indicated on or with such article; or,

2. Sells or offers for sale an article, which to his knowledge is falsely described or indicated upon any such package, or vessel containing the same, or label thereupon, in any of the particulars specified; or,

3. Sells or exposes for sale any goods in bulk to which no name or trade-mark shall be attached, and orally or otherwise represents that such goods are the manufacture or production of some other than the actual manufacturer or producer, in a case where the punishment for such offense is not specially provided for otherwise by statute; or,

4. Sells or exposes for sale any meat or meat preparation and falsely represents the same to be kosher, or as having been prepared under and of a product or products sanctioned by the orthodox Hebrew religious requirements; or falsely represents any food product or the contents of any package or container to be so constituted and prepared, by having or permitting to be inscribed thereon the word "kosher" in any language; or sells or exposes for sale in the same place of business both kosher and nonkosher meat or meat preparations who fails to indicate on his window signs and all display advertising, in block letters at least four inches in height, "kosher and nonkosher meat sold here"; or who exposes for sale in any show window or place of business both kosher and nonkosher meat or meat products who fails to display over such meat or meat preparation so exposed a sign in block letters at least four inches in height, reading "kosher meat," or "nonkosher meat," as the case may be is guilty of a misdemeanor.† (C. L. 1923, c. 41, art. 40, § 435.)

60. Using False Marks as to Manufacture.—A person who, with intent to defraud or to enable another to defraud any person, manufactures or knowingly sells or causes to be manufactured or sold, any article, marked, stamped or branded or incased or inclosed in any box, bottle or wrapper, having thereupon any engraving or printed label, stamp, imprint, mark or trade-mark which article is not the manufacture, workmanship or production of the person named, indicated or denoted by such marking, stamping or branding, or by or upon such engraving, printed label, stamp, imprint, mark or trade-mark, is guilty of a misdemeanor.† (Id. § 436.)

*Omitted herein.

†See No. 68a.

61. Willful Violation of Health Laws.—1. A person who willfully violates or refuses or omits to comply with any lawful order or regulation prescribed by any local board of health or local health officer, is guilty of a misdemeanor.

2. A person who willfully violates any provision of the health laws, or any regulation lawfully made or established by any public officer or board under authority of the health laws the punishment for violating which is not otherwise prescribed by those laws, or by this chapter, is punished by imprisonment not exceeding one year, or by a fine not exceeding two thousand dollars or by both. (C. L. 1923, c. 41, art. 166, § 1740.)

62. Obstructing Health Officer in Performance of His Duty.—A person who willfully opposes or obstructs a health officer or physician charged with the enforcement of the health laws, in performing any legal duty, is guilty of a misdemeanor.* (Id. § 1741.)

63. Omitting to Label Drugs, or Labeling Them Wrongly.—Any person, who, in putting up any drug, medicine, or food or preparation used in medical practice, or making up any prescription, or filling any order for drugs, medicines, food or preparation puts any untrue label, stamp or other designation of contents upon any box, bottle or other package containing a drug, medicine, food or preparation used in medical practice, or substitutes or dispenses a different article for or in lieu of any article prescribed, ordered, or demanded, or puts up a greater or less quantity of any ingredient specified in any such prescription, order or demand than that prescribed, ordered, or demanded, or otherwise deviates from the terms of the prescription, order, or demand by substituting one drug for another, is guilty of a misdemeanor; provided, however, that, except in the case of physicians' prescriptions, nothing herein contained shall be deemed or construed to prevent or impair or in any manner affect the right of an apothecary, druggist, pharmacist, or other person to recommend the purchase of an article other than that ordered, required or demanded, but of a similar nature, or to sell such other article in place or in lieu of an article ordered, required or demanded, with the knowledge and consent of the purchaser. Upon a second conviction for a violation of this section the offender must be sentenced to imprisonment, for a term of not less than ten days nor more than one year, and to the payment of a fine of not less than ten dollars nor more than five hundred dollars. The third conviction of a violation of any of the provisions of this section, in addition to rendering the offender liable to the penalty prescribed by law for a misdemeanor; shall forfeit any right which he may possess under the law of this State at the time of such conviction, to engage as proprietor, agent, employee or otherwise, in the business of an apothecary, pharmacist, or druggist, or to compound, prepare or dispense prescriptions or orders for drugs, medicines or foods or preparations used in medical practice; and the offender shall be by reason of such conviction disqualified from engaging in any such business as proprietor, agent, employee or otherwise or compounding, preparing or dispensing medical prescriptions or orders for drugs, medicines, or foods or preparations used in medical practice.

This section shall not affect or impair any liability, penalty or punishment under the provisions of section four hundred and one of the penal code as the same existed prior to September first, nineteen hundred and seven, but the same may be enforced, prosecuted or inflicted as fully and to the same extent as though this section had not been passed; and all actions civil or criminal instituted under or by virtue of said section as the same existed prior to July nineteenth, nineteen hundred and seven, and pending immediately prior to September first, nineteen hundred and seven, may be prosecuted and defended to final effect in the same manner as though this section had not been enacted.

The provisions of this section shall not apply to the practice of a practitioner of medicine who is not the proprietor of a store for the dispensing or retailing of drugs, medicines and poisons, or who is not in the employ of such a proprietor, and shall not prevent practitioners of medicine from supplying their patients with such articles as they may deem proper, and except as to the labeling of poisons shall not apply to the sale of medicines or poisons at wholesale when not for the use or consumption of the purchaser; provided, however, that the sale of medicines or poisons at wholesale shall continue to be subject to such regulations as from time to time may be lawfully made by the Board of Pharmacy or by any competent board of health. (Id. § 1742.)

64. Adulterated Drugs.—A person who:

1. With the intent that the same may be sold as unadulterated or undiluted, adulterates or dilutes any drug or medicine, for man or beast; or,

2. Knowing that the same has been adulterated or diluted, offers for sale or sells the same as unadulterated or undiluted, or without disclosing or informing

*See No. 68a.

the purchaser that the same has been adulterated or diluted, in a case where special provision has not been made by statute, for the punishment of the offense; or,

3. Sells or offers to sell, or stores or transports with intent to sell for any purpose other than cooling beer in casks, ice cut from any canal or from the wide waters or basins of any canal, unless the ice so sold, or offered for sale or stored or transported, is contained in a building, cart, car, sleigh, float or receptacle upon which is plainly marked in roman or capital letters, not less than eight inches square, the words, "canal ice";

Is guilty of a misdemeanor.* (Id. § 1748.)

65. Disposing of Tainted Food.—A person who with intent that the same may be used as food, drink, or medicine, sells, or offers or exposes for sale, any article whatever which, to his knowledge, is tainted or spoiled, or for any cause unfit to be used as such food, drink, or medicine, is guilty of a misdemeanor.* (Id. § 1750.)

66. Willfully Poisoning Food.—A person who willfully mingles poison with any food, drink or medicine, intended or prepared for the use of human beings, and a person who wilfully poisons any spring, well or reservoir of water, is punishable by imprisonment in a State prison not exceeding ten years, or in a county jail not exceeding one year, or by a fine not exceeding five hundred dollars, or both such fine and imprisonment. (Id. § 1760.)

67. Acts of Intoxicated Physicians.—A physician or surgeon, or person practicing as such, who, being in a State of intoxication, administers any poison, drug or medicine, or does any other act as a physician or surgeon, to another person, by which the life of the latter is endangered, or his health seriously affected, is guilty of a misdemeanor.* (Id. § 1761.)

68. Agreements or Contracts for Privileges to Deal With Occupants of Tenements or Apartment Houses.—1. A contract, agreement or arrangement entered into or executed by and between the owner of an apartment house or a tenement, or any of his agents, employees or servants and a dealer in or seller of fuel, ice or food, or his agents, employees, or representatives for the purpose of giving to such dealer or seller the privilege of selling or delivering fuel, ice or food, to the persons occupying such apartment house or tenement is against public policy and void.

2. Any person who shall, directly or indirectly, either as the owner of such apartment house or tenement, or as an agent, employee or servant of such owner, accept any money, property or thing of value for permitting or giving to any person, or his agents, employees or representatives, the privilege of selling or delivering fuel, ice or food, to the persons occupying such apartment house or tenement, and any person who shall, directly or indirectly, either as a seller of, or dealer in, fuel, ice or food, as an agent, employee, or representative of such seller or dealer, pay or give any money, property or thing of value, for such privilege shall be guilty of a misdemeanor, and upon conviction shall be punished by a fine of not less than ten nor more than one hundred dollars, or by imprisonment for not less than thirty days nor more than one year, or by both such fine and imprisonment in the discretion of the court. If a corporation is convicted of a violation of this section, it shall be punished by a fine of not less than fifty nor more than one thousand dollars.

3. A person occupying an apartment house or tenement, to whom fuel, ice or food, shall be sold or delivered by a seller or dealer who has paid or given any money, property or thing of value for the privilege of selling or delivering fuel, ice or food, to the person occupying such apartment house or tenement, may recover of such seller or dealer for his benefit a penalty, in the sum of two hundred and fifty dollars, in a civil action brought in a court of competent jurisdiction. (C. L. 1923, c. 41, art. 80, § 861.)

68a. Punishment of Misdemeanors When Not Fixed by Statute.—A person convicted of a crime declared to be a misdemeanor, for which no other punishment is specially prescribed by this chapter, or by any other statutory provision in force at the time of the conviction and sentence, is punishable by imprisonment in a penitentiary, or county jail, for not more than one year, or by a fine of not more than five hundred dollars, or by both. (C. L. 1923, c. 41, art. 174, § 1937.)

68b. Equal Rights in Places of Public Accommodation, Resort or Amusement.—All persons within the jurisdiction of this State shall be entitled to the full and equal accommodations, advantages, facilities and privileges of any places of public accommodations, resort or amusement, subject only to the conditions and limitations established by law and applicable alike to all persons. No person, being the owner, lessee, proprietor, manager, superintendent, agent or employee, of any such place shall directly or indirectly refuse, withhold from or deny to any person

*See No. 68a.

any of the accommodations, advantages, facilities or privileges thereof, or directly or indirectly publish, circulate, issue, display, post or mail any written or printed communication, notice or advertisement, to the effect that any of the accommodations, advantages, facilities and privileges of any such place shall be refused, withheld from or denied to any person on account of race, creed or color, or that the patronage or custom thereat, of any person belonging to or purporting to be of any particular race, creed or color is unwelcome, objectionable or not acceptable, desired or solicited. The production of any such written or printed communication, notice or advertisement, purporting to relate to any such place and to be made by any person being the owner, lessee, proprietor, superintendent or manager thereof, shall be presumptive evidence in any civil or criminal action that the same was authorized by such person. A person of public accommodation, resort or amusement within the meaning of this article, shall be deemed to include inns, taverns, road houses, hotels, whether conducted for the entertainment of transient guests or for the accommodation of those seeking health, recreation or rest or restaurants, or eating houses, or any place where food is sold for consumption on the premises; buffets, saloons, barrooms, or any store, park or inclosure where spirituous or malt liquors are sold; ice cream parlors, confectioneries, soda fountains, and all stores where ice cream, ice and fruit preparations or their derivatives, or where beverages of any kind are retailed for consumption on the premises; drug stores, dispensaries, clinics, hospitals, bathhouses, barber shops, theatres, motion picture houses, airdromes, roof gardens, music halls, race courses, skating rinks, amusement and recreation parks, fairs, bowling alleys, gymnasiums, shooting galleries, billiard and pool parlors, public libraries, kindergartens, primary and secondary schools, high schools, academies, colleges and universities, extension courses, and all educational institutions under the supervision of the regents of the State of New York; garages, and all public conveyances operated on land or water, as well as the stations and terminals thereof. Nothing herein contained shall be construed to include any institution, club, or place of accommodation which is in its nature distinctly private, or to prohibit the mailing of a private communication in writing sent in response to a specific written inquiry. (C. L. 1923, c. 7, art. 4, § 40.)

68c. Penalty for Violation.—Any person who shall violate any of the provisions of the foregoing section, or who shall aid or incite the violation of any of said provisions shall for each and every violation thereof be liable to a penalty of not less than one hundred dollars nor more than five hundred dollars, to be recovered by the person aggrieved thereby or by any resident of this State, to whom such person shall assign his cause of action, in any court of competent jurisdiction in the county in which the plaintiff or the defendant shall reside; and shall, also, for every such offense be deemed guilty of a misdemeanor and upon conviction thereof shall be fined not less than one hundred dollars nor more than five hundred dollars, or shall be imprisoned not less than thirty days nor more than ninety days, or both such fine and imprisonment. (Id. § 41.)

NOTE: See also Nos. 321 and 364.

PART II.

Special Food Laws.

Apples.*

69. Apples; Closed Packages; Definition.—The term "closed package," wherever used in this article, shall mean a barrel, box or other container, the contents of which cannot be adequately inspected without opening it. (C. L. 1923, c. 19, art. 13, § 157; L. 1927, c. 676.)†

70. Apples; Adoption of Grades; Branding.—The commissioner‡ is hereby authorized and empowered, after investigation and public hearing, to fix and promulgate official standards for grading and classifying apples packed or repacked within the State, and to change any of them from time to time. In establishing such stand-

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*For administrative provisions, see No. 1 et seq.

†For penalty for violation of chapter 19, see No. 38 et seq.

‡Commissioner of Agriculture and Markets. See Nos. 2 and 52 et seq.

ards he shall take into account the factors of maturity, soundness, color and shape. The official standards so fixed and promulgated shall not be lower in their requirements than the minimum requirements of the official standards for corresponding grades of apples as promulgated from time to time by the Secretary of Agriculture of the United States which standards are commonly known as the "United States grades."

(1) Variety.
(2) Grade.
(3) Minimum size of apples.
(4) Quantity of contents.
(5) Name and address of packer or repacker.

If the true name of the variety is not known to the packer or repacker, the statement shall include the words "variety unknown" in place of the name of the variety.

In case the branding upon any closed package of apples is changed, the person making the change shall cancel the name and address of the original packer and substitute therefor his own name and address. (Id. § 158.)

71. Sale of Apples; Presumption; Rules and Regulations.—1. No person shall sell, expose for sale, or transport for sale, apples in closed packages packed or repacked within the State which are not branded as required by section one hundred and fifty-eight.

2. No person shall sell, expose for sale, or transport for sale, apples, either in open or closed packages, if the package containing them or the label on them shall bear any statement, design or device regarding the apples which shall be false or misleading in any particular.

3. No person shall sell or offer for sale, or transport for sale, in either open or closed packages, apples packed in such a manner that the face or shown surface shall not be an average of the contents of the package.

4. When apples in closed packages are delivered to a common carrier for shipment, or delivered to a storage house for storage, such delivery shall be presumptive evidence that the apples are intended for sale.

The commissioner shall adopt and promulgate such rules and regulations to supplement and give full effect to the provisions of this article as he may deem necessary. (Id. § 159.)

72. Standard Evaporated Apples; Definition; Sale of Regulated.—1. Evaporated apples containing not more than twenty-four per centum of water or fluids shall be considered standard evaporated apples.

2. No person shall buy for resale, sell, expose or offer for sale as and for evaporated apples any evaporated apples intended to be used for food, or for consumption by any person, other than standard evaporated apples. (Id. § 160.)

NOTE: See also No. 354.

Bakeries—Bakery Products.

73. Definitions.—Whenever used in this chapter:

1. "Bakery" means a building, room, or place used for making, preparing or baking bread, biscuits, pastry, cakes, doughnuts, crullers, noodles, macaroni or spaghetti to be sold or consumed on or off the premises, except kitchens in hotels, restaurants, boarding houses and private residences, wherein all such products are consumed exclusively on the premises; and with respect to the provisions of this chapter relating to machinery, safety devices and sanitary conditions includes hotel bakeries. A bakery is a factory within the meaning of this chapter.

2. "Cellar" means a room or part of a building which is more than one-half its height below the level of the curb or ground adjoining the building, excluding areaways.

3. "Owner" means the owner of the premises, the lessee of the whole thereof, or the agent in charge.

4. "Occupier" means the person in possession of the premises and conducting the bakery therein. (C. L. 1923, c. 32, art. 12, § 330.)

74. Building Requirements.—1. A bakery shall have proper and sufficient drains, sinks, clean running water, and properly ventilated water-closets. The water-closets shall be apart from and shall not open directly into the bakeroom or rooms where the raw material or manufactured product thereof is stored or sold.

2. A bakery shall have adequate windows, and, if required by the rules of the board, hoods and pipes or other means for ventilating ovens and ashpits.

3. A bakery shall be at least eight feet in height measured from the surface of the finished floor to the underside of the ceiling, except that any cellar or basement of less height which was used for a bakery on the second day of May, eighteen hundred and ninety-five, need not conform to this provision.

4. The flooring shall be of smooth even cement, or tiles laid in cement, or wood, and shall be free from crevices and holes. The side walls and ceilings shall be either plastered, ceiled or wainscoted. (Id. § 331.)

75. Maintenance and Operation.—1. Every part of a bakery, its equipment, plumbing, and the yards and areaways adjoining, shall be kept in good repair, in sanitary condition and free from vermin. All furniture, troughs and utensils shall be so constructed and arranged as not to prevent cleaning them or any part of the bakery. All interior woodwork, walls and ceilings shall be painted or limewashed once every three months, where so required by the commissioner.

2. Sanitary receptacles shall be used for coal, ashes, refuse and garbage. The contents of the receptacles for refuse and garbage shall be removed daily. Mechanical means of ventilation, when provided, shall be effectively used and operated. Windows, doors and other openings shall be properly screened. Lockers shall be provided for the street clothes of employees.

3. No person shall use or be permitted to use tobacco in any form in a bakery or room where the raw material or manufactured product of the bakery is stored or sold.

4. No person shall sleep or be permitted to sleep and no domstic animals, except cats, and no birds, shall be allowed to remain in a bakery or room where the raw material or manufactured product of the bakery is stored or sold.

5. Every person while engaged in the manufacture and handling of bakery products shall wear a clean suit and clean shoes or slippers. The suit shall be of washable material and used for that work only. (Id. § 332.)

76. Employment of Diseased Bakers Prohibited.—No person who has a communicable disease shall work or be permitted to work in a bakery. Whenever required by a medical inspector of the department, a person working in a bakery shall submit to a physical examination by such inspector. No person who refuses to submit to such examination shall work or be permitted to work in a bakery. (Id. § 333.)

77. Owners and Occupiers; Respective Duties.—The owners shall comply with section three hundred and thirty-one, and the occupier with sections three hundred and thirty-two and three hundred and thirty-three, unless by a lease the other party thereto has agreed to comply with any provision of such sections and duplicate original of such lease has been previously filed with the commissioner, in which event the party assuming responsibility shall be liable for compliance. (Id. § 334.)

78. Manufacture of Other Food Products.—1. Every factory wherein a food product is manufactured shall be kept in a sanitary condition and properly lighted and ventilated and the food product prepared therein protected from contamination.

2. Every basement or cellar used as a confectionery or ice cream manufacturing shop shall be not less than seven feet high measured from the surface of the finished floor to the under side of the ceiling, except that any cellar or basement which is more than six feet high and was so used before October first, nineteen hundred and six, need not conform to this section. The board may apply any or all of the provisions of this article to a factory located in a cellar wherein any food product is manufactured. (Id. § 335.)

79. Provision for Sealing Up Bakeries.—If the commissioner finds a bakery or any part thereof to be unsanitary, he may on forty-eight hours notice in writing, to be served by affixing the notice on the inside of the main entrance door of the bakery, order the person found in charge thereof to cease operating it until it shall be properly cleaned, drained and ventilated. If such order is not complied with, the commissioner may upon filing in his office a written order stating the reasons therefor and without further notice fasten up and seal the oven or other cooking apparatus of the bakery and affix to all materials and equipment labels or conspicuous signs bearing the word "unclean." Such seal, labels and signs shall be removed only by the commissioner and not until the bakery is in a sanitary condition. (Id. § 336.)

80. Sanitary Certificates.—1. No person shall establish or operate a bakery without a sanitary certificate. The certificate shall be kept posted in a conspicuous place in the bakery.

2. The person establishing or operating the bakery shall apply to the commissioner for a certificate within ten days after the bakery commences business. The application shall be made upon a blank furnished by the commissioner. No bakery shall operate for more than thirty days after commencing business without a certificate.

3. Before issuing a certificate the commissioner shall inspect the bakery. If it conforms to articles eleven* and twelve† of this chapter and the rules of the board, the commissioner shall issue a sanitary certificate for a period of one year and renewable

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*Relates to factory regulations. Omitted herein.

†Included in Nos. 73-82.

annually upon reinspection showing compliance with the aforesaid provisions and rules, except that in the city of New York such sanitary certificate shall be operative until revoked or suspended after hearing.

4. The certificate may be revoked or suspended by the commissioner if the health of the community or of the employees of the bakery requires such action, or if an order of the commissioner is not complied with within fifteen days after the service thereof upon the person charged with the duty of compliance. Nothing contained in this subdivision shall limit the power of the commissioner to seal up an unsanitary bakery under the preceding section.

5. If an application for a certificate is denied or if a certificate is revoked or suspended, the commissioner shall file in his office the reasons for his action.

6. If a bakery has no certificate or if the certificate has been revoked or suspended, the commissioner may upon filing an order stating the reasons therefor, without further notice, fasten up and seal the oven or other cooking apparatus of said bakery. Such seal shall be removed only by the commissioner and not until a certificate for the bakery has been issued. (Id. § 337.)

81. Cellar Bakeries.—1. No bakery shall be located in a cellar which does not conform to all the provisions of this section, unless a certificate of exemption has been issued to the owner (a) upon satisfactory proof furnished the commissioner on or before November ninth, nineteen hundred and thirteen, showing that it was operated as a bakery on May ninth, nineteen hundred and twelve, or (b) upon satisfactory proof furnished the commissioner on or before the twenty-eighth day of February, nineteen hundred and fourteen, that it was in course of construction on the ninth day of May, nineteen hundred and thirteen, or that construction was commenced after the first day of January, nineteen hundred and thirteen, and completed on or before the ninth day of May, nineteen hundred and thirteen, and operated prior to the first day of January, nineteen hundred and fourteen.

2. The bakery shall be at least ten feet high, measured from the surface of the finished floor to the under side of the ceiling. If the bakery is located entirely in the front part of the building, its ceiling shall be not less than four feet and six inches above the curb level of the street in front of the building; if located entirely in the rear part of the building or extending from front to rear, the ceiling shall be not less than one foot above the curb level of the street in front of the building and the bakery shall open upon a yard or courts extending at least six inches below the floor level of the bakery.

3. The bakery shall be constructed according to plans and specifications approved by the commissioner and shall be adequately lighted and ventilated.

4. This section shall not prevent the health departments in cities of the first class from exercising any power of regulation now or hereafter vested in them. (Id. § 338.)

82. Enforcement of Article.—1. The commissioner* shall, except in cities of the first class, enforce the provisions of this article.

2. In cities of the first class, the health departments thereof shall enforce the provisions of this article and for that purpose shall possess all powers conferred by this chapter upon the commissioner or the industrial board.

3. The rules of the board relative to carrying into effect the provisions of this article shall not appply in cities of the first class. (Id. § 339.)

82a. Violations of Provisions of Labor Law;† the Industrial Code; the Rules, Regulations or Orders of the Industrial Commissioner and Industrial Board.—Any person who violates or does not comply with any provision of the labor law, any provision of the industrial code, any rule, regulation or lawful order of the industrial commissioner or industrial board, and any person who knowingly makes a false statement in or in relation to any application made for an employment certificate as to any matter required by the labor law to appear in any affidavit, record, transcript or certificate therein provided for, is guilty of a misdemeanor and upon conviction shall be punished, except as in this chapter otherwise provided, for a first offense by a fine of not less than twenty nor more than fifty dollars; for a second offense by a fine of not less than fifty nor more than two hundred and fifty dollars, or by imprisonment for not more than thirty days or by both such fine and imprisonment; for a third offense by a fine of not less than two hundred and fifty dollars, or by imprisonment for not more than sixty days, or by both such fine and imprisonment. (C. L. 1923, c. 41, art. 120, § 1275.)

NOTE: See also Nos. 146 et seq. and 359.

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*Industrial Commissioner of the State of New York.

†Of which Nos. 73-82 are a part.

Beverages.

82b. Standard of Domestic Distilled Spirits.—Domestic distilled spirits, at a temperature of sixty degrees Fahrenheit, which have a specific gravity of nine thousand three hundred and thirty-five as compared with the gravity of pure distilled water at the same temperature estimated at ten thousand, shall be deemed first proof.

The strength of any such spirits below or above first proof shall be calculated decimally, or by the percentage in reference to such standard, and shall be denoted as so many per centum below or above first proof as the actual difference in strength shall be. (C. L. 1923, c. 21, art. 19, § 300.)

83. Explosives and Combustibles.—A person who makes or keeps gunpowder, nitro-glycerine, or any other explosive or combustible material, within a city or village, or carries such materials through the streets thereof, in a quantity or manner prohibited by law or by ordinance of the city or village, is guilty of a misdemeanor.*

A person who manufactures gunpowder, dynamite, nitro-glycerine, liquid or compressed air or gases, except acetylene gas and other gases used for illuminating purposes, naphtha, gasoline, benzine or any explosive articles or compounds, or manufactures ammunition, fire works or other articles of which such substances are component parts in a cellar, room, or apartment of a tenement or dwelling house or any building occupied in whole or in part by persons or families for living purposes, is guilty of a misdemeanor.*

And a person who, by the careless, negligent, or unauthorized use or management of gunpowder or other explosive substances, injures or occasions the injury of the person or property of another, is punishable by imprisonment for not more than two years.

Any person or persons who shall knowingly present, attempt to present, or cause to be presented or offered for shipment to any railroad, steamboat, steamship, express or other company engaged as common carrier of passengers or freight, dynamite, nitro-glycerine, powder or other explosives dangerous to life or limb, without revealing the true nature of said explosives or substance so offered or attempted to be offered to the company or carrier to which it shall be presented, shall be guilty of a felony, and upon conviction, shall be fined in any sum not exceeding one thousand dollars and not less than three hundred dollars, or imprisonment in a State prison for not less than one nor more than five years, or be subject to both such fine and imprisonment.

Nothing in this section contained shall be construed to prohibit or forbid the manufacture and sale of soda water, seltzer water, ginger ale, carbonic or mineral water, or the charging with liquid carbonic acid gas of such waters or ordinary waters, or of beer, wines, ales or other malt and vinous beverages in such cellar, room or apartment of a tenement or dwelling house, or any building occupied in whole or in part by persons or families for living purposes. (C. L. 1923, c. 41, art. 172, § 1894.)

NOTE: See also Nos. 60 et seq., 68b-68c, 161, 241, 327 et seq., 330 et seq., 343, and 361.

Bread.

See No. 359; also No. 73 et seq.

Canned Goods.†

84. Branding Canned Goods.—No packer of or dealer in hermetically sealed, canned or preserved fruits, vegetables or other articles of food within this State, excepting canned or condensed milk or cream, shall sell or offer the same for sale for consumption within this State, unless the cans or jars containing the same shall have been plainly printed upon a label thereupon, with a mark or term clearly indicating the grade or quality of the articles contained therein, the name, address and place of business of the person or corporation canning or packing them, or the name of the wholesale dealer in the State selling or offering the same for sale, and the name of the State, county and city, town or village where packed, preceded by the words "packed at."

*See No. 68a.

†For administrative provisions, see No. 1 et seq.

If containing soaked goods or goods put up from products dried or cured before canning, there shall also be printed upon the face of such label in good legible type, one-half of an inch in height and three-quarters of an inch in width the word "soaked."

Goods imported from foreign countries of foreign manufacture shall not be subject to the provisions of this section.

The provisions of this section shall not apply to hermetically sealed or canned or preserved foods in containers which are labeled in accordance with the provisions of the act of Congress of June thirtieth, nineteen hundred and six, relating to misbranded and adulterated foods. (C. L. 1923, c. 19, art. 17, § 211.)*

85. Females Over Eighteen in Canneries.—Except as provided in subdivision two of section one hundred and seventy-two† a female over eighteen years of age may be employed in canning or preserving perishable products in fruit and canning establishments between the fifteenth day of June and the fifteenth day of October not more than ten hours in any day nor more than six days or sixty hours in any week, but the board‡ may adopt rules permitting such employment between the twenty-fifth day of June and the fifth day of August not more than twelve hours in any one day nor more than six days or sixty-six hours in any week, if it finds that such employment is required by the needs of the industry and can be permitted without serious injury to the health of the women so employed. The provisions of this section shall not apply unless the daily hours of labor shall be posted and a time book kept as provided in section one hundred and seventy-four.¶ (C. L. 1923, c. 32, art. 5, § 173.)‖

Cider.

See No. 327 et seq.

Cold Storage.**

86. Definitions.—1. The term "food," as used in this article, shall include any article, (except nuts, fruits, cheese, vegetables, ice cream, and articles in process of manufacture, preparation or cure,) and used for food by man or animal and every ingredient of such article.

2. The term "cold storage," as used in this article, shall mean the storage or keeping of articles of food at or below a temperature above zero of forty-five degrees Fahrenheit in a cold storage warehouse.

3. The term "cold storage warehouse," as used in this article, shall mean any establishment or structure, or portion thereof, in which food is commonly stored and which is artificially cooled to or below a temperature above zero of forty-five degrees Fahernheit, except (1) a refrigerator vehicle used as such or (2) an establishment or structure or portion thereof used exclusively for storage of any article or articles for the sole use of the occupant, owner, or maintainer thereof, for consumption by himself or his family or guests, or (3) a temporary storage place as defined in this article.

4. The term "temporary storage place" as used in this article shall mean any establishment or structure, or a separate and distinct portion thereof, artificially cooled to or below a temperature of forty-five degrees above zero Fahrenheit in which food is stored for periods in no case exceeding thirty days. (C. L. 1923, c. 19, art. 19, § 230.)††

87. Temporary Storage.—Except when such place is used for the storage of food for the sole use of the occupant, owner or maintainer thereof for consumption by himself or his family or guests, no person, firm or corporation shall maintain or operate within this State any temporary storage place in which food is stored at a temperature below twenty degrees above zero Fahrenheit without a permit to be issued by the commissioner.‡‡ When such permit has been issued goods may be stored in such temporary storage place for periods not to exceed thirty days and must be marked with the day, month and year in which they were received for storage in such temporary storage place. Provided, further, that it shall be unlawful for any person, firm or corporation to keep or store any food for any period longer than thirty

*For penalty, see No. 38 et seq.
†Relates to employment in factories of females over sixteen. Omitted herein.
‡Industrial Board of the State of New York.
¶Omitted herein.
‖For penalty, see No. 82a.
**For administrative provisions, see No. 1 et seq.
††For penalty for violation of chapter 19, see No. 38 et seq.
‡‡Commissioner of Agriculture and Markets. See Nos. 2 and 52 et seq.

days in any temporary storage place maintained at any temperature either above or below twenty degrees Fahrenheit. (Id. § 231.)

88. License to be Secured.—No person, firm or corporation shall maintain or operate within this State any cold storage warehouse, except when such warehouse is used exclusively for the storage of nuts, fruits, cheese, ice cream or vegetables, without a license to be issued, as prescribed in this article, by the department. Any person, firm or corporation desiring such a license shall, before beginning to maintain or operate a cold storage warehouse, make a written application for such license to the commissioner on or before the first day of September, and annually thereafter, stating the location of its plant or plants and such other facts as the commissioner shall prescribe. Any applicant desiring to begin the operation of a cold storage warehouse after the first day of October of any year shall, before beginning such operation, file a like application for a license therefor. On receipt of the application the commissioner shall cause an examination to be made into the sanitary condition of such plant or plants, and if found to be in a sanitary condition and otherwise properly equipped to be operated and maintained for cold storage warehouse purposes, the commissioner shall, upon payment of a license fee of twenty-five dollars, cause a license to be issued authorizing the applicant to operate a cold storage warehouse until the first day of October next following. An additional license fee of five dollars shall be paid by each applicant for the licensing of each separately operated cold storage plant in excess of one; and a separate license shall be issued for each such additional plant. In the event that any warehouse licensed under the provisions of this section, or any portion thereof, shall be deemed by the commissioner to be conducted in an insanitary manner, it shall be the duty of the commissioner to close such warehouse, or portion thereof, until it shall be put in satisfactory condition, and the commissioner shall have the power also to suspend the license in case the changes required shall not be made within a reasonable time. (C. L. 1923, c. 19, art. 19, § 232; L. 1927, c. 207, § 37.)

89. Reports of Holdings to be Rendered.—Every such licensee shall keep accurate records of the articles of food received in and the articles withdrawn from his warehouse or warehouses and shall submit reports to the department, upon printed forms to be provided by the department, setting forth in itemized particulars the quantity of each and every foodstuff in storage with, or in the control of, such licensee except such as are being held in temporary storage as provided in this article. Said report shall be filed on or before the fifth day of each month, and reports so rendered shall show conditions existing upon the last day of the preceding month. (Id. § 233.)

90. Cold Storage Food to be Marked.—No person, firm or corporation shall place, receive or keep in a cold storage warehouse any articles of food unless the same shall be plainly marked, branded, stamped or tagged, either upon the container in which they are stored or upon the article of food itself, with the day, month and year when the same is received in storage; and, except as hereinafter provided, no person, firm or corporation shall remove, or allow to be removed, such article of food from any cold storage warehouse unless the same shall be plainly marked, branded, stamped or tagged, either upon the container in which the said food is removed from storage or upon the food itself, with (a) the name and location of the warehouse where it has been in storage or such other designation for identifying the warehouse as may be approved by the commissioner, and (b) the words "cold storage," except that these words may be omitted when the date of removal is not more than thirty days subsequent to the date when such food was first placed in cold storage either within or without the State, and (c) the day, month and year when the food was received in storage, and (d) the day, month and year in which the said food was removed from storage. Such mark, brand, stamp or tag shall be prima facie evidence of such receipt, removal, and the dates thereof. In the case of food which is received from temporary storage for less than thirty days, the marks above required may be placed upon a tag to be attached either to the container or to the food itself, and if such food is withdrawn from storage within thirty days such tag may be removed. Food so received for temporary storage shall, for the purpose of identification, be placed separate and apart from other food. (C. L. 1923, c. 19, art. 19, § 234; Supp. 1926, Id.)

91. Leased Rooms.—Any person, firm or corporation operating and maintaining a cold storage warehouse who shall lease any room or rooms in such warehouse to any other person, firm or corporation for his or their private use for purposes of storage only shall file with the department, on a form to be provided by the commissioner, a description of such room or rooms with the name and address of the lessee. After such lease has been executed said lessee shall be held responsible for the sanitary condition of such room or rooms and except when such room or rooms are used for the storage of food for the sole use of the lessee for consumption by himself

or his family or guests, such lessee shall comply with the provisions of this article for the proper marking of the goods placed therein as provided in sections two hundred and thirty-one and two hundred and thirty-four. Such lessee shall also render a monthly report of the foods being held in such room or rooms as required of licensees by section two hundred and thirty-three and two hundred and forty-two unless such room or rooms have been designated as a temporary storage place as provided in sections two hundred and thirty and two hundred and thirty-one. (C. L. 1923, c. 19, art. 19, § 235; L. 1927, c. 207, § 37.)

92. Cold Storage Food When Sold Must be Represented as Such.—It shall be unlawful to sell, or to offer for sale, any article of food which has been held for a period of more than thirty days in cold storage either within or without the State, without representing the same to have been so kept. Any invoice or bill rendered for such foods shall clearly describe the commodities, using the words "cold storage goods." In case of transfer of ownership of foods while still held in cold storage the seller of the same shall notify the buyer in writing of the day, month and year in which said food was originally placed in storage. (C. L. 1923, c. 19, art. 19, § 236.)

93. Food to be Condemned.—No article of food shall be placed, received or kept in any cold storage warehouse or temporary storage place unless the same is in an apparently pure and wholesome condition. The commissioner may seize and condemn any articles of food in any cold storage warehouse or temporary storage place which are found to be unfit for human consumption, and such articles of food shall be destroyed or otherwise disposed of so as to prevent their being used for food, under such conditions as he shall prescribe. (Id. § 237.)

94. Time That Cold Storage Foods May be Kept.—It shall be unlawful for any person, firm or corporation, to keep or permit to remain in any cold storage warehouse, any article of food which has been held in cold storage, either within or without the State, for a longer aggregate period than twelve calendar months. The commissioner may, from time to time, upon application in writing, extend the period of storage beyond twelve months for any particular article of food, provided such food is found, upon examination by the department, to be in wholesome condition for further storage. The length of time for which such further storage is allowed shall be specified in the order granting the extension of time, and a copy of the order shall be furnished to the warehouse in which such food is stored. In case any article which has been in cold storage in another State shall be placed in storage in any cold storage warehouse in this State, the mark, brand, stamp or tag thereon, if any, shall be presumptive evidence of such storage and of the period of such storage. Any person, firm or corporation to whom a license to operate a cold storage warehouse has been granted under the provisions of this article who shall receive or hold in such warehouse any food owned by another person, firm or corporation, shall send to such owner a written notification to remove such food at least two weeks prior to the expiration of the time limit of twelve calendar months, and it shall be a sufficient defense to an action, civil or criminal, against such a licensee for keeping or permitting to remain in any cold storage warehouse any article of food belonging to another person after the expiration of such time limit that such notice was duly given. (C. L. 1923, c. 19, art. 19, § 238; Supp. 1926, Id.)

95. Transfer of Food.—The transfer of any food from one cold storage warehouse to another or from one temporary storage place to another for the purpose of evading any provisions of this article is hereby prohibited.

Articles of food stored in containers shall not be removed from the same while in a cold storage warehouse or temporary storage place for the purpose of further storage or for repacking or for removal from the warehouse or temporary storage place unless each individual unit of said articles or the containers in which they are repacked shall be marked in a manner identical with the marking, if any, on the original container; provided, however, that the name of the warehouse where such goods were previously stored may be omitted in such marking. If such repacked goods have been taken from original packages, stored on different dates and commingled, the repacked goods shall be marked in a manner identical with the marking on that one of the original packages which has been in cold storage for the longest period. (C. L. 1923, c. 19, art. 19, § 239.)

96. Removal of Cold Storage Marks.—It shall be unlawful for any person to alter, mutilate, destroy, obscure, obliterate or remove any mark required by this article to be placed on any article of food or the container thereof while the same is being held in storage or for purposes of resale, except that tags may be removed from food withdrawn from storage within thirty days, as provided in section two hundred and thirty-four. (Supp. 1926, c. 19, art. 19, § 240.)

97. Prohibits Return of Food to Cold Storage When Once Released for Purpose of Placing Same on Market for Sale.—When food has been in cold storage and is released therefrom for the purpose of placing the same on the market for

sale it shall be a violation of the provisions of this article to again place such food in cold storage, except when such goods have actually been sold and are being held for delivery on order from the purchaser thereof and have not already been in cold storage for a period longer than twelve months. (C. L. 1923, c. 19, art. 19, § 241.)

98. Articles of Food Stored for Export.—The provisions of this article shall not apply to any articles of food held in cold storage awaiting shipment to any foreign country, except that such food when received or placed in cold storage shall be marked in such manner as to indicate the day, month and year when it is received for storage; but if such articles of food be not actually exported, this section shall not exempt such articles of food from the operation of this article. When such articles of food are placed in cold storage awaiting shipment to any foreign country they shall be further marked with the words "for export" and with a lot number which shall serve to identify the same in the books and records kept by the licensee. On the fifth day of each month every licensee shall submit a report to the department, setting forth in itemized particulars the date received, the lot number and the quantity and kind of foodstuff in such lot, of all articles of food being held in cold storage awaiting shipment to any foreign country as the same existed on the last day of the preceding month. Immediately following removal from cold storage of any lot or portion of such lot hereinbefore mentioned the licensee shall submit a report of such removal to the department, stating the lot number of the food removed, the date when placed in cold storage, the date removed from cold storage, the quantity and kind of foodstuff removed from cold storage, the name and address of the consignee, the port of export and the permit number under which export is to be made. (C. L. 1923, c. 19, art. 19, § 242; L. 1927, c. 207, § 37.)

99. Powers of Department.—The department,* through the commissioner,* is hereby invested with full power and authority to inspect and supervise all places in this State now used or hereafter to be used for cold storage or temporary storage purposes, and for such purpose shall be vested with all the powers granted by this article or under any other article of this chapter. The power of supervision hereby granted shall extend to enable the commissioner to adopt such reasonable rules and regulations as may be determined upon from time to time as essential to the proper protection of the consumer of the commodities kept and preserved in such place or places. (C. L. 1923, c. 19, art. 19, § 243.)

NOTE: See also Nos. 22, 29 and 38.

Confectionery.†

100. Adulteration of Confectionery.—An article of confectionery shall be deemed adulterated if it contain terra alba, barytes, talc, chrome yellow or other mineral substances or poisonous color or flavor or other ingredient deleterious or detrimental to health. (C. L. 1923, c. 19, art. 17, § 202.)‡

NOTE: See also Nos. 2, 68b-68c, 78 and 332.

Dairy Products—Substitutes for Dairy Products.¶

101. Definitions.—The term "milk" when used in this article means the whole, fresh, clean, lacteal secretion obtained by the complete milking of one or more healthy cows, properly fed and kept, excluding that obtained within fifteen days before and five days after calving or such longer period as may be necessary to render the milk practically colostrum free.

The term "pure cream" or "unadulterated cream," when used singly or together, means cream taken from pure unadulterated milk.

The term "milk and cream" when used means a mixture of milk and cream which contains at least ten per centum of milk fat.

The term "adulterated milk" when used means:

1. Milk containing more than eighty-eight and one-half per centum of water or fluids.
2. Milk containing less than eleven and one-half per centum of milk solids.
3. Milk containing less than three per centum of fats.
4. Milk drawn from cows within fifteen days before and five days after parturition.

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*Department of Agriculture and Markets and Commissioner of Agriculture and Markets, respectively. See Nos. 2 and 52 et seq.

†For administrative provisions, see No. 1 et seq.

‡For penalty, see No. 38 et seq.

¶For administrative provisions, see No. 1 et seq.

5. Milk drawn from animals fed on distillery waste or any substance in a state of fermentation or putrefaction, except ensilage, or on any unhealthy food.

6. Milk drawn from cows kept in a crowded or unhealthy condition; or milk produced or kept in insanitary surroundings or in any environment or under any condition whatever that is inimical to its healthfulness or wholesomeness.

7. Milk from which any part of the cream has been removed.

8. Milk which has been diluted with water or any other fluid, or to which has been added or into which has been introduced any foreign substance whatever.

All adulterated milk shall be deemed unclean, unhealthful, impure or unwholesome.

The term "adulterated cream" when used means cream containing less than eighteen per centum of milk fat or cream to which any substance whatsoever has been added.

The term "skimmed milk" when used means milk, as hereinbefore defined, from which part or all of the cream has been removed, but which is otherwise unadulterated, except in respect to an excess in the per centum of water or fluids or a deficiency in the per centum of milk fat or milk solids contained therein, provided the same shall contain at last eight and one-half per centum of milk solids.

The term "butter" when used means the product of the dairy, usually known by that term, which is manufactured exclusively from pure, unadulterated milk or cream or both with or without salt or coloring matter and containing not less than eighty per centum by weight of milk fat.

The term "cheese" when used means the product of the dairy, usually known by that term, which is manufactured exclusively from pure unadulterated milk or cream or both with or without coloring matter, salt, rennet, sage, olives, pimentos, walnuts, peanuts, tomatoes, celery salt, or onions, added thereto as a flavor; provided that when manufactured by adding to the elemental product of the dairy usually known by the term "cheese," and manufactured exclusively from pure, unadulterated milk or cream, or both, any pimentos, olives, walnuts, peanuts, celery salt, tomatoes or onions the percentage of all such substances so added shall not exceed twenty-five per centum in bulk of the manufactured product.

The terms "oleomargarine," or "butterine," mean any oleaginous substance manufactured, sold or exposed for sale, as a substitute for, and to take the place of, butter and not made exclusively of pure or unadulterated milk or cream, or any article or substance into which any oil, lard or fat not produced from milk or cream enters as a component part, or into which melted butter or butter in any condition or state or any oil thereof has been introduced to take the place of cream. (C. L. 1923, c. 19, art. 4, § 46; Supp. 1926, Id.)*

102. Care and Feed of Cows, and Care and Keeping of Milk.—No person shall keep cows, for the production of milk for market or for sale or exchange, or for manufacturing the milk or cream from the same into any article of food, in a crowded or unhealthy condition or in unhealthful or unsanitary surroundings and no person shall keep such cows or the product therefrom in such condition or surroundings or in such places as shall cause or tend to cause the produce from such cows to be in an unclean, unhealthful or diseased condition, if the produce from such cows is to be sold, offered or exposed for sale upon the markets for consumption or to be manufactured into any food product, nor shall such cows or the produce therefrom be handled or cared for by any person suffering with or affected by an infectious or contagious disease, nor shall any such cows be fed on any substance that is in a state of putrefaction or fermentation, or upon any food that is unhealthful or that produces or may produce impure, unhealthful, diseased or unwholesome milk. But this section shall not be construed to prohibit the feeding of ensilage.

No person having milk in his possession for the purpose of selling the same for consumption as such or for manufacturing the same into butter, cheese, evaporated or condensed milk or other food shall keep the same in utensils, cans, vessels, rooms or buildings that are unclean or have insanitary surroundings or drainage or in any condition whatsoever that would tend to produce or promote conditions favorable to unhealthfulness or disease. The commissioner† shall notify all persons violating this section to clean said utensils, cans, vessels, rooms or buildings or to so improve the sanitary conditions that the foregoing provisions will not be violated; and if such notice is complied with within ten days no prosecution, civil or criminal, for a violation of this section shall be instituted. (C. L. 1923, c. 19, art. 4, § 47.)

103. Receptacles to be Cleansed Before Returning; Receptacles May be Seized; Evidence; Violation.—Whenever any can or receptacle is used for transporting or conveying milk, cream or curd to market for the purpose of selling or furnishing the same for consumption as human food, or for manufacturing into

*For penalty for violation of chapter 19, see No. 38 et seq.

†Commissioner of Agriculture and Markets. See Nos. 2 and 52 et seq.

human food, which can or receptacle, when emptied, is returned or intended to be returned to the person so selling, furnishing or shipping such substance to be again thus used, or which is liable to continued use in so transporting, conveying, selling or shipping such substance as aforesaid, the consumer, dealer or consignee using, selling or receiving the milk, cream or curd from such can or receptacle, shall, before so returning such can or receptacle remove all substances foreign to milk therefrom, by rinsing with water or otherwise. When any such milk, cream or curd is sold within any city of this State or shipped into any such city, the fact of such shipment or sale shall be prima facie evidence that the same was so shipped or sold for consumption as human food or to be manufactured into human food. When any such can or receptacle is returned or delivered or shipped to any person or creamery so selling such substance within, or shipping the same into such city, it shall be deemed that such can or receptacle is liable to such continued use in so selling or shipping such substance therein for consumption as human food within the meaning and purposes of this article. No person shall place or suffer to be placed in any such can or receptacle any sweepings, refuse, dirt, litter, garbage, filth or any other animal or vegetable substance, nor shall any such consignee or other person through himself, his agent or employee, bring or deliver to any person or railroad or other conveyance any such can or receptacle for the purpose of such return, or any milk, cream or curd can or receptacle for the purpose of delivery or shipment to any person or creamery engaged in so selling or shipping such substances for consumption as human food, which can or receptacle contains such foreign substance or which has not been rinsed as herein provided. The word "curd" as used in this article applies to the substance otherwise known as "pot cheese" or "cottage cheese." Whenever any such can or receptacle is used, returned, delivered or shipped in violation of this article every such use, return, delivery or shipment of each such can or receptacle shall be deemed a separate violation thereof. Such cans or receptacles so used, returned, delivered or shipped in violation of this article may be seized by the commissioner, his assistants or agents and held as evidence of such violation. (Id. § 48.)

104. Insanitary Cans and Receptacles Condemned.—All cans, or receptacles used in the sale of milk, cream or curd for consumption, or in transporting or shipping the same to market or the delivery thereof to purchasers for consumption as human food, when found by the commissioner or his assistants or agents to be in unfit condition to be so used by reason of being worn out, badly rusted, or with rusted inside surface, or unclean or insanitary or in such condition that they can not be rendered clean and sanitary by washing, and will tend to produce or promote in milk, cream or curd when contained therein, bad flavors, unclean or unwholesome conditions favorable to unhealthfulness or disease, shall be condemned by the commissioner or his assistants or agents. Every such can or receptacle when so condemned shall be marked by a stamp, impression or device, designed by the commissioner, showing that it has been so condemned, and when so condemned shall not thereafter be used by any person for the purpose of so selling, transporting or shipping milk, cream or curd. (Id. § 49.)

105. Prohibiting the Sale of Adulterated Milk, Imitation Milk, Adulterated Cream, Imitation Cream and Regulating the Sale of Milk and Cream Mixed and Ice Cream.—No person shall sell or exchange or offer or expose for sale or exchange, any unclean, impure, unhealthy, adulterated or unwholesome milk or any cream from the same, or any unclean, impure, unhealthy, adulterated, colored, or unwholesome cream, or sell or exchange, or offer or expose for sale or exchange, any substance in imitation or semblance of cream, which is not cream, nor shall he sell or exchange, or offer or expose for sale or exchange, any such substance as and for cream, nor shall he sell, or exchange, or offer or expose for sale or exchange any substance in imitation or semblance of milk which is not milk, or sell or exchange, or offer or expose for sale or exchange any article of food made from such milk or cream or manufacture from any such milk or cream any article of food. No person shall sell or exchange or offer or expose for sale or exchange any product as and for "milk and cream" containing anything except pure milk and cream mixed together and which does not contain at least ten per centum of milk fat. No person shall sell or exchange or offer or expose for sale or exchange any product as and for "ice cream" which does not contain at least eight per centum of milk fat and at least eighteen per centum of milk fat and milk solids not fat combined.

Any person delivering milk, cream, or "milk and cream" to any butter or cheese factory, condensary, milk gathering station or railway station to be shipped to any city, town or village shall be deemed to expose or offer the same for sale whether the said milk is delivered or consigned to himself or another. Each and every can thus delivered, shipped or consigned, if it be not pure milk, must bear a label or card upon which shall be stated the constituents or ingredients of the contents of the can. (C. L. 1923, c. 19, art. 4, § 50; Supp. 1926, Id.)

106. Regulating the Sale of Certified Milk.—No person shall sell or exchange, or offer or expose for sale or exchange, as or for certified milk, any milk which does not conform to and is not produced in accordance with the regulations prescribed by a milk commission appointed by a county medical society, chartered by the medical society of the State of New York, and unless such commission shall certify that such milk was produced under conditions prescribed by it, and adopted as standard by the American Association of Medical Milk Commissions; neither shall any person sell or exchange or offer or expose for sale or exchange, as and for certified milk, any milk which is not free from antiseptics, added preservatives, pathogenic bacteria or bacteria in excessive numbers. All milk sold as certified milk shall be conspicuously marked on the outer cap with the name of the commission certifying it. (C. L. 1923, c. 19, art. 4, § 50-a.)

107. Milk Inspection.—The commissioner or his agent, in inspecting milk for the purpose of analysis, shall take duplicate samples thereof and shall seal both samples, and shall tender, and, if accepted, deliver one sample to the person from whom the milk was taken. When samples are taken from the producer of the milk sampled or his agent, at a place other than the dairy where the milk was produced, the commissioner or his agent shall within ten days thereafter, with the consent of the producer, take duplicate samples of the mixed milk of the herd of cows from which the milk first sampled was drawn, and shall deliver one such sample to the producer or his agent and shall submit the other to analysis. If upon analysis it proves to contain no higher percentage of milk solids, or no higher percentage of fat than the sample first taken, then no action shall lie against the producer for violation of subdivisions one, two, three, seven and eight of section forty-six of this chapter. If the producer refuses to allow such herd sample to be taken, then the producer shall be precluded from offering any evidence that the milk from which the first sample was taken was just as it came from the cow. (Id. § 51.)

108. Presumptions in Regard to Cream and Skim Milk.—When cream is separated or skimmed from milk at any station or establishment where milk is received from producers for the purpose of selling the same or shipping the same to market for consumption as food and the supply of milk on hand thereat at the time of the next regular daily shipment of milk therefrom, consisting of the total amount of milk in such shipment, together with that remaining on hand immediately after such shipment, is not thereby decreased or correspondingly less than the total quantity received during any period extending from some point of time before such skimming was done until the time of such shipment, together with the amount of milk on hand at the commencement of such period, and such decrease is not equal in amount to the quantity of milk that must have been used in so separating such cream in addition to the quantity otherwise there used or disposed of during such period, such fact is conclusive that skim milk or other foreign substance was added to such milk supply within such period and shall be presumptive evidence within the meaning of this section that the same was added to each can or vessel of milk in such shipment. When cream or skim milk is found to have been on the premises of any such station or establishment or is sold or shipped therefrom, such cream or skim milk so found or so sold or shipped therefrom shall be presumed to have been produced by separating or skimming at such station or establishment. In any action or proceeding relative to the adulteration of milk by removing cream therefrom or adding skim milk or other foreign substance thereto, it shall be presumed that when cream has been produced by so skimming or separating or butter has been manufactured, there was made at least five quarts of milk in the production of each quart of cream so produced and there was necessarily so produced thereby at least four quarts of skim milk to each quart of cream so produced, and that there was used at least nine quarts of milk in the production of each pound of butter so manufactured. (Id. § 52.)

109. Regulations in Regard to Manufactories, Plants or Places Where Milk or Cream is Brought or Received.—No person shall sell, supply or bring to any butter or cheese factory or to any plant or place which manufactures a food product from milk or which ships or sells milk for consumption any milk diluted with water, or any unclean, impure, unhealthy, adulterated or unwholesome milk, or milk from which any of the cream has been taken, except pure skim milk to skim-cheese factories. No person shall sell, supply or bring to be manufactured to any butter or cheese factory or to any plant or place which manufactures a food product from milk or which ships or sells milk for consumption any milk that is sour or from which has been kept back any part of the milk commonly known as strippings, except pure skim milk to skim-cheese factories. The owner or proprietor or the person having charge of any such manufactory, plant or place where milk is received for any such purpose, not buying all the milk used by him, shall not use for his own benefit, or allow any of his employees or any other person to use for his own benefit, any milk, cream, butter or cheese or any other product thereof, brought to such factory, with-

out the consent of the owners of such milk or the products thereof. Every such manufactory, plant or place not buying all the milk used, shall keep a correct account of all the milk or cream daily received, of the number of packages of butter and cheese made each day, and the number of packages and aggregate weight of cheese and butter disposed of each day; which account shall be open to inspection to any person who delivers milk to such manufactory, plant or place. Every purchaser or receiver of milk from the producer thereof, for manufacturing purposes or for reselling the same, shall on written request therefor, tender daily thereafter at time of delivery to such producer, or to the person delivering such milk to such purchaser in behalf of such producer, a written statement of the amount of milk so received or purchased until or unless such producer notifies such purchaser in writing that he no longer desires such statement; such statement shall give, first, the name of the producer or seller, second, the date of delivery, third, the amount so delivered, fourth, shall be signed by the purchaser or his duly authorized representative; such statement shall be given in the terms of the unit used as a basis for determining the value thereof. Such purchaser or receiver shall, at each periodical time of payment for such milk, give each such producer, so delivering milk, a statement showing the amount of milk delivered during the periodical time for which payment is made, and the average per centum of butter fat test of same, provided payment is made on basis of butter fat content.

Any person having charge of a milk gathering station or establishment as aforesaid shall keep a true and correct monthly record of the receipts of milk or other dairy products received at such station or establishment, and also a true and correct monthly record of all sales or shipments of milk, cream or other dairy products shipped or sold from such station or establishment, and shall also keep a true and correct monthly record of the amount of skim milk produced in such station or establishment and of the disposition of said skim milk. Such record shall be preserved at such station or establishment for at least two years after the same shall have been made and such records shall at all times be open to the inspection of the commissioner, his assistants or agents. When cream is sold or shipped from any such station or establishment so selling or shipping milk for consumption as aforesaid, each original bottle or package of one quart or less of cream so shipped or sold shall bear a label securely attached to the side of such bottle or package on which shall be conspicuously printed the word "cream" in black letters of at least one-fourth of an inch in length or else the word "cream" shall be blown in the side of such bottle in plain raised letters of at least one-half an inch in length, and the top and side of each and every other original package or can containing cream or original crate or case containing bottles of cream so shipped or sold shall bear a label securely attached on which shall be conspicuously printed the word "cream" in black letters of at least one inch in length and also a plainly written or printed statement on the label stating from whom and what station the same is shipped and the name of the consignee and point of destination and date on which the cream therein was produced by such separation or skimming. The shipment of each and every such original package of cream so shipped and not so labeled as herein required shall constitute a separate violation. (Id. § 54.)

110. Skim Milk, Whey, Buttermilk or Separator Slop to be Heated Before Used for Feeding.—Any person, firm, association or corporation owning or operating any butter factory, cheese factory or other milk plant, shall, before returning, delivering or giving to any person or persons any skimmed milk, whey, buttermilk or separator slop, to be used for the feeding of domestic animals, cause such skimmed milk, whey, buttermilk or separator slop to be uniformly heated to a temperature of not less than one hundred and fifty degrees Fahrenheit and held at such temperature for at least twenty minutes. No skimmed milk, whey, buttermilk or separator slop from such butter factory, cheese factory or other milk plant shall be used for the feeding of domestic animals until heated as provided herein. (Id. § 55.)

111. Purchase of Milk and Cream on Milk Fat Basis.—Whenever such manufacturers or owners of such manufactories, plants or places receive or purchase milk or cream upon the basis of the amount of milk fat contained therein and use for ascertaining the amount of such fat a volumetric method or whenever the proceeds of co-operative creameries or such manufactories, plants or places are alotted on the basis of determinations of milk fat by the bottles and pipettes used in such determinations shall, before use, be examined by the director of the New York Agricultural Experiment Station. If such bottles and pipettes are found to be properly constructed and graded so as to accurately show the amount of milk fat contained in milk or cream, each piece shall be legibly and indelibly marked "S. B." Any such bottles and pipettes which on such examination are found to conform to the standard specifications promulgated by the United States Bureau of Standards, shall be deemed to be so properly constructed and graded. No bottles or pipettes shall be so marked

or used in any such test by such manufacturers or owners or proprietors of such manufactories, plants or places, except as herein provided. The acid or other chemicals used in making such test shall be of the required strength and purity to accurately determine the amount of milk fat in milk or cream and shall be examined from time to time by competent persons employed by the department* and if found not to be of sufficient strength or purity the use of such acid or other chemicals shall be deemed a violation. No person or persons receiving or purchasing milk or cream upon the basis of the amount of fat contained therein, shall credit any patron or patrons delivering milk or cream thereto with a greater or lesser percentage or average percentage of milk fat than is actually contained in the milk or cream so delivered. The department or persons employed by it for that purpose may at any time assist in making tests of milk or cream received at such manufactories, plants or places for the purpose of determining the efficiency of tests usually made at such manufactories, plants or places. No person shall use other than standard bottles and pipettes or acid or other chemicals which are of the required strength and purity to accurately determine the amount of fats in milk or cream. Corporations, associations or persons hereafter buying milk or cream from producers of milk or cream to be paid for on the basis of the percentage of milk fat contained therein and for that purpose taking samples therefrom to form a composite sample to be tested periodically to determine its value on such basis, shall, at the request of the producer, take such samples in duplicate and subject them to the same treatment. At the end of the period for which the composite sample was taken such corporation, association or person shall tender same to the producer thereof or to his authorized agent and give such producer, or his said authorized agent, the choice of one of the two composite samples so taken, both of which shall be sealed. Such producer is hereby permitted to send such duplicate composite sample so received to the head of the Department of Dairy Industry of the College of Agriculture at Cornell University within ten days from the receipt thereof, properly marked for identification, and shall accompany same with his name and post office address. Such department head shall cause such sample to be tested for the per centum of milk fat and shall send a report of such test to the producer from whom it was received within ten days or as soon thereafter as possible. Corporations, associations or persons hereafter testing samples of milk or cream taken from milk or cream bought or received from producers, where the value thereof is determined by the milk fat content, shall reseal the remaining portion of the sample from which the test was made, and in the case of milk keep the same for at least ten days and in the case of cream keep the same for at least one day after the making of such test for the purpose of permitting the commissioner or his duly authorized representative to examine and test the same.

Corporations, associations or persons making such tests of samples of milk or cream so purchased or received shall, immediately after such tests are completed, prepare a list containing the names or numbers of the producers whose milk or cream was so tested and place opposite each such producer's name or number the percentage of milk fat found to have been contained in the sample of milk or cream representing the milk or cream delivered by each such producer. Such lists so prepared shall be made with indelible pencil or ink and shall be filed in the plant or place where such milk or cream is bought or received, and each such list shall be duly signed by the person making such tests and preparing such lists, and such person shall place beneath his signature the number of the State license under which he is testing. All such lists shall be kept as a record for at least one year and shall be open to examination at all times by the commissioner or his duly authorized representative. At any time, upon request of any producer, the purchaser or receiver of such milk or cream shall permit such producer to examine such part of said record as contains information concerning the samples of milk or cream representing the milk or cream delivered by such producer. Without the written permission of the commissioner, no sample of milk or cream so tested by the purchaser or his representative shall be tested at a plant or place other than the one where received, nor without such permission shall any such sample of milk be removed from any such plant or place within ten days from the date of testing, nor shall any such sample of cream be removed therefrom within one day from such date of testing. (Supp. 1926, c. 19, art. 4, § 56; L. 1927, c. 207, § 17.)

112. Determination of Bacteria in Milk or Cream Purchased on the Basis of Bacterial Count.—In manufactories, plants or places receiving or purchasing milk or cream upon the basis of the bacterial count of such milk or cream, using either the cultural or microscopic method for ascertaining the bacterial count, or where the proceeds of co-operative creameries or such manufactories, plants or places are allotted on the basis of determinations of the bacterial count, the pipettes used in

*Department of Agriculture and Markets. See Nos. 2 and 52 et seq.

such determinations shall, before use, be examined by the director of the New York Agricultural Experiment Station. If such pipettes are found to be properly constructed and graded so as to accurately deliver the amount of liquid required for examination, each of them shall be legibly and indelibly marked "S. B." No pipettes shall be so marked except as herein provided or used in any such examination unless so examined and marked. No person or persons receiving or purchasing milk or cream upon the basis of the bacterial count shall credit any patron or patrons delivering milk or cream with a larger or smaller bacterial count than that obtained by the actual examination herein provided of the milk or cream so delivered. The commissioner or persons employed by him for that purpose may at any time assist in making the bacterial count of milk or cream received at such manufactories, plants or places for the purpose of determining the accuracy of the count made at such manufactories, plants or places. Persons using other than standard pipettes or crediting any patron or patrons delivering milk or cream with a larger or smaller bacterial count than that obtained by the actual count of the bacteria in the milk or cream so delivered and examined by the method or methods herein provided shall be deemed to have violated the provisions of the agriculture and markets law.* (C. L. 1923, c. 19, art. 4, § 56-a; L. 1927, c. 207, § 18.)

113. Licensing of Persons in Charge of Milk-Gathering Stations, Manufactories or Plants and of Persons Making Milk-Fat Tests.—1. No person shall take charge, either as superintendent, manager or otherwise, of any milk gathering station, manufactory or plant where milk or cream is received from producers for sale or resale or for manufacture, unless licensed by the commissioner.

2. No person shall test milk or cream by the Babcock or other volumetric method, for the purpose of determining the amount of milk fat contained therein, where the result of such test is used as a basis for payment for such milk or cream, or for official inspection, or for public record, unless licensed by the commissioner.

3. Application for a license, or licenses, shall be made upon a form prescribed by the commisisoner. The applicant shall furnish satisfactory evidence of good moral character and shall give proof of his ability to perform the functions for which a license is applied, to the satisfaction of the commissioner. The applicant shall pay a license fee of two dollars to the commissioner for remittance to the State treasury. The commissioner, in his discretion may combine in one license authority to take charge of a milk gathering station, manufactory or plant, and to test milk or cream by the Babcock or other volumetric method. A license shall be for a period not exceeding five years, and may be renewed, in the discretion of the commissioner, for successive periods of not exceeding five years each upon payment of a license fee of one dollar to the commission† for remittance to the State treasury.

Each license shall be kept at the place where the licensee is employed and shall be open to inspection.

A license may be revoked by the commissioner, after a hearing upon due notice to the licensee, for false statement in the application, dishonesty, incompetency, inaccuracy or a violation of the provisions of this article, and a license to take charge of a milk gathering station, manufactory or plant may also be revoked for dishonesty, incompetency, inaccuracy, or a violation of the provisions of this article by any person working under the direction of the licensee and subject to his orders. (Supp. 1926, c. 19, art. 4, § 57; L. 1927, c. 216.)

114. Licensing of Persons Making Bacterial Counts of Milk and Cream.—No person shall test milk or cream in order to determine the bacterial count by the cultural, microscopic or other methods where the result of such test is used solely as a basis for payment to the producer for such milk or cream, unless licensed by the commissioner. Application for such license shall be made upon a form prescribed by the commissioner. The applicant shall furnish satisfactory evidence of good moral character and shall demonstrate his ability to make such tests by an examination under the direction of the commissioner. The applicant shall pay a license fee of two dollars to the commissioner for remittance to the State Treasurer. A license shall be for a period not exceeding five years. A license may be renewed in the discretion of the commissioner, without an examination, for successive periods of not exceeding five years each upon payment of a license fee of one dollar to the commissioner for remittance to the State Treasurer. Each license shall be kept at the place where the licensee is engaged in testing milk and shall be open to inspection. A license may be revoked by the commissioner, after a hearing upon due notice to the licensee, for dishonesty, incompetency, inaccuracy or a violation of the provisions of this article. (Supp. 1926, c. 19, art. 4, § 57-a.)

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*See No. 1 et seq., of which this law is a part.

†So in original, evidently should be "commissioner."

115. Regulations in Regard to Evaporated or Condensed Milk.—No evaporated or condensed milk shall be made or offered or exposed for sale or exchange unless manufactured from pure, clean, healthy, fresh, unadulterated and wholesome milk from which the cream has not been removed either wholly or in part, except for the purpose of standardizing, in which case such standardized evaporated or condensed milk shall contain the proportionate quantity of solids and the proportionate amount of fats required in evaporated or condensed milk. Evaporated or condensed milk manufactured, sold or exposed for sale or exchange in hermetically sealed cans shall contain milk solids in quantity not less than twenty-five and five-tenths per centum, and not less than seven and eight-tenths per centum of milk fat. Sweetened condensed milk manufactured, sold or exposed for sale or exchange in hermetically sealed cans shall contain not less than twenty-eight per centum milk solids and not less than eight per centum milk fat. No person shall manufacture, sell or offer for sale or exchange in hermetically sealed cans, any evaporated or condensed milk unless put up in packages upon which shall be distinctly labeled or stamped the name of the person or corporation by whom made or the name of the wholesale dealer selling or offering the same for sale and the brand by which or under which it is made or sold. When evaporated or condensed milk shall be sold from cans or packages not hermetically sealed, the producer shall brand or label the original cans or packages with the name of the manufacturer of the milk contained therein, provided, however, that no unsweetened evaporated or condensed milk shall be sold or offered for sale in containers not hermetically sealed, unless the proportion of milk solids shall be the equivalent of eleven and one-half per centum of milk solids in crude milk, and of which milk solids twenty-five per centum shall be fats. (C. L. 1923, c. 19, art. 4, § 58; Supp. 1926, Id.)

116. Manufacture and Sale of Imitation Butter Prohibited.—No person by himself, his agents or employees, shall produce or manufacture out of or from any animal fats or animal or vegetable oils not produced from unadulterated milk or cream from the same, oleomargarine in imitation or semblance of natural butter produced from pure, unadulterated milk or cream of the same; or mix, compound with or add to milk, cream or butter any acids or other deleterious substance or any animal fats or animal or vegetable oils not produced from milk or cream, so as to produce any article or substance or any human food in imitation or in semblance of natural butter, nor sell, keep for sale or offer for sale any article, substance or compound, made, manufactured or produced in violation of the provisions of this section, whether such article, substance or compound shall be made or produced in this State or elsewhere. Any person manufacturing, selling, offering or exposing for sale any commodity or substance in imitation or semblance of butter, the product of the dairy, shall be deemed guilty of a violation of this chapter, whether he sells such commodity or substance as butter, oleomargarine or under any other name or designation whatsoever and irrespective of any representations he may make relative to such commodity or substance. Any dealer in any article or product, the manufacture or sale of which is prohibited by this section, who shall keep, store or display such article or product, with other merchandise or stock in his place of business, shall be deemed to have the same in his possession for sale. (C. L. 1923, c. 19, art. 4, § 59.)

117. Manufacture or Mixing of Animal Fats With Milk, Cream or Butter Prohibited.—No person shall manufacture, mix or compound with or add to natural milk, cream or butter any animal fats or animal or vegetable oils, nor make or manufacture any oleaginous substance not produced from milk or cream, with intent to sell the same as butter or cheese made from unadulterated milk or cream or have the same in his possession with such intent; nor shall any person soliciting or taking orders for the same or selling or offering any such compound so made or produced for sale represent the same to be butter or cheese, the product of the dairy. No person shall coat, powder or color with annatto or any coloring matter whatever, butterine or oleomargarine or any compound of the same or any product or manufacture made in whole or in part from animal fats or animal or vegetable oils not produced from unadulterated milk or cream by means of which such product, manufacture or compound shall resemble butter or cheese, the product of the dairy; nor shall he have any such substance so made in his possession with intent to sell the same nor shall he sell, offer or expose the same for sale; any person who shall keep, store or display any such article or product with other merchandise or stock in his place of business shall be deemed to have the same in his possession for sale. No person by himself, his agents or employees, shall manufacture, sell, offer or expose for sale butter that is produced by taking original packing stock or other butter or both and melting the same, so that the butter fat can be drawn off, then mixing the said butter fat with skimmed milk or milk or cream or other milk product and rechurning the said mixture, or that is produced by any similar process and is commonly known as boiled or process butter, unless he shall plainly brand or mark the package or tub

or wrapper in which the same is put up in a conspicuous place with the words "renovated butter" or "process butter." If the same shall be put up, sold, offered or exposed for sale in prints or rolls, then said prints or rolls shall be labeled plainly with printed letters in a conspicuous place on the wrapper with the words "renovated butter" or "process butter." If the same is packed in tubs or boxes or pails or other kind of a case or package the words "renovated butter" or "process butter" shall be printed on the top and side of the same in letters, at least one inch in length, so as to be plainly seen by the purchaser. If such butter is exposed for sale, uncovered, not in a package or case, a placard containing the label so printed shall be attached to the mass of butter in such manner as to easily be seen and read by the purchaser. Every person selling, offering or exposing for sale at retail, "renovated butter" or "process butter," shall cause each parcel of [or] package of such butter delivered to or for a customer to be wrapped in a light colored paper on which shall be printed in black letters, not less than three-eights inch square and in Gothic type, the words "renovated butter" or "process butter." No person shall sell, offer or expose for sale, any butter or other dairy product containing a poisonous, deleterious or harmful preservative. No person, firm, association or corporation shall induce or attempt to induce any person to violate any of the provisions of this chapter. Any person, firm, association or corporation selling, offering or advertising for sale any substance, preparation or matter for use in violation of the provisions of this chapter shall be guilty of a violation of this section. (Id. § 60.)

118. Prohibited Articles Not to be Furnished for Use.—No keeper or proprietor of any bakery, hotel, boarding house, restaurant, saloon, lunch-counter or place of public entertainment, nor any person having charge thereof or employed thereat, nor any person furnishing board for any others than members of his own family, or for any employees where such board is furnished for a compensation or as part of the compensation of any such employee, shall keep, use or serve therein either as food for his guests, boarders, patrons, customers or employees or for cooking purposes any article or substance made in violation of the provisions of this article. Any keeper or proprietor of any hotel, boarding house, restaurant, saloon, lunch-counter or place of public entertainment who uses or serves therein for his guests any oleaginous substance as a substitute for butter, the manufacture or sale of which is not prohibited by this chapter, shall print plainly and conspicuously on the bill-of-fare, if there is one, the words, "Oleomargarine Used Here" and shall post up conspicuously in different parts of each room where such meals are served, signs in places where they can be easily seen and read, which shall bear the words, "Oleomargarine Used Here" in letters at least two inches in length and so printed as to be easily read by guests or boarders. (Id. § 61.)

119. Coloring Matter, Dairy Terms, Size of Package, Labeling, False Advertising.—No person, manufacturing with intent to sell, any substance or article to be used as a substitute for butter or cheese and which is not made exclusively from unadulterated milk or cream or both, with or without salt or rennet or both but into which any animal, intestinal or offal fats, or any oils or fats or oleaginous substance of any kind not produced from pure, unadulterated milk or cream, or into which melted butter, or butter in any condition or state or any modification of the same, or lard or tallow shall be introduced, shall add thereto or combine therewith any annatto or compounds of the same, or any other substance or substances whatever, for the purpose or with the effect of imparting thereto a color resembling yellow, or any shade of yellow butter or cheese, nor introduce any such coloring matter or other substance not into any of the articles of which the same is composed. No person manufacturing, selling or offering for sale any oleaginous substance not made from pure milk or cream from the same, designed to take the place of butter, and the sale of which is not prohibited by any of the provisions of this article shall make or sell the same under any brand, device or label bearing words indicative of cows or the product of the dairy or the names of breeds of cows or cattle, nor use terms indicative of processes in the dairy in making or preparing butter; no oleaginous substance not made from pure milk or cream from the same, designed to take the place of butter, and the sale of which is not prohibited by any of the provisions of this article shall hereafter be sold, offered or exposed for sale in this State except it be sold in packages containing not more than five pounds, such packages to be wrapped and plainly and conspicuously labeled with the word, "Oleomargarine" in Gothic or equally conspicuous letters at least one-quarter of an inch high. No device or brand shall be imprinted upon any brick or portion of the substance itself unless the word "Oleomargarine" is also indented thereon in letters equal in size to those used in expressing any brand or word used by the manufacturer. When no display is made except a device, the said word "Oleomargarine" shall be so indented in letters not less than one-fourth of an inch high, and in all cases the word "Oleomargarine" shall be equally displayed with any brand or word used by the manufacturer, in close proximity

thereto, and on the same surface of such substance. The name and address of the manufacturer shall be plainly printed on the carton or wrapper enclosing the said goods. No person, firm, association or corporation shall use in any way, in connection or association with the sale or exposure for sale or advertisement of any substance designed to be used as a substitute for butter, the words "butter," "creamery," or "dairy," or the name or representation of any breed of dairy cattle or any combination of such word or words and representation, or any other words or symbols or combination thereof commonly used in the sale of butter. Nothing in this section shall be construed to prevent, in connection with the advertisement of any substance designed to be used as a substitute for butter, a statement of the composition of the substance advertised, provided that all of the ingredients of the said substance and the percentage of each be stated in type of the same size. (C. L. 1923, c. 19, art. 4, § 62; Supp. 1926, Id.)

120. Manufacture and Sale of Imitation Cheese and Sale of Skim-Cheese.—No person shall manufacture, deal in, sell, offer or expose for sale or exchange any article or substance, in the semblance of or in imitation of cheese made exclusively of unadulterated milk or cream, or both, into which any animal, intestinal or offal fats or oils, or melted butter or butter in any condition or state or modification of the same, or oleaginous substances of any kind not produced from unadulterated milk or cream, shall be introduced. The prohibitions in this article against the sale of cheese made from adulterated milk or cream, shall not apply to pure skim-cheese made from milk which is unadulterated except by skimming. (C. L. 1923, c. 19, art. 4, § 63.)

121. Regulations in Regard to Skimmed Milk and Products Other Than Cheese Manufactured Therefrom.—1. The prohibitions contained in this article against the sale of adulterated milk shall not apply to skimmed milk as defined in section forty-six,* which is unadulterated, except by skimming, if it is sold for and as skimmed milk.

2. No person shall sell or exchange, or offer or expose for sale, or exchange, any condensed or evaporated skimmed milk, except it be in containers or packages containing ten pounds avoirdupois net weight or more, which containers or packages shall be distinctly labeled, branded or marked in block letters not less than one-half inch in height, with the words "Condensed Skimmed Milk" or "Evaporated Skimmed Milk."

3. No person shall manufacture, sell or exchange, offer or expose for sale or exchange, or have in his possession with the intent to sell or exchange any condensed, evaporated, concentrated, powdered, dried or desiccated milk, cream or skimmed milk to which there has been added, or with which there has been mixed, blended or compounded, any fats or oils, other than milk fat, so that the finished product shall be in imitation or semblance of condensed, evaporated, concentrated, powdered, dried or desiccated milk. (Id. § 64.)

122. Butterine, Imitation Cheese and Similar Products Not to be Purchased by Certain Institutions.—No money appropriated by law for maintenance and support in whole or in part of a State institution; nor money received by a charitable, benevolent, penal or reformatory institution from the State, or from a county, city or town thereof, or appropriated by such county, city or town for the maintenance or support in whole or in part of such institution; nor money belonging to or used for the maintenance or support of such institution, shall be expended for the purchase of, or in payment for, butterine, oleomargarine, or articles or products in imitation or semblance of natural butter or cheese produced from pure unadulterated milk or cream from the same, which articles or products have been rendered or manufactured in whole or in part from animal fats, or animal or vegetable oils not produced from unadulterated milk or cream from the same; nor shall any such money be expended for any condensed milk from which the butter fat has been removed and a vegetable or other oil has been substituted therefor. (Id. § 65.)

123. Purchase, Sale and Use of Butterine and Similar Products Prohibited in Certain Institutions.—No officer, manager, superintendent or agent of an institution mentioned in the last section, shall purchase for the use of such institution articles or products, for the purchase of which the money appropriated by law, or by a county, city or town, is forbidden to be used by said section, and no person shall sell to, or for the use of such institution, such articles or products. Nor shall such articles or products be used as articles of food or for cooking purposes in such institutions within the State. (Id. § 66.)

124. Manufacturer's Brand of Cheese.—Every manufacturer of whole-milk cheese may put a brand or label upon such cheese indicating "whole-milk cheese" and the date of the month and year when made; and no person shall use such a brand

*See No. 101.

or label upon any cheese made from milk from which any of the cream has been taken. The commissioner shall procure and issue to the cheese manufacturers of the State, on proper application therefor, and under such regulations as to the custody and use thereof as he may prescribe, a uniform stencil brand or labels bearing a suitable device or motto, and the words, "New York State whole-milk cheese." Every such brand or label shall be used upon the outside of the cheese and shall bear a different number for each separate factory. The commissioner shall keep a book, in which shall be registered the name, location and number of each manufactory using the brands or labels, and the name or names of the persons at each manufactory authorized to use the same. No such brand or labels shall be used upon any other than whole-milk cheese or packages containing the same. (Id. § 67.)

125. Use of False Brand Prohibited; Branding of Skim-Milk Cheese Regulated.—No person shall offer, sell or expose for sale, in any package, butter or cheese which is falsely branded or labeled. No person shall sell, offer or expose for sale cheese commonly known as cheddar cheese or stirred curd cheese made from skimmed or partially skimmed milk unless the same is branded to show that it is skim-milk cheese. All such cheese so sold, offered or exposed for sale shall be branded with the words "skim-milk cheese," or if such cheese contains thirteen per centum of milk fat or over, it may be branded "medium skim-milk cheese," or if it contains eighteen per centum of milk fat or over, it may be branded "special skim-milk cheese." Cheese known as cheddar cheese, cheddar style cheese, stirred curd cheese, twin cheese, flats, daisies, daisy twins, longhorns and young Americas containing more than forty per centum of moisture shall when sold, offered or exposed for sale be branded or marked conspicuously with the words "cheddar cheese excess moisture." The term "cheddar cheese" when used herein, shall be deemed to mean cheese made by the cheddar process, from heated and pressed curd obtained by the action of rennet on whole milk, and which contains not more than forty per centum of water, and, in the water-free substance, not less than fifty per centum of milk fat.

Cheese known as "washed curd cheese" shall not be manufactured, sold, offered or exposed for sale upon the markets of this State unless it is branded or marked conspicuously with the words "wash curd cheese." Any such cheese containing more than forty-two per centum of moisture shall be branded or marked conspicuously with the words "washed curd cheese excess moisture." The branding herein provided shall be upon the sides of both the cheese and the container and shall be in block letters at least one-half inch square. (C. L. 1923, c. 19, art. 4, § 68; Supp. 1926, Id.)

126. County Trade-Marks.—At a regular or special meeting of a county dairymen's association in any county of the State there may be adopted a county trade-mark, by a majority of the members present and voting, to be used as a trade-mark by a person manufacturing pure unadulterated butter or full-cream cheese in such county. The secretary of the association shall forthwith send to the commissioner a copy of such trade-mark, which copy he shall place on file in his office, noting thereupon the day and hour he received the same. But one county trade-mark for butter and for cheese shall be placed on file for the same county. No association shall adopt any trade-mark of any county already on file, or use that of any other county in the formation of a trade-mark. (C. L. 1923, c. 19, art. 4, § 69.)

127. Branded Cans, Jars or Bottles Not to be Sold, Re-marked or Used Without Consent of Owner.—No person shall hereafter without the consent of the owner use, sell, dispose of, buy or traffic in any milk can, jar or bottle, or cream can, jar or bottle, having the name or initials of the owner stamped, marked or fastened on such can, jar or bottle, or willfully mar, erase or change by remarking or otherwise said name or initials of any such owner, so stamped, marked or fastened upon said can, jar or bottle. Nor shall any person without the consent of the owner place in any such can, jar or bottle, any substance or product other than milk or cream. (Id. § 70.)

128. Registration of Mark; Defacing Mark; Seizure.—Any person owning milk cans, jars or bottles upon which he has placed or desires to place any designating mark may register the said designating mark with the commissioner, who shall keep a record thereof, and he may also register with the commissioner, from time to time, the number of such cans, jars or bottles which he has or is to have, which do or may bear such designating mark. Such cans, jars or bottles may, after such registration be numbered consecutively and such consecutive numbers may be registered in the department, as above provided, with the designating mark. If any such can, jar or bottle, bearing such designating mark, shall be found in the possession of, and being used by any person other than the one so registering the same it shall be presumptive evidence of a violation of the provisions of this article, unless such person has the consent of the owner thereof to so have and use the same.

No person, except the original owner thereof, or a person duly authorized by him so to do, shall remove, deface or erase any of the marks upon the cans, jars or bottles herein provided for.

When the commissioner, or any person duly authorized by him, shall find any such cans, jars or bottles, bearing such registered designating mark, in the possession of or being used by another person than the owner thereof, he may seize the same, and if evidence is produced in three days showing that such person had been given permission to have or use such cans, jars or bottles, then they shall be delivered by the commissioner, or his agents, to the person from whom taken, otherwise the commissioner shall notify the owner of such cans, jars or bottles that he has the same and upon application deliver the same to such owner. (Id. § 71.)

129. Sanitary Regulations.—The commissioner may adopt and enforce rules regulating the sanitation of stables or other buildings used for the housing of domestic animals for the purpose of preventing the spread of infection and contagion among such animals and may provide for the inspection and examination of such stables and buildings. The commissioner may adopt and enforce rules concerning the equipment for and the method of the sanitary production of milk and may provide for the examination and scoring of dairies in accordance with such rules. He may also prescribe such rules as may be necessary for disinfecting and cleaning premises, buildings, railway cars, boats and other objects, from or by means of which infection or contagion of animals may be spread or conveyed. (C. L. 1923, c. 19, art. 5, § 75.)

130. Examination of Cattle.—The commissioner may cause a physical examination and a tuberculin test to be made by competent veterinarians of dairy cows whose milk is marketed in liquid form or manufactured into butter, cheese or other food for human consumption. Such examinations and tests may be made as frequently as available funds appropriated will permit, and as conditions, in the opinion of the commissioner, necessitate. An examination and test made by any qualified and approved veterinarian may be accepted by the commissioner. If, from such examination or test, any animal be deemed by the commissioner to be infected with tuberculosis or any other communicable disease or its condition be such as to render it undesirable for the production of milk or a menace to the health of other animals or persons, such animal shall be immediately removed from the herd, slaughtered or otherwise disposed of as the commissioner may prescribe. (C. L. 1923, c. 19, art. 5, § 78; L. 1927, c. 213.)

130a. Examination at Request of Owner; Segregation; Grading of Herds.—The owner of a herd of cattle kept for dairy or breeding purposes within the State may apply to the commissioner for examination of his herd by the tuberculin or other approved tests, subject to the following regulations: . . .

(4) Subject to the rules of the commissioner, an animal found to be diseased after such examination may continue to be used for breeding purposes but the milk from such animal shall not be used for any purpose until pasteurized at such temperature and for such period as the commissioner may prescribe.

(5) The young of any such diseased animal shall immediately be separated from its mother and shall not be permitted to receive or be fed the milk from such affected animal until such milk has been pasteurized as provided in subdivision four of this section. . . . (C. L. 1923, c. 19, art. 5, § 79.)

131. Assistance of Local Officers in Enforcing Article.—The commissioner* may call upon the sheriff, under-sheriff or deputy sheriff in a county to carry out and enforce the provisions of any notice, order or regulation which he may make pursuant to this article, and every such officer shall obey every order and instruction received from him in the premises. The expense incurred by any such officer in carrying out and enforcing the provisions of such notice, order or regulation shall be a State charge, to be audited by the commissioner and paid from the treasury on the warrant of the comptroller in the same manner as other State charges are paid, notwithstanding the provisions of any local or special act fixing or limiting the compensation or expenses payable by the county to its sheriff, under-sheriff or a deputy sheriff. If a city or part thereof be included in any notice, order, rule or regulation of the commissioner made under this article, the commissioner may call upon the commissioner of public safety or the police department of such city to enforce the same within the city or portion thereof affected; and the commissioner of public safety or police department shall obey every order or instruction so made or issued; and the expenses incurred therefor shall be a State charge. (C. L. 1923, c. 19, art. 5, § 93; L. 1927, c. 207, § 21.)

132. Commissioner and Employees Are Peace Officers.—For the purpose of enforcing the provisions of this article, the commissioner,* assistant commissioners

*Commissioner of Agriculture and Markets. See Nos. 2 and 52 et seq.

and other officers and employees of the department* shall be deemed peace officers and have all the rights and powers of peace officers. (C. L. 1923, c. 19, art. 5, § 94.)

133. Definition; Licenses; Application.—When used in this chapter, the terms "milk gathering station," "manufactory" or "plant" shall include a place where milk or cream is received from producers for sale or resale or for manufacture, with or without facilities or equipment for the preparation of milk or cream for market or for manufacture; and shall also include an office or other place of business where milk or cream is purchased from producers for sale or resale or for manufacture, with or without physical facilities in connection therewith for the receiving or the physical handling of milk or cream.

No person or corporation buying milk or cream from producers shall operate a milk gathering station, manufactory or plant where milk or cream is received or purchased from producers for sale or resale, or for manufacture, unless licensed by the commissioner. Application, upon a form prescribed by the commissioner, shall be made on or before August first in each year, for the license year beginning September first following. The applicant shall satisfy the commissioner of his or its character, financial responsibility and good faith in seeking to operate a milk gathering station, manufactory or plant. The commissioner if so satisfied shall issue to such applicant, on payment of ten dollars, a license entitling the applicant to operate milk gathering stations, manufactories or plants within the State until the first day of September next following. The license may designate the place or places where such milk gathering stations, manufactories or plants are to be operated. A license shall not be issued unless the applicant shall execute and file with the application a bond, or shall be relieved from filing of bond as provided in the next section. (C. L. 1923, c. 19, art. 21, § 252; L. 1927, c. 416.)

134. Bond; Form; Enforcement of.—The bond required by the last section shall be upon a form prescribed by the commissioner, shall be in the sum of not less than five thousand dollars, shall be executed by a surety company authorized to do business in this State, and shall be conditioned for the faithful compliance by the licensee with the provisions of this chapter, and for the prompt payment of all amounts due to producers who have sold milk or cream to such licensee, during the period that the license is in force. The bond shall be approved by the commissioner.

Upon default by the licensee in the payment of any money due for the purchase of milk or cream, the creditor may file with the commissioner, upon a form prescribed by him, a verified statement of his claim. If such creditor shall have reduced such claim to judgment or shall thereafter reduce such claim to judgment, a transcript of such judgment shall also be filed with the commissioner.

Upon default by the licensee in any of the conditions of the bond, an action upon the bond shall be brought by the commissioner. All moneys collected upon such bond shall be applied by the commissioner, first, to the payment ratably of all verified claims promptly filed with the commissioner after reasonable notice to present claims arising during the license period in connection with which the bond was given and the balance shall be paid into the State treasury.

A licensee shall from time to time, when required by the commissioner, make and file with the commissioner a verified statement of his or its disbursements during a period to be prescribed by the commissioner, containing the names of the producers from whom milk and cream were purchased, and the amount due to the vendors thereof. If it appears from such statement or from facts otherwise ascertained by the commissioner that the security afforded to producers selling milk and cream to such licensee by the bond does not adequately protect such producers, the commissioner may require such licensee to give an additional bond in a sum to be determined by the commissioner, but not exceeding by more than twenty-five per centum the value of the maximum amount of milk and cream purchased from producers in any one month, and not exceeding in any event one hundred thousand dollars.

If the applicant for a license under this section be a person or a domestic corporation, the commissioner may, if satisfied from an investigation of the financial condition of the applicant that the applicant is solvent and possessed of sufficient assets to reasonably assure compensation to probable creditors, by an order filed in the department, relieve such person or corporation from the provisions of this section requiring the filing of a bond. (Id. § 253.)

135. Power of Commissioner to Investigate.—The commissioner shall have power to investigate the record of any person or corporation applying for or holding a license, or any transaction in connection with the operation of a milk gathering station, manufactory or plant as provided in this article; and for such purpose may examine the books of account or other documents or records of any applicant or

*Department of Agriculture and Markets. See Nos. 2 and 52 et seq.

licensee and may take testimony therein under oath; but information relating to the general business of any applicant or licensee disclosed by such investigation and not relating to the immediate purpose thereof shall be deemed of a confidential nature by the commissioner. (Id. § 254.)

136. Granting and Revoking Licenses.—The commissioner may decline to grant a license or may revoke a license already granted when he is satisfied of the existence of the following cases or either of them:

1. Where the applicant or licensee has made a general assignment for the benefit of creditors or has been adjudged a bankrupt, or is insolvent.

2. Where a money judgment has been secured against the applicant or licensee by any milk or cream producer and remains unsatisfied of record.

3. Where there has been a failure to make prompt settlements to producers from whom he buys milk or cream.

4. Where there have been combinations to fix prices.

5. Where there has been a continued course of dealing of such nature as to satisfy the commissioner of the inability or unwillingness of the applicant or licensee to properly conduct the business or of an intent to deceive or defraud customers, producers or consumers.

Where there has been a continued failure to keep records required by the commissioner or by law.

6. Where the licensee has been duly required to give an additional bond and has failed so to do.

The commissioner, before revoking or determining to revoke any license issued under the provisions of this article shall give the licensee ten days notice, personally or by mail, of the time and place of a hearing to determine whether such license shall be revoked. At such hearing the commissioner shall receive evidence and hear the licensee and shall thereafter file an order either dismissing the proceeding or revoking such license. (Id. § 255.)

137. Certiorari to Review.—The action of the commissioner in refusing to grant a license, or in revoking a license, shall be subject to review by writ of certiorari. (Id. § 256.)

138. Records to be Kept by Licensee.—Every operator of a milk gathering station shall keep, in such form as the commissioner may prescribe, a record of transactions of purchases of milk or cream by him. (Id. § 257.)

139. Offenses.—No operator of a milk gathering station, manufactory or plant where milk or cream is received from producers for sale or resale or manufacture shall (a) fail to make prompt payments for milk or cream purchased, or (b) make any false or misleading statement or statements enumerated in this article, or (c) enter into any combination to fix prices or (d) fail to conform to any requirement of or violate any provision of this chapter.

Each day's operation by a person or corporation buying milk or cream from producers without a license of a milk gathering station, manufactory or plant where milk or cream is received from producers for resale or manufacture shall constitute a separate violation of this chapter. (Id. § 258.)

140. Unlawful Detention of Milk Cans.—No person shall, without the consent of the owner or shipper, or his agent, use, sell, dispose of, buy or traffic in any can, irrespective of its condition, or the use to which it may have been applied, belonging to any dealer in or shipper of milk or cream in this State or which may be shipped to any town, village or city in the State, which can has the name or initials of such owner, dealer or shipper stamped, marked or fastened thereupon, or willfully mar, erase or change by re-marking or otherwise such name or initials.

If any person, without the consent of such owner, dealer or shipper, or his agent, uses, sells, disposes of, buys, traffics in or has in his possession or under his control any such can, it shall be presumptive evidence that such use, sale, disposal, purchase, traffic or possession is unlawful.

Any such owner, dealer or shipper, or his agent, may take possession of any can used in violation of this article wherever found, and if filled or partly filled with milk or cream, and the person in whose possession it is found does not, when requested, immediately empty the same, such owner, dealer or shipper, or his agent, may empty the same into the street or elsewhere, and shall not be liable for damages for any act done pursuant to the provisions of this article. (C. L. 1923, c. 21, art. 17, § 270.)

141. Penalty and Action to Recover.—Any person violating any provision of this article shall forfeit to such owner or dealer or shipper or his agent the sum of fifty dollars for every such violation, and an action may be brought therefor in the name of any such agent without joining the real party in interest that he represents, and in any such action brought for any such violation different persons may be joined as plaintiffs, whether jointly or severally interested therein, and different persons may be joined as defendants therein who have severally violated any such provisions, and a

recovery may be had in favor of one or more of such plaintiffs against one or more of such defendants.

Such action may be brought in a court of record having jurisdiction thereof, and the place of trial thereof shall in such case be laid in the county where the defendant resides at the time of the commencement thereof, or it may be brought in a justice's court or other court not of record having similar jurisdiction, in the town, city or county of which such court is constitued* and in which the defendant resides at the time of the commencement of the action. Any such action must be begun within one year after the cause of action accrued.

The municipal court of the city of New York shall have jurisdiction over actions brought under the provisions of this article against residents of said city and such court and the judges thereof shall in such actions have and exercise all the powers now conferred by said article on courts not of record, and the marshals of said court shall have to like extent the powers of constables provided in said article. (Id. § 271.)

142. Search Warrant.—If at the time of the issue of the summons in a court not of record, the plantiff or his agent make affidavit that he has reason to believe and does believe that any defendant has any such can or cans secreted upon his premises, the justice or other magistrate or court issuing the summons must, without requiring an undertaking, grant an order for the arrest of the defendant, which order shall also contain a direction to the officer to whom the same is issued, to immediately search the place or premises mentioned in said affidavit, and if any such can or cans are there found, to bring the same together with the defendant or other persons in whose possession said can or cans are found, before such justice, magistrate or court. The proceedings may be amended at any time by adding parties or otherwise as justice may require; and the judgment may provide for the disposition of the can or cans so found.

If upon the issue of any such process, the constable, or other officer, shall be unable to find the person or persons therein named, but shall find any can or cans, as therein set forth, he shall bring such can or cans before such justice or magistrate, who shall thereupon proceed to determine the right of such complainant thereto, and if upon such hearing had thereon he shall be satisfied that such can or cans rightfully belong to such complainant, or that he is entitled to the possession thereof, he shall forthwith deliver the same into his possession or the possession of his agent. (Id. § 272.)

143. Railroad or Steamboat Company May Act as Agent of Owner.—The several superintendents of the railroad companies, and the branches and connections thereof, and steamboat lines operating their roads or lines, or any portion thereof, in this State shall have power to collect, gather and take into possession from any person or whenever found thereupon, any cans belonging to any such owner, dealer or shipper, and return the same to such owner, dealer or shipper and may appoint an agent for that purpose, and such superintendent and such agent appointed by him shall have the same power and authority under this article as an agent of such owner, dealer or shipper.

The certificate of such superintendent appointing such agent duly acknowledged shall be presumptive evidence of the appointment and authority of such agent. (Id. § 273.)

144. Assistance of Policeman or Constable.—Any person authorized by this article to seize and take into his possession any such cans may, in case of resistance, call to his aid any police officer or constable of the town, village or city who shall when so called on assist him in seizing or taking possession of such cans. (Id. § 274.)

145. Skimmed Milk.—A person who sells or offers for sale, milk from which the whole or a part of the cream has been skimmed or removed, without disclosing the fact, or having a mark or label, plainly and legibly stating the fact, conspicuously affixed to every can or vessel containing the same, under circumstances not constituting an offense, for the punishment of which provision is otherwise specially made by statute, is guilty of a misdemeanor.† (C. L. 1923, c. 41, art. 40, § 438.)

NOTE: See also Nos. 1 et seq., 22, 26, 29, 38, 68b-68c, 78, 84, 86 et seq., 162 et seq., 327 et seq., 330 et seq., 355 and 358.

Eggs.‡

146. Eggs; Sale for Food by Grades or Standards; Consumer; Definition.—No person, and the term "person" in this statute shall include an individual, partner-

*So in original.

†See No. 68a.

‡For administrative provisions, see No. 1 et seq.

ship, corporation or association, shall either as producer, wholesaler, commission merchant, jobber or retailer, sell, or offer to sell, or expose for sale for human consumption any eggs in the shell or otherwise which are unfit for human food. From and after the establishment of specific grades or standards of quality and size or weight of eggs by the Commissioner of Agriculture and Markets as provided in the next section, eggs for human consumption shall not be sold or exposed for sale except by the grades or standards so established.

The term "consumer" whenever used in this statute shall mean any person purchasing eggs for his or her own family use or consumption, or a restaurant, hotel, boarding house, bakery or other institution purchasing eggs for serving to guests or patrons, or for its or their use in cooking or baking. (C. L. 1913, c. 19, art. 13a, § 160-a; L. 1927, c. 409.)*

147. Establishment of Grades or Standards.—It shall be the duty of the State Department of Agriculture and Markets to enforce the provisions of this article and the Commissioner of Agriculture and Markets is hereby vested with full power to establish forthwith and from time to time specific grades or standards of quality and size or weight to govern the sale of eggs to the consumer, and to establish different grades or prescribe different terms indicative of size or weight, quality and manner of preparation of eggs for human consumption for use in sales between the producer and wholesaler, between the wholesaler and jobber, and between the wholesaler or jobber and the retailer. The Commissioner of Agriculture and Markets shall have full authority to make rules and regulations for carrying out and enforcing the provisions of this act, provided however, that the grades or standards of quality established by him shall not permit the sale of any eggs for human consumption of poorer quality than permitted by the lowest grade or standard for edible eggs established from time to time by the United States Secretary of Agriculture. All rules, regulations and standards of quality and size or weight established under the authority of this statute shall have the force of law and shall be filed and open for public inspection in the office of the State Department of Agriculture and Markets. (Id. § 160-b.)

148. Retail Sale by Grade or Quality; Fresh Eggs; Definition.—It shall be unlawful for any person to sell, or offer to sell or expose for sale to a consumer any eggs intended for human consumption other than those of his own production without notifying by suitable sign or label the person or persons purchasing or intending to purchase the same of the exact grade or quality of such eggs, according to the standards prescribed by the Commissioner of Agriculture and Markets.

No person shall sell, offer for sale, or advertise for sale as fresh eggs, strictly fresh eggs, hennery eggs, or new-laid eggs, or under words or descriptions of similar import, any eggs which are not fresh. No egg shall be deemed to be fresh which does not meet the standards of quality of fresh eggs established by the Commissioner of Agriculture and Markets. The method for determining adherence to the said standards of quality shall be that commonly known as "candling." (Id. § 160-c.)

149. Sales; Misrepresentation.—No person shall sell or offer for sale, or advertise for sale, eggs for human consumption if the package containing them or the label on them, or any advertising accompanying them, shall bear any statement or device regarding the eggs which may be false or misleading in any particular. (Id. § 160-d.)

150. Making and Filing of Invoice.—Every person, other than the producer, in selling eggs to a retailer, shall furnish to such retailer an invoice showing the exact grade or quality of such eggs according to the standards prescribed by the Commissioner of Agriculture and Markets. A copy of such invoice shall be kept on file by the person selling and the retailer at their respective places of business for a period of sixty days, and shall be available and open for inspection at all reasonable times by the State Department of Agriculture and Markets. (Id. § 160-e.)

151. Fines and Penalties.—Every person, partnership, corporation or association violating any of the provisions of this statute or any rule or regulation adopted hereunder by the Commissioner of Agriculture and Markets with respect to the sale of eggs for human consumption shall be subject to a penalty in the sum of not less than twenty-five dollars nor more than one hundred dollars for the first violation, nor more than two hundred dollars for the second violation, nor more than three hundred dollars for the third violation. Every violation shall be a separate and distinct violation, and each violation shall be a misdemeanor punishable in addition to any penalty with a fine of not more than five hundred dollars or imprisonment for not less than thirty days nor more than ninety days or both such fine and imprisonment. All actions for penalties shall be brought by the Attorney-General in the name of the people of the State and criminal proceedings

*For penalty for violation of chapter 19, see No. 38 et seq.

shall be brought by the Attorney-General or the district attorney, and all fines and penalties shall be paid into the treasury of the State. (Id. § 160-f.)

152. Effect of Article.—Notwithstanding the provisions of any other statute, from and after its enactment this statute shall exclusively control the keeping and sale of eggs in this State for human consumption, but nothing herein shall be deemed to repeal the provisions of article seventeen of the Agriculture and Markets law* with respect to the adulteration, packing and branding of food and food products. (Id. § 160-g.)

NOTE: See also Nos. 86 et seq. and 162 et seq.

Feeding Stuffs.†

153. Term "Concentrated Commercial Feeding Stuffs" Defined.—The term "concentrated commercial feeding stuffs" as used in this article shall apply to no materials other than those known as concentrates, and shall include linseed meals, cottonseed meals, pea meals, bean meals, peanut meals, cocoanut meals, gluten meals, velvet bean meals, soya bean meals, dried yeast grains, dried vinegar grains, corn germ meal, feeding molasses, gluten feeds, cotton seed feeds, maize feeds, velvet bean feeds, peanut feeds, dried distillers' grains, dried brewer's grains, malt sprouts, except as hereinafter provided, hominy feeds, rice meals, corn and oat chops, corn feed meal, corn bran, corn and cob meal, wheat bran, wheat middlings, wheat feed, rye feed, rye middlings, buckwheat middlings and buckwheat feed, ground beef or fish scraps, meat meals, meat and bone meals mixed, dried blood, milk by-products, mixed feeds, compounded feeds, condimental stock and poultry feeds, proprietary or trademarked stock and poultry feeds, and all other materials of a similar nature; but shall not include the materials defined in this article as roughages, the whole seeds nor pure whole grains ground together nor the unmixed meals, made directly from the entire grains of wheat, rye, barley, oats, corn, buckwheat and broom corn, nor malt sprouts, when sold as such by the maltster at retail, nor ground or cracked bone not mixed with any other substance, nor shall it include poultry feeds consisting of whole or whole and cracked grains mixed together, with or without grit, oyster shells or charcoal, when all the ingredients may be identified by the naked eye. (C. L. 1923, c. 19, art. 8, § 128.)‡

154. Term "Roughages" Defined.—The term "roughages," as used in this article, shall include dried and ground hays and straws, dried and ground corn stalks or other parts of the corn plant not included in the grain, dried beet pulp, oat hulls, barley hulls, clipped oat by-product, sorghum plant by-products and flax plant by-products, cotton seed hulls, buckwheat hulls, cocoa shells, grain screenings or other materials of a similar character. This shall not include whole ground grains not mixed with any other substance. (Id. § 129.)

155. Prohibiting Sale of Certain Compounded Feeds.—No person shall sell, offer or expose for sale any concentrated commercial feeding stuffs containing peanut shells, peanut hulls, rice hulls, rice chaff, rice straw, humus, peat, sphagnum moss, coffee hulls, chaff, sawdust, sand, ground corn cobs except in corn and cob meal unmixed with other materials, or ground cocoanut shells, or any substances injurious to the health of animals or having no feeding value; nor shall any person sell, offer or expose for sale any poultry feeds containing in excess of five per centum in the aggregate of gravel, grit, oyster shells and charcoal, nor more than five per centum in the aggregate of any two or more of them; nor shall any person sell, offer or expose for sale any concentrated commercial feeding stuffs containing cockle seed, mustard seed or other noxious or poisonous weed seeds the viability of which has not been destroyed, but the commissioner¶ shall have power to permit a uniform and reasonable tolerance in the amount of such seeds. (Id. § 130.)

156. Statements to be Attached to Packages; Contents; Analysis.—No manufacturer, firm, association, corporation or person shall sell, offer or expose for sale or for distribution in this State, any concentrated commercial feeding stuffs used for feeding live stock unless such concentrated commercial feeding stuffs shall be accompanied by or shall have affixed to each and every package in a conspicuous place on the outside thereof and near the top, a tag, the form of which shall be prescribed by the commissioner and which shall bear a plainly printed statement which shall certify as follows:

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*See No. 45 et seq.

†For administrative provisions, see No. 1 et seq.

‡For penalty for violation of chapter 19, See No. 38 et seq.

¶Commissioner of Agriculture and Markets. See Nos. 2 and 52 et seq.

1. The net weight of the contents of the package, except in the case of malt sprouts sold in packages containing uneven weights.

2. The name, brand or trade-mark.

3. The name and principal address of the manufacturer or person responsible for the placing of the commodity upon the market.

4. Its composition expressed in the following terms:

a. The minimum per centum of crude protein.

b. The minimum per centum of crude fat.

c. The maximum per centum of crude fibre, provided that the per centum of crude fibre may be omitted if it does not exceed five per centum.

d. If a compounded feed the name of each ingredient contained therein, but if any ingredient classified under concentrated commercial feeding stuffs be present in a smaller amount than five per centum of the whole, the minimum per centum or weight of such ingredient shall be given as part of the statement as herein provided.

e. If artificially colored, the name of the material used for such purpose.

f. In the case of meat products, the maximum per centum of phosphoric acid. If it contains more than ten per centum of phosphoric acid it shall be marked or designated "meat and bone scrap" or "meat and bone meal." If digester tankage contains more than ten per centum phosphoric acid, it shall be marked or designated "Digester meat and bone tankage."

g. In the case of molasses, the minimum per centum of sugar.

h. In case of compounded feeds containing roughages the percentage of total roughages when the total fibre content exceeds ten per centum with an allowance of two per centum of fibre content for variation.

i. In the case of mineral or inorganic compounds, mixed or unmixed, such as calcium phosphate, calcium carbonate or any other materials of similar inorganic character, the minimum percentage of each ingredient which is present in amounts greater than five per centum of the whole.

The statement to be placed upon the tag or sacks as herein provided shall be the same statement as that upon the application filed in the office of the commissioner by the applicant when applying for a license as required by section one hundred and thirty-two of this chapter.

Metal fasteners with sharp points shall not be used to attach a tag to the container if in the container there is a feeding stuff, irrespective of whether it be a concentrate as defined in this article or a feeding stuff exempt from the provisions of this article.

Where the feeding stuff is in white or light colored paper or cloth sacks, or in new sacks, the tag may be omitted, but the statement herein provided for shall be plainly and conspicuously printed upon each sack. If any such concentrated commercial feeding stuffs be sold, offered or exposed for sale in bulk, such printed statement shall accompany every car or lot. Any such feeding stuffs purchased in bulk and thereafter placed in sacks for the purpose of sale shall have tags attached to each sack giving the information as provided herein before being sold, offered or exposed for sale. Whenever any feeding stuffs are sold at retail in bulk or in sacks or other containers belonging to the purchaser, the seller, upon request of the purchaser, shall furnish the said purchaser the information contained in the certified statement provided herein. Whenever any dealer shall mix a concentrated commercial feeding stuff to a customer's order, he shall, upon request, give to the customer at the time of delivery of the feeding stuff a printed or written statement of all of the materials used and the weight of each. That portion of the statement required by this section relating to the quality and ingredients of feeding stuffs shall be deemed a guaranty; provided, however, that a licensee may change any ingredient in a licensed feeding stuff under the license issued by filing with the commissioner a fully written notice or statement of such change, provided that such change does not change the percentage of protein, fat or fibre guaranteed under such license, and that the statement on the sacks or tags shall be changed accordingly. (Id. § 131.)

157. Statements to be Filed With Commissioner; to be Accompanied by Sample and Affidavit When Requested.—Before any manufacturer, firm, association, corporation or person shall sell, offer or expose for sale in this State any concentrated commercial feeding stuffs, he or they shall, for each and every brand of concentrated commercial feeding stuffs, file annually, prior to the sale, offer or exposure for sale, with the commissioner a certified copy of the statement, with the exception of the net weight of the contents of the package, specified in section one hundred and thirty-one, said certified copy to be accompanied, when the said commissioner shall so request, by a sealed glass jar or bottle containing at least one pound of the feeding stuff to be sold or offered for sale, said sample to be accompanied by an affidavit that said sample corresponds to the feeding stuffs which it repre-

sents, in the per centum of crude protein, crude fat, crude fibre, and in case of meat products phosphoric acid, name of each ingredient contained therein, if a compound feed, the name of any artificial coloring materials used and the percentage of total roughages when the total fibre content exceeds ten per centum. (Id. § 132.)

158. License Fee.—Every manufacture, importer, agent or seller of any concentrated commercial feeding stuff shall pay annually prior to the sale, offer or exposure for sale, to the commissioner for remittance to the State treasury a license fee of twenty-five dollars for each and every brand to be sold, offered or exposed for sale, except that the license fee shall be ten dollars for each and every brand offered or exposed for sale upon the following concentrated commercial feeding stuffs, pure rye middlings, pure rye bran, pure rye mixed feed, pure buckwheat middlings, pure buckwheat feed and corn feed meal. Whenever a manufacturer, importer, agent or seller of any concentrated commercial feeding stuffs desires at any time to sell such material and has not complied with the requirements of the statute he shall before selling, offering or exposing the same for sale, comply with the requirements as here provided. Each manufacturer, importer or person who has complied with the provisions of this article shall be entitled to receive a certificate from the commissioner setting forth said facts. Such certificate shall expire on the thirty-first day of December of the calendar year for which it was issued, but no such certificate shall be issued for the sale of a brand of concentrated commercial feeding stuffs under a brand or trade name which is misleading or deceptive or which tends to mislead or deceive as to the constituents or material of which it is composed. Any such certificate so issued may be cancelled by the commissioner when it is shown that any statement upon which it was issued is false or misleading or if the manufacturer of the feeding stuffs which are manufactured, sold, offered or exposed for sale by the holder of such certificate shall refuse to allow access to the plant where the same is manufactured for the purpose of any inspection authorized by the provisions of this chapter, or if the manufacturer shall refuse to permit an examination of the plant where the particular brand of feeding stuffs so licensed is manufactured or the feeding stuffs and feeding stuff materials therein; provided, however, that a retailer having feeding stuffs in his possession for sale which he purchased during the time when the license was in force shall not be prohibited from selling the remainder of such goods on hand by virtue of the revocation of the license or by the fact that the year for which the license was issued has expired. Whenever a manufacturer, firm, association, corporation or person shall have filed the statement required by the last section and paid the license fee as prescribed in this section, no agent, seller or retailer of such brand of feeding stuffs shall be required to file such statement or pay such fee upon said brand during the year for which licensed, nor upon such goods so licensed remaining unsold in subsequent years which were purchased during the year for which it was licensed. For the purpose of this article, concentrated commercial feeding stuffs shall be considered as distinct and separate brands when differing either in guaranteed analysis, ingredients, name, brand or trade-mark. (C. L. 1923, c. 19, art. 8, § 133; Supp. 1926, Id.; L. 1927, c. 207, § 28.)

159. Commissioner to Take Samples for Analysis.—The commissioner shall at least once in each year analyze or cause to be analyzed at least one sample to be taken in the manner hereinafter prescribed, of the different concentrated commercial feeding stuffs sold or offered for sale under the provisions of this article. The said commissioner or his duly authorized representative in taking samples shall take them in duplicate in the presence of at least one witness, and in the presence of such witness shall seal such samples and shall at the time of taking tender, and if accepted, deliver one of such samples to the person apparently in charge of such feeding stuffs; the other sample the commissioner shall cause to be analyzed. The result of the analysis of the sample or samples so procured, together with such additional information as circumstances advise, shall be published in reports or bulletins from time to time. (C. L. 1923, c. 19, art. 8, § 134.)

160. Hearings Provided for.—It shall be the duty of the commissioner before publishing any definitions, rules or regulations covering the operation of this article, to provide for a public hearing on the subject matter thereof, and a written notice of such hearing shall be mailed at least ten days in advance of the date of the hearing to all manufacturers of, and dealers in commercial feeding stuffs who shall have filed with the commissioner a request for such notice. (Id. § 135.)

NOTE: See also Nos. 1 et seq. and 22.

Fish.

See Nos. 198-198a.

Fruit Juices.

161. Adulteration of Natural Fruit Juices.—Any person who shall knowingly sell, offer or expose for sale, or give away, any compound or preparation composed, in whole or in part, of any unwholesome, deleterious or poisonous acid, or other unwholesome, deleterious or poisonous substance, as a substitute for the pure, unadulterated and unfermented juice of lemons, limes, oranges, currants, grapes, apples, peaches, plums, pears, berries, quinces, or other natural fruits, representing such compound or preparation to be the pure, unadulterated and unfermented juice of any of such fruits; or who, in the mixing, decoction, or preparation of food or drink, shall knowingly use any such compound or preparation in the place of, or as a substitute for, the pure, unadulterated and unfermented juice of one or more of such fruits, shall be guilty of a misdemeanor, and, upon conviction, shall be punished by a fine of not more than two hundred and fifty dollars, or by imprisonment for not more than six months, or by both such fine and imprisonment. (C. L. 1923, c. 41, art. 166, § 1749.)

Fruits and Vegetables.*

162. Repacking Fruit and Farm Produce.—A person, firm or association who purchases fruit or farm produce in barrels, boxes or other packages, and empties, or causes to be emptied, such barrels, boxes or other packages, and repacks, or causes to be repacked therein the same or other fruit or farm produce, shall before any such repacked barrel, box or other package is sold, or offered or exposed for sale, erase or otherwise obliterate the name of the grower or producer, if found thereon. (C. L. 1923, c. 19, art. 17, § 213.)†

163. Definitions.—As used in this article. 1. The term "market" means any building, structure or place, the property of a city or under lease to or in the possession of a city, used or intended to be used as a public market for the buying, selling or keeping for sale of food, flowers or ornamental plants, or any part of a street, avenue, parkway, plaza, square or other public place assigned to or set apart by law or ordinance or other competent authority to be used for such purpose;

2. The term "market produce," includes food, flowers and ornamental plants. (C. L. 1923, c. 19, art. 22, § 259.)

164. Establishment of Department of Markets.—A department of markets may be established in a city under the provisions of this article, by resolution of the board of estimate and apportionment of the city, if there be such board, approved by the common council, board of aldermen or corresponding legislative body, or in a city having no such board of estimate and apportionment, by resolution of the common council, board of aldermen or corresponding legislative body of such city. Such department shall be under the control and management of a commissioner of public markets. He shall be appointed by and may be removed at the pleasure of the mayor of such city, and his compensation shall be fixed by the local authorities, if any, of such city, vested by law with the general power of fixing salaries therein, or if there be no such authorities, by the common council, board of aldermen or corresponding legislative body of the city. (Id. § 260.)

165. Appointment of Supervisors.—The Commissioner of Public Markets shall have the power to appoint supervisors, assistant supervisors and such other employees as he may deem advisable to supervise the sale of market produce from pushcarts and other vehicles in open air markets in such city. Such supervisors, assistant supervisors and other employees shall be appointed from lists to be furnished by the municipal service commission after competitive examinations for such positions pursuant to the civil service law. Such commission shall provide for and hold such examinations forthwith. Persons now holding such positions shall hold office until such time as such lists shall be completed and such appointments made therefrom. Such appointees shall receive such compensation as shall be within the appropriations made therefor by the appropriating body of such city. The powers and duties of such supervisors, assistant supervisors and employees shall be prescribed by the Commissioner of Public Markets. No vendor shall conduct business in any such open air market unless he first receive a permit from the Department of Public Markets. Such permit shall be issued by the commissioner, for such fee as the commissioner deems proper not to exceed the sum of one dollar per week for a vehicle. (Id. § 260-a.)

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*For administrative provisions, see No. 1 et seq.

†For penalty for violation of chapter 19, see No. 38 et seq.

166. Jurisdiction.—Upon the appointment of a commissioner of public markets in any city, the department of public markets therein shall have power, charge and control

1. Of the construction, repair, maintenance and management of all public markets, market places and market lands of such city, and of all buildings, structures and facilities thereon;

2. Of fixing fees for services, licenses and privileges and of renting space therein and entering into leases therefor, except as herein otherwise provided;

3. Of making rules for the government of the department and of the public markets, market places and market lands not in conflict with the rules of the council, and subject to the approval of the board of estimate of the city, or if there be no such board, of the common council, board of aldermen or other corresponding legislative body of such city;

4. Of granting or revoking licenses to auctioneers of food in such markets and of fixing a schedule of commissioners to be charged by auctioneers;

5. Of granting, transferring or revoking permits to buy or sell in such market or upon such market places or lands;

6. Of investigating any complaint in relation to the shipment of food to any public market of the city. (C. L. 1923, c. 19, art. 22, § 261; L. 1927, c. 207, § 38.)

167. Seal.—A department of public markets established in a city, pursuant to this article, may adopt a seal of which the courts of the State shall take judicial notice. (C. L. 1923, c. 19, art. 22, § 262.)

168. Transfer of Functions, Powers and Duties.—All the functions, powers and duties in respect of the management and control of public markets in a city which shall establish a department of markets, pursuant to this article, vested in and imposed on other departments, boards, commissions or officers of such city by any general law, city charter, or other law or ordinance, shall be transferred to, vested in and be performed by the departmnt of public markets of such city. (Id. § 263.)

169. Transfer of Officers and Employees.—Where existing powers and duties of a department, office, division, bureau, position or employment, or officer or employee of a city, are by this article conferred or imposed upon the department of public markets, the board of estimate and apportionment of such city, or if there be no such board, the common council, board of aldermen or corresponding legislative body, shall upon the establishment of the department of public markets designate from among the officers and employees exercising such powers and duties at the time of the appointment of the commissioner of public markets, the officers and employees to be transferred to the department of public markets. Such officers and employees shall be transferred, without change of salary, and shall be assigned to duty by the Commissioner of Public Markets. Service in the department, office, division, bureau, position or employment from which transferred shall for all purposes be counted as services in the Department of Public Markets. (Id. § 264.)

170. Transfer of Property, Records and Appropriations.—Where existing powers or duties of a department, office, division, bureau, position or employment, or officer or employee of a city are, by this article, conferred or imposed upon the Department of Public Markets, or transferred to the Department of Public Markets, all property, and such records, books, papers and documents relating to markets as the board of estimate and apportionment, or if there be no such board, as the common council, board of aldermen or other corresponding legislative body, shall from time to time determine, within the jurisdiction or control of the department, office, division, bureau, position or employment, or officer or employee now exercising such powers and duties, shall after the establishment of the Department of Public Markets be transferred and delivered to and belong to the Department of Public Markets. Upon the establishment of a department of public markets in a city, the board of estimate and apportionment, or if there be no such board, the common council, board of aldermen or other corresponding legislative body, may, in its discretion, transfer all or part of existing funds and unexpended appropriations made by the city to enable the department, office, division, bureau, officer or employee to exercise the powers and duties so transferred. (Id. § 265.)

171. Transfers of Markets.—All public markets, market places and market lands, existing and maintained as such by any city at the time of the creation therein of a department of public markets under this article, shall continue to be public markets and shall be transferred to the jurisdiction, charge and control of the Department of Public Markets. (Id. § 266.)

172. Dedication or Acquisition of Land for Public Markets.—The local authorities of a city in which a department of public markets shall be created under the provisions of this article, in whom is vested the power to assign lands of such city for public uses, may designate for use as public markets any lands owned by the city and not dedicated or devoted to another inconsistent use; or any space over the

waters of a navigable stream adjoining any dock or wharf of such city, provided such markets shall not interfere with the flow of water of such stream or extend beyond the pier or bulk head line established by law. Any such city may, with the approval of such local authorities and in such manner as may be authorized or provided by law for the acquisition of land for public purposes in such city, acquire land in such city for public market purposes, or if there be no law authorizing such acquisition, the board of estimate and apportionment of such city, or if there be no such board, the common council, board of aldermen or corresponding legislative body, may acquire land for such purpose by private purchase or by condemnation. (Id. § 267.)

173. State Aid for Public Markets.—(1) The commissioner of public markets of a city, in which a department of markets shall have been heretofore or shall hereafter be established as provided in this article, may when authorized by the city submit to the commissioner a proposal for the location and construction, repair or improvement of one or more public markets in such city with storage facilities for such market or markets and request that State aid be given for such purpose as provided in this section.

(2) The commissioner of public markets of such city shall submit such proposal by petition, in the form and manner prescribed by the commissioner. Such petition shall (a) give the location and describe in detail the lands owned by the city and dedicated or assigned for use as public markets, or lands to be acquired for such use, as provided by the last preceding section, upon which it is proposed to construct new public markets or to repair or improve existing public markets in such city; (b) describe the character of the proposed construction, repair or improvement; (c) state the estimated value of the lands dedicated or assigned, or to be acquired for use as public markets, and the estimated cost of the proposed construction, repair or improvement; (d) specify generally the public necessity for the acquisition of the lands described for public market purposes and for the construction, of new public markets on such lands, and for the construction, repair or improvement of public markets on lands already owned by the city and dedicated or assigned for use as public markets, and (e) set forth such other matters as may be required by the commissioner. The commissioner of public markets of such city shall submit with such petition detailed plans and specifications for the construction of the proposed new public market or markets, or for the repair or improvement of one or more existing public markets in such city.

(3) Upon the submission of such petition and plans and specifications, the commissioner shall cause an investigation to be made of the matters submitted in such petition, and shall determine as to whether or not a public necessity exists for the acquisition of lands and the construction, repair or improvement of public markets in such city. The commissioner shall visit and inspect the locations of the lands proposed to be acquired or already acquired and dedicated or assigned for use as public markets, and shall determine as to the suitability of such lands for public market purposes and as to the propriety of constructing, repairing or improving public markets thereon. The commissioner shall also examine the plans and specifications for the proposed construction, repair or improvement of such public markets, and determine whether such public markets should be constructed, repaired or improved in accordance with such plans and specifications. The commissioner may recommend such modifications or alterations of such plans and specifications as he may deem advisable and return the same to the commissioner of public markets of such city.

(4) If the commissioner approve the location of the proposed new public markets and the plans and specifications of the public markets to be erected thereon, or in the case of existing public markets, if the commissioner approve of the proposed repair or improvement and of the plans and specifications therefor, he shall issue a certificate of such fact to the commissioner of public markets of such city and shall state therein the maximum amount which in his opinion should be expended for the acquisition of the lands for the proposed new public markets and for the construction of public markets thereon, or in case of the repair or improvement of existing public markets, the maximum amount which should be expended for such repair or improvement.

(5) If it is proposed to erect new public markets on lands owned by the city and dedicated or assigned for use as public markets, or to repair or improve existing public markets, the commissioner shall appraise the value of such lands or of such existing public markets and shall issue a certificate of the value as so appraised to the commissioner of public markets of such city.

(6) If the lands described in such petition, the location of which shall have been approved by the commissioner, are acquired by the city as provided in this article and dedicated or assigned for use as public markets, and new public markets are

constructed upon such lands in accordance with plans and specifications which have been approved by the commissioner, or if new public markets are constructed upon lands already owned by the city and dedicated or assigned for use as public markets, in accordance with plans and specifications so approved by the commissioner, or if existing public markets are repaired or improved in accordance with plans and specifications so approved by the commissioner, one-half of the maximum amount certified by the commissioner as above provided, shall be paid by the State out of moneys appropriated or made available therefor as provided by law. The remainder of the cost of the acquisition of such lands and of the construction, repair or improvement of public markets thereon, shall be paid by the city.

(7) If the commissioner shall approve of the proposed locations of lands dedicated or assigned, or to be dedicated or assigned, for public markets in such city, and shall have approved as herein provided of the plans and specifications for the construction, repair or improvement of such public markets, all conveyances or transfers of such lands to the city shall be approved as to their form and sufficiency by the commissioner, and all contracts for the construction, repair or improvement of public markets in accordance with the plans and specifications approved by the commissioner as herein provided, shall before they become effectual be submitted to and approved by such commissioner. No payments shall be made by the State as provided herein unless the commissioner shall have approved such conveyances, transfers and contracts as above provided.

(8) The portion of the expenditures for the acquisition of lands for public markets and for the construction, repair and improvement of public markets, which is to be paid by the State shall be paid to the city by the State out of moneys appropriated or available therefor, upon the certificate of the commissioner on the warrant of the comptroller. The moneys so paid shall be applied by the city exclusively for the payment of the cost of the acquisition of the lands acquired by the city and dedicated for public markets, and for the construction, repair and improvement of public markets thereon in accordance with the provisions of this section.

(9) Upon the acquisition of lands by the city and the dedication or assignment thereof for use as public markets, and the completion of the construction of new public markets thereon or of the repair and improvement of existing public markets as provided herein, such public markets, if the State contributed financial aid to the establishment thereof, upon specific request, as herein provided, shall be under the direction of the department of public markets of the city, subject to the supervision and control of the commissioner, such supervision and control to be exercised only when and to the extent that the commissioner deems necessary for the safeguarding of the interests of the State in such markets. The commissioner of public markets shall submit to the commissioner a report at least once in each period of three months, or oftener if required by the commissioner, containing a statement of the fees and other receipts collected for the use of the public markets, for the construction, repair or improvement of which the State has contributed as provided herein. The commissioner shall prescribe the form of such reports and may inspect through officers, employees or agents of the department the books and accounts of the commissioner of markets of such city, for the purpose of dedetermining the amount received for the use of such public markets. The commissioner of public markets in such city semi-annually shall pay to the department such proportion of the net receipts collected for the use of such public markets, including services, licenses and privileges and of the renting space therein, as the payments by the State under the provisions of this section, for the acquisition of lands for public markets and the construction, repair or improvement of public markets, bear to the total amount expended for the acquisition of such lands and the construction, repair or improvement of public markets, including the appraised value of lands owned by the city and of existing public markets so repaired or improved. The net receipts shall be ascertained by deducting from the gross receipts the expenses of operating such markets according to rules of the department. The amount so paid to the department shall be turned into the State treasury to the credit of the general fund.

(10) It shall be the duty of the commissioner to prepare and submit to the Legislature a plan of apportionment of all moneys to be appropriated by the State to the several cities so that expenditures under this article shall be available to such cities on an equitable basis.

(11) The governing board of a town or village of ten thousand inhabitants or over may establish a department of markets for such municipality, with the powers, duties and jurisdiction of a department of markets in a city, as prescribed in this article, and may appoint a commissioner of public markets to be head of such department, and fix his compensation, or may provide for the supervision of the

department by such governing board or by a designated official or officials of the town or village. When a department or [of] markets shall have been so established in such a town or village the provisions of this section shall apply to such municipality in the same manner and to the same effect that they apply to cities; and references in this section to a city and to the commissioner of public markets thereof shall be deemed to include respectively, a town or village in which a department of markets shall have been established and the commissioner of public markets thereof, the governing board of the town or village or the designated official or officials in charge of such department, as the case may be. (C. L. 1923, c. 19, art. 22, § 268; Supp. 1926, Id.; L. 1927, c. 207, §§ 39-40.)

174. Rules.—The commissioner of public markets of a city may make, amend or repeal rules for the government, regulation, control, discipline and conduct of

1. The business of the department;

2. The repair, care and use of markets, and concerning fees, the hours during which business shall be conducted, and the general management of the markets;

3. All vehicles, including pushcarts, from which market produce shall be sold;

4. All auctions conducted in such markets, and all auctioneers doing business therein;

5. The establishment of standards or grades for different classes of market produce, not inconsistent with law or with the rules of the department;

6. The receipt, handling, storage and sale at public auction of market produce, consigned to auctioneers in the markets; the deduction of commissions and other authorized charges by such auctioneers, and the transmission by such auctioneers of the balance to consignors. (C. L. 1923, c. 19, art. 22, § 269; L. 1927, c. 207, § 41.)

175. When Rules to Take Effect; Punishment for Violation.—Such rules shall be in force and effect upon the approval thereof by the board of estimate and apportionment of such city, or if there be no such board, by the common council, board of aldermen or other corresponding legislative body, and upon their publication for at least ten days subsequent to such approval in such newspaper as may be designated by or pursuant to law for the publication of municipal notices of such city, or if there be no such newspaper, in a newspaper designated by the mayor. Such rules shall not be in conflict or inconsistent with the rules of the department adopted as provided in this chapter. A violation of such rules or the orders of the commissioner of public markets, which he is hereby authorized to issue in pursuance thereof, shall constitute a violation of this article and the commissioner of markets may revoke or suspend the license or permit of the offender to do business in any market heretofore issued by any other officer or hereafter issued by the department of public markets. (C. L. 1923, c. 19, art. 22, § 270; L. 1927, c. 207, § 42.)

176. Renting of Stalls and Stands.—All stalls and stands in such markets or upon such market places or lands shall be rented on permits issued by the commissioner of public markets or by an officer or employee designated by him for that purpose. (C. L. 1923, c. 19, art. 22, § 271.)

177. Inspection of Food.—The consignor or consignee of any food consigned to a tenant, occupant or licensee of space in any such public market shall be entitled to have the same examined by a market inspector when it shall have been received at any such market. The inspector shall immediately report a detailed description, in writing, of the consignment and the condition thereof at the time of his examination to the officer in charge of the market at which the same was received, who shall issue a certificate as to the condition of the consignment, when received, and send copies without delay to the consignor and consignee. Such certificate shall be presumptive evidence of the facts stated therein in any court of the State. (Id. § 272.)

178. Acting as Auctioneer Without License Prohibited.—No person shall carry on hereafter the business of auctioneer of any food in the public markets of any city in which a department of public markets shall have been established under this article without having first obtained a license from such department. (Id. § 273.)

179. License of Auctioneers.—The Department of Public Markets shall grant licenses to any person of good character and engaged in the business of auctioneer of one or more kinds of food, on the payment by such person of a license fee of one hundred dollars per annum in cities of the first class, fifty dollars per annum in cities of the second class, and twenty-five dollars per annum in cities of the third class; and the filing of a bond to be approved by the department, with sufficient surety or sureties in the penal sum of five thousand dollars in cities of the first class, twenty-five hundred dollars, in cities of the second class, and one thousand dollars, in cities of the third class, conditioned to save harmless any person with whom such auctioneer shall have official relations in connection with his duties as auctioneer of public markets. An auctioneer licensed under this section shall not be personally interested, directly or indirectly, in the sale of food, except as auctioneer and to the extent of his legal fees and charges as such. (Id. § 274.)

180. Suspension or Revocation of License of Auctioneer.—The Department of Public Markets, on complaint of any person of misconduct on the part of any such auctioneer or his agent or employee, may grant a hearing thereon and, if the charge be sustained, suspend or revoke the license granted to such auctioneer. (Id. § 275.)

181. Disposition of Consignment of Food.—Food may be consigned to such farmer's agents as may be authorized to occupy space in any public market, or may be consigned directly to auctioneers licensed by the department of public markets for sale at auction, and such consignment to auctioneers shall be sold as soon as possible after receipt thereof. The city shall not be liable for loss of or injury to any such consignment or part thereof because of any act or omission on the part of any such agent or auctioneers. The department of public markets may provide space and accommodation for the care of all such consignments, and entries of the receipt and sale thereof shall be made by the auctioneer showing the name of the consignor, the name and address of each purchaser of any part thereof, and the amount or amounts received therefor. The auctioneer shall deduct all proper charges against such consignment and his commission as fixed by the schedule established by the rules of the department of public markets, and he shall thereupon transfer the balance of the proceeds of such sale or sales to the consignor. (Id. § 276.)

182. Bureau of Information.—The department of public markets of a city may organize and maintain a bureau of information for the use and convenience of purchasers and consumers, and for general information as to the supply and prices of food, and such information tending to facilitate and cheapen food distribution as the department may deem expedient. (Id. § 277.)

183. Limitation of Article.—Nothing in this article shall abridge the powers of local boards or departments of health. (Id. § 278.)

184. Establishment of Department of Markets for County or for County and City.—The board of supervisors of a county not wholly within a city may establish a department of markets for such county, and may appoint a commissioner of public markets to be the head of such department, and fix his compensation, or may provide for the supervision of the department by the board of supervisors or by a designated official or officials of the county, or may, jointly with the authorities of a city in such county who are authorized by this article to establish a department of markets in such city, establish a department of markets for such county and city, and may agree with such authorities upon the manner of appointment and compensation of a commissioner of public markets to be the head of such department, and upon the amount of the compensation of such commissioner and the expense of the establishment and maintenance of such department to be borne by the county and city, respectively. A department of markets so established for a county or for a county and city shall have all the powers, duties and jurisdiction of a department of markets in a city as prescribed in this article, and all the provisions of this article shall apply thereto in the same manner and to the same effect so far as practicable as a department of markets in a city. A provision of this article referring to the authorities of a city having jurisdiction of a department of markets therein shall, in respect of the department of markets of a county, be deemed to refer to the board of supervisors of the county, in respect of a department of markets for a county and city shall be deemed to refer to the authorities of such city which would have jurisdiction of a department of markets if established therein and the board of supervisors of the county joining in the establishment of such market, and if action is authorized or required, by the provisions of this article, to be taken by the authorities of such a city, such action in respect of such county and city market or department of markets shall be taken jointly by such authorities and by the board of supervisors of the county. (Id. § 279.)

NOTE: See also Nos. 1 et seq., 22, 24, 29, 68b-68c, 69 et seq., 84-85, 86 et seq., 161, 354, 357-358, and 365.

Grain.

See No. 365.

Honey.*

185. Defining Honey.—The terms "honey," "liquid or extracted honey," "strained honey," or "pure honey," as used in this article, shall mean the nectar of flowers that has been transformed by, and is the natural product of the honey-bee, taken from the honeycomb and marketed in a liquid, candied or granulated condition. (C. L. 1923, c. 19, art. 17, § 205.)†

*For administrative provisions, see No. 1 et seq.

†For penalty, see No. 38 et seq.

186. Relative to Selling a Commodity in Imitation or Semblance of Honey.—No person or persons shall sell, keep for sale, expose or offer for sale, any article or product in imitation or semblance of honey branded as "honey," "liquid or extracted honey," "strained honey" or "pure honey" which is not pure honey. No person or persons, firm, association, company or corporation, shall manufacture, sell, expose or offer for sale, any compound or mixture branded or labeled as and for honey which shall be made up of honey mixed with any other substance or ingredient. There may be printed on the package containing such compound or mixture a statement giving the ingredients of which it is made; if honey is one of such ingredients it shall be so stated in the same size type as are the other ingredients, but it shall not be sold, exposed for sale, or offered for sale as honey; nor shall such compound or mixture be branded or labeled with the word "honey" in any form other than as herein provided; nor shall any product in semblance of honey, whether a mixture or not, be sold, exposed or offered for sale as honey, or branded or labeled with the word "honey," unless such article is pure honey. (Id. § 206.)*

Hops.†

187. Standard Weight of Hop Bales and Tare Thereon.—A bale of hops sold in this State shall not weigh less than one hundred and seventy-five nor more than two hundred and ten pounds. The tare to be deducted is five pounds. The standard weight of sacking for bailing is not less than twenty-four nor more than thirty ounces for each yard; five yards thereof is the maximum quantity to be used for each bale, and any excess in the weight of such sacking or other extraneous matter used in bailing may be deducted as additional tare. (C. L. 1923, c. 19, art. 18, § 215.)‡

188. Bales of Hops to be Marked.—Every person putting up hops for sale or exportation shall mark or stamp on each bale or other package containing the same, in a legible manner, the initial letter of his christian name, and his surname at full length, and the gross weight of such bale or package, before its removal from the place where the hops are put up. (Id. § 216.)‡

189. Adulteration of Hops Prohibited; Counterfeiting Marks.—No person shall intermix with any hops any foreign or improper substance, or in any manner adulterate their quality.

No person shall counterfeit the marks on any bale or package of hops, or empty any bale or package of hops so marked, for the purpose of putting therein other hops for sale or exportation, without first erasing such marks. (Id. § 217.)‡

NOTE: See also No. 364.

Ice.

See Nos. 64, 68 and 346.

Maple Sugar—Maple Syrup.¶

190. Manufacture and Sale of Imitation Maple Sugar and Syrup Prohibited.—1. No person shall manufacture for sale, keep for sale, or offer or expose for sale, any sugar in imitation or semblance of maple sugar which is not pure maple sugar, nor any syrup in imitation or semblance of maple syrup, which is not pure maple syrup, nor shall any person manufacture, offer or expose for sale any sugar as and for maple sugar which is not pure maple sugar, nor any syrup as and for maple syrup which is not pure maple syrup.

2. For the purpose of this article the term "maple sugar" shall be deemed to mean sugar made from pure maple sap or pure maple syrup, and the term "maple syrup" shall be deemed to mean syrup made from pure maple sap. (C. L. 1923, c. 19, art. 17, § 203.)‡

191. Branding and Labeling of Maple Sugar and Syrup Mixtures.—No person shall manufacture, sell or expose for sale, any compound or mixture as and for sugar which shall be made up of maple sugar mixed with any other sugar or any other substance without branding or labeling the said sugar with a statement giving the ingredients of which it is made up. No person shall manufacture, sell, expose for sale or offer for sale any compound or mixture as syrup which shall be made up of maple syrup mixed with any other syrup or ingredient without branding

*For penalty, see No. 38 et seq.
†For administrative provisions, see No. 1 et seq.
‡For penalty, see No. 38 et seq.
¶For administrative provisions, see No. 1 et seq.

or labeling said syrup with a statement giving the ingredients of which it is made up. This shall not be construed to apply to a syrup or syrups manufactured and sold for medicinal purposes only. (Id. § 204.)*

Meal.

See No. 354.

Meat—Meat Products.†

192. Shipping, Slaughtering and Selling Veal for Food.—No person shall slaughter or expose for sale, or sell any calf or carcass of the same or any part thereof, unless it is in good healthy condition. No person shall sell or expose for sale any such calf or carcass of the same or any part thereof except the hide, unless it was, if killed, at least three weeks of age at the time of killing. No person or persons shall bring or cause to be brought into any city, town or village any calf or carcass of the same or any part thereof for the purpose of selling, offering or exposing the same for sale, unless it is in a good healthy condition, and no person or persons shall bring any such calf or carcass of the same or any part thereof except the hide into any city, town or village for the purpose of selling, offering or exposing the same for sale, unless the calf is three weeks of age, or, if killed, was three weeks of age at the time of killing, provided, however, that the provisions of this section shall not apply to any calf or carcass of the same or any part thereof, which is slaughtered, sold, offered or exposed for sale, for any other purpose than food. Any person or persons exposing for sale, selling or shipping any calf or carcass of the same will be presumed to be so exposing, selling or shipping the said calf or carcass of the same for food. Any person or persons shipping any calf for the purpose of being raised, if the said calf is under three weeks of age, shall ship it in a crate, unless said calf is accompanied by its dam. Any person shipping calves under three weeks of age for fertilizer purposes must slaughter such calves before such shipping. Any person or persons duly authorized by the commissioner may examine any calf or veal offered or exposed for sale or kept with any stock of goods apparently exposed for sale, and if such calf is under three weeks of age, or the veal is from a calf killed under three weeks of age, or from a calf in an unhealthy condition when killed, he may seize the same and cause it to be destroyed and disposed of in such manner as to make it impossible to be thereafter used for food. (C. L. 1923, c. 19, art. 5, § 91.)‡

193. Shipping Veal; Receiving Veal for Shipment by Common Carriers.—It shall be unlawful for any corporation, partnership, person or persons to ship to or from any part of this State any carcass or carcasses of a calf or calves or any part of such carcass except the hide, unless they shall attach to every carcass or part thereof so shipped, in a conspicuous place, a tag, that shall stay thereon during such transportation, stating the name or names of the person or persons who raised the calf, the name of the shipper, the place of shipping and the destination and the age of the calf. No person or persons shall mutilate or in any way disfigure such tag in such way as to conceal information given thereon or render the same illegible. No railroad company, express company, steamboat company or other common carrier shall carrry or receive for transportation any carcass or carcasses of calves, or any part of the same except the hide, unless the said carcass or carcasses or parts thereof shall be tagged as herein provided. (Id. § 92.)‡

194. Branding Pork.—Each barrel of pork shall be branded on one of its heads by its name, and contain either "mess pork," "prime pork" or "cargo pork." "Mess pork" consists of the sides of good, fat hogs, exclusive of all other pieces. "Prime pork" is pork of which there is in a barrel not more than three shoulders, the legs being cut off at the knee joint, not more than twenty-four pounds of heads which have the ears and snouts cut off, the snouts cut off to the opening of the jaws, and the brains and bloody gristle taken out of the heads; and the rest made up of side pieces, neck and tail pieces. "Cargo pork" is pork of which there is not in a barrel more than thirty pounds of head and four shoulders, and it shall be otherwise merchantable pork. "Side pork" so repacked, shall be cut from the back bone to the belly, in pieces about five inches wide, and which in weight are not under four pounds; otherwise, the barrels containing the same shall not be branded merchantable pork. (C. L. 1923, c. 19, art. 17, § 210.)‡

195. Sale of Kosher Meat and Meat Preparations.—A person, who, with intent to defraud sells or exposes for sale any meat or meat preparation and falsely

*For penalty, see No. 38 et seq.
†For administrative provisions, see Nos. 1 et seq. and 131-132.
‡For penalty, see No. 38 et seq.

represents the same to be kosher, whether such meat or meat preparation be raw or prepared for human consumption, or as having been prepared under and of a product or products sanctioned by the Orthodox Hebrew religious requirements; or falsely represents any food product or the contents of any package or container to be so constituted and prepared, by having or permitting to be inscribed thereon the word "kosher" in any language; or sells or exposes for sale in the same place of business both kosher and nonkosher meat or meat preparations, either raw or prepared for human consumption, who fails to indicate on his window signs and all display advertising, in block letters at least four inches in height, "kosher and nonkosher meat sold here;" or who exposes for sale in any show window or place of business both kosher and nonkosher meat or meat preparations, either raw or prepared for human consumption, who fails to display over each kind of meat or meat preparation so exposed a sign in block letters at least four inches in height reading "kosher meat," or "nonkosher meat," as the case may be, is guilty of a misdemeanor.* (C. L. 1923, c. 41, art. 40, § 435-a)†

196. Sale of Kosher Meat in Restaurants.—A person who with intent to defraud, sells or exposes for sale in any restaurant or other place where food products are sold for consumption on the premises, any article of food or food preparations and falsely represents the same to be kosher or as having been prepared in accordance with the Orthodox Hebrew religious requirments, either by direct statements, orally or in writing, or by the display of the word "kosher" in English or Hebrew letters, or by the display of any sign or mark in simulation of such word, or by the display of any insignia, six-pointed star, or any mark which might reasonably be calculated to deceive or lead a reasonable person to believe that a representation is being made that the food sold is kosher or prepared in accordance with the Orthodox Hebrew religious requirements; or sells or exposes for sale in such restaurant or such other place both kosher and nonkosher food or food preparations for consumption on the premises not prepared in accordance with the Jewish ritual or not sanctioned by the Hebrew orthodox religious requirements and who fails to display on his window signs and all display advertising in block letters at least four inches in height "kosher and nonkosher food served here," shall be guilty of a misdemeanor.* (Supp. 1926, c. 41, art. 40, § 435-b; L. 1927, c. 284.)

197. Certain Kinds of Business and Manufacture Prohibited in Cities or Within Three Miles Therefrom; Exceptions.—It shall not be lawful for any person or persons to engage in or carry on the business of fat rendering, bone boiling or the manufacture of fertilizers or any business as a public nuisance within the corporate limits of any incorporated city of this State, or within a distance of three miles from the corporate limits of any incorporated city, provided, however, that nothing herein contained shall prevent the rendering of fresh killed cattle or swine. All departments of health or the commissioner or commissioners therof in any incorporated city of this State shall have power to enforce the provisions of this section. Any person or persons offending against the provisions of this section shall, upon conviction thereof, be guilty of a misdemeanor.* This section shall not apply to the counties of Fulton, Wayne, Tompkins, Chautauqua, Orange, Dutchess, Erie, Monroe, Oneida, Onondaga, New York, Schoharie, Ulster, Green, Cayuga, Cattaraugus, Niagara, Saratoga, Schenectady, Hamilton, Montgomery and Orleans. (C. L. 1923, c. 46, art. 3, § 39.)

NOTE: See also Nos. 22, 59, 86 et seq., 162 et seq., and 358.

Oysters, Etc.‡

198. Branding Oyster Kegs and Cans.—Every person engaged in putting up oysters for sale in kegs or cans, or offering them for sale in kegs or cans, not previously marked or branded, shall mark or brand such kegs or cans with the true quantity of oysters in pints, quarts or gallons, which they may respectively hold, and not more than ten per centum of such quantity shall be liquid. (Supp. 1926, c. 19, art. 17, § 212.)¶

198a. Scallops and Oysters; Open Season; Size Limit.—Scallops measuring not less than two inches from the middle point of the hinge to the middle point of the bill or lip may be taken from September first to March thirty-first, both inclusive, and when so taken may be possessed from September first to April fifteenth, both inclusive, but in the town of Huntington, Long Island, such scallops may be so taken

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*See No. 68a.
†See No. 59.
‡For administrative provisions, see No. 1 et seq.
¶For penalty, see No. 38 et seq.

and possessed from the first day of October to the fifteenth day of April, both inclusive.

Scallops taken from the waters of the State shall be culled when taken and all scallops of a size less than herein provided for shall be immediately returned alive to the water, but the provisions of this section shall not apply to scallops other than of a legal size unavoidably taken; provided, that the number so taken at any one time does not exceed three per centum of the total catch of scallops after being culled as herein provided. Scallops taken in accordance with the provisions of this section shall be taken ashore in the shell, except that not to exceed one gallon of scallops out of their shells may be taken ashore by any one boat.

The possession of scallops below the lawful size limit in excess of three per centum as herein provided may be determined by the measurement of any bushel of scallops taken from the catch; and if a bushel so measured shall contain more than three per centum of scallops below the lawful size the taking and possession of such scallops shall constitute a violation of this section.

The provisions of this section shall not prohibit the taking of scallops from legally planted or cultivated oyster beds or prohibit any person at any time from taking scallops by hand for food for his own personal or family use.

The possession of oysters for sale for food purposes is prohibited from May fifteenth to August thirty-first, both inclusive. The provisions of this section shall not prohibit the possession of oysters for sale without the State of New York from May fifteenth to August thirty-first, inclusive.

This section shall not apply in any respect to the possession or taking of sea scallops, otherwise known as pecten grandis. (C. L. 1923, c. 10, art. 5, Part X, § 318; Supp. 1926, Id.; L. 1927, c. 230.)

Salt.

199. Short Title.—This chapter shall be known as the "Salt Springs Law." (C. L. 1923, c. 53, art. 1, § 1.)

200. Definitions.—The term "Onondaga reservation," when used in this chapter, shall include all the lands situate in the county of Onondaga containing salt springs or used for the manufacture of salt, or owned by the people of the State and adjacent thereto, or connected therewith, or set apart for such purposes by the commissioners of the land office. The term, "manufacturer," when used in this chapter, shall include every corporation, company or individual having the direction, charge or control of the manufactory, whether as owner, proprietor or lessee thereof. (Id. § 2.)

201. Duty on Salt.—A duty of one cent per bushel of fifty-six pounds shall be collected and paid to the treasurer upon all salt manufactured from brine furnished by the State from the salt springs upon the Onondaga salt springs reservation in the county of Onondaga. (C. L. 1923, c. 53, art. 2, § 3.)

202. Onondaga Manufacturing Districts.—The Onondaga salt springs reservation shall be divided into such manufacturing districts as the superintendent may prescribe; and he may establish therein such public offices for the transaction of the business connected with the manufacture of salt as he may deem convenient. Such offices shall be kept open every day except Sundays and holidays, from sunrise to sunset, and during such hours any person may examine the books of entry kept by the superintendent. (Id. § 4.)

203. Superintendent of Onondaga Salt Springs; Office Abolished.—The office of superintendent of Onondaga salt springs is hereby abolished, and the term of office of the present superintendent shall expire, and his powers, duties and compensation cease and determine, at the time this amendment takes effect. The State Comptroller shall hereafter receive and collect all rents and revenues accruing or to accrue to the State under any lease or leases of salt springs property or otherwise and shall report annually to the legislature in the month of January, the amount of such rents and revenues received and his disbursements, if any, incurred in the performance of his duties in relation to said salt springs, during the preceding year, with the items thereof. The State Comptroller shall also hereafter have and exercise the powers and duties conferred, in terms, by other sections of this article on the superintendent of the Onondaga salt springs, except that until such time as the legislature shall make further provisions for the direct operation of the salt springs by the State, in the event of the expiration or forfeiture of existing or future leases, no deputies, inspectors or other subordinates shall be appointed or serve under the provisions of section twelve; and the various powers and duties enumerated in this article in respect to the examination, inspection and handling of salt and the inspection of the salt springs, their works and the manufacture of salt, are likewise suspended until the

resumption of such direct control by the State and further legislation in relation thereto. (Id. § 5.)

204. Powers of the Superintendent.—Such superintendent shall:

1. Have the possession, government and management of all lands, wood, timber, trees, buildings, erections, pumps and machinery of every kind, and of all water courses, conduits, wells, aqueducts, springs and other property belonging to the State on the Onondaga reservation and the Montezuma salt springs.

2. Superintend and have charge of the salt springs and of the manufacture and inspection of salt and regulate and control the delivery of salt water to salt manufacturers.

3. Daily examine or cause to be examined the cisterns attached to the several manufactories in order to discover any leaks or waste of salt water therefrom or from the logs or conduits leading the water to them and to discover any leak or waste of salt water, either by negligence or design, whether in the cisterns, logs or conduits or in the use of the water in any manufactory, or in letting the same into the cistern or in any other manner; and shall order the owner or other person occupying such manufactory or his agents or servants who may be present to immediately stop such leak or waste.

4. Cause any person wrongfully possessed of any land or property on the Onondaga reservation or the Montezuma salt springs to remove therefrom, and take possession of the same, and may sue in his name of office for the recovery of damages for any injury to such lands or property according to the nature of such injury.

5. Keep in each of his offices regular books of entry in which all of his accounts and transactions shall be entered.

6. Provide suitable books of entry, blank books, blank inspection bills, returns, forms and other stationery for the use of himself and his deputies for the performance of their official duties.

7. Receive all moneys payable to the State for the duties, rents, fines or penalties specified in this chapter or arising from the salt springs or property of the State connected with the salt manufactory.

8. Deposit each week to the credit of the State Treasurer in such bank or banks as may be designated by the Comptroller all moneys received by him as superintendent, and transmit every Monday to the Comptroller a statement showing the amount of the revenues collected, received and deposited during the preceding week.

9. Forward a statement to the Comptroller on the first Monday in each month exhibiting the whole amount of revenue collected during the preceding month and the amount in each week, with a transcript of the receiver's books in each of the manufacturing districts.

10. Prosecute in the name of the State all persons who shall knowingly trespass upon or injure any of the lands or property belonging to the State, who shall willfully damage any of the machinery, erections, fixtures or other property of the State and for the recovery of all such sums forfeited to the State.

11. Make a report annually to the Comptroller on September thirtieth or within ten days thereafter, stating the quantity of salt inspected during the previous year, the amount of revenues accruing thereon and from other sources, the expenditures made by the superintendent, and the amount which, in his judgment, will be necessary for the support of the salt springs for the ensuing year.

12. Make a report anually to the Legislature on or before January fifteenth, of his doings during the preceding year, embracing such information in regard to the manufacture of salt and the situation of public works and submitting such recommendations for their further improvement and extension as he shall deem necessary and proper. If the superintendent neglect to make the monthly return required by this section, or to make or transmit the certificate of such deposits to the Comptroller, the Comptroller shall order the superintendent's bonds to be put in suit for the recovery of any moneys which may be in his hands belonging to the State, and such neglect or omission of duty shall be deemed cause for the removal of such superintendent by the Governor. (Id. § 6.)

205. Further Powers and Duties of Superintendent.—The superintendent may:

1. Administer oaths to his deputies, foremen and employees in regard to the return of check rolls and other matters relating to their duties when he shall deem it necessary.

2. Require the officers appointed by him to perform such duties and services in behalf of the State as he may consider appropriate and necessary and remove them or either of them from office.

3. Establish and from time to time alter the boundaries of the inspection districts so as to allow of the inspection of salt at the offices most convenient to the officers in charge and to the owners of the salt works. (Id. § 7.)

206. Rules and Regulations.—The superintendent shall, annually, in the month of April, adopt rules and regulations for the guidance and direction of the salt manufacturers for the ensuing year, and may also, from time to time, establish such rules and regulations, not inconsistent with law, as he may deem expedient respecting:

1. The manufacture and inspection of salt and the collection of duties thereon.

2. The manner and order of receiving salt water from the State reservoirs and aqueducts, the mode of conducting it to the respective manufactories and the erections and securing it from waste and loss.

3. The examination of the several salt works and manufactories by his deputies to determine whether the provisions of the law are properly complied with.

4. The loading of salt in bulk, or otherwise, into boats to be transported upon the canals or the shipment of salt by railway, or otherwise, to be conveyed to market.

5. Such matters as shall tend to the more perfect execution of the provisions of this chapter.

Such rules and regulations shall take effect upon the expiration of one week from the time they are made and published, and shall be enforced until they are revoked or others are established in their stead. (Id. § 8.)

207. Penalties; Rules and Penalties to be Posted.—The superintendent may prescribe specific penalties not exceeding one hundred dollars for each offense for any violation of the rules and regulations established by him and recover the same in the name of the State with costs, and shall stop all communication between any salt block or manufactory and the State reservoir, if the person in charge of such block or manufactory shall refuse to comply with the provisions of law or the rules and regulations of the superintendent so that no salt water shall come to such block or manufactory until such provisions are complied with. Such rules and regulations and the several penalties prescribed thereby and by law shall be printed and posted conspicuously in the several offices of the superintendent, in all the fine salt manufactories and in the storehouses for coarse salt, and in the mills for grinding salt, and in such other places as shall be deemed expedient for the information of the public. (Id. § 9.)

208. Habitual Neglect to Comply With Rules.—The superintendent shall suspend for such length of time as he may deem proper, not exceeding three months at any one time, the right of any salt manufacturer to carry on his manufactory if such manufacturer shall habitually neglect the rules and regulations prescribed by the superintendent or by law, or shall be in the habit of making bad salt, or if the quantity of salt inspected from his manufactory shall be found materially less than is usually produced from a manufactory of the same capacity of kettles for the time it is actually in operation. (Id. § 10.)

209. Officers Not to be Concerned in Manufacturing.—No officer or employee connected with the salt springs shall be in any way concerned in the manufacture or sale of salt or have any interest whatever, directly or indirectly, in any salt manufactory or erection for the manufacture of salt, or in the profits of any such manufactory, or in any labor or materials, or contracts for doing any work on the salt reservations which may be done under the provisions of this chapter. (Id. § 11.)

210. Deputies and Inspectors.—The superintendent may by a written order filed in the clerk's office of Onondaga county appoint the following deputies and assistants: One deputy superintendent, who shall be the receiver and chief clerk (and in the case of the death, removal or resignation of the superintendent, possess his powers and discharge his duties until another superintendent shall be appointed); one chief engineer, one chief inspector of salt, each of whom shall receive an annual salary of twelve hundred dollars; three inspectors of salt, each of whom shall receive an annual salary of six hundred dollars; three block inspectors, each of whom shall receive a salary of sixty dollars for not more than eight months in each year; two receivers, each of whom shall receive an annual salary of eight hundred and forty dollars; one receiver, who shall receive an annual salary of five hundred and forty dollars; one overseer of pumps, who shall receive an annual salary of six hundred dollars; three overseers of pumps, each of whom shall receive the sum of fifty dollars a month for not more than eight months in each year; one superintendent of aqueducts and reservoirs, who shall receive an annual salary of six hundred and sixty dollars; three such superintendents, each of whom shall receive an annual salary of four hundred and eighty dollars; one chief inspector of barrels, who shall receive an annual salary of eight hundred and forty dollars; three assistant barrel

inspectors, each of whom shall receive a salary of fifty dollars a month while employed; two assistant barrel inspectors, each of whom shall receive fifty dollars a month for such time as their services are necessary; and such additional assistants, pumpers, inspectors, weighers and overseers as may be necessary during the business part of the season, each of whom shall receive not more than fifty dollars a month for not more than eight months a year. Before entering upon the duties of his office, each person appointed by the superintendent shall execute and deliver to him an official undertaking in amounts with sufficient sureties for the faithful performance of his duties and for the faithful and punctual payment to such superintendent of all moneys which such person shall from time to time receive, and as often and at such stated periods as may be required of him. A list of the names of all officers appointed by the superintendent shall be kept conspicuously posted in each of the receivers' offices in the several districts. (Id. § 12.)

211. Inspection of Salt.—The superintendent and his deputies charged with the inspection of salt shall carefully and constantly superintend its manufacture in the several fine and coarse salt manufactories, and examine and inspect such salt in the various stages of its production in the kettles, vats, bins and storehouses; and require inferior or impure salt to be separated from salt suitable for passing inspection, and to be either destroyed or returned to the cisterns to be dissolved or deposited in some proper place and disposed of as salt of second quality. No salt shall pass as good unless it is manufactured as directed by this chapter and by the rules and regulations of the superintendent, and is well made, free from dirt, filth, stones, admixtures of lime, ashes of wood and other substances injurious thereto, fully drained from pickle, and bitterns properly extracted therefrom. The superintendent shall allow salt made from the brine of the springs to be manufactured without extracting the bitterns or impurities therefrom, provided all such salt, whether shipped loose or in bags, barrels or packages, shall be designated and branded as impure and agricultural salt. Salt shall not be packed in casks, barrels, sacks or other vessels, or taken from the salt house in bulk or otherwise, until it has remained in the bin or storehouse at least fourteen days, and the inspectors shall have determined upon an actual examination that it is sufficiently drained of pickle and fit for inspection. No inspection shall be made after sundown or before sunrise, and no salt manufacturer shall retail or deliver any uninspected salt after sundown or before sunrise. No person shall remove or attempt to remove from the reservation or from any salt manufactory, storehouse or other place of deposit, any salt before it shall have been inspected, and the duties paid thereon, with intent to evade the inspection thereof or the payment of the duties thereon. Every person so removing or attempting to remove any salt shall forfeit to the State such salt, with the bag, barrel or other vessel in which it shall be contained, and five dollars for every bushel so removed or attempted to be removed; and the boat, vessel, cart, wagon, sled or other vehicle, in or by which the same shall be removed or attempted to be removed, with the apparel, tackle and team belonging thereto, shall be taken to be the property of such person and be liable to the payment of such penalty. (Id. § 13.)

212. Inspection of Salt; Property May be Taken for Evading Inspection.—The superintendent or any of his deputies may enter every barn, storehouse, inclosure or other place of deposit which he may suspect to contain salt so removed or attempted to be removed, and every boat, vessel, cart, wagon, sled or other vehicle in or by which such salt shall have been removed or attempted to be removed, and seize such salt, with the bag, barrel or other vessel containing it, and sell the same at public auction for the use of the people of the State, after giving six days' notice of the time and place of sale. The officer or person making such seizure may also seize such boat, vessel, cart, wagon, sled or other vehicle, with the tackle, apparel and the team belonging thereto and retain the same until the determination of any suit which may be brought for the penalty so imposed. The owner of the property so seized may obtain possession thereof by giving a bond to the superintendent, with sureties to be approved by him, for the return of such property to the officer, if judgment for the plaintiff shall be recovered in the suit brought for the forfeiture incurred, and to secure which such seizure shall have been made. (Id. § 14.)

213. By Whom Inspection Shall be Made.—Persons desiring to have salt inspected shall apply to the inspector in the district where such salt shall be, who shall thereupon actually examine it in the bag, barrel or vessel in which it is contained. In order to facilitate its examination, the person offering it shall unhead or bore the barrel or open the bag or other vessel containing it as directed by the inspector, so as to expose the salt to his touch, view and examination, and shall in all cases provide the necessary assistance to lift the salt while the inspector weighs or measures it. (Id. § 15.)

214. Examination of Kettles.—The inspectors shall daily examine in their respective districts all kettles used in the manufacture of fine salt, and shall require their removal if damaged or defective so as to be unsuitable for the manufacture of good salt, and if not removed upon his order the superintendent may withhold brine from such manufacturer until such order shall be complied with. (Id. § 16.)

215. Damaged Salt; Penalties.—The superintendent shall erase his inspection brand from packages containing salt which, after it has been inspected and the duties paid, shall have suffered any damage so as to reduce its weight or impair its quality, and require that it shall be repacked, if reduced in weight only, or destroyed, if impaired in quality, by returning it to the cisterns from which the owner or manufacturer thereof shall draw his supplies of brine for his works. Salt of any inferior quality, dirty, damaged or condemned, may be sold loose or in bulk at the works by the manufacturer thereof, the inspector designating quantity by weight in the inspection bill as in ordinary cases, and distinguishing the same as "second quality," and the person having it inspected paying the duty thereon. Such inferior salt shall not be mixed with other salt which is to be ground or prepared as table salt, or for the packing of provisions, nor shall it be packed in a manner calculated to deceive an innocent purchaser as to its real quality, and if packed in barrels in the ordinary manner it shall be branded in plain letters, "second quality." Every person violating the provisions of this section relating to mixing such salt with other salt or the preparing of it for table use or for packing purposes shall, for every such violation, forfeit to the people of the State the sum of one hundred dollars. The inspector or deputy who shall have inspected and branded any Onondaga salt put up in barrels or sacks which on being opened are found to contain salt of a quality inferior to that required by law, and the maker and manufacturer whose name is branded on any such barrel or painted on any such sack, shall forfeit to the purchaser injured thereby the sum of one dollar for each bushel so found inferior. (Id. § 17.)

216. Deleterious Ingredients Prohibited.—No salt manufacturer or other person shall put any article or ingredient into the salt water in his cisterns or while evaporating other than such as shall be allowed and approved of by the superintendent in the general rules and regulations which he shall adopt in relation thereto. Every person violating any provision of this section shall for every such offense forfeit to the State the sum of fifty dollars. (Id. § 18.)

217. Bittern Pans.—Every manufacturer shall keep one good bittern pan for each kettle or pan used in the manufacture of salt for the purpose of removing the feculent matter and other foreign substances held in solution in the brine during the process of making salt. The superintendent shall, in the rules and regulations adopted by him, regulate the manner of using such pans and of removing the impurities contained in the salt water during the process of manufacturing the same into salt, and the manner of cleansing the kettles and pans. (Id. § 19.)

218. Salt in Barrels.—The superintendent shall cause all salt barrels to be inspected before salt is packed therein, under such rules and regulations as shall from time to time be adopted and published by him, and all salt shall be rejected when offered for inspection in barrels not inspected or in inspected barrels not properly secured after the salt is packed therein so as to preserve it from waste or injury, and all barrels so used shall be such as are approved by the superintendent. Salt in barrels shall not be marked unless the barrels are thoroughly seasoned, stout and well made, with a sufficient number of good, strong hoops, to be well nailed and secured, not burned or colored on the inside or dirty on the outside, nor without having the holes made for inspection or the knot holes, if any, well and securely plugged up. If the salt upon examination shall prove not to be thoroughly drained, or if, when the barrels are standing on end, water shall exude therefrom, such barrel shall not be branded by the inspector, but the salt therein shall forthwith be emptied back into the bins, where it shall remain for a further period of fourteen days before it shall be lawful again to pack the same. (Id. § 20.)

219. Quantity of Salt in Barrels.—The superintendent shall from time to time specify the quantity of salt that barrels or other packages offered for inspection shall contain, and shall prohibit the inspector's brand from being placed upon any package that does not correspond with such regulation. He shall require that all ground salt manufactured at the Onondaga springs and put up for the market in barrels, kegs, boxes, sacks or bags, shall be legibly marked in letters at least half an inch in length, on each barrel, keg, box, sack or bag, with the word "solar" or "boiled," as the fact may be. (Id. § 21.)

220. Name of Manufacturer to be Branded on Package.—Every manufacturer shall brand or mark with durable paint every barrel or other package of salt manufactured by him with the name of the district in which his block of kettles is located, the surname at full length of the proprietor or owner of the manufactory at which the salt shall have ben made, and the initial letter of his Christian name. If

the salt shall have been manufactured for a company or association of individuals, he shall mark or brand in like manner upon every such barrel or other package, the name of the firm by which the company is called; and no inspector shall inspect or pass any barrel or other package of salt which shall not be so marked or branded, nor shall the superintendent affix his brand to any such barrel or other package. (Id. § 22.)

221. **Boat Sunk in Canal.**—The owner or agent of any boat laden in whole or in part with salt which shall be sunk or partly immersed in the canals or navigable waters of this State or filled with water so as to damage any part of the cargo of salt on board, shall not sell or otherwise dispose of the salt in the original package. Such salt shall be emptied from the barrels or sacks containing it and sold or disposed of after having been exposed to public inspection so that its quality and condition shall be known. Salt so injured shall not be again packed in barrels bearing the inspector's brand nor shipped or transported beyond the bounds of the State. Every person violating the provisions of this section shall forfeit the sum of two hundred and fifty dollars for every violation. (Id. § 23.)

222. **Duplicate Inspection Bills.**—The superintendent shall, after the inspector has ascertained the quality of salt in any parcel offered for inspection, and is satisfied that it is of such quality that it ought to pass inspection, deliver duplicate inspection bills thereof, dated and signed by him, to the person applying for the inspection. Such bills shall contain the name of the manufacturer and the person at whose instance the inspection is had, the number of bushels and pounds of salt contained in the parcel and the number of bags, barrels or other vessels in which it shall be contained, with a certificate of the inspector stating that he has inspected the salt specified in such bill. The person applying for inspection shall thereupon deliver such duplicate inspection bills to the receiver or person in charge of his office in the district where the salt is inspected and pay the duties on the salt mentioned therein. (Id. § 24.)

223. **Receiver's Duties.**—The receiver shall:

1. Mark such inspection bills with the numbers in the order in which they are presented, placing the same number on each duplicate bill of the same parcel, and commencing anew with the commencement of every month.

2. Enter upon his books an account of the parcels of salt in which he shall state the number of the parcel, the name of the manufacturer and of the person at whose instance the salt shall have been inspected, the number of bushels and pounds of salt in the parcel, the number of bags, barrels or other vessels in which it is contained, the amount of duties thereon and when the same are paid.

3. Sign a receipt at the foot of each duplicate inspection bill and deliver the same to the person paying the duties. (Id. § 25.)

224. **Delivery of Bills to the Inspector.**—The person receiving the bills shall forthwith deliver one to the inspector by whom the salt was inspected, to be entered in a book kept by him, and retain the other as evidence of payment of the duties thereon. Such inspector shall thereupon brand or mark with durable paint the barrel or cask containing the salt so inspected with his surname at length and the first letter of his Christian name, with the addition of the word "inspector" in letters of at least one inch in length; and shall mark upon the head of the barrel or cask with durable paint, the number of pounds of salt contained therein. Barrels, sacks or other packages in which salt shall have been packed and inspected, shall not be again used for the packing of salt therein until the marks or brands made by the superintendent shall be first effaced. The inspection shall not be deemed complete nor the payment of the duties consummated until one of the inspection bills so receipted shall have been returned to the superintendent, and the salt, in cask headed up, shall have been so marked or branded. Every person violating the provisions of this section relating to the packing of salt in barrels, sacks or other packages, before the marks or brands made by the superintendent shall have been effaced, shall forfeit to the State for every bushel of salt so packed the sum of five dollars. (Id. § 26.)

225. **Wells, Pumps and Lines of Aqueducts.**—The superintendent shall keep wells, pumps, reservoirs, aqueducts and machinery in necessary repair; but no repair involving any aggregate expenditure of more than five hundred dollars shall be made or undertaken without the approval of the Comptroller, to be indorsed upon detailed statements. Said superintendent may enter upon the lands of any corporation, individual or company or upon any leased lands, and carry salt and brine across the same in the same manner as hitherto, and by suitable and proper aqueducts and conduits, and shall maintain, repair and keep in proper condition for transmitting brine, the aqueducts and conduits heretofore laid by the State, its officers and agents, and may replace the same wherever situated by other aqueducts or conduits for transmitting brine, and shall provide and place such new machinery and fixtures as may be necessary to pump and distribute such brine, paying to the owner or lessee of such lands the damages

sustained by him, if he be legally entitled thereto, to be ascertained by mutual agreement, or by the appraisement of three commissioners appointed as prescribed in the condemnation law. (Id. § 27.)

226. Ascertainment of Quantity of Water.—The superintendent shall cause the quantity of water required for the efficient working of the pumps or other machinery for raising salt water from the wells and reservoirs now or hereafter to be constructed in any district, to be ascertained by competent engineers, and shall certify the same to the Superintendent of Public Works, who on receiving such certificate shall cause such quantity of water to be at all times supplied to the Syracuse level of the canal, in addition to that usually required or supplied for the purpose of navigation, except when it shall be necessary to withdraw the water from such level for repairs. The certificate shall be filed in the office of the Superintendent of Public Works, and the amount of water thus ascertained to be necessary may be drawn from the canal for such purposes by the superintendent of the Onondaga salt springs, provided the navigation of the canal be not thereby impeded. All bulkheads, gates and other appurtenances required for taking and regulating the flow of such water shall be constructed and maintained by the superintendent of the Onondaga salt springs; and any property taken by virtue of this section shall be paid for by agreement or appraisement in the manner prescribed in the condemnation law. (Id. § 28.)

227. Numerical List of Salt Blocks to be Kept.—The superintendent shall keep on file in each of the receivers' offices a numerical list of all the fine salt blocks containing the name of the owner or occupant of each, the several manufactories entitled to the first use of the water, and the date of any additional erections entitled to the surplus water in the order of their erection. A similar list shall also be kept of the coarse salt erections entitled to the first use of the water, including the number of covers or rooms; and of all subsequent erections entitled to supplies from the surplus. (Id. § 29.)

228. Distribution of Brine.—No distinction in the furnishing and distribution of brine to the fine and coarse salt erections from the Onondaga salt springs or wells shall be made between the works situated on the State lands and those built on private lands. If there be an insufficiency of brine to supply all such erections, the superintendent shall so classify them as to furnish a full supply of water to each in an equal portion of the time while such deficiency exists. The superintendent shall, during the months of July and August, so classify the erections for the manufacture of solar salt, but such classifications shall not give such erections a supply for more than an equal portion of the time. The superintendent shall not furnish brine to any erections for the manufacture of fine or coarse salt erected after April fifteenth, eighteen hundred and fifty-nine, either upon vacant lands or by doubling the blocks on lots then used and occupied for manufacturing purposes, until the quantity of brine raised and distributed by the State shall be sufficient for fully supplying all the works through the manufacturing season, without classifying the same for any part of the time. (Id. § 30.)

229. Cisterns; Repair of Buildings.—Every salt manufacturer who shall provide an earth reservoir for the storage of salt water may have such reservoir filled by the superintendent from any surplus not required for immediate distribution, and shall be allowed to use the same in addition to the ordinary supply to which such manufacturer may be entitled according to the provisions of this chapter. Every manufacturer of fine salt shall have two cisterns or reservoirs attached to and adjoining his manufactory. Such cisterns or reservoirs shall be well made and as free from leaks as may be, and shall each be of sufficient capacity to contain as much salt water as can be boiled or evaporated in such manufactory from the kettles or pans set therein, in two days. No manufacturer of fine salt who shall neglect to provide such reservoirs or cisterns or to keep the same in good repair so as to save the water from undue or unnecessary waste shall be entitled or permitted to receive any salt water from the State reservoirs. Every manufacturer shall keep his buildings, cisterns and appurtenances for the manufacture of salt in thorough repair, so that the salt manufactured by him shall not suffer damage or be impaired in quality after the same shall have been deposited in the bins or storehouses. If any such manufacturer shall neglect or refuse, upon the requisition of the superintendent to place his works in such a state of repair or to put them in a proper condition for the manufacture and preservation of good salt, he shall forfeit his right to the use of the salt water, and the superintendent may disconnect the communications betwen the State aqueducts and his cisterns until such manufacturer shall comply with the requisitions of the superintendent. (Id. § 31.)

230. Unauthorized Communications.—No manufacturer or other person shall open or aid, assist, counsel or advise in opening the communication between any manufactory or salt work and the logs or conduits leading to or connecting with the State reservoirs without the consent of the superintendent or one of his deputies.

Every person violating the provisions of this section shall forfeit to the State the sum of one hundred dollars for every such violation. The owners of any salt works surreptitiously receiving a supply of salt water by such means shall forfeit and pay to the State a like sum on demand of the superintendent; and in default of payment shall be deprived of his supply of water until such demand shall be complied with. (Id. § 32.)

231. Discharge of Laborers for Neglect.—The superintendent shall require the discharge of every boiler, packer or other laborer employed by any manufacturer who shall neglect or refuse to obey his or his deputies' directions in and about any salt works or manufactory respecting the manufacture, packing or care of salt produced by such manufacturer, and to be offered for inspection; and each person so discharged shall not be again employed by any person in the manufacture of salt, without the consent of the superintendent. (Id. § 33.)

232. Earthworks.—The superintendent may, whenever the construction of any earthwork requiring the services of an engineer shall be undertaken by him, apply to the State Engineer for the services of an engineer, who may, by a written order, if in his judgment the interests of the State will be promoted thereby, direct the resident engineer of either the Oswego or Erie canal to assume the charge of such work under the direction of the superintendent of the Onondaga salt springs, and to make surveys, maps, profiles, estimates and measurements thereof. (Id. § 34.)

233. Charges Against the State; Estimates to be Made.—All charges against the State or liabilities incurred for the support and maintenance of the Onondaga salt springs shall be audited and paid by the superintendent from the moneys advanced to him from time to time by the treasurer, upon the warrant of the Comptroller. Before drawing any money from the treasury to be expended by him, the superintendent shall make out in minute detail an estimate of the necessary expenses to be incurred so far as they can reasonably be foreseen for a period of two months, commencing with the month of January, and forward the same to the Comptroller, who shall thereupon authorize the superintendent to make his draft upon the treasurer for the amount of such estimate or such portion thereof as he shall think necessary and proper. To meet any extraordinary expenditure, the superintendent may, in like manner, make special estimates, upon which the Comptroller shall advance in like manner if the same be approved by him, but the superintendent shall not receive from the treasury a larger sum than the amount of the appropriation made by the Legislature for the support of the salt springs. At the expiration of each period of two months the superintendent shall make a full and perfect abstract of the vouchers in his possession to which his affidavit shall be attached, to the effect that he has deposited in the bank designated by the Comptroller all the moneys received by him for duties on salt, rents, fines or penalties, or for other property of the State; that such abstract is a true abstract of all the vouchers taken by him as superintendent for such two months; that the moneys specified in the receipts referred to in the abstract have been actually paid as specified in such receipt; and that all the receipts were filled up as they then appear, and were read or the amount distinctly stated, to the signer of each, when signed, according to his best knowledge and belief. The report and vouchers shall be returned to the Comptroller, and if satisfactory to him, he shall enter his approval on the abstract and audit and allow the accounts of the superintendent. The superintendent shall make out a report showing the expenditures for the two preceding months, corresponding in its detail of items to the estimate presented, before an advance is authorized to be made by the Comptroller. If any such vouchers are objectionable, the Comptroller shall enter his disapproval on the particular voucher and not audit and allow the same until satisfied of its legality and propriety. (Id. § 35.)

234. Sale of Lands on the Onondaga Salt Springs Reservation.—The commissioners of the land office shall cause to be appraised and sell and convey in fee any of the lands of the Onondaga salt springs reservation upon the request of any of the lessees of said lands, or their legal representatives, upon their releasing absolutely all right to have, demand or receive from the State any money by way of damages either on account of the termination of the leases by which such lots are held or on account of the destruction or removal of any salt blocks, their appurtenances or any other property or buildings therefrom. Such lessees or their legal representatives, after the appraisement of the value of such lands is returned to and approved by the commissioners of the land office, may for thirty days after the date of such approval become the purchasers of such lands at the appraised value thereof, but if the lessee or his legal representative does not purchase such lands at such appraisal within said thirty days, the title thereof shall vest and be in the people of the State released and discharged from the terms and conditions of any leases, and such lands shall be advertised and sold under the direction and control of the commissioners of the land office to the highest bidder in accordance with the pro-

visions of the public lands law, but the lessee or his legal representatives, may, for thirty days after such sale, remove therefrom the buildings and other property placed thereon by him. In case of failure to so remove such buildings or other property within said time, the same shall be considered as given up and abandoned and shall become and be the property of the person or persons so purchasing said land. (Id. § 36.)

235. Title to Lands.—The title of all lands of the Onondaga salt springs reservation which are now adjacent to, or which surround, or upon which are located the engines, pumps or wells belonging to the people of the State of New York, which shall not have been sold or disposed of in accordance with the foregoing provisions of this chapter on or before the first day of March, eighteen hundred and ninety-eight, and the title of all other lands of the Onondaga salt springs reservation which shall not have been sold or disposed of in accordance with the foregoing provisions of this chapter on or before the first day of January, eighteen hundred and ninety-nine, shall vest and be in the people of the State, released and discharged from the terms and conditions of any leases, and the buildings, structures and property thereon shall be deemed abandoned and shall become and be the property of the people of the State of New York. (Id. § 37.)

236. Moneys Arising From Sale.—All moneys arising from the sale of the Onondaga salt springs reservation or any part thereof, by virtue of the foregoing provisions of this chapter, shall be placed by the Comptroller in the State treasury. The State shall cease to furnish brine at any expense to said State on or before the first day of January, eighteen hundred and ninety-nine, and shall cease to operate its works at any expense to the State upon the Onondaga salt springs reservation on or before the first day of January, eighteen hundred and ninety-nine, and the commissioners of the land office are authorized and directed to set [sell] all of the right, title and interest of the State, or the people thereof, at public or private sale, in or to any or all of the personal property upon said Onondaga salt springs reservation or connected therewith. The lessees of any such personal property, if any there be, shall have the first opportunity of purchasing the same, but all such personal property which shall not have been disposed of on or before the first day of January, eighteen hundred and ninety-nine, shall vest absolutely in the people of the State of New York free from all claims in behalf of any lessee or his legal representatives. (Id. § 38.)

237. Appointments Already Made Not Affected.—This chapter shall not affect any appointment or term of office heretofore made by the present superintendent of the Onondaga salt springs reservation. (Id. § 39.)

NOTE: See also No. 354.

Vinegar.*

238. Definition of Vinegars and Adulterated Vinegars.—All vinegars made by fermentation without distillation must carry in solution the extractive matter derived exclusively from the substances from which they were fermented.

The terms "cider vinegar," "apple vinegar" shall be construed to mean the product made exclusively from the pressed juice of apples, by alcoholic and subsequent acetous fermentations, the acidity, solids and ash of which have been derived exclusively from the apples from which it was fermented.

The term "sugar vinegar" shall be construed to mean the product made by the alcoholic and subsequent acetous fermentations of solutions of sugar syrup, molasses or refiner's syrup.

The term "malt vinegar" shall be construed to mean the product made by the alcoholic and subsequent acetous fermentations of an infusion of barley malt.

The terms "wine vinegar," "grape vinegar," shall be construed to mean the product made by the alcoholic and subsequent acetous fermentation of the juice of grapes.

The term "glucose vinegar" shall be construed to mean the product made by the alcoholic and subsequent acetous fermentations of solutions of corn-sugar or glucose.

The terms "spirit vinegar," "distilled vinegar," "grain vinegar" shall be construed to mean the product made by the acetous fermentations of dilute distilled alcohol.

All vinegars which contain any added drugs, acids, coloring matter or ingredients not derived exclusively from the substances from which they were respectively made, or which shall contain less than four grams of acetic acid in one hundred cubic centimeters of the vinegar at twenty degrees centigrade, shall be deemed

*For administrative provisions, see No. 1 et seq.

adulterated. Nothing herein shall be deemed to prohibit the manufacture of vinegar for consumption elsewhere than within this State, of such acid content as may be elsewhere required.

The product made by the destructive distillation of wood, known as pyroligneous acid, or acetic acid derived from other sources than fruit, grain, vegetables, sugar or syrup shall not be sold, offered, exposed or had in possession for sale, for food.

Mixtures of two or more of the vinegars herein defined are compounds, and the packages containing the same shall be plainly marked or branded with the word "compound" together with the proportions of the vinegars so mixed in addition to the other requirements of section two hundred and nine of this article.

Packages containing vinegars made from wine or fruits which have been reduced with water must be plainly marked or branded "reduced to ———— per centum acid strength," indicating the acidity to which they have been so reduced, or words equivalent thereto. (C. L. 1923, c. 19, art. 17, § 207.)*

239. Manufacture and Sale of Adulterated or Imitation Vinegar Prohibited.—No person, firm or corporation shall manufacture, sell, offer, expose or have in possession for sale in this State:

1. Any vinegar defined herein not in compliance herewith.
2. Any adulterated vinegar.
3. Any vinegar or product in imitation of cider or apple vinegar which is not cider or apple vinegar.
4. As or for cider or apple vinegar any vinegar or product which is not cider or apple vinegar. (Id. § 208.)*

240. Packages Containing Vinegar to be Branded.—Every manufacturer or producer of vinegar shall plainly brand each cask, barrel or other container of such vinegar with his name and place of business, the kind of vinegar contained therein and the substance or substances from which it was made. And no person shall mark or brand as or for cider or apple vinegar any package containing that which is not cider or apple vinegar. Every person who sells any vinegar other than pure cider or apple vinegar, except it be delivered to the purchaser in the unbroken package in which such seller received it, shall plainly and conspicuously mark or brand the receptacle or container in which such vinegar is delivered to the purchaser, whether such receptacle or container be furnished by the seller or purchaser, with a label showing the kind of vinegar so delivered and the substance or substances from which it was made. Nothing herein shall be deemed to prohibit the sale of cider vinegar stock, provided it be sold as and for such and in compliance with the provisions of this article as to marking or branding. The term "cider vinegar stock" when used herein, shall be construed to mean acetified apple juice of less acidity than that required for vinegar which contains sufficient alcohol to develop the acidity required in vinegar. (Id. § 209.)*

NOTE: See also No. 330 et seq.

Wine.

241. Penalty for Selling Half Wine Not Labeled.—A person who sells, offers for sale or manufactures with intent to sell, any wine known as "half wine," which is not stamped, marked or labeled as required by law, is guilty of a misdemeanor.† (C. L. 1923, c. 41, art. 40, § 437.)

Sanitation.

242. Cleanliness in the Preparation and Service of Food.—A person or corporation engaged in the preparation and sale of food in any hotel, public restaurant, public dining-room, dining-car or steamboat in this State or an officer of any public, penal or charitable institution in this State, shall not use in the preparation or service of any food utensils, dishes or other containers which have not been previously cleansed in a sanitary manner. In such cleansing the use of water which has become unsanitary by previous use is prohibted. (C. L. 1923, c. 46, art. 17a, § 343-a.)

243. Powers of the State Commissioner of Health.—The State Commissioner of Health is hereby vested with full power and authority to inspect and supervise all public places in this State above enumerated in which food is prepared, sold or served. Such commissioner or his duly authorized agents or employees shall be permitted access to the kitchens of all hotels, public restaurants, public dining-rooms,

*For penalty, see No. 38 et seq.
†See No. 68a.

dining-cars and steamboats in this State and to the kitchens of all public, penal and charitable institutions in this State for the purpose of ascertaining whether the provisions of this article are being observed and he may adopt such rules and regulations as may be determined upon from time to time for the proper enforcement of this article. The State Commissioner of Health may appoint and designate from time to time persons to make the inspections authorized by this article. (Id. § 343-b.)

244. Penalties.—Any person or corporation, or officer thereof, violating any of the provisions of this article shall be guilty of a misdemeanor.† The conviction of any corporation shall not relieve any officer or officers, agents or employees of such corporation from prosecution under the provisions of this article. (Id. § 343-c.)

NOTE: See also Nos. 22, 26, 46, 73 et seq., 86 et seq., 101 et seq., 197 and 269 For sanitary provisions relating to mercantile establishments and restaurants, see C. L. 1923, c. 32, art. 14, title 1, §§ 375-383; Supp. 1926, Id.

PART III.

Special Drug Laws.

Abortifacients—Contraceptives.

245. Obscene Prints and Articles.—1. A person who sells, lends, gives away or shows, or offers to sell, lend, give away, or show, or has in his possession with intent to sell, lend or give away, or to show, or advertises in any manner, or who otherwise offers for loan, gift, sale or distribution, any obscene, lewd, lascivious, filthy, indecent or disgusting book, magazine, pamphlet, newspaper, story paper, writing, paper, picture, drawing, photograph, figure or image, or any written or printed matter of an indecent character; or any article or instrument of indecent or immoral use, or purporting to be for indecent or immoral use or purpose, or who designs, copies, draws, photographs, prints, utters, publishes, or in any manner manufactures, or prepares any such book, picture, drawing, magazine, pamphlet, newspaper, story paper, writing, paper, figure, image, matter, article or thing, or who writes, prints, publishes, or utters, or causes to be written, printed, published, or uttered, any advertisement or notice of any kind, giving information, directly or indirectly, stating, or purporting so to do, where, how, of whom, or by what means any, or what purports to be any, obscene, lewd, lascivious, filthy, disgusting or indecent book, picture, writing, paper, figure, image, matter, article or thing, named in this section can be purchased, obtained or had or who has in his possession, any slot machine or other mechanical contrivance with moving pictures of nude or partly denuded female figures which pictures are lewd, obscene, indecent or immoral, or other lewd, obscene, indecent or immoral drawing, image, article or object, or who shows, advertises or exhibits the same, or causes the same to be shown, advertised, or exhibited, or who buys, owns or holds any such machine with the intent to show, advertise or in any manner exhibit the same; or who,

2. Prints, utters, publishes, sells, lends, gives away or shows, or has in his possession with intent to sell, lend, give away or show, or otherwise offers for sale, loan, gift or distribution, any book, pamphlet, magazine, newspaper or other printed paper devoted to the publication, and principally made up of criminal news, police reports, or accounts of criminal deeds, or pictures, or stories of deeds of bloodshed, lust or crime; or who,

3. In any manner, hires, employs, uses or permits any minor or child to do or assist in doing any act or thing mentioned in this section, or any of them,

Is guilty of a misdemeanor, and, upon conviction, shall be sentenced to not less than ten days nor more than one year imprisonment or be fined not less than fifty dollars nor more than one thousand dollars or both fine and imprisonment for each offense. (C. L. 1923, c. 41, art. 106, § 1141.)

246. Indecent Articles.—A person who sells, lends, gives away, or in any manner exhibits or offers to sell, lend, or give away, or has in his possession with intent to sell, lend, or give away, or advertises, or offers for sale, loan or distribution, any instrument or article, or any recipe, drug or medicine for the prevention of conception, or for causing unlawful abortion, or purporting to be for the prevention of conception, or for causing unlawful abortion, or advertises or holds out represen-

†See No. 68a.

tations that it can be so used or applied, or any such description as will be calculated to lead another to so use or apply any such article, recipe, drug, medicine or instrument, or who writes or prints, or causes to be written or printed, a card, circular, pamphlet, advertisement or notice of any kind, or gives information orally stating when, where, how, of whom, or by what means such an instrument, article, recipe, drug or medicine can be purchased or obtained, or who manufactures any such instrument, article, recipe, drug or medicine, is guilty of a misdemeanor, and shall be liable to the same penalties as provided in section eleven hundred and forty-one of this chapter. (Id. § 1142.)

247. Mailing or Carrying Obscene Prints and Articles.—A person who deposits, or causes to be deposited, in any post office, within the State, or places in charge of an express company, or of a common carrier, or other person, for transportation, or for any purpose save the destruction thereof, any of the articles or things specified in the last four sections, or any circular, book, pamphlet, advertisement, or notice relating thereto, with the intent of having the same conveyed by mail or express, or in any other manner, or who knowingly or willfully receives the same, with intent to carry or convey, or knowingly or willfully carries or conveys the same, by express, or in any other manner, except in the United States mail is guilty of a misdemeanor.* (C. L. 1923, c. 41, art. 106, § 1143; L. 1927, c. 543.)

248. Warrant to Sheriff to Search.—A magistrate having jurisdiction to issue warrants in criminal cases, upon complaint that any person within his jurisdiction is offending against the provisions of this article, supported by oath or affirmation, must issue a warrant, direct to the sheriff or to any constable, marshal, or police officer within the county, directing him to search for, seize, and take possession of any of the articles specified in this article, in the possession of the person against whom complaint is made. The magistrate must immediately transmit every article seized by virtue of the warrant, to the district attorney of the county, who must, upon the conviction of the person from whose possession the same was taken, cause it to be destroyed, and the fact of such destruction to be entered upon the records of the court in which the conviction is had. (C. L. 1923, c. 41, art. 106, § 1144.)

249. Physicians' Instruments.—An article or instrument, used or applied by physicians lawfully practicing, or by their direction or prescription, for the cure or prevention of disease, is not an article of indecent or immoral nature or use, within this article. The supplying of such articles to such physicians or by their direction or prescription is not an offense under this article. (Id. § 1145.)

250. Who May Arrest Persons Violating Provisions of This Article.—Any agent of the New York Society for the Suppression of Vice, upon being designated thereto by the sheriff of any county in this State, may within such county make arrest and bring before any court or magistrate thereof having jurisdiction, offenders found violating the provisions of any law for the suppression of the trade in, and circulation of obscene literature and illustrations, advertisements and articles of indecent and immoral use, as it is or may be forbidden by the laws of this State, or of the United States. (Id. § 1147.)

251. Selling Drugs or Instruments to Procure a Miscarriage.—A person who manufactures, gives or sells an instrument, a medicine or drug, or any other substance, with intent that the same may be unlawfully used in procuring the miscarriage of a woman, is guilty of a felony.† (C. L. 1923, c. 41. art. 6, § 82.)

252. Evidence on Trial for Abortion.—In all prosecutions under and in pursuance of article six of the penal law, the dying declarations of the woman whose death is produced by any of the means set forth in said article, shall be admitted in evidence subject to the same restrictions as in cases of homicide. (Code of Crim. Procedure, § 398a.)

253. Manslaughter in First Degree.—. . . A person who provides, supplies, or administers to a woman, whether pregnant or not, or who prescribes for, or advises or procures a woman to take any medicine, drug, or substance, or who uses or employs, or causes to be used or employed, any instrument or other means, with intent thereby to procure the miscarriage of a woman, unless the same is necessary

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*See No. 68a.

†A person convicted of a crime declared to be a felony, for which no other punishment is specially prescribed by this chapter, or by any other statutory provision in force at the time of the conviction and sentence, is punishable by imprisonment for not more than seven years, or by a fine of not more than one thousand dollars, or by both. (C. L. 1923, c. 41, art. 174, § 1935.)

to preserve her life, in case of the death of the woman, or of any quick child of which she is pregnant, is thereby produced, is guilty of manslaughter in the first degree.* (C. L. 1923, c. 41, art. 94, § 1050.)

Biologics.

See No. 312 et seq.

Distribution of Samples.

254. Careless Distribution of Medicines, Drugs and Chemicals.—Any person, firm, or corporation, who distributes, or causes to be distributed, any free or trial samples of any medicine, drug, chemical or chemical compound, by leaving the same exposed upon the ground, sidewalk, porch, doorway, letter boxes, or in any other manner, that children may become possessed of the same, shall be guilty of a misdemeanor punishable by a fine not exceeding twenty-five dollars for each offense, but this section shall not apply to the direct delivery of any such article to an adult. (C. L. 1923, c. 41, art. 166, § 1747.)

Ginseng.†

255. Marketing Ginseng.—No person shall sell, offer or expose for sale in this State, any ginseng roots or seeds foreign to the United States, or ginseng roots or seeds raised from stock imported from any country outside the United States, except in packages to which shall be securely affixed a label, stating in plain English language, the name of such foreign country in which the roots or seeds were originally grown. (C. L. 1923, c. 19, art. 18, § 221.)‡

Insecticides and Fungicides.†

256. Definitions.—The term "insecticide" as used in this article shall include all substances or mixtures of substances intended to be used for destroying, repelling or mitigating any and all insects which may infect vegetation. The term "fungicide" as used in this article shall include any substance or mixture of substances intended to be used for destroying, repelling or mitigating any or all fungi or fungus diseases affecting any form of vegetation or vegetable products, providing that nothing herein shall be construed as contravening the provisions of the national pure food and drug law. (C. L. 1923, c. 19, art. 11, § 148.)‡

257. Labeling of Packages.—No person, firm, association or corporation shall hereafter sell, offer or expose for sale in this State any insecticide or fungicide unless the same is labeled or branded with the name and address of the manufacturer thereof and a statement which shall set forth so near as may be the percentages and chemical compositions of all essential substances or ingredients of said insecticides or fungicides or combinations of the same contained in said packages. (Id. § 149.)‡

258. Composition of Paris Green or Analogous Products.—Paris green, or any product analagous to it, when sold, offered or exposed for sale, as such, in this State, shall contain at least fifty per centum of arsenious oxide. (Id. § 150.)‡

259. Paris Green, Arsenate of Lead, Sulphur, Lime Sulphides, Miscible Combinations of Mineral and Vegetable Oils, Sulphate of Copper, Bordeaux Mixture, or Any Insecticide or Fungicide or Essential Ingredient Thereof to be Analyzed.—The commissioner¶ shall cause to have taken samples of the different brands of Paris green, arsenate of lead, sulphur, lime sulphides, miscible combinations of mineral and vegetable oils, sulphate of copper, Bordeaux mixture, or any insecticide or fungicide or essential ingredient thereof, and submit the same to the director of the New York State Agricultural Experiment Station, who shall analyze or cause to be analyzed such sample so delivered to him, and shall report the result of the analysis forthwith to the commissioner. (Id. § 151.)‡

260. Spraying Fruit Trees With Poison.—Any person who shall spray with, or apply in any way poison or any poisonous substance, to fruit trees while the same are in blossom, is guilty of a misdemeanor, punishable by a fine of not less than ten

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*Manslaughter in the first degree is punishable by imprisonment for a term not exceeding twenty years. (C. L. 1923, c. 41, art. 94, § 1051.)

†For administrative provisions, see No. 1 et seq.

‡For penalty, see No. 38 et seq.

¶Commissioner of Agriculture and Markets. See Nos. 2 and 52 et seq.

dollars nor more than fifty dollars for each offense; provided, however, that nothing in this section shall prevent the directors of the experimental stations at Ithaca and Geneva from conducting experiments in the application of poison and spraying mixtures to fruit trees while in blossom. (C. L. 1923, c. 41, art. 166, § 1757.)

Pharmacy, Poisons and Narcotics.

261. Definitions.—As used in this article: 1. "Association" means the New York State Pharmaceutical Association.

2. "Board" when not otherwise limited, means the New York State Board of Pharmacy.

3. "Chemicals" when not otherwise limited, means the chemical materials of medicine.

4. "Council" means the New York State Pharmaceutical Council with a secretary and at least one representative from each school of the State appointed by the regents for a period of five years.

5. "Commissioner" means the Commissionr of Education of the State of New York; "department," the Education Department of the State of New York; "university," the University of the State of New York; "regents," the Board of Rgents.

6. "Drugs," where not otherwise limited, means all substances used as medicines or in the preparation of medicines. "Crude drugs" means drugs that have not been changed by manufacture except by desiccation or comminution.

7. "Examiner" means a member of the State Board of Pharmacy.

8. "Formulary" means the latest edition of the National Formulary.

9. "Medicines," where not otherwise limited, means a drug or preparation of drugs in suitable form for use as a curative or remedial substance.

10. "Pharmacy," where not otherwise limited, means the place registered by the board in which drugs, chemicals, medicines, prescriptions or poisons are compounded, dispensed or retailed.

11. "Pharmacology" is the science that treats of drugs and medicines; their nature, preparation, administration and effect.

12. "Pharmacopœia," when not otherwise limited, means the latest edition of the Pharmacopœia of the United States of America.

13. "Physician" means a practitioner of medicine as defined by article forty-eight* of this chapter; "dentist" means a practitioner of dentistry as defined by article forty-nine,* and "veterinarian," means a practitioner of veterinary medicine as defined by article fifty.*

14. "Poisons," where not otherwise limited, means any drug, chemical, medicine or preparation liable to be destructive to adult human life in quantities of sixty grains or less.

15. "Rules," where not otherwise limited, means the rules of the board approved by the department.

16. "School" means any college or school of pharmacy, or the department of pharmacy of a university, whatever the corporate title, registered heretofore by the regents or hereafter by the department as maintaining a proper educational standard and legally incorporated.

17. "Secretary" means the secretary of the State Board of Pharmacy.

18. "Syllabus" means the latest edition of the syllabus adopted by the board. (C. L. 1923, c. 15, art. 51, § 1350; L. 1927, c. 85.)

262. State Board of Pharmacy; Nominations; Appointments; Examiners; Secretary; Expenses.—The State Board of Pharmacy shall consist of nine examiners, four of whom shall be residents of the city of New York.

Nominations. At each annual meeting of the association, nine licensed pharmacists shall be nominated by ballot, whose names shall be submitted to the department in writing under the seal of the association by the president and secretary thereof, promptly after the adjournment of such meeting.

Appointments. From the number thus submitted or from the other licensed pharmacists of the State the regents may appoint three persons to succeed the members whose terms of office expire on the following July thirty-first. The successors of the members, whose terms of office have expired, shall be appointed, as herein provided for a term of three years. A vacancy in the office of any member, caused otherwise than by expiration of term, shall be filled by the regents for the unexpired term of such member.

Examiners. No person shall be appointed as an examiner unless he is a licensed pharmacist, and has legally practiced as such for at least ten years in this State. Each of the candidates shall present proof of such qualifications to the de-

*Omitted herein.

partment. The regents may remove any examiner for misconduct, incapacity or neglect of duty. Each examiner shall receive a certificate of appointment from the department, and before beginning his term of office shall take and file with the Secretary of State the constitutional oath of office. The board or any committee thereof may employ counsel, may compel the attendance of witnesses, and may take testimony and proofs concerning all matters within its jurisdiction. The board shall make such rules approved by the department not inconsistent with the law, as may be necessary for the proper performance of its duty, but no rule by which more than a majority vote is required for any specific action by the board shall be amended, suspended or repealed by a smaller vote than that required for action thereunder.

Secretary. The secretary shall be a licensed pharmacist who has legally practiced as a pharmacist for at least ten years in this State. He shall be appointed by the regents, and shall hold office during their pleasure. He shall be the executive officer of the board and shall have such powers and shall perform such duties as are prescribed by the rules.

Expenses. Notwithstanding the provisions of any other general, local or special law, all fees, fines, penalties and other moneys derived from the operation of this article shall be paid to the department and shall be available, together with the appropriations made from time to time by the Legislature, for the payment of all proper expenses of the board, including the salaries of the secretary and his assistants, inspectors, chemists, examiners, and of any deputy attorney-general assigned for the purpose of enforcing the provisions of this article, and other employees, and their necessary disbursements. The unexpended balance of all such fees, fines, penalties and other moneys derived from the operation of this article remaining on December thirty-first of each year shall be paid into the State treasury. (Id. § 1351.)

263. Powers and Duties of the Board; Records; Employees.—Prior to October first the board shall annually elect from its members a president and a vice-president for the academic year, and shall hold one or more meetings each year. At any meeting a majority shall constitute a quorum; but questions prepared by the board may be grouped and edited, or answer papers of candidates may be examined and marked by committees duly authorized by the board and approved by the department.

The board shall have power:

(a) To regulate the practice of pharmacology.

(b) To regulate the sale of drugs, chemicals, medicines and poisons.

(c) To regulate the employment of apprentices and employees in pharmacies.

(d) To regulate the working hours and sleeping apartments of employees in pharmacies.

(e) To regulate and control the character and standard of drugs and medicines compounded and dispensed in the State, to employ inspectors and chemists, to secure samples and to prevent the sale of such drugs, chemicals, medicines and poisons as do not conform to the formulæ, standards and tests of the pharmacopœia and formulary.

(f) To regulate the retailing of poisons and to adopt schedules.

(g) To issue temporary permits limited to definite areas.

(h) To investigate alleged violations of the provisions of this article, to conduct hearings in respect thereto when, in its discretion, it appears to be necessary, and to bring the same to the notice of the Attorney-General.

Records. It shall be the duty of the board in its rooms provided by the department to preserve a record of all licenses and certificates which shall be open to public inspection and shall have in all legal proceedings the same weight as evidence that is given to a record of conveyance of lands. It shall render annually to the department and the association a report of all its proceedings during the preceding year.

Employees. The clerks, stenographers, inspectors and employees of the State Board of Pharmacy in office when this act takes effect shall be transferred to the department. The rules of the board, made as hereinbefore provided, shall specify the number of clerks, stenographers, inspectors and employees, necessary to carry out the provisions of this article. The clerks, stenographers, inspectors, and employees transferred to the department as above provided, or hereafter employed, shall be subject to the same rules as to appointment and service as the other employees of the department. (Id. § 1352.)

264. Licenses; Examinations; Rules.—Satisfactory evidence verified by oath shall be required by the department of all candidates for admission to the examinations.

Pharmacist. They shall admit to the examination for pharmacist any candidate that pays a fee of ten dollars and

1. Is more than twenty-one years of age.
2. Is of good moral character.
3. Had prior to the beginning of the first year of pharmaceutical study the general education required by the rules of this department preliminary to receiving the degree of graduate in pharmacy, which education shall be not less than four years of academic work or its equivalent.
4. Has studied pharmacology as outlined in the syllabus not less than two years in a school and not later than January first, nineteen hundred and twenty-eight, for a period of not less than three years.
5. Has either received the diploma of graduate in pharmacy or equivalent degree from a school, or a license conferring the full right to practice pharmacology in some foreign country registered as meeting the minimum requirements of this article. The diploma of graduate in pharmacy or equivalent degree shall not be conferred on any one that did not file with the school at matriculation the pharmacy students' certificate required above.
6. Has had four years' experience in a registered pharmacy or drug store, under the personal supervision of a pharmacist or druggist, one year of which experience within five years of the date of application must have been in a pharmacy or drug store of the United States. Provided, however, that a graduate of a registered school of pharmacy, who has not had four years' practical experience in a registered pharmacy or drug store or who is not twenty-one years of age, may be admitted to the examination in theoretical subjects only, and thereafter upon the submission of satisfactory evidence of the completion of four years' actual experience in a registered pharmacy or drug store and that such applicant is over twenty-one years of age, he may be admitted to the examination in practical pharmacy upon payment of an additional examination fee of ten dollars and if the examination is successfully passed the department shall grant to such applicant a pharmacist license.
7. Is a citizen of the United States or has made due application to become such citizen. In the event that an applicant who is a citizen of a foreign country but who has declared his intention of becoming a citizen of the United States shall be examined and licensed in accordance with the provisions of this article and shall fail to complete his citizenship within the time prescribed by law the license so granted to such applicant may be revoked by action of the department upon proof of such failure.

Druggist. Prior to January first, nineteen hundred and twenty-eight, but not thereafter they shall admit to the examination for druggists any candidate that pays a fee of five dollars and

1. Is more than eighteen years of age.
2. Is of good moral character.
3. Has the preliminary and professional education required by the rules.
4. Has had three years' experience in a registered pharmacy or drug store under the personal supervision of a pharmacist or druggist, one year of which experience within five years of the date of application must have been in a pharmacy or drug store of the United States.

Examinations. The board shall submit to the department as required suitable questions for thorough examination in pharmacology, both written and practical, as outlined in the syllabus.

From these questions the secretary shall prepare question papers in accordance with the rules which at any examination shall be the same for all candidates. Examinations for license shall be given in at least three convenient places in the State and at least four times annually in accordance with the rules. The practical examinations shall be conducted by the examiners, the written by the department. On receiving from the board an official report that an applicant has successfully passed the examination and is recommended for license, the department shall issue to him a license to practice according to the qualifications of the applicant. Every license shall be issued by the department under seal and shall be signed by the commissioner and by the secretary. Every certificate shall be issued by the board subject to rule and shall be signed by the secretary. Applicants examined and licensed by other State examining boards registered heretofore by the regents or hereafter by the department as maintaining standards not lower than those provided by this article may without further examination, on payment of twenty-five dollars to the department and on submitting such evidence as it may require receive from it an indorsement of their licenses or diplomas conferring all rights and privileges of a department license after examination.

Before any license or certificate is issued it shall be numbered and properly recorded and its number shall be noted in the license or certificate. The department on the recommendation of the board may revoke a license or annul a certificate, for cause.

Rules. The rules of the board and of the department affecting examination, registration and administration continue in force until revised by the board and approved by the department.

The board shall make rules subject to the approval of the department:

1. For the certification and registration of apprentices and storekeepers.

2. For the surrendering of licenses, issued prior to January first, nineteen hundred and one.

3. For the acceptance of licenses from other licensing boards issued prior to January, nineteen hundred and five, in lieu of diploma.

4. For the accomplishment of the trusts reposed in them by this article and by any other law of the State.

All licenses and certificates of examination, issued to licensees by former boards of pharmacy, shall be in full force and effect in perpetuity for the section of the State for which they were issued and all certificates of registration shall expire on December thirty-first of the calendar year in which they are issued. (Id. § 1353.)

265. Pharmacies; Drug Stores; Stores.—Except as prescribed in this article, it shall not be lawful for any person to practice as a pharmacist, druggist, apprentice or storekeeper, or to engage in, conduct, carrry on, or be employed in the dispensing, compounding or retailing of drugs, chemicals, medicines, prescriptions or poisons within this State. Every place in which drugs, chemicals, medicines, prescriptions or poisons are retailed, or dispensed, or compounded, shall be a pharmacy, a drug store, or a store; shall be under the personal supervision of a pharmacist, a druggist, or a storekeeper and shall be annually registered in the month of January by the board as conducted in full compliance with law and the rules.

Every pharmacy shall be owned by a licensed pharmacist and every drug store shall be owned by a licensed druggist; and no copartnership shall own a pharmacy unless all the partners are licensed pharmacists and no copartnership shall own a drug store unless all the partners are licensed druggists; except that any corporation, organized and existing under the laws of the State of New York or of any other State of the United States and authorized to do business in the State of New York and empowered by its charter to own and conduct pharmacies or drug stores and, at the time of the passage of this act, still owns and conducts a registered pharmacy or pharmacies or a registered drug store or drug stores in the State of New York, may continue to own and conduct the same and may establish and own additional pharmacies or drug stores in accordance with the provisions of this article, but any such corporation which shall not continue to own at least one of the pharmacies or drug stores therotofore owned by it or ceases to be actively engaged in the practice of pharmacy, shall not be permitted thereafter to own a pharmacy or a drug store; and except that any person, not a licensed pharmacist or a licensed druggist, who at the time of the passage of this act owns a registered pharmacy or a registered drug store in the State of New York, may continue to own and conduct the same in accordance with the provisions of this article; and except that the administrator, executor or trustee of the estate of any deceased owner of a registered pharmacy or drug store, or the widow, heirs or next of kin of such deceased owner, may continue to own and conduct such registered pharmacy or drug store, in accordance with the provisions of this article.

Pharmacies. It shall be lawful for a pharmacist in conformity with the rules, to take, use and exhibit titles pharmacist and registered pharmacy and to have charge of, engage in, conduct or carry on for himself or for another the dispensing, compounding, or sale of drugs, chemicals, medicines, prescriptions or poisons anywhere within the State, but he shall have personal supervision of not more than one pharmacy or drug store at the same time.

Drug stores. It shall be lawful for a druggist in conformity with the rules to take, use, and exhibit the titles druggist and registered drug store, and to have charge of, engage in, conduct or carry on for himself or for another the dispensing, compounding or retailing of drugs, chemicals, medicines, prescriptions or poisons anywhere within the State, in a place of not more than one thousand inhabitants, but he shall have charge of not more than one drug store at the same time. He may be employed for the purpose of dispensing or retailing drugs, chemicals, medicines, prescriptions and poisons in a registered pharmacy under the management and personal supervision of a licensed pharmacist; he may also perform such duties during the temporary absence of the pharmacist, except in cities of more than one million inhabitants.

Temporary permits. In places and villages of a thousand inhabitants or less that do not have within three miles a pharmacy or drug store:

1. Physicians may compound medicines, fill prescriptions and sell poisons labeled as required by this article.

2. Storekeepers may in accord with the rules sell medicines and poisons for a period not exceeding one year upon the payment of a fee of three dollars. The

storekeeper's certificate is limited to the village or place where the storekeeper resides and may be limited to the sale of certain classes of poisons sold only in original packages and put up by a licensed pharmacist whose name and business address is displayed on the package.

Stores. It shall be lawful for a storekeeper, in conformity with the rules, to take, use and exhibit the titles certified storekeeper and registered store and to sell medicines and poisons for a period not exceeding one year in a village or place of the State with less than one thousand inhabitants that has no pharmacy or drug store within three miles of it.

Every person practicing as a pharmacist or druggist must at all times display his license conspicuously in his place of business. The proprietor of every pharmacy, drug store, or store shall annually in the month of January report under oath to the board any facts required by the board, shall pay the registration fee of two dollars and shall receive a certificate of registration that must be conspicuously displayed at all times in the pharmacy, drug store or store with all licenses. Every person, partnership, association or corporation doing business as the proprietor or proprietors of a pharmacy, drug store or store shall cause the name of such proprietor or proprietors to be displayed upon a sign conspicuously placed upon the exterior of the building, and this sign shall be presumptive evidence of ownership of such pharmacy, drug store or store. The proprietor that opens a pharmacy, drug store or store subsequent to the month of January shall, within thirty days of opening, make this report, pay the fee and display the certificate and the sign. Every proprietor of a wholesale or retail pharmacy, drug store or store is responsible for the strength, quality and purity of all drugs sold or dispensed by him, subject to the guaranty provisions of this article. (Id. § 1354.)

266. Unauthorized Use of Terms "Drug Store" or "Pharmacy."—No person or corporation shall hereafter carry on, conduct or tranact business under a name which contains as a part thereof the words "drug store" or "pharmacy," or in any manner by advertisement, circular, poster, sign or otherwise describe or refer to the place of business conducted by such person or corporation by the terms "drug store" or "pharmacy," unless the place of business so conducted is a drug store or pharmacy duly registered and authorized by the State Board of Pharmacy. Any person or corporation violating this section shall be guilty of a misdemeanor, and if a corporation, any officer thereof who knowingly participates in such violation shall also be guilty of a misdemeanor.* (Id. § 1355.)

267. Apprentices and Employees.—Every person over fifteen years of age that shall enter a pharmacy or drug store with the intention of becoming a pharmacist or druggist, shall pay the registration fee of one dollar, and receive a certificate as a registered apprentice in accordance with the rules.

Apprentices may be employed, in accordance with the requirements of this article and the rules, in registered pharmacies and drug stores and may receive instruction in the practice of pharmacology.

Apprentices may prepare or dispense receipts or prescriptions, may sell or furnish medicines or poisons in the presence of and under the immediate personal supervision of a pharmacist or druggist, who must be either the proprietor or in the actual employ of the proprietor. The proprietor as principal shall be equally liable for violations of this article by his employees.

Other unlicensed assistants may be employed in registered pharmacies and drug stores for other purposes than the practice of pharmacology and the dispensing, compounding or retailing of drugs, chemicals, medicines, prescriptions or poisons.

A junior pharmacist may, subject to the rules of the board, have temporary charge of a pharmacy or a drug store, but during such temporary charge shall not compound or dispense physicians' prescriptions. (Id. § 1356.)

268. Working Hours and Sleeping Apartments.—No apprentice or employee in any pharmacy or drug store shall be required or permitted to work more than seventy hours a week. Nothing in this section prohibits working six hours overtime any week for the purpose of making a shorter succeeding week, provided, however, that the aggregate number of hours in any such two weeks shall not exceed one hundred and thirty-two hours. The hours shall be so arranged that an employee shall be entitled to and shall receive at least one afternoon and evening off in each week and in addition thereto shall receive one full day off in two consecutive weeks. No proprietor of any pharmacy or drug store shall require any clerk to sleep in any room or apartment in or connected with such store that does not comply with the sanitary regulations of the local board of health. The pro-

*See No. 68a.

visions of this section alone regulate working hours and sleeping apartments in pharmacies or drug stores. (Id. § 1357.)

269. **Working Hours for Male Employees Over the Age of Sixteen Years, and Sleeping Apartments in Grocery or Provision Stores.**—No male apprentice or employee over the age of sixteen years in any grocery or provision store located or lying within the boundaries of any city of the first class shall be permitted to work more than seventy hours a week or more than eleven hours in any one day, except that on the last day of the week such employees may be permitted to work fifteen hours for the purpose of eliminating work on the first day of the week. Nothing herein shall be so construed as to require male apprentices or employees over the age of sixteen years in grocery or provision stores to work on seven days in the week. The work hours shall be consecutive, allowing one hour for each meal. Nothing herein shall be so construed as to affect minors under the age of sixteen years or females of any age, or in any way to repeal or modify chapter three hundred and thirty-one of the laws of nineteen hundred and fourteen.† No proprietor of any grocery or provision store located within the boundaries of any city of the first class shall permit any clerk to sleep in any room or apartment in or connected with such store which does not comply with the sanitary regulations of the local board of health, providing, however, that this act shall not affect any proprietor or the family of such proprietor who reside in an apartment connected with such store, which apartment at the time of its building or erection was in conformity with the sanitary regulations of the local board of health. Failure to comply with any of the provisions of this section shall be deemed a misdemeanor.‡ (Id. § 1358.)

270. **Adulterating, Misbranding and Substituting.**—A drug is adulterated in any of the following cases:

1. When sold under or by a name recognized in the pharmacopœia it differs from the standard determined by the test or formula given.

2. When sold under or by a name recognized in the formulary the strength, quality or purity or percentage of the alkaloid or alkaloids or other potent ingredient or ingredients differs from the standard determined by the test or formula given.

3. When sold under or by a name not recognized in or according to a formula not given in the pharmacopœia or formulary that is found in some other standard work on pharmacology recognized by the board, it differs in strength, quality or purity from the strength, quality or purity required, or the formula prescribed in the standard work. Provided, however, that all drugs sold by wholesalers when not sold to a consumer shall be in accordance with the provisions of the national food and drug act of June thirtieth, nineteen hundred and six.

4. When sold as a homeopathic drug it differs from the strength, quality or purity established by the test or formula given in the latest edition of the homeopathic pharmacopœia of the United States or the American homeopathic pharmacopœia.

5. Its strength, quality or purity differs from the professed standard of strength, quality or purity under which it is sold.

6. It contains methyl or wood alcohol when intended for use as a medicine except when sold as a veterinary liniment for external use only and so labeled.

Misbranding and substituting. A drug is misbranded if

1. The package bears any statement, design or device that is false or misleading in any particular regarding its contents, regarding the State, territory or country in which it is manufactured or produced.

2. It is an imitation or is offered for sale under the name of another substance.

3. The original contents of the package have been removed in whole or in part and other contents added.

4. The package fails to bear a statement of the percentage contained therein by volume of alcohol and by quantity or proportion of morphine, opium, heroin, chloroform, cannabis indica, chloral hydrate, acetanilide or any derivative or preparation of any of these substances.

5. The package containing a homeopathic drug fails to state that fact.

These statements shall be made in type easily read, conspicuously displayed and described by their common or English names. Alcohol used as a solvent, preservative or for any other purpose is contained in the drug within the meaning of this article. Nothing in this paragraph applies to the compounding and dispensing of drugs and medicines on the written prescription of a physician, dentist or veter-

†Relates to employment of children under sixteen years of age in mercantile and other establishments. Omitted herein.

‡See No. 68a.

inarian, which prescription shall be kept on file by the pharmacist or druggist. Nor does it apply to unadulterated drugs recognized in the pharmacopœia and the formulary and the homeopathic pharmacopœia sold under the names by which they are recognized therein, and not sold under a proprietary name, trade name or trademark. All adulterated, misbranded or substituted drugs are forfeited to the board for destruction. (Id. § 1359.)

271. **Poison Schedules; Register.**—It is unlawful for any person to sell at retail or to furnish any of the poisons of schedule A and B without affixing or causing to be affixed to the bottle, box, vessel or package, a label with the name of the article and the word poison distinctly shown and with the name and place of business of the seller all printed in red ink together with the name of such poisons printed or written thereupon in plain, legible characters.

Wholesale dealers in drugs, medicines, pharmaceutical preparations, chemicals or poisons shall affix or cause to be affixed to every bottle, box, parcel and outer inclosure of any original package containing any of the articles of schedule A a suitable label or brand in red ink with the word poison upon it.

Register. Every person who disposes of or sells at retail or furnishes any poisons included in schedule A shall before delivering the same enter in a book kept for that purpose the date of sale, the name and address of the purchaser, the name and the quantity of the poison, the purpose for which it is purchased and the name of the dispenser. The poison register must be always open for inspection by the proper authorities and must be preserved for at least five years after the last entry. He shall not deliver any of the poisons of schedule A or B until he has satisfied himself that the purchaser is aware of its poisonous character and that the poison is to be used for a legitimate purpose. The provisions of this paragraph do not apply to the dispensing of medicines or poisons on physicians' prescriptions.

The board shall add to any of the schedules from time to time as such action becomes necessary for the protection of the public. Schedules A, B and C shall remain in force until amended by the rules. (Id. § 1360.)

272. **Construction of Article.**—This article shall not apply to the practice of a physician who is not the proprietor of a pharmacy, drug store or store, or who is not in the employ of such a proprietor. Except as to the quality of drugs dispensed it shall not prevent physicians from supplying their patients with such articles as the physician deems proper. Except as to the labeling of poison and to adulterating, misbranding and substituting, it shall not apply.

1. To the sale of drugs, medicines, chemicals, prescriptions or poisons at wholesale when not for the use or consumption of the purchaser.
2. To the sale of Paris green, white hellebore and other poisons for destroying insects.
3. To the sale of any substance for use in the arts.
4. To the manufacture and sale of proprietary medicines.
5. To the sale by merchants of the articles in schedule C.

(Id. § 1361.)

273. **Revocation of License; Misdemeanors; Violations and Penalties.**—No license or certificates shall be granted to any applicant guilty of felony or gross immorality, or that is addicted to the use of alcoholic liquors or narcotic drugs to such an extent as to render him unfit to practice pharmacology. Any license or certificate obtained by misrepresentation or fraud or that is held by anyone unfit or incompetent from negligence, habits or other cause may be revoked after reasonable notice and an opportunity to be heard. The wilful and repeated violation of any of the provisions of this article or the rules is sufficient cause for the revocation of a license or certificate. The license or certificate revoked shall on formal notice be delivered immediately to the board.

Misdemeanors. It is a misdemeanor* for

1. Any person to procure or attempt to procure a license or certificate for himself or for any other person by making or causing to be made, any false representations.
2. Any pharmacist to permit the compounding and dispensing of prescriptions of medical practitioners in his pharmacy by any unlicensed person or persons, except in the presence of and under the immediate personal supervision of a pharmacist or druggist.
3. Any unlicensed person to prepare or to dispense a medical prescription or physician's prescription, or to dispense or to sell at retail poisons or medicines except under the immediate personal supervision of a pharmacist or druggist whose license is displayed in the pharmacy or drug store.

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*See No. 68a.

4. Any unlicensed person to open or to conduct or to have charge of, or to supervise any pharmacy, drug store or store for retailing, dispensing or compounding drugs, chemicals, medicines, prescriptions or poisons.

5. Any person to fraudulently represent himself to be licensed.

6. Any person to intentionally prevent or knowingly refuse to permit any examiner or inspector to enter a pharmacy, drug store or store for the purpose of lawful inspection.

7. Any person whose license or certificate has been revoked, to refuse to deliver the certificate or license.

8. Any person to omit his name from the sign and any holder of a license or certificate to fail to display the same.

9. Any proprietor of a pharmacy or drug store to require more than seventy working hours a week in other arrangement than that permitted by section thirteen hundred and fifty-seven, and for any proprietor of a pharmacy or drug store to violate the provisions of the same section in regard to sleeping apartments.

10. Any person to adulterate, misbrand or substitute any drug knowing or intending that it shall be used, or sells, offers for sale or causes to be sold any adulterated, misbranded or substituted drug.

11. Any person to violate any of the provisions of this article in relation to the wholesaling, retailing or dispensing of drugs, chemicals, medicines, prescriptions and poisons for which violations no other punishment is imposed.

12. Any unlicensed person, except as provided in this article, to own any pharmacy or drug store. Violations and penalties. Any person that violates any of the provisions of this article who is not criminally prosecuted, on complaint of the board, as for a misdemeanor, shall forfeit to the people of the State of New York the sum of fifty dollars for every such violation, which may be paid to the board or sued for and recovered in the name of the people of the State of New York in an action brought therefor by the Attorney-General.

A person accused of violation of any of the provisions of this article relating to adulterating, misbranding or substitution shall not be prosecuted or convicted or suffer any of the penalties, fines or forfeitures for such violation, if he establishes upon the hearing or trial that the drug or drugs alleged to be adulterated, misbranded or substituted were purchased by him under a guaranty of the manufacturer or seller to the effect that said drug or drugs were not adulterated or misbranded within the meaning of this article and proves that he has not adulterated, misbranded or substituted the same. A guaranty in order to be a defense to a prosecution or to prevent conviction or to afford protection, must state that the drug or drugs to which it refers are not adulterated, misbranded or substituted within the meaning of the provisions of the statute of New York State and must state also the full name, and place of business of the manufacturer, wholesaler, jobber or other person from whom the drug or drugs were purchased. In construing and enforcing the provisions of this article the word "person" shall import both the plural and singular and shall include corporations, companies, partnerships, societies and associations, and the act, omission or failure of any officer, agent or other employee acting for or employed by any person within the scope of his authority or employment shall in every case be the act, omission or failure of the person as well as that of the officer, agent or other employee, and such person shall be equally liable for violations of this article by a partnership, association or corporation, every member of the partnership or association and the directors and general officers of the corporation and the general manager of the partnership, association or corporation, shall be individually liable and any action, prosecution or proceeding authorized by this article may be brought against any or all of such persons. When any prosecution under this article or under section eleven hundred and forty-two, section eighty, section eighty-one, section eighty-two, section seventeen hundred and forty-two, section seventeen hundred and forty-three, section seventeen hundred and forty-five, section seventeen hundred and forty-six, section seventeen hundred and forty-seven, section seventeen hundred and forty-eight, section seventeen hundred and forty-nine and section seventeen hundred and sixty of the penal law* and any amendment thereto is made on the complaint of the board, any fines collected shall be paid into the State treasury as provided by this article. (Id. § 1362.)

274. Proof Required in Prosecuting for Certain Violations.—In an action or proceeding, civil or criminal, against any person for violating any provision of this article relating to retailing or dispensing drugs, chemicals, medicines, prescriptions

*For section 1142, see No. 246; sections 80 and 81 relate to prosecution for abortion, etc., and are omitted herein; for sections 82, 1742 and 1743, see Nos. 251, 63 and 278; sections 1745 and 1746 are repealed; for sections 1747, 1748, 1749 and 1760, see Nos. 254, 64, 161 and 66.

and poisons, or to misbranding or substituting, it shall be necessary to prove at the trial or hearing that at the time and place of the taking of any sample of drugs, chemicals, medicines, or poisons, to be analyzed, the person taking the same divided it into two substantially equal parts, hermetically or otherwise effectively and completely sealed, delivered one such sealed part to the seller, pharmacist, druggist or storekeeper from whose premises such sample was taken and delivered the other part so sealed to the chemist designated by the State Board of Pharmacy; and the facts herein required to be proven shall be alleged in the complaint or information by which such action or proceeding was begun. The rules of the board shall be proven prima facie by the certificate of the secretary. (Id. § 1363.)

275. Schedules A, B and C.—These schedules remain in force until revised by the board and approved by the department.

Schedule A. Arsenic, atropine, corrosive sublimate, potassium cyanide, chloral hydrate, hydrocyanic acid, morphine, strychnine and all other poisonous vegetable alkaloids and their salts, oil of bitter almond containing hydrocyanic acid, opium and its preparations, except paregoric and such others as contain less than two grains of opium to the ounce.

Schedule B. Aconite, belladonna, cantharides, colchicum, conium, cotton root, digitalis, ergot, hellebore, henbane, phytolacca, strophantus, oil of savin, oil of tansy, veratrum viride and their pharmaceutical preparations, arsenical solution, carbolic acid, chloroform, creosote, croton oil, white precipitate, methyl or wood alcohol mineral acids, oxalic acid, Paris green, salts of lead, salts of zinc, or any drug, chemical or preparation which is destructive to adult human life in quantities of sixty grains or less.

Schedule C. Ammonia water, bicarbonate of soda, borax, camphor, castor oil, cream of tartar, dyestuffs, essence of peppermint, essence of wintergreen, nonpoisonous flavoring essences or extracts, glycerine, licorice, olive oil, sal ammoniac, saltpetre, sal soda, epsom salt, rochelle salt, sulphur, cod liver oil, vaseline, petroleum jellies, oil of origanum, oil of spike, flaxseed, rock candy, butter color, malt extract, extract of beef, beef, iron and wine, extract of witch hazel, quinine pills, cathartic pills, seidlitz powders, bay rum, perfumes, toilet water, tumeric, talcum powder, composition powder, porus plasters, court plasters, copperas, alum, gum arabic, lithia water. (Id. § 1364.)

276. Department Supervision.—The provisions of this article shall be administered subject to the provisions of section fifty-one of this chapter.* (Id. § 1365.)

277. Drug Store Not to be Used by Dispensary; Unlawful Display of Signs.—No dispensary shall make use of any place commonly known as a drug store; nor shall any person, corporation, institution, society, association, or agent thereof, except a duly licensed dispensary, display or cause to be displayed a sign or other thing which could directly or indirectly or by suggestion indicate the existence of the equivalent, in purpose and effect, of a dispensary. (C. L. 1923, c. 56, art. 15, § 294; L. 1927, c. 392.)

277a. Violation of Article, Misdemeanor.—Any person who willfully violates any of the provisions of this article, or any of the rules and regulations made and published under the authority of this article, shall be guilty of a misdemeanor,

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*Supervision of professions.—Conformably to law the regents may supervise the entrance regulations to and the licensing under and the practicing of the professions of medicine, dentistry, veterinary medicine, pharmacy, optometry and chiropody, and also supervise the certification of nurses, public accountants, certified shorthand reporters, architects, and members of any other profession which may hereafter come under the supervision of the Board of Regents.

The regents may by rule or order accept evidence of preliminary and professional education for licensing a candidate to practice any such profession in lieu of that prescribed by the laws relating to such profession; provided it shall appear to the satisfaction of the regents that such candidate has substantially met the requirement of such laws.

And the regents shall have further power to indorse a license issued by a legally constituted Board of Examiners in any other State or country upon satisfactory evidence that the requirements for the issuance of such license were substantially the equivalent of the requirements in force in this State when such license was issued, and that the applicant has been in the lawful and reputable practice of his profession for a period of not less than five years prior to his making application for such indorsement. When the evidence presented is not satisfyingly sufficient to warrant the indorsement of such license, the Board of Regents may require that the candidate for indorsement shall pass such subjects of the licensing examination specified by statute or regents' rule as should be required of the candidate to establish his worthiness to receive such indorsement. (C. L. 1923, c. 15, art. 3, § 51; Supp. 1926, Id.)

and on conviction thereof, shall be punished by a fine of not less than ten dollars and not more than two hundred and fifty dollars. (C. L. 1923, c. 56, art. 15, § 295.)

278. Selling Poison Without Labeling, and Recording the Sale.—It shall be unlawful for any person to sell at retail or furnish any of the poisons named in the schedules hereinafter set forth, without affixing or causing to be affixed, to the bottle, box, vessel or package, a label containing the name of the article and the word "poison" distinctly shown, with the name and place of business of the seller, all printed in red ink, together with the name of such poisons printed or written thereupon in plain, legible characters, which schedules are as follows, to wit:

Schedule A. Arsenic, cyanide of potassium, hydrocyanic acid, cocaine, morphine, strychnia and all other poisonous vegetable alkaloids and their salts, oil of bitter almonds, containing hydrocyanic acid, opium and its preparations, except paragoric and such others as contain less than two grains of opium to the ounce.

Schedule B. Aconite, belladonna, cantharides, colchicum, conium, cotton root, digitalis, ergot, hellebore, henbane, phytolacca, strophanthus, oil of tansy, veratrum viride and their pharmaceutical preparations, arsenical solutions, carbolic acid, chloral hydrate, chloroform, corrosive sublimate, creosote, croton oil, mineral acids, oxalic acid, Paris green, salts of lead, salts of zinc, white hellebore or any drug, chemical or preparation which, according to standard works on medicine or materia medica, is liable to be destructive to adult human life in quantities of sixty grains or less, and such other poisons as the State Board of Pharmacy, under the authority given to it by the public health law, may from time to time add to either of said schedules. Every person who shall dispose of or sell at retail or furnish any poisons included under schedule A shall, before delivering the same, make or cause to be made an entry in a book kept for that purpose, stating the date of sale, the name and address of the purchaser, the name and the quantity of the poison, the purpose for which it is represented by the purchaser to be required and the name of the dispenser, such book to be always open for inspection by the proper authorities, and to be preserved for at least five years after the last entry. He shall not deliver any of said poisons without satisfying himself that the purchaser is aware of its poisonous character and that the said poison is to be used for a legitimate purpose. The foregoing portions of this section shall not apply to the dispensing of medicines or poisons on physicians' prescriptions. Wholesale dealers in drugs, medicines, pharmaceutical preparations or chemicals shall affix or cause to be affixed to every bottle, box, parcel or outer enclosure of an original package containing any of the articles enumerated under said schedule A, a suitable label or brand in red ink with the word "poison" upon it.

Any person who violates any of the provisions of this section shall be guilty of a misdemeanor.* (C. L. 1923, c. 41, art. 166, § 1743.)

279. Having Narcotics in Possession.—1. A person, other than a duly licensed physician or surgeon engaged in the lawful practice of his profession, who has in his possession any narcotic or anæsthetic substance, compound or preparation, capable of producing stupor or unconsciousness, with intent to administer the same or cause the same to be administered to another, without the latter's consent, unless by direction of a duly licensed physician, is guilty of a felony, punishable by imprisonment in the State Prison for not more than ten years.

2. The possession by any person, other than as exempted in the foregoing subdivision, of any such narcotic or anæsthetic substance or compound, concealed or furtively carried on the person, is presumptive evidence of an intent to administer the same or cause the same to be administered in violation of the provisions of this section. (Id. § 1752.)

280. Short Title.—This article shall be known as the narcotic drug control law. (C. L. 1923, c. 46, art. 22, § 420; L. 1927, c. 672.)

281. Definitions.—As used in this article:

1. "Person" includes any corporation, association, copartnership or one or more individuals.

2. "Physician" means a licensed practitioner of medicine as defined by law.

3. "Apothecary" means a licensed pharmacist or druggist as defined by law.

4. "Dentist" means a licensed practitioner of dentistry as defined by law.

5. "Veterinarian" means a licensed practitioner of veterinary medicine as defined by law.

6. "Nurse" means a registered practitioner of nursing as defined by law.

7. "Medicine" means a drug or preparation of drugs in suitable form for use as remedial or curative substance.

8. "Sale" includes barter, exchange or giving away, or offering therefor and each such transaction made by any person whether as principal, proprietor, agent, servant or employee.

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*See No. 68a.

9. "Dispense" includes distribute, leave with, give away, dispose of, and deliver to a person or to his agent to be delivered to him.

10. "Administer" means only administration by a person authorized to administer habit forming drugs.

11. "Coca leaves" includes coca leaves, cocaine, or any compound, manufacture, salt, derivative or preparation thereof, including alpha or beta eucaine, or any of their salts or any synthetic substitute of any of them, identical in chemical composition, but shall not include decocanized coca leaves, or preparations made therefrom or other preparations of coca leaves which do not contain cocaine.

12. "Opium" (includes opium, morphine, codeine, diacetyl-morphine heroin) or any compound, manufacture, salt, derivative or preparation of any of them or any synthetic substitute of any of them identical in chemical composition, but not apomorphine and its salts.

13. "Cannabis indica" or "cannabis sativa" shall include any compound, manufacture, salt, derivative or preparation thereof and any synthetic substitute of any of them identical in chemical composition.

14. "Habit forming drugs" shall mean coca leaves, opium, cannabis indica or cannabis sativa.

15. "Manufacturer" means a person who by compounding, mixing, or other process of manufacture, produces or prepares habit forming drugs for sale on written orders and does not include an apothecary who compounds habit forming drugs to be sold or dispensed on prescription.

16. "Wholesaler" means a person who supplies habit forming drugs on written orders.

17. "The Harrison act" means the act of Congress, entitled "An act to provide for the registration of, with collectors of internal revenue, and to impose a special tax upon all persons who produce, import, manufacture, compound, deal in, dispense, sell, distribute, or give away opium or coca leaves, their salts, derivatives or preparations and for other purposes," approved December seventeenth, nineteen hundred and fourteen, as heretofore or hereafter amended. (Id. § 421.)

282. Acts Dangerous to Public Health.—Any unauthorized possession, control over, sale, distribution, prescribing, administering or dispensing of habit forming drugs is hereby declared to be dangerous to the public health, and a menace to the public welfare. (Id. § 422.)

283. Acts Prohibited.—It shall be unlawful for any person to possess, have under his control, sell, distribute, administer, dispense, or prescribe any habit forming drug except as provided in this article. (Id. § 423.)

284. Sale on Written Orders.—1. By whom and to whom sold. A manufacturer, wholesaler, or apothecary may sell or distribute habit forming drugs upon his written order to any of the following persons:

a. To a manufacturer, wholesaler or apothecary.

b. To a physician, dentist or veterinarian.

c. To a public or private hospital.

d. To a hospital or institution licensed for the treatment of drug addiction.

e. To a person in charge of a laboratory where habit forming drugs are used for scientific or medical research, but only for use in such laboratory.

f. To a person in the employ of the United States or of this State or of any political subdivision thereof purchasing or receiving the drug by reason of his official duties.

g. To a captain or proper officer of a ship upon which no regular physician is employed for the actual medical needs of the officers and crew when not in port.

Provided, however, that both parties to the transaction in each of the above cases are registered under the Harrison act if required by such act to be so registered.

2. Order blanks. A written order for the supply of any habit forming drug shall be signed in duplicate by the person giving it or by his duly authorized agent, one duplicate of which shall be presented to the person who sells or distributes such habit forming drugs and in the event of his acceptance of such order, each party shall preserve his duplicate of such order for a period of two years in such a way as to be readily accessible for inspection and it shall be subject to inspection by any public officer or employee engaged in the enforcement of this article. Provided, however, that it shall be deemed a compliance with this subsection if the person giving the order shall have complied with the provisions of the Harrison act respecting the requirements governing order blanks under said act.

3. Possession lawful. Possession of or control over habit forming drugs, obtained as provided in this section, shall be lawful only in the regular course of business, occupation, profession, employment, or duty of the possessor and in an amount necessary therefor.

4. This section shall not apply to the supply of habit forming drugs on prescription or administered or dispensed by a physician, dentist, or veterinarian. (Id. § 424.)

285. Preparations, Prescriptions and Remedies Exempted.—The provisions of this article shall not apply to:

1. Medical preparations containing cannabis indica or cannabis sativa when combined with other ingredients in medicinal doses;

2. Preparations, prescriptions and remedies which do not contain more than two grains of opium, or more than one-fourth of a grain of morphine, or more than one-eighth of a grain of heroin or more than one grain of codeine, or any salt or derivative of any of them, in one fluid ounce, or, if a solid or semi-solid preparation, in one avoirdupois ounce; or to

3. Liniments, ointments, or other preparations which are prepared for external use only, except liniments, ointments, or other preparations which contain cocaine or any of its salts or alpha or beta eucaine or any of their salts or any synthetic substitute identical in chemical composition; provided that such remedies and preparations are sold, distributed, dispensed, or possessed as medicines and not for the purpose of evading the intentions and provisions of this article. (Id. § 425.)

286. Professional Use of Habit Forming Drugs.—1. Veterinarians. A veterinarian may prescribe, administer or dispense habit forming drugs in good faith and in the course of his professional practice only, and not for use by a human being.

2. Dentists. A dentist, in good faith and in the course of his professional practice only, may administer or dispense habit forming drugs to patients under his immediate treatment.

3. Physicians. A physician in good faith and in the course of his professional practice only, may prescribe, administer, or dispense habit forming drugs.

4. Nurses. A nurse, in good faith and in the course of her professional practice only, and acting under the direction or supervision of a physician may possess and administer habit forming drugs. Any unused habit forming drugs left by a physician with a nurse to be administered during his absence, upon discharge of the nurse must be returned to the physician. (Id. § 426.)

287. Prescription.—Any apothecary may sell or dispense habit forming drugs to any individual upon a written prescription of a physician, dentist or veterinarian, dated and signed on the day when issued and bearing the full name and address of the person for whom, or the owner of the animal for which the drug is dispensed and the name, address and registry number of the practitioner under the Harrison act if he is required by it to be so registered. The person filling the prescription must write the date of filling and his own signature upon the face of the prescription, and the prescription must be retained on file by the apothecary filling it for two years so as to be readily accessible for inspection and it shall be subject to inspection by any public officer or employee engaged in the enforcement of this article, except as exempted by section four hundred and twenty-five. The prescription shall not be refilled. (Id. § 427.)

288. Record to be Kept.—1. Physicians, dentists, veterinarians. Every physician, dentist and veterinarian shall keep a record of all habit forming drugs administered or dispensed by him showing the amount administered or dispensed, except such as may be administered or dispensed to a patient upon whom he shall personally attend.

2. Manufacturers and wholesalers. Manufacturers and wholesalers shall keep a record of the habit forming drugs received and disposed of by them.

3. Exempted preparations, prescriptions and remedies. Every manufacturer of exempted preparations, prescriptions and remedies shall keep a record of the amount of habit forming drugs received and of all sales of exempted preparations, prescriptions and remedies and every dealer therein shall keep a record of all sales of exempted preparations, prescriptions and remedies.

4. Form and preservation. Every such record shall be kept for a period of two years from the date of the transaction recorded, and a record required by or under the Harrison act, containing substantially the same information, shall be a compliance with this section. All records required by this section shall be readily accessible for inspection and shall be open to inspection by the proper authorities. (Id. § 428.)

289. Written Orders and Records for Cannabis Indica and Cannabis Sativa.—Written orders shall not be required for the sale of cannabis indica or cannabis sativa, and the provisions of this act in respect to written orders and records shall not apply to cannabis indica and cannabis sativa but manufacturers and wholesalers of cannabis indica and cannabis sativa shall keep a record of all cannabis indica and cannabis sativa received by them and mnufacturers shall keep a record of the quantity used in the manufacture of medicinal products. (Id. § 429.)

290. Labels.—Whenever an apothecary pursuant to a written prescription shall sell or dispense habit forming drugs or whenever a physician, dentist or veterinarian shall dispense any of such drugs, he shall securely affix to the container of such drug a label stating in legible English the name and address of the physician, dentist or veterinarian prescribing or dispensing and of the apothecary dispensing, the date and the name and address of the person for whom or the owner of the animal for which the drug is dispensed. (Id. § 430.)

291. Authorized Possession of Drugs by Individual.—A person to whom or for whose use any habit forming drug has been sold or dispensed by an apothecary, physician or dentist or the owner of an animal for which any such drug has been prescribed or dispensed by a veterinarian, may lawfully possess it in the container delivered to him by the person selling or dispensing same. (Id. § 431.)

292. Physical Examination Required.—A physician, dentist or veterinarian shall not administer, dispense or prescribe any habit forming drugs except after a physical examination of the person for whom or the animal for which the drug is intended. (Id. § 432.)

293. Instruments for Injection of Habit Forming Drugs.—No person except a manufacturer or a wholesale or retail dealer in surgical instruments, apothecary, physician, dentist, veterinarian, nurse or interne shall at any time have or possess a hypodermic syringe or needle or any instrument or implement adapted for the use of habit forming drugs by subcutaneous injections and which is possessed for the purpose of administering habit forming drugs unless such possession be authorized by the certificate of a physician issued within the period of one year prior thereto. (Id. § 433.)

294. Exemption From Restrictions.—1. Common carriers, employees, public officers. The provisions of this article restricting the possessing or having under control of habit forming drugs shall not apply to common carriers or warehousemen or their employees engaged in lawful transportation or storage of such drugs nor to public officers or employees while engaged in the performance of their official duties, nor to temporary incidental possession by employees or agents of persons lawfully entitled to possession, or by persons whose possession is for the purpose of aiding public officers in the performance of their official duties.

2. Interstate commerce. This article shall not apply to acts done, or to habit forming drugs possessed in the course of interstate or foreign commerce. (Id. § 434.)

295. Drugs to be Destroyed.—All drugs which have been seized and judicially determined to have been unlawfully possessed or the title to which has ceased and which have come into the hands of a peace officer shall, upon the direction of a court or magistrate, be destroyed, unless otherwise destroyed according to law. A record shall be kept of the drugs so destroyed. (Id. § 435.)

296. Notice of Conviction of Professional Men Sent to Licensing Authority.—1. On conviction of any physician, dentist, veterinarian, nurse or apothecary for willful violation of any of the provisions of this article, a copy of the sentence and of the opinion of the court or magistrate if any be filed, shall be sent by the clerk of the court or by the magistrate to the department, board or officer having power to suspend or revoke the license or registration of the person convicted, for proper action by the department, board or officer.

2. At the request of such department, board or officer, the clerk or magistrate shall send to such department, board or officer a transcript of the record or of the proceedings in a court not of record, and such portion of the evidence as may be requested. (Id. § 436.)

297. Records Confidential.—Prescriptions, orders, or records required under this article shall not be open to inspection nor shall any information contained therein be divulged except for the purpose of enforcing the laws of this State or the Harrison act, or on the direction of the Department of State Police or of the police department of any city to an officer of another State, for the purpose of enforcing the law of such State. (Id. § 437.)

298. Fraud or Deceit.—Any fraud, deceit, misrepresentation, subterfuge, concealment of a material fact or the use of a false name or the giving of a false address in obtaining treatment in the course of which habit forming drugs shall be prescribed or dispensed or in obtaining any supply of such drugs shall constitute a violation of the provisions of this article and shall not be deemed a privileged communication. The willful making of any false statement in any prescription, order, report, or record required under this article shall constitute a violation of this article. No person shall for the purpose of obtaining any habit forming drug falsely assume the title or represent himself to be a manufacturer, wholesaler, apothecary, physician, dentist, veterinarian, or make or utter any false or forged order or prescription for a label for a container of or for habit forming drugs, or affix such label, or alter, deface or remove any such label. (Id. § 438.)

299. **Commitment of Addicts; Procedure; Discharge.**—1. At request of addict. A magistrate upon the voluntary application to him of any habitual user of any habit forming drug, may commit such person to any hospital or charitable institution maintained in whole or in part thereof by the State or any political subdivision thereof which is willing to receive such addict.

2. Person accused of crime. Any trial court having jurisdiction of a defendant who is a prisoner in a criminal action or proceding, if it appears that the defendant is an habitual user of any habit forming drug and is suffering as a result of such use, may likewise so commit such defendant, at any stage of such action or proceeding and direct a stay of proceedings or suspend sentence pending the period of such commitment but not exceeding sixty days without a further order of the court.

3. Discharge. Whenever the medical officer of the institution, or if there be no medical officer, the superintendent, shall certify to the committing magistrate or court that any person so committed has been sufficiently treated, or give any other reason which is deemed by the magistrate or court to be adequate and sufficient, he may in accordance with the terms of commitment discharge the person so committed, or return such person to await the further action of the court, provided, however, that when such commitment is to an institution under the jurisdiction of the Department of Correction, or other similar department in a city of the first class, where there is a parole commission established pursuant to law, such commission shall act in the place and stead of a chief medical officer for the purpose of making such a certificate. (Id. § 439.)

300. **Exceptions and Exemptions Not Required to be Negatived.**—In any complaint, information, indictment, or other writ or in any action or proceeding brought for the enforcement of any of the provisions of this article, it shall not be necessary to negative an exception or exemption, and the burden of offering proof of any such exception or exemption shall be upon the defendant. (Id. § 440.)

301. **Enforcement.**—This article shall be enforced by the judicial and police authorities of the State and of the political subdivisions thereof engaged in the enforcement of the law. Such authorities and their agents shall have access at all times to all orders, prescriptions or records to be kept under this article. (Id. § 441.)

302. **Possession at Time Article Goes Into Effect.**—Habit forming drugs lawfully in the possession or under control of any person at the time this article goes into effect, may be possessed by him with the same effect as if obtained lawfully under this article. (Id. § 442.)

303. **Penalties.**—A violation of any provision of this article shall constitute a misdemeanor.* (Id. § 443.)

304. **Acquittal or Conviction Under Harrison Act.**—No person shall be prosecuted for a violation of any provision or provisions of this article if such person shall have been prosecuted and duly acquitted or convicted under the Harrison act for the same or substantially the same, act or acts, omission or omissions, which it is alleged constitute a violation of this article. (Id. § 444.)

305. **Constitutionality.**—If any provision of this article is declared unconstitutional or the application thereof to any person or circumstances is held invalid, the validity of the remainder of the article and the application thereof to other persons and circumstances shall not be affected thereby. (Id. § 445.)

305a. **Permitting Children to Attend Certain Resorts.**—A person who: . . .

2. Suffers or permits any such child to play any game of skill or chance in any such place, or in any place adjacent thereto, or to be or remain therein, or admits to or allows to remain in any reputed house of prostitution or assignation, or in any place where opium or any preparation thereof is smoked, any child actually or apparently under the age of sixteen years; or, . . .

Is guilty of a misdemeanor* . . . (C. L. 1923, c. 41, art. 44, § 484.)

306. **Employment of Children in Drug Traffic Prohibited.**—1. A person who hires, employs or uses any child actually or apparently under the age of sixteen years to transport, carry, sell, prepare for sale or offer for sale morphine, cocaine, heroin, opium or any derivative thereof, is guilty of a felony and upon conviction thereof shall be punished by imprisonment in a State Prison for not less than two and one-half years nor more than five years. (Supp. 1926, c. 41, art. 44, § 484-a.)

307. **Sale of Hypodermic Syringes and Needles.**—It is unlawful for any person to sell at retail or to furnish to any person other than a duly licensed physician, dentist or veterinarian, an instrument commonly known as a hypodermic syringe or an instrument commonly known as a hypodermic needle, without the written order of a duly licensed physician or veterinarian. Every person who disposes of, or sells at retail, or furnishes or gives away to any person, either of the above instruments,

*See No. 68a.

upon the written order of a duly licensed physician or veterinarian, shall, before delivering the same enter in a book kept for that purpose, the date of the sale, the name and address of the purchaser, and the description of the instruments sold, disposed of, furnished or given away. Any person or persons who sells, disposes of or gives away, an instrument commonly known as a hypodermic syringe, or an instrument commonly known as a hypodermic needle, except in the manner prescribed by this section, shall be guilty of a misdemeanor.* (C. L. 1923, c. 46, art. 16, § 318-a.)

308. Commitment of Inebriates.—The judge of a court of record in the county or district where an alleged inebriate resides, or a judge of any court of record, may commit such person to any private licensed institution for the insane, in the manner hereinafter provided, upon a proper application and upon the consent in writing of the trustees, signed by their superintendent or executive officer, upon the certificates in writing made, executed and verified by at least two qualified examiners, as defined by section nineteen,† showing that such person is over the age of eighteen years, and is incapable or unfit to properly conduct himself or herself, or his or her affairs, or is dangerous to himself or herself or others by reason of periodical, frequent or constant drunkenness, induced either by the use of alcoholic or other liquors, or of opium, morphine, or other narcotic or intoxicating or stupefying substance. Such certificate must further show that such person is in actual need of special care and treatment, and that his condition is such that his detention, care and treatment in such institution would be likely to effect a cure. Such certificate shall also specifically state the facts and circumstances upon which the judgment of each examiner is based and shall show the result of such examination. It must appear upon the face of such certificate that each examiner executing the same has made a personal examination of the person alleged to be an inebriate, and that such an examination has been made within ten days prior to the application for the commitment.

2. Any person with whom an alleged inebriate may reside or at whose house he may be, or the husband or wife, father or mother, brother or sister, or the child or committee of an alleged inebriate, or the nearest relative or friend available, or an officer of any well-recognized charitable institution or home, or any overseer of the poor of the town, or superintendent of the poor of the county in which such person may be, or the alleged inebriate himself, may apply for an order committing such person to the said licensed private institution for the insane, by presenting a brief petition containing a statement of the facts because of which the application for the order is made. Such petition shall be accompanied by the certificate of the qualified examiners and the consent of the trustees as prescribed in the preceding section.† Notice of the time and place of making such application shall be served personally upon the alleged inebriate at least three days before the date therein specified upon which the application will be made. A copy of the petition shall be served with such notice. The judge or justice before whom such application is made shall, in his discretion, direct the service personally or by mail of a like notice upon the husband or wife, father or mother, or next of kin, of such alleged inebriate. At the time and place mentioned in such notice or at such other time or place as the judge or justice may designate, said judge or justice shall proceed to hear the testimony introduced for and against such application, and may examine the alleged inebriate if deemed advisable. Such judge or justice may, in his discretion, require proofs in addition to the petition and certificates of the examiners. If, from the facts ascertained upon the hearing, the proofs produced, and the petition and certificates presented, the judge or justice shall determine that such person is an inebriate, or that he is so addicted to the use of opium, morphine or other narcotic or intoxicating or stupefying substance, and his condition is such that his detention in such institution would promote his interests and improve his health, he shall grant an order committing such person to such institution, to be detained therein for a period not exceeding twelve months, or for such period less than twelve months as may be necessary in the judgment of the physician in charge of such institution for the proper treatment and cure of such person, or until discharge therefrom prior to the expiration of such period, as hereinafter provided. The physician in charge may grant a parole to a patient not exceeding six months.

3. A person committed pursuant to this section or any relative or friend in his or her behalf, may within thirty days after any order of commitment is granted as provided in the preceding section apply to a justice of the Supreme Court other than the justice making the commitment for a review of such order. Such justice shall thereupon cause a jury to be summoned as in the case of the proceedings for

*See No. 68a.

†Omitted herein.

the appointment of the committee for an insane person, and shall try the question of the inebriety of such person in the manner provided by law for the proceedings for the appointment of such committee. If the verdict of the jury be that such person is an inebriate, said justice of the Supreme Court to whom such application was made shall certify that fact and commit such person to the care and custody of the said institution. Proceedings under the commitment shall not be stayed pending an appeal therefrom, except upon an order of a justice of the Supreme Court made upon notice and after a hearing, containing a provision for such temporary care or confinement of the alleged inebriate as may be deemed necessary. Upon the refusal of a judge to grant an application for the commitment of an alleged inebriate he shall state his reasons for such refusal in writing, and the person making the application may apply to a justice of the Supreme Court in the manner specified in this section where an application is made in behalf of the alleged inebriate, and a commitment may be had after an appeal by a jury as provided herein.

4. If a writ of habeas corpus be obtained in behalf of a person committed to such an institution, and if it appears at the hearing on the return of such writ that such person may properly be discharged, the judge or justice before whom the hearing is had shall so direct; but if it shall appear that the condition of such person is such as to render further treatment desirable, such person shall be remanded to the care and custody of such institution. (C. L. 1923, c. 29, art. 9, § 201; L. 1927, c. 426.)

309. Permitting Use of Building for Nuisance; Opium Smoking.—A person who:

1. Lets, or permits to be used, a building, or portion of a building, knowing that it is intended to be used for committing or maintaining a public nuisance; or,

2. Opens or maintains a place where opium, or any of its preparations, is smoked by other persons; or,

3. At such place sells or gives away any opium, or its said preparations, to be there smoked or otherwise used; or,

4. Visits or resorts to any such place for the purpose of smoking opium or its said preparations, is guilty of a misdemeanor.* (C. L. 1923, c. 41, art. 148, § 1533.)

310. Communication With Prisoners Prohibited.—A person who: . . .

2. Conveys into or takes from such prison, reformatory, penitentiary, county jail or other place for the detention of persons convicted of crime, or who personally or through any other person or persons gives, sells, furnishes or otherwise delivers to any prisoner or prisoners in custody any drug, liquor or any article prohibited by law or by the rules of the superintendent, keeper, sheriff, board of managers or other person, or official having charge or control thereof, is guilty of a misdemeanor.* (C. L. 1923, c. 41, art. 162, § 1691.)

311. Gambling, Disorderliness, Admission of Minors and Hours of Operating Sale of Liquor and Habit Forming Drugs.—It shall be unlawful for a person, firm, association or corporation holding such license to: . . .

6. Sell, barter, furnish or possess in such billiard room or place, any habit forming drugs or any appliances for administering the same. (C. L. 1923, c. 41, art. 31, § 348.)

311a. Penalties for Violation of this Article.—The penalty for any violation of any section of this article shall be for the first offense a fine of fifty dollars and for the second offense either a fine not to exceed two hundred and fifty dollars, or imprisonment for thirty days, or both, and in addition upon such conviction for such second offense the license of the person, firm, association or corporation violating the same shall be canceled and revoked and the bond upon such license shall be forfeited. Where an act in violation of a provision of this article is also a crime punishable by other provisions of the penal law, this section shall not prevent a prosecution for violation of such other provision, and nothing contained in this article shall authorize an act or omission which is a violation of any other provision of the penal law. It shall not be a defense to a prosecution for a violation of any of the provisions of this article that the premises where the violation is alleged to have occurred were conducted during prohibited hours as a private club if at other times such premises were conducted as a public place of business for profit. (Id. § 351.)

311b. Exemption from Jury Duty.—Either of the following persons, although qualified, is entitled to an exemption from service as a trial juror, upon his claiming an exemption, as prescribed in this article: . . .

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*See No. 68a.

2. . . . a licensed pharmaceutist or pharmacist, while actually engaged in his profession as a means of livelihood; . . . (C. L. 1923, c. 31, art. 17, § 635; Id., art. 18, § 720.)*

311c. Exemption from Jury Duty.—Each of the following persons, although qualified, is entitled to exemption from service, as a trial juror, upon his claiming exemption therefrom: . . .

4. . . . a licensed pharmacist actually engaged in his profession as a means of livelihood, . . . (C. L. 1923, c. 31, art. 16, § 546.)†

NOTE: See also Nos. 63, 67, 68b-68c, and 330 et seq. For provisions relating to the care of inebriate women, see C. L. 1923, c. 56, art. 18, §§ 340-348. See also the Mental Hygiene law, L. 1927, c. 426.

Stock and Poultry Remedies.

See No. 153 et seq.

Tuberculin—Mallein—Vaccine.‡

312. Disposition and Use of Tuberculin and Mallein.—The commissioner¶ is hereby authorized to make such rules and promulgate such orders for the proper control, use or distribution of tuberculin or mallein as he may deem necessary. The following general provisions shall govern the disposition and use of tuberculin and mallein within the State:

1. All tuberculin or mallein sold, given away or used, shall bear a label stating the name and address of the manufacturer, the degree of strength and dosage recommended, and the date of its preparation.

2. All tuberculin or mallein sold or given away for use in testing bovine or equine animals shall be reported, in writing, to the commissioner within one week after such sale or gift is made. Such report shall be signed by the person making the gift or sale and shall state the name and address of the person to whom such tuberculin or mallein has been sold or given, and the amount supplied.

3. Any person, firm, corporation or institution bringing or causing tuberculin or mallein or a biological product containing living pathogenic organisms to be brought into the State to be used therein in the treatment of or administration to domestic animals shall, within one week thereafter, make a report thereof to the commissioner stating the manufacturer thereof, the quantity so brought in and giving such other information in relation thereto as the commissioner may request.

4. The commissioner shall print, in appropriate form, blanks for making and keeping records of such tests and other necessary data for the purposes of this article.

5. Any person using tuberculin or mallein in testing animals shall keep a correct record thereof, and, if requested by the commissioner, any person, firm or corporation making such tests shall within one week thereafter report to the commissioner giving a detailed account of the tests thus made, including the description of animals, the location of the farm or farms upon which tests were made, and the name and address of the owner or custodian. If the commissioner desires to cause a physical examination to be made of any animal so tested, or a bacteriological examination of its milk to be made, the owner or custodian of any such animal that has reacted shall indicate to the commissioner, or to the person designated by him, any animal that shall have been subjected to any such test and give such information as the commissioner may direct with reference thereto, or of previous tests of animal and such other information relating thereto as the commissioner may require.

6. If such tests be made by a nonresident of the State, the owner or custodian of the animals thus tested shall make such report to the commissioner as he may require.

7. No person shall knowingly inject into any bovine or equine animal as or for tuberculin or mallein any substance which is not tuberculin or mallein.

8. No person shall treat, except by consent of the commissioner for experimental purposes, any bovine or equine animal with any material or substance, or in any manner, for the purpose or with the effect of preventing a normal reaction on the part of such animal to the tuberculin or mallein test.

9. No person shall give a certificate or statement showing or tending to show that an animal has been tested or examined and found not affected with tuberculosis

*Applies to jurors in the counties of New York and Kings.
†Applies to jurors in counties other than New York and Kings.
‡For administrative provisions, see Nos. 1 et seq., and 131-132.
¶Commissioner of Agriculture and Markets. See Nos. 2 and 52 et seq.

or glanders or other communicable disease unless the character of such test or examination is stated, and was made in a proper way, and that upon such test or examination such animal failed to give any evidence of such disease. (C. L. 1923, c. 19, art. 5, § 89.)§

312a. Laboratories to be Registered.—All laboratories and other places where live pathogenic germs are handled or cultivated, shall be registered with the New York State Department of Health, and a registration number shall be issued to each place so registered. Registration and application for this registration number shall be made by the person, firm or corporation in charge of the laboratory or other place where such germs are handled. The registration number shall be valid for one year, at the expiration of which time it may be renewed upon application. (C. L. 1923, Unconsolidated Laws, p. 2467; L. 1917, c. 411, § 1.)

312b. Containers to be Labeled, Etc.—All live pathogenic germs or cultures of such germs when given away or sold by a laboratory or other person, shall bear a label on the container showing the registration number of the laboratory or other person, the name of the person or firm obtaining same, and the destination of the germs, and no person or laboratory shall sell or convey any live germs or culture to any other person or laboratory without the permission of the State Commissioner of Health. (Id. § 2, amended L. 1921, c. 269.)

312c. Registration Fee.—A registration fee of one dollar shall be charged to cover the cost of issuing the registration number. (C. L. 1923, Unconsolidated Laws, p. 2467; L. 1917, c. 411, § 3.)

312d. Penalty.—Any violation of this act shall be deemed a misdemeanor punishable by a fine of two hundred dollars, six months' imprisonment or both. (Id. § 4.)

312e. Vaccination How Made; Reports.—1. No person shall perform vaccination for the prevention of smallpox who is not a regularly licensed physician under the laws of the State. Vaccination shall be performed in such manner only as shall be prescribed by the State Commissioner of Health.

2. No physician shall use vaccine virus for the prevention of smallpox unless such vaccine virus is produced under license issued by the Secretary of the Treasury of the United States or under a certificate of approval issued by the State Commissioner of Health, and such vaccine virus shall then be used only within the period of time specified by the expiration date.

3. Every physician performing a vaccination shall within ten days make a report to the local health officer upon a form furnished by the State Commissioner of Health setting forth the full name and age of the person vaccinated, and if such person is a minor, the name and address of his parents, the date of vaccination, the date of previous successful vaccination if possible, the name of the maker of the vaccine virus, the lot or batch number of such vaccine virus and whether upon re-examination after a proper interval such vaccination was found to be successful or non-successful.

4. Every local health officer shall retain in the files and records of his office every report of a vaccination reported to him under the provisions of the preceding paragraph and shall report once in each month to the State Department of Health the number of vaccinations reported to him during the preceding month, together with the number of those which were successful and the number unsuccessful. Such report shall be made in such manner as shall be prescribed by the State Commissioner of Health. (C. L. 1923, c. 46, art. 16, § 311; Supp. 1926, 1d.)

Venereal Disease Drugs.

313. Advertisements Relating to Certain Diseases Prohibited.—Whoever publishes, delivers or distributes or causes to be published, delivered or distributed in any manner whatsoever an advertisement concerning a venereal disease, lost manhood, lost vitality, impotency, sexual weakness, seminal emissions, varicocele, self-abuse or excessive sexual indulgence and calling attention to a medicine, article or preparation that may be used therefor or to a person or persons from whom or an office or place at which information, treatment or advice relating to such disease, infirmity, habit or condition may be obtained, is guilty of a misdemeanor, and upon conviction thereof shall be punished by imprisonment for not more than six months, or by a fine of not less than fifty dollars nor more than five hundred dollars or by both such fine and imprisonment. This section, however, shall not apply to didactic or scientific treatises which do not advertise or call attention to any person or persons from whom or any office or place at which information, treatment or advice

§For penalty, see No. 38 et seq.

may be obtained, nor shall it apply to advertisements or notices issued by an incorporated hospital or a licensed dispensary or by a municipal board or department of health or by the Department of Health of the State of New York. (C. L. 1923, c. 41, art. 106, § 1142-a.)*

313a. Treatment Only by Physicians or on Their Prescriptions.—No person, other than a licensed physician, shall treat or prescribe for a case of venereal disease, or dispense a drug, medicine or remedy for the treatment of such a disease except on prescription of a duly licensed physician. Such prescription shall be retained by the person dispensing such drug, medicine or remedy, and no copy of such prescription shall be made by or delivered to any person, and such prescription shall be filled but once. (C. L. 1923, c. 46, art. 17b, § 343q.)

313b. Penalties.—Any person who shall violate any of the provisions of this article . . . shall be guilty of a misdemeanor.† . . . (Id. § 343s.)

Wood Alcohol.

See Nos. 46 and 270.

Intoxicating Liquors.

No law.

PART IV.

Miscellaneous Laws.

Convict-Made Goods.

314. Unlawful Dealing in Convict-Made Goods.—A person who:

1. Sells or exposes for sale convict-made goods, wares or merchandise, without a license therefor, or having such license does not transmit to the Secretary of State the statement required by article thirteen of the labor law;‡ or,

2. Sells, offers for sale, or has in his possession for sale any such convict-made goods, wares or merchandise without the brand, mark or label required by article thirteen of the labor law; or,

3. Removes or defaces or in any way alters such brand, mark or label,

Is guilty of a misdemeanor, and upon conviction therefor shall be punished by a fine of not more than one thousand nor less than one hundred dollars, or by imprisonment for not less than ten days or by both such fine and imprisonment. (C. L. 1923, c. 41, art. 60, § 620.)

False Advertising.

315. Article of Merchandise Defined.—The expression "article of merchandise," as used in this article, signifies any goods, wares, work of art, commodity, compound, mixture or other preparation or thing, which may be lawfully kept or offered for sale. (C. L. 1923, c. 41, art. 40, § 420.)

316. Untrue and Misleading Advertisements.—Any person, firm, corporation or association, or agent or employee thereof who, with intent to sell or in any wise dispose of merchandise, real estate, securities, service, or anything offered by such person, firm, corporation, or association, or agent or employee thereof, directly or indirectly, to the public for sale or distribution, or with intent to increase the consumption thereof, or to induce the public in any manner to enter into any obligation relating thereto, or to acquire title thereto, or an interest therein, makes, publishes, disseminates, circulates, or places before the public, or causes, directly or indirectly, to be made, published, disseminated, circulated, or placed before the public, in this State, in a newspaper, magazine or other publication, or in the form of a book, notice, circular, pamphlet, letter, handbill, poster, bill, sign, placard, card, label, or tag, or in any other way, an advertisement, announcement or statement of any sort regarding merchandise, securities, service or anything so offered to the public which advertisement contains any assertion, representation or statement of fact which is untrue, deceptive or misleading, shall be guilty of a misdemeanor.¶ (Id. § 421.)

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*For general provisions, see Nos. 247-250.

†See No. 68a.

‡Relates to manufacture in tenement houses. Omitted herein.

¶See No. 68a.

Flag Desecration.

317. Malicious Injury to and Destruction of Property.—. . . 16. Any person, who

a. In any manner, for exhibition or display, shall place or cause to be placed, any word, figure, mark, picture, design, drawing, or any advertisement, of any nature upon any flag, standard, color, shield or ensign of the United States of America or the State of New York, or shall expose or cause to be exposed to public view any such flag, standard, color, shield or ensign, upon which after the first day of September, nineteen hundred and five, shall have been printed, painted or otherwise placed, or to which shall be attached, appended, affixed, or annexed, any word figure, mark, picture, design, or drawing, or any advertisement of any nature, or

b. Shall expose to public view, manufacture, sell, expose for sale, give away, or have in possession for sale, or to give away, or for use for any purpose, any article, or substance, being an article of merchandise, or a receptacle of merchandise or article or thing for carrying or transporting merchandise, upon which after the first day of September, nineteen hundred and five, shall have been printed, painted, attached, or otherwise placed, a representation of any such flag, standard, color, shield or ensign, to advertise, call attention to, decorate, mark, or distinguish, the article or substance on which so placed, or

c. Shall print, engrave, or otherwise place or cause to be printed, engraved or otherwise placed on any blank check, billhead, letter-head, envelope or other business stationery, a representation of any such flag, standard, color, shield or ensign, or shall use any such blank check, billhead, letter-head, envelope or other stationery for business purposes or correspondence, or

d. Shall publicly mutilate, deface, defile, or defy, trample upon, or cast contempt upon either by words or act, or

e. Shall raffle or place in pawn any such flag, standard, color, shield or ensign, or

f. Shall publicly use or cause any such flag, standard, color, shield or ensign, to be publicly used as a receptacle for the placing, depositing or collecting of money or any other article or thing,

Shall be deemed guilty of a misdemeanor;* and shall also forfeit a penalty of fifty dollars for each such offense, to be recovered with costs in a civil action, or suit, in any court having jurisdiction, and such action or suit may be brought by or in the name of any citizen of this State, and such penalty when collected less the reasonable cost and expense of action or suit and recovery to be certified by the district attorney of the county in which the offense is committed shall be paid into the treasury of this State; and two or more penalties may be sued for and recovered in the same action or suit.

The words, flag, standard, color, shield or ensign, as used in this subdivision or section, shall include any flag, standard, color, shield or ensign, or any picture or representation, of either thereof, made of any substance, or represented on any substance, and of any size, evidently purporting to be, either of, said flag, standard, color, shield or ensign, of the United States of America, or of the State of New York, or a picture or a representation, of either thereof, upon which shall be shown the colors, the stars and the stripes, in any number of either thereof, or by which the person seeing the same, without deliberation may believe the same to represent the flag, colors, standard, shield or ensign of the United States of America, or of the State of New York.

This subdivision shall not apply to any act expressly permitted by the statutes of the United States of America, or by the United States Army and Navy regulations, nor shall it be construed to apply to a certificate, diploma, warrant, or commission of appointment to office, ornamental picture, article of jewelry, stationery for use in private correspondence, or newspaper or periodical, on any of which shall be printed, painted or placed, said flag, standard, color, shield or ensign disconnected and apart from any advertisement.

The possession by any person, other than a public officer, as such, of any such flag, standard, color, shield or ensign, on which shall be anything made unlawful at any time by this section, or of any article or substance or thing on which shall be anything made unlawful at any time by this section shall be presumptive evidence that the same is in violation of this section, and was made, done or created after the first day of September, nineteen hundred and five, and that such flag, standard, color, shield, ensign, or article, substance, or thing, did not exist on the first day of September, nineteen hundred and five. (C. L. 1923, c. 41, art. 134, § 1425; Supp. 1926, Id.)

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*See No. 68a.

318. Use of State and Other Seals and Insignia on Private Vehicles Prohibited.—A person who shall use any seal, device of arms, sign, lettering or insignia of the United States, or of this State or political subdivision thereof, on any vehicle not owned or used by the United States, this State or by such political subdivision thereof, which such seal, device of arms, sign, lettering or insignia represents, is guilty of a misdemeanor.* (C. L. 1923, c. 41, art. 86, § 958.)

Sperm Oil.

318a. Sperm Oils.—Pure sperm oil, at the temperature of sixty degrees Fahrenheit, shall have the same specific gravity as domestic distilled spirits of forty-eight per centum above first proof at the same temperature; and whale oil, at that temperature, shall have the same specific gravity as such spirits of eight per centum above first proof, as established by this article. The specific gravity of such oils may be tested by a hydrometer or an oleometer. The Secretary of State shall furnish, at the expense of the State, to the clerk of each county, a correct oleometer, graduated to show the difference between pure sperm oil and whale oil, which shall be kept by such clerk for public use as a standard and true test of pure sperm oils, All oils under the name of sperm, lamp, summer, fall and winter oils shall be deemed to be sold as and for pure sperm oil. All oils sold under the name of sperm, lamp, summer, fall or winter oils, which shall be adulterated from pure sperm oil, shall be deemed whale oil, and the vendor shall be liable to the purchaser for the difference in value between pure sperm and crude whale oil. (C. L. 1923, c. 21, art. 19, § 301.)

Tobacco—Tobacco Products.

319. Selling Tobacco to Minors Prohibited.—A person who: . . .

5. Sells, pays for or furnishes any cigar, cigarette or tobacco in any of its forms to any child actually or apparently under the age of eighteen years; . . . is guilty of a misdemeanor.*

It shall be no defense to a prosecution for a violation of subdivisions . . . five . . . of this section, that in the transaction upon which the prosecution is based the child acted as the agent or representative of another, or that the defendant dealt with such child as the agent or representative of another. (C. L. 1923, c. 41, art. 44, § 484.)

320. Furnishing Minors in Reformatories With Tobacco Regulated.—A person or officer who sells or gives any cigar, cigarette, snuff or tobacco in any of its forms to any minor undergoing confinement or sentence in any reformatory, penitentiary or house of refuge in this State, except by the authority of the managers of such institutions, is guilty of a misdemeanor.* (Id. § 489.)

321. Manufactures in Tenement Houses and Dwellings.—No room or apartment in a tenement or dwelling house, used for eating or sleeping purposes, shall be used for the manufacture, wholly or partly, of coats, vests, trousers, knee pants, overalls, cloaks, shirts, purses, feathers, artificial flowers or cigars, except by the members of the family living therein, which shall include a husband and wife and their children, or the children of either. A family occupying or controlling such a workshop shall, within fourteen days from the time of beginning work therein, notify the board of health of the city, village or town, where such workshop is located, or a special inspector appointed by such board, of the location of such workshop, the nature of the work carried on, and the number of persons employed therein; and thereupon such board shall, if it deems advisable, cause a permit to be issued to such family to carry on the manufacture specified in the notice. Such board may appoint as many persons as it deems advisable to act as special inspectors. Such special inspectors shall receive no compensation, but may be paid by the board their reasonable and necessary expenses. If a board of health or such inspector shall find evidence of infectious or contagious diseases present in any workshop, or in goods manufactured or in process of manufacture therein, the board shall issue such orders as the public health may require, and shall condemn and destroy such infectious and contagious articles, and may, if necessary to protect the public health, revoke any permit granted by it for manufacturing goods in such workshop. If a board of health or any such inspector shall discover that any such goods are being brought into the State, having been manufactured, in whole or in part, under unhealthy conditions, such board or inspector shall examine such goods, and if they are found to contain vermin, or to have been made in improper places or under unhealthy con-

*See No. 68a.

ditions, the board may make such orders as the public health may require, and may condemn and destroy such goods. (C. L. 1923, c. 46, art. 3, § 33.)

Trade-Marks, Etc.

322. Trade-Mark Defined.—A "trade-mark" is a mark used to indicate the maker, owner or seller of an article of merchandise, and includes, among other things, any name of a person, or corporation, or any letter, word, device, emblem, figure, seal, stamp, diagram, brand, wrapper, ticket, stopper, label or other mark, lawfully adopted by him, and usually affixed to an article of merchandise to denote that the same was imported, manufactured, produced, sold, compounded, bottled, packed or otherwise prepared by him; and also a signature or mark, used or commonly placed by a painter, sculptor or other artist, upon a painting, drawing, engraving, statue or other work of art, to indicate that the same was designed or executed by him. (C. L. 1923, c. 41, art. 206, § 2350.)

323. **Affixing Defined.**—A trade-mark is deemed to be affixed to an article of merchandise, when it is placed in any manner in or upon:

1. The article itself; or,

2. A box, bale, barrel, bottle, case, cask, platter, or other vessel or package, or a cover, wrapper, stopper, brand, label or other thing, in, by or with which the goods are packed, inclosed, or otherwise prepared for sale or disposition. (Id. § 2351.)

324. Article of Merchandise Defined.—The expression "article of merchandise," as used in sections twenty-three hundred and fifty and twenty-three hundred and fifty-one, signifies any goods, wares, work of art, commodity, compound, mixture or other preparation or thing, which may be lawfully kept or offered for sale. (Id. § 2352.)

325. Imitation of a Trade-Mark Defined.—An "imitation of a trade-mark" is that which so far resembles a genuine trade-mark as to be likely to induce the belief that it is genuine, whether by the use of words or letters, similar in appearance or in sound, or by any sign, device or other means whatsoever. (Id. § 2353.)

326. Offenses Against Trade-Marks.—A person who:

1. Falsely makes or counterfeits a trade-mark; or,

2. Affixes to any article of merchandise, a false or counterfeit trade-mark, knowing the same to be false or counterfeit, or the genuine trade-mark, or an imitation of the trade-mark of another, without the latter's consent; or,

3. Knowingly sells, or keeps or offers for sale, an article of merchandise to which is affixed a false or counterfeit trade-mark, or the genuine trade-mark, or an imitation of the trade-mark of another, without the latter's consent; or,

4. Has in his possession a counterfeit trade-mark, knowing it to be counterfeit, or a die, plate, brand or other thing for the purpose of falsely making or counterfeiting a trade-mark; or,

5. Makes or sells, or offers to sell or dispose of, or has in his possession with intent to sell or dispose of, an article of merchandise with such a trade-mark or label as to appear to indicate the quantity, quality, character, place of manufacture or production, or persons manufacturing, packing, bottling, boxing or producing the article, but not indicating it truly; or,

6. Knowingly sells, offers or exposes for sale, any goods which are represented in any manner, by word or deed, to be the manufacture, packing, bottling, boxing or product of any person, firm or corporation, other than himself, unless such goods are contained in the original packages, box or bottle, and under the labels, marks or names placed thereon by the manufacturer who is entitled to use such marks, names, brands, or trade-marks; or,

7. Shall sell or shall expose for sale any goods in bulk, to which no label or trade-mark shall be attached, and shall by representation, name or mark written or printed thereon, represent that such goods are the production or manufacture of a person who is not the manufacturer; or,

8. Shall knowingly sell, offer or expose for sale any article of merchandise, and shall orally or by representation, name or mark written or printed thereon or attached thereto used in connection therewith, or by advertisement, or otherwise, in any manner whatsoever make any false representation as to the person by whom such article of merchandise or the material thereof was made, or was in whole or in part produced, manufactured, finished, processed, treated, marketed, packed, bottled or boxed, or falsely represents that such article of merchandise or the material or any part thereof has or may properly have any trade-mark attached to it or used in connection with it, or is or may properly be indicated or identified by any trade-mark,

Is guilty of a misdemeanor and punishable for the first offense by a fine not less than fifty dollars nor more than five hundred dollars or imprisonment for not more than one year, or both such fine and imprisonment, and for each subsequent offense by imprisonment for not less than thirty days or more than one year, or by both such imprisonment and a fine of not less than five hundred dollars or more than one thousand dollars. (Id. § 2354.)

327. **Refilling or Selling Trade-Mark Bottles and Vessels.**—Any person engaged in making, bottling, packing, selling or disposing of milk, ale, beer, cider, mineral water or other beverage, or in making, selling or disposing of articles of pastry, may register his title as owner of a trade-mark by filing with the Secretary of State and the clerk of the county where the principal place of business of such person is situated, a description of the marks and devices used by him in his business, and in case the same has not been heretofore published according to the laws existing at the time of publication, causing the same to be published in a newspaper of the county, three weeks daily, if in the city of New York or Brooklyn, and weekly if in any other part of the State; but no trade-mark shall be filed which is not and cannot become a lawful trade-mark, or which is merely the name of a person, firm or corporation unaccompanied by a mark sufficient to distinguish it from the same name when used by another person. After such registration, the use without the consent of the owner of the trade-mark so described, or the filling of any bottle, siphon, barrel, platter, vessel, or thing for the purpose of sale, or for the sale, therein, of any article of the same general nature and quality which said bottle, siphon, barrel, platter, vessel or other thing before contained, without the obliteration or defacement of the trade-mark upon it, when such trade-mark can be obliterated or defaced without substantial injury to the bottle, siphon, barrel, platter, vessel or other thing so as to prevent its wrongful use, shall be deemed a misdemeanor.* (Id. § 2355.)

328. **Keeping Trade-Mark Bottles and Vessels With Intent to Refill or Sell Them.**—Any person engaged in the business of buying and selling bottles, siphons, barrels, platters, or other vessels or things, who shall with intent to defraud the registered owner of the trade-mark, knowingly sell or offer for sale any bottle, siphon, barrel, platter, vessel, or other thing, to any person, who he has reason to believe wrongfully intends to use the trade-mark upon it, or to fill such bottle, siphon, barrel, platter, vessel or other thing in violation of section twenty-three hundred and fifty-five, shall be deemed guilty of a misdemeanor.* (Id. § 2356.)

329. **Search for Trade-Mark Bottles and Vessels Kept in Violation of Law Authorized.**—Whenever a registered owner of a trade-mark, or his agent, makes oath before a magistrate that he has reason to believe and does believe, stating the grounds of his belief, that a bottle, siphon, barrel, platter, vessel or other thing to which is affixed a trade-mark belonging to him is being used or filled, or has been sold or offered for sale, by any person whomsoever, in violation of the preceding section, then the magistrate may issue a search warrant to discover the thing and cause the person having it in possession to be brought before him and may thereupon inquire into the circumstances, and if on examination, he finds that such person has been guilty of the offense charged, he may hold the offender to bail to await the action of the grand jury, and the offender shall also be liable to an action on the case for damages, for such wrongful use of such trade-mark at the suit of the owner thereof, and the party aggrieved shall also have his remedy according to the course of equity to enjoin the wrongful use of his trade-mark, and to recover compensation therefor, in any court having jurisdiction over the person guilty of such wrongful use. (Id. § 2357.)

330. **Trade-Marks on Bottles, Siphons, Tins, Kegs or Cans.**—Any person or corporation engaged in manufacturing, bottling or selling soda waters, mineral or aerated waters, porter, ale, beer, cider, ginger ale, milk, cream, small beer, lager beer, weiss beer, white beer or other beverages or medicines, medical preparations, perfumery, oils, vinegar, compounds or mixtures, in bottles, siphons, tins, kegs or cans, with his or its name or other marks or devices branded, stamped, engraved, etched, blown, embossed, impressed or otherwise produced upon such bottles, siphons, tins, kegs or cans, or the boxes used by him or it, may file in the office of the clerk of the county in which his or its principal place of business is situated, or if such person or corporation shall manufacture or bottle out of this State, then in any county in this State, and also in the office of the Secretary of State, a description of the name, marks or devices so used by him or it, and cause such description to be printed once in a week, for three weeks successively, in a newspaper published in the county in which said notice may have been filed as aforesaid, except that in

*See No. 68a.

the boroughs of Manhattan and Brooklyn in the city of New York, such publications shall be made twice in each week for three weeks successively in two daily newspapers published in such boroughs, respectively, and he shall thereupon be deemed the proprietor of such name, mark or device and of every vessel or receptacle upon which it may be branded, stamped, engraved, etched, blown, impressed, embossed, or otherwise produced. (C. L. 1923, c. 21, art. 24, § 360; Supp. 1926, Id.)

331. Definition.—The term "syphon," as used in this article, shall mean and include a syphon head, and all the provisions of this article shall apply to a syphon head, although the same may be detached from the bottle, in the same manner and with the same effect as if not so detached. (C. L. 1923, c. 21, art. 24, § 360-a.)

332. Trade-Marks on Other Articles.—Any person or corporation engaged in manufacturing, freezing, preserving or selling ice cream, confectionery, charlotte russe, cakes and jellies, with his or its name, or other marks or devices branded, stamped, engraved, stenciled, blown, impressed or otherwise produced upon the freezers, cans, blocks, moulds, trays, bricks, pans, tanks, pails, kegs, tubs, refrigerators, boxes, spoons, cutlery, glass, china, chairs, tables or signs used by him or it, may file in the office of the clerk of the county in which his or its principal place of business is located, or if such person or corporation shall manufacture or sell out of this State, then in any county in this State, and also in the office of the Secretary of State, a description of the name, marks or devices, so used by him or it, and cause such description to be printed once in each week, for three weeks successively, in a newspaper published in the county in which said notice may have been filed, as aforesaid, except that in the boroughs of Manhattan and Brooklyn in the city of New York, such publication shall be made twice in each week, for three weeks successively, in two daily newspapers published in said boroughs respectively. (Id. § 361.)

333. Unlawful Use of Trade-Marked Articles.—1. It is hereby declared to be unlawful for any person or corporation to fill with soda waters, mineral or aerated waters, porter, ale, cider, ginger ale, milk, cream, beer, small beer, lager beer, weiss beer, white beer, or other beverages, or with medicine, medical preparations, perfumery, oils, vinegar, compounds or mixtures, any bottle, box, siphon, tin, keg or can so marked or distinguished as aforesaid, with or by any name, mark or device, of which a description shall have been filed and published, as provided in section three hundred and sixty, or to deface, erase, obliterate, cover up or otherwise remove or conceal, any such name, mark or device thereon, or to sell, buy, use, give, take or otherwise dispose of or traffic in the same, or, as to cans, in the covers of such cans when the same are so sold, bought, used, given, taken, or otherwise disposed of, or trafficked in, otherwise than in conjunction with and as a part of such cans, provided such covers are so marked or distinguished, without the written consent of, or unless the same shall have been purchased from the person or corporation whose mark or device shall be or shall have been in or upon the bottle, box, siphon, tin, keg or can so filled, trafficked in, used or handled as aforesaid. Any person or corporation offending against the provisions of this subdivision shall be deemed guilty of a misdemeanor, and shall be punished for the first offense by imprisonment not less than ten days nor more than one year, or by a fine of five dollars for each and every can, and fifty cents for each and every such bottle, box, siphon, tin, keg or can cover so filled, sold, used, disposed of, bought or trafficked in, or by both such fine and imprisonment, and for each subsequent offense by imprisonment not less than twenty days nor more than one year, or by a fine of not less than seven dollars and fifty cents nor more than ten dollars for each can, nor less than one dollar, nor more than five dollars, for each and every such bottle, box, siphon, tin, keg or can cover, so filled, sold, used, disposed of, bought or trafficked in, or by both such fine and imprisonment, in the discretion of the magistrate before whom the offense shall be tried.

2. It is hereby declared to be unlawful for any person or corporation to make use of, for similar or other purposes, any such freezers, cans, blocks, moulds, trays, bricks, pans, tanks, pails, kegs, tubs, refrigerators, boxes, spoons, cutlery, glass, china, chairs, tables or signs so marked or distinguished, as aforesaid, with or by any name, mark or device, of which a description shall have been filed and published, as provided in section three hundred and sixty-one, or to deface, erase, obliterate, cover up or otherwise remove or conceal, any such name, mark or device thereon, or to sell, buy, give, take or otherwise dispose of or traffic in the same without the written consent of, or unless the same shall have been purchased from the person or corporation whose mark or device shall be or shall have been in or upon the said freezers, cans, blocks, moulds, trays, bricks, pans, tanks, pails, kegs, tubs, refrigerators, boxes, spoons, cutlery, glass, china, chairs, tables or signs trafficked in, used or handled as aforesaid. Any person or corporation offending against the provision of this subdivision, shall be deemed guilty of a misdemeanor, and shall be punished

for the first offense by imprisonment not less than ten days nor more than one year, or by a fine of three dollars for each and every such article named and described in section three hundred and sixty-one, sold, used, disposed of, bought or trafficked in, or by both such fine and imprisonment, and for each subsequent offense by imprisoment not less than twenty days nor more than one year, or by a fine of not less than five dollars nor more than ten dollars for each and every such article named and described in said section, sold, used, disposed of, bought or trafficked in, or by both such fine and imprisonment, in the discretion of the magistrate before whom the offense shall be tried. (C. L. 1923, c. 21, art. 24, § 362; Supp. 1926, Id.)

334. Presumptive Evidence of Unlawful Use.—1. The use by any person other than the person or corporation whose device, name or mark shall be or shall have been upon the same without such written consent or purchase as aforesaid, of any such marked or distinguished bottle, box, siphon, tin, keg, cans or can covers, a description of the name, mark or device whereon shall have been filed and published, as herein provided, for the sale therein of soda waters, mineral or aerated waters, porter, ale, cider, ginger ale, milk, cream, beer, small beer, lager beer, weiss beer, white beer or other beverages, or any article of merchandise, medicines, medical preparations, perfumery, oils, vinegar, compounds, mixtures or preparations, or for the furnishing of such or similar beverages to customers, or the buying, selling, using, disposing of or trafficking in any such bottles, boxes, siphons, tins, kegs, cans or can covers, by any person other than said persons or corporations having a name, mark or device thereon of such owner without such written consent, or the having by any junk dealer or dealers in second-hand articles, possession of any such bottles, boxes, siphons, tins, kegs, cans or can covers, a description of the marks, names or devices, whereon shall have been so filed and published as aforesaid, without such written consent, shall, and is hereby declared, to be presumptive evidence of the said unlawful use or purchase of and traffic in such bottle, boxes, siphons, tins, kegs, cans or can covers.

2. The use by any person other than the person or corporation whose device, name or mark shall be or shall have been upon the same without such written consent or purchase as aforesaid, of any such article named and described in section three hundred and sixty-one, a description of the name, mark or device whereon shall have been filed and published as herein provided, for similar or other purposes, or the buying, selling, using, disposing of, or trafficking in any such article named and described in said section, by any person other than said persons or corporations having a name, mark or device thereon of such owner, without such written consent, or the having by any junk dealer or dealers in second-hand articles, possession of any such article, named and described in said section, a description of the marks, names or devices, whereon shall have been so filed and published as aforesaid, without such written consent, shall, and is hereby declared to be presumptive evidence of the said unlawful use or purchase of and traffic in such freezers, cans, blocks, moulds, trays, bricks, pans, tanks, pails, kegs, tubs, refrigerators, boxes, spoons, cutlery, glass, china, chairs, tables or signs. (C. L. 1923, c. 21, art. 24, § 363; Supp. 1926, Id.)

335. Search Warrant to Discover Trade-Marked Articles Unlawfully Used.—1. Whenever any person or corporation mentioned in section three hundred and sixty or his or its agent shall make oath before any magistrate that he or it has reason to believe, and does believe, that any of his or its bottles, boxes, siphons, tins, kegs, cans or can covers, a description of the names, marks or devices whereon has been so filed and published as aforesaid, are being unlawfully used or filled, or had, by any person or corporation manufacturing or selling soda, mineral or aerated waters, porter, ale, cider, ginger ale, milk, cream, small beer, lager beer, weiss beer, white beer or other beverages or medicine, medical preparations, perfumery, oils, vinegar, compounds or mixtures, or that any junk dealer or dealer in second-hand articles, vendor of bottles, or any other person or corporation has any such bottles, boxes, siphons, tins, kegs or cans or can covers, in his or its possession or secreted in any place, the said magistrate must thereupon issue a search warrant to discover and obtain the same, and may also cause to be brought before him the person in whose possession such bottles, boxes, siphons, tins, kegs, cans or can covers, may be found, and shall then inquire into the circumstances of such possession, and if such magistrate finds that such person has been guilty of a violation of subdivision one of section three hundred and sixty-two, he must impose the punishment herein prescribed, and he shall also award possession of the property taken upon such warrant to the owner thereof.

2. Whenever any person or corporation mentioned in section three hundred and sixty-one, or his or its agent, shall make oath before any magistrate, that he or it has reason to believe, and does believe, that any of his or its freezers, cans, blocks, moulds, trays, bricks, pans, tanks, pails, kegs, tubs, refrigerators, boxes, spoons, cutlery, glass, china, chairs, tables or signs, a description of the names, marks or devices whereon has been so filed and published as aforesaid, are being unlawfully used for

similar or other purposes, or that any junk dealer or dealers in second-hand articles, or any other person or corporation, has any such article as named and described herein, in his or its possession, or secreted in any place, the said magistrate must thereupon issue a search warrant to discover and obtain the same, and may also cause to be brought before him the person in whose possession such articles as named and described herein may be found, and shall then inquire into the circumstances of such possession, and if such magistrate finds that such person has been guilty of a violation of subdivision two of section three hundred and sixty-two, he must impose the punishment herein prescribed, and he shall also award possession of the property taken upon such warrant to the owner thereof. (C. L. 1923, c. 21, art. 24, § 364; Supp. 1926, Id.)

336. What Constitutes Sale of Article.—The requiring, taking or accepting of any deposit, for any purpose, upon any bottle, siphon, tin, keg, freezer, can, block, mould, tray, brick, pan, tank, pail, keg, tub, refrigerator, box, spoon, cutlery, glass, china, chair, table or sign, shall not be deemed or constitute a sale of such property, either optional or otherwise, in any proceeding under this article. (C. L. 1923, c. 21, art. 24, § 365.)

337. Trade-Marks Heretofore Filed.—Any person or corporation that has heretofore filed in the offices mentioned in sections three hundred and sixty or three hundred and sixty-one, a description of the name or names, marks or devices upon his or its property, therein mentioned, and has caused the same to be published according to the law existing at the time of such filing and publication, shall not be required to again file and publish such description to be entitled to the benefits of this article. (Id. § 366.)

338. Further Provisions Concerning Trade-Marks on Articles of Merchandise.—Any person or corporation engaged in manufacturing, packing, bottling or selling any article of merchandise, put up by him for sale in any bottle, vessel, box, package or other receptacle with his name, trade-mark, label, or private mark appearing in any way thereon, or branded, stamped, affixed, blown or impressed thereon, may file in the office of the Secretary of State, and in the office of the county clerk of the county where the same is manufactured, packed, bottled or put up for sale, or where his, its or their principal place of business is situated, or if such person or corporation shall manufacture, pack or bottle outside of this State, then in any county of this State, and also in the office of the Secretary of State, a description, specimen or facsimile of the name, trade-mark, label or other private mark so appearing thereon or so branded, stamped, affixed, blown, impressed or otherwise marked thereupon, and he shall thereupon be deemed the proprietor of such name, trade-mark, label, or other private mark. The Secretary of State shall deliver to such person or corporation so filing the same, a certificate under his seal of the record of such label, trade-mark or other private mark. Any person or corporation so filing said description, specimen or facsimile may publish the same once a week for at least three weeks successively in a newspaper published in said county, except in New York and Kings counties, where such publication shall be for the same length of time daily in two newspapers therein. Such a certificate granted by the Secretary of State under this act and proof of publication as aforesaid shall be prima facie evidence of the ownership and use of the trade-mark and label by the persons therein named, in any actions under this statute. Such certificate shall be prima * evidence of the ownership and use of any label or trade-mark therein described by the persons therein named in any prosecution or action under any of the statutes of this State, where proof of such ownership and use is necessary, and in any action or proceeding brought for the purpose of recovering damages for the violation of said trade-mark or of preventing infringement thereof. This statute, however, shall not be construed as preventing the proof of any such label or trade-mark and the use thereof in any other lawful manner in use prior to the passage of this act. The Secretary of State shall not record, register, or file any label, trade-mark or other private mark identical with or so similar to any other label, trade-mark or other private mark theretofore filed or registered as above provided as would be calculated to deceive, unless such prior registration shall have been revoked as herein provided. The Supreme Court may in an action brought for that purpose by any person aggrieved thereby against any person who has already filed or registered any such label, trade-mark or other private mark, direct the revocation of any such registration where it shall determine that the person who has already registered the same is not the rightful owner of any such label, trade-mark or other private mark. No person other than such proprietor of such label, trade-mark or other private mark which has been filed in the office of the Secretary of State and in the office of the county clerk, as aforesaid shall sell, keep or offer for sale in, from, or out of, or fill, place or put into, any

*So in the law.

vessel, box, package, bottle or receptacle on which any such names, labels or marks in any manner appear, and while so branded, stamped, labeled, blown, impressed or marked, any article or substance other than the original contents placed therein by the proprietor of the label, trade-mark or other private marks thereon, or sell, keep or offer for sale any article or substance in, from or out of, or fill, or place or put any article or substance into any vessel, box, package, bottle or receptacle on which said label and trade-mark in any manner appears or which shall bear or have branded, stamped, labeled, blown, impressed or otherwise marked thereon, any imitation or counterfeit of any such label, trade-mark or other private mark so filed in the office of the Secretary of State and county clerk as aforesaid. No person other than such proprietor in such cases where filing and publication is made as aforesaid, shall remove, deface or obliterate any device, brand, stamp, mark, name, trade-mark or other private marks impressed, stamped or blown into the substance of which any such vessel or receptacle is composed, without the written permission of such proprietor or unless there has been a sale to such person of such vessel or receptacle exclusive of the contents thereof by such proprietor. No person other than such proprietor shall, without his permission, use, traffic in, purchase, sell, dispose of, convert, mutilate, destroy or willfully or unreasonably refuse to return or deliver to such proprietor, on demand, any such vessel or receptacle belonging to such proprietor, which is branded, stamped or marked by having any such registered design, device, name or mark blown or impressed into the substance of which the vessel or receptacle is composed or sell or dispose of any such vessel or receptacle without obliterating or defacing such label, trade-mark or other private mark if such obliterating or defacing can be done without substantial injury to the vessel or receptacle on which it appears or to which it is affixed providing filing and publication has been made as aforesaid. Nothing herein contained shall be construed as preventing the traffic in any bottles or other receptacles without contents, with or without obliteration or defacement of the trade-mark upon it, when such trade-mark can be obliterated or defaced without substantial injury to the bottle or receptacle, the intention of this section being to protect the owners of trade-marks and labels against imitation and refilling of all packages and receptacles while bearing such trade-marks. Each act of refilling, each sale, each imitation, each counterfeit and each offering for sale shall be construed as constituting a separate and distinct violation of this act. Any person violating any provisions of this section shall forfeit to such proprietor one hundred dollars for each such violation. Written permission of such proprietor to do the specific act complained of shall be a complete defense to any action therefor under this section. Nothing in this act shall prevent, lessen, impeach, or avoid any remedy at law or in equity which any party aggrieved by any wrongful use of any trade-mark might have had if this act had not been passed, and nothing herein contained shall prevent or avoid or defeat any prosecution under any of the existing penal or other statutes of this State. It is not intended hereby to repeal any of the existing penal or civil statutes or remedies relating to trade-marks, labels, bottles or packages. (C. L. 1923, c. 21, art. 24, § 367; Supp. 1926, Id.)

338a. Fees.—The Secretary of State shall collect the following fees: . . .

14. For registering a trade-mark, name, brand, device or label, in pursuance of law, for the registry of which no other fee is exacted, five dollars. . . . (C. L. 1923, c. 18, art. 3, § 26.)

NOTE: See also Nos. 59, 60 and 126 et seq.

Trading Stamps.

339. Issue of Trading Stamps and Similar Devices.—A person who shall:

1. Issue trading stamps or other devices to any person engaged in any trade, business or profession, with the promise, express or implied, that he will give to the person presenting to him such stamps or other devices, money or anything of value, without receiving from such person the value thereof, or make to any such person any concession or preference in any way, on account of the presentation of such trading stamps or other devices; or,

2. Being engaged in any trade, business or profession, shall distribute or present to any person dealing with him, any such trading stamp or other device, in consideration of any article or thing purchased of, or any services performed by him,

Shall be guilty of a misdemeanor.*

3. It shall not be unlawful for any merchant or manufacturer to place his own tickets, coupons or other vouchers in or upon packages of goods sold or manufactured by him. Such tickets, coupons or other vouchers to be redeemed by such merchant or manufacturer either in money or merchandise, whether such packages

*See No. 68a.

are sold directly to the consumer or through retail merchants. Nor shall it be unlawful for any person to issue with such packages, tickets, coupons or other voucher so issued by such merchant or manufacturer. (C. L. 1923, c. 41, art. 208, § 2360.)*

340. Issue and Redemption of Trading Stamps and Similar Devices.—1. No person shall sell or issue any stamp, trading stamp, cash discount, stamp, check, ticket, coupon, or other similar device, which will entitle the holder thereof, on presentation thereof either singly or in definite number to receive either directly from the vendor or indirectly through any other person, money or goods, wares or merchandise, unless each of said stamps, trading stamps, cash discount stamps, checks, tickets, coupons, or other similar devices shall have legibly printed or written upon the face thereof the redeemable value thereof in lawful money of the United States.

2. Any person who shall sell or issue to any person engaged in any trade, business or profession, any stamp, trading stamp, cash discount stamp, check, ticket, coupon, or other similar device, which will entitle the holder thereof, on presentation thereof either singly or in definite number, to receive either directly from the vendor or indirectly through any other person, money or goods, wares or merchandise, shall, upon presentation, redeem the same either in goods, wares, or merchandise or in lawful money of the United States, at the option of the holder thereof, at the value in lawful money printed on the face thereof, provided the same be presented for redemption in number or quantity aggregating in money value not less than five cents in each lot.

3. Any person engaged in any trade, business, or profession who shall distribute, deliver or present to any person dealing with him, in consideration of any article or thing purchased, any stamp, trading stamp, cash discount stamp, check, ticket, coupon or other similar device which will entitle the holder thereof on presentation thereof either singly or in definite number, to receive either directly from the person issuing or selling same as set forth in the second paragraph hereof, or indirectly through any other person, shall, upon the refusal or failure of the said person issuing or selling same to redeem the same as set forth in the second paragraph hereof, be liable to the holder thereof for the face value thereof and shall upon presentation of the same in lots or number aggregating in money value not less than five cents in each lot, redeem the same either in goods, wares or merchandise, or in lawful money of the United States, at the option of the holder thereof, at the value in lawful money printed upon the face thereof.

4. No person, firm or corporation shall give, sell or deliver as an inducement for or in connection with the sale of merchandise, any coupon, check, ticket, stamp, token or similar device redeemable in money or merchandise by any other person, firm or corporation, without the consent of the person, firm or corporation originally issuing the same and responsible for the redemption thereof.

5. Any person, firm or corporation who shall violate any of the provisions of this section, shall be deemed guilty of a misdemeanor.†

6. This section shall not apply to tickets, coupons or other vouchers placed by any merchant or manufacturer in or upon packages or goods sold or manufactured by him if such tickets, coupons or other vouchers are issued by such merchant or manufacturer in his own name to be redeemed by him. (Id. § 2361.)‡

Weights and Measures.¶

341. Description of Weights and Measures.—The standard weights and measures that were furnished to this State by the government of the United States, in accordance with a joint resolution of congress, approved June fourteenth, eighteen hundred and thirty-six, and consisting of one standard yard measure and one set of standard weights, comprising one Troy pound, and nine avoirdupois weights of one, two, three, four, five, ten, twenty, twenty-five and fifty pounds, respectively; one set of standard Troy ounce weights, divided decimally from ten ounces to the one ten-thousandth of an ounce; one set of standard liquid capacity measures, consisting of one wine gallon of two hundred and thirty-one cubic inches, one-half

*This law was declared unconstitutional in People v. Dycker, 72 App. Div. 308, 76 N. Y. S. 111 (1902).

†See No. 68a.

‡This law was declared unconstitutional in People v. Zimmerman, 102 App. Div. 103, 92 N. Y. S. 497 (1905).

¶For administrative provisions see No. 1 et seq.

gallon, one quart, one pint and one-half pint measure; and one standard half bushel, containing one thousand and seventy-five cubic inches and twenty one-hundredths of a cubic inch, according to the inch hereby adopted as standard, and such new weights, measures, balances and other apparatus as may be received from the United States as standard weights, measures, balances and apparatus in addition thereto or in renewal thereof as well as such weights, measures, balances and apparatus as may be added by the State Department of Weights and Measures and verified by the National Bureau of Standards shall be the standards of weights and measure throughout this State. (C. L. 1923, c. 19, art. 16, § 176.)*

342. Units of Weights.—The units or standards of weight from which all other weights shall be derived and ascertained, shall be the standard weights designated in this article. The hundredweight consists of one hundred avoirdupois pounds and twenty hundredweight are a ton. In all transactions relating to the sale or delivery of coal two thousand avoirdupois pounds in weight shall constitute a legal ton. (Id. § 178.)

343. Units of Capacity.—The units or standards of measure of capacity for liquids from which all other measures shall be derived and ascertained shall be the standards designated in this article. The barrel is equal to thirty-one and one-half gallons and two barrels are a hogshead. The parts of the liquid gallon shall be derived from the gallon by continual division by the number two, so as to make half gallons, quarts, pints, half pints and gills. The peck, half peck, quarter peck, quart, pint and half pint measures for measuring commodities which are not liquids shall be derived from the half bushel by successively dividing that measure by two. (Id. § 179.)

344. Duties of Commissioner in Relation to Weights and Measures.—The commissioner† shall take charge of the standards adopted by this article as the standards of the State; cause them to be kept in the principal office of the department in the city of Albany, from which they shall not be removed, except for repairs or for certification, and take all other necessary precautions for their safekeeping. He shall maintain the State standards in good order and shall submit them once in ten years to the National Bureau of Standards for certification. He shall correct the standards of the several cities and counties, and, as often as once in five years, compare the same with those in his possession, and shall keep a record of the same, and where not otherwise provided by law he shall have a general supervision of the weights, measures and measuring and weighing devices sold or offered for sale in the State or in use in the State. He shall, upon the written request of any citizen, firm, corporation or educational institution of the State, test or calibrate weights, measures, weighing or measuring devices and instruments or apparatus used as standards in the State. He shall from time to time cause to be tested all weights and measures, and weighing and measuring devices used in checking the receipt or disbursement of supplies in every State institution and report in writing to the executive officer of the institution concerned; and at the request of said officers the commissioner shall appoint in writing one or more employees, then in actual service, of each institution, who shall act as special deputies for the purpose of checking the receipt or disbursement of supplies. He shall keep a complete record of the standards, balances and other apparatus belonging to the State and take receipt for the same from his successor in office. The commissioner shall inspect all standards used by the counties or cities at least once in two years and shall keep a record of the same. He shall as often as he shall deem necessary visit the various cities and counties of the State in order to inspect the work of the local sealers and in the performance of his duties he may inspect the weights, measures, balances or any other weighing or measuring appliances of any person, firm or corporation. He shall establish amounts of tolerance, or reasonable variations allowable for weights, measures and weighing and measuring devices, and shall issue instructions to the county and city sealers and these shall be binding upon and govern said sealers in the discharge of their duties. (C. L. 1923, c. 19, art. 16, § 180; Supp. 1926, Id.)

345. Copies of Standard Weights and Measures.—The State shall have a complete set of copies of the original standards of weights and measures adopted by this article, which shall be used for adjusting county standards, and the original standards shall not be used except for the adjustment of this set of copies and for scientific purposes.

The commissioner shall see that the foregoing provisions of this section are complied with and procure such apparatus and fixtures, if the same have not already been procured, as are necessary in the comparison and adjustment of the county standards.

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*For penalty for violation of chapter 19, see No. 38 et seq.

†Commissioner of Agriculture and Markets. See Nos. 2 and 52 et seq.

He shall cause all the city and county standards to be impressed with the emblem of the United States, the letters "N. Y.," and such other devices as he shall direct for the particular county. (C. L. 1923, c. 19, art. 16, § 181.)

346. County Sealer; Duty of Supervisors.—There shall be a county sealer of weights and measures in each county, except where such county is wholly embraced within a city, who shall be appointed by the board of supervisors and hold office during the pleasure of such board. He shall be paid a salary determined by the board of supervisors and shall be provided by them with the necessary working equipment of standard weights and measures. He shall take charge of and safely keep the county standards, and at least once in every five years shall submit such standards to the commissioner, at the place where the standards of the State are kept, for calibration and certification. Where not otherwise provided by law, the county sealer shall have the power within his county to inspect, test, try and ascertain if they are correct, all weights, scales, beams, measures of every kind, instruments or mechanical devices for measurement and the tools, appliances or accessories connected with any or all such instruments or measurements used or employed within the county by any proprietor, agent, lessee or employee in determining the size, quantity, extent, area or measurement of quantities, things, produce, article for distribution or consumption offered or submitted by such person or persons for sale, for hire or award. He shall at least twice in each year and as much oftener as he may deem necessary see that the weights, measures and all apparatus used in the county are correct. He may for the purposes above mentioned, and in the general performance of his official duties, enter or go into or upon and without formal warrant, any stand, place, building or premises or may stop any vendor, peddler, junk dealer, coal wagon, ice wagon or any dealer whatsoever, for the purposes of making the proper tests. Whenever the county sealer finds a violation of the statutes relating to weights and measures he shall cause the violator to be prosecuted. The county sealer shall keep a complete record of the work done by him and shall make an annual report to his board of supervisors, and an anual report, duly sworn to, not later than the first of December to the commissioner. The county sealer of weights and measures shall forthwith on his appointment give a bond, with sureties to be approved by the appointing power, for the faithful performance of the duties of his office and for the safety of the local standards and such appliances for verification as are committed to his charge and for the surrender thereof immediately to his successor in office or to the person appointed by the proper authority to receive them. (Id. § 182.)

347. City Sealer.—There shall be a city sealer of weights and measures, or an officer having similar duties, to be appointed by the mayor with the approval of the common council of each city, or in such other way as the city charter shall designate. He shall be paid a salary to be fixed and determined by the board or body authorized to determine salaries of city officials, and no fees shall be charged or received by him or by the city for the inspection or testing of weights, measures or weighing or measuring devices. He shall perform in his city the duties of and have like powers as a county sealer in a county. (Id. § 183.)

348. Sealing of Approved Weights and Measures.—Whenever a city or county sealer inspects any weight or measure and finds that it corresponds or causes it to correspond with the standards in his possession he shall seal or mark the same with an appropriate device.

No person shall remove any such seal or mark from any such weight or measure or obliterate or deface any such seal or mark. (Id. § 184.)

349. Sealing of False Weights and Measures.—Whenever any city or county sealer inspects any weight or measure and finds that it does not correspond and does not cause it to correspond with the standards in his possession he shall seal or mark the same.

No person shall use or attempt to use any weight or measure to which there has been affixed or upon which there has been placed any such last mentioned seal, mark or device, for the purpose of determining the weight or quantity of any commodity or article of merchandise, unless such seal, mark or device shall have been removed therefrom by a city or county sealer.

No person shall remove from any such weight or measure any seal or mark which has been affixed thereto, or placed thereon by a city or county sealer or obliterate or deface the same. (Id. § 185.)

350. Condemnation and Seizure of False Weights and Measures.—A city or county sealer may condemn and seize any weight or measure found by him to fail to conform to the standards in his possession and which is not caused by him to conform to such standards and cause the same to be destroyed or disposed of under such regulations as the commissioner may prescribe. (C. L. 1923, c. 19, art. 16, § 186; L. 1927, c. 207, § 33.)

351. Keeping False Weights and Measures.—No person shall retain in his possession any weight or measure, knowing it to be false, unless it appears beyond a reasonable doubt that it was so retained without intent to use it or permit it to be used for determining the quantity of any commodity or article of merchandise. (C. L. 1923, c. 19, art. 16, § 187.)

352. Using False Weights and Measures; Delivery of Deficient Quantities.—No person, with knowledge that the same is false, shall use a false weight, measure, or other apparatus, for determining the quantity of any commodity or article of merchandise, or knowingly deliver less of any such commodity or article of merchandise than the quantity he represents.

The possession or use by any person of any false weight, measure, or other apparatus, for determining the quantity of any commodity or article of merchandise is presumptive evidence of knowledge by such person of the falsity of such weight, measure, or other apparatus. The delivery by any person of a lesser quantity of any commodity or article of merchandise than the quantity he represents is presumptive evidence of knowledge by such person that the quantity delivered was less than the quantity he represented. (Id. § 188.)

353. False Labels.—No person shall, with intent to defraud, put upon an article of merchandise or upon a cask, bottle, stopper, vessel, case, cover, wrapper, package, band, ticket, label or other thing, containing or covering such an article, or with which such an article is intended to be sold, or is sold, any false description or false indication of or respecting the number, quantity, weight or measure of such article or any part thereof; or sell or offer or expose for sale an article which to his knowledge is falsely described or indicated in any of the manners or in any of the particulars above specified. (Id. § 189.)

354. Number of Pounds to the Bushel.—Whenever any commodity specified in this section is sold by the bushel, and no special agreement is made by the parties as to the mode of measuring, the bushel shall consist of seventy pounds of lime or coarse salt; sixty pounds of wheat, peas, potatoes, cloverseel or beans; fifty-seven pounds of onions; fifty-six pounds of Indian corn, rye, or fine salt; fifty-five pounds of flaxseed; fifty-four pounds of sweet potatoes; fifty pounds of corn meal, rye meal or carrots; forty-eight pounds of barley or buckwheat; forty-five pounds of herdsgrass, timothy seed or rough rice; forty-four pounds of sea island cotton seed; thirty-three pounds of dried peaches; thirty-two pounds of oats; thirty pounds of upland cotton seed; twenty-five pounds of dried apples; twenty pounds of bran or shorts. For a fractional part of the bushel a like fractional part of the above weights shall be required. (Id. § 190.)

355. Bottles or Jars for Milk and Cream.—Bottles used for the sale of milk and cream shall be of the capacity of half gallon, three pints, one quart, one pint, half pint and one gill, filled full to the bottom of the cap ring or stopper. The following variations on individual bottles or jars may be allowed: six drams above and six drams below on the half gallon; five drams above and five drams below on the three pint; four drams above and four drams below on the quart; three drams above and three drams below on the pint; two drams above and two drams below on the half pint, and two drams above and two drams below on the gill. Bottles or jars used for the sale of milk shall have clearly blown, or otherwise permanently marked, in the sides or bottom of the bottle the name, initials or trademark of the manufacturer and a designating number, which designating number shall be different for each manufacturer and may be used in identifying the bottles. The designating number shall be furnished by the commissioner upon application by the manufacturer, and a record of the designating numbers and to whom furnished shall be kept in the office of the commissioner. No manufacturer shall sell milk or cream bottles to be used in this State that do not comply as to size and marking with the provisions of this section. No dealer shall knowingly use, for the purpose of selling milk or cream, jars or bottles that do not comply with the provisions of this section. (C. L. 1923, c. 19, art. 16, § 191; L. 1927, c. 219.)

356. Definition of Term "Container."—"A container," as used in the following sections of this article, shall include any carton, box, crate, barrel, half-barrel, hamper, keg, drum, jug, jar, crock, bottle, bag, basket, pail, can, wrapper, parcel or package. (C. L. 1923, c. 19, art. 16, § 192.)

357. Standard Containers; Vegetables.—A standard container to be used for the sale of any commodity hereinafter named shall be one having the dimensions specified in this section for that particular commodity. No container used for the sale of such commodity shall be marked or otherwise represented as a standard container unless it shall have the dimensions hereinafter given for a standard container for such commodity; nor shall any such nonstandard container be sold or offered for sale as a standard container, nor shall the commodity in question, if packed in such nonstandard container, be represented as being packed in a standard container

when offered for sale or sold. But the commissioner shall have authority to, and may, approve as a standard container any type of container for any commodity which shall have the same cubic capacity as the one hereafter provided for such commodity. Any container so approved shall be deemed a standard container for such commodity.

1. A standard container for lettuce shall have a capacity of two thousand two hundred and eighty cubic inches, and shall have the following inside dimensions: length nineteen inches, width sixteen inches, depth seven and one-half inches, and shall be marked "standard lettuce container." When lettuce is sold or offered for sale either in a standard or nonstandard container, the contents of such container shall be plainly marked thereon, or on a label or tag attached thereto, in terms of numerical count, anything to the contrary in section one hundred and ninety-four of this chapter notwithstanding.

2. A standard container for celery shall have a capacity of seven thousand three hundred and four cubic inches, including space occupied by inside corner posts, if any are used, and shall have the following inside dimensions, including space occupied by inside corner posts, if any are used: length twenty and three-fourths inches, width sixteen inches, depth twenty-two inches. If inside corner posts are used they shall not be larger than one and one-half inches square. Such container shall be marked "standard celery container." When celery is sold or offered for sale either in a standard or nonstandard container, the contents of such container shall be plainly marked thereon, or on a label or tag attached thereto, in terms of numerical count, anything to the contrary in section one hundred and ninety-four of this chapter notwithstanding. (Supp. 1926, c. 19, art. 16, § 192-a; L. 1927, c. 207, § 34.)

358. Method of Sale of Certain Commodities.—All meat, meat products and butter shall be sold or offered for sale by net weight; all other commodities not in containers shall be sold or offered for sale by standard net weight, standard measure or numerical count; and such net weight, measure or count shall be marked thereon, or on a label or tag attached thereto; provided, however, that vegetables may be sold by the head or bunch. (C. L. 1923, c. 19, art. 16, § 193.)

359. Method of Sale of Bread.—Except as hereinafter otherwise provided, bread shall not be manufactured for sale, sold or offered or exposed for sale otherwise than by weight, and shall be manufactured for sale, sold, or offered or exposed for sale only in units of one pound, one and one-half pounds, or multiples of one pound. When multiple loaves are baked, each unit loaf shall conform to the weight required by this section. The weights herein specified shall mean net weights not more than twelve hours after baking, or not more than twelve hours after sale and delivery by the manufacturer for resale. Such weights shall be determined by the average weight of not less than six loaves; provided, that such average weights shall be determined by the weight of at least twelve loaves, whenever such number of loaves is available at the time and place of such weighing; and provided further, that bread found upon any premises occupied for the manufacture of bread for sale, or any bread found in the wagons, trucks, baskets, boxes or other delivery vehicle or receptacles owned or controlled by the manufacturer of such bread, and being transported or delivered for sale, shall for the purposes of this section be deemed to have been baked within twelve hours unless such bread is marked, designated or segregated as stale bread. Such unit weights shall not apply to rolls; nor to stale bread when sold as such; nor to restaurant or sandwich bread sold for consumption and used on the premises and not for resale; nor to fancy bread such as fruit breads, nut breads, seed-covered breads, sugar-coated breads and gluten breads, and such other breads as shall be defined as fancy bread; nor to bread sold by the piece cut from the loaf, provided such bread be weighed in the presence of the buyer upon tested scales kept for that purpose; nor to loaves bearing in plain and conspicuous position a plain statement of the net weight of the loaf and the name of the manufacturer thereof upon the wrapper of each loaf, if the bread is wrapped, or, if unwrapped, upon a label, which label or that portion representing the weight shall be not larger than one by one and three-quarter inches and not smaller than one by one and one-half inches in size affixed to the loaf in a sanitary manner, provided, however, that in the case of loaves sold at retail, or offered or exposed for retail sale, direct from manufacturer to consumer upon or in the premises of the manufacturer, the information as to the weight of such loaves may be given upon a notice printed in English and, if different language is spoken, also the language or languages of the neighborhood, conspicuously posted in plain view of the buyer and in close proximity to the bread offered for sale in such premises, setting forth the weight of each size and variety of such loaves. When an inspection of bread is made at any bakery by or under the direction of the commissioner or by or under the direction of any city or county sealer, the manufacturer of such bread or his servants or agents shall, upon the request of the official making such inspection, inform him whether such bread is manufactured for sale in any of the standard unit weights prescribed by

this section and, if not so manufactured for sale in such standard units, shall furnish such official with samples of the labels or wrappers intended to be used on all such loaves of other than standard unit weights, or the notices intended to be posted with respect to such loaves. The commissioner shall make such uniform rules and regulations as are necessary to enforce this section, including reasonable tolerances or variations within which all weights shall be kept; provided, however, that the variation between the standard or represented weight and the true or actual weight shall not exceed one ounce per pound. The requirements of section one hundred and ninety-four of this chapter shall not apply to the sale of bread. (Supp. 1926, c. 19, art. 16, § 193-a; L. 1927, c. 207, § 35.)

360. Net Contents of Containers to be Indicated on the Outside Thereof.—When commodities are sold or offered for sale in containers whose sizes are not otherwise provided by statute, the net quantity of the contents of each container, shall be plainly and conspicuously marked, branded or otherwise indicated on the outside or top thereof or on a label or a tag attached thereto in terms of weight, measure or numerical count; provided, however, that reasonable variations shall be permitted. (C. L. 1923, c. 19, art. 16, § 194.)

361. Exceptions.—The provisions of sections one hundred and ninety-three and one hundred and ninety-four shall not apply to containers or commodities in containers with ornamentations or decorations exclusively for gifts or social favors or to commodities dispensed for consumption on the premises, or to commodities or containers put in receptacles used merely for the purpose of carrying or delivering of commodities or containers complying with the provisions of such sections, or when the numerical count of the individual units is six or less, or in the case of liquids when the contents is two fluid ounces or less, or when the weight of the contents is three avoirdupois ounces or less, or to barrels, half-barrels, quarter-barrels, casks, kegs and packages used for the purpose of containing maltous beverages. (C. L. 1923, c. 19, art. 16, § 195; Supp. 1926, Id.)

362. Guaranty Furnished by Wholesaler, Jobber or Manufacturer.—No person shall be prosecuted under the provisions of the last three sections when he can show a guaranty signed by a wholesaler, jobber or manufacturer, residing in the State of New York from whom he purchased the commodity in containers to the effect that they were not incorrectly marked within the meaning of such sections. The person making the sale and guaranty shall then be amenable to the prosecution, fines, and other penalties which would in due course attach to the dealer under the provisions of such sections. The name appearing on the container and the marking as provided by next to the last preceding section shall be deemed to constitute a guaranty. (C. L. 1923, c. 19, art. 16, § 196.)

363. Construction of Contracts.—All contracts made within the State for work to be done, or for the sale or delivery of personal property by weight or measure, shall be taken and construed according to the standards of weights and measures adopted in this article. (Id. § 197.)

364. Concealing Foreign Matter in Merchandise.—A person who, with intent to defraud, while putting up in a barrel, bag, bale, box, or other package, cotton, hops, hay, or any other article of merchandise whatever, usually sold by weight in such packages, places or conceals therein any other substance or thing whatever, in a case where special provision for the punishment thereof is not otherwise made by statute, is guilty of a misdemeanor.* (C. L. 1923, c. 41, art. 40, § 434.)

365. Requiring More Than the Legal Weight for a Bushel.—Where potatoes, grains or other agricultural products are sold by the bushel, without agreement as to the weight, any person requiring a greater number of pounds for a bushel than as prescribed by section eight† of the general business law is guilty of a misdemeanor.* (C. L. 1923, c. 41, art. 216, § 2410.)

366. Using False Weights and Measures.—A person who injures or defrauds another by using, with knowledge that the same is false, a false weight, measure, or other apparatus, for determining the quantity of any commodity, or article of merchandise, or by knowingly delivering less than the quantity he represents, is guilty of a misdemeanor.* (Id. § 2411.)

367. Keeping False Weights and Measures.—A person who retains in his possession any weight or measure, knowing it to be false, unless it appears beyond a reasonable doubt that it was so retained without intent to use it, or permit it to be used in violation of the last section, is guilty of a misdemeanor.* (Id. § 2412.)

368. False Weights and Measures Authorized to be Seized.—A person who is authorized or enjoined by law to arrest another person for a violation of the last two sections, is equally authorized and enjoined to seize any false weights or measures

*See No. 68a.
†Repealed.

found in the possession of the person so arrested, and to deliver the same to the magistrate before whom the person so arrested is required to be taken. (Id. § 2413.)

369. Weights and Measures May be Tested by Committing Magistrate and Destroyed or Delivered to District Attorney.—The magistrate to whom any weight or measure is delivered pursuant to the last section, must, upon the examination of the defendant, or if the examination is delayed or prevented, without awaiting such examination, cause the same to be tested by comparison with standards conformable to law; and if he finds it to be false, he must cause it to be destroyed, or to be delivered to the district attorney of the county in which the defendant is liable to indictment or trial, as the interests of justice in his judgment require. (Id. § 2414.)

370. Presumption of Knowledge.—The possession or use by any person of any false weight, measure or other apparatus for determining the quantity of any commodity or article of merchandise is presumptive evidence of knowledge by such person of the falsity of such weight, measure or other apparatus. (Id. § 2414-a.)

371. False Weights and Measures to be Destroyed After Conviction of Offender.—Upon the conviction of the defendant, the district attorney must cause any weight or measure in respect whereof the defendant stands convicted, and which remains in the possession or under the control of the district attorney, to be destroyed. (Id. § 2415.)

372. Stamping False Weight or Tare on Casks or Packages.—A person who knowingly marks or stamps false or short weights, or false tare on any cask or package, or knowingly sells or offers for sale any cask or package so marked, is guilty of a misdemeanor.* (Id. § 2416.)

NOTE: See also Nos. 22, 24, 52, 54, 59, 69 et seq., 111 et seq., 146 et seq., 187 et seq., 194, 198, and 199 et seq.

PART V.

Cases.

1. General Food and Drug Law.

Adulteration of Food—Definition Re Coloring, Coating, Polishing or Powdering Food—Not in Conflict With Federal Imported Food Law of 1890 or Violative of Commerce Clause: *Crossman v. Lurman, 192 U. S. 189, 24 S. Ct. 234, 48 L. Ed. 401 (1904), affirming *Crossman et al. v. Lurman et al., 171 N. Y. 329, 63 N. E. 1097, 98 Am. St. Rep. 599 (1902), which affirmed *Same, 57 App. Div. 393, 68 N. Y. Supp. 311 (1901). See also: In the matter of Lurman, 90 Hun 303 (1895), affirmed in Same, 149 N. Y. 588 (1896); Crossman et al. v. Lurman et al., 33 App. Div. 422, 54 N. Y. Supp. 72 (1898).

Adulteration of Food—Definition Re Addition of Poisonous Ingredient: People v. Bischoff, Same v. Allen, 14 N. Y. State Rep. 581 (1888).

Article Used as Both Food and Drug: People v. Fulle, 12 Abb. N. C. 196, 1 N. Y. Crim. Rep. 172 (1883).

Borax—Substandard—Complaint Insufficient: State Board of Pharmacy v. Davey, 56 Misc. 568, 107 N. Y. Supp. 46 (1907).

Camphorated Oil—Substandard Because of Evaporation of Camphor—Application of Law: State Board of Pharmacy v. Bronson, 113 N. Y. Supp. 490 (1908); Same v. Malkin, 138 App. Div. 17, 122 N. Y. Supp. 466 (1910).

Canned Peas—Containing Copper: People v. Bischoff, Same v. Allen, 14 N. Y. State Rep. 581 (1888).

Complaint—Motion for Leave to Serve Amended Complaint Because of Laches: People v. Munn, 131 App. Div. 341, 115 N. Y. Supp. 803 (1909).

Coffee—Adulteration: *Crossman v. Lurman, 192 U. S. 189, 24 S. Ct. 234, 48 L. Ed. 401 (1904), affirming *Crossman et al. v. Lurman et al., 171 N. Y. 329, 63 N. E. 1097, 98 Am. St. Rep. 599 (1902), which affirmed *Same, 57 App. Div. 393, 68 N. Y. Supp. 311 (1901). See also: In the matter of Lurman, 90 Hun 303 (1895), affirmed in Same, 149 N. Y. 588 (1896); Crossman et al. v. Lurman et al., 33 App. Div. 422, 54 N. Y. Supp. 72 (1898).

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*See No. 68a.

Cream of Tartar—Fatal Variance Between Complaint and Proof—Complaint Alleged Article Was Sold as Drug, Whereas Evidence Established It Was Sold as Food: People v. Fulle, 12 Abb. N. C. 196, 1 N. Y. Crim. Rep. 172 (1883).

Drugs—Application of Law to Drugs Subject to Subsequent Deterioration Due to Evaporation: State Board of Pharmacy v. Bronson, 113 N. Y. Supp. 490 (1908); State Board of Pharmacy v. Malkin, 138 App. Div. 17, 122 N. Y. Supp. 466 (1910).

"Extract of Vanilla"—Misbranded: People v. James Butler, Inc., 134 App. Div. 151, 118 N. Y. Supp. 849 (1909), appeal dismissed without opinion in Same, 200 N. Y. 556, 93 N. E. 1127 (1910); Same, 148 App. Div. 928, 133 N. Y. Supp. 1137 (1912), affirmed without opinion in Same, 212 N. Y. 613 (1914).

False Label—Not Cured by Inconspicuous True Label: People v. James Butler, Inc., 134 App. Div. 151, 118 N. Y. Supp. 849 (1909), appeal dismissed without opinion in Same, 200 N. Y. 556, 93 N. E. 1127 (1910); Same, 148 App. Div. 928, 133 N. Y. Supp. 1137 (1912), affirmed without opinion in Same, 212 N. Y. 613 (1914).

Farm and Markets Law of 1917—Relation to Public Health Law: *People v. Buffalo Cold Storage Co., 113 Misc. 479, 185 N. Y. Supp. 790 (1920).

Federal Food and Drugs Act—Imported Gelatine: Ritchie & Co. v. Paul Puttmann, Inc., 222 N. Y. Supp. 283 (1927).

Food—Action to Recover Damages Sustained by Refusal to Accept—Adulteration, the Defense: *Crossman v. Lurman, 192 U. S. 189, 24 S. Ct. 234, 48 L. Ed. 401 (1904), affirming *Crossman et al. v. Lurman et al., 171 N. Y. 329, 63 N. E. 1097, 98 Am. St. Rep. 599 (1902), which affirmed *Same, 57 App. Div. 393, 68 N. Y. Supp. 311 (1901).

Food—Butter—Defined: See Pardy v. Boomhower Grocery Co., 178 App. Div. 347, 164 N. Y. Supp. 775 (1917).

Food—Disclosure of Ingredients: People v. Henderson, 74 Misc. 577, 131 N. Y. Supp. 997 (1911); People v. Durkee, 189 App. Div. 276, 178 N. Y. Supp. 614 (1919), affirming Same, 101 Misc. 331, 166 N. Y. Supp. 987 (1917); *Crescent Mfg. Co. v. Wilson, 233 Fed. 282 (1916), appeal dismissed in *Same, 242 Fed. 462 (C. C. A.) (1917).

Food—Municipal Purchase and Sale: *Howard et al. v. City of New York, 234 N. Y. 505 (1922), ordering reargument of *Same, 199 App. Div. 596, 191 N. Y. Supp. 878 (1922); Same, 236 N. Y. 91, 140 N. E. 206 (1923), reversing Same, 199 App. Div. 596, 191 N. Y. Supp. 878 (1922).

Guaranty Under Drug Law: People v. Straus et al., 81 Misc. 154, 142 N. Y. Supp. 326 (1913).

Hydrogen Peroxide—Substandard: People v. Straus et al., 81 Misc. 154, 142 N. Y. Supp. 326 (1913).

Inspector of Foods in Department of Health of City of New York—Not a "Public Officer"—Compensation: Devlin v. City of New York, 149 N. Y. Supp. 1061 (1914).

Intent—Proof of Criminal Intent or Negligence Necessary: People v. Fulle, 12 Abb. N. C. 196, 1 N. Y. Crim. Rep. 172 (1883).

Lard—Complaint Sufficient: People v. Lewis, 131 App. Div. 336, 115 N. Y. Supp. 909 (1909).

Lard—Unlawful Sale: People v. Lewis, 138 App. Div. 673, 122 N. Y. Supp. 1025 (1910); People v. Finch, 74 Misc. 575, 131 N. Y. Supp. 1039 (1911).

"Lemonade"—Adulterated: People v. Park, 60 App. Div. 255, 69 N. Y. Supp. 1120 (1901).

Mapleine: *Crescent Mfg. Co. v. Wilson, 233 Fed. 282 (1916), appeal dismissed in *Same, 242 Fed. 462 (C. C. A.) (1917).

Medicine—Action for Breach of Contract to Purchase—Misbranded, the Defense: Gesualdi v. Personeni, 128 N. Y. Supp. 683 (1911).

Medicine—Action for Misbranding—Judgment of Conviction Reversed for Want of Jurisdiction: People v. Frooks, 190 App. Div. 378, 38 N. Y. Crim. Rep. 232, 180 N. Y. Supp. 81 (1920).

Medicine—Substandard: State Board of Pharmacy v. Teitel, 113 N. Y. Supp. 69 (1908).

Mixture, Compound, Imitation Proviso—Construed: People v. Luke, 122 App. Div. 64, 106 N. Y. Supp. 621 (1907); People v. James Butler, Inc., 134 App. Div. 151, 118 N. Y. Supp. 849 (1909), appeal dismissed without opinion in Same, 200 N. Y. 556, 93 N. E. 1127 (1910); Same, 148 App. Div. 928, 133 N. Y. Supp. 1137 (1912), affirmed without opinion in Same, 212 N. Y. 613 (1914); People v. Henderson, 74 Misc. 577, 131 N. Y. Supp. 997 (1911); People v. Finch, 74 Misc. 575, 131 N. Y. Supp. 1039 (1911); People v. Treichler, 178 App. Div. 718, 165 N. Y. Supp. 453 (1917); People v. Durkee, 189 App. Div. 276, 178 N. Y. Supp. 614 (1919), affirming Same, 101 Misc. 331, 166 N. Y. Supp. 987 (1917); *People v. Excelsior Bottling Works, Inc., 184 App. Div. 45, 171 N. Y. Supp. 733, 37 N. Y. Crim. Rep.

42 (1918), reversing *Same, 168 N. Y. Supp. 570, 35 N. Y. Crim. Rep. 62 (1916). See also: *Crescent Mfg. Co. v. Wilson, 233 Fed. 282 (1916), appeal dismissed in *Same, 242 Fed. 462 (C. C. A.) (1917).

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"Offered or Exposed for Sale" —Construed: People v. Lewis, 138 App. Div. 673, 122 N. Y. Supp. 1025 (1910).

Patent Medicines—Registration of Ingredients: *E. Fougera & Co., Inc., v. City of New York et al., 224 N. Y. 269, 120 N. E. 642, 1 A. L. R. 1467 (1918), affirming *Same, 178 App. Div. 824, 166 N. Y. Supp. 248 (1917); *Charles N. Crittenton Co. v. City of New York et al., 224 N. Y. 607 (1918), affirming *Same, 178 App. Div. 824, 166 N. Y. Supp. 248 (1917); *Herman Planten & Son v. City of New York et al., 224 N. Y. 608 (1918), affirming *Same, 178 App. Div. 824, 166 N. Y. Supp. 248 (1917).

Principal Responsible for Sale of Adulterated and Misbranded Food by Agent: People v. Lewis, 138 App. Div. 673, 122 N. Y. Supp. 1025 (1910).

Principal Responsible for Sale of Adulterated Drugs: People v. Kimmel & Kimmel, 88 Misc. 38, 150 N. Y. Supp. 311, 32 N. Y. Crim. Rep. 308 (1914).

Retailer May Recover from Wholesaler Amount of Fine or Penalty and Also of Costs and Fees Paid by Him for Unwitting Sale of Adulterated Food purchased by Him from Wholesaler Upon Representation or Implied Warranty of Its Purity: Friedgood v. Kline, 67 Misc. 428, 123 N. Y. Supp. 247 (1910). See also: Rossano et al. v. Kaminsky et al., 134 N. Y. Supp. 895 (1912); S. F. Zaloom & Co. v. Craig, 149 N. Y. Supp. 911 (1914).

Saccharin—Its Use in Food May be Regulated, But Not Prohibited: *People v. Excelsior Bottling Works, Inc., 184 App. Div. 45, 171 N. Y. Supp. 733, 37 N. Y. Crim. Rep. 42 (1918), reversing *Same, 168 N. Y. Supp. 570, 35 N. Y. Crim. Rep. 62 (1916).

Salad Dressing—Ingredients Need Not be Disclosed—No Adulteration or Misbranding: People v. Henderson, 74 Misc. 577, 131 N. Y. Supp. 997 (1911); People v. Durkee, 189 App. Div. 276, 178 N. Y. Supp. 614 (1919), affirming Same, 101 Misc. 331, 166 N. Y. Supp. 987 (1917).

Tea—Adulterated—Action to Enjoin Sale: Health Department of City of New York et al. v. Purdon et al., 99 N. Y. 237, 1 N. E. 687, 52 Am. Rep. 22 (1885), affirming Same, 19 Jones & S. 109 (1884). See also: The Daily Register, December 1, 1883.

Tomato Catsup—Falsely Labeled: People v. Luke, 122 App. Div. 64, 106 N. Y. Supp. 621 (1907).

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2. Special Food Laws.

Apples: People v. Wilson, 179 App. Div. 301, 166 N. Y. Supp. 329 (1917); De Hoff v. Aspegren et al., 166 N. Y. Supp. 1019 (1917); People v. Branch, 200 App. Div. 853, 191 N. Y. Supp. 943 (1921).

Bakeries—Hours of Labor: *Lochner v. New York, 198 U. S. 45, 25 S. Ct. 539, 49 L. Ed. 937, 3 Ann. Cas. 1133 (1905), reversing *People v. Lochner, 177 N. Y. 145, 69 N. E. 373, 101 Am. St. Rep. 773 (1904), which affirmed *Same, 73 App. Div. 120, 76 N. Y. Supp. 396 (1902).

Beverages—Container Protection Law: Westcott v. Thompson & Atkinson, 18 N. Y. 363 (1858); *Mullins v. People, 24 N. Y. 399 (1862); Lighte & Lighte v. Finan, 20 N. Y. State Rep. 777, 3 N. Y. Supp. 148 (1888); People, ex rel. Fellows, v. Hogan, 123 N. Y. 219, 25 N. E. 193, 33 N. Y. State Rep. 48 (1890), affirming Same, 55 Hun 391, 29 N. Y. State Rep. 110, 7 N. Y. Crim. Rep. 476, 8 N. Y. Supp. 451 (1890); People v. Elfenbein, 65 Hun 434, 20 N. Y. Supp. 364 (1892); *People v. Cannon, *People v. Quinn, *People v. Bartholf, 139 N. Y. 32, 34 N. E. 759, 36 Am. St. Rep. 668, 54 N. Y. State Rep. 431 (1893), affirming *People v. Cannon, 63 Hun 306, 43 N. Y. State Rep. 427, 18 N. Y. Supp. 25 (1892), and reversing People v. Quinn, 63 Hun 634, 18 N. Y. Supp. 569 (1892), and People v. Bartholf, 66 Hun 626, 20 N. Y. Supp. 782,

49 N. Y. State Rep. 368 (1892); Long Island Bottlers' Union v. Seitz, 180 N. Y. 243, 73 N. E. 20 (1905), reversing Same, 86 App. Div. 632, 83 N. Y. Supp. 1110 (1903); People v. Sommer, 55 Misc. 55, 106 N. Y. Supp. 190 (1907); *People v. Luhrs, 195 N. Y. 377, 89 N. E. 171, 25 L. R. A. (N. S.) 473 (1909), affirming *Same, 127 App. Div. 634, 111 N. Y. Supp. 749 (1908). *Clement v. Liquors Seized, Etc., 62 Misc. 27, 115 N. Y. Supp. 162 (1909); Haslinghuis et al. v. Hencken Haaren & Co., 143 N. Y. Supp. 1094 (1913); Presto-O-Lite Co. v. American Auto Supply Co., 147 N. Y. Supp. 150 (1913); John Jameson & Son, Ltd., v. Reilly, 90 Misc. 318, 153 N. Y. Supp. 225 (1915). See also: *Milk—Container Protection Law; Medicine—Container Protection Law (3).*

Beverages—Soda Water—Use of Carbonic Acid Gas—Tenement House Law: People v. Lichtman, 173 N. Y. 63, 65 N. E. 854 (1903), reversing *Same, 65 App. Div. 76, 72 N. Y. Supp. 511 (1901).

Beverages—Soft Drinks—License: *Safee v. City of Buffalo et al., 204 App. Div. 561, 198 N. Y. Supp. 646 (1923).

Beverages—Soft Drinks—License Denied to Alien: *Miller v. City of Niagara Falls et al., 207 App. Div. 798, 202 N. Y. Supp. 549 (1924).

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Butter—Adulteration: People v. Mahaney, 41 Hun 26, 2 N. Y. State Rep. 663 (1886).

Butter—Renovated Butter: People v. Mack, 97 App. Div. 474, 89 N. Y. Supp. 1004 (1904); People v. Waters et al., 114 App. Div. 669, 100 N. Y. Supp. 177 (1906), affirmed without opinion in Same, 188 N. Y. 632, 81 N. E. 1171 (1907).

Butter—Weight: Dibble v. Hathaway, 11 Hun 571 (1877); People v. Sheffield Farms-Slawson-Decker Co., 206 N. Y. 79, 99 N. E. 181 (1912), affirming Same, 149 App. Div. 923, 133 N. Y. Supp. 1138 (1912); City of New York v. Gurowitz, 78 Misc. 511, 138 N. Y. Supp. 616 (1912).

Candy Containing Sulphurous Acid—Adulterated—Sale to Inspector is Violation—Ignorance of Adulteration is No Defense: People v. Greenberg, 134 App. Div. 599, 119 N. Y. Supp. 325 (1909).

Canned Foods—Application of Weights and Measures Law: City of New York v. Fredericks, 206 N. Y. 618, 100 N. E. 419 (1912), affirming Same, 150 App. Div. 83, 134 N. Y. Supp. 796 (1912).

Canning Factories—Hours of Labor: *People, ex rel. Hoelderlin, v. Kane, 79 Misc. 140, 139 N. Y. Supp. 350 (1913), affirmed in *People v. Hodelerlin, 161 App. Div. 956 (1914).

Cheese—Storage a Nuisance: Mackay-Smith et al. v. Crawford et al., 56 App. Div. 136, 67 N. Y. Supp. 541 (1900), affirmed without opinion in Same, 171 N. Y. 662, 64 N. E. 1123 (1902).

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Dairy Products—Addition of preservative, Prohibited: *People v. Biesecker, 169 N. Y. 53, 61 N. E. 990, 57 L. R. A. 178, 88 Am. St. Rep. 534 (1901), affirming *Same, 58 App. Div. 391, 68 N. Y. Supp. 1067 (1901), which affirmed *Same, 33 Misc. 35, 68 N. Y. Supp. 134 (1900).

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Eggs—Unwholesome—Criminal Intent Not Necessary to Conviction: People v. Friedman, 138 App. Div. 29, 122 N. Y. Supp. 500 (1910), affirmed without opinion in Same, 200 N. Y. 591, 94 N. E. 1096 (1911).

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Feeding Stuffs: People v. Down and Down, 176 App. Div. 282, 163 N. Y. Supp. 151 (1917).

Flour—Inspection: Ferris v. Coles, 3 Caines 207 (1805); Griswold v. New York Insurance Co., 1 Johns. 205 (1806); Hancock v. Sturges, 13 Johns. 331 (1816); Smith v. Brown, 1 Wend. 231 (1828).

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Grocer—Action for Libel: Davey v. Davey, 22 Misc. 668, 50 N. Y. Supp. 161 (1898), affirmed without opinion in Same, 36 App. Div. 640, 56 N. Y. Supp. 1106 (1899).

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Meat—Action for Libel: Hartmann v. Sun Printing & Publishing Association, 74 App. Div. 282, 77 N. Y. Supp. 538 (1902).

Meat—Goat Meat—Action for Libel: Kornblum & Kornblum v. Commercial Advertiser Association, 183 App. Div. 615, 170 N. Y. Supp. 249 (1918), affirming Same, 164 N. Y. Supp. 186 (1917).

Meat—Inspection: Seaman v. Patten, 2 Caines 311 (1805).

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Meat—License: City of Buffalo v. Hill, 79 App. Div. 402, 79 N. Y. Supp. 449 (1903).

Meat—Market: Bush et al. v. Seabury, 8 Johns. 327 (1811); Village of Buffalo v. Webster, 10 Wend. 99 (1833). See also *Markets.*

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Meat—Removal of Dead Animals and Unsound Meat Beyond City Limits, Required: Underwood v. Green, 42 N. Y. 140 (1870), reversing Same, 3 Robertson 86 (1864).

Meat—Sanitation—Want of Intent is No Defense: Department of Health of City of New York v. Sulzberger & Sons Co., 78 Misc. 134, 137 N. Y. Supp. 998 (1912), application denied in Same, 154 App. Div. 895 (1912).

Meat—Slaughterhouse: Catlin et al. v. Valentine, 9 Paige 575 (1842); *City of Brooklyn v. Cleves, Hill & Denio Supp. 231 (1843); Brady et al. v. Weeks et al., 3 Barb. 157 (1848); Peck et al. v. Elder et al., 3 Sandford 126 (1849);

Cropsey v. Murphy, 1 Hilt. 126 (1856); Dubois et al. v. Budlong et al., 15 Abb. Pr. 445, 10 Bosworth 700 (1863); *Schuster v. Metropolitan Board of Health, 49 Barb. 450 (1867); *Metropolitan Board of Health v. Heister, 37 N. Y. 661 (1868); *Cronin v. People, 82 N. Y. 318, 22 Albany Law Journal 430, 10 Weekly Dig. 565, 37 Am. Rep. 564 (1880), affirming *Same, 20 Hun 137 (1880); Bird v. Grout and May Tritt v. Grout and May, 106 App. Div. 159, 94 N. Y. Supp. 127 (1905). See also: *Reynolds v. Schultz et al., 34 How. Pr. 147, 4 Robertson 282 (1867).

Meat—Unwholesome: People v. John W. Williams, Inc., 172 App. Div. 68, 158 N. Y. Supp. 245 (1916).

Meat—Veal Law: *People v. Jackson, 36 Misc. 282, 73 N. Y. Supp. 461 (1901); *People v. Bishopp, 106 App. Div. 266, 94 N. Y. Supp. 773 (1905), affirming *Same, 44 Misc. 12, 89 N. Y. Supp. 709 (1904); People v. Steers & Menke, 113 N. Y. Supp. 486 (1908); *People v. Dennis et al., 114 N. Y. Supp. 7 (1909); *Williams v. Rivenburg, 145 App. Div. 93, 129 N. Y. Supp. 473 (1911).

Meat—Weight—Shrinkage: City of New York v. Sulzberger & Sons Co., 80 Misc. 660, 141 N. Y. Supp. 876 (1913).

Meat—Wrapped Bacon—Application of Weight Declaration Law: People, ex inf. Eylers, v. Armour & Co., 176 App. Div. 161, 162 N. Y. Supp. 621 (1916).

Milk—Action Against Inspector for Illegal Conduct: *Bellows v. Raynor, 207 N. Y. 389, 101 N. E. 181 (1913), affirming Same, 145 App. Div. 899, 129 N. Y. Supp. 1113 (1911).

Milk—Action for Libel: Brooks v. Harison et al., 91 N. Y. 83 (1883).

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Milk—Addition of Formaldehyde Charged—Evidence in Defense: *People v. Bowen, 182 N. Y. 1, 74 N. E. 489 (1905), reversing Same, 97 App. Div. 642, 90 N. Y. Supp. 1108 (1904).

Milk—Analysis: *People v. Eddy, 59 Hun 615, 35 N. Y. State Rep. 146, 12 N. Y. Supp. 628 (1891).

Milk—Babcock Test as Evidence: People v. Rickard, 48 App. Div. 408, 63 N. Y. Supp. 165 (1900).

Milk Business—When a Nuisance: People v. High Ground Dairy Co., 166 App. Div. 81, 151 N. Y. Supp. 710 (1915); People v. Weeks, 172 App. Div. 117, 158 N. Y. Supp. 39 (1916).

Milk—Certified Milk: *People v. Briggs, 193 N. Y. 457, 86 N. E. 522 (1908), reversing *Same, 121 App. Div. 927, 106 N. Y. Supp. 1140 (1907).

Milk—Complaint and Indictment—Sufficiency: People v. Fauerback, 5 Parker's Crim. Rep. 311 (1862); People v. Burns, 53 Hun 274, 25 N. Y. State Rep. 97, 7 N. Y. Crim. Rep. 92, 6 N. Y. Supp. 611 (1889); People v. Du Bois, 25 N. Y. State Rep. 101 (1889); People v. Lamb, 85 Hun 171, 32 N. Y. Supp. 584 (1895); People v. Spees, 18 App. Div. 617, 46 N. Y. Supp. 995 (1897); People v. Woodbeck, 55 App. Div. 277, 67 N. Y. Supp. 38 (1900); People v. Koster, 50 Misc. 46, 97 N. Y. Supp. 829 (1906); People v. Liberman Dairy Co., 109 N. Y. Supp. 1067, 59 Misc. 22 (1908); Same, 112 N. Y. Supp. 1140 (1908); People v. Steinbeck, 186 App. Div. 26, 173 N. Y. Supp. 791 (1919).

Milk—Complaint Need Not State Analysis: People v. Bailey, 136 App. Div. 130, 120 N. Y. Supp. 618 (1909).

Milk—Condensed Milk: See Genessee Valley Milk Products Co. v. J. H. Jones Corporation, 143 App. Div. 624, 128 N. Y. Supp. 191 (1911), reversing Same, 69 Misc. 236, 124 N. Y. Supp. 1009 (1910).

Milk—Condensed Skim Milk—Action for Breach of Contract to Buy: Boston Dairy Co. v. J. H. Jones Corporation, 72 Misc. 17, 129 N. Y. Supp. 70 (1911).

Milk—Container Protection Law: *Monroe Dairy Ass'n v. Stanley, 65 Hun 163, 20 N. Y. Supp. 19 (1892); Pound v. Molyneaux, 53 N. Y. State Rep. 854, 24 N. Y. Supp. 592 (1893); *Bell v. Gaynor et al., 14 Misc. 334, 71 N. Y. State Rep. 71, 36 N. Y. Supp. 122 (1895); Bell v. Moen's Asphaltic Cement Co., 32 App. Div. 362, 52 N. Y. Supp. 1084 (1898); Schmidt v. Justus, 46 Misc. 459, 92 N. Y. Supp. 362 (1905); United States Condensed Milk Co. v. Smith et al., 116 App. Div. 15, 101 N. Y. Supp. 129 (1906), affirmed without opinion in Same, 191 N. Y. 536, 84 N. E. 1122 (1908); People's Milk Co. v. Doty, 64 Misc. 595, 118 N. Y. Supp. 966 (1909), affirmed without opinion in Same, 140 App. Div. 883, 124 N. Y. Supp. 1126 (1910); Partridge et al. v. Doty, Urban v. Same, 121 N. Y. Supp. 586 (1910), appeal dismissed in Partridge et al. v. Doty, 124 N. Y. Supp. 1124 (1910), and Urban v. Doty, 124 N. Y. Supp. 1132 (1910); People v. Srutowski, 184 App. Div. 602,

172 N. Y. Supp. 560 (1918); Voris v. Schmaling, 185 App. Div. 773, 173 N. Y. Supp. 424 (1918); Milk Bottlers' Federation v. Rosen et al., 174 N. Y. Supp. 145 (1919), affirmed without opinion in Same, 188 App. Div. 918, 176 N. Y. Supp. 911 (1919). See also: *Beverages—Container Protection Law; Medicine—Container Protection Law* (3).

Milk—Contract to Manufacture Cheese and Butter: Stewart v. Stone, 127 N. Y. 500, 14 L. R. A. 215 (1891).

Milk—Court of Special Sessions—Jurisdiction: People v. Austin, 49 Hun 396, 3 N. Y. Supp. 578 (1888).

Milk—Cows Fed on Distillery Waste: Riley v. Ackley, 58 Hun 610, 35 N. Y. State Rep. 204, 12 N. Y. Supp. 701 (1890).

Milk—Creamery Association Principally Engaged in Buying Milk and Cream for Sale, Not a "Producer": Wilson v. Israel et al., 227 N. Y. 423, 125 N. E. 819 (1920), reversing Same, 185 App. Div. 816, 173 N. Y. Supp. 842 (1919).

Milk—Criminal Knowledge or Intent Not an Element of Offense: People v. Schaeffer, 41 Hun 23 (1886); *People v. West, 106 N. Y. 293, 8 N. Y. State Rep. 713, 60 Am. Rep. 452, 27 Weekly Dig. 68, 6 N. Y. Crim. Rep. 382 (1887), affirming *Same, 44 Hun 162, 7 N. Y. State Rep. 843, 26 Weekly Dig. 215 (1887); *People v. Kibler, 106 N. Y. 321, 12 N. E. 795, 7 N. Y. Crim. Rep. 23 (1887); People v. Eddy, 59 Hun 615, 35 N. Y. State Rep. 146, 12 N. Y. Supp. 628 (1891); *People v. Beaman, 102 App. Div. 151, 92 N. Y. Supp. 295 (1905); People v. Bosch and Bosch, 129 App. Div. 660, 114 N. Y. Supp. 65 (1908); People v. Tsitsera, 138 App. Div. 446, 122 N. Y. Supp. 915 (1910); People v. Butler, 140 App. Div. 705, 125 N. Y. Supp. 556 (1910). But see: Verona Central Cheese Co. v. Murtaugh, 50 N. Y. 314 (1872), reversing Same, 4 Lansing 17 (1871).

Milk—Cumulative Penalties: People v. Koster, 121 App. Div. 852, 106 N. Y. Supp. 793 (1907); *People v. Abramson et al., 208 N. Y. 138, 101 N. E. 849 (1913), affirming Same, 147 App. Div. 491, 131 N. Y. Supp. 798 (1911).

Milk—Delivery, Sale or Offer or Expose for Sale: Flander v. People, 4 Albany Law Journal 316 (1871); People v. Wright, 19 Misc. 135, 43 N. Y. Supp. 290 (1897); People v. Koch, 19 Misc. 634, 44 N. Y. Supp. 387 (1897); People v. Kellina, 23 Misc. 134, 50 N. Y. Supp. 653 (1898); People v. McDermott-Bunger Dairy Co., 38 Misc. 365, 77 N. Y. Supp. 888 (1902); People v. McDermott Dairy Co., 122 N. Y. Supp. 294 (1910).

Milk—Different Prohibitions and Penalties as to Producing and Non-Producing Vendors: *St. John v. New York, 201 U. S. 633, 26 S. Ct. 554, 50 L. Ed. 896, 5 Ann. Cas. 909 (1906), affirming People v. St. John, 178 N. Y. 617, 70 N. E. 1104 (1904), which affirmed Same, 89 App. Div. 617, 85 N. Y. Supp. 1140 (1903).

Milk—Evidence: People v. Fauerback, 5 Parker's Crim. Rep. 311 (1862); Stearns et al. v. Ingraham et al., 1 Thomp. & C. 218 (1873); People v. Eddy, 59 Hun 615, 35 N. Y. State Rep. 146, 12 N. Y. Supp. 628 (1891); Cornwell v. Cagwin, 63 Hun 624, 17 N. Y. Supp. 299 (1892); People v. Woodbeck, 55 App. Div. 277, 67 N. Y. Supp. 38 (1900); *People v. Hills, 64 App. Div. 584, 72 N. Y. Supp. 340 (1901); People v. Terwilliger, 59 Misc. 617, 110 N. Y. Supp. 1034 (1908); People v. Tsitsera, 138 App. 446, 122 N. Y. Supp. 915 (1910); People v. Wiggins, 201 N. Y. 151, 94 N. E. 610 (1911), reversing Same, 138 App. Div. 917, 123 N. Y. Supp. 1135 (1910); People v. McDermott Dairy Co., 122 N. Y. Supp. 294 (1910); Same, 132 N. Y. Supp. 329 (1911); Same, 149 N. Y. Supp. 906 (1914); People v. Russell, 134 N. Y. Supp. 1068 (1912); People v. Hart, 1110 Misc. 714, 181 N. Y. Supp. 796 (1920).

Milk—Evidence That Adulterated Milk Was as It Came from Cow: People v. Eddy, 59 Hun 615, 35 N. Y. State Rep. 146, 12 N. Y. Supp. 628 (1891); People v. Salisbury, 2 App. Div. 39, 72 N. Y. State Rep. 671, 37 N. Y. Supp. 420 (1896), affirmed without opinion in Same, 151 N. Y. 663, 46 N. E. 1150 140 App. Div. 705, 125 N. Y. Supp. 556 (1910); People v. McDermott Dairy Co., 132 N. Y. Supp. 329 (1911). But see: *People v. Bowen, 182 N. Y. 1, 74 N. E. 489 (1905), reversing Same, 97 App. Div. 642, 90 N. Y. Supp. 1108 (1904).

Milk—Fair Sample: People v. Thompson, 60 Hun 582, 38 N. Y. State Rep. 317, 14 N. Y. Supp. 819 (1891); People v. Hodnett, 68 Hun 341, 22 N. Y. Supp. 809 (1893); People v. Salisbury, 2 App. Div. 39, 72 N. Y. State Rep. 671, 37 N. Y. Supp. 420 (1896), affirmed without opinion in Same, 151 N. Y. 663, 46 N. E. 1150 (1897); People v. Rickard, 48 App. Div. 408, 63 N. Y. Supp. 165 (1900); People v. Wiard, 61 App. Div. 612, 69 N. Y. Supp. 1142 (1901), affirmed without opinion in Same, 170 N. Y. 590, 63 N. E. 1120 (1902); People v. Gilmor, 73 App. Div. 483, 77 N. Y. Supp. 273 (1902); People v. Laesser, 79 App. Div. 384, 79 N. Y. Supp. 470 (1903); *People v. Beaman, 102 App. Div. 151, 92 N. Y. Supp. 295 (1905); People v. Weaver, 116 App. Div. 594, 101 N. Y. Supp. 961 (1906); People v. Bailey, 136 App. Div. 130, 120 N. Y. Supp. 618 (1909); People v. Butler, 140 App. Div. 705, 125

N. Y. Supp. 556 (1910); People v. Corcoran, 113 Misc. 692, 186 N. Y. Supp. 366 (1920).

Milk—From Which Cream Has Been Removed—Adulterated, Although It Retains Statutory Percentage of Fats and Solids: *People v. Koster, 121 App. Div. 852, 106 N. Y. Supp. 793 (1907).

Milk—Jurisdiction of Courts: People v. Harris, 123 N. Y. 70, 25 N. E. 317, 33 N. Y. State Rep. 168 (1890), affirming Same, 54 Hun 638, 28 N. Y. State Rep. 297, 7 N. Y. Supp. 773 (1889).

Milk—Lactometer Test—Conviction May be Had Upon Basis of It, Without Chemical Analysis: People v. Bailey, 136 App. Div. 130, 120 N. Y. Supp. 618 (1909).

Milk—Law Not Invalid Regulation of Interstate Commerce: *People v. Abramson et al., 208 N. Y. 138, 101 N. E. 849 (1913), affirming Same, 147 App. Div. 491, 131 N. Y. Supp. 798 (1913).

Milk—License—"Blood Test" as Condition: *People, ex rel. Schulz, v. Hamilton & Goler, 188 App. Div. 783, 177 N. Y. Supp. 222 (1919), reversing *Same, 97 Misc. 437, 161 N. Y. Supp. 425 (1916).

Milk—License to Buy or Sell: Metropolitan Milk & Cream Co. v. City of New York et al., 113 App. Div. 377, 98 N. Y. Supp. 894 (1906), affirmed without opinion in Same, 186 N. Y. 533, 78 N. E. 1107 (1906); *People, ex rel. Lodes, v. Department of Health of City of New York, 117 App. Div. 856 (1907); People, ex rel. Staub, v. Gilman, 103 N. Y. Supp. 954 (1907); People, ex rel. Shelter v. Owen & Goler, 66 Misc. 24, 116 N. Y. Supp. 502 (1909); *City of Hudson v. Flemming, 139 App. Div. 327, 123 N. Y. Supp. 1065 (1910); *People, ex rel. Levy Dairy Co., v. Wilson, 179 App. Div. 416, 166 N. Y. Supp. 211 (1917); *People v. Beakes Dairy Co., 222 N. Y. 416, 119 N. E. 115, 3 A. L. R. 1260 (1918), affirming *Same, 179 App. Div. 942, 166 N. Y. Supp. 209 (1917). See also: *Milk—Permit to Sell.*

Milk—Malted—Made from Adulterated Milk: People v. Kuperschmid & Lippa, 107 Misc. 506, 37 N. Y. Crim. Rep. 560, 176 N. Y. Supp. 828 (1919).

Milk—Maximum Watery Fluids and Minimum Solids and Fats Standard: *People v. Cipperly, 37 Hun 319, 3 N. Y. Crim. Rep. 385 (1885), reversed in *Same, 101 N. Y. 634, 4 N. Y. Crim. Rep. 70 (1886); *People v. Bowen, 182 N. Y. 1, 74 N. E. 489 (1905), reversing Same, 97 App. Div. 642, 90 N. Y. Supp. 1108 (1904); *People v. Beamen, 102 App. Div. 151, 92 N. Y. Supp. 295 (1905); *People v. Koster, 12 App. Div. 852, 106 N. Y. Supp. 793 (1907); People v. Bosch & Bosch, 129 App. Div. 660, 114 N. Y. Supp. 65 (1908); People v. McDermott Dairy Co., 122 N. Y. Supp. 294 (1910); People v. Tsitsera, 138 App. Div. 446, 122 N. Y. Supp. 915 (1910); People v. Butler, 140 App. Div. 705, 125 N. Y. Supp. 556 (1910); People v. McDermott Dairy Co., 132 N. Y. Supp. 329 (1911); People v. Russell, 134 N. Y. Supp. 1068 (1912); People v. Martin, 88 Misc. 519, 151 N. Y. Supp. 69 (1915); People v. Blajian et al., 154 N. Y. Supp. 123 (1915).

Milk—Organized Interference with Delivery: Gottlieb v. Matckin et al., 117 Misc. 128, 191 N. Y. Supp. 777 (1921).

Milk—Pasteurization Plant—Nuisance: People v. Borden's Condensed Milk Co., 31 N. Y. Crim. Rep. 195 (1914); Same, 165 App. Div. 711, 151 N. Y. Supp. 547, 32 N. Y. Crim. Rep. 477 (1915), affirmed without opinion in Same, 216 N. Y. 658, 110 N. E. 1046 (1915).

Milk—Pasteurization Plant—Sunday Labor Law: People v. R. F. Stevens Co., Inc., 178 App. Div. 306, 165 N. Y. Supp. 39 (1917), appeal dismissed in Same, 221 N. Y. 622, 117 N. E. 1079 (1917), and motion for reargument denied in Same, 221 N. Y. 667, 117 N. E. 1080 (1917).

Milk—Peddler: See *Peddlers.*

Milk—Permit to Sell: *People, ex rel. Lieberman, v. Van de Carr, 199 U. S. 552, 26 S. Ct. 144, 50 L. Ed. 305 (1905), affirming *Same, 175 N. Y. 440, 67 N. E. 913, 108 Am. St. Rep. 781 (1903), which affirmed *Same, 81 App. Div. 128, 80 N. Y. Supp. 1108 (1903); *People, ex rel. Lodes, v. Department of Health of City of New York, 189 N. Y. 187, 82 N. E. 187, 13 L. R. A. (N. S.) 894 (1907), reversing *Same, 117 App. Div. 856, 103 N. Y. Supp. 275 (1907); People, ex rel. Agins & Klugerman, Inc., v. Board of Health of Department of Health of City of New York, 197 App. Div. 562, 189 N. Y. Supp. 507 (1921); In re Morris, 128 Misc. 280, 219 N. Y. Supp. 143 (1926). See also: *Milk—License to Buy or Sell.*

Milk—Permit—Mandamus to Vacate Order to Revoke: People, ex rel. Agins & Klugerman, Inc., v. Board of Health of the Department of Health of the City of New York, 197 App. Div. 562, 189 N. Y. Supp. 507 (1921); People, ex rel. Feinsmith & Co., Inc., v. Board of Health of the Department of Health of the City of New York, 197 App. Div. 565, 189 N. Y. Supp. 509 (1921); In re Morris, 128 Misc. 280, 219 N. Y. Supp. 143 (1926).

Milk—Possession: People v. Wright, 19 Misc. 135, 43 N. Y. Supp. 290 (1897); *People v. Timmerman, 79 App. Div. 565, 80 N. Y. Supp. 285 (1903), affirmed

without opinion in Same, 179 N. Y. 550, 71 N. E. 1136 (1904); People v. McDermott Dairy Co., 126 N. Y. Supp. 1141 (1910).

Milk—Power of Municipal Board of Health: *People, ex rel. Cox, v. Justices of Court of Special Sessions, 7 Hun 214 (1876).

Milk—Power to Impose Both Civil and Criminal Liability: *People v. Beaman, 102 App. Div. 151, 92 N. Y. Supp. 295 (1905).

Milk—Prosecution by Local Officers: *People v. Beaman, 102 App. Div. 151, 92 N. Y. Supp. 295 (1905).

Milk—Registration: City of Gloversville v. Enos, 70 App. Div. 326, 75 N. Y. Supp. 245 (1902), reversing Same, 35 Misc. 724, 72 N. Y. Supp. 398 (1901).

Milk—Right to Sell Milk is Constitutional Right Subject Only to Due Exercise of Police Power: *People, ex rel. Lodes, v. Department of Health of City of New York, 116 App. Div. 890, 102 N. Y. Supp. 1145 (1907), affirming *Same, 51 Misc. 190, 100 N. Y. Supp. 788 (1906).

Milk—New York Sale of Adulterated Milk is Subject to New York Law Notwithstanding Delivery is in Another State and Milk Conforms to Its Law: *People v. Abramson et al., 208 N. Y. 138, 101 N. E. 849 (1913), affirming Same, 147 App. Div. 491, 131 N. Y. Supp. 798 (1911). See also: People v. Abramson & Fichhandler, 137 App. Div. 549, 122 N. Y. Supp. 115 (1910).

Milk—Sale of Adulterated Milk Prohibited: *Polinsky v. People, 73 N. Y. 65 (1878), affirming Same, 11 Hun 390 (1877); *People v. Cipperly, 37 Hun 319, 3 N. Y. Crim. Rep. 385 (1885), reversed in *Same, 101 N. Y. 634, 4 N. Y. Crim. Rep. 70 (1886); *People v. West, 106 N. Y. 293, 8 N. Y. State Rep. 713, 27 Weekly Dig. 68, 60 Am. Rep. 452, 6 N. Y. Crim. Rep. 382 (1887), affirming *Same, 44 Hun 162, 7 N. Y. State Rep. 843, 26 Weekly Dig. 215 (1887); *People v. Hills, 64 App. Div. 584, 72 N. Y. Supp. 340 (1901); *People v. Koster, 121 App. Div. 852, 106 N. Y. Supp. 793 (1907).

Milk—Sale of Loose or Dipped Milk Prohibited: *Mannix v. Frost & Sautter, 100 Misc. 36, 164 N. Y. Supp. 1050 (1917), affirmed without opinion in Same, 181 App. Div. 961, 168 N. Y. Supp. 1118 (1917). See also the case next following.

Milk—Sale of Milk Prohibited Unless Bottled, from Tuberculin Tested Herd, and Upon Permit: *Village of Herkimer v. Potter, 124 Misc. 57, 207 N. Y. Supp. 35 (1924).

Milk—Sale of Milk Prohibited Unless Certified or Pasteurized Grade A: *People, ex rel. Ogden, v. McGowan, 118 Misc. 828, 195 N. Y. Supp. 286 (1921), affirmed without opinion in Same, 200 App. Div. 836, 191 N. Y. Supp. 946 (1921); *Moll et al. v. City of Lockport et al., 118 Misc. 573, 194 N. Y. Supp. 250 (1922).

Milk—Sale of Milk Prohibited Unless Pasteurized: *People, ex rel. Ogden, v. McGowan, 118 Misc. 828, 194 N. Y. Supp. 286 (1921), affirmed without opinion in *Same, 200 App. Div. 836, 191 N. Y. Supp. 946 (1921).

Milk—Seizure and Condemnation of Substandard Milk: *Blazier & Burden v. Miller, 10 Hun 435 (1877).

Milk—Skimmed Milk—When Keeping Not Offense: People v. Thompson, 60 Hun 582, 38 N. Y. State Rep. 317, 14 N. Y. Supp. 819 (1891); Same, 17 N. Y. Supp. 605 (1891).

Milk—State and Municipal Law Upon Same Subject: Polinsky v. People, 73 N. Y. 65 (1878), affirming Same, 11 Hun 390 (1877).

Milk—Subpœna—Power of Commissioner of Foods and Markets to Issue: In the Matter of Nicosia, 180 App. Div. 427, 167 N. Y. Supp. 912 (1917).

Milk—Tuberculin Test: *People v. Teuscher, 129 Misc. 94, 221 N. Y. Supp. 20 (1927).

Milk—Typhoid Epidemic: Forbes et al. v. City of Jamestown, 212 App. Div. 332, 209 N. Y. Supp. 99, 215 N. Y. Supp. 846 (1925).

Milk—Unclean Receptacles—Use Prohibited: *People v. Clover Farms Co., 133 N. Y. Supp. 421 (1912); *People v. Frudenberg, 209 N. Y. 218, 103 N. E. 166 (1913), affirming *Same, 155 App. Div. 199, 140 N. Y. Supp. 17, 29 N. Y. Crim. Rep. 203 (1913).

Milk—Vendor, When Not a Trespasser: Stark et al. v. Sheffield Farms-Slawson-Decker Co., 166 N. Y. Supp. 411 (1917).

Milk—Writ of Certiorari Will Not Issue to Review Action of City Board of Health in Preventing Relator from Carrying on Business of Selling Milk, In Absence of Permissive Statute: *People, ex rel. Lodes, v. Department of Health of City of New York, 116 App. Div. 890, 102 N. Y. Supp. 1145 (1907), affirming *Same, 51 Misc. 190, 100 N. Y. Supp. 788 (1906).

Oleomargarine: *People v. McGann, 34 Hun. 358, 3 Crim. Rep. 1 (1884); *People v. Hill, 4 Crim. Rep. 144 (1885); *People v. Marx, 99 N. Y. 377, 2 N. E. 29, 52 Am. Rep. 34 (1885), reversing *Same, 35 Hun 528, 3 N. Y. Crim. Rep. 11 (1885); People v. Kerin, 39 Hun 631, 4 Crim. Rep. 140 (1886); People v. Mahaney,

41 Hun 26, 2 N. Y. State Rep. 663 (1886); *People v. Arensberg, 103 N. Y. 388, 5 Crim. Rep. 77, 3 N. Y. State Rep. 621, 57 Am. Rep. 741 (1886), reversing *Same, 40 Hun 358, 4 N. Y. Crim. Rep. 401 (1886); *Same, 105 N. Y. 123, 11 N. E. 277, 59 Am. Rep. 483, 5 Crim. Rep. 372, 6 N. Y. State Rep. 789, 26 Weekly Digest 119 (1887); *People v Hill, 44 Hun 472, 9 N. Y. State Rep. 336, 26 Weekly Digest 452 (1887); *People v. Waterbury, 44 Hun 493, 9 N. Y. State Rep. 5 (1887); People v. Briggs et al., 114 N. Y. 56, 20 N. E. 820, 23 Abb. N. C. 108 (1889), affirming Same, 47 Hun 266, 13 N. Y. State Rep. 365 (1888); People v. Dold, 63 Hun 583, 18 N. Y. Supp. 643, 44 N. Y. State Rep. 822 (1892); People v. Fox, 4 App. Div. 38, 38 N. Y. Supp. 635, 74 N. Y. State Rep. 500 (1896); People v. Laning, 40 App. Div. 227, 57 N. Y. Supp. 1057 (1899); People v. Meyer, 44 App. Div. 1, 60 N. Y. Supp. 415 (1899); People v. Hillman, 58 App. Div. 571, 69 N. Y. Supp. 66, 15 N. Y. Crim. Rep. 394 (1901); People v. Berwind, 38 Misc. 315, 77 N. Y. Supp. 859 (1902); People v. Bremer, 69 App. Div. 14, 74 N. Y. Supp. 570 (1902), appeal dismissed in Same, 173 N. Y. 599, 66 N. E. 1113 (1903); *People v. Meyer, 89 App. Div. 185, 85 N. Y. Supp. 834 (1903); *People, ex rel. McAuley v. Wahle & Gaffney, 124 App. Div. 762, 109 N. Y. Supp. 629 (1908); People v. Schintzius, 61 Misc. 410, 113 N. Y. Supp. 313 (1908); People v. Secor, 113 N. Y. Supp. 487 (1908); Same, 119 N. Y. Supp. 185 (1909); People v. Gottfried, 113 N. Y. Supp. 1086 (1909); People v. Teele, 131 App. Div. 87, 115 N. Y. Supp. 212, 23 N. Y. Crim. Rep. 323 (1909); People v. Brien, 117 N. Y. Supp. 246 (1909); People v. Simpson, Crawford Co., People v. Hale, People v. Fried, 62 Misc. 240, 114 N. Y. Supp. 945 (1909), affirmed without opinion in People v. Simpson, Crawford Co., People v. Fried, 133 App. Div. 889, 118 N. Y. Supp. 1131, 1132 (1909) and People v. Hale, 141 App. Div. 930, 126 N. Y. Supp. 1141 (1910); *People v. Clark, 140 App. Div. 150, 124 N. Y. Supp. 1023 (1910); People v. Fichten, 146 App. Div. 307, 130 N. Y. Supp. 704 (1911); People v. Redding, 70 Misc. 420, 126 N. Y. Supp. 977 (1911); *People v. Griffin et al., 71 Misc. 568, 128 N. Y. Supp. 946 (1911), affirmed without opinion in Same, 149 App. Div. 931, 134 N. Y. Supp. 1141 (1912); *People v. Guiton et al., 210 N. Y. 1, 103 N. E. 773, 53 L. R. A. (N. S.) 757 (1913), reversing *Same, 152 App. Div. 614, 137 N. Y. Supp. 600 (1912), which reversed *Same, 73 Misc. 408, 133 N. Y. Supp. 353 (1911); *People v. Von Kampen, 210 N. Y. 381, 104 N. E. 942 (1914), affirming *Same, 149 App. Div. 887, 134 N. Y. Supp. 710 (1912); People v. Wellner, 87 Misc. 334, 149 N. Y. Supp. 999 (1914); *People v. Wilcox, 103 Misc. 289, 170 N. Y. Supp. 944 (1918); People v. Peterson, 231 N. Y. 100, 131 N. E. 748 (1921), reversing Same, 189 App. Div. 926, 180 N. Y. Supp. 948 (1919). See also: Lauferty v. Wheeler, 11 Abb. N. C. 220 (1882); *Waterbury v. Egan, 3 Misc. 355, 23 N. Y. Supp. 115, 52 N. Y. State Rep. 421 (1893).

Peddlers—License: People, ex rel., Larrabee v. Mulholland, 82 N. Y. 324, 37 Am. Rep. 568 (1880), affirming Same, 19 Hun 548 (1880); *Village of Ballston Spa v. Markham, 58 Hun 238, 34 N. Y. State Rep. 237, 11 N. Y. Supp. 826 (1890); *People v. Jarvis, 19 App. Div. 466, 46 N. Y. Supp. 596 (1897); Jones v. Foster et al., 43 App. Div. 33, 59 N. Y. Supp. 738 (1899); People v. Meyer, 110 Misc. 439, 181 N. Y. Supp. 506 (1920).

Peddlers—Prohibition of Sale of Peanuts and Popcorn from Vehicle Unless Drawn by Horse: *People v. Gilbert, 68 Misc. 48, 123 N. Y. Supp. 264 (1910).

Peddling in Certain Hours Prohibited: *City of Buffalo v. Schleifer, 2 Misc. 216, 21 N. Y. Supp. 913 (1893); *City of Buffalo v. Linsman, 113 App. Div. 584, 98 N. Y. Supp. 737 (1906).

Salt—Weight: Clark & Clark v. Pinney, 7 Cow. 681 (1827).

Sidewalk Stand—Nuisance: See Weisberg v. Eilenberg & Eilenberg, 192 App. Div. 194, 182 N. Y. Supp. 551 (1920).

Vinegar—Addition of Artificial Color: *People v. Girard, 145 N. Y. 105, 45 Am. St. Rep. 595, 39 N. E. 823 (1895), affirming *Same, 73 Hun 457, 26 N. Y. Supp. 272 (1893); People v. Lang, 164 N. Y. Supp. 5 (1917).

Vinegar—Cider Vinegar—Acetic Acid Standard—Proviso Favoring Farmers: *People v. Windholz, 92 App. Div. 569, 86 N. Y. Supp. 1015 (1904).

Vinegar—Cider Vinegar—Addition of Water to Reduce Acetic Acid Content: People v. Henry J. Heinz Co. & Haldt, 90 App. Div. 408, 86 N. Y. Supp. 141 (1904).

Vinegar—Cider Vinegar—Chemist's Statement Insufficient to Show Violation of Law: People v. Braested, 30 App. Div. 401, 51 N. Y. Supp. 824 (1898).

Vinegar—"Cider Vinegar"—Made from Evaporated Apples: People v. Douglas Packing Co., Inc., 118 Misc. 775, 194 N. Y. Supp. 633 (1922), affirmed in Same, 203 App. Div. 878, 196 N. Y. Supp. 810 (1922); Same, 236 N. Y. 1, 139 N. E. 759 (1923), reversing Same, 206 App. Div. 645, 198 N. Y. Supp. 489 (1923), motion to amend remittitur denied in Same, 236 N. Y. 635, 142 N. E. 314 (1923).

Vinegar—Falsely Labeled Cider Vinegar—Cumulative Penalties: People v. Spencer, 201 N. Y. 105, 94 N. E. 614, Ann. Cas. 1912 A, 818 (1911), affirming

People v. Albion Cider & Vinegar Co. et al., 133 App. Div. 865, 118 N. Y. Supp. 15 (1909).

Vinegar—Falsely Labeled Cider Vinegar—Form of Complaint: People v. Sheriff & Son (Merritt) and the Albion Cider & Vinegar Co., 78 App. Div. 46, 79 N. Y. Supp. 783 (1902).

Vinegar—Falsely Labeled Cider Vinegar—Possession Unlawful Notwithstanding It Was Intended for Shipment to Another State: *People v. Niagara Fruit Co. et al., 75 App. Div. 11, 77 N. Y. Supp. 805 (1902), affirmed without opinion in Same, 173 N. Y. 629, 66 N. E. 1114 (1903).

Vinegar—Imported: *People v. Schmidt, 218 N. Y. 256, 112 N. E. 755 (1916), affirming Same, 171 App. Div. 954, 155 N. Y. Supp. 1132 (1916).

Vinegar—Power of County Judge to Enjoin Violations of Law: People v. Windholz et al., 68 App. Div. 552, 74 N. Y. Supp. 241 (1902).

3. Special Drug Laws.

Abortifacients: People v. Spier, 120 App. Div. 786, 105 N. Y. Supp. 741 (1907); People v. Hager, 181 App. Div. 153, 168 N. Y. Supp. 183, 36 N. Y. Crim. Rep. 176 (1917). See also: Halstead v. Nelson, 36 Hun 149 (1885); People v. Phelps, 133 N. Y. 267 (1892); Hemmens v. Nelson, 138 N. Y. 517 (1893).

Antitoxin—Sale by Physician of Free Antitoxin—Larceny: People, ex rel. Lacina v. Lavin & Mayer, 41 Misc. 53, 83 N. Y. Supp. 630 (1903).

Contraceptives: *People v. Byrne, 163 N. Y. Supp. 680 (1916); *People v. Byrne, 99 Misc. 1, 35 N. Y. Crim. Rep. 406, 163 N. Y. Supp. 682 (1917); *People v. Sanger, 222 N. Y. 192, 118 N. E. 637 (1918), affirming *Same, 179 App. Div. 939, 166 N. Y. Supp. 1107 (1917), writ of error dismissed in Sanger v. People, 251 U. S. 537, 64 L. Ed. 403, 40 S. Ct. 55 (1919). See also: Halstead v. Nelson, 36 Hun 149 (1885); Hemmens v. Nelson, 138 N. Y. 517 (1893); *Message Photoplay Co., Inc., v. Bell, 179 App. Div. 13, 166 N. Y. Supp. 338 (1917), reversing Same, 100 Misc. 267, 167 N. Y. Supp. 129 (1917); Universal Film Mfg. Co. v. Bell, 100 Misc. 281, 167 N. Y. Supp. 124 (1917), affirmed without opinion in Same, 179 App. Div. 928, 166 N. Y. Supp. 344 (1917).

Hours of Labor in Drug Store: People v. Louis K. Liggett Co., 227 N. Y. 617, 125 N. E. 922 (1919), affirming Same, 184 App. Div. 937, 171 N. Y. Supp. 44 (1918); People ex inf. Reed v. Rosenberg, 218 App. Div. 297, 218 N. Y. Supp. 21 (1926).

Medicine—Container Protection Law: Hostetter Co. v. McGowan, 101 Misc. 501, 167 N. Y. Supp. 276 (1917); Hostetter Co. v. Bruder, 167 N. Y. Supp. 278 (1917); Hostetter Co. v. Hanley et al., 167 N. Y. Supp. 279 (1917); Hostetter v. Hughes, 169 N. Y. Supp. 997 (1918); Hostetter Co. v. Goerling et al., 173 N. Y. Supp. 375 (1919). See also: *Beverages—Container Protection Law and Milk—Container Protecton Law (2).*

Medicine—Action for Libel: Patten v. Harper's Weekly Corp. et al., 93 Misc. 368, 158 N. Y. Supp. 70 (1916).

Narcotic Addicts: *People, ex rel. Sherwood et al., v. City of Buffalo et al., 127 Misc. 290, 216 N. Y. Supp. 468 (1926).

Narcotics: People v. Santagata, 130 App. Div. 225, 114 N. Y. Supp. 321, 23 N. Y. Crim. Rep. 193 (1909); People v. Quartararo, 76 Misc. 55, 133 N. Y. Supp. 985, 27 N. Y. Crim. Rep. 140 (1912); People v. Levy, 77 Misc. 555, 138 N. Y. Supp. 163, 28 N. Y. Crim. Rep. 47 (1912); People v. Hoyt, 34 N. Y. Crim. Rep. 70, 166 N. Y. Supp. 953 (1915); People v. Davico, 170 App. Div. 337, 156 N. Y. Supp. 399, 35 N. Y. Crim. Rep. 22 (1915); People v. Alex, 171 App. Div. 929, 155 N. Y. Supp. 1130 (1915), subsequent motion denied in Same, 172 App. Div. 888, 156 N. Y. Supp. 1138 (1915); People v. Cohen, 94 Misc. 355, 157 N. Y. Supp. 591 (1916); People v. Donnelly, 173 App. Div. 713, 159 N. Y. Supp. 690 (1916); *People, ex rel. Sherwood et al., v. City of Buffalo et al., 127 Misc. 290, 216 N. Y. Supp. 468 (1926). See also: Tidd v. Skinner et al., 225 N. Y. 422, 122 N. E. 247, 37 N. Y. Crim. Rep. 322, 3 A. L. R. 1145 (1919), modifying Same, 171 App Div. 98, 156 N. Y. Supp. 885 (1916); Same, 100 Misc. 734, 165 N. Y. Supp. 1013 (1916).

Narcotics—Hypodermic Needle: See Townsend v. Commercial Travelers Mutual Accident Association of America, 231 N. Y. 148, 131 N. E. 871, 17 A. L. R. 1001 (1921), reversing Same, 188 App. Div. 370, 177 N. Y. Supp. 68 (1919).

Narcotics—Maintenance of Premises for Sale of: People v. Kingston, 177 App. Div. 376, 164 N. Y. Supp. 181 (1917).

Narcotics—Opium Den: People v. Reed, 46 App. Div. 625, 61 N. Y. Supp. 520 (1899); People v. Miller, 63 App. Div. 11, 71 N. Y. Supp. 212 (1901); Barrett v. Fook, 129 N. Y. Supp. 23 (1911).

Pharmacy: *People v. Rontey, 117 N. Y. 624, 22 N. E. 1128 (1889), affirming *Same, 51 Hun 640, 6 N. Y. Crim. Rep. 249, 21 N. Y. State Rep. 173, 4 N. Y. Supp. 235 (1889); Matter of Ward, 10 Misc. 424, 63 N. Y. State Rep. 342, 31 N. Y. Supp. 49 (1894); Suffolk County v. Shaw, 21 App. Div. 146, 47 N. Y. Supp. 349 (1897); Bigelow et al. v. Drummond, 98 App. Div. 499, 90 N. Y. Supp. 913 (1904), reversing Same, 42 Misc. 617, 87 N. Y. Supp. 581 (1904); State Board of Pharmacy v. Rhinehardt, 116 App. Div. 495, 101 N. Y. Supp. 769 (1906); State Board of Pharmacy v. Teitel, 113 N. Y. Supp. 69 (1908); State Board of Pharmacy v. Bronson, 113 N. Y. Supp. 490 (1908); State Board of Pharmacy v. Mishking, 65 Misc. 588, 120 N. Y. Supp. 753 (1910); *State Board of Pharmacy v. Bellinger, 138 App. Div. 12, 122 N. Y. Supp. 651 (1910); People v. Kimmel & Kimmel, 88 Misc. 38, 150 N. Y. Supp. 311, 32 N. Y. Crim. Rep. 308 (1914); *Matter of Tucker v. New York State Board of Pharmacy, 127 Misc. 538, 217 N. Y. Supp. 217 (1926). See also: Timmerman v. Morrison, 14 Johns. 369 (1817); Allcott v. Barber, 1 Wend. 526 (1828); Smith v. Tracy, 2 Hall 465 (1829); Thompson v. Staats, 15 Wend. 395 (1836); Bailey v. Mogg, 4 Denio 60 (1847); Willson v. Faxon, Williams & Faxon, 208 N. Y. 108, 101 N. E. 799, 47 L. R. A. (N. S.) 693, Ann Cas. 1914 D, 49 (1913), reversing Same, 147 App. Div. 920, 131 N. Y. Supp. 1151 (1911).

Pharmacy—Domestic Remedies—Sale by Merchants: Westchester County v. Dressner, 23 App. Div. 215, 48 N. Y. Supp. 953 (1897); *State Board of Pharmacy v. Bellinger, 138 App. Div. 12, 122 N. Y. Supp. 651 (1910); *State Board of Pharmacy v. Matthews et al., 197 N. Y. 353, 90 N. E. 966, 26 L. R. A. (N. S.) 1013 (1910), affirming Same, 122 App. Div. 889, 920, 106 N. Y. Supp. 1146 (1907), which affirmed Same, 52 Misc. 482, 102 N. Y. Supp. 507 (1907); *People v. Roemer, 168 App. Div. 377, 153 N. Y. Supp. 323 (1915); People v. Smith, 231 N. Y. 531, 132 N. E. 876 (1921), affirming Same, 190 App. Div. 887, 178 N. Y. Supp. 909 (1919).

Pharmacy—Patent Medicines—Sale by Merchants: People v. Abraham et al., 16 App. Div. 58, 44 N. Y. Supp. 1077, 12 N. Y. Crim. Rep. 351 (1897).

Pharmacy—Physician's Contract to Send Patients to Particular Druggist Not Unlawful: Ward v. Hogan, 11 Abb. N. C. 478 (1882).

Pharmacy—Practice of Medicine by Pharmacy Company: People, ex rel. Lederman, v. Warden of City Prison, 168 App. Div. 240, 152 N. Y. Supp. 977, 33 N. Y. Crim. Rep. 138 (1915).

Pharmacy—Proof of Prescriptions: See Cullinan v. Hosmer et al., 100 App. Div. 148, 91 N. Y. Supp. 607 (1905).

Pharmacy—Sale of Substandard Cream of Tartar, Etc., By General Merchant: State Board of Pharmacy v. Gasau, 195 N. Y. 197, 88 N. E. 55 (1909), reversing Same, 122 App. Div. 803, 107 N. Y. Supp. 409 (1907), which affirmed Same, 52 Misc. 490, 102 N. Y. Supp. 539 (1907).

Poisons: See Flynt v. Rightmeyer, 107 Misc. 692, 177 N. Y. Supp. 842 (1919); Tidd v. Skinner et al., 225 N. Y. 422, 122 N. E. 247, 37 N. Y. Crim. Rep. 322, 3 A. L. R. 1145 (1919), modifying Same, 171 App. Div. 98, 156 N. Y. Supp. 885 (1916); Same, 100 Misc. 734, 165 N. Y. Supp. 1013 (1916).

Poisons—Calomel Not Subject to Poison Law: Willson v. Faxon, Williams & Faxon, 138 App. Div. 359, 122 N. Y. Supp. 778 (1910), reversing Same, 63 Misc. 561, 117 N. Y. Supp. 361 (1909), motion to amend decision denied in Same, 143 App. Div. 961 (1911), motion for leave to withdraw appeal granted in Same, 202 N. Y. 542, 95 N. E. 1141 (1911); Same, 138 App. Div. 366, 122 N. Y. Supp. 783 (1910).

4. Civil Action to Recover Damages for Injury Alleged to Have Been Caused by Consumption or Use of Product.

Bottle—Breaking: Simons v. Sun Ray Water Co., 162 N. Y. Supp. 968 (1917).

Bottle—Explosion: Glaser v. Seitz et al., 35 Misc. 341, 71 N. Y. Supp. 942 (1901); Bruckel v. J. Milhau's Son, 116 App. Div. 832, 102 N. Y. Supp. 395 (1907); Torgesen v. Schultz, 192 N. Y. 156, 84 N. E. 956, 18 L. R. A. (N. S.) 726, 127 Am. St. Rep. 894 (1908), reversing Forgesen v. Schultz, 112 App. Div. 911, 98 N. Y. 1102 (1906); Bruckel v. J. Milhau's Son, 145 App. Div. 557, 130 N. Y. Supp. 245 (1911); Willey v. Mynderse, 165 App. Div. 620, 151 N. Y. Supp. 280 (1915); Nolan v. Fach, 178 App. Div. 115, 164 N. Y. Supp. 1011 (1917); Licari v. Markotos, 110 Misc. 334, 180 N. Y. Supp. 278 (1920).

Carbon Disulphide—Explosion: Fitzgerald v. Brooklyn Institute of Arts & Sciences, 175 App. Div. 554, 162 N. Y. Supp. 625 (1916).

Chlorinated Lime—Explosion: Stellwagen v. S. Wander & Sons' Chemical Co., Inc., 192 App. Div. 943 (1920); Hallenbeck v. S. Wander & Sons' Chemical Co. Inc., 197 App. Div. 855, 189 N. Y. Supp. 334 (1921); Groves v. S. Wander & Sons'

Chemical Co. Inc., 232 N. Y. 579 (1922), affirming Same, 192 App. Div. 948, 182 N. Y. Supp. 927 (1920).

Coffee Urn—Explosion: Statler v. George A. Ray Manufacturing Co., 195 N. Y. 478 (1909), reversing Same, 125 App. Div. 69 (1908).

Corks to be Used by Soft Drink Manufacturers: Schram v. Guttenburg, 198 N. Y. Supp. 209 (1923).

Drugs: Thomas v. Winchester, 6 N. Y. 397, 57 Am. Dec. 455 (1852); Wohlfahrt v. Beckert, 92 N. Y. 490, 12 Abb. N. C. 478, 44 Am. Rep. 406 (1883), affirming in part and overruling in part, Same, 27 Hun 74 (1882); Minner v. Scherpich, 5 N. Y. State Rep. 851 (1886); Beckwith v. Oatman, 43 Hun 265, 5 N. Y. State Rep. 445, 26 Weekly Dig. 189 (1887); Allan v. State Steamship Co., 132 N. Y. 91, 30 N. E. 482, 43 N. Y. State Rep. 386, 15 L. R. A. 166, 28 Am. St. Rep. 556 (1892), reversing Same, 55 Hun 611, 29 N. Y. State Rep. 288, 8 N. Y. Supp. 803 (1890); Cohn v. Jarecky, 90 Hun 266, 35 N. Y. Supp. 935 (1895); Mundt v. Glokner, 160 N. Y. 571 (1899), dismissing appeal from Same, 24 App. Div. 110, 48 N. Y. Supp. 940 (1897), which affirmed Same, 20 Misc. 63, 44 N. Y. Supp. 430 (1897); McVeigh v. Gentry, 72 App. Div. 598, 76 N. Y. Supp. 535 (1902); Lauren v. Bolton Drug Co., 93 N. Y. Supp. 1035, 16 N. Y. Ann. Cas. 267 (1905); Horst v. Walter, 53 Misc. 591, 103 N. Y. Supp. 750 (1907); Goldberg v. Hegeman & Co., 60 Misc. 107, 111 N. Y. Supp. 679 (1908); Willson v. Faxon, Williams & Faxon, 138 App. Div. 359, 122 N. Y. Supp. 778 (1910), reversing Same, 63 Misc. 561, 117 N. Y. Supp. 361 (1909), motion to amend decision denied in Same, 143 App. Div. 961 (1911), motion for leave to withdraw appeal granted in Same, 202 N. Y. 542, 95 N. E. 1141 (1911); Same, 138 App. Div. 366, 122 N. Y. Supp. 783 (1910); Moran v. Dake Drug Co., 134 N. Y. Supp. 995 (1912), affirmed without opinion in Same, 155 App. Div. 879, 139 N. Y. Supp. 1134 (1913); Willson v. Faxon, Williams & Faxon, 208 N. Y. 108, 101 N. E. 799, 47 L. R. A. (N. S.) 693, Ann. Cas. 1914 D, 49 (1913), reversing Same, 147 App. Div. 920, 131 N. Y. Supp. 1151 (1911); Fagan v. McRae, 169 N. Y. Supp. 577 (1918); Flynt v. Rightmeyer & Rightmeyer, 107 Misc. 692, 177 N. Y. Supp. 842 (1919); Samols v. Mayer & Freistadtl, 120 Misc. 516, 199 N. Y. Supp. 754 (1923). See also: Marsh v. Davison, 9 Paige 580 (1842); Ryall v. Kennedy, 67 N. Y. 379 (1876), affirming Same, 40 N. Y. Superior Ct. 347 (1876); Ward v. Hogan, 11 Abb. N. C. 478 (1882); Swain v. Schieffelin et al., 134 N. Y. 471, 31 N. E. 1025, 18 L. R. A. 385, 47 N. Y. State Rep. 910 (1892), affirming Same, 58 Hun 608, 34 N. Y. State Rep. 888, 12 N. Y. Supp. 155 (1890); Matter of Halper, 82 Misc. 205, 143 N. Y. Supp. 1005 (1913); O'Neil v. Carley Heater Co. et al., 218 N. Y. 414, 113 N. E. 406, L. R. A. 1917 A, 349 (1916), reversing Same, 173 App. Div. 922, 157 N. Y. Supp. 1138 (1916).

Eye Glasses: Price v. Ga Nun et al., 11 Misc. 74, 66 N. Y. State Rep. 184, 32 N. Y. Supp. 801 (1895), affirmed without opinion in Same, 155 N. Y. 670 (1898).

Food: Van Bracklin v. Fonda, 12 Johns. 468, 7 Am. Dec. 339 (1815); Julian v. Laubenberger, 16 Misc. 646, 38 N. Y. Supp. 1052 (1896); Leahy v. Essex Co., 164 App. Div. 903, 148 N. Y. Supp. 1063 (1914); Cook v. People's Milk Co., 90 Misc. 34, 152 N. Y. Supp. 465 (1915); Jacobs v. Childs Co., 166 N. Y. Supp. 798 (1916); Freeman v. Schultz Bread Co., 100 Misc. 528, 163 N. Y. Supp. 396 (1917); Ternay v. Ward Baking Co., 167 N. Y. Supp. 562 (1917); Rosenbusch v. Ambrosia Milk Corp., 181 App. Div. 97, 168 N. Y. Supp. 505 (1917); Barrington v. Hotel Astor, 184 App. Div. 317, 171 N. Y. Supp. 840 (1918); Zenkel v. Oneida County Creameries Co., 104 Misc. 251, 171 N. Y. Supp. 676 (1918), affirmed without opinion in Same, 188 App. Div. 905, 176 N. Y. Supp. 927 (1919); Race v. Krum, 222 N. Y. 410, 118 N. E. 853, L. R. A. 1918 F, 1172 (1918), affirming Same, 162 App. Div. 911, 146 N. Y. Supp. 197 (1914), reargument denied in Same, 163 App. Div. 924, 147 N. Y. Supp. 818 (1914); Rinaldi v. Mohican Co., 225 N. Y. 70, 121 N. E. 471 (1918), affirming Same, 171 App. Div. 814, 157 N. Y. Supp. 561 (1916); Maxwell v. Marsh et al., 225 N. Y. 637 (1918), affirming Same, 173 App. Div. 1003, 159 N. Y. Supp. 1128 (1916); Weinberg v. Peter Doelger Brewing Co., Inc., 174 N. Y. Supp. 69 (1919); Rosenswaike v. Interborough Rapid Transit Co., 175 N. Y. Supp. 828 (1919); Muller v. Childs Co., 185 App. Div. 881, 171 N. Y. Supp. 541 (1919); Chysky v. Drake Bros. Co., Inc., 192 App.. Div. 186, 182 N. Y. Supp. 459 (1920); Lieberman v. Sheffield Farms-Slawson-Decker Co., Inc., 117 Misc. 531, 191 N. Y. Supp. 593 (1921); Kennedy v. F. W. Woolworth Co., 205 App. Div. 648, 200 N. Y. Supp. 121 (1923); Chysky v. Drake Bros. Co., Inc., 235 N. Y. 468, 27 A. L. R. 1533, 139 N. E. 576 (1923), reversing Same, 200 App. Div. 864, 192 N. Y. Supp. 920 (1922); Temple v. Keeler, 238 N. Y. 344, 144 N. E. 635, 35 A. L. R. 920 (1924), affirming Same, 207 App. Div. 880, 201 N. Y. Supp. 951 (1923); Carroll v. New York Pie Baking Co., 215 App. Div. 240, 213 N. Y. Supp. 553 (1926); Ritchie v. Sheffield Farms Co., Inc., 222 N. Y. Supp. 724 (1927). See also: Wright v. Hart et al., 18 Wend. 449 (1837), affirming Hart et al. v. Wright, 17 Wend. 267 (1837); Crain v. Petrie, 6 Hill 522, 41 Am. Dec.

765 (1844); Moses & Moses v. Mead & Mead, 5 Denio 617 (1845), affirming Same, 1 Denio 378, 43 Am. Dec. 676 (1845); Hyland et al. v. Sherman et al., 2 E. D. Smith 234 (1853); Goldrich v. Ryan, 3 E. D. Smith 324 (1854); Divine v. McCormick, 50 Barb. 116 (1867); Burch et al. v. Spencer, 15 Hun 504 (1878); Rinschler v. Jeliffe et al., 9 Daly 469 (1881); *Waterbury v. Egan, 3 Misc. 355, 23 N. Y. Supp. 115, 52 N. Y. State Rep. 421 (1893); Money v. Fisher, 92 Hun 347, 72 N. Y. State Rep. 383, 36 N. Y. Supp. 862 (1895); Akers v. Overbeck et al., 18 Misc. 198, 41 N. Y. Supp. 382 (1896); Cotton v. Reed, 25 Misc. 380, 54 N. Y. Supp. 143 (1898); James v. Libby, McNeil & Libby, 103 App. Div. 256, 92 N. Y. Supp. 1047 (1905), reversing Same, 44 Misc. 210, 88 N. Y. Supp. 812 (1904); Kinch v. Haynes, 58 Misc. 499, 111 N. Y. Supp. 618 (1908); Wart v. Hoose, 65 Misc. 462, 119 N. Y. Supp. 1107 (1909); Friedgood v. Kline, 67 Misc. 428, 123 N. Y. Supp. 247 (1910); Genesee Valley Milk Products Co. v. J. H. Jones Corporation, 69 Misc. 236, 124 N. Y. Supp. 1009 (1910), reversed in Same, 143 App. Div. 624, 128 N. Y. Supp. 191 (1911); Maggioros et al. v. Edson Bros., 164 N. Y. Supp. 377 (1917); Marcuse v. Kampelmacher, 167 N. Y. Supp. 557 (1917); Kutsukian v. Limpert Bros., 167 N. Y. Supp. 1036 (1918); Polly et al. v. Arony et al., 172 N. Y. Supp. 305 (1918); Same (no opinion), 175 N. Y. Supp. 917 (1918); Whipple v. Sherman, 121 Misc. 14, 200 N. Y. Supp. 820 (1923); J. Aron & Co., Inc., v. Sills et al., 205 App. Div. 358, 199 N. Y. Supp. 436 (1923); Abounader v. Strohmeyer & Arpe, 211 App. Div. 167, 206 N. Y. Supp. 586 (1924); J. Aron & Co., Inc., v. Sills et al., 240 N. Y. 588, 148 N. E. 717 (1925), affirming Same, 211 App. Div. 21, 206 N. Y. Supp. 695 (1924); Abounader v. Strohmeyer & Arpe Co., 243 N. Y. 458, 154 N. E. 309 (1926), affirming Same, 217 App. Div. 43, 215 N. Y. Supp. 702 (1926), motion for reargument denied in Same, 216 N. Y. Supp. 791 (1926).

Hair Dye: Cahill v. Inecto, Inc., 208 App. Div. 191, 203 N. Y. Supp. 1 (1924); Same, 208 App. Div. 797, 203 N. Y. Supp. 923 (1924).

Hyposulphate of Soda—Sale to Photographer: Van Lien v. Scoville Mfg. Co., 4 Daly 554, 14 Abb. Pr. (N. S.) 74 (1873).

Ice: Interboro Brewing Co., Inc., v. Independent Consumers Ice Co., Inc., 93 Misc. 24, 156 N. Y. Supp 410 (1915).

Milk Receiver—Injury Sustained by Stumbling Over: Wagner v. Sheffield Farms Co., Inc., 168 N. Y. Supp. 1 (1918).

Narcotics: Tidd v. Skinner et al., 225 N. Y. 422, 122 N. E. 247, 37 N. Y. Crim. Rep. 322, 3 A. L. R. 1145 (1919), modifying Same, 171 App. Div. 98, 156 N. Y. Supp. 885 (1916). See also: Same, 100 Misc. 734, 165 N. Y. Supp. 1013 (1916).

Narcotics—Sale of Laudanum to Wife—Action by Husband: Hoard v. Peck, 56 Barb. 202 (1867).

Oxygen Gas—Selling as Pure Oxygen a Poisonous Gas: Taintor v. Charles Beseler Co., 33 Misc. 720, 68 N. Y. Supp. 980 (1901), affirmed without opinion in Taylor v. Charles Beseler Co., 62 App. Div. 617, 71 N. Y. Supp. 1149 (1901).

Slops for Feeding Cattle: Holden et al. v. Clancy et al., 58 Barb. 590, 41 How. Prac. Rep. 1 (1871).

Water—Municipal Water Works: Canavan v. City of Mechanicville, 229 N. Y. 473, 13 A. L. R. 1123, 128 N. E. 882 (1920), affirming Same, 190 App. Div. 252, 180 N. Y. Supp. 62 (1920), which reversed Same, 108 Misc. 579, 177 N. Y. Supp. 808 (1919).

Whiskey: Harkins v. Provenzo, 116 Misc. 61, 189 N. Y. Supp. 258 (1921).

Wood Alcohol: See People v. Licenziata, 199 App. Div. 106, 191 N. Y. Supp. 619, 39 N. Y. Crim. Rep. 364 (1921).

5. Miscellaneous.

Cigarettes—Sale to Minor: People v. Zabor, 183 N. Y. 242, 76 N. E. 17 (1905), reversing Same, 103 App. Div. 594, 92 N. Y. Supp. 1139 (1905), which affirmed Same, 44 Misc. 633, 90 N. Y. Supp. 412 (1904).

Cigars: *Matter of Jacobs, 98 N. Y. 98 (1885), affirming *Same, 33 Hun 374 (1884).

Convict-Made Goods: *People v. Hawkins, 85 Hun 43, 65 N. Y. State Rep. 679, 32 N. Y. Supp. 524 (1895), affirming *Same, 10 Misc. 65, 63 N. Y. State Rep. 399, 31 N. Y. Supp. 115 (1894); *People v. Hawkins, 157 N. Y. 1, 51 N. E. 257, 68 Am. St. Rep. 736, 42 L. R. A. 490 (1898), affirming *Same, 20 App. Div. 494, 47 N. Y. Supp. 56 (1897); *People ex rel. Phillips v. Raynes, 136 App. Div. 417, 120 N. Y. Supp. 1053 (1910), affirmed without opinion in Same, 198 N. Y. 539, 92 N. E. 1097 (1910), motion for re-argument denied in Same, 198 N. Y. 622 (1910).

False Advertising: People v. Sipp, 231 N. Y. 519, 132 N. E. 871 (1921), affirming Same, 183 App. Div. 924, 169 N. Y. Supp. 1108 (1918); People v. Nessler, 198 App. Div. 362, 190 N. Y. Supp. 506, 39 N. Y. Crim. Rep. 322 (1921), reversing Same, 174 N. Y. Supp. 409, 37 N. Y. Crim. Rep. 173 (1919); Goldsmith v. Jewish Press Publishing Co., 118 Misc. 789, 195 N. Y. Supp. 732 (1922). See also: Hickey v. Morrell, 102 N. Y. 454, 35 Am. Rep. 824 (1886), reversing Same, 12 Daly 482 (1884); Thorner v. Samuels, 122 Misc. 139, 203 N. Y. 316 (1923), affirmed without opinion in Same, 209 App. Div. 863, 205 N. Y. Supp. 955 (1924); Amalgamated Furniture Factories, Inc., v. Rochester Times-Union, Inc., 128 Misc. 673, 219 N. Y. Supp. 705 (1927).

Flag Desecration: *People ex rel. McPike v. Van De Carr, 178 N. Y. 425, 66 L. R. A. 189, 102 Am. St. Rep. 516, 70 N. E. 965 (1904), affirming *Same, 91 App. Div. 20, 86 N. Y. Supp. 644 (1904).

Gift Enterprise: People v. Runge, 3 N. Y. Crim. Rep. 85 (1885); *People v. Gillson, 109 N. Y. 389, 17 N. E. 343, 16 N. Y. State Rep. 185, 4 Am. St. Rep. 465 (1888); People ex rel. Ellison v. Lavin, 179 N. Y. 164, 66 L. R. A. 601, 71 N. E. 753, 1 Ann. Cas. 165 (1904), reversing Same, 93 App. Div. 292, 87 N. Y. Supp. 776 (1904); Carl Co. v. Lennon et al., 86 Misc. 255, 148 N. Y. Supp. 375 (1914); People v. Mail & Express Co. et al., 231 N. Y. 586, 132 N. E. 898 (1921), affirming Same, 192 App. Div. 903, 182 N. Y. Supp. 943 (1920), which affirmed Same, 179 N. Y. Supp. 640 (1919).

Gift Enterprise—Prize Packages: Hull v. Ruggles et al., 56 N. Y. 424 (1874), affirming Same, 1 Thompson & C. 18 (1873).

Soap Factory—Nuisance: Howard v. Lee, 3 Sandford 281 (1849).

Spirits of Turpentine: People v. Glaser, 76 Misc. 214, 134 N. Y. Supp. 609 (1912).

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215 App. Div. 798, 213 N. Y. Supp. 847 (1926); Ford Motor Co. v. C. N. Cady Co., Inc., 124 Misc. 678, 208 N. Y. Supp. 574 (1925), modified in Same, 216 App. Div. 786, 214 N. Y. Supp. 838 (1926); Gotham Silk Hosiery Co., Inc., v. Reingold et al., 213 App. Div. 237, 210 N. Y. Supp. 38 (1925); Same, 126 Misc. 855, 214 N. Y. Supp. 414 (1925); Westphal v. Westphal's World's Best Corp. et al., 216 App. Div. 53, 215 N. Y. Supp. 4 (1926), affirmed in Same, 243 N. Y. 639 (1926); Matter of Brown, 242 N. Y. 1, 150 N. E. 581 (1926), reversing Same, 211 App. Div. 662, 208 N. Y. Supp. 359 (1925), which affirmed Same, 124 Misc. 473, 209 N. Y. Supp. 237 (1924); Caron Corp. v. Conde, Limited, 126 Misc. 676, 213 N. Y. Supp. 735 (1926); American Bosch Magneto Corp. v. Robert Bosch Magneto Co., Inc., 127 Misc. 119, 215 N. Y. Supp. 387 (1926); Lerner Stores Corp. v. Lerner Ladies' Apparel Shop, Inc., et al., 218 N. Y. Supp. 442 (1926); Jenkins v. News Syndicate Co., Inc., 219 N. Y. Supp. 196 (1926); Vasquez v. Sociedad Mutualista Mexicana, Inc., 219 N. Y. Supp. 257 (1926); Eagle Embossing Co. v. New York Leather Embossing Co., 129 Misc. 647, 223 N. Y. Supp. 293 (1927). See also: *Beverages—Container Protection Law; Milk—Container Protection Law; Medicine—Container Protection Law.*

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Weights and Measures: Ferris v. Coles, 3 Caines 207 (1805); Winans' Case, 4 City Hall Rec. 176 (1819); Clark & Clark v. Pinney, 7 Cow. 681 (1827); Sewall v. Gibbs & Jenny, 1 Hall 602 (1829); *Stokes & Gilbert v. Corporation of City of N. Y., 14 Wend. 87 (1835); Bayard v. Smith, 17 Wend. 88 (1837); Milk v. Christie & Todd, 1 Hill 102 (1841); People v. Fish, 4 Parker Crim. Rep. 206, 1 Buffalo Super. Ct. 537 (1854); *Tinkham et al. v. Tapscott et al., 17 N. Y. 141 (1858); Paige et al. v. Fazackerly, 36 Barb. 392 (1862); Dibble v. Hathaway, 11 Hun 571 (1877); *Hettenbach v. New York Cent. & Hudson R. R. Co., 18 Hun 129 (1879); *People ex rel. Gould v. City of Rochester, 45 Hun 102, 9 N. Y. State Rep. 602, 27 Weekly Dig. 98 (1887); Mayor, Etc., of City of New York v. Bruns, 23 Misc. 635, 51 N. Y. Supp. 1120 (1898); Ford v. New York Cent. & Hudson River Railroad Co., 33 App. Div. 474, 53 N. Y. Supp. 764 (1898); *Ford v. Standard Oil Co., 32 App. Div. 596, 53 N. Y. Supp. 48 (1898); *City of Buffalo v. Collins Baking Co., 39 App. Div. 432, 57 N. Y. Supp. 347 (1899), affirming *Same, 24 Misc. 745, 53 N. Y. Supp. 968 (1898); City of New York v. Compton, 32 Misc. 205, 65 N. Y. Supp. 686 (1900); Fausnaugh v. Rogers, 62 App. Div. 535, 71 N. Y. Supp. 125 (1901); City of New York v. Henderson et al., 39 Misc. 351, 79 N. Y. Supp. 877 (1902); City of New York v. Spatz, 85 N. Y. Supp. 353 (1903); *City of New York v. Hewitt, 91 App. Div. 445, 86 N. Y. Supp. 832 (1904); People v. Mack, 97 App. Div. 474, 89 N. Y. Supp. 1004 (1904); City of New York v. Biffle, 91 N. Y. Supp. 737 (1905); Kelly v. Town of Saugerties, 110 App. Div. 561, 97 N. Y. Supp. 177 (1906); City of New York v. Marco et al., 107 N. Y. Supp. 100 (1907); *City of New York v. Marco & Marco, 58 Misc. 225, 109 N. Y. Supp. 58 (1908); Epstein Coal Co. v. Solvinsky, 110 N. Y. Supp. 351 (1908); People v. Wulforst, 203 N. Y. 634, 97 N. E. 113 (1911), affirming Same, 146 App. Div. 938, 131 N. Y. Supp. 1135 (1911); City of New York v. Frank, 143 App. Div. 587, 127 N. Y. Supp. 963 (1911); City of New York v. International Provision Co., 144 App. Div. 290, 129 N. Y. Supp. 212 (1911); People v. Goldberg, 146 App. Div. 950, 131 N. Y. Supp. 481 (1911); City of New York v. Wilkinson Bros. & Co., 151 App. Div. 660, 136 N. Y. Supp. 219 (1912), affirmed without opinion in Same, 208 N. Y. 549, 101 N. E. 1098 (1913); City of New York v. Gurowitz, 78 Misc. 511, 138 N. Y. Supp. 616 (1912); People v. Sheffield Farms-Slawson-Decker Co., 206 N. Y. 79, 99 N. E. 181 (1912), affirming Same, 149 App. Div. 923, 133 N. Y. Supp. 1138 (1912); City of New York v. Fredericks, 206 N. Y. 618, 100 N. E. 419 (1912), affirming Same, 150 App. Div. 83, 134 N. Y. Supp. 796 (1912); People v. Delaware, Lackawanna & Western Ry. Co., 81 Misc. 253, 143 N. Y. Supp. 159, 30 N. Y. Crim. Rep. 32 (1913); City of New York v. Sulzberger & Sons Co., 80 Misc. 660, 141 N. Y. Supp. 876 (1913); Llopis v. Pastene & Co., Inc., 159 N. Y. Supp. 773 (1916); De Hoff v. Aspegren & Aspegren, 96 Misc. 681, 161 N. Y. Supp. 53 (1916); People ex inf. Eylers v. Armour & Co., 176 App. Div. 161, 162 N. Y. Supp. 621 (1916); De Hoff v. Aspegren et al., 166 N. Y. Supp. 1019 (1917); People v. Wallace, People v. Wetzel, 177 App. Div. 928, 163 N. Y. Supp. 938 (1917), appeal dismissed in Same, 221 N. Y. 617, 117 N. E. 1078 (1917) and motion for reargument denied in Same, 221 N. Y. 666, 117 N. E. 1079 (1917); People v.

Gaab, 177 App. Div. 192, 163 N. Y. Supp. 934 (1917), appeal dismissed in Same, 221 N. Y. 617, 117 N. E. 1078 (1917) and motion for reargument denied in Same, 221 N. Y. 666, 117 N. E. 1079 (1917); Smith & Wheeler v. Graves, 187 App. Div. 740, 176 N. Y. Supp. 39 (1919), affirmed without opinion in Same, 231 N. Y. 523, 132 N. E. 872 (1921); Chemung Iron & Steel Co. v. Mersereau Metal Bed Co., Inc., 179 N. Y. Supp. 577 (1920); Glanzer et al. v. Shepard et al., 233 N. Y. 236, 23 A. L. R. 1425, 135 N. E. 275 (1922), affirming Same, 194 App. Div. 693, 186 N. Y. Supp. 88 (1921), which reversed Same, 182 N. Y. Supp. 178 (1920); People v. Visconti, 234 N. Y. 165, 136 N. E. 330 (1922), affirming Same, 201 App. Div. 863, 193 N. Y. Supp. 947 (1922); City of New York v. Valley Coal Co., 126 Misc. 323, 213 N. Y. Supp. 384 (1926). *Standard Computing Scale Co. v. Farrell, 242 Fed. 87 (1916), affirmed in *Same, 249 U. S. 571, 39 S. Ct. 380, 63 L. Ed. 780 (1919); Dwight & Lloyd Sintering Co., Inc., v. American Ore Reclamation Co., 263 Fed. 315 (C. C. A.) (1920), certiorari denied in American Ore Reclamation Co. v. Dwight & Lloyd Sintering Co., Inc., 252 U. S. 582, 40 S. Ct. 393, 64 L. Ed. 727 (1920).

Weights and Measures—Action for Libel: O'Connell v. Press Publishing Co., 214 N. Y. 352, 108 N. E. 556 (1915), reversing Same, 155 App. Div. 918, 140 N. Y. Supp. 1134 (1913). See also: Same, 209 N. Y. 516 (1913).

Weights and Measures—Sale of Short Weight Food—Civil Action by Dealer to Recover Damages: Abounader v. Strohmeyer & Arpe Co., 243 N. Y. 458, 154 N. E. 309 (1926), affirming Same, 217 App. Div. 43, 215 N. Y. Supp. 702, 216 N. Y. Supp. 791 (1926); Same, 211 App. Div. 167, 206 N. Y. Supp. 586 (1924).

NORTH CAROLINA.*

PART I.

General Food and Drug Law.

1. **Collection and Analysis of Samples; Publication of Results.**—For the purpose of protecting the people of the State from imposition by the adulteration and misbranding of articles of food, drugs, confectionery, or liquors, the Board of Agriculture shall cause to be procured from time to time, and under rules and regulations to be prescribed by them in accordance with section 4764, samples of food, drugs, confectionery, or liquors, offered for sale in the State, and shall cause the same to be analyzed or examined miscroscopically or otherwise by the chemists or other experts of the Department of Agriculture. The Board of Agriculture is hereby authorized to make such publication of the results of the examination, analyses, and so forth, as they may deem proper. (C. S. 1919, § 4750.)

2. **Sale or Possession of Misbranded or Adulterated Articles Prohibited.**—No person, firm, or corporation, by himself or agent, shall manufacture, sell, expose for sale, or have in his possession with intent to sell, any article of food, drug, confectionery or liquor which is adulterated or misbranded within the meaning of this article. (Id. § 4751.)

3. **Violations of This Article a Misdemeanor; Disposal of Fine.**—Any person who shall violate any of the provisions of this article shall be guilty of a misdemeanor, and for such offense shall be fined not exceeding two hundred dollars for the first offense and for each subsequent offense not exceeding three hundred dollars, or be imprisoned not exceeding one year, or both, in the discretion of the court; and such fines, less legal costs and charges, shall be paid into the treasury of the State for the Department of Agriculture, to be used exclusively in executing the provisions of this article. (Id. § 4752.)

4. **Analysis of Specimens Under Rule of Department.**—The chemists or other experts of the Department of Agriculture shall make, under rules and regulations prescribed by the Board of Agriculture, examinations of specimens of food, drugs, confectionery, or liquors offered for sale in North Carolina, which may be collected from time to time under their direction in various parts of the State. (Id. § 4753.)

5. **Notice of Violation Disclosed; Hearing.**—If it shall appear from any such examinations that any such specimen is adulterated or misbranded within the meaning of this article, that notice thereof shall be given to the manufacturer or party from whom such sample was obtained. Any party so notified shall be given an opportunity to be heard under such rules and regulations as may be prescribed by the Commissioner or Board of Agriculture. (Id. § 4754.)

6. **Commissioner to Certify Solicitor and Furnish Analysis.**—If it appears that any of the provisions of this article have been violated, the Commissioner of Agriculture shall certify the fact to the solicitor in the district in which such sample was obtained and furnish that officer with a copy of the results of the analysis or other examinations of such article, duly authenticated by the analyst or other officer making such examination under the oath of such officer. (Id. § 4755.)

7. **Certificate of Analyst as Evidence.**—In all prosecutions arising under this article the certificate of the analyst or other officer making the analysis or examination, when duly sworn to by such officer, shall be prima facie evidence of the fact or facts therein certified. (Id. § 4756.)

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*CITATIONS: "C. S. 1919" refers to the Consolidated Statutes of North Carolina, 1919, published by authority of Chapter 252, Laws of 1917, and Chapter 238, Laws of 1919. "C. S. Supp. 1924" refers to the 1924 supplement thereto, published by authority of Chapter 86, Laws of 1923. "Cum. Sts. 1925" refers to the 1925 North Carolina Cumulative Statutes, published by the Michie Company. "L." refers to the public acts of the year cited.

8. Solicitor to Prosecute Violations.—It shall be the duty of every solicitor to whom the Commissioner of Agriculture shall report any violation of this article to cause proceedings to be commenced and prosecuted without delay for the fines and penalties in such cases prescribed. (Id. § 4757.)

9. "Drug" and "Food" Defined.—The term "drug" as used in this article shall include all medicines and preparations recognized in the United States Pharmacopœia or National Formulary for internal or external use, and substance or mixture of substances intended to be used for the cure, mitigation, or prevention of disease of either man or other animals. The term "food" as used herein shall include all articles used for food, drink, confectionery, or condiment by man or or other animals, whether simple, mixed, or compound. (Id. § 4758.)

10. "Adulterated" Defined.—For the purpose of this article an article shall be deemed to be adulterated:

1. Adulterated Drugs. In case of drugs:

(1) If, when a drug is sold under or by a name recognized in the United States Pharmacopœia or National Formulary, it differs from the standard of strength, quality, or purity, as determined by the test laid down in the United States Pharmacopœia or National Formulary official at the time of investigation: Provided, that no drug defined in the United States Pharmacopœia or National Formulary shall be deemed to be adulterated under this provision if the standard of strength, quality, or purity be plainly stated upon the bottle, box, or other container thereof, although the standard may differ from that determined by the test laid down in the United States Pharmacopœia or National Formulary.

(2) If its strength or purity fall below the professed standard or quality under which it is sold.

2. Adulterated Confectionery. In case of confectionery:

(1) If it contains terra alba, barytes, talc, chrome yellow, or other mineral substance or poisonous color or flavor, or other ingredient deleterious or detrimental to health, or any vinous, malt, or spirituous liquor or compound or narcotic drug.

3. Adulterated Food. In case of food:

(1) If any substance has been mixed or packed with it, so as to reduce or lower or injuriously affect its quality or strength.

(2) If any substance has been substituted wholly or in part for the article.

(3) If any valuable constituent of the article has been wholly or in part abstracted.

(4) If it be mixed, colored, bleached, powdered, coated, or stained in a manner whereby damage or inferiority is concealed.

(5) If it contains any added poisonous or other added deleterious ingredient which may render such article injurious to health. If it contains any of the following substances, which are hereby declared deleterious and dangerous to health when added to human food, to wit: Colors which contain antimony, arsenic, barium, lead, cadmium, chromium, copper, mercury, uranium, or zinc; or the following colors: gamboge, corallin, picric acid, aniline, or any of the coal-tar dyes; saccharine, dulcin, glucin, or any other artificially or synthetically prepared substitute for sugar; paraffin, formaldehyde, beta-naphthol, abrastol, benzoic acid or benzoates, salicylic acid or salicylates, boric acid or borates, sulphurous acid or sulphites, hydrofluoric acid or any fluorine compounds, sulphuric acid or potassium sulphate or wood alcohol: Provided, that catsups and condimental sauces may, when the fact is plainly and legibly stated in the English language on the wrapper and label of the package in which it is retailed, contain not to exceed two-tenths of one per cent of benzoic acid or its equivalent in sodium benzoate. Fermented liquors may contain not to exceed two-tenths of one per cent of combined sulphuric acid and not to exceed eight-thousandths of one per cent of sulphurous acid.

(6) If it consists in whole or in part of a filthy, decomposed, or putrid animal or vegetable substance, or any portion of an animal unfit for food, whether manufactured or not, or if it is the product of a diseased animal, or one that had died otherwise than by slaughter. In addition to the ways already provided, sausage shall be deemed to be adulterated if it is composed in any part of liver, lungs, kidneys, or other viscera of animals: Provided that the use of animal intestines as sausage casings shall not be deemed to be an adulteration.

(7) If it differs in strength, quality, or purity from the standards of purity of food products that have been or may be from time to time adopted by the Board of Agriculture.

(8) By consent of the board, the Commissioner of Agriculture may, when he deems it advisable and to the best interest of the public, suspend the action of any provision of subdivision five of subsection three of this section, relating to the use of chemical preservatives and coal-tar dyes in food, when such provision is not in harmony with the provisions of the National Food Law or rulings thereunder. (Id. § 4759.)

11. "Misbranded" Defined.—The term "misbranded" as used herein shall apply to all drugs, or articles of food, or articles which enter into the composition of food, the package or label of which shall bear any statement, design, or device regarding such article, or the ingredients or substance contained therein, which shall be false or misleading in any particular, and to any food or drug product which is falsely branded as to the State, territory, or country in which it is manufactured or produced.

For the purpose of this article an article shall also be deemed to be misbranded:

1. Misbranded Drugs. In the case of drugs:

(1) If it be an imitation of, or offered for sale under the name of, another article.

(2) If the contents of the package as originally put up shall have been removed, in whole or in part, and other contents shall have been placed in such package, or if the package fails to bear a statement on the label of the quantity or proportion of any alcohol, morphine, opium, cocaine, heroin, alpha or beta eucaine, chloroform, cannabis indica, chloral hydrate, or acetanilide, or any derivative or preparation of any such substances contained therein: Provided, that this shall not apply to prescriptions of regularly licensed physicians, dentists, and veterinary surgeons, United States Pharmacopœia and National Formulary preparations.

(3) If its package or label shall bear or contain any statement, design, or device regarding the curative or therapeutic effect of such article or any of the ingredients or substances contained therein which is false or fraudulent.

2. Misbranded Food. In the case of food:

(1) If it be an imitation of, or offered for sale under the distinctive name of, another article.

(2) If it be labeled or branded so as to deceive or mislead the purchaser, or purport to be a foreign product when not so, or if the contents of the package as originally put up shall have been removed in whole or in part, and other contents shall have been placed in such package, or if it fails to bear a statement on the label of the quantity or proportion of any morphine, opium, cocaine, heroin, alpha or beta eucaine, chloroform, cannabis indica, chloral hydrate, or acetanilide, or any derivative or preparation of any such substances contained therein. That all cans, jars, or other packages containing canned meats intended for food shall have printed on the label thereof the correct date on which said food product was canned or put into said package, as provided in the National Pure Food Law.*

(3) If in package form, the quantity of the contents be not plainly and conspicuously marked on the outside of the package in terms of weight, measure, or numerical count so as to comply with the regulations on labeling prescribed by the Board of Agriculture, provided for by section 4764 in this article. The Board of Agriculture is hereby authorized to establish rules and regulations permitting reasonable variations when in their judgment exactness is impractical: Provided, that the provisions of this paragraph shall not apply to articles in packages or containers when the retail price of such article is six cents or less; and provided, further, that it shall not apply to products on hand at the time of the passage of this act until after January first, one thousand nine hundred and sixteen.

(4) If the package containing it or its label shall bear any statement, design, or device regarding the ingredients or the substances contained therein, which statement, design, or device shall be false or misleading in any particular. (Id. § 4760.)

12. Certain Compounds, etc., Not Deemed Adulterated or Misbranded.—An article of food which does not contain any added poisonous or deleterious ingredients shall not be deemed to be adulterated or misbranded in the following cases:

1. In the case of mixtures or compounds which may be now or from time to time hereafter known as articles of food under their own distinctive names, and not an imitation of, or offered for sale under the distinctive names of, another article, if the name be accompanied on the same label or brand with a statement of the place and where said article has been manufactured or produced.

2. In the case of articles labeled, branded, or tagged so as to plainly indicate that they are compounds, imitations or blends, and the word "compound," "imita-

*There is no such provision in said law.

tion," or "blend," as the case may be, is plainly stated on the package in which it is offered for sale: Provided, the labeling is according to the rules prescribed by the Board of Agriculture: Provided, that the term "blend" as used herein shall be construed to mean a mixture of like substances, not excluding harmless coloring or flavoring ingredients used for the purpose of coloring and flavoring only; and provided further, that nothing in this article shall be construed as requiring or compelling proprietors or manufacturers of proprietary foods which contain no unwholesome added ingredient to disclose their trade formulas, except in so far as the provisions of this article may require to secure freedom from adulteration or misbranding. (Id. § 4761.)

13. Dealer Released by Guaranty of Wholesaler.—No dealer shall be prosecuted under the provisions of this article when he can establish a guaranty signed by the wholesaler, jobber, manufacturer, or other party, residing in North Carolina, from whom he purchases such articles, to the effect that the same is not adulterated or misbranded within the meaning of this article, designating it. Said guaranty, to afford protection, shall contain the name and address of the party or parties making the sale of such articles to such dealer, and in such cases said party or parties shall be amenable to the prosecutions, fines, and other penalties which would attach in due course, to the dealer under the provisions of this article: Provided, that the above guaranty shall not afford protection to any dealer after the first offense in connection with a product from a particular wholesaler, jobber, or manufacturer. (Id. § 4763.)

14. Standards and Rules to Enforce Article; Drug Inspector.—The Board of Agriculture shall, from time to time, fix and publish standards or limits of variability permissible in any article of food, drugs, confectionery, or liquors, and the North Carolina Board of Pharmacy shall, from time to time, fix and publish standards or limits of variability permissible in any article of drugs, and these standards, when so published, shall be the standards before all courts: Provided, that these standards shall not apply to United States Pharmacopœia and National Formulary preparations. The Board of Agriculture shall have authority to make uniform rules and regulations for carrying out the provisions of this article, and in the appointment of a drug inspector under the provisions of this article they shall confer with the North Carolina Board of Pharmacy. (Id. § 4764.)

15. Seller to Furnish Samples on Payment.—Every person who offers for sale or delivers to a purchaser any food, drugs, confectionery, or liquors, shall furnish within business hours and upon tender and full payment of the selling price, a sample of such food, drugs, confectionery, or liquors to any person duly authorized by the Board of Agriculture to secure the same, and who shall apply to such manufacturer or vendor or person delivering to a purchaser, food, drugs, confectionery, or liquors, for such sample for such use in sufficient quantity for the analysis of such article or articles in his possession. (Id. § 4765.)

16. Refusing Samples or Obstructing Article [Officer] a Misdemeanor.—Any manufacturer or dealer who refuses to comply, upon demand, with the requirements of the preceding section, or any manufacturer, dealer, or person who shall impede, obstruct, hinder or otherwise prevent, or attempt to prevent, any chemist, inspector, or other person in the performance of his duty in connection with this article, shall be guilty of a misdemeanor, and upon conviction be fined not less than ten dollars nor more than one hundred dollars, or be imprisoned, in the discretion of the court; and said fines, less the legal costs, shall be paid into the treasury of the State for the benefit of the Department of Agriculture, to be used exclusively in executing the provisions of this article. (Id. § 4766.)

17. Person Includes Corporation; Liability For Acts of Agents.—The word "person" as used in this article shall include corporations, companies, societies, and associations. When construing and enforcing the provisions of this article, the act, omission, or failure of any officer, agent, or other person acting for or employed by any corporation, company, society, or association within the scope of his employment or office, shall in every case be also deemed to be the act, omission, or failure of such corporation, company, society, or association, as well as that of the person. (Id. § 4767.)

18. Sale Contrary to Article Misdemeanor; Forfeiture; Disposal of Proceeds.—Any person, firm, or corporation who shall manufacture, sell or offer for sale any article of food, drug, or liquor that is adulterated or misbranded within the meaning of this article, or who shall violate any of the rules or regulations adopted by the Board of Agriculture for the purpose of carrying out the provisions of this article, shall be guilty of a misdemeanor, and in addition to being subject to the penalties already provided in this article, the article of food, drug, or liquor shall be subject to seizure, condemnation, and sale by the Commissioner

of Agriculture, as is provided for the seizure, condemnation, and sale of commercial fertilizers;* and the proceeds thereof, if sold less the legal costs and charges, shall be paid into the treasury for the use of the Department of Agriculture in executing the provisions of this article; but no article or articles shall be sold in any jurisdiction contrary to the provisions of this article or the laws of that jurisdiction: Provided, that the Commissioner of Agriculture shall have authority for the first offense to allow the shipment of such article or articles without the borders of the State. (Id. § 4768.)

Miscellaneous General Provisions.

18a. Joint Duties of Commissioner and Board.—The Commissioner of Agriculture, by and with the consent and advice of the Board of Agriculture . . . is especially charged—. . .

9. Sales of fertilizers, seeds, and food products. With the enforcement and supervision of the laws which are or may be enacted in this State for the sale of commercial fertilizers, seeds and food products, and the authority to make regulations concerning the same; * * * (C. S. 1919, § 4688.)

18b. Executive Duties Transferred from Board to Commissioner of Agriculture.—In all laws, rules and regulations passed by the General Assembly of North Carolina and placed in the State Department of Agriculture for enforcement, where the context clearly states or implies the invocation or executive authority or executive action, such as selecting the workers of the department and appointing same, the execution of the regulations of the Board of Agriculture and the enforcing of the laws of the General Assembly, and any other duties that are clearly executive in their nature, the words "Board of Agriculture," whenever they occur in such connection, shall be and are hereby changed to "Commissioner of Agriculture" in all cases where executive and not legislative action is clearly indicated. (Cum. Sts. 1925, § 4688(a).)

NOTE: See also Nos. 98 et seq., 137, 167 et seq., 222-224, 234r, and 242f et seq.

PART II.

Special Food Laws.

Bakeries—Bakery Products.

See No. 108 et seq.

Beverages.

18c. Adulteration of Liquors.—If any person shall adulterate any spirituous, alcoholic, vinous or malt liquors by mixing the same with any substance of whatever kind, except as provided in the following section, or if any person shall sell or offer to sell any spirituous, alcoholic, vinous or malt liquors, knowing the same to be thus adulterated, or shall import into this State any spirituous or intoxicating liquors, and sell or offer to sell such liquor, knowing the same to be adulterated, he shall be guilty of a misdemeanor and shall be fined or imprisoned, or both, at the discretion of the court. (C. S. 1919, § 4451.)

18d. Selling Recipe for Adulterating Liquors.—If any person shall sell or offer to sell any recipe or formula whatever for adulterating any spirituous or alcoholic liquors, by mixing the same with any substance of whatever kind, except as is herein provided, he shall be guilty of a felony, and shall be fined or imprisoned as is provided in the preceding section: Provided, that this section and the two sections that immediately precede and follow it respectively shall not be so construed as to prevent druggists, physicians and persons engaged in the mechanical arts from adulterating liquors for medical and mechanical purposes. (Id. § 4452.)

18e. Manufacturing or Selling Poisonous Liquors.—If any person shall manufacutre, sell, or in any way deal out spirituous liquors, of any name or kind,

*The fertilizer law is not included herein.

to be used as a drink or beverage, and the same shall be found to contain any foreign properties or ingredients poisonous to the human system, he shall be guilty of a felony and shall be imprisoned in the State's prison not less than five years, and may be fined in the discretion of the court. It shall be competent for any citizen, after making purchase of any spirituous liquor, to cause the same to be analyzed by some known competent chemist, and if upon such analysis it shall be found to contain any foreign poisonous matter, it shall be prima facie evidence against the party making such a sale. (Id. § 4453.)

NOTE: See also Nos. 10, 86 et seq., 97a et seq., 193 et seq., and 225 et seq.

Bread.

See No. 108 et seq.

Catsup.

See No. 10.

Cider.

See No. 203.

Condimental Sauces.

See No. 10.

Confectionery.

See No. 10.

Cottonseed Meal.

19. Cottonseed Meal Defined; Inspection Tax.—Cottonseed meal is a product of the cottonseed only, composed principally of the kernel with such portion of the fibre or hull and oil as may be left in the course of manufacture of cottonseed oil, and when sold for use as fertilizer or feed shall be subject to an inspection tax of twenty cents per ton, and be subject to inspection as other fertilizers or fertilizing materials, unless sold to manufacturers for use in manufacturing fertilizers or feed. (C. S. 1919, § 4704.)

20. Bags to be Branded with Specified Particulars.—All cottonseed meal offered for sale, unless sold to manufacturers for use in manufacturing fertilizers or feed, shall have plainly branded on the bag containing it, or on the tag attached thereto, the following data:

1. Cottonseed meal (with brand and grade).
2. Weight of package.
3. Ammonia and protein.
4. Name and address of manufacturer. (Id. § 4705.)

21. Grades and Standards Established.—No person, firm, or corporation shall offer for sale any cottonseed meal except as provided in the preceding section, graded and classed as follows:

1. Prime cottonseed meal by analysis must contain at least seven and one-half per cent of ammonia or thirty-eight and fifty-six one hundredths per cent of protein.

2. Good cottonseed meal by analysis must contain at least seven per cent of ammonia, or thirty-six and no one-hundredths per cent of protein.

3. Ordinary cottonseed meal by analysis must contain at least six and one-half per cent of ammonia, or thirty-three and forty-four hundredths per cent of protein. (Id. § 4706.)

22. Rules to Enforce Statute; Misdemeanor.—The Board of Agriculture is empowered and directed to make such rules and regulations as are necessary to a proper carrying into effect of the provisions of this article, and to provide for all such tags as manufacturers may demand, upon paying the tax therefor. Any person willfully violating any of the regulations made by the Board of Agriculture in connection with the provisions of this article shall be guilty of a misdemeanor. (Id. § 4707.)

23. Sales Without Tag; Misuse of Tag; Penalty; Forfeiture.—Every merchant, trader, manufacturer, or agent who shall sell or offer for sale any cottonseed meal without having attached thereto such labels, stamps, and tags as are required by law, or who shall use the required tag a second time to avoid the payment of the tonnage charge, and every person who shall aid in the fraudulent selling

or offering for sale of any cottonseed meal, shall be liable to a penalty of the price paid the manufacturer for each separate bag, barrel, or package sold, offered for sale, or removed, to be recovered by the Commissioner of Agriculture by suit brought in the name of the state, and any amount so recovered shall be paid one-half to the informant, and one-half to the State Treasurer for the use of the Department of Agriculture. If any such cottonseed meal shall be condemned, as provided by law, it shall be the duty of the department to have an analysis made of the same; cause printed tags or labels expressing the proper grade to be put upon each bag, barrel, or package, and shall fix the commercial value at which it may be sold; and it shall be unlawful for any person to sell, offer for sale, or remove any such cottonseed meal, or for any agent of any railroad or other transportation company to deliver any such cottonseed meal in violation of this section. (Id. § 4708.)

24. Sales Contrary to Act a Misdemeanor.—Any person, firm, or corporation who shall sell or offer for sale or shall act as agent of or broker for the manufacturer of or dealer in any cottonseed meal contrary to the provisions above set forth shall be guilty of a misdemeanor. (Id. § 4709.)

25. Forfeiture for Unauthorized Sale; Release from Forfeiture.—All cottonseed meal sold or offered for sale contrary to the provisions above set forth shall be subject to seizure, condemnation, and sale by the Commissioner of Agriculture. The net proceeds from such sale shall be placed in the general fund of the department and accounted for upon its books. The commissioner, however, shall have the discretion to release the meal so seized and condemned upon compliance with the law as set forth above and the payment of all costs and expenses incurred by the department in any proceedings connected therewith. (Id. § 4710.)

26. Method of Seizure and Sale on Forfeiture.—Such seizure and sale shall be made under the direction of the Commissioner of Agriculture by an officer or agent of the department; the sale to be made at the courthouse door in the county in which the seizure is made, after thirty days' advertisement in some newspaper published in said county, or if no newspaper is published in said county, then by like advertisement in a newspaper published in the nearest county thereto having a newspaper. The advertisement shall state the grade of the meal, the quantity, why seized and offered for sale. (Id. § 4711.)

27. Collection and Analysis of Samples.—The Department of Agriculture shall have the same authority and powers for taking and analyzing samples of cottonseed meal as are provided in case of commercial fertilizers and fertilizer materials; and the same procedure as to law and regulations shall be followed in taking such samples of cottonseed meal as are prescribed and followed for taking samples of fertilizer and fertilizer materials. (Id. § 4712.)

28. Sales Below Guaranteed Quality; Duties of Commissioner.—When the Commissioner of Agriculture shall be satisfied that any cottonseed meal is five per cent below the guaranteed analysis, it shall be his duty to assess twice the value of said deficiency against the manufacturer, and if said cottonseed meal shall fall as much as ten per cent below the guaranteed analysis it shall be his duty to assess three times the value of said meal and require that his findings of said deficiency be made good to all persons who, in the opinion of the commissioner, have purchased the said meal; and the commissioner may seize any meal belonging to said company, to the value of the deficiency, if the deficiency shall not be paid within thirty days after notice to the company. If the commissioner shall be satisfied that the deficiency in analysis was due to intention or fraud of the manufacturer, then the commissioner shall assess and collect from the manufacturer twice the amount above provided for and pay over the same to parties who purchased said meal. If any manufacturer shall resist such collection or payment, the commissioner shall immediately publish the analysis and the facts in the bulletin and in such newspapers in the State as he may deem necessary. (Id. § 4713.)

29. Adulteration Prohibited.—It shall be unlawful for any manufacturer to adulterate cottonseed meal in the process of manufacture or otherwise. (Id. § 4714.)

Dairy Products—Substitutes for Dairy Products.

30. Sale of Oleomargarine Without Label a Misdemeanor.—If any person shall sell, keep for sale, or offer for sale any oleomargarine or butterine, without having securely affixed on each package, tub, or firkin thereof a label on which shall be printed in large roman type the chemical ingredients and the proportions

thereof, he shall be guilty of a misdemeanor, and upon conviction shall be fined not less than fifty dollars or be imprisoned not exceeding thirty days, and for each subsequent offense be fined not less than two hundred dollars or imprisoned not less than six months, or both, in the discretion of the court. For the purposes of this section any article manufactured or compounded in imitation or semblance of butter, or which shall be composed of any ingredient in combination with butter, shall be deemed to be oleomargarine and butterine. (C. S. 1919, § 5088.)

30a. Quarantine—Removal or Sale—Sale and Use of Milk.—The owner or owners of an animal affected with tuberculosis shall keep said animal isolated and quarantined in such a manner as to prevent the spread of the disease to other animals or man. Said animals must not be moved from the place where quarantined or sold, or otherwise disposed of except upon permission of the State Veterinarian, and then only in accordance with his instructions. The milk from said animals must not be sold, and if used shall be first boiled or properly pasteurized. (C. S. Supp. 1924, § 4895(c).)*

30b. Pollution of Water or Lands Used for Dairy Purposes.—It shall be unlawful for any person, firm, or corporation owning lands adjoining the lands of any person, firm, or corporation which are or may be used for dairy purposes or for grazing milk cows, to dispose of or permit disposal of any animal, mineral, chemical, or vegetable refuse, sewage or other deleterious matter in such way as to pollute the water on the lands so used or which may be used for dairy purposes or for grazing milk cows, or to render unfit or unsafe for use the milk produced from cows feeding upon the grasses and herbage growing on such lands. This section shall not apply to incorporated towns maintaining a sewer system. Any one violating the provisions of this section shall be guilty of a misdemeanor and fined not more than fifty dollars or imprisoned for not more than thirty days. or both, and each day that such pollution is committed or exists shall constitute a separate offense. (C. S. 1919, § 4501.)

NOTE: See also No. 98 et seq.; No. 225 et seq.

Feeding Stuffs.

31. Packages to be Marked with Statement of Specified Particulars.—Every lot or parcel of concentrated commercial feeding stuff sold, offered or exposed for sale within this State shall have affixed thereto or printed thereon, in a conspicuous place on the outside thereof, a legible and plainly printed statement in the English language clearly and truly certifying the weight of the package; the name, brand, or trade-mark under which the article is sold; the name and address of the manufacturer, jobber, or importer; the names of each and all ingredients of which the article is composed; a guarantee that the contents are pure and unadulterated, and a statement of the maximum percentage it contains of crude fiber, and the percentage of crude fat, and the percentage of crude protein, and the percentage of carbohydrates, allowing one per cent of nitrogen to equal six and one-fourth per cent of protein, all four constituents to be determined by the methods in use at the time by the Association of Official Agricultural Chemists of the United States. (C. S. 1919, § 4724.)

32. Weight of Packages Prescribed.—All concentrated commercial feeding stuffs shall be in standard-weight bags or packages of twenty-five, fifty, seventy-five, one hundred, one hundred twenty-five, one hundred fifty, one hundred seventy-five, and two hundred pounds. (Id. § 4725.)

33. "Concentrated Commercial Feeding Stuffs" Defined.—The term "concentrated commercial feeding stuffs" shall be held to include all feeds used for live stock and poultry, except hays, straws, and corn stover, when the same are not mixed with other materials, nor shall it apply to the whole seeds or grains of cereals when not mixed with other materials. (Id. § 4726.)

34. Copy of Statement and Sample Filed for Registration.—Each and every manufacturer, importer, jobber, agent, or seller, before selling, offering or exposing for sale in this State any concentrated commercial feeding stuff, shall, for each and every feeding stuff bearing a distinguishing name or trade-mark, file for registration with the Commissioner of Agriculture a copy of the statement required in section 4724 above, and accompany said statement, on request, by a sealed glass jar or bottle containing at least one pound of such feeding stuff to be sold, exposed or offered for sale, which sample shall correspond within reasonable limits to the feeding stuff which it represents in the percentages of crude protein, crude fat, crude fiber, and carbohydrates which it contains. (Id. § 4727.)

*For penalty, see No. 176.

35. Agent Released by Statement of Manufacturer.—When a manufacturer, importer, or jobber of any concentrated commercial feeding stuffs files a statement, as required by the preceding section, no agent or seller of such manufacturer, importer, or jobber, shall be required to file such statement. (Id. § 4728.)

36. Power to Refuse or to Cancel Registration.—The Commissioner of Agriculture shall have the power to refuse the registration of any concentrated commercial feeding stuff under a name which would be misleading as to the materials of which it is composed, or when the names of each and all ingredients of which it is composed are not stated, or where it does not comply with the standards and rulings adopted by the Board of Agriculture. Should any concentrated commercial feeding stuffs be registered and it is afterwards discovered that they are in violation of any of the provisions of this article, the Commissioner of Agriculture shall have the power to cancel such registration. (Id. § 4729.)

37. Inspection Tax on Feeding Stuffs; Tax Tags.—Each and every manufacturer, importer, jobber, agent, or seller of any concentrated commercial feeding stuff, as defined, above in this article, shall pay to the Commissioner of Agriculture an inspection tax of twenty cents per ton for each ton of such commercial feeding stuff sold, offered or exposed for sale or distributed in this State, and shall affix to or accompany each car shipped in bulk, and to each bag, barrel, or other package of such concentrated commercial feeding stuff, a tag or stamp to be furnished by the Commissioner of Agriculture stating that all charges specified in this section have been paid: Provided, whenever any concentrated commercial feeding stuff, as herein above defined, is kept for sale in bulk, stored in bins or otherwise, the manufacturer, dealer, jobber, or importer keeping the same for sale shall keep on hand cards of proper size, upon which the statement required in section 4724 is plainly printed; and if the feeding stuff is sold at retail bulk, or if it is put up in packages belonging to the purchaser, the manufacturer, dealer, jobber, or importer shall furnish the purchaser with one of said cards upon which is or are printed the statement or statements described in this section, together with sufficient tax tags or stamps to cover same: Provided, that the inspection tax of twenty cents per ton shall not apply to whole seeds and grains when not mixed with other materials. It is further provided that, upon demand, said inspection tags or stamps shall be redeemed by the department issuing said tags or stamps, upon surrender of same, accompanied by an affidavit that the same have not been used; Provided, said tags or stamps shall be returned for redemption within the time fixed by the Board of Agriculture: Provided further, that nothing in this article shall be construed to restrict or prohibit the sale of concentrated commercial feeding stuff in bulk to each other by importers, manufacturers, or manipulators who mix concentrated commercial feeding stuff for sale. The Commissioner of Agriculture is hereby empowered to prescribe the form of such tax tags or stamps. (Id. § 4730.)

38. Sale Unauthorized by Article or Below Grade; Forfeiture; Release from Forfeiture.—Any manufacturer, importer, jobber, agent, or dealer who shall sell, offer or expose for sale or distribution in this State any concentrated commercial feeding stuff, as defined above in this article, without complying with the requirements of the preceding sections of this article, or who shall sell or offer or expose for sale or distribution any concentrated commercial feeding stuff which contains substantially a smaller percentage of crude protein or crude fat or carbohydrates or a larger percentage of crude fiber than certified to be contained, or who shall adulterate any feeding stuff with foreign, mineral, or other substance or substances, such as rice chaff or hulls, peanut shells, corn cobs, oat hulls, or similar materials of little or no feeding value, or with substances injurious to the health of domestic animals shall be guilty of a violation of this article, and the lot of feeding stuff in question shall be subject to seizure, condemnation, and sale by the Commissioner of Agriculture, and the proceeds from said sales shall be covered into the State treasury for the use of the department executing the provisions of this article. The Commissioner of Agriculture, however, may in his discretion release the feeding stuff so withdrawn when the requirements of the provisions of this article have been complied with, and upon payment of all costs and expenses incurred by the Department of Agriculture in any proceedings connected with such seizure and withdrawal. (Id. § 4731.)

39. Method of Seizure and Sale on Forfeiture.—Such seizure and sale shall be made under the direction of the Commissioner of Agriculture, or an officer of the Department of Agriculture. The sale shall be made at the courthouse door in the county in which the seizure is made, after thirty days advertisement in some newspaper published in such county, or if no newspaper is published in such county, then by like advertisement published in the nearest county thereto

having a newspaper. The advertisement shall state the name or brand of the goods, the quantity, and why seized and offered for sale. (Id. § 4732.)

40. Collection and Analysis of Sample.—The Commissioner of Agriculture, together with his deputies, agents, and assistants, shall have free access to all places of business, mills, buildings, carriages, cars, vessels and packages of whatsoever kind used in the manufacture, importation, or sale of any concentrated commercial feeding stuff, and shall have power and authority to open any package containing or supposed to contain any concentrated commercial feeding stuff, and, upon tender and full payment of the selling price of said samples, to take therefrom, in the manner hereinafter prescribed, samples for analysis; and he shall annually cause to be analyzed at least one sample so taken of every concentrated commercial feeding stuff that is found, sold, or offered or exposed for sale in this State under the provisions of this article. Said sample, not less than one pound in weight, shall be taken from not less than ten bags or packages, or if there be less than ten bags or packages, then the sample shall be taken from each bag or package, if it be in bag or package form, or if such feeding stuff be in bulk, then it shall be taken from ten different places of the lot. The sample or samples taken shall be kept a reasonable length of time by the Department of Agriculture, and on demand a portion of such sample or samples shall be furnished to the manufacturer, importer, or jobber of his feeds for examination by the chemists or other experts of said manufacturer, importer, or jobber. The Department of Agriculture is hereby authorized to publish from time to time in reports or bulletins the results of the analysis of such sample or samples, together with such additional information as circumstances advise: Provided, however, that if such sample or samples as analyzed differ from the statement prescribed in section 4724 above, then, at least thirty days before publishing the results of such analysis, written notice shall be given of such results to the manufacturer, importer, agent, or jobber of such stock, if the name and address of such manufacturer, jobber, or importer be known: Provided further, that if the analysis of any such sample does not differ within reasonable limits from the statement prescribed in section 4724 above appearing upon the goods, the manufacturer shall be considered as having complied with the requirements of this article. (Id. § 4733.)

41. Rules and Standards to Enforce Statute.—The Board of Agriculture is empowered to adopt standards for concentrated commercial feeding stuffs and such rules and regulations as may be necessary for the enforcement of this article, and a violation of such rules and regulations shall be a misdemeanor. (Id. § 4734.)

42. Sales Without Tag; Misuse of Tag; Counterfeiting Tag.—Any manufacturer, importer, jobber, agent, or dealer who shall sell, offer or expose for sale or distribute in this State any concentrated commercial feeding stuff without having attached thereto or furnished therewith such tax stamps, labels, or tags as required by the provisions of this article, or who shall use the required tax stamps, labels, or tags a second time to avoid the payment of the tonnage tax, or any manufacturer, importer, jobber, agent, or dealer who shall counterfeit or use a counterfeit of such tax stamps, labels, or tags, shall be guilty of a violation of the provisions of this article. (Id. § 4735.)

43. Refusal to Comply with the Article or Hindering its Enforcement.—Any manufacturer, importer, jobber, agent, or dealer who refuses to comply with the requirements of the provisions of this article, or any manufacturer, importer, jobber, agent, or dealer or person who shall impede, obstruct, hinder, or otherwise prevent or attempt to prevent any chemist, inspector, or other authorized agent in the performance of his duty in connection with the provisions of this article, shall be guilty of a violation of such provisions. (d. § 4736.)

44. Violation of Article a Misdemeanor.—Any manufacturer, importer, jobber, agent, or dealer who shall violate any of the provisions of this article, upon conviction thereof, shall be fined not exceeding fifty dollars for the first offense nor more than two hundred dollars for each subsequent offense, and the proceeds from such fines shall be covered into the State treasury for use of the Department of Agriculture in executing the provisions of this article. (Id. § 4737.)

45. Notice of Charges to Accused; Hearing Before Commissioner.—Whenever the Commissioner of Agriculture becomes cognizant of any violation of the provisions of this article he shall immediately notify in writing the manufacturer, importer, or jobber and dealer, if same be known. Any party so notified shall be given an opportunity to be heard, under such rules and regulations as may be prescribed by the commissioner and the Board of Agriculture. (Id. § 4738.)

46. Commissioner to Certify Solicitor and Furnish Analysis.—If it appears that any of the provisions of this article have been violated the Commissioner of Agriculture shall certify the facts to the solicitor in the district in which such sample was obtained, and furnish that officer with a copy of the results of the analysis or other examinations of such article, duly authenticated by the analyst or other officer making such examination, under the oath of such officer. (Id. § 4739.)

47. Solicitor to Prosecute Violations.—It shall be the duty of every solicitor to whom the Commissioner of Agriculture shall report any violation of this article to cause proceedings to be commenced and prosecuted without delay for the fines and penalties in such cases prescribed: Provided, that the provisions of this article shall not apply to any concentrated commercial feeding stuffs now in the hands or in the stock of any dealer or manufacturer. (Id. § 4740.)

48. Certificate of Analyst as Evidence.—In all prosecutions arising under this article the certificate of the analyst or other officer making the analysis or examination, when duly sworn to by such officer, shall be prima facie evidence of the fact or facts therein certified. (Id. § 4741.)

48a. Proclamation of Infected Feed Stuff Quarantine.—Upon the recommendation of the Commissioner of Agriculture, it shall be lawful for the Governor to issue his proclamation forbidding the importation into this State of any hay, feed stuff, or other article dangerous to live stock as a carrier of infectious or contagious disease from any State where there is known to prevail contagious or infectious disease among the live stock of such State. (Id. § 4872.)

NOTE: See also No. 19 et seq and No. 184.

Fish (Oysters, Etc.).*

49. Fish, Fishing, Fisheries, Defined.—Wherever the word "fish" or "fishes," as a substantive, occurs in this subchapter, it shall be construed to include porpoises and other marine mammals, fishes, mollusca, and crustaceans, and wherever the word "fishing," or "fisheries" occurs it shall be construed to include all operations involved in using, setting or operating apparatus employed in killing or taking the said animals or in transporting and preparing them for market. (C. S. 1919, § 1865.)

50. Edible Fish Used Only as Food.—Any person, firm or corporation who catches or causes to be caught any edible fish in the waters of the State of North Carolina for any other purpose than as food, and any person, firm or corporation who shall use any edible fish for fertilizing purposes shall be guilty of a misdemeanor and fined not less than fifty dollars or imprisoned not less than thirty days. (Id. § 1868.)

51. Resident May Catch Shellfish for Own Use.—No tax shall be levied or collected from bona fide residents or citizens of this State who shall take fish, oysters, clams, escallops, or crabs other than with dredges for his own personal or family's use and consumption. But if any person shall sell or offer for sale any such products without having first procured a license, he shall be guilty of a misdemeanor and shall be fined not less than five dollars or imprisoned not exceeding thirty days. (Id. § 1888.)

52. License Tax on Dealers and Packers.—An annual license tax, for the year beginning January 1st in each year, to be collected by the Fisheries Commission Board, is imposed on all persons or dealers who purchase or carry on the business of canning, packing, shucking, or shipping the sea products enumerated below, as follows: On—

Oysters, five dollars;
Escallops, five dollars;
Clams, five dollars;
Crabs, for shipment out of the State, five dollars;
Fish, two dollars and fifty cents;

Shrimp, two dollars and fifty cents: Provided, that (1) the license tax for shucking or selling oysters and clams on local market by retail shall be fifty cents a year; (2) no license tax shall be imposed on fishermen who pay a license on nets to catch fish or shrimp, and who ship only the fish or shrimp caught in such licensed nets. (Id. § 1892.)

53. Purchase Tax on Dealers; Schedule; Collection.—All dealers in and all persons who purchase, catch, or take for canning, packing, shucking, or shipping the sea products enumerated below shall be liable to a tax to be collected by the Fisheries Commission Board as follows: On—

*The duties and powers to be exercised by the Fisheries Commission hereunder have been transferred to the Department of Conservation and Development by L. 1927, c. 57.

Oysters, four cents a bushel, except coon oysters, two cents a bushel;
Escallops, five cents a gallon;
Clams, eight cents a bushel;
Soft crabs, two and one-half cents a dozen;
Hard crabs, ten cents a bushel;
Crab meat, five cents a gallon;
Shrimps, cooked or green, one-fourth cent a pound.

But none of these products shall be twice taxed, and no tax shall be imposed on oysters, escallops, or clams taken from private beds or gardens. Upon failure to pay said tax, the license provided in the preceding section shall at once be null and void and no further license shall be granted during the current year; and it shall be the duty of the commissioner, assistant commissioner, or inspector to institute suit for the collection of said tax. Such suit shall be in the name of the State of North Carolina on relation of the commissioner or inspector at whose instance such suit is instituted, and the recovery shall be for the benefit and for the use of the general fisheries commission fund. Any person failing or refusing to pay said tax shall be guilty of a misdemeanor. (Cum. Sts. 1925, § 1893; L. 1927, c. 59.)

54. Printed Regulations Furnished Dealers.—It is the duty of the Fisheries Commission Board, upon issuing any license under the provisions of this subchapter to furnish with said license the printed regulations controlling the waters in which such fishermen applying therefor proposes to fish. (C. S. 1919, § 1894.)

55. Dealers to Keep and Furnish Statistics.—All persons, firms, or corporations engaged in buying, packing, canning, or shipping oysters, escallops, clams, crabs, shrimp, and fish taken from the public grounds or natural beds of the State, or the natural waters or streams of the State, shall keep a permanent record of all such products, showing the quantity of each of said products so purchased, packed, canned, or shipped, the kind of fish, from whom each of said species of fish, mollusca, or crustaceans were purchased, that a statement of all these facts shall be made whenever required by the fisheries commissioner, but shall be at least at the end of each month. That all such records shall be open at all times to the fisheries commissioner, assistant commissioner, or any one under the direction of the fisheries commissioner. (Id. § 1895.)

56. Violations of Fisheries Law Misdemeanor; Licenses Forfeited.—Upon failure of any person, firm or corporation to comply with any of the provisions of this article, or any of the fisheries laws, any license issued to any such person, firm or corporation may be revoked by the fisheries commission, and upon satisfactory settlement may be reinstated, with the consent of the board. All such persons violating the provisions of this article or of the fisheries law shall be guilty of a misdemeanor. (Id. § 1901.)

57. Tax on Oysters Exported From State.—All oysters going out of the State in any boat or vessel shall pay a tax of two cents per tub. (Id. § 1916.)

58. Oyster Dealer's License.—The Fisheries Commissioner, Assistant Commissioner or inspector shall, upon application and the payment of a fee of fifty cents, grant to the applicant a dealer's license, authorizing the applicant to engage in the business of buying, purchasing, canning, packing, shucking or shipping oysters. Such license shall not be issued prior to the fifteenth day of November of any year and shall expire on the fifteenth day of March following. The Assistant Fisheries Commissioner or inspector granting the license shall at once mail a duplicate to the Fisheries Commissioner. Nothing contained in this section (except as to New Hanover, Onslow and Pender counties) shall be deemed to require any license of persons engaged in the business of buying, purchasing, canning, packing, shucking or shipping oysters which were not taken or caught from the public grounds or natural oyster beds of the State: Provided, that in New Hanover, Onslow and Pender counties such license shall not be issued prior to the fifteenth day of October in any year and shall expire on the first day of April following. (Id. § 1917.)

59. Close Season for Oysters; Exceptions.—If any person shall buy or sell oyster in the shell which have taken from the public grounds or natural oyster beds of this State between the fifteenth day of April and the fifteenth day of October in any year, he shall be guilty of a misdemeanor and be fined not more than fifty dollars or imprisoned not more than thirty days: Provided, that oysters may be taken with hand tongs from March fifteenth to May first and with dredges from March fifteenth to April fifth, in any year, to be used for planting on private grounds entered and held under the laws of this State, upon the condition further that they shall not be removed from said private grounds within a period of three months from time of planting: Provided, further, that oysters may be taken with hand tongs only for home consumption: Provided, further, that coon oysters may be taken

from November first to May first of each year in the waters of Onslow and Carteret counties.

This section, except as specifically provided, is inapplicable to New Hanover, Onslow and Pender counties. (Id. § 1920.)

60. Oyster Dealers to Keep Records.—All persons engaged in buying, packing, canning, shucking or shipping oysters shall keep a permanent record of all oysters either bought or caught by them, or by persons for them, when and from whom bought, the number of bushels and the price paid therefor. All these records shall at all times be open to the examination and inspection of the fisheries commissioner, assistant commissioner and inspector, and upon request shall be verified by the parties making them. If any person engaged in buying, packing, canning, shucking or shipping oysters taken or caught from the public grounds or natural oyster beds of the State shall fail to keep a permanent record of all oysters bought by him or caught by him, or by persons for him, when and from whom bought, the number of bushels and the price paid therefor, or shall fail upon demand to exhibit such record as required by law, or shall fail to verify the same, he shall be guilty of a misdemeanor and be fined not exceeding fifty dollars or imprisoned not exceeding thirty days. (Id. § 1921.)

60a. Oyster Measure.—All oysters measured in the shell shall be measured in a circular tub with straight sides and straight, solid bottom, with holes in the bottom not more than one-half inch in diameter. The said measures shall have the following dimensions: A bushel tub shall measure eighteen inches from inside to inside across the top, sixteen inches from inside to inside chimb to the bottom and twenty-one inches diagonal from inside chimb to top. All measures found in the possession of any dealer not meeting the requirements of this section shall be destroyed by said Fisheries Commissioner, assistant commissioner or inspector. Any person using an unlawful measure for the sale or purchase of oysters shall be guilty of a misdemeanor. (Id. § 1922.)

60b. Local Modification as to Oyster Measures in New Hanover, Onslow and Pender Counties.—In New Hanover, Onslow and Pender counties all measures used for buying or selling oysters shall have a brand, to be adopted by the Fisheries Commissioner, stamped therein by said commissioner, assistant commissioner, or his lawful inspectors. (Id. § 1923.)

60c. Illegal Measures Prohibited.—If any person shall in buying or selling oysters use any measure other than that prescribed by law for the measurement of oysters, or if any dealer in oysters shall have in his possession any measure for measuring oysters other than that prescribed by law, he shall be guilty of a misdemeanor and be fined not exceeding fifty dollars or imprisoned not exceeding thirty days. (Id. § 1924.)

60d. Culling Required; Size Limit.—All oysters taken from the public grounds of this State, with whatsoever instrument or implement shall be culled, and all oysters whose shells measure less than two and one-half inches in longest diameter, except such as are attached to a large oyster and cannot be removed without destroying the small oyster, and all shells taken with the said oysters shall be returned to the public ground when and where taken, and no oyster shall be allowed by the inspectors to be marketed which shall consist of more than ten per cent of such small oysters and shells, except "coon" oysters and oysters largely covered with mussels: Provided, these musseled oysters must not contain more than five per cent of shells or small oysters under regulation size. (Id. § 1928.)

60e. Local Modifications as to Culling Oysters in New Hanover, Onslow and Pender Counties.—In New Hanover, Onslow and Pender counties the preceding section is in force, except that the oysters shall be measured "from hinge to mouth," instead of in longest diameter. (Id. § 1929.)

60f. Catching Oysters Without License.—If any person shall catch oysters from the public grounds of the State without having first obtained a license according to law, or shall employ any person as agent or assistant, or shall as the agent or assistant of any person catch oysters from the public grounds, without all of said persons having first obtained a license according to law, he shall be guilty of a misdemeanor, and be fined not exceeding fifty dollars or imprisoned not exceeding thirty days. (Id. § 1934.)

60g. Oyster Dealing Without License.—If any person shall engage in the business of buying, canning, packing, shipping or shucking oysters taken or caught from the public grounds, or natural oyster beds of the State, without having first obtained a license as required by law, he shall be guilty of a misdemeanor and be fined not exceeding fifty dollars or imprisoned not exceeding thirty days. (Id. § 1935.)

60h. Sale or Purchase of Unculled Oysters.—If any person shall sell or offer for sale, transport or offer to transport out of the State, or from one point in the State to another, or have in his possession any oysters which have not been properly

culled according to law, he shall be guilty of a misdemeanor, and be fined not exceeding fifty dollars or imprisoned not exceeding thirty days. It is unlawful for any person, firm or corporation to purchase oysters which have not been properly culled according to law, and for each violation shall upon conviction be fined two hundred dollars or be imprisoned in the discretion of the court.

In New Hanover, Onslow and Pender counties the purchase of unculled oysters is not forbidden. (Id. § 1943.)

60i. Inspectors for Salt Fish; Duties; Fees.—The board of county commissioners of every county where fish are packed for sale or shipment shall appoint and qualify one or more sworn inspectors of fish at or near all packing localities, whose duty it shall be to inspect all salt fish packed for sale or shipment; and all barrels, half-barrels and packages of fish inspected and approved by them shall be branded with the word "inspected" and the name of the inspector. Said board shall regulate and prescribe the duties, powers and fees of said inspector, which fees shall not exceed five cents per barrel of two hundred pounds net and two and one-half cents per half-barrel of one hundred pounds net and smaller packages, to be paid by the shipper. This section shall not apply to fishermen who may sell their fish to packers and shippers by weight or otherwise, as they may agree: Provided, that in any county where the board of county commissioners have not already appointed an inspector as is provided in this section, upon a petition of two or more persons it shall be mandatory upon the said board of county commissioners to immediately appoint an inspector in accordance with the provisions above. Upon failure to do so for five days after said petition has been filed, said board shall be guilty of a misdemeanor, and upon conviction shall be fined not less than five nor more than fifty dollars for each member or be imprisoned not more than thirty days: Provided, said petition be filed with the clerk of the board of commissioners five days before regular meeting of said board. (Id. § 1960.)

60j. Salt Fish Sold by Weight; Marked on Package.—All salt fish packed for market shall be sold at their net weight, which shall be marked on every package; and any person packing or offering for sale salt fish, fraudulently marking the net weight on the package, shall for each offense be guilty of a misdemeanor and fined not more than fifty dollars or imprisoned not more than thirty days, or both, at the discretion of the court. (Id. § 1961.)

60k. Salt Mullet; Special Marking.—Each package of salt mullets packed and offered for sale shall be marked or stamped "large," "medium" or "small," and all packages containing any other kind of fish shall be marked plainly [with] the name of the fish contained, and any person who shall pack as principal or shall have the same done by others for him shall be deemed the packer and shall stamp his name and place of packing, together with net weight and size of fish, as prescribed in this section, on the head of each package before offering for sale or shipment, and on failure to pack and stamp as herein prescribed or to pack or stamp said package falsely, so as to misrepresent the weight or size of the fish in said package, shall be guilty of a misdemeanor and fined not less than five nor more than fifty dollars for each offense, and may be imprisoned at the discretion of the court, not to exceed thirty days: Provided, this section shall not apply to packages containing less than fifty pounds net fish: Provided further, this section shall not apply to fishermen themselves, but shall apply only to merchants and others who may be classed as packers or brokers, within the proper meaning of the term. (Id. § 1962.)

60l. Measures for Fish Scrap and Oil.—For the purpose of uniformity in the trade of manufacturing fish scrap and oil in the State of North Carolina, there is hereby established a standard measure of twenty-two thousand cubic inches for every one thousand fish. Any person, firm, corporation or syndicate buying or selling menhaden fish for the purpose of manufacturing within the borders of this State, who shall measure the fish by any other standard (more or less) than is prescribed in this section, shall be guilty of a misdemeanor, and upon conviction shall be fined not more than fifty dollars or imprisoned not to exceed thirty days. Each day said measure is unlawfully used shall constitute a separate and distinct offense. (Id. § 1963.)

NOTE: See also No. 235.

Flour.

61. [Artificially Bleached Flour]—Collection and Analysis of Samples; Publication of Results.—For the purpose of regulating the labeling and sale of arti-

ficially bleached flour, the Board of Agriculture shall cause inspection to be made from time to time, and samples of flour offered for sale in the State obtained, and shall cause same to be analyzed or examined by the State Food Chemist or other experts of the Department of Agriculture for the purpose of determining if same has been artificially bleached or sold in violation of this article. The Board of Agriculture is hereby authorized to make such publication of the results of the examination, analysis, and so forth as they may deem proper. (C. S. 1919, § 4801.)

62. Entry to Secure Samples.—The food inspectors of the Department of Agriculture shall have authority, during business hours, to enter all stores, warehouses, and other places where food products are stored or offered for sale for the purpose of inspection and obtaining samples of same. (Id. § 4802.)

63. Commissioner to Certify Solicitor of Violation and Furnish Facts.—If it shall appear from such inspection or examination or both that any of the provisions of this article have been violated, the Commissioner of Agriculture shall certify the facts to the solicitor in the district in which the violation was committed, and furnish that officer with the facts in the case, duly authenticated by the expert, under oath who made the examination. (Id. § 4803.)

64. Label for Artificially Bleached Flour.—Flour artificially bleached with nitrogen peroxide or chlorine or any other agent, when offered for sale in North Carolina, shall have plainly marked or printed in a conspicuous place on the sack, barrel, or other package, in letters not smaller than five-eighths of an inch in size, the legend: "Artificially Bleached." (Id. § 4804.)

65. Statement Required to be Filed Before Sale.—Before any artificially bleached flour shall be offered for sale in this State the manufacturer, dealer, agent, or person who causes it to be sold or offered for sale, by sample or otherwise, within this State shall file with the Commissioner of Agriculture a statement that it is desired to offer such bleached flour for sale in North Carolina, and the name of the manufacturer or jobber and the brand name of the flour if it has such. (Id. § 4805.)

66. Inspection Fee for Registering Brands.—For the purpose of defraying expenses incurred in the enforcing of the provisions of this article, for each and every separate brand of artificially bleached flour registered and before being offered for sale in the State, the manufacturer, dealer, or agent registering same shall pay to the Commissioner of Agriculture an inspection fee of fifteen dollars during the month of July, one thousand nine hundred and fifteen, and during the month of January in each succeeding year, or before such flour is offered for sale in the State, said fees to be used by the board and Commissioner of Agriculture for executing the provisions of this article. (Id. § 4806.)

67. Violation of Article a Misdemeanor.—Any person or persons, firm or corporation, by himself or agent, who shall sell, offer for sale, or have in his possession with intent to sell any artificially bleached flour not labeled or branded as required in section 4804, or who shall violate any of the provisions of the article, shall be guilty of a misdemeanor, and for such offense, upon conviction of same, shall be fined not to exceed fifty dollars for the first offense and for each subsequent offense not to exceed one hundrd dollars, or be imprisoned not to exceed six months, or both, in the discretion of the court. (Id. § 4807.)

68. Forfeiture for Unauthorized Sale; Release from Forfeiture.—The flour offered for sale in violation of this article shall be subject to seizure, condemnation, and sale by the Commissioner of Agriculture, as is provided for the seizure, condemnation, and sale of commercial fertilizers; and the proceeds thereof, if sold, less the legal costs and charges, shall be paid into [the] treasury for use in executing the provisions of this article: Provided, that the Commissioner of Agriculture may, in his discretion, for the first offense, order the release of the flour seized, upon payment by the owner of the flour of the expenses incurred by the department in the seizure of the same, and upon compliance with the requirements of this article, when it shall appear to the commissioner that said owner did not intend to violate the law. (Id. § 4808.)

69. Seller to Furnish Samples on Payment.—Every person who offers for sale or delivers flour to a purchaser shall, within business hours, and upon tender or payment of the selling price, furnish a sample of flour as demanded, to any person duly authorized by the Board of Commissioners to secure same, and who shall apply for such sample. (Id. § 4809.)

70. Refusing Samples or Obstructing Article a Misdemeanor.—Any manufacturer or dealer who refuses to comply, upon demand, with the requirements

of the last section, or any person who shall willfully impede, hinder, or otherwise prevent or attempt to prevent, any chemist or inspector in the performance of his duty in connection with this article, shall be guilty of a misdemeanor, and upon conviction be fined not less than ten dollars and not more than one hundred dollars, or imprisoned, in the discretion of the court. (Id. § 4810.)

NOTE: See also No. 245 et seq.

Fruits and Vegetables.

71. Shipping Fruit or Vegetables Not Having Grower's or Shipper's Name Stamped on Receptable a Misdemeanor.—Any person or persons, firm or corporation selling or offering for sale or consignment any barrel, crate, box, or other case, package or receptacle containing any berries, fruit, melons, potatoes, vegetables, truck or produce of any kind whatsoever, to be shipped to any point within or without the State, without the true name of the grower or packer either written, printed, stamped or otherwise placed thereon in distinct and legible characters, shall be guilty of a misdemeanor and fined not exceeding fifty dollars or imprisoned not exceeding thirty days. This section shall not apply to railroads, express companies and other transportation companies selling or offering for sale for transportation or storage charges or any other charges accruing to said railroads, express companies or other transportation companies any barrel, crate, box, or other case, package or receptacle containing berries, fruit, melons, potatoes, vegetables, truck or produce. (C. S. 1919, § 5087.)

71a. Establishment of Standard Packages, Etc., Authorized.—The purpose of this article is to give authority to investigate marketing conditions and to establish and maintain standard grades and packages and state brands for farm and horticultural crops and animal products. The term "farm products" as used hereafter in this article shall be construed to mean any or all of the crops or products named above in this section. (C. S. Supp. 1924, § 4781.)

71b. Power to Employ Agents and Assistants.—The Board of Agriculture is charged with the execution of the provisions of this article, and has authority to employ such agents and assistants as may be necessary, fix their compensation and define their duties, and may require bonds in such amount as they may deem advisable, conditioned upon the faithful performance of duties by any employee or agent. (C. S. 1919, § 4782.)

71c. Board of Agriculture to Investigate Marketing of Farm Products.—It shall be the duty of the Board of Agriculture to investigate the subject of marketing farm products, to diffuse useful information relating thereto, and to furnish advice and assistance to the public in order to promote efficient and economical methods of marketing farm products, and authority is hereby given to gather and diffuse timely information concerning the supply, demand, prevailing prices, and commercial movement of farm products, including quantities in common and cold storage, and may interchange such information with the United States Department of Agriculture. (Id. § 4783.)

71d. Promulgation of Standards for Receptacles, Etc.—After investigation, and from time to time as may be practical and advisable, the board shall have authority to establish and promulgate standards of opened and closed receptacles for, and standards for the grade and other classification of farm products, by which their quantity, quality, and value may be determined, and prescribe and promulgate rules and regulations governing the marks, brands, and labels which may be required for receptacles for farm products, for the purpose of showing the name and address of the producer or packer; the quantity, nature and quality of the product, or any of them, and for the purpose of preventing deception in reference thereto, and for the purpose of establishing a State brand for any farm product produced in North Carolina: Provided, that any standard for any farm product or receptacle therefor, or any requirement for marking receptacles for farm products, now or hereafter established under authority of the Congress of the United States, shall forthwith, as far as applicable, be established or prescribed and promulgated as the official standard or requirement in this State: Provided, that no standard established or requirement for marking prescribed under this article shall become effective until the expiration of thirty days after it shall have been promulgated. (Id. § 4784.)

71e. Sale and Receptacles of Standardized Products Must Conform to Requirements.—Whenever any standard for the grade or other classification of any farm product becomes effective under this article no person thereafter shall pack for sale, offer to sell, or sell within this State any such farm product to which such

standard is applicable, unless it conforms to the standard, subject to such reasonable variations therefrom as may be allowed in the rules and regulations made under this article: Provided, that any farm product may be packed for sale, offered for sale, or sold, without conforming to the standard for grade or other classification applicable thereto, if it is especially described as not graded or plainly marked "Not graded."

Whenever any standard for an open or closed receptacle for a farm product shall be made effective under this article no person shall pack for sale in and deliver in a receptacle, or sell in and deliver in a receptacle, any such farm product to which such standard is applicable, unless the receptacle conforms to the standard, subject to such variations therefrom as may be allowed in the rules and regulations made under this article, or unless the receptacle be of a capacity twenty-five per cent less than the capacity of the minimum standard receptacle for the product: Provided, that any receptacle for such farm product of a capacity within twenty-five per cent of, or larger than, the minimum standard receptacle for the product may be used if it be specifically described as not a standard size, or be conspicuously marked with the phrase, "Not standard size," in addition to any other marking which may be prescribed for such receptacles under authority given by this article.

Whenever any requirement for marking a receptacle for a farm product shall have been made effective under this article no person shall sell and deliver in this State any such farm product in a receptacle to which such requirement is applicable unless the receptacle be marked according to such requirements. (Id. § 4785.)

71f. Inspectors or Graders Authorized; Revocation of License.—The board is authorized to employ, license, or designate persons to inspect and classify farm products and to certify as to the grade or other classification thereof, in accordance with the standards made effective under this article, and shall fix, assess and collect, or cause to be collected, fees for such services. Whenever, after opportunity for a hearing is afforded to any person employed, licensed, or designated under this section, it is determined that such person has failed to classify farm products correctly in accordance with the standards established therefor under this article, or has violated any provision of this article, or of the rules and regulations made hereunder, the board may suspend or revoke the employment, license, or designation of such person. Pending investigation the person in charge of this work may suspend or revoke any such appointment, license, or designation temporarily without hearing. (Id. § 4786.)

71g. Appeal From Classification.—The owner or person in possession of any farm product classified in accordance with the provisions of this article may appeal from such classification under such rules and regulations as may be prescribed. (Id. § 4787.)

71h. Certificate of Grade Prima Facie Evidence.—A certificate of the grade or other classification of any farm product issued under this article shall be accepted in any court of this State as prima facie evidence of the true grade or other classification of such farm product at the time of its classification. (Id. § 4788.)

71i. Unwholesome Products Not Classified; Health Officer Notified.—Any person employed, licensed, or designated shall neither classify nor certify as to the grade or other classification of any farm product which, in his judgment, is unwholesome or unfit for food of man or other animal. If, in the performance of his official duties, he discovers any farm product which is unwholesome or unfit for food of man or for other animal for which it is intended, he shall promptly report the fact to a health officer of the State or of any county or municipality thereof. (Id. § 4789.)

71j. Inspection and Sampling of Farm Products Authorized.—Agents and employess are authorized from time to time to ascertain the amount of any farm products in this State, to inspect the same in the possession of any person engaged in the business of marketing them in this State, and to take samples of such products. In carrying out these purposes agents and employees are authorized to enter on any business day, during the usual hours of business, any storehouse, warehouse, cold storage plant, packinghouse, stockyard, railroad yard, railroad car, or any other building or place where farm products are kept or stored by any person engaged in the business of marketing farm products. (Id. § 4790.)

71k. Rules and Regulations; How Prescribed.—The Board of Agriculture is authorized to make and promulgate such rules and regulations as may be necessary to carry out the provisions of this article. Such rules and regulations shall be made to conform as nearly as practicable to the rules and regulations of the Secretary of Agriculture of the United States, prescribed under any act of Congress of the United States relating to the marketing of farm products. (Id. § 4791.)

711. Violation of Article or Regulations a Misdemeanor.—Any person who violates any provision of this article, or of the rules and regulations made under the article for carrying out its provisions, or fails or refuses to comply with any requirement thereof, or who willfully interferes with agents or employees in the execution, or on account of the execution, of his or their duties, shall be guilty of a misdemeanor. Any person convicted of a misdemeanor under this article shall be punished by a fine of not more than one hundred dollars; or by imprisonment in the county jail for not more than thirty days, or by both in the discretion of the court. (Id. § 4792.)

71m. Inoculating Culture for Leguminous Crops.—The Board of Agriculture is hereby authorized to manufacture inoculating culture for leguminous crops and distribute it to the citizens of the State applying therefor at cost, the expense of manufacture and distribution to be paid for out of the receipts of the Department of Agriculture. (Id. § 4685.)

NOTE: See also No. 235.

Grits.

See No. 244 et seq.

Hominy.

See No. 244 et seq.

Meal.

See Nos. 19 et seq., 235 and 243 et seq.

Meat—Meat Products.

72. Selling or Offering to Sell Meat of Diseased Animals.—If any person shall knowingly and willfully slaughter any diseased animal and sell or offer for sale any of the meat of such diseased animal for human consumption, or if any person knows that the meat offered for sale or sold for human consumption by him is that of a diseased animal, he shall be guilty of a misdemeanor, and shall be fined or imprisoned, or both, in the discretion of the court. (C. S. 1919, § 4465.)

73. Sale of Unsanitary Meat; Prosecution and Fine; Meat Destroyed.—It shall be unlawful for any person or persons, firm or corporation, to sell, or to have in his or their possession to sell for human food, the carcass or parts of carcass of any animal which has been slaughtered, prepared, or kept under unsanitary conditions; and unsanitary conditions shall legally exist wherever and whenever any one or more of the following conditions appear or are found, to wit: If the slaughterhouse is dilapidated and in a state of decay; if the drainage of the slaughterhouse or slaughterhouse yard is not efficient; if maggots or filthy pools or hog-wallows exist in the slaughterhouse yard or under the slaughterhouse; if the water supply is not pure and unpolluted; if hogs are kept in the slaughterhouse yard, or fed therein on animal offal, or if the odors of putrefaction plainly exist therein, or if kept in unclean, bad-smelling refrigerators, or if kept in unclean or bad-smelling storage-rooms.

All peace and health officers shall have the power and are commanded to seize any animal carcass or parts of carcasses which are intended for sale or offered for sale for human food, which have been slaughtered and prepared, handled or kept under unsanitary conditions as herein defined, and shall deliver the same forthwith to and before the nearest police judge or justice of the peace, together with all information obtained; and said police judge or said justice of the peace shall, upon sworn complaint being filed, issue warrants of arrest for all persons who have violated the provisions of this section, and proceed to try the case. Any person, persons, firm, or corporation found guilty of violating the provisions of this section shall be fined not less than ten nor more than one hundred dollars, and the meat in question shall be destroyed. (Id. § 4762.)

74. Application for Permit.—Any persons, firms or corporations engaged in the slaughter of meat-producing animals within the State of North Carolina, may make application to the Commissioner of Agriculture for a permit to transport, convey, and sell their products at any place within the limits of the State of North Carolina. (Cum. Sts. 1925, § 4768 (a).)

75. Investigation of Sanitary Conditions; Issuance of Permit.—It shall be the duty of the Commissioner of Agriculture, on receipt of such application described above, to cause to be made a thorough investigation of the sanitary conditions existing in such establishment, the efficiency of the inspection provided, and the manner in which the food products of such establishment are slaughtered and prepared. If such establishment is found to be operating in accordance with the regulations of the Commissioner of Agriculture as provided for in this article, a numbered permit shall be issued to the persons, firms, or corporations making application for same. (Id. § 4768 (b).)

76. Municipalities, Inspection of Meats.—Municipal corporations shall have power and authority under this article to establish and maintain the inspection of meats and meat products, at establishments located within their corporate limits, and county commissioners shall have power and authority to establish and maintain inspection of meats and meat products at establishments not located in municipal corporations, but located within the boundaries of their county. (Id. § 4768 (c).)

77. Fees for Inspection.—The officials of municipalities or countries in which such inspection is maintained, shall have full power and authority to fix and collect fees for inspection of any and all meat animals or meat products necessary to the maintenance of such inspection, but no further inspection shall be made within the State. (Id. § 4768 (d).)

78. Inspection Conducted by Veterinarian.—No permit shall be issued to any establishment except where the meat inspection is conducted under the supervision of a graduate veterinarian approved by the State Veterinarian of North Carolina or the North Carolina Veterinary Medical Examining Board. (Id. § 4768 (e).)

79. Number of Permit to Identify Meats; Revocation of Permit.—To each establishment complying with the provisions of this article, the numbered permit shall be the establishment's official State number, and such number may be used to identify all passed meats and meat products prepared in such establishment. Such permit may be revoked by the Commissioner of Agriculture at any time when the establishment issuing [issued] such permit violates any of the regulations prescribed for efficient inspection and sanitation. (Id. § 4768 (f).)

80. Carcasses Marked When Inspected.—All meat carcasses inspected and passed in accordance with this article shall be branded with a rubber stamp bearing the number of the establishment and the words "N. C. Inspected and Passed." (Id. § 4768 (g).)

81. Rules and Regulations for Inspection; Power of Commissioner.—The Commissioner of Agriculture shall have full power and authority to make and adopt all necessary rules and regulations for the efficient inspection, preparation and handling of meats and meat products in such establishments, and for the disposal of all condemned meats, and such rules and regulations shall govern the inspection of all meats and meat products at establishments operating under this article. (Id. § 4768 (h).)

82. Inspection; Meat Stamped as Approved or Condemned.—All persons, firms, or corporations engaged in the business of operating a meat packing plant or plants within the State of North Carolina where more than one thousand beef cattle are slaughtered per annum, or more than ten thousand hogs or swine are slaughtered per annum, or more than five hundred sheep are slaughtered per annum shall have the meat or beef of said slaughtered cattle inspected by a veterinary surgeon duly licensed by the State of North Carolina; that said inspector shall be elected by the governing body of the municipal corporation wherein said packing plant or plants is or are situated, or, if said packing plant be not situated within a municipal corporation, then by the board of county commissioners of the county wherein said packing plant is situated. Said inspector shall condemn all meats found to be unfit for human consumption. Said inspector shall cause all meats so condemned either to be destroyed or put to some use which shall not be dangerous for the public health. Each and every piece of meat or beef not condemned by said inspector shall be stamped by him in the usual manner; that the stamp to be used to stamp said meat or beef shall bear the following words: "North Carolina State Meat Inspection—Approved (insert name of inspector), Inspector." All meat or beef condemned by said inspector shall be stamped by a similar stamp, except that the word "condemned" shall be inserted thereon instead of the word "approved." (Id. § 4768 (i).)

83. Fees for Inspection.—The charges for said inspection shall be as follows: twenty-five cents for each and every beef cattle or cow inspected; ten cents for each and every hog inspected, and ten cents for each and every sheep inspected;

ten cents for each and every veal calf respectively [inspected]; no further inspection shall be necessary within the State except such inspection as is provided for in section four thousand seven hundred and sixty-two of the Consolidated Statutes of North Carolina.* No further or other inspection charges for the inspection of meat or beef inspected as provided herein shall be made within the State. (Id. § 4768 (j).)

84. Veterinary Not Available; Who to Inspect.—Should no regularly licensed veterinary surgeon be available for the purposes of this article, then the duties provided herein to be performed by said inspector shall be performed by some competent person to be elected by the governing body of the municipal corporation wherein said packing plant is located, or if said packing plant be not located within a municipal corporation, then by the board of county commissioners of the county wherein said packing plant is located. (Id. § 4768 (k).)

85. Collection of Fees; Remuneration of Inspector.—The fees or inspection charges herein provided for shall be collected by the municipal corporation wherein said packing plant is located, or if said packing plant be not located within a municipal corporation, then by the board of county commissioners of the county wherein said plant is located. Said fees or charges so collected shall be placed in the general fund of the municipal corporation or county collecting the same. The salary or remuneration of the inspector shall be fixed and paid by the municipal corporation or county by which said inspector is elected. (Id. § 4768 (l).)

85a. Local; Sale of Calves for Veal.—It shall be unlawful for any person or persons, firm, or corporation to buy or sell, or engage in the business of buying and selling or shipping calves for veal under the age of six months, either dead or alive: Provided, that this act shall not apply to persons buying or selling heifer calves to be raised for milk cows, nor to bull calves for raising purposes or work stock.

Any person, firm, or corporation violating the provisions of this section shall be deemed guilty of a misdemeanor, and upon conviction shall pay a penalty of not less than fifteen dollars nor more than thirty dollars, or be imprisoned for not less than twenty nor more than thirty days, or both, in the discretion of the court, for each and every offense.

This act shall apply to the following counties only: Alamance, Alexander, Ashe, Avery, Caldwell, Cherokee, Clay, Franklin, Gaston, Graham, Lee (1917, c. 93, s. 1.), Madison, McDowell, Mitchell, Robeson, Sampson, Wake, and Wilson, (Ex. Sess. 1913, c. 80; 1915, c. 2 (Cabarrus, Guilford, Hoke, Rowan, Moore, Warren), c. 155 (Durham); P. L. 1919, c. 159 (Lincoln county); P. L. 1917, c. 470 (Cleveland county); 1917, c. 299 (Henderson county); Ex. Sess. 1924, c. 11 [omits Burke].) (Id. § 5098.)

NOTE: See also Nos. 10, 11 and 235.

Peanuts.

85b. Sale of Seed—Cotton or Peanuts.—If any person shall buy, sell, deliver, or receive for a price, or for any reward whatever, any cotton, in the seed where the quantity is less than what is usually baled, or any peanuts, and shall fail to enter upon a book to be kept by him for such purpose the date of such buying or receiving, the number of pounds in each lot, the person or persons from whom bought or received, the name of the owner of the land on which such cotton is raised, and the price paid for the same per pound, which book shall be opened to inspection by the public at all business hours of the day, he shall be guilty of a misdemeanor, and upon conviction be punished by a fine not exceeding fifty dollars or imprisoned not exceeding thirty days. In all prosecutions under this section it shall only be necessary for the State to allege and prove that the defendant bought or received the seed cotton or peanuts as charged, and the burden shall be upon the defendant to show that the provisions of this section have been complied with. (C. S. 1919, § 5083.)

Soft Drinks.

86. Specifications of Places of Manufacture.—Every building or room used for the manufacture, bottling or preparation for sale of any soft drink shall be properly lighted, drained, and ventilated, and shall have floors of some material which can be flushed and washed clean with water. All manufacturing or bottling

*See No. 73.

of soft drinks shall be conducted with due regard for the purity and wholesomeness of the products therein produced. (C. S. 1919, § 4769.)

87. Soft Drink Defined.—The term "soft drink" as used herein shall include all soda waters, root beers, and similar beverages, carbonated or otherwise, or ingredients used in the preparation of same. (Id. § 4770.)

88. Bottling Plant Kept Clean; Containers Sterilized.—The floors, walls, ceilings, furniture, receptacles, implements, and machinery of every establishment where soft drinks are manufactured, bottled, stored, sold, or distributed shall at all times be kept in a clean, sanitary condition; all vessels, receptacles, utensils, tables, shelves, and machinery used in moving, handling, mixing, or processing must be thoroughly cleaned daily; all bottles, jugs, and other containers used must be sterilized with boiling water or live steam before being used, and all second-hand bottles or bottles that have been previously used must be soaked in caustic soda or alkali solution as prescribed by the rules and regulations adopted by the Board of Agriculture. (Id. § 4771.)

89. Protection from Contamination.—Soft drinks in the process of manufacture, preparation, bottling, storing or distribution must be protected from flies and dirt, and, as far as may be necessary, from all other foreign or injurious contamination. (Id. § 4772.)

90. Refuse Removed Daily.—All refuse, dirt, and the waste products subject to decomposition and decay incident to the manufacture, preparation, storing, selling, or distribution of soft drinks must be removed from the plant daily. (Id. § 4773.)

91. Screened Against Flies.—The doors, windows, and other openings of every building or room used for the preparation or bottling of soft drinks during fly season shall be fitted with self-closing screen doors and wire window screens of not coarser than fourteen-mesh wire gauze. (Id. § 4774.)

92. Washroom and Toilet.—Every bottling establishment shall be provided with washroom, and, if a toilet is attached, it must be of sanitary construction, and such toilet shall be separate and apart from any room used for the manufacture or bottling of soft drinks. (Id. § 4775.)

93. Use of Deleterious Substances Prohibited.—The use of soap bark or any other substance deleterious to health in soft drinks is prohibited, and the container must bear the name of the material and the name and address of the manufacturer or jobber. (Id. § 4776.)

94. Information on Container.—The information required on the container of soft drinks may appear either on a paper label pasted on the container or on the crown cap of same. (Id. § 4777.)

95. Enforcement by Board of Agriculture; Obstruction a Misdemeanor.—It shall be the duty of the Board of Agriculture to enforce the provisions of this article, and the said board shall adopt and publish such regulations under this article as will insure the uniform and efficient enforcement of same. The food inspectors of the Department of Agriculture shall have authority, during business hours, to enter, for the purpose of inspection, all buildings or rooms used for the manufacture, bottling or handling of soft drinks, and to examine the condition of same, including products before and after manufacture, machinery and all implements used; and any person who shall hinder or prevent any inspector in the performance of his duty in connection with this article shall be guilty of a violation thereof. (Id. § 4778.)

96. Violation of Article a Misdemeanor.—Any person who shall violate any of the provisions of this article shall be guilty of a misdemeanor, and upon conviction thereof shall be fined not to exceed twenty-five dollars for the first offense, and for each subsequent offense in the discretion of the court. (Id. § 4779.)

97. Bottler's Inspection Fee.—For the purpose of defraying expenses incurred in the enforcement of the provisions of this article the owner, proprietor, or operator of each bottling plant or place where soft drinks are made or bottled operated in this State shall pay to the Commissioner of Agriculture an inspection fee of ten dollars during the month of June of each year or before any such bottling plant shall be operated thereafter. (Id. § 4780.)

Vinegar.

See No. 203.

Water.

97a. To Analyze Potable Waters.—It shall be the duty of the State Board of Health to have made in such laboratory monthly examinations of samples from all the public water supplies of the State; of all waters sold in bottle or other package, and of all spring waters that are maintained and treated as an adjunct to any hotel, park, or resort for the accommodation or entertainment of the public. In the case of springs in connection with hotels, parks, or resorts intermittently operated, examinations of the water shall be made monthly during the period only that they are open for the accommodation or entertainment of the public; but if upon the examination of the water of any such spring it shall be found to be infected or contaminated with intestinal bacilli or other impurities dangerous to health, examinations shall be made weekly until its purity and safety are shown.

The board shall also cause examinations to be made of well and spring waters, when in the opinion of any county superintendent of health or any registered physician there is reason to suspect such waters of being contaminated and dangerous to health. (C. S. 1919, § 7057.)

97b. Support of Laboratory; Tax on Water.—For the support of the State Laboratory of Hygiene in addition to the annual appropriation there is hereby appropriated an annual tax of sixty-four dollars, payable quarterly, by every water company, municipal, corporate, and private, selling water to the people. The annual tax for waters from springs or wells sold in bottles or otherwise shall be as follows: For springs or wells, the gross annual sales from which for the previous calendar year are less than two thousand dollars and more than one thousand five hundred dollars, fifty dollars; less than one thousand five hundred and more than one thousand dollars, forty dollars; less than one thousand and more than five hundred dollars, thirty dollars; less than five hundred and more than two hundred and fifty dollars, twenty dollars; less than two hundred and fifty dollars, fifteen dollars; for any spring maintained and treated as an adjunct to any hotel, park, or resort for the accommodation and entertainment of the public, fifteen dollars, and an additional tax for water sold in bottle or other package from such spring in accordance with the above schedule. The tax shall be collected quarterly by the sheriff, as other taxes, and shall be paid by the sheriff directly to the treasurer of the State Board of Health. (Id. § 7059.)

97c. Duty of Seller to Make Reports and Transmit Samples; Penalties.—Every corporation, firm, or person selling water in the manner set forth in the preceding section shall file with the treasurer of the State Board of Health, annually in the month of January, an affidavit as to the gross amount received from sales of water for the previous calendar year, and upon this affidavit the tax for the current year shall be based. Failure to file such affidavit within the time prescribed shall subject the corporation, firm, or person to double tax for the current year. Failure to transmit sample within five days after receipt of sterilized bottle or container from the laboratory of hygiene shall be a misdemeanor, and upon conviction shall subject the delinquent to a fine of twenty-five dollars. Transportation charges, by mail, shall be paid by the sender; by express, by the laboratory. When deemed advisable, the laboratory of hygiene shall analyze samples purchased by it in the open market in lieu of those sent direct from the spring. (Id. § 7060.)

97d. Nonresidents Selling Water.—Any person, firm, or corporation not a citizen of the State who shall sell or offer for sale any water in bottle or other package for consumption by the people of the State shall obtain a license from the treasurer of the State Board of Health and shall pay for said license the sum of sixty-four dollars per annum, or a less amount, equal to the tax paid by springs of the same class within the State, upon compliance with the conditions applying to them, payable in advance: Provided, that satisfactory evidence of purity furnished by the State Hygienic Laboratories of other States agreeing to reciprocate in the matter with this State shall be accepted in lieu of the license tax. (Id. § 7061.)

97e. Publication of Dangerous Waters.—If water sold by any person, firm, corporation, or municipality shall be discovered by three successive analyses made by the State Laboratory of Hygiene to be dangerous to the public health, publication of that fact shall be made in the monthly bulletin of the State Board of Health. The result of said analyses shall be immediately forwarded by mail to the person, firm, corporation, or municipality selling the water so analyzed. When upon subsequent analysis the water shall be found to be no longer dangerous to health, a certificate thereof shall be furnished the person, firm, corporation, or municipality offering the water for sale, and publication of the fact shall be made in the monthly bulletin:

Provided, that this shall not apply to therapeutic waters so medicated as to render them sterile, the question of their sterility to be decided by the director of the State Laboratory of Hygiene. (Id. § 7062.)

NOTE: For sanitary provisions relating to water supply, see C. S. 1919, § 7116 et seq., as amended.

Sanitation.

98. Cleanliness and Sanitation Enjoined; Washrooms and Toilets; Living and Sleeping Rooms; Animals.—For the protection of the health of the people of the State, all places where ice cream is made for sale, all creameries, butter and cheese factories, when in operation, shall be kept clean and in a sanitary condition. The floors, walls, and ceilings of all workrooms where the products of plants named herein are made, mixed, stored, or handled shall be such that same can be kept in a clean and sanitary condition. All windows, doors, and other openings shall be effectively screened during fly season. Suitable washrooms shall be maintained, and if a toilet is attached, it shall be of sanitary construction and kept in a sanitary condition. No person shall be allowed to live or sleep in such factory unless rooms so occupied are separate and apart from the work or storage rooms. No horses, cows, or other animals shall be kept in such factories or close enough to contaminate products of same unless separated by impenetrable walls without doors, windows, or other openings. (C. S. Supp. 1924, § 7251 (a).)

99. Cleaning and Sterilization of Vessels and Utensils.—Suitable means or appliances shall be provided for the proper cleaning or sterilizing of freezers, vats, mixing cans or tanks, conveyers, and all utensils, tools, and implements used in making or handling cream, ice cream, butter or cheese and all such apparatus shall be thoroughly cleaned as promptly after use as practical. (Id. § 7251 (b).)

100. Purity of Products.—All cream, ice cream, butter, cheese, or other products produced in places named herein shall be pure, wholesome, and not deleterious to health, and shall comply with the standards of purity, sanitation, and rules and regulations of the Board of Agriculture provided for in section 7251 (h). (Id. § 7251 (c).)

101. Receivers of Products to Clean Utensils Before Return.—Every person, company, or corporation who shall receive milk, cream, or ice cream which is delivered in cans, bottles, or other receptacles, shall thoroughly clean same as soon as practical after the contents are removed and before the said receptacles are returned to shipper or person from whom the same was received or before such receptacles are delivered to any carrier to be returned to shipper. (Id. § 7251 (d).)

102. Correct Tests of Butter Fat—Tests by Board of Agriculture.—Creameries and factories that purchase milk and cream from producers of same on a butter-fat basis, and pay for same on their own test, shall make and pay on correct test, and any failure to do so shall constitute a violation of this act. The Board of Agriculture, under regulations provided for in section 7251 (h) shall have such test made of milk and cream sold to factories named herein that will show if dishonest tests and practices are used by the purchasers of such products. (Id. § 7251 (e).)

103. Department of Agriculture to Enforce Law—Examination.—It shall be the duty of the Department of Agriculture to enforce this article, and the Board of Agriculture shall cause to be made by the experts of the department such examinations of plants and products named herein as are necessary to insure the compliance with the provisions of this article. For the purpose of inspection, the authorized experts of the department shall have authority, during business hours, to enter all plants or storage rooms where cream, ice cream, butter, or cheese or ingredients used in same are made, stored, or kept, and any person who shall hinder, prevent, or attempt to prevent any duly authorized expert of the department in the performance of his duty in connection with this article shall be guilty of a violation of the article. (Id. § 7251 (f).)

104. Closure of Plants for Violation of Article—Certificate to Solicitor of District.—If it shall appear from the examinations that any provision of this article has been violated, the Commissioner of Agriculture shall have authority to order the plant or place of manufacture closed until the law is complied with. If the owner or operator of place refuses or fails to comply with the order, law, or regulations, the commissioner shall then certify the facts in the case to the solicitor in the district in which the violation was committed. (Id. § 7251 (g).)

105. Standards of Purity and Sanitation.—The Board of Agriculture is authorized to establish such standards of purity for products and sanitation for plants or places of manufacture named herein with such regulations, not in conflict

with this article, as shall be necessary to make provisions of this article effective and insure the proper enforcement of same, and the violation of said standards of purity or regulations shall be deemed to be a violation of this article. (Id. § 7251 (h).)

106. Inspection Fees—Wholesalers—Retailers and Cheese Factories.—For the purpose of defraying the expenses incurred in the enforcement of this article, the owner, proprietor, or operator of each ice cream factory or creamery in this State that disposes of its product at wholesale to retail dealers, to be resold, shall pay to the Commissioner of Agriculture during the month of July of each year an inspection fee of twenty dollars ($20), and each maker of ice cream who disposes of his product at retail only, and cheese factories, shall pay to the Commissioner of Agriculture an inspection fee of five dollars ($5) during the month of July of each year. (Id. § 7251 (i).)

107. Violation of Law Misdemeanor; Punishment.—Any person, firm or corporation who shall violate any of the provisions of this article shall be guilty of a misdemeanor, and upon conviction thereof shall be fined not to exceed twenty-five dollars for the first offense, and for each subsequent offense in the discretion of the court. (Id. § 7251 (j).)

108. Sanitary Condition of Rooms; Drainage; Toilets.—Every room or other place occupied or used as a bakery for the preparation, production, storage, or display of bread, cakes, or other bakery products intended for sale for human consumption, shall be clean, properly lighted, and ventilated. The floors, walls, and ceilings of the rooms in which the dough or pastry is mixed, handled, or prepared for baking, or in which the bakery products or ingredients of such products are otherwise handled, stored, or displayed, shall be kept and maintained in a clean and sanitary condition. All openings into such rooms, including windows and doors, shall be properly screened to exclude flies. Every such bakery shall be provided with adequate drainage and suitable wash sinks. If a toilet or water-closet is maintained in connection with such bakery, it must be of sanitary construction, and such toilet or water-closet shall be well ventilated and kept in a sanitary condition. (Id. § 7251 (k).)

109. Tables, Shelves and Implements; Refuse; Sleeping Rooms.—All tables, shelves, troughs, trays, receptacles, utensils, implements, and machinery used in preparing, mixing or handling bakery products or the ingredients of same, must be thoroughly cleaned daily when in use, and kept in a clean, sanitary condition. All refuse, dirt, and waste matter subject to a decomposition and decay incident to the production of bakery products must be removed from the bakery daily. The workrooms of bakeries, where bakery products are made, stored or displayed, shall not be used as sleeping or living rooms, and shall at all times be separate and closed from any such room. (Id. § 7251 (l).)

110. Employees; Sitting or Lying on Tables; Cleanliness.—No employee or other person shall sit or lie upon any of the tables, troughs, shelves, etc., which are used for the dough or other bakery products. Before beginning the work of preparing or mixing the ingredients, or after using toilet or water-closet, every person engaged in the preparation or handling of bakery products shall wash the hands and arms thoroughly, and for this purpose sufficient wash basins or sinks, together with soap and clean towels, shall be provided by the bakery. (Id. § 7251 (m).)

111. Use of Tobacco.—No person shall use tobacco in any form in any bakery or bread manufacturing plant where bread or other bakery products are manufactured or stored. (Id. § 7251 (n).)

112. Ingredients and Materials.—All ingredients used in the manufacture or making of bread or any other bakery products shall be pure and wholesome, and shall contain no substance that is poisonous or deleterious to health. All materials and ingredients used in bakery products shall be stored, handled, and kept in a way to protect them from spoilage and contamination, and no material shall be used which is spoiled or contaminated, or which may render the product unwholesome or unfit for food. (Id. § 7251 (o).)

113. Adulterants; Stale Products; Infections.—No material or ingredient may be used which may deceive the purchaser, or which lowers or lessens the nutritive value of the product. No bread or other bakery products shall be sold or offered for sale for human food that has by age or otherwise become stale.

All handling or sale of bread or other bakery products and all practices connected therewith shall be conducted so as to prevent the distribution of contamination or diseases and so as to prevent the distribution of the bakery infection in bread commonly known as "rope" or other bakery infections. No bread or other bakery products shall be returned by any dealer, restaurant, cafe or hotel

keeper to a bakery or distributor after same has been in stock where it may have been subject to contamination, [and] no bakery or distributor shall directly or indirectly accept any such bread or other bakery products or make any allowance for such products. (Cum. Sts. 1925, § 7251 (p).)

114. Department of Agriculture to Enforce Law; Examination of Plants and Products.—It shall be the duty of the Department of Agriculture to enforce this article, and the Board of Agriculture shall cause to be made by the experts of the department such examinations of plants and products named herein as are necessary to insure proper compliance with the provisions of this article. For the purpose of inspection, the authorized experts of the department shall have authority, during business hours, to enter all bakeries or storage rooms. For the purpose of inspection, the authorized experts of the department [who] shall prevent or attempt to prevent any duly authorized expert in the performance of his duty in connection with this article, shall be guilty of a violation of this article. (C. S. Supp. 1924, § 7251 (q).)

115. Closing of Plant; Report of Violation of Law to Solicitor.—If it shall appear from examination that any provision of this article has been violated, the Commissioner of Agriculture shall have authority to order the bakery or place closed until the law has been complied with. If the owner or operator of same refuses or fails to comply with the law, the commissioners shall then certify the facts in the case to the solicitor in the district in which the violation was committed. (Id. § 7251 (r).)

116. Regulations; Establishment; Violation.—The Board of Agriculture is authorized to establish such regulations, not in conflict with this article, as may be necessary to make provisions of this article effective, and to insure the proper compliance of same, and a violation of the regulations shall be deemed to be a violation of this article. (Id. § 7251 (s).)

117. Inspection Fee.—For the purpose of defraying expenses incurred in the enforcement of this article the owner or operator of each public bakery or bakery furnishing bakery products to the public operated in this State shall pay to the Commissioner of Agriculture during the month of May of each year, an inspection fee of ten dollars. (Id. § 7251 (t).)

118. Violation of Law a Misdemeanor.—Any person, firm, or corporation who shall violate any of the provisions of this article shall be guilty of a misdemeanor, and upon conviction thereof shall be fined not to exceed twenty-five dollars for the first offense, and for each subsequent offense in the discretion of the court. (Id. § 7251 (u).)

119. Inspectors.—The inspectors who shall carry out the provisions of this article shall be the same inspectors who shall be sent out by the Department of Agriculture to inspect bottling works and general food inspections. (Id. § 7251 (v).)

120. Sanitation of Cars.—From and after March 4, 1925, it shall be unlawful for any carrier transporting food intended for human consumption to transport the same knowingly in cars or other vehicles which have been defiled by live stock or by human beings without having first put said car or vehicle in a sanitary condition.

It shall be unlawful for any person to defile any railroad car by urinating therein or by passing therein excreta.

Any person, firm, or corporation who shall violate any provision of this section shall be deemed guilty of a misdemeanor and upon conviction shall be fined not more than fifty dollars or imprisoned not to exceed thirty days. (Cum. Sts. 1925, § 7251 (ii).)

NOTE: See also Nos. 30a-30b; the meat law, No. 72 et seq.; the soft drink law, No. 86 et seq. For hotel and restaurant inspection, see C. S. Supp. 1924, § 2277, and § 2283(a) et seq.

PART III.

Special Drug Laws.

Ginseng.

121. Purchase of Ginseng; Register to be Kept—Details.—Every person, firm or corporation buying ginseng in any quantity shall keep a register and shall keep therein a true and accurate record of each purchase, showing the amount of

ginseng, the name and residence of the person from whom purchased, the source from which obtained and amount paid for the same and the date of the purchase. A failure to comply with the above requirements, or the making of a false entry in regard to the purchasing of such ginseng, shall be a misdemeanor, punishable in the discretion of the court. (C. S. Supp. 1924, § 4510(a).)

Insecticides and Fungicides.

121a. Department of Agriculture to Make Rules and Adopt Standards.—Department of Agriculture shall have power to make rules, regulations and adopt standards to carry out the designs and purposes of this act. (L. 1927, c. 53, § 1.)

121b. Registration.—Before any manufacturer or dealer shall sell, offer or expose for sale in this State any Paris green, calcium arsenate, lead arsenate or any other insecticide or fungicide he shall register with the Department of Agriculture the name of each brand of said preparation, the name and address of the manufacturer or dealer, the minimum per cent of each and every toxic chemical or compound present, and the specific name of each active ingredient used in its manufacture and the weight of the packages in which the material is packed. The words "Paris green, calcium arsenate, lead arsenate and all other insecticides and fungicides" mentioned and used in this act, shall apply only to insecticides and fungicides used on cotton, tobacco, all field crops, gardens, orchards, fruits, etc., for the control or destruction of insect life and fungus diseases. (Id. § 2.)

121c. Labels.—Every lot, package or parcel of Paris green, calcium arsenate, lead arsenate, or any other insecticide or fungicide, offered or exposed for sale within this State, shall have affixed thereto a tag or label, in a conspicuous place on the outside thereof containing a legible and plainly printed statement in the English language clearly and truly certifying

(a) The net weight of the lot, package or parcel;

(b) The name, brand or trade-mark;

(c) The name and address of the manufacturer, importer, jobber, firm, association, corporation, dealer or person, etc., responsible for placing the commodity on the market;

(d) The minimum per cent of each and every toxic chemical or compound present;

(e) The specific name of each active ingredient used in its manufacture. (Id. § 3.)

121d. Power to Refuse Registration; Cancellation.—The commissioner shall have the power to refuse to register any Paris green, calcium arsenate, lead arsenate or any other insecticide or fungicide under a name, brand or trade-mark, which would be misleading or deceptive. Should any Paris green, calcium arsenate, lead arsenate, or any other insecticide or fungicide be registered in the State and it is afterward discovered that such registration is in violation of any of the provisions of this act, the commissioner shall cancel such registration. (Id. § 4.)

121e. Tax.—All manufacturers and dealers, for the purpose of defraying the expense connected with the enforcement of this act, shall pay to the Department of Agriculture the sum of ten cents per hundred pounds for Paris green, calcium arsenate, lead arsenate and all other insecticides and fungicides, manufactured for sale or sold in this State. (Id. § 5.)

121f. Tax Stamps.—Manufacturers and dealers who have registered their brands in compliance with section two of this act shall forward to the commissioner a request for tax stamps, stating that the said stamps are to be used on brands of Paris green, calcium arsenate, lead arsenate or any other insecticide or fungicide registered and sold in accordance with this act and said request shall be accompanied with the inspection tax, whereupon it shall be the duty of the commissioner to issue stamps to parties applying who shall attach said stamps to each lot, package or parcel, at shipping or selling point. All manufacturers and dealers are hereby forbidden to attach stamps described by this section to any lot, package or parcel of Paris green, calcium arsenate, lead arsenate or any other insecticide or fungicide which has not been previously registered as required in section two of this act and which is not in accordance with all provisions of this act. The Department of Agriculture is hereby empowered to adopt a form for said stamps. (Id. § 6.)

121g. When Tax Stamps Not Required to be Affixed.—It shall not be required of manufacturers or dealers to place upon or attach to any package of Paris green, calcium arsenate, lead arsenate or any other insecticide or fungicide a tax stamp when sold in less than one pound packages. (Id. § 7.)

121h. Statement to be Filed With Commissioner.—Every manufacturer and dealer who has registered Paris green, calcium arsenate, lead arsenate or any other

insecticide or fungicide for sale within the State of North Carolina shall mail to the commissioner on forms provided by the commissioner, within forty-eight hours of each sale, shipment or delivery into or within North Carolina, a statement showing the official name of the insecticide or fungicide, the guaranteed analysis, the quantity and the name and address of the purchaser to whom sold, and the initials and numbers of the car, if sold in car lots. (Id. § 8.)

121i. **Inspection; Analysis.**—The commissioner in person, or by deputy, shall have the power to enter into any car, warehouse, store, building, boat, vessel or place supposed to contain insecticides or fungicides, for the purpose of inspection or sampling, and shall have the power to take samples for analysis from any lot, package or parcel of insecticides or fungicides. It shall be unlawful for any person to oppose entrance of said commissioner or deputy, or in any way interfere with the discharge of his duty. All analyses shall be made by the official methods of the Association of Official Agricultural Chemists of the United States, and shall be made by chemists of the Department of Agriculture. (Id. § 9.)

121j. **Use of Stamp a Second Time Unlawful; Adulteration or Misbranding; Suit for Enjoinder.**—It shall be unlawful for any manufacturer or dealer to sell or offer for sale any Paris green, calcium arsenate, lead arsenate, or any other insecticides or fungicides without having attached thereto such tax stamps as are required by law, or, to use the required tax stamp a second time to avoid the payment of the tax, or, to sell adulterated or misbranded Paris green, calcium arsenate, lead arsenate, or any other insecticides or fungicides. Paris green, calcium arsenate, lead arsenate and all other insecticides and fungicides shall be deemed to be misbranded if it carries any false or misleading statement upon or attached to the lot, package or parcel, or, if any false or misleading statements concerning its value are made on the lot, package or parcel, or in any printed advertising matter issued by the manufacturer or dealer that registered Paris green, calcium arsenate, lead arsenate, or any other insecticide or fungicide, or if the number of net pounds set forth upon the package, lot, or parcel is not correct. It shall be the duty of the Attorney-General, when requested by the commissioner, to institute suit to enjoin any manufacturer, or dealer, resident or nonresident, from manufacturing or selling or soliciting orders for the sale of Paris green, calcium arsenate, lead arsenate, or any other insecticide or fungicide, for use in this State without complying with all the provisions in this act, which injunction may be issued without bond or advance cost. (Id. § 10.)

121k. **Search and Seizure; Condemnation, Etc.**—Any Paris green, calcium arsenate or any other insecticide or fungicide sold, offered or exposed for sale within this State in violation of any provisions of this act shall be liable to seizure at the instance of the commissioner. Upon complaint being filed by the commissioner in person or by duly authorized deputy, with any district judge or a justice of the peace, describing the Paris green, calcium arsenate, lead arsenate or any other insecticide or fungicide and the place where it is believed Paris green, calcium arsenate, lead arsenate or any other insecticide or fungicide is sold, offered or exposed for sale in violation of the law, such district judge or justice of the peace shall issue his warrant directing the sheriff or any of his deputies to search such place, and if the law is being violated to seize the Paris green, calcium arsenate, lead arsenate, or any other insecticide or fungicide and it shall be the duty of the officer to whom such warrant is delivered to search the place described in the warrant and to seize all Paris green, calcium arsenate, lead arsenate or any other insecticide or fungicide found there in violation of the law, and if the admission into such place is refused, the officer executing said warrant is hereby authorized to force open the same. If it shall appear at the hearing before the district judge or a justice of the peace, who issued said writ, that the Paris green, calcium arsenate, lead arsenate or any other insecticide or fungicide was sold, exposed or offered for sale in violation of any provisions of this act, said Paris green, calcium arsenate, lead arsenate or any other insecticide or fungicide shall be condemned and delivered to an officer or agent of the commissioner, to be destroyed or to be sold at his discretion. The sale shall be made at the court house in the county in which the seizure is made. Said Paris green, calcium arsenate lead arsenate or any other insecticide or fungicide shall be sampled and subjected to analysis if necessary or tagged, or branded and otherwise brought into compliance with the requirements of this act, before being sold. The commissioner, however, may, in his discretion, release the Paris green, calcium arsenate, lead arsenate or any other insecticide or fungicide seized or condemned upon the payment of the required tax or charge and all costs and expenses incurred in any proceedings connected with such seizure and condemnation, and upon compliance with all other requirements of this act. (Id. § 11.)

121l. **Copy of Analysis Admissible in Evidence.**—A copy of the analysis made by any chemist of the Department of Agriculture of any Paris green, calcium arsenate, lead arsenate or any other insecticide or fungicide certified to by him

shall be admissible as evidence in any court of the State on trial of any issue involving the merits of the insecticides and fungicides covered by this act. (Id. § 12.)

121m. Application of Act.—Nothing contained in this act shall interfere with Paris green, calcium arsenate, lead arsenate or any other insecticide or fungicide passing through the State in transit, nor shall apply to the delivery of materials to manufacture Paris green, calcium arsenate, lead arsenate or any other insecticide or fungicide for manufacturing purposes. (Id. § 13.)

121n. Penalty.—Any manufacturer or dealer violating any provision or section in this act, or any rule, regulation or standard of the Department of Agriculture promulgated under this act shall be deemed guilty of a misdemeanor and upon conviction shall be fined not less than fifty dollars nor more than two hundred and fifty dollars for each offense. (Id. § 14.)

121o. Unconstitutionality.—If any clause, sentence, paragraph, or part of this act, shall, for any reason, be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not effect, impair, or invalidate the remainder of this act, but shall be confined in its operation to the clause, sentence, paragraph, or any part thereof, directly involved in the controversy in which such judgment has been rendered. (Id. § 15.)

121p. When Act Effective.—This act shall be in force from and after October 1, 1927. (Id. § 16.)

Jamaica Ginger.

See No. 206.

Pharmacy, Poisons and Narcotics.

122. North Carolina Pharmaceutical Association.—The North Carolina pharmaceutical Association and the persons composing the same, shall continue to be a body politic and corporate under the name and style of the North Carolina Pharmaceutical Association, and by said name have the right to sue and be sued, to plead and be impleaded, to purchase and hold real estate and grant the same, to have and to use a common seal, and to do such other things and perform such other acts as appertain to bodies corporate and politic not inconsistent with the constitution and laws of the State. (C. S. 1919, § 6650.)

123. Object of Pharmaceutical Association.—The object of the association is to unite the pharmacists and druggists of this State for mutual aid, encouragement and improvement; to encourage scientific research, develop pharmaceutical talent, to elevate the standard of professional thought and ultimately restrict the practice of pharmacy to properly qualified druggists and apothecaries. (Id. § 6651.)

124. Board of Pharmacy; Election; Terms; Vacancies.—The Board of Pharmacy shall consist of five persons licensed as pharmacists within this State, who shall be elected and commissioned by the Governor as hereinafter provided. The members of the present Board of Pharmacy shall continue in office until the expiration of their respective terms, and the rules, regulations and by-laws of said board, so far as they are not inconsistent with the provisions of this article, shall continue in effect. The North Carolina Pharmaceutical Association shall annually elect a resident pharmacist from its number to fill the vacancy annually occurring in said board, and the pharmacist so elected shall be commissioned by the Governor and shall hold office for the term of five years and until his successor has been duly elected and qualified. In case of death, resignation or removal from the State of any member of said Board of Pharmacy, the said board shall elect in his place a pharmacist who is a member of said North Carolina Pharmaceutical Association, who shall be commissioned by the Governor as a member of the said Board of Pharmacy for the remainder of the term. It shall be the duty of a member of the Board of Pharmacy, within ten days after receipt of notification of his appointment and commission to appear before the clerk of the Superior Court of the county in which he resides and take and subscribe an oath to properly and faithfully discharge the duties of his office according to law. (Id. § 6652.)

125. Election of Officers; Bonds; Annual Meetings.—The Board of Pharmacy shall elect two officers, a president and a secretary-treasurer, who shall hold their offices until their successors shall have been elected and qualified. The president shall be elected from the membership of the board. The secretary-treasurer may or may not be a member of the board, as the board shall determine. The secretary-treasurer shall give bond in such sum as may be prescribed by the board, conditioned for the faithful discharge of the duties of his office according to law

and said bond shall be made payable to the North Carolina Board of Pharmacy and approved by said board. The said board shall hold an annual meeting at such time and place as it may provide by rule for the examination of candidates and for the discharge of such other business as may legally come before it, and said board may hold such additional meetings as may be necessary for the examination of candidates and for the discharge of any other business. (C. S. Supp. 1924, § 6653.)

126. **Powers of Board; Reports; Quorum; Records.**—The Board of Pharmacy shall have a common seal and shall have the power and authority to define and designate nonpoisonous domestic remedies, to adopt such rules, regulations and by-laws, not inconsistent with this article, as may be necessary for the regulation of its proceedings and for the discharge of the duties imposed under this article, and shall have power and authority to employ an attorney to conduct prosecutions and to assist in the conduct of prosecutions under this article, and for any other purposes which said board may deem necessary. The said Board of Pharmacy shall keep a record of its proceedings and a register of all persons to whom certificates of license as pharmacists or assistant pharmacists and permits have been issued, and of all renewals thereof; and the books and register of the said board, or a copy of any part thereof, certified by the secretary, attested by the seal of said board, shall be taken and accepted as competent evidence in all the courts of the State. The said Board of Pharmacy shall make annually to the Governor and to the North Carolina Pharmaceutical Association written reports of its proceedings and of its receipts and disbursements under this article, and of all persons licensed to practice as pharmacists and assistant pharmacists in this State. A majority of the board shall constitute a quorum for the transaction of all business. (Id. § 6654.)

127. **Compensation of Secretary and Board.**—The secretary of the board of Pharmacy shall receive such salary as may be prescribed by the board, and shall be paid his necessary expenses while engaged in the performance of his official duties. The other members of the said board shall receive the sum of ten dollars for each day actually employed in the discharge of their official duty and their necessary expenses while engaged therein. Provided, that the compensation and expenses of the secretary and members of the said Board of Pharmacy and all disbursments for expenses incurred by the said board in carrying into effect and executing the provisions of this article shall be paid out of the fees received by the said board. (Id. § 6655.)

128. **Secretary to Investigate and Prosecute.**—Upon information that any provision of this article has been or is being violated by any member, the secretary of the Board of Pharmacy or any one appointed by the said Board of Pharmacy shall promptly make investigations of such matters, and upon probable cause appearing, shall file complaint and prosecute the offender. All fines and penalties prescribed in this article shall be recoverable by suit in the name of the people of the State. In all prosecutions for the violation of any of the provisions of this article a certificate under oath by the secretary of the Board of Pharmacy shall be competent and admissible as evidence in any court of the State that the person so charged with the violation of this article is not a registered pharmacist or assistant pharmacist, as required by law. (Id. § 6656.)

129. **Fees Collectible by Board.**—The Board of Pharmacy shall be entitled to charge and collect the following fees: For the examination of an applicant for license as a pharmacist or assistant pharmacist, ten dollars; for renewing the license as a pharmacist and assistant pharmacist, five dollars; for issuing a permit to a physician to conduct a drug store in a village of not more than five hundred inhabitants, ten dollars; for the renewal of permit to a physician to conduct a drug store in a village of not more than five hundred inhabitants, five dollars. All fees shall be paid before any applicant may be admitted to examination or his name placed upon the register of pharmacists and assistant pharmacists, or before any license or permit, or any renewal thereof, may be issued by the board. (Id. § 6657.)

130. **Application and Examination for License, Prerequisites.**—Every person now licensed or registered as a pharmacist under the laws of this State shall be entitled to continue in the practice of his profession until the expiration of the term for which his certificate of registration or license was issued. Every person who shall desire to be licensed as a pharmacist or assistant pharmacist shall file with the secretary of the Board of Pharmacy an application, duly verified under oath, setting forth the name and age of the applicant, the place or places at which and the time he has spent in the study of the science and art of pharmacy, the experience in the compounding of physicians' prescriptions which the applicant has

had under the direction of a legally licensed pharmacist, and such applicant shall appear at a time and place designated by the Board of Pharmacy and submit to an examination as to his qualifications for registration as a licensed pharmacist or assistant pharmacist. The application referred to above shall be prepared and furnished by the Board of Pharmacy.

In order to become licensed as a pharmacist, within the meaning of this article, an applicant shall be not less than twenty-one years of age, he shall present to the Board of Pharmacy satisfactory evidence that he has had four years' experience in pharmacy under the instruction of a licensed pharmacist, and that he is a graduate of a reputable school or college of pharmacy, and he shall also pass a satisfactory examination of the Board of Pharmacy. Provided, however, that the actual time of attendance at a reputable school or college of pharmacy, not to exceed two years, may be deducted from the time of experience required. In order to be licensed as an assistant pharmacist, within the meaning of this article, an applicant shall be not less than eighteen years of age; shall have had a sufficient preliminary general education, and shall have had not less than two years' experience in pharmacy under the instruction of a licensed pharmacist, and shall also pass a satisfactory examination by, or under the direction of, the Board of Pharmacy. Provided, however, that applicants for licenses as assistant pharmacists, who have attended a reputable school or college of pharmacy, may have deducted from the time of experience required the actual time of attendance at such school or college of pharmacy, such time not to exceed one year. (Id. § 6658.)

131. When License Issued.—If an applicant for license as pharmacist or assistant pharmacist has complied with all the requirements of the two preceding sections, the Board of Pharmacy shall enroll his name upon the register of pharmacists and assistant pharmacists, and issue to him a license, which shall entitle him to practice as a pharmacist or assistant pharmacist up to the first day of January next ensuing, as provided in this article for the annual renewal of every registration. (Id. § 6659.)

132. When License Without Examination Issued.—The Board of Pharmacy may issue license to practice as pharmacists in this State, without examination, to such persons as have been legally registered or licensed as pharmacists by other boards of pharmacy, if the applicant for such license shall present satisfactory evidence of the same qualifications as are required from licentiates in this State, and that he was registered or licensed by examination by such other board of pharmacy, and that the standard of competence required by such board of pharmacy is not lower than that required in this State. All applicants for license under this section shall, with their application, forward to the secretary of the Board of Pharmacy the same fees as are required of other candidates for license. (C. S. 1919, § 6660.)

133. When License Refused or Revoked; Fraud.—The board of pharmacy may refuse to grant a license to any person guilty of felony or gross immorality, or who is addicted to the use of alcoholic liquors or narcotic drugs to such an extent as to render him unfit to practice pharmacy; and the Board of Pharmacy may, after due notice and hearing, revoke a license for like cause, or any license which has been procured by fraud, and any license or permit, or renewal thereof, obtained through fraud or by any fraudulent or false representations shall be void and of no effect in law. (Id. § 6661.)

134. Expiration and Renewal of License; Failure to Renew Misdemeanor.—Every licensed pharmacist or assistant pharmacist who desires to continue in the practice of his profession, and every physician holding a permit to sell drugs in a village of not more than five hundred inhabitants, shall within thirty days next preceding the expiration of his license or permit, file with the secretary and treasurer of the Board of Pharmacy an application for the renewal thereof, which application shall be accompanied by the fee hereinbefore prescribed. If the Board of Pharmacy shall find that an applicant has been legally licensed in this State and is entitled to a renewal thereof, or to a renewal of a permit, it shall issue to him a certificate attesting that fact. And if any pharmacist or assistant pharmacist shall fail, for a period of six days after the expiration of his license, to make application to the board for its renewal, his name shall be erased from the register of licensed pharmacists and assistant pharmacists, and such person, in order to again become registered as a licensed pharmacist or assistant pharmacist, shall be required to pay the same fee as in the case of original registration. And if any holder of a permit to sell drugs in a village of not more than five hundred inhabitants shall fail, for a period of sixty days after the expiration of his permit, to make application for the renewal thereof, his name shall be erased from the

register of persons holding such permits, and he may be restored thereto only upon the payment of the fee required for the granting of original permit. The registration of every license and every permit issued by the board shall expire on the thirty-first day of December next ensuing the granting thereof. Provided, that all licenses and permits for the years one thousand nine hundred and twenty-one and one thousand nine hundred and twenty-two, shall expire on the thirty-first day of December, one thousand nine hundred and twenty-two. Provided, that the Board of Pharmacy, in its discretion, shall have the power to issue a license or permit, or renewals thereof, to any person whose license or permit has been revoked by operation of law or by the Board of Pharmacy, or whose renewal thereof has been refused by the Board of Pharmacy, after the expiration of one year from the date of such revocation of license or permit, or refusal of a renewal thereof, upon satisfactory proof that such person is entitled to such license or permit, or to a renewal thereof.

Every holder of a license or permit as a pharmacist or assistant pharmacist, who after the expiration thereof continues to carry on the business for which the license or permit was granted, without renewing the same as required by this section, shall be guilty of a misdemeanor and fined not less than five nor more than twenty-five dollars. (C. S. Supp. 1924, § 6662.)

135. License to be Displayed; Penalty.—Every certificate or license to practice as a pharmacist or assistant pharmacist and every permit to a practicing physician to conduct a pharmacy or drug store in a village of not more than five hundred inhabitants, and every last renewal of such license or permit, shall be conspicuously exposed in the pharmacy or drug store or place of business of which the pharmacist, or other person to whom it is issued, is the owner or manager, or in which he is employed.

The holder of such license, permit or renewal who fails to expose it as required by this section shall be guilty of a misdemeanor and fined not less than five nor more than twenty-five dollars, and each day that such license, permit or renewal thereof shall not be exposed shall be held to constitute a separate and distinct offense. (Id. § 6663.)

136. Unlicensed Person Not to Use Title of Pharmacist; Penalty.—It shall be unlawful for any person not legally licensed as a pharmacist or assistant pharmacist to take, use or exhibit the title of pharmacist or assistant pharmacist or licensed or registered pharmacist, or the title druggist or apothecary, or any other title, name or description of like import.

Every person who violates this section shall be guilty of a misdemeanor and be fined not less than twenty-five nor more than one hundred dollars. (Id. § 6664.)

137. Purity of Drugs Protected; Seller Responsible; Adulteration Misdemeanor.—Every person who shall engage in the sale of drugs, chemicals and medicines shall be held responsible for the quality of all drugs, chemicals and medicines he may sell or dispense, with the exception of those sold in the original packages of the manufacturers, and also those known as "patent or proprietary medicines."

If any person engaged in the sale of drugs, chemicals and medicines shall intentionally adulterate, or cause to be adulterated, or exposed to sale, knowing the same to be adulterated, any drugs, chemicals or medical preparations, he shall be guilty of a misdemeanor and liable to a fine not exceeding one hundred dollars, and if he is a licensed pharmacist or assistant pharmacist his name shall be stricken from the register of licensed pharmacists and assistant pharmacists. (Id. § 6665.)

138. Prescriptions Preserved; Copies Furnished.—Every proprietor or manager of a drug store or pharmacy shall keep in his place of business a suitable book or file, in which shall be preserved for a period of not less than five years the original of every prescription compounded or dispensed at such drug store or pharmacy. Upon the request of the prescribing physician, or of the person for whom such prescription was compounded or dispensed, the proprietor or manager of such drug store or pharmacy shall furnish a true and correct copy of such prescription, and said book or file of original prescriptions shall at all times be open to the inspection and examination of duly authorized officers of the law or other persons authorized and directed by the Board of Pharmacy to make such inspection and examination. (C. S. 1919, § 6666.)

139. Selling Drugs Without License Prohibited; Drug Trade Regulated.—It shall be unlawful for any person not licensed as a pharmacist or assistant pharmacist within the meaning of this article to conduct or manage any pharmacy, drug or chemical store, apothecary shop or other place of business for the retail-

ing, compounding or dispensing of any drugs, chemicals or poison, or for the compounding of physicians' prescriptions, or to keep exposed for sale at retail any drugs, chemicals or poison, except as hereinafter provided, or for any person not licensed as a pharmacist within the meaning of this article to compound, dispense or sell at retail any drug, chemical, poison or pharmaceutical preparation upon the prescription of a physician or otherwise, or to compound physicians' prescriptions except as an aid to and under the immediate supervision of a person licensed as a pharmacist or assistant pharmacist under this article. [Provided, that during the temporary absence of the licensed pharmacist in charge of any pharmacy, drug store or chemical store, a licensed assistant pharmacist may conduct or have charge of said store.] And it shall be unlawful for any owner or manager of a pharmacy or drug store or other place of business to cause or permit any other than a person licensed as a pharmacist or assistant pharmacist to compound, dispense or sell at retail any drug, medicine or poison, except as an aid to and under the immediate supervision of a person licensed as a pharmacist or assistant pharmacist.

Nothing in this section shall be construed to interfere with any legally registered practitioner of medicine in the compounding of his own prescriptions, nor with the exclusively wholesale business of any dealer who shall be licensed as a pharmacist or who shall keep in his employ at least one person who is licensed as a pharmacist, nor with the selling at retail of nonpoisonous domestic remedies, nor with the sale of patent or proprietary preparations which do not contain poisonous ingredients, [nor with the sale of paregoric, Godfrey's cordial, aspirin, alum, borax, bicarbonate of soda, calomel tablets, castor oil, compound cathartic pills, copperas, cough remedies which contain no poison or narcotic drugs, cream or tartar, distilled extract witch hazel, epsom salts, harlem oil, gum asafœtida, gum camphor, glycerin, peroxide of hydrogen, petroleum jelly, salt petre, spirit of turpentine, spirit of camphor, sweet oil and sulphate of quinine] nor with the sale of poisonous substances which are sold exclusively for use in the arts or for use as insecticides when such substances are sold in unbroken packages bearing a label having plainly printed upon it the name of the contents, the word "poison," the vignette of the skull and crossbones, and the name of at least two readily obtainable antidotes.

In any village of not more than five hundred inhabitants the Board of Pharmacy may grant any legally registered practicing physician a permit to conduct a drug store or pharmacy in such village, which permit shall not be valid in any other village than the one for which it was granted, and shall cease and terminate when the population of the village for which such permit was granted shall become greater than five hundred. Provided, that the Board of Pharmacy may, after due investigation, grant to any legally registered practicing physician in towns or villages of more than five hundred, and not exceeding six hundred inhabitants, a permit to conduct a drug store or pharmacy in such towns or villages subject to the provisions of this article. [The part of the section in brackets shall not apply to any city or town where there is located an established drug store, except in the counties of McDowell and Onslow.] (Cum. Sts. 1925, § 6667.)*

140. Compounding Prescriptions Without License.—If any person, not being licensed as a pharmacist or assistant pharmacist, shall compound, dispense or sell at retail any drug, medicine, poison or pharmaceutical preparation, either upon a physician's prescription or otherwise, and any person being the owner or manager of a drug store, pharmacy or other place of business, who shall cause or permit any one not licensed as a pharmacist or assistant pharmacist to dispense, sell at retail or compound any drug, medicine, poison or physician's prescription contrary to the provisions of this article, he shall be deemed guilty of a misdemeanor and fined not less than twenty-five nor more than one hundred dollars. (C. S. Supp. 1924, § 6668.)

141. Conducting Pharmacy Without License.—If any person, not being licensed as a pharmacist, shall conduct or manage any drug store, pharmacy or other place of business for the compounding, dispensing or sale at retail of any drugs, medicines or poisons, or for the compounding of physicians' prescriptions contrary to the provisions of this article, he shall be deemed guilty of a misde-

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*Chapter 27 of the Laws of 1925 reads thus:

Sec. 1. That section one, chapter one hundred and sixteen of the Public Laws, extra session, nineteen hundred and twenty-four (Cum. Sts. 1925, § 6667), be and the same is hereby amended by striking out the proviso at the end thereof.

Sec. 2. That this act shall apply only to the counties of McDowell and Onslow.

Sec. 3. That this act shall be in force from and after its ratification.

meanor, and be fined not less than twenty-five nor more than one hundred dollars, and each week such drug store or pharmacy or other place of business is so unlawfully conducted shall be held to constitute a separate and distinct offense. (C. S. 1919, § 6669.)

142. Pharmacist Obtaining License Fraudulently.—If any person shall make any fraudulent or false representations for the purpose of procuring a license or permit, or renewal thereof, either for himself or for another, he shall be guilty of a misdemeanor and fined not less than twenty-five nor more than one hundred dollars; and if any person shall willfully make a false affidavit or any other false or fraudulent representation for the purpose of procuring a license or permit or renewal thereof, either for himself or for another, he shall be deemed guilty of perjury, and upon conviction thereof shall be subject to like punishment as is now prescribed for the crime of perjury. (Id. § 6670.)

142a. Registration of Drug Stores and Pharmacies; Definitions.—The Board of Pharmacy shall require and provide for the annual registration of every drug store and pharmacy doing business in this State; the proprietor of every drug store or pharmacy opening for business after the taking effect of this act shall apply to the Board of Pharmacy for registration and it shall be unlawful for any drug store or pharmacy to do business until so registered; the fee for such registration, whether original or annual, shall be one dollar, and upon the payment thereof the Board of Pharmacy shall issue permit to applicant entitled to receive same. All permits issued under this section shall expire on December thirty-first of each year.

The terms "drug store" and "pharmacy" as used herein shall mean any store or other place in which drugs, medicines, chemicals, poisons, or prescriptions are compounded, dispensed, or sold at retail, or which uses the title "drug store" "pharmacy" or "apothecary" or any combination of such titles, or any title or description of like import. Provided, that nothing in this section shall apply to the sale of domestic remedies, patent and proprietary preparations, and insecticides as set out and provided for in paragraph two of section six thousand six hundred and sixty-seven of the Consolidated Statutes. (Id. § 6670(a), as added L. 1927, c. 28, § 1.)

142b. Conflicting Laws Repealed.—All laws and clauses of laws in conflict with the provisions of this act are hereby repealed. (L. 1927, c. 28, § 2.)

142c. Act Effective, When.—This act† shall be in force and effect from January first, one thousand nine hundred and twenty-eight. (Id. § 3.)

143. Poisons; Sales Regulated; Label; Penalties.—It shall be unlawful for any persons to sell or deliver to any person any of the following described substances or any poisonous compound, combination or preparation thereof, to wit: The compounds and salts of arsenic, antimony, lead, mercury, silver and zinc, oxalic and hydrocyanic acids and their salts, the concentrated mineral acids, carbolic acid, the essential oils of almonds, pennyroyal, tansy and savine, croton oil, creosote, chloroform, chloral hydrate, cantharides or any aconite, belladonna, bitter almonds, colchicum, cotton root, conium, cannabis indica, digitalis, hyoscyamus, nux vomica, opium, ergot, cannabis stramonius or any of the poisonous alkaloids or alkaloidal salts or other poisonous principles derived from the foregoing, or cocaine or any other poisonous alkaloids or their salts, or any other virulent poisons, except in the manner following: It shall first be learned by due inquiry that the person to whom delivery is made is aware of the poisonous character of the substance, and that it is desired for a lawful purpose, and the box, bottle or other package shall be plainly labeled with the name of the substance, the word "poison," and the name of the person or firm dispensing the substance.

Before a delivery is made of any of the following substances, to wit, the compounds and salts of arsenic, antimony and mercury, hydrocyanic acid and its salts, strychnine and its salts, and the essential oil of bitter almonds, there shall be recorded in a book kept for the purpose the name of the article, the quantity delivered, the purpose for which it is required as represented by the purchaser, the date of delivery, the name and address of the purchaser, the name of the dispenser, which book shall be preserved for at least five years and shall at all times be open to the inspection of the proper officers of the law. Provided, that the foregoing provision shall not apply to articles dispensed upon the order of persons believed by the dispenser to be lawfully authorized practitioners of medicine or dentistry. Provided, also, that the record of sale and delivery above mentioned shall not be required of manufacturers and wholesalers who shall sell any of the foregoing substances at wholesale; but the box, bottle or other package containing such substances, when sold at wholesale, shall be properly labeled with

†Included in Nos. 142a-142c.

the name of the substance, the word "poison," and the name and address of the manufacturer or wholesaler. Provided, further, that it shall not be necessary to place a poison label upon, or to record the delivery of, the sulphide of antimony or the dioxide or carbonate of zinc or lead, or of colors ground in oil and intended for use as paint, or Paris green, when dispensed in the original package of the manufacturer or wholesaler, or calomel, paregoric or other preparations of opium containing less than two grains of opium to the fluid ounce, nor in the case of preparations containing any of the substances named in this section when in a single box, bottle or other package, or when the bulk of two fluid ounces or the weight of two avoidupois ounces does not contain more than an adult medicinal dose of such poisonous substance. If any person shall sell or deliver to any person any poisonous substance specified in this section without labeling the same and recording the delivery thereof in the manner prescribed, he shall be guilty of a misdmeanor and fined not less than twenty-five nor more than one hundred dollars. (C. S. 1919, § 6671.)

144. Narcotics and Certain Other Drugs; Sales Regulated.—1. Dispensing without prescription forbidden. It shall be unlawful for any person, firm or corporation to sell, furnish or give away any cocaine, alpha or beta eucaine, novocaine, opium, morphine, heroin, codine or any salt or compound of any of the foregoing substances, or any preparation or compound containing any of the foregoing substances, or their salts or compounds, in greater quantity than is prescribed in the United States Pharmacopœia, except upon the original written order or prescription of a lawfully licensed practitioner of medicine, dentistry or veterinary medicine, which order or prescription shall be dated, and shall contain the name of the person for whom prescribed, or, if ordered by a practitioner of veterinary medicine, shall state the kind of animal for which ordered, and shall be signed by the person giving the order or prescription.

2. Limitation as to form of preparation and amount dispensed. In no case shall any person, firm or corporation fill any prescription or order for cocaine, alpha or beta eucaine, novocaine, opium, morphine, heroin, codine or any salt or compound of any of the foregoing substances or any preparation or compound containing any of the foregoing substances, or their salts or compounds, in flake or crystals, but only in a solution or ointment, which shall not contain over four per cent of the above named substances or any of them, and no such order or prescription shall be for a greater quantity than one ounce of any such solution or ointment sold and dispensed in one-ounce bottles.

3. Prescription retained; duplicates. Such written order or prescription shall be permanently retained on file by the person, firm or corporation who shall compound or dispense the article ordered or prescribed, and it shall not be again compounded or dispensed, except upon the written order of the original prescriber for each and every subsequent compounding or dispensing. No copy or duplicate of such written order or prescription shall be made or delivered to any person, but the original shall at all times be open to inspection by the prescriber and properly authorized officers of the law.

4. When section inapplicable. The above provisions shall not apply to preparations containing opium, or its derivatives, and recommended and sold in good faith for diarrhœa, cholera or coughs, each bottle or package of which is accompanied by specific directions for use, and a caution against habitual use; nor to the compound powder of ipecac and opium, commonly known as "Dover's powders"; and the above provisions shall not apply to sales at wholesale by jobbers, wholesalers and manufacturers to retail druggists or qualified physicians, or to each other, nor to sales at retail by retail druggists to regular practitioners of medicine, dentistry or veterinary medicine, nor to sales made to manufacturers of proprietary or pharmaceutical preparations, for use in the manufacture of such preparations, nor to sales to hospitals, colleges or scientific institutions. (Id. § 6672.)*

145. Limitations on Sales of Certain Drugs to Practitioners.—It shall be unlawful for any person, firm or corporation to sell, furnish or dispense to any regular practitioner of medicine, dentistry or veterinary medicine more than one dram of cocaine, alpha or beta eucaine, novocaine or any salt or compound of any of the foregoing substances, or their salts or compounds, at one time; or more than one-half ounce of opium, morphine, heroin, codine, or any salt or compound of any of the said substances, or their salts or compounds, at one time. (Id. § 6673.)*

146. Limitations on Possession of Certain Drugs by Retail Druggists.—It shall be unlawful for any person, firm or corporation doing a retail drug business to have more than one ounce of cocaine, alpha or beta eucaine, novocaine, or any

*But see the subsequent narcotic law quoted in No. 156 et seq.

salt or compound of any of the foregoing substances, or their salts or compounds, or more than one and one-half ounces of opium, morphine, heroin, codine, or any salt or compound of any of them, or their salts or compounds, in his or its possession at any one time. (Id. § 6674.)*

147. **Limitations on Possession of Certain Drugs by Practitioners; Records to be Kept.**—It shall be unlawful for any practitioner of medicine, dentist or veterinarian to have or keep in his possession at any time more than one dram of cocaine, alpha or beta eucaine, novocaine, or any salt or compound of any of the foregoing substances, or their salts or compounds, or more than one-half ounce of opium, morphine, heroin, codine, or any salt or compound of any of them, or their salts or compounds, and each practitioner of medicine, dentist and veterinarian shall keep a complete record of all purchases, the date and amount of each purchase, and the name of the person or party from whom each purchase was made, and a complete record of any disposition of said drugs, or any of them, and said record shall be open at all times to the inspection of the legally authorized officers of the law. (Id. § 6675.)*

148. **Presumptive Evidence of Illegal Sale.**—It shall be presumptive evidence of an illegal sale if the amount shown by the amount on hand, plus the amount legally dispensed, does not tally with the amount shown to have been purchased by the retail druggist, practitioner of medicine, dentist or veterinarian. (Id. § 6676.)*

149. **Prescriptions of Certain Drugs Regulated.**—It shall be unlawful for any practitioner of medicine, dentistry or veterinary medicine to furnish or to prescribe for the use of any habitual user of the same any cocaine, alpha or beta eucaine, novocaine, opium, morphine, heroin, codine, or any salt or compound of any of the foregoing substances, or their salts or compounds; and it shall also be unlawful for any practitioner of dentistry to prescribe any of the foregoing substances for any person not under his treatment in the regular practice of his profession, or for any practitioner of veterinary medicine to prescribe any of the foregoing substances for the use of any human being. The provisions of this section shall not be construed to prevent any lawfully authorized practitioner of medicine from furnishing or prescribing in good faith for the use of any habitual user of narcotic drugs, who is under his professional care, such substances as he may deem necessary for his treatment, when such prescriptions are not given or substances furnished for the purpose of evading the provisions of this article. (Id. § 6677.)*

150. **Limitations on Sales of Certain Drugs by Wholesalers; Records to be Kept.**—It shall be unlawful for any jobber, wholesaler, or manufacturer to sell or furnish to any retail druggist cocaine, alpha or beta eucaine, novocaine, or any salt or compound of any of the foregoing substances, or their salts or compounds, in greater quantity than one ounce at one time, or to likewise sell or furnish opium, morphine, heroin, codine, or any salt or compound of any of them, or their salts or compounds, in greater quantity than one and one-half ounces at one time; and it shall be unlawful for any jobber, wholesaler or manufacturer to sell or furnish to any practitioner of medicine, dentistry or veterinary medicine, cocaine, alpha or beta eucaine, novocaine, or any salt or compound of any of the foregoing substances, or their salts or compounds, in greater quantity than one dram at one time, or to likewise sell or furnish opium, morphine, heroin, codine, or any salt or compound of any of them, or their salts or compounds, in greater quantity than one-half ounce at one time; and every package sold or furnished by any jobber, wholesaler or manufacturer shall bear a serial number, stamped upon the outside wrapper or cover; and all jobbers, wholesalers and manufacturers shall keep a complete record of every sale made by them, showing the name of the buyer, his place of business, the date of sale, the kind of drug sold, and if a salt or compound, the percentage of any substance therein enumerated, the amount sold, the serial number of each package, and the name of the clerk or employer by whom each order was filled, and these records shall be open at all times to the inspection of the legally authorized officers of the law. (Id. § 6678.)*

151. **Possession of Certain Drugs Forbidden; Exceptions.**—It shall be unlawful for any person, firm, or corporation, other than those enumerated in this article, and also those into whose hands possession may come in enforcing or attempting to enforce the provisions of this article, to have in his or their possession any cocaine, alpha or beta eucaine, novocaine, opium, morphine, heroin, codine, or any salt or compound of the foregoing substances, or their salts or compounds. (Id. § 6679.)*

152. **Process for Securing Evidence.**—Upon affidavit being made that there is reason to believe that the provisions of this article are being violated at any place,

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*But see the subsequent narcotic law quoted in No. 156 et seq.

or by any person, those officers or persons authorized to issue process are authorized to issue to any lawful officer of the city or county where such place or person may be a subpœna capias ad testificandum, or summons in writing, commanding any person who may have information concerning such violation of the law to appear and give evidence upon oath concerning the same in accordance with the provisions of the section under chapter on evidence† whereby magistrates are authorized to compel testimony in investigations covering sales of liquor and keeping gaming tables. (Id. § 6680.)*

153. Testimony Enforced; Immunity.—No person shall be excused from testifying in any prosecution for violation of the provisions of this article relating to narcotics, cocaine, alpha or beta eucaine, or novocaine, or any investigation concerning the violating of any law prohibiting the sale, dispensing or possession of any of these substances, mixtures or compounds as enumerated in this article, or any other law of the State concerning the same; but no discovery made by such person shall be used against him in any penal or criminal prosecution, and he shall be altogether pardoned for the offense done or participated in by him. (Id. § 6681.)*

154. Search Warrants; Seizure and Retention of Drugs.—If any credible witness shall make oath before any person authorized to issue process as hereinbefore provided in the second preceding section, that there is a reasonable cause to suspect that any provision of this article is being violated, or any other act prohibiting the sale, dispensing or possession of the substances, mixtures or compounds enumerated herein, it shall be the duty of such officer or person to grant a warrant, to be executed within the limits of the county in which such violation is alleged to have occurred, or to be occurring, to any lawful officer, authorizing him to search the place where, or the person by whom, it is alleged (in such affidavit) this law has been or is being violated, and to seize and preserve any evidence of the violation of this article, to be used in the trial of any person arrested by reason of the examination, search or seizure herein provided. All cocaine, alpha or beta eucaine, novocaine, opium, morphine, heroin, codine or any mixture of either, or any salt or compounds of any of the forgoing substances, or any preparation or compound containing any of the foregoing substances, or their salts or compounds, seized under this article, shall be held, and upon acquittal of the person so charged shall be returned to him, and upon conviction shall be destroyed. (Id. § 6682.)*

155. Narcotics and Certain Other Drugs; Violation of Law a Misdemeanor.—Any person who shall violate any of the provisions of this article relating to the prescription, sale or possession of any cocaine, alpha or beta eucaine, novocaine, opium, morphine, heroin, their salts or compounds, shall be deemed guilty of a misdemeanor, and upon conviction shall be fined or imprisoned in the discretion of the court; and if a licensed pharmacist, physician, dentist or veterinary surgeon, his license shall be revoked. It shall be the duty of all judges of the Superior Court in this State, at every regular term thereof, to charge all regularly impaneled grand juries to diligently inquire into and investigate all cases of the violation of such provisions of this article and to make a true presentment of all persons guilty of such violations. It shall be the duty of the Board of Pharmacy to cause the prosecution of all persons violating such provisions of this article. No prosecution shall be brought for the sale of any patent or proprietary medicine containing any of the drugs or preparations hereinbefore mentioned until the Board of Pharmacy shall certify that such medicine contains any of the said drugs or preparations in excess of the maximum percentage hereinbefore mentioned. In any proceedings under the provisions of this article the charge may be brought against any or all of the members of a partnership, or against the directors or executive officers of a corporation, or against the agent or employee of any person, partnership or corporation. (Id. § 6683.)*

156. Drugs Defined.—Except as limited in section two of this article,‡ the word "drug" as used in this article shall be construed to include (a) opium, (b) coca leaves, or (c) any compound or derivative of opium or coca leaves, or (d) any substance or preparation containing opium or coca leaves, or (e) any substance or preparation containing any compounds or derivatives of opium or coca leaves. (Cum. Sts. 1925, § 6683(a).)

157. Excepted Substances.—The word "drug" shall not be construed to include (1) preparations and remedies and compounds which do not contain more than two grains of opium or more than one-fourth of a grain of morphine or more than one-eighth of a grain of heroin or more than one grain of codeine or

*But see the subsequent narcotic law quoted in No. 156 et seq.
†Chapter 35 of the Consolidated Statutes, 1919.
‡See No. 157.

any salt or derivative of any of them in any one fluid ounce, if the same is a liquid; or if a solid or a semi-solid, in one avoirdupois ounce; (2) liniments, ointments or other preparations prepared and dispensed in good faith for external use only, providing such liniments, ointments or other preparations do not contain cocaine or any of its salts, alpha or beta eucaine or any of their salts or any synthetic substitutes for cocaine or eucaine or their salts; (3) decocainized coca leaves or preparations made therefrom or other preparations of coca leaves which do not contain cocaine; but such preparations for external use only must contain ingredients rendering same unfit for internal administration. Provided, however, that this shall not apply to camphorated tincture of opium (paregoric) prepared according to the United States Pharmacopœia standard and containing not quite two grains of opium to a fluid ounce. Provided, however, that no preparations, remedies or compounds containing any opium or coca leaves or any compound or derivatives thereof in any quantity whatsoever may be sold, dispensed, distributed or given away for the use of any known habitual user of drugs or any child of twelve years of age or under, except in pursuance of a written prescription of a duly licensed physician or dentist in the course of his professional practice, and when said drugs are dispensed or administered to the patient for legitimate medical purpose. (Id. § 6683(b).)

158. Prescribing Drugs for Habitual Users.—No physician or dentist shall sell, dispense, administer, distribute, give or prescribe any of said drugs to any person known to such physician or dentist to be an habitual user of any of said drugs, unless said drug is prescribed, administered, dispensed or given for the cure or treatment of some malady other than the drug habit, or administered, dispensed, given or prescribed for the treatment of a bona fide patient suffering from cancer or other incurable disease, and the name of such patient, his or her age, name and address shall within five days thereafter be reported by the physician so administering, giving or prescribing such drugs to the county health officer of the county in which the patient resides, and if there be no county health officer in such county, then to the secretary of the Board of Health of this State. And in every such case the physician so administering, prescribing or giving such drug shall himself make a physical examination of the patient to whom or for whom such drug is administered, dispensed, given or prescribed, together with a diagnosis of the case and the amount and nature of the drug prescribed or dispensed in the first treatment. When the patient leaves his care such physician shall report in writing the same to the said officer of the county or local board of health and to the secretary of the State Board of Health when there is no county or local health officer the result of the said treatment. (Id. § 6683(c).)

159. Treatment of Addicts.—This article shall not be construed to apply to the treatment of habitual users of drugs in public State hospitals, State sanatoriums, county homes, prisons or other public institutions, except that all such public institutions, except State hospitals at Raleigh, shall render an annual report to the State Department of Health, giving therein the names, addresses, ages, clinical conditions and results of treatment of all habitual users of drugs given treatment in such State institutions. For the purpose of enforcing the provisions of this article the State Board of Health and its inspectors and officers shall have the right at any time and from time to time to examine any or all records required by this article to be kept, but this shall not be construed to exclude duly constituted authorities of this State from enforcing the provisions of this article. (Id. § 6683(d).)

160. "Person" Defined; Prescription.—The word "person" as used in this act shall be construed to include an individual, a copartnership, a corporation or an association. Masculine words include feminine or neuter. The singular includes the plural. The word "prescription" shall be construed to designate a written order by duly licensed physician, dentist or veterinarian calling for a drug or any substance or preparation containing a drug. (Id. § 6683(e).)

161. Possession, Sale, Etc., of Drugs; Exceptions.—No person shall have in his possession or under his control or deal in, dispense, sell or deliver, distribute, prescribe, traffic in or give away any of said drugs. But this section does not apply in the regular course of their business, profession, employment, occupation or duties to (a) manufacturers of drugs, (b) persons engaged in the wholesale drug trade, (c) importers or exporters of drugs, (d) registered pharmacists actually engaged as retail druggists, (e) bona fide owners of pharmacies or drug stores, (f) licensed physicians, (g) licensed dentists, (h) licensed veterinarians, (i) persons in the employ of the United States or of this State, or of any county, township or municipality having such drug in their possession by reason of their official duties, (j) warehousemen or common carriers engaged bona fide in handling or transporting

drugs, (k) persons regularly in charge of drugs in hospitals, State asylums, State sanatoriums, county homes, jails, penitentiaries or public institutions, (l) registered nurses under the immediate supervision and direction of the attending physician, (m) persons in charge of the laboratory where such drugs are used for medical or scientific research, (n) persons other than habitual users of such drugs having such drugs in their possession for their own personal use: Provided, they have obtained the same in good faith for their own use from a duly licensed physician or dentist in pursuance of his prescription given them by duly licensed physician or dentist. (Id. § 6683(f).)

162. Use of Drugs.—No person shall use, take, administer to his person, or cause to be administered to his person, or administer to any other person or cause to be administered to any other person, any of the aforesaid drugs, except under the advice and direction and with the consent of a regularly practicing and duly licensed physician or dentist. (Id. § 6683(g).)

163. To Whom Drugs Sold.—No manufacturer or producer, importer, exporter or person engaged in the wholesale drug trade and regularly selling drugs shall sell, dispense or give away any of said drugs, except to (a) a duly licensed physician, (b) duly licensed pharmacist, (c) duly licensed dentist, (d) duly licensed veterinarian, (e) manufacturer of drugs, (f) person engaged in the wholesale drug trade and regularly selling drugs, (g) exporter of drugs, (h) bona fide hospital, State dispensary, asylum or sanitarium, (i) a public institution, (j) bona fide owner of pharmacy or drug store, (k) a person in charge of a laboratory where such drugs are used for scientific and medical research only, (l) a person in the employ of the United States or this State, or any county, township or municipality thereof purchasing or receiving the same in his official capacity. And no manufacturer, producer or person engaged in the wholesale or retail drug trade shall sell, dispense or give away any of said drugs, except in pursuance of a written order signed by the person to whom such drug is sold, dispensed or given. Such order shall be preserved for a period of two years in such a way as to be open to inspection by proper authorities. (Id. § 6683(h).)

164. Selling, Dispensing, Etc.; Prescription, Written Order.—No licensed physician, druggist or bona fide owner of a pharmacy or drug store shall sell, dispense or give away any of said drugs to an individual, except in pursuance of a written prescription by a physician, dentist or veterinary, which prescription shall be dated the same day on which it is signed and shall be signed by said physician, dentist or veterinary who issued the same, and also shall not be sold, dispensed or given except also upon a written order of the person to whom sold, dispensed or given. But this section shall not be construed to prohibit sale to (a) a manufacturer of drugs, (b) persons engaged in the wholesale drug trade, (c) importers or exporters of drugs, (d) registered pharmacists actually engaged as retail druggists, (e) bona fide owners of pharmacies or drug stores, (f) licensed physicians, (g) licensed dentists, (h) licensed veterinary, (i) persons in the employ of the United States or this State or of any county, township or municipality having such drug in their possession by reason of their official duties, (j) nor delivery to warehousemen or common carrier engaged bona fide in the handling or transporting of drugs, (k) persons regularly in charge of drugs in State dispensaries, hospitals, State asylums, State sanatoriums, county homes, jails, penitentiaries or public institutions, (l) persons in charge of a laboratory where such drugs are used for medical or scientific research only (m) persons other than habitual users of such drugs having said drugs in their possession for their own personal use. Provided, they have obtained same in good faith for their own use from a duly licensed physician or dentist, in pursuance of a prescription duly given them by such duly licensed physician or dentist. (Id. § 6683(i).)

165. Examination Before Prescribing; Veterinary Not to Prescribe for Human Beings.—No physician dentist shall dispense, give or prescribe any of such drugs to or for a patient without first making a physical examination of such patient. And no veterinary shall sell, dispense [or], prescribe any of such drugs for human beings. (Id. § 6683(j).)

166. Violation, Penalties.—The violation of any provisions of this act shall be and constitute a misdemeanor, and upon conviction thereof the person or persons, corporation or corporations, so violating the same shall be fined or imprisoned, or both, in the discretion of the court. (Id. § 6683(k).)

166a. Furnishing Intoxicants, Poisons or Firearms to Inmates of Charitable and Penal Institutions.—If any person shall sell or give to any inmate of any charitable or penal institution any intoxicating drink or any narcotic, poison or poisonous substance, except upon the prescription of a physician, or shall give or sell to any such inmate any deadly weapon, or any cartridge or ammunition for

firearms of any kind, he shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined or imprisoned at the discretion of the court; and if he be an officer or employee of any institution of the State, he shall be dismissed from his office. (C. S. 1919, § 4508.)

166b. "Inebriate" Defined.—For the purposes of this law, the word "inebriate" is defined to be a person habitually so addicted to alcoholic drinks or narcotic drugs as to be a proper subject for restraint, care and treatment. (C. S. Supp. 1924, § 2304(a).)

166c. Petition for Examination—Warrant for Hearing—Action Without Petition—Evidence.—Upon petition of two citizens, who shall be either the wife, husband, parent, child, committee of the estate of an inebriate, or next friends of such person, the clerk of the Superior Court of the county in which said alleged inebriate resides shall issue his warrant requiring the inebriate, on a day fixed, to be brought into court for a hearing. The petition shall not be considered unless it sets forth that the person named therein is an inebriate within the scope of this law, and unless it be accompanied by the affidavit or affidavits of at least two reputable physicians, stating that they have examined the alleged inebriate, and that he is a proper subject for restraint, care, and treatment, or the clerk may, on his own initiative, where he has information and reasonable grounds to believe that a particular person is an inebriate and is a fit subject for restraint, care, and treatment, cause such person to be brought before him and proceed to hear and try the question of whether or not he is an inebriate within the definition of the preceding section. If two reputable physicians shall certify before him that such person is an inebriate, he may commit such an inebriate as herein provided to the Department of the State Hospital at Raleigh provided for the care and treatment of such inebriate. (Id. § 2304(b).)

166d. Commitment for Treatment; Discharge.—If after such hearing the clerk is satisfied that the alleged inebriate is a proper subject for restraint, care, and treatment, he shall commit the inebriate to the department for inebriates at the State Hospital in Raleigh, where he shall be treated, subject to the same rules and regulations as provided for the treatment and cure of curable insane persons, and he shall be discharged therefrom under the same rules and regulations. (Id. § 2304(c).)

166e. Inquiry as to Estate of Inebriate—Minors—Costs—Expenses.—After the clerk shall determine that an inebriate is a fit subject to be committed to the department for inebriates as aforesaid, he shall go further and inquire as to whether said inebriate is indigent or not in such way that he has not in his own right sufficient estate or property to bear the cost and expense of his restraint, care, and treatment while in the institution. If he is so indigent, then he shall inquire further whether or not the petitioning wife or husband has sufficient estate to pay such costs. If the inebriate is a minor he shall determine whether his particular guardian or parent has sufficient estate of the inebriate or his own, if a parent, to pay such costs. In any of these instances, if sufficient estate or property is found to pay such costs, the clerk shall adjudge the payment from such estate, and in all cases, if the petitioning parent has property sufficient to pay, he shall be adjudged adjudged to pay costs of the treatment of his minor child. But if in none of these cases sufficient property is found to pay such costs and expenses, the inebriate shall be declared indigent and the actual cost and expense of restraint, care, and treatment of indigent inebriates as herein defined shall be borne and paid by the county from which the inebriate is committed: Provided, that there shall not be included in such cost and expense any charge except for board and clothing. (Id. § 2304(d).)

166f. Inebriate Submitting Himself for Treatment.—Any inebriate within the definition of section 2304(a) who wishes to submit himself for care and treatment in the department for inebriates at the State Hospital in Raleigh, may be received therein as a patient upon his presentation of himself personally at the institution and making arrangements with the superintendent for the actual cost of his detention and treatment. He shall signify his desires in writing, and promise therein to submit himself to the rules and regulations for the government of the institution. When this is done he shall be detained therein and given adequate care and attention. After he has been so detained for thirty days he may secure his release and discharge by ten days notice in writing to the superintendent, or to any one of the assistant physicians in charge of such institution: Provided, said physician or physicians are satisfied that said inebriate has sufficiently recovered to return to his home and not become a menace or charge to society. (Id. § 2304(e).)

166g. Department for Inebriates.—It shall be the duty of trustees and superintendent of the State Hospital at Raleigh to prepare and set apart a department for such inebriates on or before the first day of May, one thousand nine hundred and twenty-two. (Id. § 2304(f).)

167. Certain Patent Cures and Devices; Sale and Advertising Forbidden.—It shall be unlawful for any person, firm, association or corporation in the State, or any agent thereof, to sell or offer for sale any proprietary or patent medicine or remedy purporting to cure cancer, consumption, diabetes, paralysis, Bright's disease or any other disease for which no cure has been found or any mechanical device whose claims for the cure or treatment of disease are false or fraudulent; and that it shall be unlawful for any person, firm, association or corporation in the State, or any agent thereof, to publish in any manner, or by any means, or cause to be published, circulated, or in any way placed before the public any advertisement in a newspaper or other publication or in the form of books, pamphlets, handbills, circulars, either printed or written, or by any drawing, map, print, tag, or by any other means whatsoever, any advertisement of any kind or description offering for sale or commending to the public any proprietary or patent medicine or remedy purporting to cure cancer, consumption, diabetes, paralysis, Bright's disease or any other disease for which no cure has been found, or any mechanical device for the treatment of disease, when the North Carolina Board of Health shall declare that such device is without value in the treatment of disease.

Any person, firm, association or corporation violating any of the provisions of this section shall be guilty of a misdemeanor, and upon conviction shall be fined not exceeding one hundred dollars for each offense. Each sale, offer for sale, or publication of any advertisement for sale of any of the medicines, remedies or devices mentioned in this section shall constitute a separate offense. (C. S. 1919, § 6684.)

168. Certain Patent Cures and Devices; Enforcement of Law.—To provide for the efficient enforcement of the preceding section, the same shall be under the supervision and management of the North Carolina Board of Pharmacy, and it shall be the duty of all registered pharmacists to report immediately any violations thereof to the secretary of the Board of Pharmacy, and any willful failure to make such report shall have the effect of revoking his license to practice pharmacy in this State. (Id. § 6685.)

169. Department of Agriculture to Analyze Patent Medicines.—The chemists and other experts of the Department of Agriculture shall, under such rules and regulations as may be prescribed by the Board of Pharmacy, and upon request of the secretary of said board, make an analytical examination of all samples of drugs, preparations and compounds sold or offered for sale in violation of the two preceding sections. (Id. § 6686.)

NOTE: See also No. 14. For additional provisions relating to inebriates see C. S. 1919, §§ 2284 et seq., as amended, and 6219; also Laws 1927, Chapter 45.

Serum, Tuberculin, Anti-toxin.

170. Distributing, Selling or Using Hog-Cholera Virus Without Permission.—It shall be unlawful for any person, firm or corporation to distribute, sell or use virulent blood from cholera-infected hogs, or "virus," unless and until written permission has been obtained from the State Veterinarian for such distribution, sale or use. Any person, firm or corporation guilty of violating the provisions of this section, or failing or refusing to comply with the requirements hereof, shall be guilty of a misdemeanor, and upon conviction shall be fined not less than fifty nor more than one hundred dollars for each offense, and may be imprisoned, in the discretion of the court, not less than ten nor more than thirty days. The offender shall also be liable to any person injured on account of such violation to the full amount of all damages and costs. (C. S. 1919, § 4492.)

171. Price of Serum to be Fixed.—The Department of Agriculture shall fix the price of antihog-cholera serum at such an amount as will cover the cost of production. (Id. § 4878.)

172. Manufacture and Use of Serum and Virus Restricted.—It shall be unlawful for any person, firm or corporation to distribute, sell or use in the State antihog-cholera serum unless said antihog-cholera serum is produced at the serum plant of the State Department of Agriculture, or produced in a plant which is licensed by the United States Department of Agriculture, Bureau of Animal Industry, allowing said plant to do an interstate business.

It shall be unlawful for any person, firm or corporation to distribute, sell or use in the State of North Carolina virulent blood from hog-cholera-infected hogs,

or virus, unless said virulent blood, or virus, is produced at the serum plant of the State Department of Agriculture or produced in a plant which is licensed by the United States Department of Agriculture, Bureau of Animal Industry, allowing said plant to do an interstate business. No virulent blood from hog-cholera-infected hogs, or virus, shall be distributed, sold or used in the State unless and until permission has been given in writing by the State Veterinarian for such distribution, sale or use. Said permission to be canceled by the State Veterinarian when necessary.

Any person, firm or corporation guilty of violating the provisions of this section or failing or refusing to comply with the requirements thereof shall be guilty of a misdemeanor. (Id. § 4879.)

173. Provision for Serum Plant.—The North Carolina State Board of Agriculture shall have the use and control of the whole of the tract of land owned by the State, which land was purchased from W. A. Myatt and wife and conveyed by them to the State, May third, one thousand eight hundred and eighty-nine, and contains seventy-eight acres, more or less, adjoining the city farm of the city of Raleigh. The Board of Agriculture shall use said land for the raising, feeding and caring of hogs, the manufacturer of hog cholera serum, and for conducting experiments in hog production and other live stock, or crop work, as it may find desirable. The hog cholera serum so manufactured is to be distributed by the State Veterinarian at cost to the people of the State applying for the same. To this end the said Board of Agriculture is authorized to erect and equip all such buildings and appliances as may be necessary for the purposes for which it is to use said land. (C. S. Supp. 1924, § 4880.)

174. Counties Authorized to Purchase and Supply Serum.—If the county commissioners of any county in the State deem it necessary to use antihog-cholera serum to control or eradicate the disease known as hog cholera, they are authorized within their discretion to purchase from the State Department of Agriculture sufficient antihog-cholera serum and virus for use in their county and supply same free of cost to the residents of the county, or pay for any portion of the cost of said serum, the remaining portion to be paid by the owners of the hogs.

The use of antihog-cholera serum and virus and the quarantine of diseased animals shall remain under the supervision of the State Veterinarian.

Nothing in this section shall in any way interfere with existing laws and regulations covering the use of antihog-cholera serum and virus and the quarantine and control of contagious diseases, or any laws or regulations that may become necessary in the future. (C. S. 1919, § 4881.)

175. Sale of Tuberculin.—No person, firm, or corporation shall sell or distribute or administer tuberculin, or keep the same on hand for sale, distribution, or administration, except qualified veterinarians licensed physicians, or licensed druggists, or others lawfully engaged in the sale of biological products. (C. S. Supp. 1924, § 4895(f).)

176. Violation of Law a Misdemeanor.—Any person or persons who shall violate any provision set forth in this law, or any rule or regulation duly established by the State Board of Agriculture or any officer or inspector who shall willfully fail to comply with any provisions of this law, shall be guilty of a misdemeanor. (Id. § 4895(n).)

176a. Anti-toxin Furnished to Indigents.—The State Board of Health is hereby authorized and directed to arrange for a sufficient supply of diphtheria anti-toxin for the treatment therewith, free of charge, of indigent persons sick of diphtheria, and for immunizing against infection such indigent persons as may be exposed to the disease, and to extend the facilities for making the diagnosis of the disease. (C. S. 1919, § 7165.)

176b. Laboratory of Hygiene to Furnish Anti-toxin to Counties.—The Board of Health shall keep on hand in the State Laboratory of Hygiene a supply of reliable diphtheria anti-toxin, and shall distribute it, through the said laboratory, to the several counties of the State, whenever the boards of county commissioners thereof shall request it, and shall notify the secretary of the State Board of Health that they will pay for the same upon presentation of a bill, and shall designate the person or persons with whom it shall be deposited. The anti-toxin shall be furnished at the lowest figure obtainable for a reliable preparation. (Id. § 7166.)

176c. Physician's Requisitions for Anti-toxin.—Whenever a physician is called to a case of diphtheria in an indigent person or one in immediate need and unable to pay for anti-toxin, he may obtain the same from one of the depositories or diphtheria stations by filling out and signing in duplicate the blank requisition form to be supplied with the anti-toxin by the said Board of Health, and presenting

the same to the county superintendent of health or any member of the county sanitary committee, or to such person as the said county sanitary committee may appoint, who, after satisfying himself as to the indigency of the person or persons for whom the anti-toxin is intended, shall approve and countersign in duplicate the requisition. The person dispensing the anti-toxin shall retain one copy of the requisition and shall mail the duplicate promptly to the Director of the Laboratory of Hygiene. He shall also return to the said director all packages of anti-toxin in his possession as soon as they become out of date. (Id. § 7167.)

176d. Article Applicable to Cities and Towns.—The provisions of this article shall apply to cities and towns upon the same conditions as it does to counties. (Id. § 7168.)

NOTE: See also No. 71m.

Stock and Poultry Remedies.

177. Application and Affidavit for Registration.—Before any condimental, patented, proprietary or trade-marked "stock or poultry tonic," "stock or poultry regulator," "stock or poultry conditioner," or any similar preparation, regardless of the specific name or title under which it is sold, which is represented as containing "tonic," "remedial," or other "medicinal" properties, either is sold, offered or exposed for sale in the State, the manufacturer, importer, dealer, agent or person who causes it to be sold or offered for sale, by sample or otherwise, within this State shall file with the Commissioner of Agriculture a statement that he desires to offer such "stock or poultry tonic," "stock or poultry regulator," "stock or poultry conditioner," or similar preparation for sale in this State, and also a certificate, the execution of which shall be sworn to before a notary public or other proper official, for registration, stating the name of the manufacturer, the location of the principal office of the manufacturer, and the name, brand, or trade-mark under which the said preparation or preparations will be sold, together with the guaranty that said preparation or preparations are not injurious to the health of domestic animals and that they do not conflict with the drug requirements of article 7 of this chapter, Pure Foods and Drugs,* and that the name or trade-mark under which the article is sold shall not mislead or deceive the purchaser in any way; also, that any statement, design, or device on the label or package regarding the substances contained therein shall be true and correct, and any claim made for the feeding, condimental, tonic, or medicinal value shall not be false or misleading in any particular, and file with the Commissioner of Agriculture a labeled package of each brand of goods, showing claims made for same, which labeling and claims shall not be changed during the fiscal year for which registration is made without the consent of the Commissioner of Agriculture. (C. S. 1919, § 4742.)

178. Registration Fee.—For the expense incurred in registering, inspecting and analyzing "stock or poultry tonics," "stock or poultry regulators," "stock or poultry conditioners," and similar preparations defined in the last section, a registration fee of twenty dollars for each separate brand shall be paid by the manufacturers or sellers of same to the Commissioner of Agriculture during the month of July, one thousand nine hundred and nine, and during the month of January in each succeeding year, said fees to be used by the Commissioner of Agriculture for executing the provisions of this article. (Id. § 4743.)

179. Sale of Unregistered Tonics a Misdemeanor.—Any person, company, corporation, or agent that shall offer for sale or expose for sale any package or sample or any quantity of any condimental, patented, proprietary, or trade-marked "stock or poultry tonic," "stock or poultry regulator," "stock or poultry conditioner," or any similar preparation, regardless of the title under which it is sold, which has not been registered as required by section 4742, or which may have been registered, but subsequently found by an analysis or examination made by or under the direction of the Commissioner of Agriculture to violate any of the provisions of this article, shall be deemed guilty of a misdemeanor, and on conviction thereof shall be fined in the sum of fifty dollars for the first offense and in the sum of one hundred dollars for each subsequent offense. (Id. § 4744.)

180. Notice of Violation Charged; Hearing Before Commissioner.—Whenever the Commissioner of Agriculture becomes cognizant of any violation of any of the provisions of this article he shall immediately notify, in writing, the manufacturer, importer, jobber, or dealer, if same be known. Any party so notified shall be given an opportunity to be heard, under such rules and regulations as may be prescribed by the commissioner and the Board of Agriculture. (Id. § 4745.)

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*See No. 1 et seq.

181. Commissioner to Notify Solicitor and Furnish Analysis.—If it appears that any of the provisions of this article have been violated the Commissioner of Agriculture shall certify the facts to the solicitor in the district in which said sample was obtained, and furnish that officer with a copy of the result of the analysis or other examinations of said article, duly authenticated by the analyst or other officer making such examination under the oath of such officer. (Id. § 4746.)

182. Solicitor to Prosecute Violations.—It shall be the duty of every solicitor to whom the Commissioner of Agriculture shall report any violation of this article to cause proceedings to be commenced and prosecuted without delay for the fines and penalties in such cases prescribed. (Id. § 4747.)

183. Certificate of Analyst as Evidence.—In all prosecutions arising under this article the certificate of the analyst or other officer making the analysis or examination, when duly sworn to by such officer, shall be prima facie evidence of the fact or facts therein certified. (Id. § 4748.)

184. Purpose of Article.—This article does not repeal any part of any concentrated commercial feeding stuff law which may be in effect in this State, but is designed to fully cover all preparations commonly known as condimental, patented, proprietary, or trade-marked "stock or poultry tonics," "stock or poultry regulators," "stock or poultry conditioners," and all similar preparations used for "tonic," "regulative," or "condition" purposes, and to protect the public from deception and fraud in the sale of these specific products. (Id. § 4749.)

Venereal Disease Drugs.

185. Treatment Except by Physician Unlawful.—It shall be unlawful for any person except a regularly licensed physician to prescribe or give away any medicine for the treatment of any person afflicted with venereal disease. (C. S. 1919, § 7199.)

186. Patented and Proprietary Remedies; Druggists to Report Sales of.—Any druggist or other person who sells at retail any patented, proprietary, or trademark remedy or alleged remedy advertised or recommended or sold for or used in the treatment of venereal diseases (gonorrhœa, syphilis, or chancroid) or lost manhood, impotency, or sterility, or medicinal preparations containing the oils of cubebs, copaiba, sandalwood, or the oils themselves, iodides of mercury, or preparations compounded for urethral injections, shall report weekly on forms and in accordance with instructions supplied by the North Carolina State Board of Health the sale of such remedies or alleged remedies to the bureau of venereal diseases of the North Carolina State Board of Health. (Id. § 7200.)

187. Obtaining Prescription or Remedy Under False Name a Misdemeanor.—Any person who, in obtaining a prescription from a physician under section 7199, or in obtaining drugs or remedies mentioned in section 7200, gives a false or assumed name or address, shall be guilty of a misdemeanor and subject to the penalties imposed in section 7206. (Id. § 7201.)

188. Quarantine Officer May Appoint Physicians as Agents to Issue Prescriptions.—For the convenience of the public, a quarantine officer, either municipal or county, shall appoint, on the official request of the North Carolina State Board of Health, from the regularly registered physicians of the county one or more agents to issue prescriptions for drugs or remedies, necessary for treatment of such diseases. (Id. § 7202.)

189. Fees of Quarantine Officer and Agents.—A quarantine officer or agent of a quarantine officer who issues a prescription for any such drug, remedy, or alleged remedy, and who instructs a person infected with venereal disease as required by the State laws and reports by number but without identification as now prescribed for reports by physicians for such diseases to the North Carolina State Board of Health, shall be entitled to a fee of fifty cents, twenty-five cents of which shall be paid by the Bureau of Venereal Diseases of the North Carolina State Board of Health, and twenty-five cents of which shall be paid by the county commissioners of the county in which the quarantine officer has jurisdiction, on a certification of the Bureau of Venereal Diseases of the North Carolina State Board of Health of the number of prescriptions issued by the quarantine officer or the quarantine officer's agent; provided, that the municipal authorities shall pay the above amount for prescriptions issued by a municipal quarantine officer or his agent. No quarantine officer shall be entitled to any pay from either county or city for issuing prescriptions to persons who pay the quarantine officer in part or in full for the issuance of prescriptions. Several prescriptions issued on a single visit of the infected person to the quarantine officer shall entitle the said officer to not more than the fee for a single prescription. (Id. § 7203.)

190. Druggists to Keep Record of Prescriptions; Subject to Inspection.—Any and all prescriptions for venereal diseases (gonorrhœa, syphilis, or chancroid), or impotency, sterility, or lost manhood, or prescriptions containing the drugs, remedies or alleged remedies mentioned in section 7200, shall be kept by a druggist on a separate file, and shall be subject at any reasonable hour to inspection by an officer of the North Carolina State Board of Health. (Id. § 7204.)

191. Purchaser of Remedies May be Examined.—The State Health Officer or his deputy or agent may require any purchaser of remedies or alleged remedies designated in section 7200, and who may be reasonably supposed to be infected with a venereal disease, to appear before a regularly licensed physician, quarantine officer or agent, for an examination for such disease. (Id. § 7205.)

192. Violation of this Article a Misdemeanor.—Any person violating any of the provisions of this part of this article shall be guilty of a misdemeanor and shall be fined not less than ten dollars nor more than fifty dollars, or imprisoned for not exceeding thirty days. (Id. § 7206.)

Wood Alcohol.

See No. 10.

Intoxicating Liquors.

193. Definitions—When Used in This Article.—(1) The word "liquor" or the phrase "intoxicating liquor" shall be construed to include alcohol, brandy, whiskey, rum, gin, beer, ale, porter and wine, and in addition thereto any spirituous, vinous, malt or fermented liquors, liquids and compounds, whether medicated, proprietary, patented or not, and by whatever name called, containing one-half of one per centum or more of alcohol by volume, which are fit for use for beverage purposes. Provided, that the foregoing definition shall not extend to dealcoholized wine nor to any beverage or liquid produced by the process by which beer, ale, porter or wine is produced, if it contains less than one-half of one per cent of alcohol by volume, and is otherwise denominated than as beer, ale or porter, and is contained and sold in, or from, sealed and labeled bottles, casks or containers, and is made in accordance with the regulations set forth in title II of "The Volstead Act," an act of Congress enacted October twenty-eighth, one thousand nine hundred and nineteen, and an act supplemental to the National Prohibition Act, "H. R. 7294," an act of Congress approved November twenty-third, one thousand nine hundred and twenty-one.

(2) The word "person" shall mean and include natural persons, associations, copartnerships and corporations. (C. S. Supp. 1924, § 3411(a).)

194. Manufacture, Sale, Etc., Forbidden—Construction of Law—Non-beverage Liquor.—No person shall manufacture, sell, barter, transport, import, export, deliver, furnish, purchase or possess any intoxicating liquor except as authorized in this article and all the provisions of this article shall be liberally construed to the end that the use of intoxicating liquor as a beverage may be prevented. Liquor for nonbeverage purposes and wine for sacramental purposes may be manufactured, purchased, sold, bartered, transported, imported, exported, delivered, furnished and possessed, but only as provided by title II of "The Volstead Act," [an] act of Congress enacted October twenty-eighth, one thousand nine hundred and nineteen, [and] an act supplemental to the National Prohibition Act, "H. R. 7294," an act of Congress approved November twenty-third, one thousand nine hundred and twenty-one. (Id. § 3411(b).)

195. Advertisements, Signs and Billboards.—It shall be unlawful to advertise, anywhere or by any means or method, liquor, or the manufacture, sale, keeping for sale or furnishing of the means, or where, how, from whom, or at what price the same may be obtained. No one shall permit any sign or billboard containing such advertisement to remain upon one's premises. (Id. § 3411(c).)

196. Advertising, Etc., of Utensils, Etc., for Use in Manufacturing Liquor.—It shall be unlawful to advertise, manufacture, sell or possess for sale any utensils, contrivance, machine, preparation, compound, tablet, substance, formula, direction or receipt advertised, designed or intended for use in the unlawful manufacture of intoxicating liquor. It shall be unlawful to have or possess any liquor or property designated for the manufacture of liquor intended for use in violating this article, or which has been so used, and no property rights shall exist in any such liquor or property. (Id. § 3411(d).)

197. Soliciting Orders for Liquor.—No person shall solicit or receive, nor knowingly permit his employee to solicit or receive, from any person any order

for liquor or give any information of how liquor may be obtained in violation of this article. (Id. § 3411(e).)

198. Witnesses—Self-Crimination; Immunity.—No person shall be excused, on the ground that it may tend to incriminate him or subject him to a penalty or forfeiture, from attending and testifying, or producing books, papers, documents and other evidence in obedience to a subpœna of any court in any suit or proceeding based upon or growing out of any alleged violation of this article; but no natural person shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing as to which, in obedience to a subpœna and under oath, he may so testify or produce evidence; but no person shall be exempt from prosecution and punishment for perjury committed in so testifying. (Id. § 3411(g).)

199. Place of Sale and Delivery—Place of Prosecution.—In case of a sale of liquor where the delivery thereof was made by a common or other carrier, the sale and delivery shall be deemed to be made in the county wherein the delivery was made by such carrier or the consignee, his agent or employee, or in the county wherein the sale was made, or from which the shipment was made, and prosecution for such sale or delivery may be had in either county. (Id. § 3411(h).)

200. Possession Prima Facie Evidence of Keeping for Sale.—The possession of liquor by any person not legally permitted under this article to possess liquor shall be prima facie evidence that such liquor is kept for the purpose of being sold, bartered, exchanged, given away, furnished or otherwise disposed of in violation of the provisions of this article. But it shall not be unlawful to possess liquor in one's private dwelling while the same is occupied and used by him as his dwelling only, provided such liquor is for use only for the personal consumption of the owner thereof, and his family residing in such dwelling, and of his bona fide guests when entertained by him therein. (Id. § 3411(j).)

201. Records of Transportation Companies—Evidence.—All express companies, railroad companies or other transportation companies doing business in this State are required hereby to keep a separate book in which shall be entered immediately upon receipt thereof the name of the person to whom liquor is shipped, the amount and kind received, and the date when received, the date when delivered, by whom delivered, and to whom delivered, after which record shall be a blank space, in which the consignee shall be required to sign his name, or, if he cannot write, shall make his mark in the presence of a witness, before such liquor is delivered to such consignee, and which book shall be open for inspection to any officer or citizen of the State, county or municipality any time during business hours of the company, and such book shall constitute prima facie evidence of the facts therein and will be admissible in any of the courts of this State. Any express company, railroad company or other transportation company, or any employee or agent of any express company, railroad company, or other transportation company violating the provisions of this section shall be guilty of a misdemeanor. (Id. § 3411 (o).)

202. Sale by Druggists or Pharmacists.—It is unlawful for any druggist or pharmacist to sell or otherwise dispose of for gain, any intoxicating liquor. (Id. § 3411 (r).)

203. Grain Alcohol for Use in Medicine or Surgery—Manufacture or Sale of Cider.—The provisions of this article shall not apply to grain alcohol, received by duly licensed physicians, druggists, dental surgeons, college, university, and State laboratories, and manufacturers of medicine, when intended to be used in compounding, mixing, or preserving medicines or medical preparations, or for surgical purposes, when obtained as hereinbefore provided; provided however, that nothing contained in this article shall prohibit the importation into the State of North Carolina and the delivery and possession in the State for use in industry, manufactures, and arts of any denatured alcohol or other denatured spirits which are compounded and made in accordance with the formulæ prescribed by acts of Congress of the United States and regulations made under authority thereof by the Treasury Department of the United States and the commissioner of internal revenue thereof, and which are not now subject to internal revenue tax levied by the government of the United States; provided, further, that this article shall not apply to wines and liquors required and used by hospitals or sanatoriums bona fide established and maintained for the treatment of patients addicted to the use of liquors, morphine, opium, cocaine, or other deleterious drugs, when the same are administered to patients actually in such hospitals or sanatoriums for treatment, and when the same are administered as an essential part of the particular system or method of treatment and exclusively by or under the direction of a duly licensed and registered physician of good moral

character and standing; provided, further, that this article shall not prohibit the manufacture or sale of cider or vinegar. (Id. § 3411(s).)

204. **Distilling or Manufacturing Liquor—First Offense Misdemeanor.**—It is unlawful for any person to distill, manufacture, or in any manner make, or for any person to aid, assist, or abet any such person in distilling, manufacturing, or in any manner making any spirituous or malt liquors or intoxicating bitters within the State of North Carolina. Any person or persons violating the provisions of this section shall, for the first conviction, be guilty of a misdemeanor and, upon conviction or confession of guilt, punished in the discretion of the court; for the second or any subsequent conviction, said person or persons shall be guilty of a felony, and upon conviction or confession in open court shall be imprisoned in the State Prison for not less than four months and not exceeding five years, in the discretion of the court. (Id. § 3411(z).)

205. **Misdemeanor—Punishment—Effect of Previous Punishment by Federal Court.**—Any person violating any of the provisions of this article except as otherwise specified in this article shall be guilty of a misdemeanor, and upon conviction shall be fined or imprisoned, or both, in the discretion of the court; provided, that no person shall be punished who has been previously punished for the same offense by a Federal court. (Id. § 3411 (aa).)

206. **Sale of Jamaica Ginger.**—It shall be unlawful for any person, firm, or corporation to sell the compound known as Jamaica ginger except upon the prescription of a duly licensed and regular practicing physician; the person, firm, or corporation selling Jamaica ginger upon prescription shall keep a list of said prescriptions, and shall allow said list to be examined by any officer of the law, and no prescription shall ever be filled but once; it shall be unlawful for any physician to give a prescription for Jamaica ginger except to a person directly under his care, and then only in good faith for medicinal purposes only. (C. S. 1919, § 4507.)

NOTE: For prior acts relating to intoxicating liquors, see C. S. 1919, §§ 3367 to 3393, and 3397 to 3411, as amended.

PART IV.

Miscellaneous Laws.

False Advertising.

207. **Fraudulent and Deceptive Advertising.**—It shall be unlawful for any person, firm, corporation or association, with intent to sell or in anywise to dispose of merchandise, securities, service, or any other thing offered by such person, firm, corporation or association, directly or indirectly, to the public for sale or distribution or with intent to increase the consumption thereof, or to induce the public in any manner to enter into any obligation relating thereto, or to acquire title thereto, or an interest therein, to make public,* disseminate, circulate or place before the public or cause directly or indirectly to be made, published, disseminated, circulated or placed before the public in this State, in a newspaper or other publication, or in the form of a book, notice, handbill, poster, bill, circular, pamphlet or letter, or in any other way, an advertisement of any sort regarding merchandise, securities, service or any other thing so offered to the public, which advertisement contains any assertion, representation or statement of fact which is untrue, deceptive or misleading. Provided, that such advertising shall be done willfully and with intent to mislead. Any person who shall violate the provisions of this section shall be guilty of a misdemeanor, and upon conviction shall be fined not exceeding fifty dollars or imprisoned not exceeding thirty days. (C. S. 1919, § 4290.)

Flag Desecration.

208. **Desecration of State and National Flag.**—Any person who in any manner, for exhibition or display, shall place or cause to be placed any word, figure, mark, picture, design, drawing or any advertisement of any nature upon any flag, standard, color or ensign of the United States or State flag or ensign of this State, or shall expose or cause to be exposed to public view any such flag,

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* So in the law. Probably should read "make, publish."

standard, color or ensign upon which shall have been printed, painted or otherwise placed, or to which shall be attached, appended, affixed or annexed, any word, figure, mark, picture, design or drawing or any advertisement of any nature, or who shall expose to public view, manufacture, sell, expose for sale, give away or have in possession for sale or to give away, or for use for any purpose, any article or substance of merchandise, or a receptacle of merchandise or article or thing for carrying or transporting merchandise, upon which shall have been printed, painted, attached or otherwise placed a representation of any such flag, standard, color or ensign, to advertise, call attention to, decorate, mark or distinguish the article or substance upon which it is so placed, or who shall publicly mutilate, deface, defile or defy, trample upon or cast contempt, either by words or act, upon any such flag, standard, color or ensign, shall be deemed guilty of a misdemeanor and shall be punished by a fine not exceeding fifty dollars or by imprisonment for not more than thirty days. Any person violating this section shall also forfeit a penalty of fifty dollars for each offense, to be recovered with costs in a civil action or suit in any court having jurisdiction. Such action or suit may be brought by and in the name of any citizen of this State, and such penalty, when collected, less the costs and expenses of the action or suit, shall be paid one-half to the person suing and one-half to the school fund of the county in which suit was brought; and two or more penalties may be sued for and recovered in the same action or suit.

The words flag, standard, color or ensign, as used in this section, shall include any flag, standard, color, ensign or any picture or representation of any of them, made of any substance or represented on any substance, and of any size, evidently purporting to be a flag, standard, color or ensign of the United States of America, or a picture or a representation of any of them, upon which shall be shown the colors, the stars and the stripes, in any number of either thereof, or by which the person seeing the same, without deliberation, may believe it to represent the flag, colors, standard or ensign of the United States of America.

The possession by any person other than a public officer, as such, of a flag, standard, color, ensign, article, substance or thing on which there is anything made unlawful by this section shall be presumptive evidence that the same is in violation of this section. (C. S. 1919, § 4500; L. 1923, c. 136, § 372.)

Matches.

208a. Requirements for Matches Permitted to be Sold.—No person, association, or corporation shall manufacture, store, offer for sale, sell or otherwise dispose of or distribute white phosphorus, single-dipped, strike-anywhere matches of the type popularly known as "parlor matches"; nor manufacture, store, sell, offer for sale, or otherwise dispose of, or distribute, white phosphorus, double-dipped, strike-anywhere matches or any other type of double-dipped matches, unless the bulb or first dip of such match is composed of a so-called safety or inert composition, non-ignitable on an abrasive surface; nor manufacture, store, sell, or offer for sale, or otherwise dispose of or distribute matches which when packed in a carton of five hundred approximate capacity and placed in an oven maintained at a constant temperature of two hundred degrees F., will ignite in eight hours; nor manufacture, store, offer for sale, sell or otherwise dispose of, or distribute, blazer, or so-called wind matches, whether of the so-called safety or strike-anywhere type. (C. S. 1919, § 5113.)

208b. Packages to be Marked.—No person, association, or corporation shall offer for sale, sell or otherwise dispose of, or distribute, any matches, unless the package or container in which such matches are packed bears, plainly marked on the outside thereof, the name of the manufacturer and the brand or trade-mark under which the matches were sold, disposed of, or distributed. (Id. § 5114.)

208c. Storage and Packing Regulated.—No more than one case of each brand of matches of any type or manufacture shall be opened at any one time in the retail store where matches are sold or otherwise disposed of; nor shall loose boxes or paper-wrapped packages of matches be kept on shelves or stored in such retail stores at a height exceeding five feet from the floor; and all matches when stored in warehouses must be kept only in properly secured cases, and not piled to a height exceeding ten feet from the floor; nor be stored within a horizontal distance of ten feet from any boiler, furnace, stove, or other like heating apparatus; nor within a horizontal distance of twenty-five feet from any explosive material kept or stored on the same floor. All matches shall be packed in boxes or suitable packages, containing not more than seven hundred matches in any one box or pack-

age: Provided, however, that when more than three hundred matches are packed in any one box or package the said matches shall be arranged in two nearly equal portions, the heads of the matches in the two portions shall be placed in opposite directions, and all boxes containing three hundred and fifty or more matches shall have placed over the matches a center-holding or protecting strip, made of chip board, not less than one and one-quarter inches wide; said strip shall be flanged down to hold the matches in position when the box is nested into the shuck or withdrawn from it. (Id. § 5115.)

208d. **Shipping Containers Regulated.**—All match boxes or packages shall be packed in strong, shipping containers or cases; maximum number of match boxes or packages contained in any one shipping container or case shall not exceed the following number:

No. of Boxes.	*Nominal No. of Matches Per Box.*
½ gross	700
1 gross	500
2 gross	400
3 gross	300
5 gross	200
12 gross	100
20 gross over 50 and under	100
25 gross under	50

No shipping container or case constructed of fiber board, corrugated fiber board, or wood, nailed or wirebound, shall exceed a weight including its contents, of seventy-five pounds; and no lock-cornered wooden case containing matches shall have a weight, including its contents, exceeding eighty-five pounds; nor shall any other article or commodity be packed with matches in any such container or case; and all such containers and cases in which matches are packed shall have plainly marked on the outside of the container or cases the words "Strike-anywhere Matches" or "Strike-on-the-Box-Matches." (Id. § 5116.)

208e. **Violation of Article a Misdemeanor.**—Any person, association or corporation violating any of the provisions of this article shall be fined for the first offense not less than five dollars nor more than twenty-five dollars, and for each subsequent violation not less than twenty-five dollars. (Id. § 5117.)

Tobacco—Tobacco Products.

209. **Selling Cigarettes to Minors.**—If any person shall sell, give away or otherwise dispose of, directly or indirectly, cigarettes or tobacco in the form of cigarettes, or cut tobacco in any form or shape which may be used or intended to be used as a substitute for cigarettes, to any minor under the age of seventeen years; or if any person shall aid, assist or abet any other person in selling such articles to such minor, he shall be guilty of a misdemeanor, and upon conviction shall be punished by fine or imprisonment in the discretion of the court. (C. S. 1919, § 4438.)

210. **Aiding Minors in Procuring Cigarettes; Duty of Police Officers.**—If any person shall aid or assist any minor child under seventeen years old in obtaining the possession of cigarettes or tobacco in any form used as a substitute therefor, by whatsoever name it may be called, he shall be guilty of a misdemeanor and upon conviction shall be fined or imprisoned in the discretion of the court.

It shall be the duty of every police officer, upon knowledge or information that any minor under the age of seventeen years is or has been smoking any cigarette, to inquire of any such minor the name of the person who sold or gave him such cigarette, or the substance from which it was made, or who aided and abetted in effecting such gift or sale. Upon receiving this information from any such minor the officer shall forthwith cause a warrant to be issued for the person giving or selling, or aiding and abetting in the giving or selling of such cigarette or the substance out of which it was made, and have such person dealt with as the law directs. Any such minor who shall fail or refuse to give to any officer, upon inquiry, the name of the person selling or giving him such cigarette, or the substance out of which it was made, shall be guilty of a misdemeanor. (Id. § 4439.)

210a. **Accounts of Warehouse Sales Required.**—On and after the first day of August, one thousand nine hundred and seven, the proprietor of each and every

leaf tobacco warehouse doing business in this State shall keep a correct account of the number of pounds of leaf tobacco sold upon the floor of his warehouse daily. (Id. § 4926.)

210b. Monthly Reports to Commissioner; Results Classified.—On or before the tenth day of each succeeding month the said warehouse proprietors shall make a statement, under oath, of all the tobacco so sold upon the floor of his warehouse during the past month and shall transmit the said statement, at once, to the Commissioner of Agriculture at Raleigh, North Carolina. The report so made to the Commissioner of Agriculture shall be so arranged and classified as to show the number of pounds of tobacco sold for the producers of tobacco from first hand; the number of pounds sold for dealers; and the number of pounds resold by the proprietor of the warehouse for his own account or for the account of some other warehouse. (C. S. Supp. 1924, § 4927.)

210c. Commissioner to Keep Record and Publish in Bulletin.—The Commissioner of Agriculture shall cause said statement to be accurately copied into a book to be kept for this purpose, and shall keep separate and apart the statements returned to him from each leaf tobacco market in the State, so as to show the number of pounds of tobacco sold by each market for the sale of leaf tobacco; the number of pounds sold by producers, and the number of pounds resold upon each market. The Commissioner of Agriculture shall keep said books open to the inspection of the public, and shall, on or before the fifteenth day of each month, after the receipt of the reports above required to be made to him on or before the tenth day of each month, cause the said reports to be published in the bulletin issued by the agricultural department and in one or more journals published in the interest of the growth, sale, and manufacture of tobacco in the State, or having a large circulation therein. (Id. § 4928.)

210d. Penalty for Failure to Report Sales.—Any warehouse failing to make the report as required by section 4927 shall be subject to a penalty of twenty-five dollars and the costs in the case, to be recovered by any person suing for same in any court of a justice of the peace; and the magistrate in whose court the matter is adjudicated shall include in the cost of each case where the penalty is allowed one dollar, to be paid to the Department of Agriculture for expense of advertising. (C. S. 1919, § 4929.)

210e. Commissioner to Publish Failure; Certificate as Evidence.—The Commissioner shall, on the 14th day of each month, publish in some newspaper the names of the tobacco warehouses that have failed to comply with this article.

The certificate of the commissioner under seal of the department shall be admissible as evidence the same as if it were deposition taken in form as provided by law. (C. S. Supp. 1924, § 4930.)

210f. Maximum Warehouse Charges.—The charges and expenses of handling and selling leaf tobacco upon the floor of tobacco warehouses shall not exceed the following schedule of prices, viz.: For auction fees, fifteen cents on all piles of one hundred pounds or less, and twenty-five cents on all piles over one hundred pounds; for weighing and handling, ten cents per pile for all piles less than one hundred pounds, for all piles over one hundred pounds at the rate of ten cents per hundred pounds; for commissions on the gross sales of leaf tobacco in said warehouses, not to exceed two and one-half per centum. (C. S. 1919, § 5124.)

210g. Oath of Tobacco Weigher.—All leaf tobacco sold upon the floor of any tobacco warehouse shall first be weighed by some reliable person, who shall have first sworn and subscribed to the following oath, to wit: "I do solemnly swear (or affirm) that I will correctly and accurately weigh all tobacco offered for sale at the warehouse of ....., and correctly test and keep accurate the scales upon which the tobacco so offered for sale is weighed." Such oath shall be filed in the office of the clerk of the Superior Court of the county in which said warehouse is situated. (Id. § 5125.)

210h. Warehouse Proprietor to Render Bill of Charges; Penalty.—The proprietor of each and every warehouse shall render to each seller of tobacco at his warehouse a bill plainly stating the amount charged for weighing and handling, the amounts charged for auction fees, and the commission charged on such sale, and it shall be unlawful for any other charge or fees to be made or accepted. For each and every violation of the provisions of this article a penalty of ten dollars may be recovered by any one injured thereby. (Id. § 5126.)

Trade-Marks, Etc.

211. Adoption and Filing for Registry.—It shall be lawful for any person to adopt for his protection and file for registry, as in this chapter provided, any

label, trade-mark, term or design that has been used or is intended to be used for the purpose of designating, making known or distinguishing any goods, wares, merchandise or products of labor that have been or may be wholly or partly made, manufactured, produced, prepared, packed or put on sale by any such person, or to or upon which any work or labor has been applied or expended by any such person, or by any member of any corporation that has adopted and filed for registry any such label, trade-mark, term or design as aforesaid, or announcing or indicating that the same have been made in whole or in part by any such person or corporation, or by any member thereof. (C. S. 1919, § 3971.)

212. **Property Rights Protected by Filing for Registry.**—Whenever any person shall adopt and file for registry any label, trade-mark, term or design pursuant to the provisions of this chapter, the property, privileges, rights, remedies and interests in and to any such label, trade-mark, term or design, and in and to the use of same, provided or given by this chapter to, or otherwise conferred upon or enjoyed by, the person filing the same for the registry shall be fully and completely secured, preserved and protected as the property of those entitled to the same before any such label, trade-mark, term or design has been actually applied to any goods, wares, merchandise or product of labor, and put upon the market for sale or otherwise, and before any use or appropriation of any such label, trade-mark, term or design has been made in connection with any such goods, wares, merchandise or product of labor, as well as after the same has been used or applied to designate, make known or distinguish any such goods, wares, merchandise or product of labor and they have been put upon the market. (Id. § 3972.)

213. **Filing to Be With Secretary of State; Contents of Affidavits; Fees.**—Any person who has heretofore adopted and used, or shall hereafter adopt and use any label, trade-mark, term or design, as in this chapter provided, may file the same for registry in the office of the Secretary of State, by leaving two copies, facsimiles or counterparts thereof, with the said secretary, and filing therewith a statement in the form of an affidavit, subscribed and sworn to by any such person, or by any officer, agent or attorney, if a corporation, specifying the person by whom any such label, trade-mark, term or design is filed, and the class or character of the goods, wares, merchandise or products of labor to which the same has been or is intended to be appropriated or applied, and that the person so filing the same has the right to the use of the said label, trade-mark, term or design, and that no other person, firm or corporation has the right to such use, either in the identical form or in any such near resemblance thereto as may be calculated to deceive, without the permission or authority of the person filing the same, and that the copies, facsimiles or counterparts filed therewith are true and correct copies, facsimiles or counterparts of the genuine label, trade-mark, term or design of the person filing the same; and there shall be paid for such registry a fee of one dollar to the Secretary of State for the use of the State, and the same recording fees required by law for recording certificate of organization of corporations. (Id. § 3973.)

214. **Registration; Certified Copies Evidence; Fees.**—The Secretary of State, upon the filing of any such label, trade-mark, term or design that is not in conflict with section 3976, shall register the same, and shall deliver to the person filing the same as many certified copies thereof, with his certificate of such registry, as any such person may request, and for every such copy and certificate there shall be paid to the Secretary of State, for the use of the State, a fee of one dollar; and any such certified copy and certificate shall be admissible in evidence and competent and sufficient proof of the adoption, filing and registry of any such label, trade-mark, term or design, by any such person in any action or judicial proceeding in any of the courts of this State, and of due compliance with the provisions of this chapter. (Id. § 3974.)

215. **Transfer of Trade-Marks.**—The right to use any registered label, trade-mark, term or design shall be granted only by an instrument in writing, duly filed in the office of the Secretary of State. The fees for recording or filing such transfer and issuing copies thereof shall be the same as for filing such label, trade-mark, term or design. (Id. § 3975.)

216. **Similar Trade-marks Refused Registration.**—It shall not be lawful for the Secretary of State to register for any person any label, trade-mark, term or design that is in the identical form of any other label, trade-mark, term or design theretofore filed by any other person, or that bears any such near resemblance thereto as may be calculated to deceive, or that would be liable to be mistaken therefor. (Id. § 3976.)

217. Fraudulent Registration; Penalty.—Any person who shall file or procure the filing and registry of any label, trade-mark, term or design in the office of the Secretary of State under the provisions of this chapter, by making any false or fraudulent representations or declarations, with fraudulent intent, shall be liable to pay any damages sustained in consequence of any such registry, to be recovered by or in behalf of the party injured thereby. (Id. § 3977.)

218. Use of Counterfeit Trade-Marks Unlawful.—Whenever any person has adopted and filed for registry any label, trade-mark, term or design, as provided by law, and the same shall have been registered pursuant to law, it shall be unlawful for any other person to manufacture, use, sell, offer for sale, or in any way utter or circulate any counterfeit or imitation of any such label, trade-mark, term or design, or have in possession, with intent that the same shall be sold or disposed of, any goods, wares, merchandise or product of labor to which or on which any counterfeit or imitation of any such label, trade-mark, term or design is attached, affixed, printed, stamped, impressed or displayed, or to sell or dispose of, or offer to sell or dispose of, or have in possession with intent that the same shall be sold or disposed of, any goods, wares, merchandise or product of labor contained in any box, case, can or package to which or on which any such counterfeit or imitation is attached, affixed, printed, stamped, impressed or displayed. (Id. § 3978.)

219. Unauthorized Use Unlawful; Use Under License.—Whenever any person has adopted and registered any label, trade-mark, term or design, as provided by law, it shall be unlawful for any other person to make any use, sale, offer for sale or display of the genuine label, trade-mark, term or design of any such person filing the same, or to have any such genuine label, trade-mark, term or design in possession with intent that the same shall be used, sold, offered for sale, or displayed, or that the same shall be applied, attached or displayed in any manner whatever to or on any goods, wares or merchandise, or to sell, offer to sell, or dispose of, or have in possession with intent that the same shall be sold or disposed of, any goods, wares or merchandise in any box, case, can or package to or on which any such genuine label, trade-mark, term or design of any such person is attached, affixed or displayed, or to make any use whatever of any such genuine label, trade-mark, term or design, without first obtaining in every such case the license of the person adopting, filing and registering the same; and any such license may be revoked and terminated at any time upon notice, and thereafter any use thereof shall be unlawful. (Id. § 3979.)

220. Remedies; Damages; Profits; Destruction of Counterfeits.—Any person who has registered any label, trade-mark, term or design under the provisions of this chapter shall have a right of action against any person for the unauthorized use of such label, trade-mark, term or design, and the courts shall by appropriate remedies prevent the unauthorized or unlawful use, manufacture or display of any label, trade-mark, term or design, or the imitation or counterfeit thereof, or the sale, disposal or display of any articles of property on which any counterfeit or imitation of any registered label, trade-mark, term or design, or on which any genuine label, trade-mark, term or design may be used or displayed without proper authority; and shall further secure and protect all persons in all rights of property and interest which they may have in any label, trade-mark, term or design registered under this chapter; and the court shall award to the plaintiff any and all damages resulting from any such wrongful use of any such label, the trade-mark, term or design; and any counterfeit or imitation of any labels, trade-marks, terms or designs, and any die, engraving, mould or mechanical device or the manufacture of the same in the possession or under the control of the defendant, shall be delivered up to an officer of the court, to be destroyed, and any such genuine labels, trade-marks, terms or designs in the possession or under the control of any such defendant shall be delivered to the plaintiff. (Id. § 3980.)

221. Concurrent Action for Penalty.—In addition to any other rights, remedies or penalties provided by this chapter, and as concurrent therewith, any person who shall violate any of the provisions of this chapter shall be liable to a penalty of two hundred dollars, to be recovered by any person who has filed any such label, trade-mark, term or design. (Id. § 3981.)

222. Use of Private Marks or Labels to Defraud, Misdemeanor.—If any person shall knowingly and willfully forge or counterfeit, or cause or procure to be forged or counterfeited, the private marks, tokens, stamps or labels of any mechanic, manufacturer or other person, being a resident of the United States, with intent to deceive and defraud the purchasers, mechanics or manufacturers of any goods, wares or merchandise whatsoever, upon conviction thereof he shall be punished by a fine of not less than fifty dollars and not exceeding one thousand

dollars, or by imprisonment of not less than thirty days or more than five years, or both fine and imprisonment, at the discretion of the court. (Id. § 3982.)

223. **Selling Goods with Forged Marks or Labels, Misdemeanor.**—If any person shall vend any goods, wares or merchandise having thereon any forged or counterfeited marks, tokens, stamps or labels purporting to be the marks, tokens, stamps or labels of any person being a resident of the United States, knowing the same at the time of the purchase thereof by him to be forged or counterfeited, he shall be guilty of a misdemeanor and punished by imprisonment in the county jail not exceeding six months, or by a fine not exceeding one hundred dollars, or by both fine and imprisonment, at the discretion of the court. (Id. § 3983.)

224. **Misbranding Sacks to Defraud, Misdemeanor.**—If any person shall knowingly use the mark or brand of any other person on any sack, or shall knowingly impress on any sack the mark or brand of another person, with intent to defraud or for the purpose of enhancing the value of his own property, the person so offending shall be guilty of a misdemeanor, and punished as if convicted of larceny. (Id. § 3984.)

225. **[Mineral Waters and Beverages]—Description of Name, Labels, or Marks Filed and Published.**—Any person, partnership or corporation engaged in manufacturing, bottling, selling or dealing in mineral, soda or aerated waters, beers, lager beer, milk or other beverages in kegs, boxes, trays, crates, bottles, syphons, barrels, casks or other vessels, with his name or other marks or devices printed, impressed or otherwise produced thereon, or upon labels pasted thereon, shall file with the clerk of the superior court of the county in which his principal office or place of business (or in the case of a foreign corporation, its principal office or place of business or agency) is located, a description of the names, marks or devices so used by him, and cause such description to be printed twice a week for two successive weeks in some daily newspaper published in said county, if there be a daily newspaper published therein, and if not, then in some newspaper published in said county once a week for two successive weeks. The description of the names, marks or devices, before being filed as aforesaid, shall be signed by the person filing the same, or in case of a partnership by a partner, or in case of a corporation by one of its officers or managers, and shall be acknowledged by the person signing the same as his act, or as the act of said partnership or corporation, before an officer competent to take acknowledgments of deeds. The publication hereby required need only be a brief description, sufficient for identification, of such names or marks, and need not contain a certified copy of the acknowledgment. The provisions of this article shall apply to all vessels enumerated above upon which said names or marks shall appear as aforesaid, whether or not any of the same shall be in existence at the time of said filing and publication. (Id. § 3994.)

226. **Clerk to Record Description.**—The several clerks of the superior courts mentioned in the preceding section shall record in some book of record in their custody all such descriptions filed with them, and also copies of the said advertisement in the newspaper, certified to by the publishers thereof, and shall furnish copies thereof, duly certified by them in the usual manner, to any person who may apply therefor, and shall receive for the recording of such copies a fee of fifty cents. Such certified copies shall be evidence that the provisions of the preceding section have been complied with, and shall be prima facie evidence of the title of the person, named therein, to the vessels upon which his name, marks, labels or devices appear as described in said description. (Id. § 3995.)

227. **Refilling Vessels and Defacing Marks Forbidden; Punishment.**—After any person has filed and published his description of such names, marks, or devices, in accordance with the preceding provisions of this article, it shall be unlawful for any persons to fill in any way the vessels upon which such names or other marks are printed, impressed or otherwise produced, with any water or beverage enumerated in this article, or to deface, remove or conceal such names or other marks thereon with intent to convert the same to his use, or to have on sale, offer for sale, traffic in, handle in the course of business, transport, or to take or collect from ash or garbage receptacles or from public or private premises, or to keep in stock, store or dispose of or deal or traffic in same, or any parts thereof, without the written consent of the person whose name or other marks are upon such vessels, or to willfully break, destroy or otherwise injure any of the articles mentioned in this section. Any person who shall do any of the acts declared to be unlawful by this section shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished for the first offense by imprisonment of not less than ten days or more than one year, or by a fine of three dollars for each of such kegs, casks or barrels, and one dollar for each of such boxes, trays, crates, bottles, syphons or any

other vessels so unlawfully used; and for the second and subsequent offense by imprisonment for not less than twenty days or more than one year, or by a fine of not less than two dollars or more than five dollars for each vessel unlawfully used, or by both such fine and imprisonment, at the discretion of the court before whom such offense is tried: Provided, this section shall not apply to such vessels as the bottler charges his customers for at the time of sale of the goods. (Id. § 3996.)

227a. Disposal of Fine.—In the event of a fine being imposed by any court for any offense under this article, one-half thereof shall go to the State and one-half to the informer, to be collected as other fines are collected. (Id. § 3997.)

228. Possession of Vessels as Evidence of Offense.—If any person shall be found to be in possession of any of the vessels mentioned above in this article, or any parts thereof, and the persons whose names, marks or devices have been placed thereon, as above provided, have complied with the provisions of this article, and the persons so found in possession thereof shall be charged with any of the offenses mentioned in the preceding section, then such possession shall be prima facie evidence that such person is guilty of the offenses so charged: Provided, this section shall not apply to bottlers who receive such vessels in the course of business and mixed and exchanged in shipment, when such bottler within a reasonable time notifies the owners thereof of the location thereof. (Id. § 3998.)

229. Search Warrants.—If the owner of any vessel mentioned in section 3994 of this article who has complied with the provisions thereof, or the officer, agent or employee of such owner, shall make an affidavit before a justice of the peace asserting that he has reason to believe and does believe that any person is in actual or constructive possession of, or is making use of, any article above mentioned or any part thereof, or in any way declared to be unlawful by section 3996 of this article, the justice may issue his search warrant to any sheriff, constable or other officer of the law to whom such warrant may be directed, and cause the premises designated in the warrant to be searched; and if article above mentioned or any part thereof shall be found upon the premises so designated, the officer executing such search warrant shall thereupon report the same, under his oath, to the justice, who shall thereupon, upon said report and upon the oath of any person or persons charging any violations of section 3996 of this article, issue his warrant for the arrest of the person against whom the charge is made, and cause him, together with such articles, to be brought before him for trial. (Id. § 3999.)

230. Concurrent Jurisdiction of Justices.—The justices of the peace in the counties of this State shall have concurrent jurisdiction with the superior courts of their respective counties in the case of persons arrested for violation of the above provisions of this article, and such justices of the peace shall proceed to hear and determine such cases when the parties arrested are brought before them, in all cases where the punishment fixed in this article is such as to give the justices jurisdiction under the Constitution and laws of this State. And if such person shall be found to be guilty of the violation of any of the provisions of this article, the court trying such person and imposing the punishment herein prescribed shall also award possession to the owner of all the property involved in such violation. (Id. § 4000.)

231. Accepting Deposit Not Deemed Sale.—The requiring, taking or accepting of any deposit for any purpose upon any vessel above enumerated shall not be deemed to constitute a sale of such property, either optional, conditional or otherwise, in any proceedings under this article. (Id. § 4001.)

232. When Refiling Description Not Required.—Any person, partnership, or corporation that has heretofore filed and published a description of his name, marks or devices for the purposes mentioned in section one [3994] of this article, in accordance with the law existing at the time of such filing and publication, shall not be required to again file such description, but shall be entitled to all the benefits of this article as fully as if he had complied with all the provisions thereof. (Id. § 4002.)

233. Application of the Article.—The provisions of this article do not apply to any person using the vessels enumerated above for the beverages placed therein by the owners, or who after consumption of the contents is in possession of the same, while awaiting the return to the owners, nor shall the provisions of this article apply to any garbage man collecting the same in the regular course of his business. Provided, this article shall not apply to beer and mineral water bottles shipped into this State from other States. (Id. § 4003.)

Trading Stamps.

234. Trading Stamps.—An annual license tax for the State upon the business of issuing, selling or delivering trading stamps or checks, receipts, certificates, tokens or other similar devices to persons engaged in trade or business, with the understanding or agreement, expressed or implied, that the same shall be presented or given by the latter to their patrons as a discount, bonus, or premium or as an inducement to secure trade or patronage, and that the corporation, firm, or association, or person selling or delivering the same will give to the persons presenting or possessing the same, money or other thing of value, or any concession or preference in any way on account of the possession or presentation thereof, is hereby assessed against and imposed upon each corporation, firm, association or person engaged in such business, of two hundred dollars ($200); that nothing in this act shall be construed to apply to a manufacturer or to a merchant who sells the goods of such manufacturer from offering to present to the purchaser or customer a gift of certain value as an inducement to purchase such goods. Provided, that no county, city or town shall charge more than one hundred dollars ($100). (L. 1927, c. 80, § 156.)

234a. Persons Offering Gifts as an Inducement to Purchase.—On any person or establishment offering any article for sale and proposing to present purchasers with any gift or prize as an inducement to purchase, twenty-five dollars ($25): Provided, that this section shall not be construed as giving license or relieving such person or establishment from any penalties incurred by violation of the criminal law. (L. 1925, c. 101, § 53.)*

Weights and Measures.

234b. Office of Superintendent of Weights and Measures Established.—In order to protect the purchasers of any commodity and to provide one standard of measure of length and surface throughout the State ,which must be in conformity with the standard of measure of length, surface, weight and capacity established by Congress, the Office of Superintendent of Weights and Measures for the State of North Carolina is hereby established as hereinafter provided. (L. 1927, c. 261, § 1.)

234c. Enforcement of Act.—The provisions of this act shall be administered by the State Department of Agriculture through a suitable person to be selected by the Commissioner of Agriculture and known as the Superintendent of Weights and Measures. In administering the provisions of this act, the Department of Agriculture is empowered to make such rules and regulations as may be necessary to make effective the purposes and provisions of this act and to fix and prescribe reasonable charges and fees for examining, testing, adjusting and certifying the correct, or incorrect, equipment used in the buying or selling of any commodity or thing, or for hire or award, or in the computation of any charge for services rendered on the basis of weight or measure, or in the determination of weight and measure when a charge is made for such determination. Such rules and regulations and fees and charges shall be published thirty days before such rules, regulations, fees and charges become effective. (Id. § 2.)

234d. Disposition of Fees, Etc.—All fees, charges or other money collected under this act shall be deposited with the State Treasurer of North Carolina under and in accordnace with the daily deposit act, and the same shall be kept in a separate and distinct fund by the said treasurer. Such funds shall be disbursed by warrants drawn in the usual manner by the Commissioner of Agriculture.

After the payment of all outstanding obligations any balance to the credit of this fund at the end of the fiscal year shall be transferred to the general fund in the usual manner. (Id. § 2½.)

234e. Officers.—The Commissioner of Agriculture shall have authority to employ a Superintendent of Weights and Measures and necessary assistants, local inspectors and such other employees as may be necessary in carrying out the provisions of this act, and fix and regulate their duties. (Id. § 3.)

234f. Superintendent of Weights and Measures to Give Bond.—The person named as Superintendent of Weights and Measures shall give bond to the State of North Carolina in the sum of ten thousand dollars to guarantee the faithful performance of his duties, the expense of said bond to be paid by the State to be approved as other bonds for the State officers. The Superintendent of Weights and Measures shall, to safeguard the interests of the buyer and seller, require bond from other employees authorized under section three of this act in the amounts

*Query: Is this section now effective? See L. 1927, c. 80.

of not less than one thousand dollars for each employee designated as a local inspector or sealer of weights and measures. (Id. § 4.)

234g. Salaries, Etc.; How Paid.—All salaries and expenses and purchases of supplies shall be paid from the fees collected under this act, but nothing herein shall be construed to prevent the Commissioner of Agriculture designating any of the duties under this act to be administered by other persons employed by the Department of Agriculture and paid from those or any other funds when such person is deemed suitable and when the duties under this act would not seriously conflict with such other duties as may have been designated to him from the Department of Agriculture. (Id. § 5.)

234h. Local Inspectors or Sealers.—When any town or county wishes to appoint a local standard keeper or inspector or sealer of weights and measures the appointment and regulation of his work must be in keeping with the rules and regulations of the State Department of Agriculture and his work subject to supervision of the State Superintendent of Weights and Measures. (Id. § 6.)

234i. Inspection.—The State Superintendent of Weights and Measures, or his deputies, or inspectors on his direction, shall, after examining any standards of weights or measures or other apparatus used for determining the weight or measure of anything, issue to the owner of such measuring device or apparatus a receipt for any fees collected and, when such measuring device or apparatus is found to be accurate, stamp upon, or tag, the measuring instrument with the letters "N. C." and two figures representing the year in which the inspection was made. (Id. § 7.)

234j. Standard Equipment.—There shall be issued to each deputy inspector, or local sealer of weights and measures, such standard equipment as may be necessary. (Id. § 8.)

234k. Standards of Weights and Measures.—The weights and measures received from the United States under joint resolution of Congress, approved June fourteenth, one thousand eight hundred and twenty-six, and July twenty-seventh, one thousand eight hundred and sixty-six, and such new weights and measures as shall be received from the United States as standards of weights and measures in addition thereto, or in renewal thereof, and such as shall be supplied by the State in conformity therewith and certified by the National Bureau of Standards shall be the State standards of weights and measures, and in addition thereto there shall be supplied from time to time such copies of these as may be deemed necessary. The Superintendent of Weights and Measures shall take charge of the standards adopted by this act as the standards of the State and cause them to be kept in a fireproof building belonging to the State, from which they shall not be removed except for repairs or for certification, and he shall take all other necessary precautions for their safe keeping. He shall maintain the State standards in good order and shall submit them at least once in ten years to the National Bureau of Standards for certification. He shall keep complete record of the standards, balances and other apparatus belonging to the State and take a receipt for same from his successor in office. He shall annually, or on the first day of December, make to the Commissioner of Agriculture a report of all work done in his office. (Id. § 9.)

234l. Duties of State Superintendent of Weights and Measures.—The State Superintendent of Weights and Measures shall have and keep a general supervision of the weights and measures and weighing or measuring devices offered for sale, sold, or in use in the State. He, or his deputies, or inspectors at his direction, shall, upon written request of any citizen, firm, or corporation, or educational institution in the State, test or calibrate weights, measures, and weighing or measuring devices used as standards in the State. (Id. § 10.)

234m. Deputy or Local Inspectors; Powers and Duties of.—Each deputy or local inspector shall have the power, and it shall be his duty, under the direction of the State Superintendent of Weights and Measures, to inspect, test, try and ascertain if they are correct all weights and measures and weighing and measuring devices kept, offered, or exposed for sale, sold, or used or employed within the State by any proprietor, agent, lessee, or employee in proving the size, quantity, extent, area, or measurement of quantities, things produced, or articles for distribution or consumption, purchased or offered or submitted by any person or persons for sale, hire, or award, and he shall have the power, and shall, from time to time, weigh or measure and inspect packages or amounts of commodities of whatsoever kind kept for the purpose of sale, offered, or exposed for sale, or sold, or in the process of delivery, in order to determine whether the same contain the amount represented, or whether they be kept, offered or exposed for sale, or sold in a manner in accordance with the law. He may, for the purpose above mentioned and in the general performance of his duties, enter and go into, or open [upon], and without formal warrant, any stand, place, building, or premises, or stop any ven-

dor, peddler, junk dealer, coal wagon, ice wagon, delivery wagon, or any person whomsoever and require him, if necessary, to proceed to some place which the sealer may specify for the purpose of making the proper test. (Id. § 11.)

234n. Seizure of Incorrect Weights and Measures.—The deputy or local inspector shall condemn, seize, and may destroy incorrect weights and measures or weighing and measuring devices, which in his best judgment are not susceptible of satisfactory repair, but such as are incorrect and yet in his best judgment may be repaired, he shall mark or tag as "Condemned for Repairs" in a manner prescribed by the State Superintendent of Weights and Measures. The owners or users of any weights, measures or weighing or measuring devices of which such disposition is made shall have the same repaired and corrected within ten days and they may neither use nor dispose of same in any way, but shall hold the same at the disposal of the sealer. Any weights, measures, or weighing or measuring devices which have been condemned for repairs and have not been repaired as required shall be confiscated by the sealer. (Id. § 12.)

234o. Police Powers.—The Superintendent of Weights and Measures, his deputies and inspectors are hereby made special policemen and are authorized and empowered to arrest without formal warrant, any violator of the statutes in relation to weights and measures and to seize as use for evidence without formal warrant any false or unsealed weights, measures, or weighing or measuring devices or package or amount of commodity found to be used, retained, or offered or exposed for sale, or sold in violation of law. (Id. § 13.)

234p. Penalty for Hindering Superintendent of Weights and Measures.—Any person who shall hinder or obstruct in any way the Superintendent of Weights and Measures, his deputies or inspectors, in the performance of his official duties shall be guilty of misdemeanor and, upon conviction in any court of competent jurisdiction, shall be punished by fine of not less than ten dollars or more than two hundred dollars, or by imprisonment in the county jail for not more than three months, or by both fine and imprisonment. (Id. § 14.)

234q. Penalty for Impersonating Superintendent of Weights and Measures.—Any person who shall shall impersonate in any way the Superintendent of Weights and Measures, his deputies or inspectors, by the use of his seal or counterfeit of his seal, or otherwise, shall be guilty of a misdemeanor and upon conviction therefor in any court of competent jurisdiction, shall be punished by fine of not less than one hundred dollars or more than five hundred dollars, or by imprisonment for not more than one year, or by both such fine and imprisonment. (Id. § 15.)

234r. Sale of Commodities in Package Form.—It shall be unlawful to keep for the purpose of sale, or expose for sale, or sell any commodity in package form unless the net quantity of the contents are plainly or conspicuously marked on the outside of the package in terms of weight, measure, or numerical count; provided, however, that reasonable variations or tolerance shall be permitted and that these reasonable variations or tolerances, and also exemptions as to small packages shall be established by rules and regulations made by and published with other rules and regulations made by and published with other rules and regulations approved by the Department of Agriculture. (Id. § 16.)

234s. Application of Act.—Nothing in this act shall be construed to prohibit the sale by farmers, dealers or merchants, of fruits and vegetables when sold by the piece, head or bunch, and there is no claim made as to its weight or measure. (Id. § 17.)

234t. Commodities to be Sold by Net Weight.—Whenever any commodity is sold on a basis of weight, it shall be unlawful to employ any other weight in such sale than the net weight of the commodity and all contracts concerning goods sold on a basis of weight shall be understood and construed accordingly. Whenever the weight of a commodity is mentioned in this act, it shall be understood and construed to mean the net weight of the commodity. (Id. § 18.)

234u. Penalties.—Any person who, by himself, or his servant or agent, or as the servant or agent of any other person, shall offer, or expose for sale, sell, use in the buying or selling of any commodity or thing or for hire or award, or in computation of any charge for services rendered on the basis of weight or measure, or in the determination of weight or measure, when a charge is made for such determination, or retain in his possession a false weight or measure or weighing or measuring device or any weight or measure or weighing or measuring device which has not been sealed by the State Superintendent, of his deputy, or inspectors, or by a sealer or deputy sealer of weights and measures within one year, or shall dispose of any condemned weight, measure, or weighing or measuring device contrary to law, or remove the tag placed thereon by the State Superintendent, or his

deputy, or inspectors, or who shall sell or offer or expose for sale less than the quantity he represents on any commodity, thing, or service, or shall take or attempt to take more than the quantity he represents, when as the buyer, he furnishes the weight, measure, or weighing or measuring device by means of which the amount of any commodity, thing, or service is determined; or who shall keep for the purpose of sale, offer or expose for sale, or sell any commodity in a manner contrary to law; or who shall violate any provisions of this act for which a specific penalty has not been provided; or who shall sell or offer for sale, or use or have in his possession for the purpose of selling or using any device or instrument to be used to, or calculated to, falsify any weight or measure, shall be guilty of a misdemeanor, and shall be punished by fine of not less than ten dollars or more than two hundred dollars, or by imprisonment for not more than three months, or by both such fine and imprisonment, upon a first conviction in any court of competent jurisdiction: and upon a second or subsequent conviction in any court of competent jurisdiction he shall be punished by a fine of not less than fifty dollars or more tha five hundred dollars, or by imprisonment in the county jail for not more than one year, or by both such fine and imprisonment. (Id. § 19.)

234v. "Person" Defined.—The word "person" as used in this act shall be construed to import both the plural and singular as the case demands and shall include corporations, companies, societies and associations. (Id. § 20.)

234w. Definitions.—The words "weights, measures, or (and) weighing or (and) measuring devices" as used in this act, shall be construed to include all weights, scales, beams, measures of every kind, instruments, mechanical devices for weighing or measuring any other appliances and accessories connected with any or all such instruments. The words "sale or sell" as used in this act shall be construed to include barter and exchange. (Id. § 21.)

234x. Constitutionality of Act.—If any particular section, or part of any section of this act, shall be held to be unconstitutional, such holdings shall not invalidate any other portion thereof. (Id. § 22.)

234y. Conflicting Laws Repealed.—All laws and clauses of laws in conflict with this act are hereby repealed. (Id. § 23.)

235. Standard Weights and Measures, Exception; Penalty.—The standard weight of the following seeds and other articles named shall be as stated in this section, viz:

Alfalfa shall be	60 lbs. per bu.
Apples, dried, shall be	24 lbs. per bu.
Apple seed shall be	40 lbs. per bu.
Barley shall be	48 lbs. per bu.
Beans, castor, shall be	46 lbs. per bu.
Beans, dry, shall be	60 lbs. per bu.
Beans, green in pod, shall be	30 lbs. per bu.
Beans, soy, shall be	60 lbs. per bu.
Beef, net, shall be	200 lbs. per bbl.
Beets shall be	50 lbs. per bu.
Blackberries shall be	48 lbs. per bu.
Blackberries, dried, shall be	28 lbs. per bu.
Bran shall be	20 lbs. per bu.
Broomcorn shall be	44 lbs. per bu.
Buckwheat shall be	50 lbs. per bu.
Cabbage shall be	50 lbs. per bu.
Canary seed shall be	60 lbs. per bu.
Carrots shall be	50 lbs. per bu.
Cherries, with stems, shall be	56 lbs. per bu.
Cherries, without stems, shall be	64 lbs. per bu.
Clover seed, red and white, shall be	60 lbs. per bu.
Clover, burr, shall be	8 lbs. per bu.
Clover, German, shall be	60 lbs. per bu.
Clover, Japan, Lespedeza, shall be, in hull	25 lbs. per bu.
Corn in ear, shucked, shall be	66 lbs. per bu.
Corn, shelled, shall be	56 lbs. per bu.
Corn in ear, with shucks, shall be	70 lbs. per bu.
Corn, Kaffir, shall be	50 lbs. per bu.
Corn, pop, shall be	70 lbs. per bu.
Cotton seed shall be	30 lbs. per bu.
Cotton seed, Sea Island, shall be	44 lbs. per bu.
Cucumbers shall be	48 lbs. per bu.
Fish shall be, half-barrel	100 lbs. per ½-bbl.

Flaxseed shall be	56 lbs. per bu.
Grapes, with stems, shall be	48 lbs. per bu.
Grapes, without stems, shall be	60 lbs. per bu.
Gooseberries shall be	48 lbs. per bu.
Grass seed, Bermuda, shall be	14 lbs. per bu.
Grass seed, blue, shall be	14 lbs. per bu.
Grass seed, Hungarian, shall be	48 lbs. per bu.
Grass seed, Johnson, shall be	25 lbs. per bu.
Grass seed, Italian rye, shall be	20 lbs. per bu.
Grass seed, orchard, shall be	14 lbs. per bu.
Grass seed, tall meadow and tall fescue,	24 lbs. per bu.
Grass seed, all meadow and fescue except tall	14 lbs. per bu.
Grass seed, perennial rye, shall be	14 lbs. per bu.
Grass seed, timothy, shall be	45 lbs. per bu.
Grass seed, velvet, shall be	7 lbs. per bu.
Grass redtop, shall be	14 lbs. per bu.
Hemp seed shall be	44 lbs. per bu.
Hominy shall be	62 lbs. per bu.
Horseradish shall be	50 lbs. per bu.
Liquids shall be	42 gals. per bbl.
Meal, corn, whether bolted or unbolted	48 lbs. per bu.
Melon, cantaloupe, shall be	50 lbs. per bu.
Millet shall be	50 lbs. per bu.
Mustard shall be	58 lbs. per bu.
Nuts, chestnuts, shall be	50 lbs. per bu.
Nuts, hickory, without hulls, shall be	50 lbs. per bu.
Nuts, walnuts, without hulls, shall be	50 lbs. per bu.
Oats, seed, shall be	32 lbs. per bu.
Onions, button sets, shall be	32 lbs. per bu.
Onions, top buttons, shall be	28 lbs. per bu.
Onions, matured, shall be	57 lbs. per bu.
Osage orange seed shall be	33 lbs. per bu.
Peaches, matured, shall be	50 lbs. per bu.
Peaches, dried, shall be	25 lbs. per bu.
Peanuts shall be	22 lbs. per bu.
Peach seed shall be	50 lbs. per bu.
Peanuts, Spanish, shall be	30 lbs. per bu.
Parsnips shall be	50 lbs. per bu.
Pears, matured, shall be	56 lbs. per bu.
Pears, dried, shall be	26 lbs. per bu.
Peas, dry, shall be	60 lbs. per bu.
Peas, green, shall be, in hull	30 lbs. per bu.
Pieplant shall be	50 lbs. per bu.
Plums shall be	64 lbs. per bu.
Pork, net, shall be	200 lbs. per bbl.
Potatoes, Irish, shall be	56 lbs. per bu.
Potatoes, sweet, shall be	56 lbs. per bu.
Quinces, matured, shall be	48 lbs. per bu.
Raspberries shall be	48 lbs. per bu.
Rice, rough, shall be	44 lbs. per bu.
Rye seed shall be	56 lbs. per bu.
Sage shall be	4 lbs. per bu.
Salads, mustard, spinach, turnips, kale	10 lbs. per bu.
Salt shall be	50 lbs. per bu.
Sorghum seed shall be	50 lbs. per bu.
Sorghum molasses shall be	12 lbs. per bu.
Strawberries shall be	48 lbs. per bu.
Sunflower seed shall be	24 lbs. per bu.
Teosinte shall be	59 lbs. per bu.
Tomatoes shall be	56 lbs. per bu.
Turnips shall be	50 lbs. per bu.
Wheat shall be	60 lbs per bu.
Cement shall be	80 lbs. per bu.
Charcoal shall be	22 lbs. per bu.
Coal, stone, shall be	80 lbs. per bu.
Coke shall be	40 lbs. per bu.
Hair, plastering, shall be	8 lbs. per bu.

Land plaster shall be	100 lbs. per bu.
Lime, unslaked, shall be	80 lbs. per bu.
Lime, slaked, shall be	40 lbs. per bu.

But this section shall not be construed to prevent the purchase and sale by measure.

If any person shall take any greater weight than is specified for any of the items named herein he shall forfeit and pay the sum of twenty dollars for each separate case to any person who may sue for same. (C. S. Supp. 1924, § 8060.)

236. **Congressional Standards Adopted.**—No trader or other person shall buy or sell, or otherwise use in trading, any other weights and measures than are made and used according to the standard prescribed by the Congress of the United States: Provided, that this chapter shall not prevent the citizens of the State from buying and selling grain by measure as may be agreed upon between the parties. (C. S. 1919, § 8061.)

237. **County Commissioners to Provide Standards.**—The board of commissioners of each county shall, at the charge of their county, procure standard sealed weights of half hundred, quarter hundred, ten pounds, five pounds, two pounds and one pound, one-half pound, one-quarter pound, two ounces, one ounce, one-half ounce, gauging rod and waist sticks, yardsticks, half-bushel, peck, half-peck, quarter-peck and one-eighth peck; gallon, half-gallon, quart, pint, half-pint and gill measure, of the United States standard, sealed and branded "N. C." (Id. § 8063.)

238. **Penalty for Using Untested Standards.**—If any person, after demand by the standard-keeper for permission to examine and adjust the same, shall buy, sell or barter by any weight or measure which shall not be tried by the standard, and sealed or stamped as aforesaid, he shall, for every such offense, forfeit and pay forty dollars, and if any person shall sell and deliver by less measure than the standard, he shall forfeit and pay for each offense forty dollars to the person suing therefor. (Id. § 8064.)

239. **Appointment; Bond; Keeper of Capitol to Act.**—The Governor is authorized to appoint a suitable person to take care of the balances, weights and measures, and perform the duties relating to weights and measures heretofore imposed on the Governor, and such other duties as the Governor may prescribe, touching said balances and weights and measures; and he shall take from such person a bond with surety, to be approved by the Governor, in the penal sum of five hundred dollars, for the safekeeping of said weights and measures and for the performance of all his duties. And in case the Governor fails to appoint, or the person appointed fails to qualify or discharge said duties, the keeper of the capitol shall be ex-officio the keeper of weights and measures and discharge the duties and receive the compensation provided. (Id. § 8065.)

240. **To Procure and Supply Standards to Counties.**—It shall be the duty of the keeper of weights and measures, under the direction of the Governor, to procure and furnish, at prime cost, to any of the counties, upon an order of the board of county commissioners, any of the standard sealed weights and measures required by law to be kept, and he is hereby authorized, by and with the approval of the Governor, to contract for the manufacture of plain sealed weights substantially made of iron, steel or brass, as the county ordering may direct; yardstick made of substantial wood, each end neatly covered with metal, sealed, marked and stamped "N. C."; half-bushel, peck, half-peck, quarter-peck and one-eighth peck, made of substantial, well seasoned wood, with secure metallic binding and casing; gallon, half-gallon, quart, pint, half-pint and gill measure, made of light sheet copper with iron handles. He shall procure and furnish, as herein provided, to the board of commissioners of any county ordering the same, dry and liquid sealed measures and yard-stick made of brass or copper. (Id. § 8066.)

241. **Counties to Pay Costs of Standards.**—It shall be the duty of the State Standard-keeper to supply to each county which shall call for the same such standard weights as the standard-keeper of such county shall demand, duly sealed, such county paying to the State Treasurer the actual cost of such weights, upon the certificate of the State Standard-keeper. (Id. § 8067.)

242. **To Keep Record.**—It shall be the duty of the State Standard-keeper to keep a book, in which he shall keep an accurate account of all the weights and measures by him delivered, and the expenses incurred by him in the purchase of such weights and measures, subject to the inspection of the State Treasurer and the General Assembly. (Id. § 8068.)

242a. **Appointment; Term; Oath; Bond.**—The weights and measures, stamps and brands thus provided shall be kept at the courthouse of the respective counties

by a standard keeper, to be elected by the board of commissioners for the term of two years; the person thus elected shall, before the board of county commissioners, take the oath required for public officers and also an oath of office, and shall give bond, with good and sufficient surety, payable to the State of North Carolina, in the sum of two hundred dollars, conditioned for the safe-keeping of weights and measures, stamps and brands of said county, and for the faithful performance of the duties of his office. (Id. § 8069.)

242b. Removal of Standards.—The standard-keeper may remove the weights and measures, stamps and brands from the courthouse, not to exceed sixty days in any one year, for the purpose of testing weights and measures throughout the county. (Id. § 8070.)

242c. Testing and Marking Standards; Penalty.—Every person, firm, or corporation using weights and measures of any and every kind which shall be used in buying or selling or bartering, or for hire, or in fixing or determining the amount of toll or charge or rate for any service shall allow or permit the standard-keeper of the county to try, examine, and adjust by the standard, at least once every year, all the said weights and measures of any and every kind used as aforesaid, and every person, firm, or corporation who shall neglect to comply with the requirements of this section shall forfeit and pay fifty dollars, to be recovered at the suit of the standard-keeper, one-half to his use and the other half to the use of the county wherein the default occurs. It shall be the duty of the standard-keeper, when practicable, to mark, by stamp or brand, the weights or measures found or made to agree with the standard, and shall give a certificate of such examination and adjustment, stating the weights and measures examined and adjusted. (Cum. Sts. 1925, § 8071.)

242d. Destruction of Unadjusted Standards.—In every instance where the standard-keeper shall have before him for adjustment, or shall find in the possession of any person, intending to use the same, any weight or measure that cannot be adjusted so as to meet the requirements of the law, it shall be the duty of the standard-keeper to destroy the same. (C. S. 1919, § 8072.)

242e. Local; Office Abolished in Certain Counties.—The office of county standard-keeper is abolished in the following counties, and in these counties the section regulating that office and its duties do not apply: Ashe, Beaufort, Bertie, Bladen, Brunswick, Camden, Cumberland, Gaston, Halifax, Lincoln, Montgomery, Moore, Northampton, Rutherford, Swain, Warren, Yadkin, Yancey, and the provisions of this article shall not apply to the city of Winston-Salem. (Id. § 8073, as amended Public-Local Laws, 1923, c. 11, § 1, and Private Laws, 1923, c. 74, § 1.)

242f. County Commissioners to Appoint Inspectors.—The board of county commissioners may appoint for their county or any township thereof inspectors for any article of commerce the inspection of which is not otherwise provided for by law, who shall hold office for the term of five years after their employment. (C. S. 1919, § 5068.)

242g. Vacancies in Office of Inspectors; Assistants; Principal Liable.—Whenever there shall be a vacancy in the office of inspector while the county commissioners are not in session, any three justices may appoint some other fit person until the next succeeding meeting of the board; or if any inspector shall be rendered incapable of performing his duty by sickness or other accident, he may, with the consent of three justices, appoint some other person as assistant during his sickness or other disability, which consent shall be certified under their hands and lodged with the clerk of the board of commissioners, and such assistant shall take the same oaths as inspectors; and the inspector shall be liable to the same fines and penalties for the assistant's misbehavior as for his own. (Id. § 5069.)

242h. Duties of Inspectors of Certain Commodities.—Every inspector of flaxseed, tar, pitch, and turpentine shall constantly attend at the places for which he shall be appointed, and shall provide an iron to brand any of the said commodities, bearing the name of the inspector and his place of residence, and shall find laborers, equally with the owners, to assist in weighing the several commodities he shall inspect and weigh; and also shall find and provide proper steelyards or scales of the lawful standard; and if any inspector shall neglect his duty, or brand or stamp any of the commodities contrary to this chapter, or brand any empty barrels, or lend his brand to any person, he shall forfeit and pay for every such offense twenty dollars; and for branding any empty barrel, or lending his brand, two hundred dollars; and every other person that shall brand, or procure to be branded, any cask or barrel otherwise than by the inspector or by his assistant shall forfeit and pay for every offense the same fines and penalties as inspectors are by this section liable to pay for similar breaches of duty or misbehavior.

This section does not extend to the town of New Bern so far as it relates to tar, pitch, and turpentine. (Id. § 5070.)

242i. Bond of Inspector; Fees.—The said inspector shall enter into bond in the sum of five hundred dollars, payable to the State of North Carolina, conditioned for the faithful performance of the duties of his office, which bond the board shall take; and he shall be entitled to such fees as may be prescribed by the board. (Id. § 5071.)

242j. Falsely Acting as Inspector.—If any person, who is not a legal or sworn inspector of lumber or other articles, presume to act as such, he shall forfeit and pay one hundred dollars, and be guilty of a misdemeanor. (Id. § 5072.)

242k. Penalty for Sale Without Inspection.—If any person shall sell any article of forage or provision, of which inspection is required in accordance with this article, without the same having been inspected as required, he shall, for every offense, forfeit and pay one hundred dollars. (Id. § 5073.)

242l. Penalty on Master Receiving Without Inspection.—No master or commander of any vessel shall take on board any cask or barrel or other commodity, liable to inspection as aforesaid, without being inspected and branded as required under the penalty of two hundred dollars for each offense.

This section does not extend to the town of New Bern so far as it relates to tar, pitch, and turpentine. (Id. § 5074.)

242m. Who to Pay Inspectors' Fees; Penalty for Extortion.—The fees of inspectors shall be paid by the purchaser or exporter of the articles inspected, and if any inspector shall receive any greater fees than are by law allowed, he shall forfeit and pay ten dollars for every offense to any person suing for the same. (Id. § 5075.)

243. Corn Meal.—It shall be unlawful for any person or persons to pack for sale, sell, or offer for sale in this State corn meal except in packages containing one pound, two pounds, three pounds, five pounds, ten pounds, twenty-five pounds, fifty pounds or one hundred pounds, or multiple[s] of one hundred pounds, and whether the meal is bolted or unbolted shall be stated on the package. (C. S. Supp. 1924, § 8081(a).)

244. Hominy or Grits.—It shall be unlawful for any person or persons to pack for sale, sell or offer for sale any hominy or grits except in packages of one pound, one and one-half pounds, three pounds, five pounds, ten pounds, fifty pounds or one hundred pounds, or multiples of one hundred pounds. (Id. § 8081(b).)

245. Flour; Sales from Bulk.—It shall be unlawful for any person or persons to pack for sale, sell or offer for sale in this State flour, except in packages containing six pounds, twelve pounds, twenty-four pounds, forty-eight pounds, ninety-eight pounds, or one hundred and ninety-six pounds of flour, and the net weight of all grits, meal or flour shall be stated on the package of such meal, flour or grits, with the name and address of the maker or jobber: Provided, the provisions of this article shall not apply to the retailing of grits, meal or flour direct to customers from bulk, when the same is priced and delivered by actual weight. (Id. § 8081(c).)

246. Inspections for Discovery of Violations of Law—Certification of Violation to Solicitor.—The Board of Agriculture shall cause to be made from time to time such inspections as may be necessary to determine whether the provisions of this article have been violated. If it shall appear from such inspection that any provisions of this article have been violated, the Commissioner of Agriculture shall certify the facts to the solicitor in the district in which the violation was committed, and furnish that officer with the facts in the case. (Id. § 8081(d).)

247. Violation of Law a Misdemeanor—Seizure and Sale of Goods; Release by Commissioner.—Any person or persons violating any provision of this article shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine or imprisonment in the discretion of the court, and the meal or flour offered for sale in violation of this article shall be subject to seizure, condemnation and sale by the Commissioner of Agriculture, as is provided for the seizure, condemnation and sale of commercial fertilizers; and the proceeds thereof, if sold, less the legal cost and charges, shall be paid into the treasury for the use of the Department of Agriculture in executing the provisions of this article: Provided, that the Commissioner of Agriculture may, in his discretion, order the release of the grits, meal or flour seized when the owner of same shall offer to pack it in accordance with the provisions of this article, and it shall appear to the satisfaction of the commissioner that said owner did not intend to violate the provisions of the law. (Id. § 8081(e).)

248. Measures to be Kept; Tolls by Weight or Measure.—All millers shall keep in their mills the following measures, namely a half-bushel and peck of full measure, and also proper toll-dishes for each measure; but the toll allowed by law

may be taken by weight or measure at the option of the miller and customer. (C. S. 1919, § 2533.)

249. Keeping False Toll-Dishes Misdemeanor.—If any owner, by himself or servant, keeping any mill, shall keep any false toll-dishes, he shall be guilty of a misdemeanor. (Id. § 2534.)

NOTE: See also Nos. 11, 32, 49 et seq., 71 et seq., 85b, and 208a et seq.

PART V.

Cases.

1. General Food and Drug Law.

Food—Unwholesome Food—Meat: State v. Smith, 10 N. C. 378, 14 Am. Dec. 594 (1824); State v. Norton et al., 24 N. C. 40 (1841).

Fruit Preservative Containing Sulphur: See Smith v. Alphin, 150 N. C. 425, 64 S. E. 210 (1909).

2. Special Food Laws.

Beverages—Flavoring Extracts: State v. Barksdale, 181 N. C. 621, 107 S. E. 505 (1921).

Beverages—Phosphate: State v. Powell, 141 N. C. 780, 53 S. E. 515, 6 L. R. A. (N. S.) 477 (1906).

Beverages—Soda Fountain—License: Lenoir Drug Co. v. Town of Lenoir, 160 N. C. 571, 76 S. E. 480 (1912).

Beverages—Soft Drinks—Sale on Sunday Prohibited: See *State v. Weddington, 188 N. C. 643, 125 S. E. 257, 37 A. L. R. 573 (1924).

Beverages—Wood Alcohol—Manslaughter: State v. Keever, 177 N. C. 114, 97 S. E. 727 (1919).

Dairies—Keeping Cows in City: *State & City of Charlotte v. Stowe, 190 N. C. 79, 128 S. E. 481, 40 A. L. R. 559 (1925).

Dairymen—License: *City of Asheville v. Nettles, 164 N. C. 315, 80 S. E. 236 (1913); *State & City of Charlotte v. Kirkpatrick, 179 N. C. 747, 103 S. E. 65 (1920); *State v. Edwards, 187 N. C. 259, 121 S. E. 444 (1924).

Feeding Stuffs: See E. T. Jennette & Co. v. City Hay & Grain Co., 158 N. C. 156, 73 S. E. 884 (1912); Poovey v. International Sugar Feed Number Two Co., 191 N. C. 722, 133 S. E. 12 (1926).

Fish—Markets: *State v. Perry, 151 N. C. 661, 65 S. E. 915, 134 Am. St. Rep. 1002 (1907); *Angelo et al. v. City of Winston-Salem et al., 193 N. C. 207, 136 S. E. 489 (1927).

Fish—Packing and Shipping—Tax: Commissioners of Edenton v. G. W. & Wm. R. Capeheart, 71 N. C. 156 (1874).

Fruits and Vegetables—Peddlers—License: State v. Ninestein, 132 N. C. 1039, 43 S. E. 936 (1903).

Fruits and Vegetables, Etc.—Sidewalk Stands: *State v. Summerfield, 107 N. C. 895, 12 S. E. 114 (1890).

Ice—Monopoly: See Smith v. Morganton Ice Co. et al., 159 N. C. 151, 74 S. E. 961 (1912).

Ice—Tax: State v. Worth, 116 N. C. 1007, 21 S. E. 204 (1895).

Markets: *City of Raleigh v. Sorrell, 46 N. C. 49 (1853); Smith v. City of Newbern, 70 N. C. 14, 16 Am. Rep. 766 (1874); Wade v. City of Newbern, 77 N. C. 460 (1877); *State v. Bean, 91 N. C. 554 (1884); *Hutchins v. Town of Durham, 118 N. C. 457, 24 S. E. 723, 32 L. R. A. 706 (1896). See also: *Fish—Markets; Meat—Markets.*

Meat—License: State v. Yearby, 82 N. C. 561, 33 Am. Rep. 694 (1880); *State v. Bean, 91 N. C. 554 (1884); State v. Wernwag, 116 N. C. 1061, 21 S. E. 683, 28 L. R. A. 297, 47 Am. St. Rep. 873 (1895); Hutchins v. Town of Durham, 118 N. C. 457, 24 S. E. 723, 32 L. R. A. 706 (1896); State v. Green, 126 N. C. 1032, 35 S. E. 462 (1900); *State v. Carter, 129 N. C. 560, 40 S. E. 11 (1901); State v. Spaugh, 129 N. C. 564, 40 S. E. 60 (1901); State v. Smith, 173 N. C. 772, 92 S. E. 325 (1917); *McIntyre v. Murphy et al., 177 N. C. 300, 98 S. E. 820 (1919).

Meat—Markets: *State v. Pendergrass, 106 N. C. 664, 10 S. E. 1002 (1890); *Angelo et al. v. City of Winston-Salem et al., 193 N. C. 207, 136 S. E. 489 (1927).

Meat—Packing House—License: *Lacy v. Packing Co., 134 N. C. 567, 47 S. E. 53 (1904), affirmed in *Armour Packing Co. v. Lacy, 200 U. S. 226, 26 S. Ct. 232, 50 L. Ed. 451 (1906).

Meat—Slaughterhouse: *Moore v. City of Greensboro, 191 N. C. 592, 132 S. E. 565 (1926).

Milk—Conspiracy to Raise Price: State v. Craft et al., 168 N. C. 208, 83 S. E. 772, Ann. Cas. 1917 B, 1013 (1914).

Milk—Pasteurization: *State v. Edwards, 187 N. C. 259, 121 S. E. 444 (1924).

Oysters—License: *State v. Sermons, 169 N. C. 285, 84 S. E. 337 (1915).

3. Special Drug Laws.

Narcotics: State v. Burno, 158 N. C. 632, 74 S. E. 462 (1912); State v. Ross, 168 N. C. 130, 83 S. E. 307 (1914). See also: Thomas v. Board of Pharmacy, 152 N. C. 373, 67 S. E. 925 (1910).

Narcotics—Opium Den: See State v. Shoaf, 179 N. C. 744, 102 S .E. 705, 9 A. L. R. 426 (1920).

Patent Medicines—License: *State v. Trotman, 142 N. C. 662, 55 S. E. 599 (1906).

Peddlers—License: State v. Morrell, 100 N. C. 506, 6 S. E. 418 (1888); *Smith v. Wilkins, 164 N. C. 135, 80 S. E. 168 (1913).

Pharmacy—Addition of Croton Oil to Candy as Practical Joke—Assault and Battery: State v. Monroe, 121 N. C. 677, 28 S. E. 547, 43 L. R. A. 861, 61 Am. St. Rep. 686 (1897).

Pharmacy—Violation of Narcotic Law—Revocation of License: Thomas v. Board of Pharmacy, 152 N. C. 373, 67 S. E. 925 (1910).

Practicing Medicine—Vendor of Patent Medicines: *State v. VanDoran, 109 N. C. 864, 14 S. E. 32 (1891).

Stock Tonics: See Miller v. Howell, 184 N. C. 119, 113 S. E. 621 (1922).

4. Civil Action to Recover Damages for Injury Alleged to Have Been Caused by Consumption or Use of Product.

Bottle—Explosion: Dail v. Taylor, 151 N. C. 284, 66 S. E. 135, 28 L. R. A. (N. S.) 949 (1909); Same, 156 N. C. 588, 72 S. E. 1101 (1911); Cashwell v. Fayetteville Pepsi-Cola Bottling Works, 174 N. C. 324, 93 S. E. 901 (1917); Grant v. Graham Chero-Cola Bottling Co., 176 N. C. 256, 97 S. E. 27, 4 A. L. R. 1090 (1918).

Drugs: Spry v. Kiser et al., 179 N. C. 417, 102 S. E. 708 (1920). See also: State v. Monroe, 121 N. C. 677, 28 S. E. 547, 43 L. R. A. 861, 61 Am. St. Rep. 686 (1897); Dr. Shoop Family Medicine Co. v. Davenport, 163 N. C. 294, 79 S. E. 602 (1913).

Drugs—Sale of Narcotic to Wife—Action by Husband: Holleman v. Harward & Hunter, 119 N. C. 150, 25 S. E. 972, 34 L. R. A. 803, 56 Am. St. Rep. 672 (1896).

Feeding Stuffs: Poovey v. International Sugar Feed Number Two Co., 191 N. C. 722, 133 S. E. 12 (1926).

Food: Ward v. Morehead City Sea Food Co., 171 N. C. 33, 87 S. E. 958 (1916); Lamb v. Boyles, 192 N. C. 542, 135 S. E. 464 (1926). See also: Haynor Manufacturing Co. v. Davis, 147 N. C. 267, 61 S. E. 54, 17 L. R. A. (N. S.) 193 (1908); Smith v. Alphin, 150 N. C. 425, 64 S. E. 210 (1909); State v. Keever, 177 N. C. 114, 97 S. E. 727 (1919).

5. Miscellaneous.

Gift Enterprise: State v. Bryant, 74 N. C. 207 (1876); State v. Lumsden et al., 89 N. C. 572 (1883); State v. Perry, 154 N. C. 616, 70 S. E. 387 (1911); *State v. Lipkin, 169 N. C. 265, 84 S. E. 340, L. R. A. 1915 F, 1018, Ann. Cas. 1917 D, 137 (1915); *Brevard Manufacturing Co. v. W. Benjamin & Sons, 172 N. C. 53, 89 S. E. 797 (1916); Basnight v. American Manufacturing Co. & Southwestern Surety Insurance Co., 174 N. C. 206, 93 S. E. 734 (1917); State v. Lowe, 178

N. C. 770, 101 S. E. 385 (1919); Boon-Iseley Drug Co. v. Doughton, 189 N. C. 720, 128 S. E. 341, 39 A. L. R. 1032 (1925).

Tobacco—Warehouses: Gray v. Central Warehouse Co. et al., 181 N. C. 166, 106 S. E. 657 (1921).

Trade-Marks: Blackwell v. Wright, 73 N. C. 310 (1875); Blackwell Durham Tobacco Co. v. McElwee, 94 N. C. 425 (1886); Blackwell's Durham Tobacco Co. v. McElwee, 100 N. C. 150, 5 S. E. 907 (1888). See also: Bingham School v. Gray et al., 122 N. C. 699, 30 S .E. 304, 41 L. R. A. 243 (1898); Blackwell's Durham Tobacco Co. v. American Tobacco Co. et al., 145 N. C. 367, 59 S. E. 123 (1907); Zagier v. Zagier, 167 N. C. 616, 83 S. E. 913 (1914); Yellow Cab Co. v. Creasman, 185 N. C. 551, 117 S. E. 787, 28 A. L. R. 109 (1923).

Trade-Marks—Slander of Title to Trade-Mark: McElwee v. Blackwell et al., 94 N. C. 261 (1886).

Trading Stamps: Winston v. Beeson, 135 N. C. 271, 47 S. E. 457, 65 L. R. A. 167 (1904); Winston v. Hudson, 135 N. C. 286, 47 S. E. 1023 (1904). See also: Boon-Iseley Drug Co. v. Doughton, 189 N. C. 720, 128 S. E. 341, 39 A. L. R. 1032 (1925).

Weights and Measures: *City of Raleigh v. Sorrell, 46 N. C. 49 (1853); State v. Perry et al., 50 N. C. 252 (1858); State v. Nixon et al., 50 N. C. 257 (1858); Atkinson v. Williams & Murchison, 63 N. C. 592 (1869); *Sutton v. Phillips, 116 N. C. 502, 21 S. E. 968 (1895); Same, 117 N. C. 228, 23 S. E. 264 (1895); Nance v. Southern Railway, 149 N. C. 366, 63 S. E. 116 (1908). See also: *State v. Tyson, 111 N. C. 687, 16 S. E. 238 (1892); North Carolina Cotton Co. v. Wilson & Town of Gastonia, 159 N. C. 141, 74 S. E. 883 (1912).

NORTH DAKOTA.*

PART I.

General Food and Drug Law.

1. Name of Act.—This act shall be known as the North Dakota Food and Drugs Act and may be so cited in any pleading, complaint, indictment or information. (C. L. Suppl. 1925, § 2889b1.)

2. The State Food Commissioner and Chemist; Duties and Powers.—The State Food Commissioner and Chemist shall hereby be charged with the enforcement of all the provisions of this act. He shall be appointed by the State Board of Administration and shall, with the approval of said State Board of Administration, employ and fix the compensation of such other chemists, scientific experts, agents, inspectors and employees, provide for adequate laboratories and offices, supplies and equipment for the same, and provide such other facilities as may be necessary for the proper enforcement of this act. When in this act the term "agents" of the State Food Commissioner and Chemist or similar terms are used, said terms shall be construed to refer to such chemists, scientific experts, agents, inspectors and employees provided for in this section. (Id. § 2889b2.)

3. Unlawful to Sell Certain Foods and Drugs.—It shall be unlawful for any person to manufacture, sell, offer or expose for sale or delivery or to have in possession for sale or delivery any article of food or drug which is adulterated, misbranded or otherwise violates any provisions of this act or any rule or regulation issued pursuant thereto. (Id. § 2889b3.)

4. Definitions.—The term "food" as used herein shall include all articles, whether simple, mixed or compound, used for, or entering into the composition of, or intended for use in the preparation of food, drink, confectionery or condiment for man. The term "drug" as used herein shall include all medicines and preparations recognized in the United States Pharmacopœia or National Formulary for internal or external use, and any substance or mixture of substances intended or designed to be used for the cure, mitigation, prevention or treatment of disease of either man or other animals. (Id. § 2889b4.)

5. Adulteration, What Constitutes.—For the purpose of this act a food or drug shall be deemed to be adulterated:

A. In the case of drugs:

First. If, when a drug is sold under or by a name, recognized in the United States Pharmacopœia or National Formulary, it differs from the standard of strength, quality or purity, as determined by the test laid down in the United States Pharmacopœia or National Formulary official at the time of sale of such drug.

Second. If, when a drug is sold under or by a name not recognized by the United States Pharmacopœia or National Formulary, its strength, quality, or purity falls below the professed standard of strength, quality or purity under which it is sold.

Third. If it contains any methyl alcohol.

B. In the case of foods:

First. If any substance has been mixed or packed with it so as to lower, reduce or injuriously affect its quality, strength or fitness for consumption.

Second. If any substance has been substituted wholly or in part for the article.

Third. If any valuable constituent of the article has been wholly or in part abstracted.

Fourth. If it be mixed, colored, powdered, coated, stained or otherwise treated in a manner whereby damage or inferiority is concealed, or the article is made to appear better than it really is, or if such treatment be for the purpose of imitating another article of recognized quality.

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*CITATIONS: "C. L. 1913" refers to the Compiled Laws of North Dakota, 1913, published by authority of Chapter 197, Laws of 1913. "C. L. Suppl. 1925" refers to the supplement thereto of 1925, published by authority of Chapter 158, Laws of 1925. "L." refers to the session laws of the year cited.

Fifth. If it contains any poisonous or deleterious substance which may render the article injurious or detrimental to health. The word "substance" as used herein shall include ingredients naturally present or added.

Sixth. If it consists in whole or in part of filthy, decomposed or putrid animal or vegetable substance, or any portion of an animal unfit for food, or if it be the product of a diseased animal, or one that has died otherwise than by slaughter.

Seventh. If it does not conform to the standard of purity or quality established for the article. (Id. § 2889b5.)

6. Misbranding, What Constitutes.—The term "misbranded" as used herein shall apply to all drugs or foods or articles which enter into the composition of food, the package or label of which shall bear any statement, design or device regarding such article, or the ingredients or substances contained therein which shall be false or misleading in any particular, and to any food or drug product which is falsely branded as to locality, state or country of origin, or in which it was manufactured or produced, or if the package or label of which does not contain the true name and address of the manufacturer, jobber or other person responsible for its being placed in commerce.

For the purposes of this act an article shall also be deemed to be misbranded:

A. In the case of drugs:

First. If it be an imitation of or offered for sale under the name of another article.

Second. If the contents of the package as originally put up shall have been removed, in whole or in part, and other contents shall have been placed in such package.

Third. If the package or label of which fails to bear a statement of the quantity or proportion of alcohol or any narcotic or habit forming drug.

Fourth. If the package or label shall bear or contain any statement, design or device regarding the curative or therapeutic effect of such article or any of the ingredients or substances contained therein, which is misleading, false or fraudulent.

B. In the case of food:

First. If it be offered for sale under the distinctive name of another article.

Second. If it be labeled or branded so as to deceive or mislead the purchaser, or purport to be a foreign product when not so, or if the contents of the package as originally put up shall have been removed in whole or in part and other contents shall have been placed in such package.

Third. If the label fails to bear the quantity or proportion of alcohol.

Fourth. If, in package form, the name of the article, together with the quantity of the contents in terms of weight, measure or numerical count, be not plainly and conspicuously marked on the outside of the package.

Fifth. If, in package form, the package be not filled with the food it purports to contain, irrespective of whether the quantity of the contents be plainly and conspicuously marked on the outside of the package in terms of weight, measure or numerical count.

Sixth. If the package containing it or its label shall bear any statement, design or device regarding the ingredients or substances contained therein, which statement, design or device shall be false or misleading in any particular.

Seventh. If it be an imitation of another article and it be not marked with the word "imitation" equally conspicuous with and immediately adjoining the name of the imitated article.

Eighth. If it be a compound for which no standard of purity or quality has been established and it be not marked with the word "compound" equally conspicuous with and immediately adjoining the name of the article: Provided, however, that imitations, compounds, blends, mixtures or products sold under their own distinctive names shall, where necessary to prevent fraud or deception or to convey to the purchaser the true nature of the product, bear on the label a plain statement of the ingredients. If such statement of the ingredients alone be insufficient for the purpose herein designated the percentage of each ingredient shall in addition be required. (Id. § 2889b6.)

7. Special Weights and Sizes.—It shall be unlawful for any person, firm or corporation to manufacture, sell or expose for sale, any article of food or drug in any package or container, the size or shape of which may deceive or tend to deceive the purchaser of such product as to the contents of said package or container, and that for the purpose of preventing fraud and deception, the State Food Commissioner and Chemist shall hereby be authorized to establish, publish and enforce rules and regulations relative to the size, weight or style of package or other specific food or drug commodities than those specifically named in section 7 and

section 8 of this act* and such rules and regulations shall have the force and effect of law. (Id. § 2889b9.)

8. Right of Inspection.—For obtaining information regarding suspected violations of this act the State Food Commissioner and Chemist, his assistants, inspectors or agents shall have free access, ingress and egress to all places where articles of food, drug or beverage or other articles designated in this act are manufactured, sold, exposed for sale or transported or held in possession with intent to use, sell or transport, or where food is prepared, cooked or held in any capacity whatever, except in a private home; and that agents, bookkeepers, transportation officers and other employees shall render all assistance and aid within their power to inspectors to effectuate the provisions of this act; that said inspectors or agents upon paying or offering to pay to the person entitled thereto the full value thereof, may open any package, receptacle or container containing any article coming under the provisions of this act and may take a sample therefrom, sufficient for inspection and analysis. Any person obstructing such entry or inspection or failing upon request to assist therein shall be deemed guilty of a misdemeanor. (Id. § 2889b14.)

9. Seizure; Search Warrant.—The State Food Commissioner and Chemist may seize any article of food or drug, the manufacture, transportation, sale or use of which is prohibited by this act or which is manufactured, sold, used, transported, kept or offered for sale, use or transportation or had in possession with intent to use, sell or transport in violation of any provision of this act or in violation of any rule, regulation, standard or definition issued pursuant thereto, and for this purpose he and his several assistants, inspectors, agents and employees shall have the powers of a constable. Such seizure may be made without a warrant, but in such case, as soon as practicable, he shall cause the person suspected of such violation of law to be arrested and prosecuted therefor. When necessary a search warrant may be issued by any magistrate of the State, justice of the peace or police magistrate whenever probable cause is shown by testimony under oath by way of affidavit or deposition, that any article of food or drug which is adulterated, misbranded, insufficiently or improperly labeled or otherwise in violation of any provision of this act or any rule, regulation, standard or definition issued pursuant thereto, or any food which is unwholesome, poisonous, deleterious or detrimental to health, is being kept or is present upon certain premises, particularly describing such premises, or in the possession of any person, naming or describing the person, the said magistrate shall issue a search warrant, signed by him with the name of his office, directed to any peace officer in his county, or to the State Food Commissioner and Chemist, or any of his duly authorized agents, commanding him or them to forthwith search the person or place named and to seize all and any articles of food or drug which may be held in violation of any provision of this act and to bring such articles of food or drug before the magistrate. The search warrant issued shall be substantially the form prescribed in section 11134 of the Code of Criminal Procedure, Compiled Laws of North Dakota, 1913.

The provisions of article 11 of the Code of Criminal Procedure, Compiled Laws of North Dakota, 1913, as to service of search warrant, return of warrant, hearing, and return to District Court, shall govern in cases of search warrant issued pursuant to the provisions of this act, except that the testimony of the witnesses need not be reduced to writing, and where the magistrate finds that the property seized is property of the kind described in the search warrant, and that there is probable cause to believe that the grounds on which the search warrant was issued existed, he shall send said property so seized under the search warrant to the District Court, together with his return. In case he shall find there is not probable cause to believe that the grounds on which the search warrant was issued existed he shall order the property returned to the person from whom it was taken. (Id. § 2889b15.)

10. Disposition of Seized Articles.—Any article of food or drug which is adulterated, misbranded, insufficiently or improperly labeled, or any article of food which is poisonous, deleterious or detrimental to health or is held, used or transported in violation of any of the provisions of this act or of any rule, regulation, standard or definition issued pursuant thereto, is hereby declared to be a nuisance, and the Attorney-General, any of his assistants, the State's attorney of any county or the State Food Commissioner and Chemist may maintain an equitable action in the name of the State for the abatement of any such nuisance. In said action any person in whose possession any such nuisance as herein described may be found or the occupant, tenant, owner, manager or person in charge of any building, vehicle

*See Nos. 41 and 119.

of transportation or other property in which any such nuisance may have been found, shall each or all be made defendant. Said action shall be instituted and tried in the same manner in which other civil, equitable actions are tried. In case judgment is rendered in favor of the plaintiff in an action brought under the provisions of this section, the court in rendering judgment shall provide for the destruction of such adulterated, misbranded, insufficiently or improperly labeled article of food or drug or article of food which is unwholesome, poisonous, deleterious, or detrimental to health, or make such other judgment and decree with reference to the same as shall be proper in the premises, and such as shall prevent said articles from being used, sold or transported in violation of this act. In case of perishable food or drugs the court may at any time, on the motion of any party upon ten days' notice to the other parties to the action, in his discretion order the destruction of the same, or may at any time in his discretion order that said property be returned to the person from whom it was taken upon furnishing a bond conditioned that said article will not be sold, used or transported in violation of any of the laws of this State, and further conditioned for the payment of any judgment for costs which may be entered in said action. In case judgment is rendered in favor of the plaintiff in any action brought under the proceedings in said action, the court or judge rendering the same shall also render judgment for a reasonable attorney's fee in said action in favor of the plaintiff and against the defendants therein, which attorneys' fee shall be taxed and collected as other costs therein; and when collected, paid to the attorney or attorneys of the plaintiff therein; Provided, that if such attorney is the Attorney-General, one of his assistants, or the State's attorney of the county in which the action is instituted, such attorneys' fee shall be paid into the county treasury in the same manner in which other costs in the action are paid. (Id. § 2889b16.)

11. Authority to Render Certain Foods Unsalable.—Whenever the State Food Commissioner and Chemist or any of his authorized agents shall find in any room, building, vehicle of transportation or other structure or place, any meat, sea food, poultry, vegetable, fruit or other perishable articles intended to be sold or used for human consumption which are or contain filthy, decomposed or putrid animal or vegetable substance or that may be unsafe, unwholesome, poisonous, deleterious or detrimental to health, the same being hereby declared to be a nuisance, he shall forthwith seize, condemn and destroy the same or in any other manner render the same unsalable as human food. (Id. § 2889b17.)

12. Definitions, Rules, Regulations and Standards.—For the purpose of securing uniformity as far as practicable among the laws of this State, municipalities within the State, and the Federal Government, to prevent fraud and deception in the manufacture, use, sale and transportation of food, and to protect and preserve the public health and to carry out the intent of this act, it shall be the duty of the State Food Commissioner and Chemist to fix, adopt, publish and enforce definitions, rules, regulations and standards of quality, purity and strength of articles of food and drugs for which no definitions, rules, regulations and standards are prescribed by law, and such definitions, rules, regulations and standards so fixed, adopted and published shall be lawful in this State and shall have the force and effect of law. (Id. § 2889b18.)

13. Analyses, Publication.—It shall be the duty of the State Food Commissioner and Chemist to make or cause to be made analyses, examinations and inspections of all articles included under the provisions of this act to determine whether such articles are adulterated, misbranded, insufficiently or improperly labeled or unwholesome, poisonous or deleterious within the meaning of this act, and whether such articles have been manufactured, used, sold, transported, offered for sale or transportation or had in possession with intent to use, sell or transport in violation of any provisions of this act or any definition, standard, rule or regulation issued pursuant thereto and for other reasons, and a copy of the result of the examination or analysis of any such article duly authenticated by the chemist making such analysis or examination when given under oath shall be prima facie evidence in all courts of the matters and facts therein contained. The said State Food Commissioner and Chemist shall have authority to make such analysis, inspection and investigations and to carry on research and to publish the reports of such analysis, inspections and research for the information of the public. (Id. § 2889b19.)

14. Local Inspection.—The governing authority of any municipal corporation may by ordinance provide for the inspection of milk, cream and butter sold within its limits, and of dairy and dairy herds kept for the production of such milk, cream or butter, and may prescribe the terms upon which such sales may be made, and fix penalties for violation thereof; they may provide for a municipal

abattoir, provide for its operation and may prescribe regulations for the slaughtering of animals to be sold as meat and other sanitary and regulatory provisions as applied to food products; but no such ordinance or ordinances, rules or regulations shall conflict with any law of this State or any standard, rule or regulation fixed pursuant thereto. (Id. § 2889b20.)

15. Duty to Prosecute.—It shall be the duty of any State's Attorney to whom the State Food Commissioner and Chemist or his agent shall report any violation of this act to cause, without delay, appropriate proceedings to be instituted in the proper court of jurisdiction for the enforcement of the penalties, as in such case, is herein provided. (Id. § 2889b21.)

16. Penalties.—Any person violating or failing to comply with any of the provisions of this act or any rule, regulation, definition or standard issued pursuant thereto shall be deemed guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not less than twenty-five dollars ($25.00) or more than one hundred dollars ($100.00) or by imprisonment for not less than ten days or more than thirty days or both at the discretion of the court. (Id. § 2889b22.)

17. Disposition of Funds; Expenses, How Paid.—All moneys appropriated or otherwise authorized for the enforcement of this act shall be entered on the records of the State Food Commissioner and Chemist and the State Treasurer shall enter such moneys and carry them in a special revolving fund to be designated the State Regulatory Fund. All salaries and items of expense of whatever nature incurred in the enforcement of this act, as herein provided, shall be paid out of said State Regulatory Fund. Vouchers for all expenses, pay rolls and other items of expense of whatever nature incurred by the State Food Commissioner and Chemist in carrying out and enforcing the provisions of this act shall be approved by said State Food Commissioner and Chemist and shall be forwarded monthly to the State Board of Administration for audit and approval and the same shall be certified to the State Auditor, who shall draw warrants upon the State Treasurer for all pay rolls, expenses and bills so audited and approved. The State Treasurer shall thereupon pay such expenses and accounts out of the State Regulatory Fund. (Id. § 2889b23.)

18. Construction, Intent of Act.—The fact that certain weight, size and style of package are fixed in this act and that specific forms of adulteration and misbranding are specifically defined and other specific provisions are made in this act, it shall not be construed to limit the operation of the act to such forms of adulteration and misbranding as are specifically mentioned, it being the intention of the act to prevent deception and fraud in all articles of food, drugs or beverages and to prohibit the manufacture, sale, offering for sale or transportation or having in possession with intent to use, sell or transport any adulterated, misbranded, insufficiently or improperly labeled article of food or drug or any article of food which is unwholesome, poisonous, deleterious or detrimental to health, whether the adulteration, misbranding, insufficient or improper labeling, unwholesomeness or poisonous or deleterious qualities are referred to specifically in this act or not. (Id. § 2889b24.)

19. Definitions, Evidence of Intent.—The word "person" as used in this act shall be construed to import both the singular and plural, as the case demands, and shall include corporations, copartnerships, companies, societies and associations or two or more individuals having a joint or common interest. No person who shall commit or assist in committing any offense herein defined shall be exempt from conviction and punishment therefor, for the reason that he acted as an agent, employee or representative of another. When construing and enforcing the provisions of this act, the act, omission or failure of any officer, agent or other person acting for or employed by any corporation, copartnership, company, society or association within the scope of his employment or office shall in every case be also deemed to be the act, omission or failure of such corporation, copartnership, company, society or association as well as that of the person.

The words "sell" and "sale" as used herein shall be construed as including the keeping, offering or exposing for sale, use, transportation or exchange of the restricted, regulated or prohibited article; the having of any such article in possession with intent to sell, use, transport or exchange the same, and the storing, carrying or handling thereof in aid of traffic therein, whether done or permitted in person or through others; the having in possession of any article, the manufacture, sale, use or transportation of which is restricted, regulated or forbidden by this act, shall be deemed prima facie evidence of intent to sell, manufacture, transport or use the same in violation of law. (Id. § 2889b25.)

20. Provisions Severable.—The provisions of this act and each part thereof and its sections and each part thereof are independent and severable, and if any

provisions or part thereof or section or part thereof be held unconstitutional or invalid, no other provision or part thereof or section or part thereof shall thereby be impaired or rendered unconstitutional or invalid. (Id. § 2889b26.)

Miscellaneous General Provisions.

21. Unfair Competition.—Any person, firm or corporation, foreign or domestic, doing business in the State of North Dakota and engaged in the production, manufacture, distribution, purchase or selling of milk, cream, butter fat, grain or any commodity in general use that shall, with the intention of creating a monopoly, or of destroying the business of a competitor, or of any regular established dealer, or to prevent competition of any person who in good faith intends and attempts to become such a dealer, discriminate between different sections, communities, towns or cities, or portions thereof, in this State, by purchasing at a higher or selling at a lower rate or price in one section, community, town or city, or portion thereof, in this State, than is paid or charged by such person, firm or corporation for such milk, cream, butter fat, grain or commodity in general use in another section, community, town or city, or portion thereof, in this State, after making due allowance for the difference, if any, in the actual cost of transportation of such commodities, shall be guilty of unfair discrimination. (C. L. 1913, § 3043.)

22. Forfeiture of Charter.—If complaint shall be made to the Attorney-General that any person, firm or corporation is guilty of unfair discrimination, as defined by this article, he shall investigate the matter complained of, and for that purpose may subpœna witnesses, administer oaths, take testimony and require the production of books or other documents belonging to such person, firm or corporation, and if, in his opinion, sufficient grounds exist therefor he shall prosecute an action in the name of the State of North Dakota, in the proper court, to annul the charter or revoke the permit or license of such person, firm or corporation, as the case may be. (Id. § 3044.)

23. Attorney-General Brings Action, When.—If, after the revocation of such charter in the case of a domestic corporation, or of its permit if it be a foreign corporation, any such corporation shall continue or attempt to do business within this State, it shall be the duty of the Attorney-General of this State, by a proper action commenced in the name of the State, to oust such corporation from any and all business of any kind or character within the State of North Dakota. (Id. § 3045.)

24. Penalty.—Any person, firm or corporation convicted of unfair discrimination shall be fined in any sum not less than two hundred dollars nor more than three thousand dollars. (Id. § 3046.)

25. Cumulative Remedies.—Nothing in this article contained shall in any manner be construed as repealing or in any manner altering any other act or part of act heretofore adopted by the Legislature of this State; but the remedies herein provided shall be cumulative to all other remedies now existing. (Id. § 3047.)

26. Adulterating Medicines.—Every person who knowingly, willfully or fraudulently, either:

1. Falsifies or adulterates, or causes or permits to be falsified or adulterated, any drug, medicinal preparation authorized or recognized by any standard work on pharmacy, or used or intended to be used medicinally; or

2. Mixes or causes or permits to be mixed with any such drug or medicinal preparation any foreign or inert substance, for the purpose or with the intent of destroying or weakening its medicinal power or effect or of lessening its cost; or,

3. Sells, furnishes or delivers or causes or permits any such falsified or adulterated drug or medicinal preparation to be sold, furnished or delivered for medicinal purposes,

Is guilty of a misdemeanor. (C. L. Suppl. 1925, § 9741.)

27. Adulterating Food or Medicines.—Every person who adulterates or dilutes any article of food, drink, drug, medicine, strong, spirituous or malt liquor or wine, or any article useful in compounding either of them, whether one useful for mankind or for animals, with a fraudulent intent to offer the same, or cause or permit it to be offered for sale as unadulterated or undiluted, and every person who fraudulently sells or keeps or offers for sale the same as unadulterated or undiluted, knowing it to have been adulterated or diluted, is guilty of a misdemeanor. (C. L. 1913, § 9765.)

28. Knowingly Selling Tainted Food.—Every person who knowingly sells, or keeps or offers for sale or otherwise disposes of any article of food, drink, drug or medicine, knowing that the same has become tainted, decayed, spoiled or otherwise

unwholesome or unfit to be eaten or drank, with intent to permit the same to be eaten or drank by any person or animal, is guilty of a misdemeanor. (Id. § 9767.)

28a. Adulterating and Selling Adulterated Food or Medicine.—Every person who, either:

1. With intent that the same may be used as food, drink or medicine for man, sells or offers or exposes for sale, any article whatever, which to his knowledge is tainted or spoiled, or for any cause unfit to be used as food, drink or medicine; or,

2. Knowingly sells any article intended as food or drink for man which contains a sufficient quantity of any drug or other substance to render such article injurious to health, or compounds the same; or,

3. Adulterates or dilutes so as to render it injurious to health, for the purpose of sale as unadulterated or undiluted, any substance intended as food, drink or medicine for man,

Is guilty of a misdemeanor. (Id. § 10206.)

29. Provisions Sound and Wholesome.—One who makes a business of selling provisions for domestic use warrants by a sale thereof to one who buys for actual consumption, and not for the purpose of sale, that they are sound and wholesome. (Id. § 5985.)

29a. State Food Commissioner and Chemist, Creation of Office, Assistants. The office of the State Food Commissioner and Chemist is hereby created. It shall be the duty of the State Board of Administration, or such other body as may hereafter by law be designated as the governing body of the North Dakota Agricultural College, to appoint the said State Food Commissioner and Chemist. The term of office of such appointee shall be two years but shall be subject to removal for cause without appeal by the governing body of the North Dakota Agricultural College. The said State Food Commissioner and Chemist shall receive an annual salary of four thousand ($4,000.00) dollars and shall qualify by taking an oath of office, the same to be filed in the office of the Secretary of State and by furnishing a bond in the sum of ten thousand ($10,000.00) dollars conditioned for the faithful performance of the duties of his office. The said State Food Commissioner and Chemist may require any person employed by or responsible to him to furnish a bond for the faithful performance of his duties. The premiums on all such bonds shall be charged against the State regulatory fund hereinafter created.

The State Food Commissioner and Chemist shall, with the approval of the State Board of Administration, employ and fix compensation of such other chemists, scientific experts, agents, inspectors and employees; provide for adequate laboratories and offices, supplies and equipment for the same and provide such other facilities as may be necessary for the proper enforcement of any acts of which he may by law be charged. When in this act the term "agents" of the State Food Commissioner and Chemist or similar terms are used, said terms shall be construed to refer to the chemists, scientific experts, agents, inspectors and employees provided for in this section.

The compensation and all necessary expenses of the State Food Commissioner and Chemist and all other persons herein referred to for services rendered in connection with the enforcement of the provisions of any act, of which he may by law be charged, shall be paid out of the State regulatory fund and shall be apportioned among the various individual funds, making up the State regulatory fund, in proportion to the service rendered under each act and such apportionment shall be approved by the State Board of Administration.

The State Board of Administration shall annually and on or before the first day of July of each year, prepare an annual budget covering the expenditures to be made during the next ensuing year from each of the several funds comprising the State regulatory fund, and such budget, as so made, shall be adhered to during such ensuing year.

The State Food Commissioner and Chemist shall keep records showing the amount of money derived as fees under the provisions of each act under his enforcement and said records shall show the apportionment of all approved items of expense chargeable to the funds derived from each individual act. (C. L. Suppl. 1925, § 396c1.)

29b. State Food Commissioner and Chemist, Powers and Duties.—The duties of the State Food Commissioner and Chemist shall be such as may be prescribed by law. Wherever in the laws of the State of North Dakota the Food Commissioner, the State Food Commissioner, directors of the North Dakota Governmental Agricultural Experiment Station, director of the regulatory division of the North Dakota Agricultural College, director of the experiment station, Food Commissioner and State Chemist, Inspector of Oils, Inspector of Hotels, or Chief Sanitary Inspector or similarly designated officers shall be granted any powers

or charged with the performance of any duties in connection with the enforcement of any of the laws hereinafter specified or any acts amendatory thereof, said powers so vested in said officers shall be vested in the State Food Commissioner and Chemist, and he shall perform all the duties required by these laws to be performed by any of said officers in connection with the enforcement of any of the following acts:

Chapter 200 of the Session Laws of 1915.—Pure Food Law (§§ 2879-2889, post.)*

Chapter 38, Article 48, Political Code, Compiled Laws of 1913; sections 2939 to 2951, inclusive.—Drug Law.*

Chapter 38, Article 46, Political Code, Compiled Laws of 1913; sections 2926 to 2932, inclusive.—Formaldehyde Law.*

Chapter 38, Article 53, Political Code, Compiled Laws of 1913; sections 2962 to 2971, inclusive.—Sanitary Inspection Law.*

Chapter 38, Article 78, Political Code, Compiled Laws of 1913; sections 3149 to 3161, inclusive.—Cold Storage Law.*

Chapter 216 of the Session Laws of 1917; sections 1 to 5, inclusive.—Soda Fountain Law (§§ 2971a-2971a5, post).*

Chapter 72, Article 1, Penal Code, Compiled Laws of 1913; sections 9989 to 9991, inclusive.—False and Misleading Advertising Law.

Chapter 38, Article 60, Political Code, Compiled Laws of 1913; sections 3010 to 3013, inclusive.—Net Weight Lard and Bread Law.*

Chapter 60, of the Session Laws of 1921; sections 1 to 9, inclusive.—Egg Law (§§ 2863c1-2863c9, post.)

Chapter 85, Article 1, Penal Code, Compiled Laws of 1913; section 10155 to 10169, inclusive.—Beverage Law.*

Chapter 37, of the Session Laws of 1921; sections 1 to 13, inclusive.—Feeding Stuffs Law (§§ 2911-2921a, post).*

Chapter 97, Article 1, Penal Code, Compiled Laws of 1913; sections 10210 to 10224, inclusive.—Insecticide and Fungicide Law.

Chapter 38, Article 41, Political Code, Compiled Laws of 1913; sections 2890 to 2897, inclusive.—Fertilizer Law.†

Chapter 91, Article 1, Penal Code, Compiled Laws of 1913; sections 10180 to 10183, inclusive.—Snuff Law.

Chapter 185 of the Session Laws of 1919; sections 1 to 25, inclusive.—Oil Inspection Law. See note preceding (§ 3080a1, post).†

Chapter 38, Article 45, Political Code, Compiled Laws of 1913; sections 2923 to 2925, inclusive.—Paint Law.†

Chapter 1 of the Session Laws of 1921; sections 1 to 6, inclusive.—Varnish Law (§§ 2925a1-2925a6, post).†

Chapter 38, Article 57,† Political Code, Compiled Laws of 1913; sections 2979 to 2994, inclusive;† and Chapter 133 of the Sessions Laws of 1917,† sections 1 and 2.—Hotel Inspection Law (§§ 2986,† 2886a,† post). Id. § 396c2.)

29c. State Regulatory Fund, Creation of, Expenses, How Paid.—All fees and monies received by the State Food Commissioner and Chemist under the provisions of any acts with the enforcement of which he may by law be charged, shall be properly recorded by him as herein provided and forwarded monthly to the treasurer of the State of North Dakota as provided by law. The State Treasurer shall upon receipt thereof enter such funds and carry them in a special revolving fund to be designated the "State regulatory fund." All salaries and items of expense of whatever nature incurred in the enforcement of any act, as herein provided, shall be paid out of said State regulatory fund. Vouchers for all expenses, pay rolls and other items of expense of whatever nature incurred by the State Food Commissioner and Chemist in carrying out and enforcing the provisions of any act, shall be approved by said State Food Commissioner and Chemist and shall be forwarded monthly to the State Board of Administration for audit and approval, and the same shall be certified to the State Auditor who shall draw warrants upon the State Treasurer for all pay rolls, expenses and bills so audited and approved. The State Treasurer shall thereupon pay such expenses and accounts out of the State regulatory fund. (Id. § 396c3.)

29d. Powers and Duties of Board [of Health].‡—The board shall have power and it shall be its duty: . . .

7. To condemn or cause to be destroyed any impure or diseased article of food that may be offered for sale. . . .

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*Repealed.

†Omitted herein.

‡Now State Department of Health. C. L. Suppl. 1925, § 396d1.

9. To empower and direct the superintendent of public health to do or cause to be done any or all of the things mentioned in sub-divisions four, five, six, seven, and eight of this section. . . . (C. L. 1913, § 400.)

29e. Powers and Duties of the Superintendent.—The county superintendent of health shall have charge of and superintend, subject to the supervisory control of the State Board of Health, all matters and things mentioned in sub-divisions 1, 2, 3 and 4 of section 407,* throughout the county outside of the corporate limits of the cities. He shall exercise supervisory control of the local boards of health within his county, known as village boards of health and township boards of health. He shall furnish at the expense of the county board of health all township and village clerks and all physicians within his jurisdiction with proper blanks for reporting to him all contagious and infectious diseases. He shall properly instruct the township and village clerks and the physicians within his jurisdicton on the proper methods to employ in reporting contagious diseases. He shall be charged with strict and thorough enforcement of the laws, rules and regulations to the end that the health of the people be conserved and protected. When it shall come to his notice, or when he believes that there is a probability that a dangerous disease exists within his jurisdiction he shall make such sanitary inspecton of such places as he may deem advisable, and shall take such action and enforce such rules and regulations as he may deem necessary for the protection of the public health. Whenever a village board of health or township board of health within his jurisdiction neglects or refuses to perform any of its duties as specified in this act [article], or refuses or neglects to execute any of the orders or regulations of the county board of health, then the superintendent of said county board of health may execute its orders and regulations by agents of its own appointment. He shall have full and complete control, subject to the supervisory control of the State Board of Health, of all matters, pertaining to public health outside of the limits of incorporated cities within his county. He shall decide when quarantine and disinfecton are necessary for the safety of the public, and shall have power to establish and perform the same. All expenses incurred in quarantining or disinfecting outside of incorporated cities shall be audited by the county board of health and paid for out of the general fund of the county. He may send out circulars permitting the use of the long distance telephone at the expense of the county board of health in all cases of emergency. He may also investigate, subject to the supervisory control of the state board of health, all public water and ice supplies which are suspected of being infected and cause them to be condemned whenever he finds it necessary. He may also investigate public milk supplies and prohibit the sale of unwholesome milk and dairy products, stop shipment of spoiled or unwholesome meat, the slaughtering of diseased animals, and subsequent sale of the meat thereof. He shall enforce cleanliness in schools, inspect over-crowded, poorly ventilated and insanitary school houses, and when necessary report such cases to the board of inspection, as provided in section 80, chapter 266, of the Session Laws of 1911. He shall by the tenth day of each month report to the Secretary of the State Board of Health, on blanks furnished for that purpose, the name and address of each case of dangerous and contagious, infectious diseases occurring in his jurisdiction for the preceding month, with the name of the party reporting the same, together with a detailed statement of his official acts. (C. L. Suppl. 1925, § 408.)

29f. Laboratory Established.—There is hereby established a public health laboratory. Such laboratory shall be established at the State University and School of Mines. It shall be under the control and regulation of the trustees of the university and the professor of bacteriology and pathology at the State University shall be the director of said laboratory. (C. L. 1913, § 1650.)

29g. Director Makes Examinations.—It shall be the duty of the director of said laboratory to make bacteriological examinations of bodily secretions and excretions, waters and foods, and make preparations and examinations of pathological tissues submitted by the State Superintendent of Public Health, or by any county [superintendent] of public health, or by any regularly licensed physician of North Dakota. These analyses and preparations shall be made and the results furnished as expeditiously and promptly as the nature of the work and equipment of the laboratory permits. (Id. § 1651.)

NOTE: See also Nos. 216 et seq., 244b, and 299.

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*Omitted herein.

PART II.

Special Food Laws.

Beverages.

30. Intoxicating Liquors Defined.—The following liquors are hereby declared to be intoxicating and their intoxicating quality shall by all courts be presumed, viz.: All spirituous, malt, fermented and vinous liquors (except unfermented grape juice in hermetically sealed bottles), alcohol, whiskey, rum, brandy, beer, ale, porter, wine, hard cider and malt, or mixtures thereof, by whatsoever name called, or any liquor that will produce intoxication of any degree, or any liquor or liquids which are made, sold or offered for sale as a beverage and which shall contain coculus, indicus, copperas, opium, cayenne pepper, picric acid, Indian hemp, strychnine, tobacco, darmal seed, extract of logwood, salts of zinc, copper or lead, alum or any of its compound, methyl alcohol or its derivatives, amyl alcohol or any extract or compound of any of the above ingredients, or any liquid or compound of any name or description whatever, containing no alcohol whether medicated or not, capable of being used as a beverage and having the appearance or flavor of beer or malt, unless such liquor is pasteurized and contained in hermetically sealed bottles, shall be considered and held, to be intoxicating liquors within the meaning of this chapter. (C. L. Suppl. 1925, § 10105.)*

30a. Name of Act.—The following act shall be known and may be cited as the North Dakota Beverage Inspection Act. (Id. § 10169a1.)

31. Certain Beverages Unlawful to Sell.—It shall be unlawful for any person, firm or corporation, their agents or employees to sell, offer or expose for sale or to have in their possession with intent to sell within this State, any beverage of whatever nature that contains any ingredient or ingredients injurious to health or is adulterated, misbranded, insufficiently or improperly labeled within the meaning of the Food and Drugs act of this State, or that is not licensed as hereinafter provided. (Id. § 10169a2.)

32. Label, Standards.—The requirements for labeling and standards of purity and quality of all beverages included in this act shall be the same as those required under the Food and Drugs act of this State, together with such other standards, rules and regulations as the State Food Commissioner and Chemist is herewith empowered to make to carry out the intent of this act, and such standards, rules and regulations shall have the force and effect of law. (Id. § 10169a3.)

33. What is Included.—There shall be included as coming under the provisions of this act all beverages, as soda water, carbonated and non-carbonated, ginger ale, root beer, aromatic flavors, cereal or malt beverages, apple cider, grape juice and other fruit juices, imitations or compounds of any of these concentrated extracts and essences from which beverages are made and mineral or spring water sold under private label. (Id. § 10169a4.)

34. License Required.—Before any beverage, concentrate or essence from which any beverage is to be made can be sold, exposed for sale or held with intent to sell within this State, the manufacturer, importer, jobber or retailer shall submit a suitable sample of each and every product to the State Food Commissioner and Chemist for inspection and chemical analysis. If, after examination, it shall be found to comply with all requirements of law it shall be licensed and may then be sold within this State. If it does not meet all requirements of law, the State Food Commissioner and Chemist shall refuse to license it and prevent its sale. Said sample shall be submitted to the State Food Commissioner and Chemist and the license fee paid annually during the month of December of every year or prior to placing such beverage on the market, and said license shall expire December 31 next following its issuance. If the manufacturer or jobber secures a license for a product, subsequent sellers, including retailers and dispensers, need not again secure a license for the same product, and no dispenser shall be required to secure a license for a product prepared for his own use from a product already licensed. At the time of submitting the sample for analysis there shall be paid to the State Food Commissioner and Chemist a license fee according to the following schedule:

Soda water, ginger ale, root beer, pop—brand or class	$10.00
Concentrated extracts, essences, nectars, cordials—brand or class	50.00

*See No. 203, a subsequent law.

Fruit juices, apple cider, grape juice, true brand	$20.00
Fruit juices, apple cider, grape juice, imitation brand	10.00
Cereal beverages and malts—brand	50.00
Mineral and spring water—brand	20.00

(Id. § 10169a5.)

35. Fees, Disposition of; Expenses, How Paid.—All fees received by the State Food Commissioner and Chemist as provided for in this act shall be properly recorded by him and forwarded monthly to the Treasurer of the State of North Dakota. The State Treasurer shall upon receipt thereof enter such funds and carry them in a special revolving fund to be designated the "State Regulatory Fund." All salaries and items of expense of whatever nature incurred in the enforcement of this act shall be paid out of said State Regulatory Fund. Vouchers for all expenses, pay rolls and other items of expense of whatever nature, incurred in the enforcement of this act shall be approved by the State Food Commissioner and Chemist and be forwarded monthly to the State Board of Administration for audit and approval and when so audited and approved shall be certified to the State Auditor who shall draw warrants upon the State Treasurer for all pay rolls, expenses and bills so audited and approved. The State Treasurer shall thereupon pay such expenses and accounts out of the State regulatory fund. (Id. § 10169a6.)

36. State Food Commissioner and Chemist to Enforce.—The State Food Commissioner and Chemist, his agents and inspectors, as provided for in the Food and Drugs act of this State, is hereby charged with the enforcement of all the provisions and intent of this act and is hereby authorized to inspect and collect samples of the various beverages as defined under the provisions of this act and on sale in this State or being shipped into the State at such times and places and to such extent as he may determine. The State Food Commissioner and Chemist and his agents, inspectors and deputies shall have access, ingress and egress to all places of business, factories, building, carriages, cars, vessels and containers used in the sale or transportation of beverages coming under the provisions of this act. He shall have power and authority to open any package, container or vessel containing such article and upon paying or offering to pay the value thereof may take suitable samples for analysis therefrom, and shall have the authority to prevent the sale or manufacture of products not complying with the provisions of this act. (Id. § 10169a7.)

37. Facts, How Transmitted.—Whenever said State Food Commissioner and Chemist shall find, by analysis or otherwise, that adulterated, misbranded, insufficiently labeled or an unlicensed product is being sold in violation of this act, he shall forthwith transmit the facts so found to the State's attorney of the county in which the product was found and it shall be the duty of said State's attorney to institute appropriate proceedings in the proper court of jurisdiction. (Id. § 10169a8.)

38. Penalties For Violation.—Any person, firm or corporation violating any of the provisions of this act or any rule or regulation issued pursuant thereto shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined not less than twenty-five dollars ($25.00) and not more than one hundred dollars ($100.00), at the discretion of the court. (Id. § 10169a9.)

39. Publicity.—The State Food Commissioner and Chemist shall have authority to publish analyses of all products coming under the provisions of this act and to gather useful information for the benefit of the public and users of the articles designated herein. (Id. § 10169a10.)

40. Provisions Severable.—The provisions of this act and each part thereof and its sections and each part thereof are independent and severable and if any provisions or part thereof or section or part thereof be held unconstitutional or invalid, no other provision or part thereof or section or part thereof shall thereby be impaired or rendered unconstitutional or invalid. (Id. § 10169a11.)

NOTE: See also Nos. 8, 18, 27-28a, 203 et seq., 245, 254 et seq., and 276.

Bread.

41. Bread, How Sold.—It shall be unlawful for any person to sell, offer or expose for sale or to have with intent to sell or transport any bread the loaf of which is not one of the following weights: sixteen ounces, twenty-four ounces avoirdupois or any whole multiple of sixteen ounces avoirdupois. The weights shall apply alike to each unit of twin or multiple loaves. Any loaf shall be of the required weight at any period from the time of baking until twelve hours thereafter. The above required weight standards shall apply alike to wheat bread, white

bread, milk bread, rye bread, raisin bread, currant bread, brown bread, graham or whole wheat bread and other similar kinds of farinaceous substances baked in loaves and known and designated by the trade as bread. The average weight of loaves shall be as often above as below any permissible weights; provided, that the weight standards defined in this section shall not be construed to apply to cake, buns, biscuits and similar small unit products. (C. L. Suppl. 1925, § 2889b8.)*

Cider.

See Nos. 33 and 212.

Cold Storage.

42. Storage; Cold Storage Products.—For the purpose of this act a cold storage shall be defined as a place artifically cooled to a temperature of forty degrees Fahrenheit or below, but shall not include such a place within a private home, hotel, restaurant or a refrigerator car. No food shall be sold as fresh when held in storage or cold storage for a longer period than has been shown by good practice to improve the quality of the particular food, or when there is any deterioration in such article, or when the storage product is not as desirable as the fresh. If storage or cold storage or other than fresh products are sold they must be labeled so as to fully advise the purchaser of the nature of the product entering into the transaction. All storage or cold storage products shall be stamped, labeled or tagged with the date when they were received in storage and removed therefrom. Said stamp, tag or label shall not be removed by any subsequent seller. (C. L. Suppl. 1925, § 2889b12.)*

NOTE: See also No. 96.

Confectionery.

43. Adulteration of Candy.—No person shall by himself, his servant or agent, or as the servant or agent of any other person or corporation, manufacture for sale, or knowingly sell or offer to sell any candy adulterated by the mixture of terra alba, barytes, talc or any other mineral substance, by poisonous colors or flavors or other ingredients deleterious or detrimental to health. Whoever violates any of the provisions of this section shall be punished by a fine of not exceeding one hundred dollars nor less than fifty dollars. The candy so adulterated shall be forfeited and destroyed under direction of the court. (C. L. 1913, § 9766.)

Dairy Products—Substitutes For Dairy Products.

44. Dairy Department Created.—There is hereby created a bureau of the Department of Agriculture and Labor to be known as the Dairy Department, which is hereby created for the purpose of promoting, improving and regulating the dairy products of the State and to establish and enforce proper rules and regulations pertaining thereto. (C. L. 1913, § 2835.)

45. Deputy Commissioners.—The Commissioner of Agriculture and Labor is hereby authorized and directed to appoint a deputy in his department, who shall be known as the Dairy Commissioner and who shall be the official head of the dairy department. He shall have a practical knowledge and experience in the manufacture of dairy products. There shall also be appointed by the Commissioner of Agriculture and Labor, with the advice of the Dairy Commissioner, two assistant dairy commissioners, who shall possess the same qualifications as the Dairy Commissioner. Said Dairy Commissioner and assistant dairy commissioners shall hold their offices during the term of the Commissioner of Agriculture and Labor, who shall appoint them, subject to removal by said commissioner for inefficiency, neglect or violation of duty. The Commissioner of Agriculture and Labor may also appoint, with the advice of the Dairy Commissioner, such other assistants in the dairy department as the needs of the department demand and the funds available permit, not to exceed three in number. The assistants so appointed shall hold office for such time as may be determined by the Commissioner of Agriculture and Labor and shall be subject to removal for inefficiency, neglect or violation of duty. (C. L. Suppl. 1925, § 2836.)

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*For penalty, see No. 16.

46. Compensation.—The Dairy Commissioner shall receive the same salary as is paid to the assistant or chief deputy in other departments of the State government; and the assistant dairy commissioners shall be paid a salary of fifteen hundred dollars per annum, such salary to be paid on vouchers approved by the Commissioner of Agriculture and Labor in the same manner as the salaries of the employees of other departments of the State government are paid. (C. L. 1913, § 2837.)

47. Expenses of Commissioners Paid.—In addition to the compensation in this article provided the said Dairy Commissioner and assistant dairy commissioners shall be paid all actual and necessary expenses incurred in the performance of their duties, to be paid as the expenses of other departments are paid. (Id. § 2838.)

48. Duties.—It shall be the duty of said Dairy Commissioner to carry into effect the provisions of this article and all other acts which may be in force or be hereafter enacted relating to dairies and dairy products and he is hereby authorized and empowered to promulgate and enforce such rules and regulations as may be deemed proper and necessary to carry into effect the provisions of this article; and to amend, alter or abolish such regulations from time to time as changed conditions or experience shall show to be to the best interest of the dairying interests of the State, and relating to the production, manufacture and sale of dairy products, their imitations and substitutes. He shall inspect or have inspected every creamery and cream station, cheese factory and renovating or "process butter" factory in the State at least once a year; to assist the butter makers, cheese makers and managers of such factories and stations and the patrons of the same, in order to improve the quality of the dairy products sold to or manufactured in said factories and to co-operate with and instruct the dairymen in testing their dairy herds, both individually and collectively. (Id. § 2839.)

49. Publish Bulletins.—The said Dairy Commissioner, under the supervision of the Commissioner of Agriculture and Labor is hereby authorized, and it is made his duty from time to time as deemed necessary to publish and distribute bulletins containing the rules and regulations of the Dairy Commissioner and such other useful information as he shall deem to the advantage of the dairy interests of the State. The expenses for such publications shall be audited and paid for as other public printing. (Id. § 2840.)

50. Additional Powers and Duties.—In addition to the powers and duties in this article enumerated, the said Dairy Commissioner and such persons as shall be duly authorized for the purpose, shall have access, ingress and egress to all places of business, factories, farms, buildings, carriages, cars, vessels and cans used in the sale of any dairy product, or any imitation thereof. They shall also have power and authority to open any package, can or vessel containing such article which may be manufactured, sold or exposed for sale in violation of the provisions of this article, and may inspect the contents therein, and may take samples therefrom for analysis. They shall also have authority to prevent the sale or manufacture into any food product cream that is filthy or putrid, or milk that has been drawn from cows diseased or fed on unwholesome food, and to prohibit the shipment of the same from any railway station within the State. All clerks, bookkeepers, express agents, railroad officials, employees or common carriers shall render to them every assistance in their power, when so requested, in tracing, finding or discovering the presence of any prohibited article named in this article. The dairy commissioners and such persons as shall be duly authorized for the purpose shall have free access to any barn or stable where any cow is kept or milked, or to any factory, building, dairy premises or creamery where any dairy products are bought, manufactured, handled or stored when the milk or cream from such cow or product is to be sold or shipped at or to any cream station, creamery, cheese factory, ice cream factory or other factory, and may enforce such measures as are necessary to secure perfect cleanliness in and around the same, and of any utensils used therein. (Id. § 2841.)

51. Penalty For Obstructing Commissioner.—Whosoever shall refuse to allow the inspection herein provided for, or shall in any way hinder or obstruct the proper officers performing their duties hereunder shall be subject, on conviction, to a fine not exceeding one hundred dollars or by imprisonment in the county jail not exceeding thirty days, and it shall not be necessary to have the indorsement of the State's attorney to a complaint made for violation of the provisions of this article; but when the justice of the peace or other court before whom complaint is made shall be satisfied of the truthfulness of such complaint, he shall issue a warrant thereon. (Id. § 2842.)

52. Cream Station Defined.—For the purpose of this article a "cream station" shall be any place where an individual, firm or corporation receives milk or cream

from more than one herd that is weighed, tested or purchased when such milk or cream is to be manufactured into butter, cheese or ice cream by some other individual, firm or corporation, or in some separate building or locality than that in which such milk or cream is weighed, tested or purchased; provided, however, that it is not intended by this article to include weighing on public scales by producers before shipment by themselves. (Id. § 2843.)

53. License Required; Fees and Revocation.—Every person, firm, or corporation owning or operating a creamery, cheese factory, renovating or process butter factory, ice cream factory, or cream station in this State, shall be required before beginning business to obtain from the Dairy Commissioner a license for each and every creamery, cheese factory, renovating or process butter factory, ice cream factory or cream station owned or operated by said person, firm, or corporation, which shall be good for one year. The fee for such license shall be ten dollars, and no license shall be transferable. Each license shall record the name of the person, firm or corporation owning or operating the creamery, cheese factory, renovating or process butter factory, ice cream factory, or cream station licensed, its place of business, the location thereof, the name of the manager thereof and the number of the same. Each license so issued shall constitute a license to the manager or agent of the place of business named therein. It shall be the duty of every person, partnership, firm or corporation, or association holding a license to operate any plant in which dairy products are handled commercially, to post in a conspicuous place such license under which they are operating, together with a summary of the dairy laws, which shall be prepared and sent out from the office of the Dairy Commissioner. The Dairy Commissioner may withhold a license from any applicant who has previously violated or refused to comply with any of the existing dairy laws or lawful requests issued by said Dairy Commissioner, or his authorized assistants. The Dairy Commissioner may, at any time, revoke a license on evidence that licensee has violated any of the existing dairy statutes, or has refused to comply with all lawful requests of the Dairy Commissioner or his authorized agents. (C. L. Suppl. 1925, § 2844.)

54. Authority Required to do Business.—No corporation or association shall do or transact any business in this State pertaining to the dairy interests of the State as described in this article without having first been authorized so to do under the laws of this State, and no foreign corporation shall purchase any cream in this State for shipment out of the State except through authorized agents at established and licensed cream stations, and subject to such rules and regulations as shall be prescribed by the Dairy Commissioner for the regulation and conduct of cream stations. No person shall act as the agent or purchaser of cream for any foreign corporation who is not a resident of this State and licensed so to do, and any person acting as such agent who fails to comply with the provisions of this article and the rules and regulations established thereunder shall on conviction be punished as for a misdemeanor. (C. L. 1913, § 2845.)

55. Annual Report of Cream Station; Price Discrimination Forbidden; Dairy Products.—The agent or person in charge of any cream station at which cream is purchased for shipment out of the State or for shipment from the place where purchased to a point within the State, shall on July 1st of each year or within thirty days thereafter report to the Dairy Commissioner the name, location and business of his employer, amount of capital stock invested in business, property or assets, liabilities and such other information pertaining to the business and conduct of the cream station of which such agent has charge, as shall be requested in writing by the Dairy Commissioner. Any person, partnership, firm, corporation or association engaged in the business of buying milk, cream or butter fat, who shall discriminate between different sections, localities, communities, villages or cities of this State by purchasing such commodity at a different price or rate in one locality than is paid for the same commodity by said person, partnership, firm, corporation or association in another locality or section of the State, after making due allowance for the difference, if any, in the actual cost of transportation from the locality of purchase to the locality of manufacture, or place of destination, shall be deemed guilty of unfair discrimination and such acts are hereby declared to be unlawful, and upon conviction thereof, shall be punished by a fine of not less than one hundred dollars or thirty days' imprisonment in the county jail, or both, for conviction of first offense; and not less than two hundred fifty dollars, or ninety days' imprisonment in the county jail, or both, for each additional or subsequent offense.

Provided, however, that the purchase of such commodities at a different price or rate may be made at a particular section, locality, community, village or city, to meet legitimate competition in such section, locality, community, village or city, and legitimate competition as used herein is defined to be the meeting of a price or rate paid for the same commodity by a competitor located in the same section, locality,

community, village or city and engaged in the same business under the same conditions and circumstances and operating in the same manner as the person, partnership, firm, corporation or association meeting said price. The meeting of this competition as herein defined shall not be a violation of this act. (C. L. Suppl. 1925, § 2846.)*

56. Report of Commissioners.—The Dairy Commissioner shall make report to the Commissioner of Agriculture and Labor, as directed by such commissioner, and the annual reports of the Commissioner of Agriculture and Labor shall contain a detailed report of the work and proceedings, together with an account of expenses and disbursements of said assistant dairy commissioners, in regard to the production manufacture and sale of dairy products, and such suggestions as he may regard of public importance connected therewith. (C. L. 1913, § 2847.)

57. Authority of Assistants.—The assistant dairy commissioners shall perform such duties as may be directed by the Dairy Commissioner, or the Commissioner of Agriculture and Labor; and when acting as such, the assistant dairy commissioners shall be invested with the same authority as is by this act conferred upon the Dairy Commissioner. (Id. § 2848.)

58. Stencil or Brand Required; Report to Commissioner.—Every creamery, cheese factory, combined creamery and cheese factory or renovating or "process butter" factory shall procure a stencil or brand bearing a suitable device and words which shall clearly designate the quality of the product manufactured and the number and location of the factory, and it may contain a special or private brand or name of said factory; every brand shall be used upon the outside of the cheese and also upon the package containing the same, but in the case of butter on the package only; and shall on the first day of July, or within thirty days thereafter, of each year, report to the Dairy Commissioner the name, location and number of each factory, using the same brand, and the name or names of the persons at each factory authorized to use the same, together with a copy of each stencil or brand, and the Dairy Commissioner shall keep a book in which shall be registered the same. (Id. § 2849.)

59. Blanks For Report.—The said Dairy Commissioner shall provide blanks which shall be furnished to all proprietors or managers of creameries, cheese factories and renovating or "process butter" factories and cream stations, which shall be licensed under the provisions of this article, for the purpose of making a report of the amount of milk and dairy goods handled, and all owners or managers of such creameries, cheese factories and renovating or "process butter" factories, and cream stations shall send to the Dairy Commissioner, not later than the last day of each month, a full and accurate report of the amount of business done during the preceding month as designated under the different headings of such printed blanks. (Id. § 2850.)

60. Penalty For Selling Impure, Adulterated or Skimmed Milk.—If any person shall sell or expose for sale or exchange or deliver or bring to another for domestic or potable use, to be converted into any product of human food, any unclean, impure, unhealthy, adulterated, unwholesome or skimmed milk (except pure skimmed milk to skim cheese factories), or milk from which has been held back what is commonly known as strippings, or milk taken from an animal having disease, sickness, ulcers, abscess or running sores or which has been taken from animals within fifteen days before or five days after parturition; or if any person shall purchase to be converted into any product of human food, any unclean, unhealthy, adulterated or unwholesome milk or cream, or shall manufacture any such milk or cream into any product of human food; or if any person, having cows for the purpose of producing milk and cream for sale, shall stable them in an unhealthy place, or in a crowded manner, or shall knowingly feed them food which produces impure unwholesome milk, or shall feed them on any substance in a state of putrefaction or rottenness, or of an unhealthy nature, shall be guilty of a misdemeanor, and upon conviction thereof shall be punished as provided by law. (Id. § 2851.)

61. Adulteration Defined.—For the purpose of this article, the addition of water or any so-called preservative or anything to whole milk or skimmed milk or partially skimmed milk or cream is hereby declared an adulteration, and milk or cream which is obtained from animals fed on any substance of an unhealthy nature is hereby declared impure and unwholesome, and milk which has been proved by any reliable method of test or analysis to contain less than twelve per cent. of milk solids to the hundred pounds of milk, or less than three pounds of butter fat to the hundred pounds of milk, shall be regarded as skimmed or partially

*See also No. 21 et seq.

skimmed milk and every article not containing fifteen per cent. or more of butter fat shall not be regarded as cream. (Id. § 2852.)

62. Standard Glassware.—Any person shall be guilty of a misdemeanor who shall within this State test milk or cream for butter fat by the use of any bottles or glassware which do not conform to the Standard Babcock test bottles for milk and cream, which shall be the following:

1. Eight per cent, 18-gram, 6-inch milk-test bottle.
2. Fifty per cent, 9-gram, short neck (6-inch) cream-test bottle.
3. Fifty per cent, 9-gram, long neck (9-inch) cream-test bottle.
4. Fifty per cent, 18-gram, long neck (9-inch) cream-test bottle.
5. Fifty per cent, 18-gram, short neck (6-inch) cream-test bottle.

1. Eight per cent, 18-gram, so-called 6-inch milk-test bottle. Graduation: The total per cent graduation shall be 8. The graduated portion of the neck shall have a length of not less than 63.5 mm. (2.5 inches). The graduation shall represent whole per cent, five-tenths per cent, and tenths per cent. The tenths per cent graduation shall be not less than 3 mm. in length; the five-tenths per cent graduation shall be 1 mm. longer than the tenths per cent graduations, projecting 1 mm. to the left; the whole per cent graduations shall extend one-half way around the neck to the right, projecting 2 mm. to the left of the tenths per cent graduations. Each per cent graduation shall be numbered, the number being placed on the left of the scale. The maximum error of the total graduation or any part thereof shall not exceed the volume of the smallest unit of the graduation.

Neck: The neck shall be cylindrical for at least 5 mm. below the lowest and above the highest graduation mark. The top of the neck shall be flared to a diameter of not less than 10 mm.

Bulb: The capacity of the bulb up to the junction of the neck shall not be less than 45 ml. The shape of the bulb may be either cylindrical or conical with the smallest diameter at the bottom. If cylindrical, the outside diameter shall be between 34 and 36 mm.; if conical, the outside diameter of the base shall be between 31 and 33 mm. and the maximum diameter between 35 and 37 mm.

The charge of the bottle shall be 18 grams.

The total height of the bottle shall be between 150 and 165 mm. (5⅞ and 6½ inches).

Each bottle shall bear a permanent identification number.

2. Fifty per cent 9-gram, so-called short-neck (6-inch) cream-test bottle. Graduation: The total per cent graduation shall be 50. The graduated portion of the neck shall have a length of not less than 63.5 mm. (2.5 inches). The graduation shall represent 5 per cent, 1 per cent and 0.5 per cent. The 0.5 per cent graduations shall be at least 3 mm. in length; the 1 per cent graduations shall be 2 mm. longer than the 0.5 per cent graduations, projecting 2 mm. to the left; the 5 per cent graduation shall extend halfway around the neck to the right. Each 5 per cent graduation shall be numbered, the number being placed on the left of the scale. The maximum error of the total graduation or any part thereof shall not exceed the volume of the smallest unit of the graduation.

Neck: (Same as standard milk-test bottle.) The neck shall be cylindrical for at least 5 mm. below the lowest and above the highest graduation mark. The top of the neck shall be flared to a diameter of not less than 10 mm.

Bulb: (Same as standard milk-test bottle.) The capacity of the bulb up to the junction of the neck shall not be less than 45 ml. The shape of the bulb may be either cylindrical or conical, with the smallest diameter at the bottom. If cylindrical, the outside diameter of the base shall be between 31 and 33 mm. and the maximum diameter between 35 and 37 mm.

The charge of the bottle shall be 9 grams. All bottles shall bear on top of the neck above the graduations in plainly legible characters a mark denoting the weight of the charge to be used (9 grams).

The total height of the bottle shall be between 150 and 165 mm. (5⅞ and 6.5 inches). (Same as standard milk-test bottles.)

Each bottle shall bear a permanent identification number.

3. Fifty per cent 9-gram, so-called long-neck (9-inch) cream-test bottles.

The same specifications in every detail as specified for the 50 per cent 9-gram 6-inch cream-test bottle shall apply to the 9-inch bottle, with the exception, however, that the total height of this bottle shall be between 210 and 229 mm. (8¼ and 9 inches), and the graduated portion of the neck shall have a length of not less than 120 mm.

4. Fifty per cent 18-gram, so-called long-neck (9-inch) cream-test bottles.

The same specifications in every detail as specified for the 50 per cent 9-gram, 9-inch cream-test bottle shall apply, except that the charge shall be 18 grams. All bottles shall bear on top of the neck above the graduations in plainly legible characters a mark denoting the weight of the charge to be used (18 grams).

THE STANDARD BABCOCK PIPETTE.

Total length of pipette not more than	mm.	330
Outside diameter of suction tube	mm.	6–8
Length of suction tube	mm.	130
Outside diameter of delivery tube	mm.	4.5–5.5
Length of delivery tube	mm.	100–120
Distance of graduation mark above bulb	mm.	15–45
Tolerance	ml.	0.05

Nozzle straight.

To contain 17.6 ml. of water at 20° C.

Delivery in 5 to 8 seconds.

5. Fifty per cent 18-gram, so-called short-neck (6-inch) cream-test bottle; which shall be the same specification in every detail as specified for the 50 per cent, 9-gram 6-inch cream-test bottle, except that the charge shall be 18 grams and the flare at the top of the neck of the bottle shall be at least 15 mm. in diameter. (L. 1927, c. 130, § 1.)

62a. When Act Does Not Apply.—No person shall be guilty of a violation of this act, nor be subject to prosecution thereunder who has, for the purpose of testing milk and cream for butter fat, used bottles or glassware purchased from a manufacturer who has filed a bond and been assigned a designating number as provided in the following section. (Id. § 2.)

62b. Registration of Trade-Marks.—Any manufacturer desiring to sell, in this State, bottles and glassware for use in testing milk and cream for butter fat may make application to the Dairy Commissioner for the registration of a trade-mark adopted by such manufacturer and to receive from the Dairy Commissioner a designating number, and shall at the time of filing such application file with such commissioner a bond in the sum of one thousand dollars payable to the State of North Dakota, with sureties, which said sureties, if personal, shall be residents of this State, and if a surety company, shall be authorized to do business in this State, conditioned that it will sell in this State only such bottles and glassware as shall conform to the standard Babcock test, and which shall have clearly blown or otherwise permanently marked in the side thereof the capacity of the same and the word "Sealed," and in the side or bottom the trade-mark and the designating number of the manufacturer, which said trade-mark and designating number shall be different for each manufacturer. Such bond shall be valid for a period of three years from the date of its execution, unless prior to that time it shall appear to the Dairy Commissioner that the surety or sureties thereon have become insolvent or nonresidents of the State or, if a surety company has ceased to do business in this State, whereupon he shall be authorized to cancel such bond and require a new bond to be filed. Upon the making of such application and the filing of such bond, the Dairy Commissioner shall assign to the applicant a designating number and cause a record to be made thereof in his office, together with a record of such trade-mark. (Id. § 3.)

62c. Penalty.—Any manufacturer who shall have made the application and filed the bond aforesaid and to whom shall have been assigned a designating number, who shall sell in this State any bottles or glassware which do not conform to the Standard Babcock test and be marked as provided in the foregoing section, shall forfeit to the State of North Dakota the sum of five hundred dollars to be recovered in an action for that purpose brought in the name of the State of North Dakota by the Attorney-General against the surety or sureties upon such bond. Any manufacturer, merchant, dealer or agent in this State who shall offer for sale or sell any milk or cream test bottle, which is not in compliance with the above specifications, shall be guilty of a misdemeanor and upon conviction thereof shall be punished as provided by law. (Id. § 4.)

63. False Reading Unlawful.—It shall be unlawful for the owner, manager, agent or employee of any factory, station, plant or place of any character whatsoever where milk or cream or the products of either or both combined are tested, or for any other person whatsoever, to manipulate, under-read, over-read, or in any other manner to alter the true reading of the Babcock test, or any other instrument, contrivance or method that is, or can be, legally used to determine the quality or value of butter fat in milk or cream or the products of either, or both combined. (C. L. Suppl. 1925, § 2854; L. 1927, c. 128, § 1.)

63a. Penalty.—Any person, copartnership, or corporation, or any agent, servant or employee of either, violating any of the provisions of this act, shall be deemed guilty of a misdemeanor and be punished by a fine of not less than $50.00 (fifty dollars), nor more than $100.00 (one hundred dollars), or by imprisoment for not less than thirty days nor more than ninety days, or by both such fine and imprisonment. (L. 1927, c. 128, § 2.)

64. Sale of Adulterated Products Prohibited; Oleomargarine Excepted.—No person by himself or his agents or servants shall render or manufacture, sell, offer for sale for the future delivery of, having in his possession, keep in storage, distribute, deliver, transfer or convey with intent to sell within this State any article, product or compound made wholly or partly out of any fat, oil or oleoginous substance or compound thereof, not produced from adulterated milk or cream from the same, which shall be an imitation of yellow butter produced from pure unadulterated milk or cream of the same; provided, that nothing in this article shall be construed to prohibit the manufacture or sale of oleomargarine in a separate and distinct form, and in such a manner as will advise the consumer of its real character, free from coloration or ingredient that causes it to look like butter. (C. L. 1913, § 2855.)

65. Oleomargarine, Butterine, etc., How Marked.—No person by himself or his agent or servants shall sell or expose for sale oleomargarine, butterine or any substance made in imitation or semblance of pure butter, in tubs, firkins or other original packages not distinctly, legibly and durably branded or marked in a conspicuous place with the word "oleomargarine" or "butterine" or "imitation butter," as the case may be, in letters not less than one inch in length and one-half inch in width, or in retail packages not plainly and conspicuously labeled with said words, "oleomargarine" or "butterine" or "imitation butter," as the case may be. (Id. § 2856.)

66. Renovated Butter, How Marked.—No person by himself, or his agents or servants, shall manufacture, sell, offer for sale or expose for sale butter that is produced by taking original packing stock or other butter, or both, and melting the same so that the butter fat can be drawn off, then mixing the said butter fat with skimmed milk or milk and cream, or other milk product, and rechurning the said mixture; or that is produced by any similar process, and is commonly known as boiled or process butter, unless the tub, firkin or other original package in which the same may be put up be distinctly, legibly and durably branded, stamped or marked in a conspicuous place with the words "renovated butter," in printed letters not less than one inch in length and one-half inch in width; or be in prints, boxes or rolls not plainly and conspicuously labeled on the wrapper thereof with said words "renovated butter," in printed letters not less than one-half inch in length and one-quarter inch in width. (Id. § 2857.)

67. Skimmed Milk Cheese, How Marked.—No person by himself or his agents or servants shall sell or offer for sale any cheese manufactured from skim milk or from milk that is partially skimmed, without the same being plainly branded, stamped or marked on the side or top of both cheese and package in a durable manner, in the English language, the words "skimmed milk cheese," the letters of the words to be not less than one inch in height and one-half inch in width. (Id. § 2858.)

68. Filled Cheese, How Marked.—No [any] person [who] by himself or his agents or servants shall sell or offer for sale or make, manufacture out of any oleaginous substance or substances or any compound of the same or any other compound than that produced from adulterated milk, or any article to take the place of cheese produced from pure milk, or any article termed "filled cheese," shall stamp each package of the same on the top and side with lampblack and oil the words "filled cheese," or words that shall designate the exact character and quality of the product, in printed letters at least one inch long and one-half inch wide. (Id. § 2859.)

69. City Council Provide For Inspection of Milk and Dairy Herds.—The council of any city or incorporated town may by ordinance provide for the inspection of milk and of dairies and dairy herds kept for the production of milk within its limits, and issue licenses for the sale of milk within its limits, and regulate the same, and may authorize and empower the board of health to enforce all laws and ordinances relating to the production and sale of milk and the inspection of dairies and dairy herds producing milk for sale within such city. (C. L. Suppl. 1925, § 2860.)

70. Violation Constitutes Misdemeanor; Penalty.—Whoever violates any of the provisions of this article, the punishment of which is not herein otherwise provided, shall be guilty of a misdemeanor, and upon conviction thereof shall be punished for each offense by a fine of not less than fifteen dollars nor more than one hundred dollars, or by imprisonment of not to exceed thirty days, or both. (Id. § 2861.)

71. Guests Apprised of Use of Oleomargarine, Butterine, etc.—Whoever furnishes or causes to be furnished in any hotel, restaurant, boarding house or at any lunch counter, oleomargarine or butterine to any guest or patron of such hotel,

restaurant, boarding house or lunch counter, in the place or stead of butter shall notify said guest or patron that the substance so furnished is not butter, and any party so furnishing without such notice shall be punished by a fine of not less than five dollars nor more than ten dollars for each and every offense. (C. L. 1913, § 2863.)

72. Selling Imitation of Butter Without Brand.—Any person who shall knowingly sell or offer for sale or procure the sale of, or make or manufacture, any article or substance in semblance of butter, not the legitimate product of the dairy and made exclusively of milk or cream, but into the composition of which the oil or fat of animals, or melted butter or any oil thereof, enters as a substitute for cream, in tubs, firkins or other original packages and not distinctly, legibly and durably branded, stamped or marked in a conspicuous place with the word "oleomargarine," or "butterine," or "patent butter," as the case may be, in letters not less than one-fourth of an inch in width and one-half of an inch in length, or in retail packages not plainly and conspicuously labeled with the said words "oleomargarine," or "butterine," or "patent butter," as the case may be, shall be guilty of a misdemeanor, and punished by a fine of not less than twenty-five nor more than one hundred dollars, or shall be confined in the county jail not less than ten nor more than ninety days, or by both such fine and imprisonment in the discretion of the court. (Id. § 10196.)

73. Imitation Butter; "Quinness' Patent."—Any person or firm who shall sell or offer for sale, or make or manufacture, imitation butter or butter made of part cream and part caseine or other ingredients under what is known as "Quinness' patent," or process or any other similar process, whereby the caseine of milk and other ingredients are made to imitate and resemble genuine butter made from cream, shall stamp upon each package of the same on the top and side with lampblack and oil, the words "patent butter," in letters at least one-fourth of an inch wide and one-half of an inch long. Whoever violates the provisions of this section is guilty of a misdemeanor, and shall be punished for each offense by a fine of not less than twenty-five nor more than one hundred dollars, or shall be confined in the county jail not less than ten nor more than ninety days, or by both such fine and imprisonment in the discretion of the court. (Id. § 10197.)

74. Character of Product Must be Designated.—Any person or firm who shall sell or offer for sale, or make or manufacture out of any oleaginous substance or substances, or any compound of the same or compound other than that produced from unadulterated milk, any article designed to take the place of cheese, or imitation of cheese from pure milk, or any article termed "filled cheese," shall stamp upon each package of the same on the top and side with lampblack and oil, the words "filled cheese," or words that shall designate the exact character and quality of the product, in letters at least one-fourth of an inch wide and one-half of an inch long. Whoever violates the provisions of this section is guilty of a misdemeanor and shall be punished for each offense by a fine of not less than twenty-five nor more than one hundred dollars, or shall be confined in the county jail not less than ten or more than ninety days, or by both such fine and imprisonment in the discretion of the court. (Id. § 10198.)

75. Patent Butter and Cheese; Card Stating Ingredients.—Whoever sells or offers for sale any imitation or patent butter or cheese, as described in the foregoing sections of this chapter, shall give to each purchaser of said goods a printed card stating correctly the different ingredients contained in the said compound. Whoever violates the provisions of this section is guilty of a misdemeanor, and shall be punished for each offense by a fine of not less than twenty-five nor more than one hundred dollars, or shall be confined in the county jail not less than ten nor more than ninety days, or by both such fine and imprisonment in the discretion of the court. (Id. § 10199.)

76. Possession Prima Facie Evidence of Guilt.—The having in possession by any person or firm, of any article or substance prohibited by this chapter, shall be considered prima facie evidence that the same is kept by such person or firm in violation of its provisions, and the State Dairy Commissioner shall be authorized to seize upon and take possession of any such article or substance, and upon the order of any court which has jurisdiction, he shall sell the same for any purpose other than to be used for food; the proceeds derived from the sale of imitation butter shall be paid one-half to the informer and one-half into the State treasury, to be placed to the credit of the State Dairy Commissioner's fund. (Id. § 10200.)

77. Specimens Analyzed; Certificate; Evidence.—Samples or specimens of any article in imitation of butter or suspected of being of a spurious character, shall be analyzed or otherwise satisfactorily tested as to compounds by the chemist of the Agricultural College at Fargo, free of expense; and a certificate of the analysis, sworn

to by the analyzer, shall be admissible as evidence in all prosecutions under this chapter. (Id. § 10201.)

78. Packages Not Branded or Labeled.—The sale or offer for sale of the substance mentioned in the foregoing section in packages not branded, stamped, marked or labeled as in this chapter required, shall be prima facie evidence of knowledge of the character of such substance on the part of the person so selling or offering the same for sale, and his employer. (Id. § 10202.)

79. Stencils; Names; Reports.—Every cheese factory, creamery, or combined cheese factory and creamery, engaged in the manufacture of butter and cheese, shall procure a stencil or brand bearing a suitable device and words which shall clearly designate the quality of the product manufactured and the number and location of the factory, and may contain a special or private brand or name of said factory; every brand shall be used upon the outside of the cheese and also upon the package containing the same, but in the case of butter, on the package only; and shall report annually to the State Commissioner of Agriculture and Labor, who by virtue of his office is State Dairy Commissioner, the name, location and number of each factory using the said brand, and the name or names of the persons at each manufactory authorized to use the same, together with a copy of each stencil or brand, and the State Dairy Commissioner shall keep a book in which shall be registered the same. Whoever violates the provisions of this section shall be guilty of a misdemeanor, and shall be punished by a fine of not less than ten nor more than fifty dollars, for each and every offense. (Id. § 10203.)

80. Provisions Construed.—Nothing in this chapter shall be so construed as to prohibit the shipment of buttter and cheese without unloading through the State of North Dakota. (Id. § 10204.)

81. Butter and Cheese Defined.—For the purposes of this chapter the term "butter" or "cheese," shall be understood to mean the product usually known by that name, and which is manufactured exclusively from milk or cream or both. (Id. § 10205.)

82. License to Persons Sampling or Testing Required.—It shall be unlawful for any person to sample or test milk, cream or any other dairy product for the purpose of determining the commercial value of such product when bought or sold, without first having secured a license from the State Dairy Department, and such license shall be conspicuously displayed in his place of business. Provided, that in case of sickness or necessary absence said person may appoint a substitute for six days and for a longer period subject to approval of the Dairy Commissioner; but said person shall be responsible for the acts of said substitute. This license shall be granted to those who shall have completed a course in milk and cream testing in any recognized college or dairy school, or to those who shall pass an examination under the direction of the State Dairy Department and satisfactorily demonstrate that they are properly qualified and competent to use such test.

The Dairy Commissioner shall have the authority to revoke any license issued under the provisions of this act if the holder is convicted of a failure to comply with the State dairy laws. Said license shall be granted for a period of one year by the Dairy Department upon payment of a fee of two dollars ($2.00), payable prior to examinations, one dollar ($1.00), of which shall be returned in case of failure to pass said examination. In the case of a renewal of a license a fee of one dollar ($1.00) shall be paid.

The fees collected under the provisions of this act shall be paid into the general fund of the State treasury monthly by the Dairy Commissioner. (C. L. Suppl. 1925, § 2863-b7; L. 1927, c. 129.)

83. Registration of Brands on Dairy Product Containers.—Whoever operates a creamery, cheese factory, ice cream factory, or cream buying station, or if upon the farm or elsewhere produces milk or cream or any dairy product to be sold for human consumption or to be manufactured into any product or kind of human food, or any dealer in dairy products having in his possession any cans, ice cream containers or other receptacles, shall at all times keep all buildings on the premises surrounding or adjacent thereto and all cans, pails and other receptacles, cream separators and other mechanical contrivances used in handling such dairy products or used in the production of such on the farm, in a clean, hygienic and sanitary condition, and shall not consign for transportation by common carrier, empty cans or ice cream containers in an unsanitary condition. All persons, companies and corporations engaged in the purchase of milk or cream or in the manufacture of ice cream shall adopt a mark or marks of ownership to be stamped or marked on any can, cask, keg, barrel or other receptacle, used in the handling and transportation of any said products, and shall file in the office of the Dairy Commissioner, without charge, a description of the name or mark so used by

them or either of them, and the use to be made of any such can, cask, keg, barrel or other receptacle. The brand or mark so selected and adopted as herein provided may consist of a name, design, mark or marks, or some particular color of paint or enamel used upon the can, cask, keg, barrel or other receptacle, or any part thereof. It shall be unlawful for any person, company or corporation to adopt or use any brand or mark which has already been designated, appropriated or obtained under the provisions of this act. It shall be unlawful for any persons other than the rightful owner thereof or his lawful agent to use any can, cask, keg, barrel or other receptacle, marked or branded as herein provided. Any person other than the owner, or his lawful agent, having in his possession any such can, cask, keg, barrel or other receptacle marked or branded as herein provided shall be deemed guilty of having violated the provisions of this law. Provided, nothing in the section shall apply to transportation companies or their agents during the time that such can, cask, keg, barrel or other receptacle marked or branded as herein provided is being transported to or from the owner or his lawful agent. It shall be unlawful for any other person than the rightful owner or his lawful agent to deface or remove any such brand, mark or stamp put upon any such can, cask, keg, barrel or other receptacle as herein provided. Any person or persons who shall violate any provision of this act shall be deemed guilty of misdemeanor, and upon conviction thereof before a court having jurisdiction in such cases shall be fined for each and every offense in a sum not less than five or more than one hundred dollars. For the purpose of preventing the use of said cans, casks, kegs, barrels or other receptacles by other than the owner, or for any purpose other than that herein provided, and to insure the wholesomeness and high quality of said products and the sanitary condition of the receptacles in which the same are transported, it shall be the duty of the State Dairy Commissioner to enforce the provisions of this act. (C. L. Suppl. 1925, § 2863a1.)

84. Sampling and Care of Samples.—All persons, partnerships, firms, or corporations operating creameries, cream stations, cheese factories, ice cream factories, renovating or process butter factories, or condensories in this State buying or receiving milk or cream on the basis of the amount of butter fat contained therein shall, before emptying each container or a number of containers, delivered by same person, partnership, association, firm or corporation, of any part of the milk or cream received therein and before adding any other substance thereto, thoroughly mix the entire contents thereof and procure therefrom, by the use of a thoroughly cleaned and dried sampling device, a representative sample of which not less than two ounces shall be immediately transferred to a thoroughly cleaned and dried sample jar or bottle, properly and securely fitted with such a cover as will prevent the escape of any of the contents thereof. All samples of milk or cream so taken shall be indelibly labeled, marked or numbered to correspond with a record kept of the net weight of milk or cream, the percentage and amount of butter fat credited as being present in each container received, and the amount of money paid for same. Except that in case more than one container is used by the owner or owners in the delivery of a quantity of milk or cream, the entire contents, but only the original contents of such containers may be emptied into a tank or vat free from other substance where it shall be thoroughly mixed and a representative sample of not less than two ounces procured, transferred to a sample jar or bottle, and labeled to correspond with a record kept as herein provided shall be protected from extremes of temperature and shall be retained for a period of not less than twenty-four hours, except that all samples taken on Saturday shall be retained until 5 o'clock of the afternoon of the following Monday, during which time the receptacles containing such samples shall not be opened except by the State Dairy Commissioner, his deputy or legal agent, who may officially inspect the same for the purpose of determining the percentage of butter fat contained therein according to section 2853 of the Compiled Laws of 1913.* The Dairy Commissioner, his deputy or legal agent, shall at all times have access to the records kept in compliance with the provisions of this act. (Id. § 2863b1.)

85. Official Butter Fat Test.—In case dispute, controversy, or disagreement arises between the owner and buyer or protective [prospective] buyer, or the legal representatives of both or either, over the percentage of butter fat contained in any quantity of milk or cream sold or offered for sale, a sample of such milk or cream obtained as provided in section 1 and mutually agreed upon by the interested parties as being representative of the percentage of butter fat contained in the entire quantity of milk or cream in question, shall, at the request of the owner and in his presence, be satisfactorily sealed, prepared for shipment and

*Repealed.

mailed by the buyer or prospective buyer to the office of the State Dairy Commissioner. There shall accompany all such samples a statement prepared by the buyer or the prospective buyer giving the name and address of the owner of the milk or cream in question, the net weight of such milk or cream, the percentage and amount of butter fat contained therein, the price per pound for butter fat and the amount of money paid or offered in payment for same. Such statement shall bear the signatures of the owner and the buyer or prospective buyer to indicate that the samples so forwarded is representative of the entire amount of milk or cream in question. The State Dairy Commissioner, his deputy or agent, shall officially determine the percentage of butter fat contained in such sample according to the provisions of section 2853 of the Compiled Laws of 1913,* and shall make a report thereon in triplicate, the original to be filed in his office, one copy to be sent to the owner, and one to the buyer or prospective buyer of the milk or cream. The percentage of butter fat so determined and reported shall constitute the "official butter fat test" of the milk or cream and shall be the basis on which final settlement shall be made for the milk or cream in question. (Id. § 2863b2.)

86. Disagreement, Procedure and Settlement.—Whenever it shall be impossible to secure and mutually agree upon a sample of milk or cream as provided in section 2 of this act, by reason of its having been mixed with other milk or cream or any other substance which might alter its percentage of butter fat content, or when for any reason the original quantity of milk or cream is not available for sampling then the party selling or offering for sale such milk or cream may, within twenty-four hours of the time of delivery, require that the buyer or prospective buyer shall forward to the office of the State Dairy Commissioner the sample taken in compliance with section 1 of this act. There shall accompany each sample so forwarded a statement from the buyer or prospective buyer, in the form of an affidavit, that such sample was taken in compliance with all provisions of section 1. This statement shall also give all information as specified in section 2, except that such statement need not bear the signature of the previous owner of the cream. Each sample so forwarded to and received at the office of the State Dairy Commissioner shall be tested and reported on as prescribed in section 2, and the percentage of butter fat so determined and reported shall constitute the "official butter fat test" and shall be the basis on which final settlement shall be made for the entire amount of milk or cream in question. (Id. § 2863b3.)

87. Complaints, How Made, and Action Taken Relative To.—The Dairy Commission, upon receipt of a complaint from any buyer of milk or cream, as described in section 1, regarding methods, weights, measures, scales or any apparatus used by any other buyer in determining the percentage and amount of butter fat present in any quantity of milk or cream may require that any sample or samples taken in compliance with section 1, together with the record corresponding to such sample or samples, shall be forwarded to his office for an official test; provided, however, that the Dairy Commissioner shall give notice to that effect within twenty-four hours of the time when such sample or samples in question are taken. (Id. § 2863b4.)

88. Defective Apparatus and Unreasonable Variation in Tests.—Any weights, measures, scales or any apparatus whatever used in determining the amount of butter fat in a quantity of milk or cream which shall be found defective or inaccurate in the enforcement of this act may be ordered repaired or the use thereof discontinued. Any unreasonable variation between the official test made by the Dairy Commissioner, his deputy or his agent and any test made by any licensed milk or cream tester in the State may be cause for the revocation of or refusal to reissue a license to any milk or cream buyer in the State. (Id. 2863b5.)

89. Enforcement.—The provisions of this act shall be enforced by the State Dairy Commissioner and he shall have authority to make such rules and regulations, not in conflict herewith, as he shall find necessary to carry into effect all the provisions of this act. Violations of or refusal to comply with this act, any part thereof, or any legal rules or regulations prescribed by the Dairy Commissioner in enforcing this act shall be cause for the revocation of the license of any cream buyer or cream tester in this State. (Id. § 2863b6.)

90. Dairy Products.—Butter, dairy butter, creamery butter, oleomargarine, butterine, renovated butter or compounds of or substitutes for any of these, whether compounded or prepared from animal or vegetable fats or oils, and homogenized, reconstructed, filled or manufactured products from which the natural butter fat has been abstracted in whole or in part and other animal or vegetable fats or oils substituted therefor, or compounds of or products prepared from any of these

*Repealed.

shall be appropriately labeled so as to clearly advise the purchaser of the true nature of the product. (Id. § 2889b11.)*

91. Adulterated Products; Sale, Exchange or Possession Unlawful.—It shall be unlawful for any person, firm or corporation, by himself, his servant or agent, or as the servant of another, to manufacture, sell or exchange or have in his possession with intent to sell or exchange, any milk, cream, skim milk, buttermilk, condensed or evaporated milk, powdered milk, condensed skim milk, or any of the fluid derivatives of any of them, to which has been added any fat or oil other than milk fat, either under the names of said products or articles or any of the derivatives thereof, or under any fictitious or trade name whatsoever. (Id. § 2855a1.)

92. Same; Use of Deceptive Words Unlawful.—It shall be unlawful for any person, firm or corporation to use in any way, in connection or association with the sale, or exposure for sale, or advertisement of any substance designed to be used as a substitute for butter, the words "butter," "creamery," or "dairy," except as otherwise required by the laws of this State; or the name or representation of any breed of dairy cattle, or any combination of such word, or words and representation, or any other words or symbols or combination thereof, commonly used in the sale of butter. (Id. § 2855a2.)

93. Penalties.—Any person who shall violate any of the provisions of this act shall be deemed guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not less than twenty-five dollars nor more than one hundred dollars, or by imprisonment in the county jail for a term of not less than sixty days nor more than one year, or by both such fine and imprisonment. (Id. § 2855a3.)

NOTE: See also Nos. 14, 21 et seq., 29e, and 118.

Eggs.

94. Eggs, Sale Unlawful, When.—It shall be unlawful for any person, firm or corporation to sell, offer or expose for sale, or to traffic in, eggs which are unfit for human food. For the purpose of this act, eggs shall be deemed unfit for human food if they consist in whole or in part of a filthy, decomposed or putrid substance. (C. L. Suppl. 1925, § 2863c1.)

95. Eggs, Unlawful to Use, When.—It shall be unlawful for any person, firm or corporation to use eggs that are unfit for food as defined in section one in the preparation or manufacture of food for public consumption; and there shall be no delivery, sale, purchase or acceptance of such eggs in or at any establishment where food products are prepared or manufactured. (Id. § 2863c2.)

96. Eggs, Cold Storage.—It shall be unlawful for any person, firm, or corporation to advertise for sale, offer for sale or to sell, as and for fresh eggs, any eggs which have been held in cold storage for thirty days or any eggs which have been pickled in brine or in water-glass or in lime water or which have been preserved in any manner whatsoever. For the purpose of this act and in all dealings having to do with the purchase and sale of eggs, the word "eggs," when used without further description or qualification, shall in every instance be understood to mean fresh, sweet eggs. If [in] case eggs which have been held in cold storage for a period of thirty days or longer are offered or exposed for sale or sold, there shall be placed in or on the receptacle containing such eggs, in full view of the public, a card not smaller than six inches in width by six inches in length, upon which shall be printed the words "cold storage" in plain Gothic letters not less than one inch in length. In case eggs which have been preserved by pickling in brine, water-glass or lime water, or which have been preserved by any process whatsoever shall be offered or exposed for sale or sold, there shall be placed in or on the receptacle containing such eggs, in full view of the public, a card not smaller than six inches in width by six inches in length upon which shall be printed the words "preserved eggs" in plain Gothic letters not less than inch in length. (Id. § 2863c3.)

97. Eggs, Dockage on.—It shall be unlawful for any person, firm or corporation, in buying or selling eggs to take or to give a greater or less dockage for eggs unfit for food as defined in section one of this act than the actual dockage which shall be determined by the careful candling of the eggs so purchased or sold. The term "candling" as used herein shall be construed to mean the careful examination, in a partially dark room or place, of the whole egg by means of a strong light, the apparatus and method employed to be such as shall be approved by the State Food Commissioner.† (Id. § 2863c4.)

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*For penalty, see No. 16.

†See No. 29b.

98. Eggs Candled; How Identified.—There shall be placed on the top layer the top flat of every case of candled eggs, by the person, firm or corporation candling the same, a candling certificate. Such candling certificate shall be printed on cards or sheets of paper not smaller in size than two and three-eighths by four and one-fourth inches and shall give the date of candling the eggs contained in the case in which it is placed, the name, initials or number of the person candling the eggs, the name, address and license number of the person, firm or corporation candling the eggs or for whom the eggs were candled. Such certificate shall be in the following words and form:

The eggs in this case where candled .....
(Date.)

By .....
(Signature of person candling the eggs.)

Of .....
(Individual, firm or corporation.)

License No. ...., N. D.

(Id. § 2863c5.)

99. Eggs, Candling.—Every person, firm or corporation engaged in the business of buying eggs in this State for resale or consignment shall provide and maintain an adequate place for the accurate candling of eggs and a suitable place for the proper handling of eggs which are intended to be used for human food. Every person, firm or corporation buying eggs for resale or consignment from any dealer in eggs shall keep on file for a period of sixty (60) days an accurate candling record of every lot, shipment or consignment of eggs received and shall, within ten days after the receipt of any lot, shipment or consignment of eggs, render an accurate and detailed return statement to the person, firm or corporation by whom such lot, shipment or consignment of eggs was delivered, shipped or consigned. This return statement shall truthfully and accurately classify and grade the eggs received by the buyer according to generally accepted commercial standards. In the case of the first buyer of eggs from the producer, such first buyer shall render to the producer a statement which shall specify the total number of eggs received and the number of eggs rejected by the process of candling as unfit for resale as food. The statement to be furnished by subsequent buyers shall include the following information for the benefit of the shipper, seller or consignor: the total number of cases of eggs received, the number of eggs grading No. 1, the number of eggs grading as "seconds," the number of cracked eggs, the number of mashed or leaking eggs, the number of rotten eggs or "rots" (which term shall include all eggs unfit for human food), and the shortage of eggs in the lot, shipment or consignment. All candling records and return statements required by this act and all other records relating to any sale, purchase or shipment of eggs shall be open at all reasonable times for examination by the Commissioner or Inspectors of the State Food Department. (Id. § 2863c6.)

100. Licenses For Dealers.—For the purpose of enforcing the provisions of this act it is hereby required that on or before the tenth day of April, 1921, and the first day of April annually thereafter, every person, firm or corporation engaged in the business of trading in eggs or of buying eggs, except retailer buying only candled eggs from licensed dealers and selling in lots not greater than one case, shall make application to the State Food Commissioner for a license to conduct such business. Any person, firm or corporation who may desire to engage in such business after the first day of April of any year shall first make application to the State Food Commissioner for license. The commissioner, upon receipt of proper application upon such forms as he may provide, accompanied by a license fee for [of] two dollars ($2.00) and for each annual renewal of one dollar ($1.00) shall thereupon issue license to engage in such business. All licenses provided for herein shall expire on the thirtieth day of March following the date of issue. All moneys received by the Food Commissioner for licenses shall at the close of each calendar month be transmitted to the State Treasurer and by him added to the General Fund. (Id. § 2863c7.)

101. Penalties.—Any person, firm or corporation failing to comply with the requirements of this act as to license or violating any provisions of this act shall be guilty of a misdemeanor and shall on conviction for the first offense be fined not more than fifty dollars ($50.00). Upon conviction for a second or any subsequent violation of the foregoing provisions of this act the violator shall be fined not to exceed one hundred dollars ($100.00), and, in addition thereto, and as part of the penalty imposed, the court may, in its discretion, authorize the State Food Commissioner to withhold, suspend or revoke the license of the party so convicted, either permanently or for a limited time to be specified in the judgment. Any person, firm or corporation that shall engage in the business of buying or trading in eggs during the time specified in any such judgment, and while his license is

withheld, suspended or revoked by the operation thereof, shall, upon conviction therefor be punished by a fine of one hundred dollars ($100.00) for each offense and by the permanent revocation or withholding of license to buy or trade in eggs. (Id. § 2863c8.)

Feeding Stuffs.

102. Statement of Concentrated Feeding Stuff to be Filed With State Food Commissioner and Chemist.—Before any concentrated commercial feeding stuff is sold, offered or exposed for sale in North Dakota, the manufacturer, importer, dealer, agent or person who causes it to be sold or offered for sale, by sample or otherwise, within this State, shall file with the State Food Commissioner and Chemist of the State of North Dakota, a statement that such manufacturer, importer, dealer, agent, or person desires to offer for sale such concentrated commercial feeding stuff, in this State, and also a certificate, the execution of which shall be sworn to before a notary public, or other proper official, for registration, stating the name of the manufacturer, the location of the principal office of the manufacturer, the name, brand, or trade-mark under which the concentrated commercial feeding stuffs will be sold, the ingredients from which the concentrated commercial feeding stuffs are compounded, and the minimum percentage of crude fat and crude protein, allowing one per cent of nitrogen to equal 6.25 per cent of protein, and the maximum percentage of crude fiber determined according to the Official and Tentative Methods of Analysis of the Association of Official and Agricultural Chemists, which the manufacturer or person offering the concentrated commercial feeding stuff for sale guarantees it to contain. (L. 1927, c. 141, § 1.)

103. Statement to be Affixed to Packages and Samples.—Any person, company, corporation or agent who shall sell, offer or expose for sale or distribution in this State, any concentrated commercial feeding stuffs shall affix, or cause to be affixed to every package or sample of such concentrated commercial feeding stuffs, in a conspicuous place on the outside thereof, a tag or label which shall be accepted as a guarantee of the manufacturer, importer, dealer or agent and which shall have plainly printed thereon in the English language, the number of net pounds of concentrated commercial feeding stuffs in the package, the name, brand or trade-mark under which the concentrated commercial feeding stuffs are sold, the name of the manufacturer, the location of the principal office of the manufacturer, and the guaranteed analysis, stating minimum percentage of crude fat and crude protein, and the maximum percentage of crude fiber, determined as provided in the provisions of this act, and the ingredients from which the concentrated commercial feeding stuff is compounded. For each one hundred pounds, or fraction thereof, the person, company, corporation or agent shall also affix the tag or label purchased from the State Food Commissioner and Chemist of the State of North Dakota, showing that the concentrated commercial feeding stuff has been registered as required by the provisions of this act, and that the inspection tag has been paid. When the concentrated commercial feeding stuff is sold in bulk, a tag as hereinbefore described, shall be delivered to the consumer with each one hundred pounds or fraction thereof, provided, that the State Food Commissioner and Chemist's tags and labels shall be issued to cover twenty-five, fifty and one hundred pounds, provided, further, that the State Food Commissioner and Chemist is authorized to issue tags or labels or other denominations. (Id. § 2.)

104. Registration by State Food Commissioner and Chemist and Tags and Labels to be Supplied—Fees.—The State Food Commissioner and Chemist shall register the facts set forth in the certificate required by section 1 of this act in a permanent record, and shall furnish tags or labels showing the registration of such certificate to manufacturers or agents desiring to sell the concentrated commercial feeding stuff so registered at such times and in such numbers as the manufacturers or agents may desire; provided, that the State Food Commissioner and Chemist shall not be required to sell tags or labels in less amount than to the value of five dollars ($5.00) or multiple of five dollars, for any one concentrated commercial feeding stuff; provided, further, that the State Food Commissioner and Chemist shall not be required to register any certificates unless accompanied by an order and fees for tags or labels to the value of five dollars ($5.00) or some multiple of five dollars; provided, further, that such tags or labels shall be printed in such form as the State Food Commissioner and Chemist may prescribe; provided, however, that each package or container of a concentrated commercial feeding stuff offered for sale in the State of North Dakota, containing one or more of the materials of low feeding value enumerated in section 6 of this act, in which the maximum crude fiber content of such concentrated commercial feeding stuff is twelve and one-half per cent or more, or the minimum crude protein of such concentrated commercial feeding stuff is nine per cent or less, shall have attached to it a yellow tag or label, identical with the official tag as

prescribed by the State Food Commissioner and Chemist, except in color, and that there shall be printed on this tag, in red ink, the per cent present of each material enumerated in section 6, or the names and total per cent of all such materials or the names and maximum per cent thereof. Provided, further, that such tags or labels shall be good until used. (Id. § 3.)

105. Sworn Statement to be Filed Annually.—On or before January 31st of each year, each and every manufacturer, importer, dealer, agent or person who causes any concentrated commercial feeding stuff to be sold or offered or exposed for sale in the State of North Dakota, shall file with the State Food Commissioner and Chemist of the State of North Dakota, a sworn statement, giving the number of net pounds of each brand of concentrated commercial feeding stuff that such manufacturer, importer, dealer, agent, persons, or person has sold or caused to be offered for sale in the State, for the previous year, ending with December 21st; provided, that when the manufacturer, jobber, or importer of any concentrated commercial feeding stuff shall have filed the statement aforesaid, any persons or person acting as agents for such manufacturer, importer or jobber, shall not be required to file such statement. (Id. § 4.)

106. Fees, Disposition of, Expenses, How Paid.—For the expenses incurred in registering, inspecting and analyzing concentrated commercial feeding stuffs, the State Food Commissioner and Chemist shall receive for tags or labels furnished, to cover one hundred pounds, one dollar for each one hundred tags or labels; to cover fifty pounds, sixty cents for each one hundred tags or labels; to cover twenty-five pounds, forty cents for each one hundred tags or labels; provided, that if the State Food Commissioner and Chemist should at his discretion, issue tags or labels to cover more than one hundred pounds or less than twenty-five pounds, as provided in the provisions of this act, he shall receive for all tags or labels in excess of one hundred pounds a proportional rate on the basis of a one hundred pound tag, and for all tags or labels issued in denominations of less than twenty-five pounds, he shall receive not less than thirty cents for each one hundred tags or labels. All fees received by the State Food Commissioner and Chemist as provided for in this act shall be properly recorded by him and forwarded monthly to the Treasurer of the State of North Dakota. The State Treasurer shall upon receipt thereof enter such funds and carry them in a special revolving fund to be designated the "State Regulatory Fund." All salaries and items of expense of whatever nature incurred in the enforcement of this act shall be paid out of said State Regulatory Fund. Vouchers for all expenses, payrolls, and other items of expense of whatever nature incurred in the enforcement of this act shall be approved by the State Food Commissioner and Chemist and be forwarded monthly to the State Board of Administration for audit and approval and when so audited and approved shall be certified to the State Auditor who shall draw warrants upon the State Treasurer for all payrolls, expenses and bills so audited and approved. The State Treasurer shall thereupon pay such expenses and accounts out of the State Regulatory Fund. (Id. § 5.)

107. Adulteration of Commercial Feeding Stuffs.—No person, company, corporation, or agent shall offer for sale, sell or expose for sale any package or sample or any quantity of any concentrated commercial feeding stuffs which is adulterated with any foreign mineral matter or damaged feeding materials which have been reduced in feeding value to an extent as to be rendered unwholesome, or any foreign substance of low feeding value, such as mill, elevator, boat or other sweepings or dust; buckwheat hulls; cottonseed hulls; peanut hulls; peanut shells; rice hulls; oat hulls; corn cobs ground; cocoa shells; clipped oat by-products; ground or unground hulls; chaff; dust or other inferior cleanings derived from the preparation, cleaning or milling of any seed or grain when separated from the standard product; humus, peat, sphagnum moss, ivory nut turnings, ground cornstalks, flax plant by-products; sorghum pulp; ground or shredded straw, or hay (excepting alfalfa meal or similar leguminous meals), sawdust, tree bark, cellulose or dirt, coffee hulls or chaff or any other materials of equally low feeding value, without plainly stating on the tags or labels hereinbefore described, the components of such mixture, using the names by which each ingredient is commonly known. Provided, that if any concentrated commercial feeding stuff is adulterated with humus, peat or sphagnum moss, the maximum percentage of such humus, peat or sphagnum moss present in the concentrated commercial feeding stuff must also be stated upon the tag or label.

Provided, further, that no concentrated commercial feeding stuff shall be adulterated with any substance injurious to the health of domestic animals. (Id. § 6.)

108. Powers Granted State Food Commissioner and Chemist.—The State Food Commissioner and Chemist or any person deputized by him is hereby empowered to procure from any lot, parcel or package of any concentrated commercial feeding stuff offered for sale or found in the State of North Dakota; and upon tender and full payment of the selling price of said sample take therefrom a quantity of com-

mercial feeding stuff of not less than two pounds; provided that such samples shall be obtained during reasonable business hours, or in the presence of the owner of the concentrated commercial feeding stuff or in the presence of some person claiming to represent the owner. (Id. § 7.)

109. Standards and Definitions Authorized to be Promulgated.—The State Food Commissioner and Chemist is hereby empowered to promulgate standards and definitions for concentrated commercial feeding stuff, and to subscribe and enforce such rules and regulations, relating to concentrated commercial feeding stuff as he may deem necessary to carry into effect the full intent and meaning of this act, and to refuse the registration of any concentrated commercial feeding stuff under a name which would be misleading as to the materials of which it is made or when the percentage of crude fiber is above or the percentage of crude fat or crude protein below the standards adopted by the State Food Commissioner and Chemist for concentrated commercial feeding stuffs. The State Food Commissioner and Chemist is further empowered to refuse to issue tags or labels to any manufacturer, importer, dealer, agent or person who shall sell or offer or expose for sale any concentrated commercial feeding stuff in the State of North Dakota and who refuses to submit a sworn statement as required by the provisions of this act. (Id. § 8.)

110. Facts, How Transmitted.—Whenever said State Food Commissioner and Chemist shall find by analyses or otherwise that adulterated, misbranded, insufficiently labeled or an unlicensed product is being sold in violation of this act, he shall forthwith transmit the facts so found to the State's Attorney of the county in which the product was found and it shall be the duty of said State's Attorney to institute appropriate proceedings in the proper court of jurisdiction. (Id. § 9.)

111. Articles Included Within Terms.—The term "concentrated commercial feeding stuffs," as used in this act, shall include linseed meals, cocoanut meals, gluten feeds, gluten meals, germ feeds, corn feeds, maize feeds, starch feeds, sugar feeds, dried brewer's grains, malt sprouts, dried distiller's grains, dried beet refuse, hominy feeds, cerealine feeds, rice meals, rice bran, rice polish, peanut meals, oat feeds, corn and oat feeds, corn brand, and other mill by-products not excluded in this section, ground beef or fish scraps, dried blood, blood meals, bone meals, tankage, meat meals, slaughterhouse waste products, mixed feeds, clover meals, alfalfa meals and feeds, pea vine meal, cottonseed meal, sunflower oil cake, velvet bean meal, or any other leguminous meal, mixed feeds and mixed meals made from seeds or grains and all materials of similar nature used for food for domestic animals, condimental feeds, poultry feeds, stock feeds, patented proprietary or trade and market stock and poultry feeds, and all feeds containing mineral ingredients generally regarded as dietary factors essential for the normal nutrition or growth of animals and which are sold or represented for the purpose of supplying those minerals as correctives to rations in which these same mineral factors may be deficient; but it shall not include straws, hay, whole seeds, mixed meals, made directly from the entire grains of wheat, rye, barley, oats, Indian corn, buckwheat and broom corn, nor wheat flours or other cereal flours, nor preparations which are sold or represented for the cure, mitigation or prevention of a definitely described disease. (Id. § 10.)

112. Violations a Misdemeanor.—Any person, company, corporation, or agent that shall offer for sale, sell or expose for sale any package or sample or any quantity of any concentrated commercial feeding stuff which has not been registered with the State Food Commissioner and Chemist as required by the provisions of this act, or which does not have affixed to it a tag or label required by the provisions of this act, or which is found by an analysis made by or under the direction of the State Food Commissioner and Chemist to contain a smaller percentage of crude fat or crude protein than the maximum guarantee, or a greater percentage of crude fiber than the maximum guarantee, or which shall be labeled with a false or inaccurate guarantee, or who shall alter the tags or labels of the State Food Commissioner and Chemist, or who shall use the name and title of the State Food Commissioner and Chemist, or who shall use the tags and labels of the State Food Commissioner and Chemist a second time, or who shall refuse or fail to make the sworn statement required under the provisions of this act, or who shall prevent or strive to prevent the State Food Commissioner and Chemist, or any person or persons deputized by him, from inspecting and obtaining samples of concentrated commercial feeding stuffs, as provided for in this act, shall be deemed guilty of a misdemeanor and on conviction thereof shall be fined in the sum of fifty dollars for the first offense, and in the sum of one hundred dollars for each subsequent offense. In all litigation arising from the purchase or sale of any concentrated commercial feeding stuff in which the composition of the same may be involved, a certified copy of the official analysis by the State Food Commissioner and Chemist shall be accepted as prima facie evidence of the composition of such concentrated commercial feeding stuff, provided that nothing in this act shall be construed to restrict or prohibit the sale of concentrated com-

mercial feeding stuff in bulk to each other by importers, manufacturers, or manipulators who mix concentrated commercial feeding stuff for sale, or as preventing the free unrestricted shipment of these articles in bulk to manufacturers or manipulators who mix concentrated commercial feeding stuff for sale, or to prevent the State Food Commissioner and Chemist or any person or persons deputized by the State Food Commissioner and Chemist or the North Dakota Agricultural Experiment Station or any person or persons in the employ of the North Dakota Agricultural Experiment Station, making experiments with concentrated commercial feeding stuffs for the advancement of the science of agriculture. (Id. § 11.)

113. When Act Effective.—This act shall take effect and be in force from and after its passage and approval. (Id. § 13.)

Flavoring Extracts and Syrups.

See No. 206.

Flour.

See No. 288.

Fruit Juices.

See No. 203.

Fruits and Vegetables.

See Nos. 11, 113a and 285.

Grain.

113a. Cheating or False Weighing, Penalty.—Any person, who shall knowingly cheat, or falsely weigh any wheat or other agricultural product, or who shall violate any of the provisions of this act, where punishment is not elsewhere in this act provided for, shall be guilty of a misdemeanor, and shall on conviction thereof, be subject to a fine of not less than two hundred dollars nor more than one thousand dollars or be imprisoned in the penitentiary for a period of not exceeding one year, in the discretion of the court. (L. 1927, c. 155, § 13.)

113b. Federal Grades to Control; Grades to be Posted.—All public warehousemen shall purchase and store grain and seeds in accordance with the official grades established from time to time by the Secretary of Agriculture of the United States, except as otherwise provided in rules and regulations applicable thereto adopted by Federal officials pursuant to law. They shall post in a conspicuous place in their warehouse the official grades so established and also any change that may be made from time to time. (Id. § 14.)

113c. Grading of Grain.—All public warehousemen shall, before testing for grade any grain handled by them remove therefrom and make due allowance for any dockage of such grain made by reasons of the presence of straw, weed seeds, dirt or any other foreign matter. (Id. § 15.)

113d. Penalty.—Any public warehouseman within this State, who shall violate the provisions of the foregoing section, shall be guilty of a misdemeanor, and upon conviction shall be punished by a fine of not less than ten dollars nor more than one hundred dollars or by imprisonment in the county jail for not less than ten nor more than thirty days, or by both such fine and imprisonment. (Id. § 16.)

113e. Standard Weights to be Used; Exception.—No person purchasing, selling or storing grain in any public warehouse in this State, shall use any other measure for such grain than the standard bushel, and no other number of pounds shall be used or called a bushel than the number of pounds provided by law as the standard weight of the kind of grain in question; provided, however, that during the months of October and November, not exceeding eighty-two pounds, and during the months of December and January, not exceeding seventy-six pounds may be used as the standard bushel of new ear corn. (Id. § 17.)

113f. Discrimination Prohibited.—No public warehouseman shall discriminate in the buying, selling, receiving and handling of grain or in the charges made or the service rendered to owners of stored grain, nor shall such warehouseman discriminate in the receiving of grain offered for sale or storage, nor in regard to the persons offering such grain for sale or storage; provided, that no public warehouseman shall be required to receive for storage any grain which is heating or otherwise out of condition. Storing grain free of charge is hereby prohibited. (Id. § 24.)

NOTE: See also Nos. 21 et seq., 285, and 292-293.

Ice.

See No. 287.

Meat—Meat Products.

114. Calf Less Than Four Weeks Old.—Every person who knowingly, either:

1. Kills or causes to be killed, for the purpose of sale as food for man, a calf less than four weeks old; or

2. Sells or has in his possession with intent to sell as food for man the meat of any calf killed when less than four weeks old

Is guilty of a misdemeanor, and upon conviction thereof is punishable by imprisonment in the county jail not exceeding thirty days or by fine not exceeding fifty dollars, or by both. (C. L. 1913, § 10207.)

115. Meat May be Seized.—The meat of any calf killed when less than four weeks old and exposed for sale or kept with intent to sell for food, may be seized without warrant and destroyed by any health officer, sheriff, deputy sheriff or peace officer. (Id. § 10208.)

116. Magistrate May Issue Warrant; Procedure.—Any magistrate having reasonable cause to believe by complaint on oath made to him that the meat of any calf killed when less than four weeks old is kept or concealed within his county by any person, contrary to the provisions of section 10207, may issue his warrant to any peace officer of such county commanding him, in the daytime only, to search for and, if found, to seize such meat and to notify such owner or keeper of such seizure and that he appear forthwith before the magistrate issuing such warrant to show cause why such meat should not be destroyed. If such owner or keeper does not appear, or if upon investigation before such magistrate it is determined that such meat is kept in violation of such section, the magistrate shall issue his warrant to such officer, commanding him forthwith to destroy such meat and such officer shall proceed accordingly, or if it is determined that such meat is not kept contrary to the provisions of such section the same shall be returned to the place where seized. The costs of the proceedings, if contested, shall be taxed against the person claiming such meat if defeated, and collected upon execution issued against him, as in a civil action, but if such proceedings are not contested the costs shall be taxed and paid by the county wherein such proceedings are had. (Id. § 10209.)

117. Certificate of Health to Butcher.—Every person who handles meats in a butcher shop or meat market where meats are sold to the public shall file with the executive officer of the board of health a certificate from a physician licensed to practice medicine in this State, to the effect that he has examined such person and found him to be free from any infection, contagious or loathsome disease. Every such person must be examined at least once in each year. (C. L. Suppl. 1925, § 2954a.)

118. Duty of Owners of Stock; Animals in Transit; Meats to be Labeled.—The following regulations shall be observed in all cases of disease covered by this article:

First. It shall be unlawful to sell, give away or in any manner part with any animal affected with, or suspected of being affected with, any contagious or infectious disease, with such exception as shall be provided for by the rules and regulations of the Live Stock Sanitary Board, and in case of any animal that may be known to have been affected with or exposed to any such disease within one year or prior to such disposal due notice of the fact shall be given in writing to the person receiving the animal.

Second. It shall be unlawful to kill for butcher purposes any such animals, or to sell, give away or use any part of it or its milk, or to remove any part of the skin, with such exceptions as shall be provided for by the rules and regulations of the Live Stock Sanitary Board. Provided, that in all cases where, under the rules and regulations of the Live Stock Sanitary Board of this State, it shall be lawful to sell, barter or give away for human consumption the meat from any animal affected with contagious or infectious diseases, there shall be placed upon each quarter of the animal so affected, in at least ten separate places, a stamp or label clearly showing the words "affected meat." No meat from any affected or diseased animal shall be placed upon the block or table on which meat not so affected is handled. Failure to observe these provisions shall be a misdemeanor and on conviction shall be punished by a fine of not less than one hundred dollars, or by imprisonment in the county jail for a term of not less than thirty days nor

more than one year. It shall be the duty of the owner, agent or person having in charge any animal infected or suspected of being infected with any contagious disease, immediately to confine the same in a safe place, isolated from all other animals and with all necessary restrictions prevent the dissemination of the disease until the arrival of an accredited agent of the Live Stock Sanitary Board; provided, however, the provisions of this section shall not apply to industries which are under the supervision of the United States Department of Agriculture, Bureau of Animal Industry. (Id. § 2698.)

119. Lard, How Sold.—Every lot of lard, or of lard compounds, or of lard substitutes, unless sold in bulk, shall be sold in pails or other containers holding one, three or five pounds net weight, or some whole multiple of these numbers and not any fractions thereof. (Id. § 2889b7.)*

120. Meats.—The meat of an animal shall not be sold for human consumption unless it be the product of a healthy animal, and no meat of any animal slaughtered during the period of heat, advance pregnancy or immediately preceding or following parturition shall be sold for human food. The meat of no calf less than four weeks old shall be sold as food. Hogs or other animals to be slaughtered for food shall not be permitted to eat filthy, diseased or decomposed food, nor shall they be kept in a filthy or unsanitary place; provided, nothing in this section shall be construed to conflict with the law relating to the sale of affected meat or the rules and regulations issued pursuant thereto by the State Live Stock Sanitary Board. (Id. § 2889b10.)*

NOTE: See also Nos. 11, 14 and 29e.

Sea Food.

See No. 11.

Vinegar.

See No. 206.

Sanitation.

121. Sanitation of Food.—Every building or other structure or vehicle of transportation in which any food or drug or product to be used in the preparation of either of these is manufactured, prepared, held, sold, used or transported, shall at all times be kept and maintained in a clean and sanitary condition. Food at all times shall be kept covered or enclosed or by other means fully protected from avoidable contamination by any agencies that might serve to bring about or hasten its decomposition or that might render it infectious, poisonous, deleterious, injurious to health or filthy.

All buildings, shelves, counters, storage bins, floors, walls, ceilings, scales, stoves, machines, refrigerators and other facilities used therein for storing, handling, displaying or preparing of food products shall be designed and well adapted for the purpose with strict regard for the principles of sanitation.

The person and clothing of all employees in or about any food establishment shall be clean and when possible the personnel of such places shall be provided with special outer garments, aprons, white coats or other apparel for use during the hours of their employment.

No person shall be employed in or permitted to remain as an employee in any food establishment who is affected with any contagious or infectious disease in a communicable form. For the proper enforcement of this provision any inspector or agent of the State Food Commissioner and Chemist may require a medical examination and certificate of health from any employer for any employee whom he may have reason to suspect is so affected. Such examination shall be made by a physician approved by the State Food Commissioner and Chemist or his agent and the cost thereof shall be borne by the employer of said person. When notified to do so any employer who fails to provide such a health certificate for himself or employee within a reasonable time thereafter shall be deemed guilty of a misdemeanor.

The provisions for ventilation and lighting, toilet and washroom facilities, such as towels, washbowls and soap, cuspidors and other facilities for the convenience, health and safety of employees and patrons of such places as herein defined shall be ample therefor and subject to the approval of the State Food Commissioner and Chemist or his agent as to their sufficiency, location and condition.

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*For penalty, see No. 16.

All doors and windows that may be opened or closed at will shall, during the fly season, be kept properly screened and fly proof. All foods kept, displayed, prepared or offered for sale in any such place shall at all times be protected from contact with flies, roaches, ants, mice, rats and other vermin or household pests, the presence of any of which in any food establishment shall be deemed to render the same unsanitary and the proprietor thereof liable to prosecution under this act.

No room or rooms used for the storage, display, preparation, use or sale of food shall be used as a sleeping, dressing or living room, nor shall any sleeping, dressing or living room be adjacent to and open into any such place, nor shall dogs, cats or other domestic animals be permitted to occupy such rooms. (C. L. Suppl. 1925, § 2889b13.)*

NOTE: For provisions relating to Hotel Inspection, see C. L. 1913, §§ 2979 to 2994, inclusive, as amended C. L. Suppl. 1925. Omitted herein.

See also Nos. 14, 44 et seq., 83, 117, and 120.

PART III.

Special Drug Laws.

Abortifacients—Contraceptives.

121a. Bringing Obscene Literature Into State.—Every person who shall bring or cause to be brought into the State, or shall buy, sell or cause to be sold, or shall advertise, lend, give away, offer, show or exhibit, or shall have in his possession with intent to sell, lend, give away, offer, show, exhibit, distribute or cause to be distributed, or shall design, copy, draw, photograph, print, etch or engrave, cut, carve, make, publish or otherwise prepare or assist in preparing, or shall receive subscriptions for any indecent or obscene book, pamphlet, paper, picture, print, drawing, figure, image or other engraved, printed or written matter, or any article or instrument of immoral use, or any book, pamphlet, magazine or other paper devoted principally or wholly to the publication of criminal news of pictures or stories of deeds of bloodshed or crime, shall be guilty of a misdemeanor, and upon conviction thereof shall be fined not less than five dollars and not more than one hundred dollars, or be imprisoned in a county jail not to exceed thirty days, or by both such fine and imprisonment. (C. L. 1913, § 9654.)

NOTE: See also Nos. 201 and 202.

Distribution of Samples.

122. Distribution of Drug Samples Prohibited.—Any person who shall, by himself, his servant or agent, or as the servant or agent of any other person, leave, throw or deposit upon the door-step or premises or within dwellings or within barns or other buildings owned or occupied or used by any other person or any householder without a special personal request, as hereinafter specified, of such person or householder, any patent or proprietary medicine or any preparation, pill, tablet, powder, capsule, cosmetic, disinfectant or antiseptic or any drug or medicine or condiment that contains poison or any ingredient that is deleterious to health or that has to be printed under the laws of this State or of the United States, on the label thereof, or have its presence therein disclosed otherwise, a sample, or any quantity or size whatever for the purpose of advertising or inviting or suggesting its use shall be deemed guilty of a misdemeanor and any health officer, peace officer, or other person may bring or have brought an action in the name of the State of North Dakota, and upon conviction thereof defendant shall be fined not exceeding one hundred dollars and not less than twenty-five dollars, or imprisoned in the county jail not exceeding one hundred or less than thirty days, or both, for each and every violation. And such samples of goods are, and are hereby declared to be a nuisance and a danger and a menace to the safety of the children, members or live stock, and other living beings of such household and if not removed upon notice or request or order of the

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*For penalty, see No. 16.

householder or any member of the household, or if left behind purposely and if not removed within twenty-four hours without notice or request they may be removed, destroyed or annihilated and disposed of, or done away with by such person or householder or any member of his household, and no accounting will have to be rendered therefor to any one and no action demanding such accounting shall be maintained or be maintainable in any court of justice and no defense for any violation of this section shall be competent or valid or be sustained, unless a receipt or a request for such goods, dated and signed by such person or householder at that time, in person, is produced as evidence. The terms drug, medicine, patent or proprietary medicine, pill, tablet, powder, capsule, cosmetic, disinfectant or antiseptic or condiment, as used in this section shall include all remedies for internal or external or technical use, either in packages or bulk, simple, mixed or compound. (C. L. 1913, § 10260.)

Insecticides and Fungicides.

123. Duty of Manufacturers and Dealers.—It shall be the duty of each and every manufacturer of Paris green (commercial acetoarsenite of copper) to be used as an insecticide within the State, and of every dealer in original packages of said Paris green manufactured outside of this State, before the said Paris green is offered or exposed for sale, or sold within the State as an insecticide, to submit to the Director of the North Dakota Government Agricultural Experiment Station of Fargo,* samples of said Paris green, and a written or printed statement setting forth: First, the brands of said Paris green to be sold, the number of pounds contained in each package in which it is put on the market for sale, the name or names of the manufacturers and the place of manufacturing the same; second, the statement shall set forth the amount of combined arsenic which the said Paris green contains, and the statement so furnished shall be considered as constituting a guaranty to the purchaser that every package of such Paris green contains not less than the amount of combined arsenic set forth in the statement. (C. L. 1913, § 2933.)†

124. Regulation of Sale; Legal Strength.—Every purchaser of said Paris green in original packages, which is manufactured outside of this State, who intends to sell or expose the same for sale, and every manufacturer of said Paris green within this State, shall, after filing the statement above provided for, with the Director of the North Dakota Government Agricultural Experiment Station at Fargo, receive from the said director a certificate stating that he has complied with the foregoing statement, which certificate shall be furnished without charge therefor; said certificate when furnished shall authorize the party when receiving the same to deal in this State in the said Paris green. Any person who fails to comply with the terms of section 2933 shall not be entitled to such certificate and it shall not be construed as applying to retail dealers selling Paris green which has already been labeled and guaranteed. Paris green, when sold, offered or exposed for sale, as an insecticide, in this State, shall contain at least fifty per cent. of arsenious oxide, and shall not contain more that four per cent. of the same in the uncombined state. (Id. § 2934.)†

125. Duty of the Director of North Dakota Agricultural College Experiment Station.—The Director of the North Dakota Government Agricultural Experiment Station at Fargo shall examine or cause to be examined different brands of Paris green sold, offered or exposed for sale within the State, and cause samples of the same to be analyzed, and for this purpose he may appoint such agent or agents as he may deem necessary for the enforcement of this article, and such agent or agents shall have free access at all reasonable hours for the purpose of examining into any place wherein it is suspected any Paris green may be kept, and such agent or agents may take from any person, firm or corporation, samples of said Paris green for analysis and when said goods are found on analysis to be in violation of this article the said director shall report the said facts to the State's attorney for the district wherein the offense is committed. (Id. § 2935.†

126. Certificates as Evidence.—Every certificate duly signed and acknowledged by the Chemist of the North Dakota Government Agricultual Experiment Station at Fargo relating to the analysis of any Paris green shall be presumptive evidence of the fact therein stated. (Id. § 2936.)†

127. Duty of State's Attorney.—It shall be the duty of the State's attorney to prosecute all persons violating any of the provisions of this article when the evi-

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*See No. 29b.

†But see the subsequent act quoted in No. 129 et seq.

dence thereof has been presented by the North Dakota Government Agricultural Experiment Station, as provided for in sections 2935 and 2936. (Id. § 2937.)*

128. What Constitutes Violation.—The doing of anything prohibited by this article shall be evidence of the violation of the provisions of this article relating to the things so prohibited and the omission to do anything directed to be done shall be evidence of a violation of the provisions of this article relative to the things so directed to be done, and any person who shall sell or dispose of any package of Paris green or any part thereof which has not been labeled as herein provided, shall be guilty of a misdemeanor, and shall be fined not less than ten dollars nor more than one hundred dollars, together with the costs of the suit in an action caused to be brought by the Director of the North Dakota Government Agricultural Experiment Station in the name of the people of the State of North Dakota. (Id. § 2938.)*

129. Manufacture or Misbranding Prohibited.—It shall be unlawful for any person to manufacture within the State of North Dakota any insecticide, Paris green, lead arsenate or fungicide which is adulterated or misbranded within the meaning of this chapter. (Id. § 10210.)

130. Dealing in Adulterated or Misbranded Insecticides Forbidden.—Any person who shall offer for shipment or deliver from any point in the State of North Dakota to any other point in the State of North Dakota any insecticide, or Paris green or lead arsenate, or fungicide which is adulterated or misbranded within the meaning of this chapter, or any person who shall receive, or offer to receive, any insecticide, or Paris green, or lead arsenate, or fungicide which is adulterated or misbranded within the meaning of this chapter, and having received, shall sell or deliver, or shall offer for sale or delivery, such adulterated or misbranded insecticide, or Paris green, or lead arsenate, or fungicide, shall be guilty of a violation of this chapter. (Id. § 10211.)

131. What Constitutes Adulteration.—For the purpose of this chapter an article shall be deemed to be "adulterated":

In the case of Paris green: First, if it does not contain at least fifty per centum of arsenious oxide; second, if it contains arsenic in water-soluble forms equivalent to more than three and one-half per centum of arsenious oxide; third, if any substance has been mixed and packed with it so as to reduce or lower or injuriously affect its quality or strength.

In the case of lead arsenate: First, if it contains more than fifty per centum of water; second, if it contains total arsenic, equivalent to less than twelve and one-half per centum of arsenic oxide (As_2O_5); third, if it contains arsenic in water-soluble forms equivalent to more than seventy-five one-hundredths per centum of arsenic oxide (As_2O_5); fourth, if any substances have been mixed and packed with it so as to reduce, lower or injuriously affect its quality or strength; provided, however, that extra water may be added to lead arsenate (as described in this paragraph) if the resulting mixture is labeled "lead arsenate and water," the percentage of water being plainly and correctly stated on the label.

In the case of insecticides and fungicides other than Paris green and lead arsenate: First, if its strength or purity falls five per cent. or more below the professed standard or quality under which it is sold; second, if any substance has been substituted wholly or in part for the article; third, if any valuable constituent of the article has been wholly or in part abstracted; fourth, if it is intended to use on vegetation and shall contain any substance or substances which, although preventing, destroying, repelling or mitigating insects, shall be injurious to such vegetation when used. (Id. § 10212.)

132. "Misbranding" Defined.—The term "misbranded," as used herein, shall apply to insecticides, Paris green, lead arsenate or fungicide, or articles which enter into the composition of insecticides or fungicides, the package or label of which shall bear any statement, design or device regarding such article or the ingredients of the substances contained therein which shall be false or misleading in any particular. (Id. § 10213.)

133. Further Definition of "Misbranding."—For the purpose of this chapter an article shall be deemed to be "misbranded":

In case of insecticides, Paris green, lead arsenate and fungicides: First, if it be an imitation or offered for sale under the name of another article; second, if it be labeled or branded so as to deceive or mislead the purchaser; or if the contents of the package as originally put up shall have been removed in whole or in part and other contents shall have been placed in such package; third, if in package form, and if the contents are not stated in terms of weight or measure and they are not plainly and correctly stated on the outside of the package.

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*But see the subsequent act quoted in No. 129 et seq.

In the case of insecticides other than Paris green and lead arsenates and fungicides: First, if they contain arsenic in any of its combinations or in the elemental form and the total amount of arsenic present (expressed as per centum of metallic arsenic) is not stated on the label; second, if it contains arsenic in any of its combinations or in the elemental form and the amount of arsenic in water-soluble forms (expressed as per centum of metallic arsenic) is not stated on the label; third, if it consists partially or completely of an inert substance or substances which do not prevent, destroy, repel or mitigate insects or fungi, and does not have the names and percentage amounts of each and every one of such inert ingredients plainly and correctly stated on the label; provided, however, that in lieu of naming and stating the percentage amount of each and every inert ingredient the producer may, at his discretion, state plainly upon the label the correct names and percentage amount of each and every ingredient of the insecticide or fungicide having insecticidal or fungicidal properties, and make no mention of the inert ingredients, except insofar as to state the total percentage of inert ingredients present. (Id. § 10214.)

134. Duty of Food Commissioner.*—It shall be the duty of the Food Commissioner to collect from time to time specimens of insecticides, Paris greens, lead arsenates and fungicides in unbroken original packages, manufactured or offered for sale in the State of North Dakota, for the purpose of determining whether or not such insecticides, Paris greens, lead arsenates and fungicides are adulterated or misbranded within the meaning of this chapter. (Id. § 10215.)

135. Citizen May Send Suspected Article to Food Commissioner; Duty of Latter.—When any citizen of the State has any reason to believe that any particular brand or lot of insecticide or Paris green, or lead arsenate, or a fungicide is adulterated or misbranded within the meaning of this chapter, he may send or deliver to the Food Commissioner at Fargo an original and unbroken package of the article in question. Upon receipt of such a questionable article it shall be the duty of the commissioner to examine or cause an investigation to be made, and, at his discretion, may cause chemical examinations of such questioned articles as hereinafter provided. (Id. § 10216.)

136. Chemical Analysis at Instance of Food Commissioner.—Upon the receipt of specimens of insecticides, Paris green, lead arsenates and fungicides in unbroken original packages, as hereinbefore provided, the Food Commissioner of the Experiment Station shall make, or cause to be made, a chemical analysis of such specimens for the purpose of determining whether or not they comply with the requirements of this act [chapter]; provided, that when the commissioner has information showing samples delivered to him for examination are out of lots of insecticides. Paris greens, lead arsenates or fungicides that have already been examined a sufficient number of times to indicate whether or not they comply with the requirements of this chapter, then the commissioner may refuse to examine such lots and so notify the citizens of the State. (Id. § 10217.)

137. Insecticide, Paris Green, Lead Arsenic [Arsenate] and Fungicide Defined.—The term "insecticide" as used in this chapter shall include any substance or mixture of substances intended to be used for preventing, destroying, repelling or mitigating any insects, mites or ticks which may infest vegetation, man or other animals, or household, or be present in any environment whatsoever. The term "Paris green" as used in this chapter shall include the product sold in commerce as Paris green and chemically known as the aceto-arsenite of copper. The term "lead arsenate" as used in this chapter shall include the product or products derived from arsenic acid (H_3AsO_4) by replacing one or more hydrogen atoms by lead. The term "fungicide" as used in this chapter shall include any substance or mixture of substances intended to be used for preventing, destroying, repelling or mitigating any and all fungi that may infest vegetation or be present in any environment whatsoever. (Id. § 10218.)

138. When Dealer Protected From Prosecution.—No dealer shall be prosecuted under the provisions of this chapter when he can establish a guaranty signed by the wholesaler, jobber, manufacturer or other party residing in the State of North Dakota from whom he purchased such articles, to the effect that the same is not adulterated or misbranded within the meaning of this chapter, designating it; said guaranty, to afford protection, shall contain the name and address of the party or parties making the sale of such articles to such dealer, and in such case said party or parties shall be amenable to the prosecutions, fines and other penalties which would attach to the dealer under the provisions of this chapter. (Id. § 10219.)

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*See No. 29b.

139. Proceeding Against Contraband Articles.—Any insecticide, Paris green, lead arsenate or fungicide that is adulterated or misbranded within the meaning of this chapter and is being transported from one point within the State of North Dakota to another point within the State of North Dakota, to be sold, wholly or in part, or having been transported, remains unloaded, unsold or in original unbroken packages, or if it be sold or offered for sale in the State of North Dakota, shall be liable to be proceeded against in any District Court of the State of North Dakota. If any such article is condemned as being adulterated or misbranded within the meaning of this chapter, the same shall be disposed of by destruction or by sale, as said court may direct; but such goods shall not be sold in any jurisdiction contrary to the provisions of this chapter or the laws of the jurisdiction; provided, however, that upon the payment of the costs of such proceedings and the execution and delivery of a good and sufficient bond to the effect that such articles shall not be sold or otherwise disposed of contrary to the provisions of this chapter or the laws of this State, the court may, by order, direct that such article be delivered to the owner thereof. (Id. § 10220.)

140. Penalty For Violation of This Chapter.—Any person who shall violate any of the provisions of this chapter shall be guilty of a misdemeanor and shall, upon conviction thereof, be fined not less than twenty-five dollars ($25) nor more than two hundred dollars ($200) for the first offense, and upon conviction for each subsequent offense be fined not less than fifty dollars ($50) nor more than three hundred dollars ($300), or sentenced to imprisonment for not more than thirty days, in the discretion of the court. (Id. § 10221.)

141. "Person" as Used Herein Defined.—The word "person" as used in this chapter shall be construed to include both the plural and the singular, as the case may be, and shall include corporations, companies, societies and associations. When construing and enforcing the provisions of this chapter the act, omission or failure of any officer, agent or other person acting for or employed by any corporation, company, society or association, within the scope of his employment or office, shall in every case be also deemed to be an act, omission or failure of such corporation, company, society or association, as well as that of the other person. (Id. § 10222.)

142. Evidence of Violation of This Chapter; What Constitutes Violation of the Law.—The doing of anything prohibited by this chapter shall be evidence of the violation of the provisions of this chapter relating to the things so prohibited and the omission to do anything directed to be done shall be evidence of a violation of the provisions of this chapter relative to the things so directed to be done. (Id. § 10223.)

Pharmacy, Poisons and Narcotics.

143. Compounding Restricted.—No person other than a registered pharmacist, assistant registered pharmacist or a regularly licensed physician shall manufacture, compound, sell or dispense for medicinal use any drug, poison, medicine or chemical (except patent or proprietary preparations) or dispense or compound a prescription of a medical practitioner except as provided in this article. (C. L. 1913, § 475.),

144. Who May Engage in the Drug Business.—Every store, dispensary, pharmacy, laboratory, or office for the sale, dispensing or compounding of drugs, medicines or chemicals, or for the compounding or dispensing of prescriptions of medical practitioners shall be in charge of a registered pharmacist, or during the temporary absence of such registered pharmacist, in charge of a registered assistant pharmacist. Every store or shop where drugs, medicines, or chemicals are dispensed or sold at retail, or displayed for sale at retail for medicinal purposes, or where prescriptions are compounded, shall be deemed a "pharmacy" or "drug store" within the meaning of this act. No person shall hereafter carry on, conduct, or transact business under a name which contains as a part thereof, the words, "drugs," "drug store," or "pharmacy," or in any manner by advertisement, circular or poster, sign or otherwise describe or refer to the place of business conducted by such person by the terms, "drugs," "drug store," or "pharmacy," unless the place of business so conducted be at all times in charge of a registered pharmacist, or during the temporary absence of such registered pharmacist, in charge of a registered assistant pharmacist. Every person violating any provision of this section shall be guilty of a misdemeanor, the minimum punishment whereof shall be a fine of fifty dollars. (Id. § 476; L. 1927, c. 211, §1.)

145. Board of Pharmacy, Appointment.—The State Board of Pharmacy shall consist of five registered pharmacists. The members of said board shall be appointed by the Governor upon the recommendation of the North Dakota Phar-

maceutical Association, and the persons so appointed shall be chosen from the members of said association. Except as provided in the next section the members of said board shall be appointed for a term of five years and until their successors are appointed and qualified. (C. L. 1913, § 477.)

146. Vacancies.—The three members of the present State Board of Pharmacy shall continue in office for the remainder of their respective terms, and the Governor shall appoint two additional members, one for a term of four years and one for a term of five years. In case of a vacancy by death, resignation or removal the Governor shall fill the vacancy by an appointment for the unexpired term. (C. L. Suppl. 1925, § 478.)

147. Organization; Bond; Meetings.—At the first regular meeting of the board after the appointment and qualification of the additional members thereof provided by this article, and annually thereafter at the first regular meeting after the appointment and qualification of a new member for a full term the board shall elect a president, secretary and treasurer. The president and treasurer shall be chosen from the members of the board, but any suitable person, whether a member of the board or not, may be chosen as secretary. Said officers shall respectively perform such duties as the board may prescribe. The secretary and treasurer shall each give a satisfactory bond to the State Board of Pharmacy in the sum of not less than two thousand dollars for the faithful performance of his official duties and the safe and proper care and disposal of all funds and property under his charge by the officer by and for whom the bond is given. The board shall hold at least two and not more than four meetings in each calendar year for the examination of applicants for registration, and it shall give at least thirty days' notice of the time and place of any meeting for the examination of applicants for registration, by publishing notice thereof in three pharmaceutical journals of general circulation in the State. It may hold such other meetings for the performance of its duties as may be necessary, and such meetings may be called by the secretary at the request of the president, or of any two members upon such notice to all the members as the board may prescribe by its rules and regulations or at such time and place as a majority of the members agree upon. In case of the death, removal or resignation of the president of the board or his absence from or refusal or inability to act at any meeting of the board, the senior member of the board present shall act as president. In case of the death, removal or resignation of the secretary or treasurer or the absence or refusal or inability of either to act, the board may choose another for the time being, or for the remainder of the year. The president, secretary and treasurer, or any of them, may be allowed such compensation for their services as such in addition to their pay as members as four-fifths of the members of the board shall determine. (C. L. 1913, § 479.)

148. Quorum; Powers.—A majority of the board shall constitute a quorum for the transaction of any business. The board shall have power and it shall be its duty:

(a) To cancel and revoke the certificate and registration of any registered pharmacist or registered assistant pharmacist for incompetency, or who is addicted to any drug habit.

(b) To examine and register as pharmacist and assistant pharmacist all applicants which it shall find to be entitled to such registration.

(c) To prescribe rules and regulations for the guidance of its members, officers and employees, and to ensure the proper and orderly dispatch of its business.

(d) To employ and pay such persons as it may deem necessary to inspect pharmacies in this State, or investigate for the information of the board, or to procure evidence in any proceeding pending before such board, or in aid of any prosecution or action in any court commenced, or about to be commenced, by or against such board in relation to any matter in respect to which the board has any duty to perform.

(e) To employ and pay counsel to advise the board, or to prosecute or defend any action or proceeding commenced by or against the board or pending before it.

(f) The president of the board shall have the power to administer oaths to applicants for registration and to any witness in any hearing, investigation or proceeding pending before such board. (Id. § 480.)

149. Certificate of Registration, Canceled When.—The certificate and registration of a pharmacist or assistant pharmacist shall not be revoked or cancelled until after a hearing before the board upon notice to the person accused and an opportunity to appear in person and by counsel and produce witnesses in his own behalf; and the notice of hearing must contain a copy of the complaint against him, which complaint must be in writing. The foregoing provisions of this section

shall not apply to cases where a pharmacist or assistant pharmacist shall have been convicted in a court of general jurisdiction of an offense against any law, the violation of which is ground for cancellation of the certificate or registration, but in such cases a certified copy of the judgment of conviction filed with the board shall authorize the board to summarily cancel and revoke the certificate of the convicted pharmacist. The board shall prescribe rules and regulations not inconsistent with this article, to govern the procedure in proceedings before it to cancel a certificate or registration. (Id. § 481.)

150. Former Certificates in Force.—The certificate of every pharmacist and assistant pharmacist whose certificate and registration as such is in force at the time this article takes effect shall remain in force for the period for which this certificate was issued, but subject to the conditions and provisions of this article and may be renewed, cancelled or revoked and the holder shall be entitled to the same privileges and be subject to the same conditions and penalties as if such certificate had been issued and such registration procured under this article; provided, however, that any offense committed or penalty or forfeiture incurred on account of any act or transaction before this article takes effect shall be punishable or recoverable according to the provisions of the law in force when such act was done, notwithstanding any express or implied repeal of such law by this article. (Id. § 482.)

151. Restriction as to Registration.—After this article takes effect no person except those mentioned in the preceding section shall be registered or receive a certificate as a pharmacist or assistant pharmacist until he or she shall have complied with the conditions hereinafter provided. (Id. § 483.)

152. Registration Without Examination, When.—The board may, without examination, register and issue a certificate as a pharmacist or assistant pharmacist to any person of good moral character who shall present to the board satisfactory evidence that he or she had before coming to this State been legally licensed as a pharmacist or assistant pharmacist in another State or foreign country, by the laws of which the requirements for such license with respect to qualifications are equivalent to the requirements of this article; provided, however, that it shall not be obligatory upon such board to recognize or accept the license, certificate or registration of such other State or foreign country as evidence of the applicant's qualifications unless the board is satisfied that such applicant is in fact qualified to be a pharmacist or assistant pharmacist in this State; and provided, further, that the board may deny recognition or acceptance of the license, certificate or registration of any State or foreign country which does not accord similar recognition to licentiates of this State. (Id. § 484.)

153. Examination For Registration.—Except as hereinafter provided, every applicant for registration as a pharmacist or assistant pharmacist must, before receiving a certificate from the board, successfully pass such an examination as to his learning and professional qualifications the board shall prescribe. (Id. § 485.)

154. Qualifications for Registration.—Every applicant for a license as a registered pharmacist, shall be not less than twenty-one (21) years of age, shall be of good moral character, shall be a graduate of a school or college of pharmacy recognized by the board; and shall have at least two (2) years practical experience in a retail pharmacy under the supervision of a registered pharmacist, which experience shall be predominantly work directly related to selling drugs and poisons, compounding of pharmaceutical preparations and physicians' prescriptions, and keeping records and making reports required under State and Federal statutes; provided, however, that not to exceed one year of additional credit on practical experience may be allowed for one or more years of satisfactorily completed work in an approved school or college of pharmacy, in excess of two years.

On and after January 1, 1930, an applicant for examination as a registered pharmacist, must, with the application for examination, present to and file with the pharmacy board, satisfactory evidence that he or she has had at least one year of practical experience as defined above, and must have graduated from a school or college of pharmacy having a course of three years or more, and recognized by the Board of Pharmacy as an approved school.

The said board shall be authorized to determine what shall constitute an approved school or college of pharmacy, but a school or college to be so approved must maintain standards equivalent to the requirements of membership of the American Association of Colleges of Pharmacy. Provided, that any person who was registered as an assistant pharmacist in North Dakota prior to January 1st, 1913, and who still continues to practice such profession within the State of North Dakota, but has been debarred from application for a certificate as a registered pharmacist by reason of the requirement as to college work, shall upon application duly made to the board prior to July 1st, 1928, be given an examination for registration as a pharmacist, such

examination for registration to be so given with due regard for such circumstances; and upon passing of an examination so to be given, in manner satisfactory to the majority of such board shall be given a certificate as a registered pharmacist.

Registration as a pharmacist by said board entitles the person so registered to membership in the North Dakota Pharmaceutical Association. (Id. § 486; L. 1927, c. 211, § 2.)

155. Examination For Assistant.—An applicant for examination and registration as an assistant pharmacist must as a condition precedent to the right to be examined, present and file with the board satisfactory evidence that he or she is a person of good moral character over the age of eighteen years, and has had at least two years' experience at a reputable pharmacy under the instruction and supervision of a reputable pharmacist, or has been registered as an apprentice in pharmacy in this State for a period of two years. The board may, however, allow and consider as a part of the two years' experience required of such applicant, such time, not exceeding one year, as shall have been spent by the applicant in a regular course of study in a college of pharmacy approved by the board. (C. L. 1913, § 487; L. 1927, c. 211, § 3.)

156. Fees.—Each applicant for registration shall pay to the secretary the sum of fifteen dollars before examination; provided, that in case of a failure to pass a satisfactory examination, he may be re-examined at any regular meeting of the board upon the payment of a further fee of five dollars. (C. L. 1913, § 488; L. 1927, c. 211, § 4.)

157. Prerequisites to Examination.—Any person having the educational qualifications sufficient to enable him or her to pass an entrance examination to the high schools of the State of North Dakota, or its equivalent, desiring to register as an apprentice in pharmacy shall at the date of entering into his or her apprenticeship, file with the Secretary of the State Board of Pharmacy a certificate, stating that he or she has entered into an apprenticeship, and stating his or her age, name and educational qualifications, and he or she shall at the same time file with the said secretary a certificate from his or her employer, who must be a regularly licensed and registered pharmacist of this State, which certificate shall set forth that the applicant has been employed by him as an apprentice in pharmacy, and that said applicant possesses the knowledge of such registered pharmacist, education and qualifications which would enable him or her to pass the entrance examinations to the high schools of this State, or its equivalent; said certificates shall be accompanied by a fee of twenty-five cents, and thereupon it shall be the duty of said secretary to file the same and register said applicant as an apprentice and at the expiration of two years after such registration, the said applicant shall be permitted to take the examination prescribed by the State Board of Pharmacy for assistant pharmacists upon the conditions imposed by the State Board of Pharmacy. (C. L. 1913, § 489; L. 1927, c. 210.)

158. Certificate; Issuance of.—The board shall cause to be issued to each pharmacist, or assistant pharmacist, whom it finds entitled thereto, a certificate showing the date of issue, the fact that the person to whom issued is a registered pharmacist or assistant pharmacist, as the case may be, and his or her residence. The certificate shall be signed by a majority of the members of the board. Such certificate shall entitle the holder to act in the capacity stated therein for a period of one year, and such certificate may be renewed, or the place of business designated therein be changed, as hereinafter provided. Such certificate and any renewal thereof must be displayed in a conspicuous place in any pharmacy or drug store where the holder thereof is employed. (C. L. 1913, § 490; L. 1927, c. 211, § 5.)

159. Register.—The secretary of the board shall keep a record or register in which in addition to such other matters as the board may require it to show he shall register each certificate issued and the facts appearing in such certificate and appropriate spaces shall be reserved in which to record any subsequent cancellation or removal thereof or change therein. (C. L. 1913, § 491.)

160. Teaching of Pharmacy.—No member of the Board of Pharmacy shall teach pharmacy in any of its branches, unless it be as a teacher in a public capacity, in a college of pharmacy, or to an apprentice duly registered with him. (Id. § 492.)

161. Compensation of Board.—Members of the Board of Pharmacy shall receive a per diem of ten dollars for attendance at board meetings, and all actual and necessary expenses incurred in attending such meetings and in performing other official duties. Such per diem and expenses shall be paid only from monies received by the board under the provisions of this article. Any monies remaining after the payment of the per diem and expenses herein provided for, shall be held by the treasurer as a special fund to meet the expenses of the board and of the reports and annual meeting of the North Dakota Pharmaceutical Association, and such other necessary expenses as may be incurred by said association. (Id. § 493; L. 1927, c. 211, § 6.)

161a. Annual Report.—The board shall in its annual report render to the Governor of the State, and the North Dakota Pharmaceutical Association an account of all monies received and disbursed by it. (C. L. 1913, § 494.)

162. Renewal Fees.—Every registered pharmacist and every registered assistant pharmacist who desires to retain his registration on the books of the Board of Pharmacy in this State, shall annually, before the expiration of the first year's registration, and on or before the first day of March in each year, pay to the Secretary of the State Board of Pharmacy a renewal fee in an amount to be fixed by the board, but in no case exceeding five dollars, and upon payment of such fee, a renewal certificate shall be issued. In case the certificate holder fails to pay the renewal fee as above required, within the time provided, then the secretary shall mail to the certificate holder a notice addressed to his last known place of residence, notifying the delinquent of his failure to obtain a renewal certificate. Any delinquent certificate holder may within sixty days after the date of the mailing of said notice procure a renewal certificate upon payment of a renewal fee of seven dollars. In event of his failure so to do, his original certificate or renewal certificate, as the case may be, shall become void and the registry thereof be cancelled. The board may, however, on application by the delinquent certificate holder, authorize the issuance to him of a new certificate without examination upon payment of all unpaid fees, if satisfied that the applicant is a proper person to receive the same. (Id. § 495; L. 1927, c. 211, § 7.)

163. Change of Residence; Record of.—Every registered pharmacist, and assistant pharmacist, shall, within thirty days after changing his place of business as designated on the books of the Board of Pharmacy, notify the secretary of the board of his new place of business, and shall accompany the said notice with a fee of fifty cents. Upon receipt of said fee and the notice of change of place of business, the secretary shall make the necessary change in the register and issue a receipt for the said fee to the person sending it. (C. L. 1913, § 496.)

164. Physicians' Prescriptions to be Filed and Preserved.—Every registered pharmacist shall file, or cause to be filed, all physicians' prescriptions, or a copy thereof, compounded or dispensed in his pharmacy or store; they shall be preserved for at least two years, and he may furnish a copy of any prescription to the party presenting it on the request of such party only. (Id. § 497.)

165. False Registration; Penalty.—Any person who shall procure or attempt to procure registration for himself or any other person under this act by making or causing to be made any false representations, or who shall falsely or fraudulently represent himself to be registered shall be deemed guilty of a misdemeanor and, in addition to the penalty imposed by the court on conviction, shall, if he be a registered pharmacist or registered assistant pharmacist, have his registration canceled. (Id. § 498.)

166. Who exempt.—Nothing in this article shall apply to, or interfere with, any practitioner of medicine who is duly registered as such by the State Board of Medical Examiners of this State, with supplying his own patients, as their physician, with such remedies as he may desire; nor does this article apply to the exclusively wholesale business of any dealer, nor do general dealers come under the provisions of this article so far as it relates to the keeping for sale of proprietary medicines in original packages and the simple household remedies; nor does this article apply to registered or copyrighted proprietary medicines registered in the United States Patent Office, nor to the manufacture of proprietary remedies or the sale of the same in original packages, by persons other than pharmacists, and this article shall not be construed to prohibit the sale, dispensing or compounding of drugs or medicines or physicians' prescriptions in any established hospital to the patients therein by or under the direct supervision of a resident interne physician of such hospital. (Id. § 499.)

167. Penalty.—Any proprietor of a pharmacy, who not being a registered pharmacist, shall fail or neglect to place in charge of such pharmacy a registered pharmacist, or any such proprietor who shall by himself or any other person permit the compounding or dispensing of prescriptions, or the vending of drugs, medicines or poisons, in his store or place of business, except by or in the presence and under the direct supervision of a registered pharmacist, or any person not being a registered pharmacist, who shall take charge of or act as manager of such pharmacy, or store, or who, not being a registered pharmacist, retails, compounds or dispenses drugs, medicines or poisons, shall be guilty of a misdemeanor. (Id. § 500.)

168. Temporary Certificate; How Obtained.—The Secretary of the State Board of Pharmacy, or any member of said board, on being requested by the secretary in writing, may examine applicants orally or in writing, and issue a temporary certificate to practice pharmacy, which shall authorize such practice and be valid until the next meeting of the board. Only one temporary certificate shall

be issued to the same applicant, and no temporary certificate shall be issued to any person whose application has been acted on by the board. The applicant for a temporary certificate shall pay to the person making the examination the same fee as provided by this act for an examination by the board, and such fees when paid shall be for the benefit of the said board and shall be delivered to the secretary by the person making the examination. (Id. § 501.)

169. Record of Poisons.—Every person who shall sell, furnish or deliver to another at retail any arsenic or its preparations, corrosive sublimate, white precipitate, red precipitate, biniodide of mercury, cyanide of potassium, hydrocyanic acid, strychnia and all other poisons, vegetable alkaloids and their salts, essential oil of bitter almonds, opium or its preparations, except paregoric and other preparations of opium with less than two grains to the ounce, shall before delivering the same enter, or cause to be entered, in a book kept for that purpose, the date of sale, the name and address of the person to whom sold or delivered, the name, quantity and quality of the articles sold and the name of the dispenser, and shall affix to the bottle, box or vessel or receptacle containing the same a label showing the name of the contents, the word "poison" and his name and place of business. (Id. § 502.)

170. Same.—Every person who shall sell, furnish or deliver to another at retail any aconite, belladona, colchicum, conium, formaldehyde, nux vomica, henbane, savin, ergot, cotton root, cantharides, creosote, digitalis and their pharmaceutical preparations, croton oil, chloroform, chloral hydrate, sulphate of zinc, mineral acids, carbolic acid and oxalic acid, shall before delivering the same affix to the bottle, box, vessel or package containing the same, a label showing the name of the contents, the word "poison" and his name and place of business; provided, however, that any storekeeper may sell the drugs known as formaldehyde and Paris green in unbroken packages. (Id. § 503.)

171. Narcotics.—No person shall have in his possession or under his control any opium, coca leaves, or any compound, salt, derivative, or preparation thereof, including cocaine, morphine, heroin and codeine, unless it be possessed through having been prescribed, or dispensed in good faith by a physician, dentist, or veterinary surgeon registered under the laws of North Dakota and registered by the United States Government under the Harrison Act, and Act of Congress approved December 17, 1914, as amended, to prescribe or dispense such drugs; provided, that this section shall not apply to any person registered under the said Harrison Act, or to any employee, or assistant of a registered person and under his supervision, having such possession or control by virtue of his employment and not on his own account; or to the possession of any of the aforesaid drugs by any corporation engaged in the wholesale of such drugs; or by manufacturers of pharmaceuticals, registered under the Harrison Act, or by any United States, State, city, county, or municipal official, who has possession of any of said drugs by reason of his official duties; or by a warehouseman holding possession for a person so registered and who has paid the tax under the aforementioned Harrison Act; or to common carriers engaged in transporting such drugs; provided, further, that it shall not be necessary to negative any of the aforesaid exemptions under any complaint, information, indictment or other writ or proceeding, brought under this section; and the burden of proof of any such exemption shall be on the defendant. Any person violating any provisions of this section shall be deemed guilty of a misdemeanor and shall be fined not less than one hundred dollars ($100.00) or more than one thousand dollars ($1,000.00) or be imprisoned in the county jail not less than thirty days nor more than one year, or both such fine and imprisonment; providing that, if the court or judge finds that the defendant is a habitual user of narcotic drugs, he may commit the defendant for a period not to exceed three years in a State institution.

That the provisions of this section shall not be construed to apply to the sale, distribution, giving away, dispensing, or possession of preparations and remedies which do not contain more than two grains of opium, or more than one-fourth grain of morphine, or more than one-eighth of a grain of heroin, or more than one grain of codeine, or any salt or derivative of any of them in one fluid ounce, or if a solid or semi-solid preparation, in one avoirdupois ounce; or to liniments, ointments or other preparations which are prepared for external use only, except liniments, ointments and other preparations which contain cocaine or any of its salts, or alpha or beta eucaine or any of their salts, or any subthetic substitutes for them; provided, that such remedies and preparations are sold, distributed, given away, dispensed or possessed as medicines and not for the purpose of evading the intentions and provisions of this section. (Id. § 504; L. 1927, c 211, § 8.)

172. Penalty for Violations.—Any person who shall willfully violate any of the provisions of this article shall be guilty of a misdemeanor and upon conviction thereof, shall, unless otherwise provided in this article, be punished by a fine of not

less than twenty-five dollars ($25.00) nor more than one hundred dollars ($100.00), or be imprisoned in the county jail not exceeding thirty days, or both, with costs of prosecution in which shall be included an item of twenty-five dollars in addition to the traveling and other necessary expenses of members of the board, or of their appointee, in procuring evidence and securing conviction. (C. L. 1913, § 505; L. 1927, c. 211, § 9.)

173. Costs in Prosecution.—All costs and expenses collected in prosecutions under this article except court costs, fees of officers and witness fees shall be paid to the secretary of the State Board of Pharmacy. (C. L. 1913, § 506.)

174. Unlawfully Acting as Pharmacist.—Every person who is not a registered pharmacist, or who has not a registered pharmacist in his employ and who, either:

1. Takes, uses or exhibits the title or certificate of a registered pharmacist; or,
2. Retails, compounds or dispenses medicine; or,
3. Permits the compounding or dispensing of prescriptions, or the vending of drugs, medicines or poisons in his store or place of business except under the supervision of a registered pharmacist; or,
4. Violates, or fails, or neglects to comply with and observe any provisions of law relating to or regulating the practice of pharmacy; and every person who,
5. Willfully makes any false representation to procure registration as a pharmacist for himself or for any other person is guilty of a misdemeanor, and upon conviction thereof is punishable by a fine of not less than fifty dollars and not exceeding one hundred dollars, and all necessary costs, including the costs and expenses of procuring evidence necessary to secure conviction. (Id. § 9735.)

175. Provisions of Last Section Limited.—The provisions of the last section shall not be construed to interfere in any manner with the business of a physician in regular practice; nor to prevent such physician from supplying his patients with whatever he may deem necessary; nor to prevent him from receiving a certificate as a registered pharmacist as provided by law; nor to interfere with the making or compounding of proprietary medicines or medicines placed in sealed packages with the name of the contents and of the person by whom prepared or compounded; nor to prevent shopkeepers from dealing in or selling the commonly used medicines and poisons, if such medicines or poisons are put up by a regular pharmacist; nor from dealing in or selling patent or proprietary medicines; nor to interfere with the exclusive wholesale business of any dealer. (Id. § 9736.)

176. Selling Certain Enumerated Poisons.—Every person who, at retail, sells, furnishes or delivers to another, either:

1. Arsenic or its preparations, corrosive sublimate, white precipitate, red precipitate, biniodide of mercury, cyanide of potassium, hydrocyanic acid, strychnia and all other poisons, vegetable alkaloids and their salts, essential oil of bitter almonds, opium or its preparations, except paragoric and other preparations of opium with less than two grains to the ounce; or,
2. Aconite, belladonna, colchicum, conium, nux vomica, henbane, savin, ergot, cotton root, cantharides, creosote, digitalis, and their pharmaceutical preparations, croton oil, chloroform, chloral hydrate, sulphate of zinc, mineral acids, carbolic acid and oxalic acid, without affixing to the bottle, box, vessel or package containing the same the name of the contents, the word "poison," and his name and place of business, is guilty of a misdemeanor and is punishable by a fine of not less than ten dollars, nor exceeding five hundred dollars, or by imprisonment in the county jail for not less than thirty days, nor more than six months. (Id. § 9737.)

177. Physicians' Prescriptions Excepted.—The provisions of the last section shall not be construed to include or apply to the dispensing of physicians' prescriptions specifying or containing poison. (Id. § 9738.)

178. Record of Poison Sold.—Every person who, at retail, sells, furnishes or delivers to another the articles or preparations mentioned in section 9737 or any drug, chemical or preparation which, according to the standard works on medicines or materia medica, is liable, in quantities of sixty grains or less, to destroy adult human life, and who, either:

1. Fails or neglects, before delivering the same, to enter or cause to be entered in a book kept for that purpose, the date of sale, the name and address of the person to whom delivered or sold, the name, quantity and quality of the article or preparation delivered or sold, and the name of the dispenser; or,
2. Fails, neglects or refuses during business hours to exhibit such book and every part thereof for inspection and to permit the same and every part thereof, upon demand, to be inspected by any physician, coroner, sheriff, constable or magistrate of the county,

Is guilty of a misdemeanor. (Id. § 9739.)

179. How Violations Punished.—Every person convicted of any of the offenses mentioned in sections 9737 and 9739 is punishable by a fine of not less than fifty dollars and not exceeding one hundred dollars, and all necessary costs, including the costs and expenses of procuring evidence necessary to secure conviction. (Id. § 9740.)

180. Apothecary Negligently Endangering Life.—Every apothecary or druggist, and every person employed as clerk or salesman by an apothecary or druggist, or otherwise carrying on business as a dealer in drugs or medicines, who, in putting up any drugs or medicines, willfully, negligently or ignorantly omits to label the same, or puts any untrue label, stamp or other designation of contents upon any box, bottle or other package containing any drugs or medicines, or substitutes a different article for any article prescribed or ordered, or puts up a greater or less quantity of any article than that prescribed or ordered, or otherwise deviates from the terms of the prescription or order which he undertakes to follow, in consequence of which human life or health is endangered, is guilty of a misdemeanor. (Id. § 9758.)

181. Record of Poison Sold; Label.—No druggist, apothecary or other person dealing or trafficking in drugs or medicines, and no person employed as a clerk or salesman by any apothecary or druggist, shall sell or give away any poison or poisonous substances, except to practicing physicians, in their ordinary practice of medicine, without recording in a book, to be kept for that purpose, the names of the person or persons receiving such poison, and his, her or their residence, excepting upon the written order or prescription of some practicing physician whose name must be attached to such order or prescription. No person shall sell, give away or dispose of any poisonous substance without attaching to the phial, box or parcel containing such poisonous substance a label with the word "poison" printed or written upon it, in plain and legible characters. (Id. § 9759.)

182. Violation, Misdemeanor.—Any person violating any of the provisions of section 9759 shall be deemed guilty of a misdemeanor. (Id. § 9760.)

183. Record Subject to Inspection.—Every person whose duty it is by section 9759 to keep any book for recording the sale or gift of poisons, who willfully refuses to permit any person to inspect said book upon reasonable demand made during business hours, is punishable by a fine not exceeding fifty dollars. (Id. § 9761.)

184. Sale and Gift of Certain Drugs Prohibited.—It shall be unlawful for any person, firm or corporation, either personally or by servant or agent, or as the servant or agent of any other person, or of any firm or corporation, to sell, furnish or give away any opium or coca leaves or any compound, manufacture, salt, derivative or preparation thereof, and especially to sell, furnish or give away any cocaine, salts of cocaine, or preparation containing cocaine or salts of cocaine, or morphine, or preparation containing morphine or salts of morphine, or any codeine, or salt or derivative thereof, or any preparation containing codeine, or any chloral hydrate, or preparation containing chloral hydrate, or any heroin, or any of its salts or derivatives or any preparation containing heroin or any other habit-forming drug, whatever its nature or character, or any preparation containing any habit-forming drug, whatever its nature or character, or any substance or residue left after the smoking of opium, whether obtained from an opium pipe or other article used for smoking opium; except upon the original written order or prescription of a recognized and reputable practitioner of medicine, or of veterinary medicine, duly licensed to practice in the State of North Dakota, which order or prescription shall be dated and shall contain the name of the person for whom prescribed, or if ordered by a practitioner of veterinary medicine shall state the kind of animal for which ordered, and shall be signed by the person giving the order or prescription. Such order or prescription shall be, for a period of two years, retained on file by the person, firm or corporation who compounds or dispenses the article ordered or prescribed, and it shall not be compounded or dispensed after the first time except upon the written order of the original prescriber. The record so kept may be examined by the State's attorney of the county, or his assistant, at any time, and it shall be unlawful for any person, firm or corporation compounding or dispensing articles prescribed as aforesaid to fail to keep such orders and prescriptions on file, and to fail, refuse or neglect to exhibit the same to the State's attorney or his assistant when requested. Provided, however, that any physician or veterinary surgeon, licensed to practice in the State of North Dakota, may dispense or distribute any of the aforesaid drugs to a patient in the course of his professional practice only, and a dentist may use and administer such drugs in the course of professional treatment of a patient; provided, further, that such dispensation or distribution must be in good faith, in the course of practice, when the administration of such drugs is necessary and proper in the proper

practice of medicine, veterinary medicine or dentistry, and not for the purpose of evading the spirit or provisions of this act. Any physician, dentist or veterinary surgeon, so distributing or dispensing any of the drugs herein mentioned, shall keep a record of all such drugs dispensed or distributed, showing the amount dispensed or distributed, the date, and the name and address of the patient to whom such drugs are dispensed or distributed, which record shall be kept for a period of two years from the date of dispensing or distributing such drugs, and shall be kept open to the inspection of the State's attorney of the county in which such physician, veterinary surgeon or dentist resides, or his assistant. Provided, further, that the provisions of this act shall not be construed to permit the selling, furnishing, giving away, or prescribing for the use of any habitual users of any of the substances hereinbefore first named and referred to, any of such substances. This last proviso shall not be construed to prevent any physician, duly licensed to practice medicine in the State of North Dakota, from furnishing in good faith for the use of any habitual user of narcotic drugs who is under his professional care, such substances as he may deem necessary for their treatment, when such prescriptions are not given or substances furnished for the purpose of evading the provisions of this act, and provided a record is kept of the same, to be kept open for inspection by the State's attorney or his assistant, as hereinbefore provided for. It shall be unlawful, however, for any physician or veterinary surgeon to write a prescription or order for the furnishing of or to furnish any of the substances hereinbefore named, the selling, furnishing or giving away of which is hereby made unlawful, to any habitual users of any of said substances, unless in the course of good faith treatment of such person or persons for some disease or for the cure of the drug habit, in the proper and usual practice of medicine.

The above provisions shall not apply to preparations which do not contain more than two grains of opium, or more than one-quarter grain of morphine, or more than one-eighth of a grain of heroin, or more than one grain of codeine, or any salt or derivative of them in one fluid ounce, or, if solid or semi-solid preparation, in one avoirdupois ounce, or to liniments, ointments or other preparations which are prepared for external use only, except liniments, ointments and other preparations which contain cocaine or any of its salts, or alpha or beta eucaine, or any of their salts or any synthetic substitute for them. Provided, however, that such remedies and preparations last named shall be excepted from this act only when they are sold, distributed, given away, dispensed or possessed as medicines and not for the purpose of evading the intentions and provisions of this act.

The provisions of this act shall not apply to sales at wholesale between jobbers, manufacturers, and retail druggists, hospitals, scientific or public institutions. The prescriptions and orders hereinbefore referred to may be filled only in retail drug stores and by registered pharmacists.

The provisions of this act shall not only apply to decocainized coca leaves or preparations made therefrom, or [but] to other preparations of coca leaves which do not contain cocaine or any habit-forming drug. (C. L. Suppl. 1925, § 2889c1.)*

185. Having in Possession of Certain Drugs Prohibited.—It shall be unlawful for any person, firm or corporation, except physicians, practitioners of veterinary medicine, and dentists, all duly licensed to practice their professions within the State of North Dakota, owners of retail drug stores conducted by registered pharmacists, jobbers of drugs, manufacturers of drugs and medicines carrying on a regular business within the State of North Dakota, hospitals, scientific and public institutions, and nurses, acting under the supervision of duly licensed and practicing physicians, having the substances hereinafter named by virtue of their employment or occupation and not on their own account, to have in his, her or its possession any opium or coca leaves, or any compound, manufacture, salt, derivative or preparation thereof, and especially any cocaine, salts of cocaine, or preparation containing cocaine or salts of cocaine, or morphine, or preparation containing morphine or salts of morphine, or any codeine or salt or derivative thereof, or any preparation containing codeine, or any chloral hydrate or preparation containing chloral hydrate, or any heroin or any of its salts or derivatives, or any preparation containing heroin, or any substance or residue left after the smoking of opium, whether obtained from an opium pipe or other articles used for smoking opium, or any other habit-forming drugs, whatever its nature or character, unless the person so having the same in his, her or its possession has obtained the same from a retail drug store within the State of North Dakota upon the written prescription of a duly licensed physician or practitioner of veterinary medicine, licensed to practice and practicing and having his residence within the State of North Dakota, under the conditions provided for in section 1 of this act,

*See the subsequent narcotic law quoted in No. 171.

the said person having obtained the same in good faith as a remedy and not for the purpose of evading this act, or any of the provisions thereof, or the intention and spirit thereof. The provisions of this section, however, shall not apply to any United States, State, county, municipal or other public officer who has possession of any of said drugs by reason of his official duties, or to a warehouseman holding possession for another who is entitled under the provisions hereof to have possession of said drugs, or to common carriers engaged in transporting said drugs. The persons excepted from the operation of the provisions of this section shall not be exempted if any of the substances or drugs herein named are kept by them to be disposed of in violation of this act. (Id. § 2889c2.)*

186. Complaints, Informations and Indictments For Violations of Act; Evidence; Burden of Proof.—It shall not be necessary to negative any of the exemptions in this act contained in any complaint, information or indictment, or other writ or proceeding laid or brought under this act, but it shall only be necessary that the State allege in such complaint, information, or indictment, or other writ or proceeding, that the defendant did willfully, unlawfully, and feloniously sell, furnish, prescribe, give away, or have in his possession, as the case may be, one or more of the substances hereinbefore in this act mentioned and referred to. Upon any hearing or trial of any person, firm or corporation for a violation of section 1 of this act, proof of a sale, furnishing, giving away or prescribing by the accused of any of the substances in paragraph 1 mentioned and referred to, or any article or preparation containing any of said substances, shall be prima facie proof of a violation of said section and of this act, and shall be sufficient evidence to support a conviction for a violation of said section and of this act, and the burden shall be upon the accused to prove that such sale, furnishing, giving away or prescribing was within one or more of the exceptions or exemptions provided by said section. Upon any hearing or trial of any person, firm or corporation for a violation of the provisions of section 2 of this act, proof of the finding of any of the substances hereinbefore mentioned and referred to, upon the person of, or in the dwelling house of, or in any room or place occupied by or controlled by the accused, or in any manner in the possession of the accused, shall be prima facie evidence of a violation of said section and of this act, and shall be sufficient evidence to support a conviction for a violation of said section and of this act. In case the accused, in a prosecution for a violation of section 2 of this act, shall claim to have received the said substance from a retail druggist upon a prescription, as hereinbefore provided for, or from a physician or veterinary surgeon, it shall be necessary for him to produce the original prescription, and the testimony of the physician writing the prescription and of the pharmacist filling the prescription, in case he claims to have obtained it from a druggist, or, in case he claims to have procured it from a physician or veterinary surgeon, to produce the testimony of the physician or veterinary surgeon from whom he procured it; provided the testimony of such parties can be procured, either by having them present in person, or by deposition; [,] before the prima facie case made out by the State as aforesaid shall be deemed to have been overcome. (Id. § 2889c3.)*

187. Search Warrant; Seizure.—If any person shall make an affidavit before any person entitled to administer an oath, setting forth that any of the substances, the sale, furnishing, giving away, prescribing or having in possession of which are herein forbidden, are being kept or are present upon certain premises, particularly describing such premises, and further stating the name of the person or persons keeping said substances, or having them under their control, if known to the affiant, and if not known, stating that fact, and said affidavit setting forth the foregoing facts shall be filed with any justice of the peace, police magistrate, or other magistrate having jurisdiction together with the affidavit of the State's attorney or his assistant that to the best of his knowledge, information and belief the facts set forth in such affidavit are true and he verily believes that such substance is kept in violation of law, or for the purpose of being sold, given away or furnished in violation of law, said magistrate shall issue a search warrant directed to the proper officer, commanding him to search the premises described in the above affidavit, and to seize all substances, the sale, furnishing, giving away, prescribing or keeping of which are herein prohibited, and take the same into his custody to abide the further order of the court. The officer shall thereupon proceed to execute the search warrant and make return thereon to said magistrate. If the return of said officer shall show that he has found or seized any such substances or drugs as are herein described and referred to, the magistrate shall appoint a day for hearing, not more than ten days from the date of such seizure or finding, of which hearing notice shall be given to the person or persons from whose custody or in whose premises said substances or drugs were

*See the subsequent narcotic law quoted in No. 171.

taken. If at a hearing it shall be found by the magistrate that the drugs or substances so found or seized were kept in violation of this act, the court shall order the destruction thereof by the sheriff of the county, at such time as the said magistrate shall fix, save that when a criminal action has been or is about to be commenced for a violation of the provisions of this act, in which said drugs or substances may be used as evidence, such destruction shall not take place until after the final determination of said criminal action. If the affidavit for a search warrant is made in good faith, the person making it shall not be held civilly liable for damages by reason of such making. (Id. § 2889c4.)*

188. Privilege.—No person shall be excused from testifying touching any offense committed by another against any of the provisions of this act by reason of his testimony tending to criminate himself (witness). But the testimony given by such person shall in no case be used against him. (Id. § 2889c5.)*

189. Punishment For Violations of the Act.—Any person violating any of the provisions of this act, shall upon conviction be punished by a fine of not to exceed $1,000.00 nor less than $100.00, or by imprisonment in the State Penitentiary not more than three years and not less than one year, or by imprisonment in the county jail not more than one year, or by both such fine and imprisonment, and if such person be a licensed physician, dentist, veterinarian or druggist, his license may be declared forfeited. (Id. § 2889c6.)*

190. Place For Smoking Opium and Places Where Other Narcotics are Sold Deemed a Nuisance.—Every room, building, cellar or other place or premises used or permitted to be used for the smoking of opium or any of its preparations and all places where morphine, opium, cocaine, heroin or other narcotics are sold, bartered or given away in violation of the provisions of this chapter, or where persons are permitted to resort for the purposes of smoking opium, using morphine, cocaine, heroin and other narcotics, or where morphine, opium, cocaine, heroin and other narcotics are kept for sale, barter or delivery, except as hereinafter provided, or where opium, cocaine, morphine, heroin or other narcotics are possessed, except as hereinafter provided, used for medical purposes, in violation of this chapter, are hereby declared to be a common nuisance; and if the existence of such a nuisance is established, either in a criminal or equitable action, upon the judgment of a court or judge having jurisdiction, finding such place to be a nuisance, the sheriff, his deputy or undersheriff, or any constable of the proper county or marshal of any city where the same is located, shall be directed to shut up and abate such place by taking possession thereof, if he has not already done so under the provisions of this chapter and by taking possession of all such narcotics found therein, together with all signs, screens, bars, bottles, glasses and other property used in keeping and maintaining such nuisance and such personal property so taken possession of shall, after judgment, be forthwith publicly destroyed by such officer, and the owner or keeper thereof, or any person who, in any manner, by using such place for the illegal purposes forbidden herein, or otherwise aids, abets, or assists in any violation of this section or chapter, shall, upon such conviction be adjudged guilty of maintaining a common nuisance, and shall for the first offense be punished by a fine of not less than $200 nor more than $1,000, and by imprisonment in the county jail not less than ninety days nor more than one year, and for the second and every successive offense be punished by imprisonment in the penitentiary not exceeding two years and not less than one year; and said officer abating such nuisance shall securely close said buildings, erection or place where such nuisance was located, as against the use or occupation of the same, for such illegal purposes, and keep the same securely closed for the period of one year (unless sooner released as hereinafter provided), and any person breaking open said building, erection or place, or using the premises so ordered to be closed, shall be punished for contempt, as hereinafter provided, in case of violation of injunction; provided, however, that when leasehold premises are closed under a temporary injunctional order or have been adjudged to be a nuisance, the owner thereof shall have the right to terminate the lease by giving three days' notice thereof, in writing to the tenant, and when this is done, if the said owner shall prove to the court that he was without fault, and neither knowingly, nor without knowledge negligently permitted the keeping or maintaining of the nuisance complained of, the premises shall be turned over to the owner upon the order of the court or judge as hereinafter set forth. But the release of the property shall be upon the condition that the nuisance shall not be continued, and the return of the property shall not release any lien upon said property occasioned by any prosecution of the tenant. If the owner appears and pays all costs of the proceedings and files a bond with sureties to be approved by the clerk in the full value of the property to be ascertained by the court

*See the subsequent narcotic law quoted in No. 171.

or judge, conditioned that he will immediately abate said nuisance and prevent the same from being established or kept therein within the period of one year thereafter the court, or in vacation time the judge may, if satisfied of his good faith, order the premises taken and closed under the order of abatement, to be delivered to said owner, and if the proceeding is an action either at law or in equity and bond is given and costs therein paid, the action shall be dismissed at the end of one year from the date of the service of the temporary injunctional order, if in an equity case, or the closing of the premises if in a criminal case; in the meantime and in either form of action the premises where such nuisance was kept and maintained, shall be regarded as being under a restraining order of the court, a violation of which will subject the violator to punishment for contempt as hereinafter provided; provided, however, that the release of the property under the provisions of this section shall not release it from any judgment, lien or penalty, or liability to which it may be subject under any statute or law. Provided, further, that when an injunction, either temporary or permanent has been granted, under the provisions of this chapter, the same shall be binding personally on the defendant or defendants, throughout the entire State, and for the violation of such injunction in any place in the State of North Dakota, the offending party shall be punished as for contempt according to the rules in this chapter prescribed; provided, that this section shall not apply to any room, building, cellar or other place or premises where said narcotic drugs are possessed, or possessed for sale, barter or delivery for medical purposes when the owner or keeper, or other person legally in charge and possession of such place or premises shall have registered and paid the special tax as required by the Federal Narcotic Drug Act of the United States. Provided, further, that it shall not be necessary to negative any of the foresaid exemptions in any complaint, information, indictment or proceedings laid or brought under this act, and the burden of the proof of any such exemption shall be upon the defendant. (Id. § 10177.)

190a. Cumulative.—This act shall be held by the courts to be cumulative to other laws already provided and shall repeal only such acts or parts of acts as are clearly in conflict with this act. (Id. § 10177a1.)

191. Unlawfully Keeping Place For, and Smoking Opium.—Every person who, either:

1. Lets or permits to be used, any building or portion of a building, knowing that it is intended to be used for committing or maintaining a public nuisance; or,

2. Owns or maintains a place where opium or any of its preparations is [are] smoked by other persons; or,

3. At any place sells or gives away any opium or its preparations, to be there smoked or otherwise used; or,

4. Visits or resorts to any such place for the purpose of smoking opium or its preparations,

Is guilty of a misdemeanor, and upon conviction thereof is punishable by imprisonment in the county jail not exceeding thirty days or by a fine not exceeding one hundred dollars, or by both. (C. L. 1913, § 10178.)

192. Jurisdiction of Justice of the Peace.—Any justice of the peace within his county shall have concurrent jurisdiction with the District Court to hear, try and determine any prosecution arising under the provisions of this chapter, and upon conviction to impose the punishment prescribed, subject to defendant's right to appeal to the District Court as provided by law. (Id. § 10179.)

193. Regulation of Sale, Etc.—It shall be unlawful for any person, firm, corporation, or association to sell, furnish, or give away, or offer to sell, furnish, or give away, or to have in his or its possession Peyote (Pellote), botanically known as Lophophora Williamsii; or Agave [Agava] Americana, commonly known as the Mescal button, or any compound, derivative, or preparation thereof. (C. L. Suppl. 1925, § 10176a1.)

194. Penalties.—Any person who shall violate any of the provisions of this act shall be guilty of a misdemeanor and upon conviction thereof shall be fined not to exceed $500.00 or imprisoned in the county jail for a period not to exceed six months, or by both such fine and imprisonment. (Id. § 10176a2.)

194a. Introduction of Liquors or Drugs Into Penal or Charitable Institutions Forbidden.—Every person, who shall take, send, or introduce any intoxicating liquor, narcotic, or other habit-forming drug of any kind into any of the buildings, or upon any of the premises of the State Hospital for the Insane, Feeble-Minded Institute, School for Deaf and Dumb, School for the Blind, Reform School, State Penitnetiary, or other penal or charitable institutions of the State, or any county, city or village jail, or any other penal or charitable institution of any county, city, or village of the State, except upon the express authority of the physician or chief executive officer of such institution, given in writing shall be guilty of a mis-

demeanor, and upon conviction thereof shall be punished by a fine of not exceeding one hundred dollars, or imprisonment in the county jail not exceeding thirty days, or by both such fine and imprisonment. (C. L. 1913, § 10174.)

194b. Treatment of Drunkards—Method of Procedure.—Any inhabitant of this State, who is of kin to, or a friend of an habitual drunkard as hereinafter defined, may petition the board of county commissioners of the county where such drunkard resides for leave to send such drunkard, at the expense of the county, to any reputable institute for the treatment of drunkenness, designated by a committee of three persons to be appointed by the Governor; which petition shall set forth the name, age and condition of such drunkard; that such drunkard or those of his kin petitioning are not financially able to incur the expense of such cure, and that such habitual drunkard is willing and has agreed to attend such institute for the cure of drunkenness, which petition shall be verified by the person making such request, and shall contain, in addition thereto, the written agreement of such habitual drunkard, his desire to take such treatment, and the names of three reputable taxpayers in the county where such habitual drunkard resides, stating that they are familiar with the facts set forth in the petition, and with the financial circumstances of the drunkard and of the petitioner and think it a proper case for assistance by the board of county commissioners. (Id. § 3164.)

194c. Duties of County Commissioners.—When such petition is filed the board of county commissioners, if satisfied from examination that the facts set forth in the petition are true, that such drunkard has been a resident of the county for six months, and of his own free will desires to take such treatment, shall send such drunkard to some reputable institute for the treatment of such disease, which will treat the same at the lowest figure; but such board shall not be compelled to send such person to the institute making the lowest bid, unless, in its judgment, the best interests of such drunkard will be promoted thereby; and the board shall order that the expense for the treatment be paid out of the county treasury in the manner that other claims and bills against the county are paid. The treatment of such drunkard shall at all times be under the supervision of the board of county commissioners, who may at any time it deems proper, discontinue the treatment of such drunkard, or change him from one institute to another, as to it shall seem best. No county shall be required to send the same person a second time at its expense to any such institute. (Id. § 3165).

194d. Drunkard Defined.—A drunkard, as defined herein, includes a person who uses alcoholic, spirituous, malt, fermented or intoxicating liquors, morphia, laudanum, cocaine, opium or other narcotics to such a degree as to deprive him of a reasonable degree of self-control. (Id. § 3166.)

194e. May Reimburse the County.—Any person who shall be treated for drunkenness under the provisions of this article, and who desires to reimburse the county at whose expense he has been treated, may pay to the county treasurer of such county the amount expended for his treatment, and the treasurer shall give him a receipt for the amount so paid, which receipt shall state that such payment is for reimbursement as aforesaid, and the amount so paid shall be covered into the treasury of the county. (Id. § 3167.)

194f. County Commissioners Shall Purchase Poison and Other Material.—It shall be the duty of the county commissioners, immediately upon the filing of a sufficient petition as is provided for in section 1* [2868-a1] of this act, to make arrangements for and to purchase poison and other material to be used for exterminating grasshoppers, and they shall be guided in such purchase by the recommendation of the State Agricultural College and the Federal Department of Agriculture. (C. L. Suppl. 1925, § 2868-a2.)

194g. Notice of Distribution; How Given; Rules and Regulations.—The county commissioners shall give notice in all local papers in the county of a day upon which such poison and other material shall be given out, and the same shall be distributed from the county seat, and any other place in the county designated by the county commissioners, in the notice hereinbefore mentioned. At the time such distribution is made a list of the persons applying for and receiving the same shall be made and there shall be accurately included in such list the description of the land which each such person will cover. The county commissioners shall prepare in accordance with the recommendations of the Agricultural College and the Federal Department of Agriculture, printed regulations to be given each person applying for and obtaining such poison, which shall clearly set forth the manner in which the same is to be used and designating a period of not exceeding seven days during which

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*Relates to tax levy by county commissioners upon petition of electors to create a fund to be known as the "Grasshopper Exterminator Fund." Omitted herein.

such poison shall be set out. Instructions as to the number of times and periods when such poison shall be scattered shall also appear therein. (Id. § 2868-a3.)

194h. Penalty.—Any owner, renter or lessee of land in said county, who fails, refuses or neglects to comply with the provisions of this act, or the rules and regulations of the county commissioners promulgated under authority of this act, shall be guilty of a misdemeanor, and upon conviction thereof shall be fined not less than fifty nor more than one hundred dollars. (Id. § 2868-a6.)

194i. Duty of County Agent.—It shall be the duty of the county agent of each county to aid, assist and advise the county commissioners and the residents of each county in carrying out the provisions of this act. (Id. § 2868-a7.)

194j. Fund Created, Appropriation.—There is hereby appropriated to the North Dakota Agricultural Experiment Station out of the general fund of the State of North Dakota, not otherwise appropriated, the sum of $3,500.00 to be used as a revolving fund under the direction of the directors thereof for purchasing supplies and preparing and testing poisons to be sold at a price covering the first cost thereof, and the cost of preparing and testing the same, to the various county and township officials and others for use in the systematic extermination of ground squirrels, gophers and prairie dogs. (Id. § 2872-a1.)

Serum, Etc.

195. Institute Established.—There is hereby established a serum institute. Said institute shall be established at the State Agricultural College and Experiment Station and shall be under the control and regulation of the trustees of the State Agricultural College and Experiment Station and the professor of veterinary science of the agricultural college shall be the director of the said serum institute. (C. L. 1913, § 1657.)

196. Duty of Director.—It shall be the duty of the director of said institute to manufacture or cause to be manufactured vaccines, sera and other agents for the prevention, eradication, cure and control of tuberculosis, glanders, hog cholera, blackleg and other infectious or contagious diseases. (Id. § 1658.)

197. Serum to be Distributed.—It shall be furthermore the duty of the director of said institute to distribute or cause to be distributed to citizens, residents of the State of North Dakota, free of charge, said vaccines, sera and other agents upon application, showing evidence that the issue of said vaccines, sera and other agents is warranted by existing conditions, and upon such conditions as may be prescribed by the Live Stock Sanitary Board. (Id. § 1659.)

198. Serum Must Not be Sold.—It shall be unlawful for any one receiving said vaccines, sera and other agents issued by the State Serum Institute, to sell or offer for sale said vaccines, sera and other agents and a failure to observe these provisions shall be deemed a misdemeanor and on conviction shall be punished by a fine of not less than twenty-five dollars and not exceeding one hundred dollars. (Id. § 1660.)

199. Tests.—All certificates of health shall be issued and all tuberculin and mallein tests shall be made by a Federal or State Veterinarian, Deputy State Veterinarian, or by a graduate veterinarian whose inspections and tests are endorsed by officer in charge of live stock sanitary work in the State where the said inspection or test is made, and subject to the regulations of the North Dakota State Live Stock Sanitary Board. All such mallein and tuberculin tests must conform to the standard tuberculin and mallein tests of the United States Department of Agriculture.

All mallein, tuberculin and serums used must be manufactured or approved by the United States Department of Agriculture. (C. L. Suppl. 1925, § 2762f.)

200. Serums.—All serums used, tuberculin, mallein and hog cholera serums, in conducting tuberculin or mallein tests and immunization for hog cholera shall be manufactured or approved by the United States Bureau of Animal Industry. (C. L. 1913, § 2762g.)

Venereal Disease Drugs, Etc.

201. Certain Advertising Prohibited; Penalty.—Any person who shall advertise, in his own name or the name of another person, firm or pretended firm, association, corporation or pretended corporation, or in any newspaper, pamphlet, circular or other written or printed paper or the owner, publisher or manager of any newspaper or periodical who shall permit to be inserted or published in any newspaper or periodical owned or controlled by him an advertisement of the treatment or curing of venereal diseases, the restoration of "lost manhood" or

"lost vitality," or shall advertise in any manner that he is a specialist in diseases of the sexual organs or diseases caused by sexual weakness, self-abuse or in any disease of like causes, or who shall advertise in any manner any medicine, drug compound, appliance or any means whatever whereby it is claimed that sexual diseases of men and women may be cured or relieved, or miscarriage or abortion produced, or who shall advertise any medicine or means whereby the monthly periods of women can be regulated, or the menses re-established if suppressed, shall be guilty of a misdemeanor and upon conviction shall be punished by a fine of not less than fifty dollars nor more than five hundred dollars, or by imprisonment in the county jail for not more than six months. (C. L. 1913, § 9656.)

202. Distributing Unlawful.—Any person publishing, distributing or causing to be distributed or circulated, any of the advertising matter hereinbefore prohibited shall be guilty of a misdemeanor and punished as prescribed in section 9656. (Id. § 9657.)

Wood Alcohol.

See Nos. 5 and 30.

Intoxicating Liquors.*

203. Defining Intoxicating Liquors.—The following liquors are hereby declared to be intoxicating and their intoxicating quality shall, by the courts, be presumed, viz.: alcohol, brandy, whisky, rum, gin, beer, ale, porter and wine and in addition thereto any spirituous, vinous, malt or fermented liquor, liquids and compounds, whether medicated, proprietary, patented or not, and by whatever name called, containing one-half of 1 per centum or more of alcohol by volume which are fit or intended for use for beverage purposes; provided, that the foregoing definition shall not extend to sweet fruit juices or dealcoholized wine nor to any beverage or liquor produced by the process by which beer, ale, porter or wine is produced if it contains less than one-half of 1 per centum of alcohol by volume and is otherwise denominated than as beer, ale, or porter. (C. L. Suppl. 1925, § 10145b1.)

204. Defining "Person."—The word person shall mean and include natural persons, associations, copartnerships, corporations and their clerks, agents and abettors. (Id. § 10145b2.)

205. Crime of Engaging in Liquor Traffic Defined.—Any person who shall, within this State manufacture, sell, barter, transport, import, export, deliver, furnish, or possess any intoxicating liquor, shall be guilty of the crime of engaging in the liquor traffic. (Id. § 10145b3.)

206. Prohibiting Intoxicating Beverages.—No person shall within this State manufacture, sell, barter, transport, import, export, deliver, furnish or possess any intoxicating liquor, except as provided in this chapter. All provisions of this chapter shall be liberally construed to the end that the use of intoxicating liquor as a beverage may be prevented. Provided, that pure grain or ethyl alcohol for nonbeverage purposes and wine for sacramental purposes may in good faith only be used, transported, purchased and possessed as provided in this chapter. It is further provided, that denatured alcohol or denatured rum; medical preparations that are unfit for beverage purposes; patented, patent and proprietary medicines that are unfit for beverage purposes; toilet, medical and antiseptic preparations and solutions that are unfit for beverage purposes; vinegar; flavoring extracts and syrups that are unfit for use as a beverage, or for intoxicating beverage purposes; together with those United States Pharmacopœia and National Formulary and American Institute of Homeopathy preparations fit for beverage purposes, which can only be used by physicians and druggists for compounding purposes as hereinafter provided, may be manufactured, sold, purchased, transported, imported, exported, delivered, furnished and possessed only to be used for any legitimate nonbeverage purposes and such preparations and other alcoholic compounds and solutions shall not be sold or used for beverage purposes or sold under circumstances from which the seller may reasonably deduce an intention on the part of the purchaser to use the same for beverage purposes. (Id. § 10145b4.)

207. Use of Intoxicating Liquors by Physicians.—No physician shall issue any prescription for intoxicating liquors as such, but a physician holding a federal

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*The law quoted herein consists of chapter 175, Laws of 1925, chapter 268, Laws of 1923, and chapter 97, Laws of 1921, quoted in chapter 83B, of the Penal Code, section 10145b1 et seq. of the 1925 Supplement to the Compiled Laws, entitled "Bringing Prohibition Laws Into Accord With Eighteenth Amendment and the Volstead Act." Prior acts are omitted.

permit therefor, may personally or under his supervision administer intoxicating liquors to his patients, where the immediate use of such intoxicating liquors is believed necessary to afford relief from some disease. Provided, that not more than one pint of such intoxicating liquors may be administered to any one patient by a physician, during any period of ten days, and provided that no physician shall obtain for such purposes more than five gallons of intoxicating liquors during any calendar year. Provided, further, that physicians may procure and use those United States Pharmacopœia and National Formulary and American Institute of Homeopathy preparations fit for beverage purposes in such amount and for such purposes as may be in good faith necessary in compounding medical preparations. (Id. § 10145b6.)

208. Use of Alcohol by Dentists, Veterinarians.—Dentists and veterinarians may use pure grain or ethyl alcohol for any legitimate, nonbeverage purpose in the course of their professional practice, provided they hold federal permits therefor, and not more than two gallons of alcohol shall be obtained for that purpose during any calendar year. (Id. § 10145b7.)

209. Use of Alcohol by Druggists.—Retail druggists holding federal permits therefor, may use such quantities of pure grain or ethyl alcohol and those United States Pharmacopœia and National Formulary and American Institute of Homeopathy preparations fit for beverage purposes in such amounts and for such purposes as may be in good faith necessary in compounding medical and other preparations. (Id. § 10145b8.)

210. Evidence, Burden of Proof.—Any person prosecuted for a violation of the provisions of this chapter shall be presumed to be acting without a federal permit, and the possession of a federal permit may be proved by the defendant as defensive material and the burden of proof shall be upon the defendant to establish such defense. (Id. § 10145b9.)

211. Cumulative.—All portions of this act shall be construed as cumulative in their effect to all former statutes enacted upon the subject of intoxicating liquors, and shall not be considered as repealing any former statute, unless that statute is clearly in conflict with this act. (Id. § 10145b10.)

212. Sweet Fruit Ciders.—Sweet fruit ciders may be manufactured, procured, sold and possessed only when put in sterile, closed containers and treated by the addition of benzoate of soda, or other substance which will prevent fermentation, in such proportion as to insure the alcoholic content remaining below one-half of one per cent by volume. (Id. § 10145b11.)

213. Prohibiting Unlawful Advertisements, Etc.—It shall be unlawful to advertise, manufacture, sell or possess any utensil, contrivance, machine, preparation, compound, tablet, substance, formula direction, or recipe, advertised, designed, or intended for use in the unlawful manufacture of intoxicating liquor. (Id. § 10145b13.)

214. Soliciting and Receiving Prohibited.—No person shall solicit or receive, nor knowingly permit his employee to solicit or receive for him from any person any order for liquor or property designed, or intended for use in the unlawful manufacture of intoxicating liquor, or give any information of how such liquor or property may be obtained in violation of this act. (Id. § 10145b14.)

215. Penalty.—Any person who shall within this State commit the crime of engaging in the liquor traffic or violate any of the provisions of this chapter (unless the penalty is elsewhere provided for) shall, for the first offense, be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be fined in any sum not less than $200.00 nor more than $1,000.00 and be imprisoned in the county jail not less than ninety days nor more than one year; and for the second and every successive offense shall be deemed guilty of a felony and be punished by imprisonment in the penitentiary not exceeding two years and not less than one year. Provided, that the phrase "second offense" shall mean a conviction of any offense prohibited by this act or of the crime of bootlegging as defined in section 10,144 of the Revised Codes of the State of North Dakota for the year 1913, and a subsequent conviction of violating any provision of this act, whether for the first time or not. This shall not apply to section [s] 5, 6, 10 and 11 of this act. Provided, however, that if the evidence in such case convinces the court that the person convicted of transporting intoxicating liquors in violation of this act, was in charge of and used any wagon, buggy, automobile, water or air craft, or other vehicle or conveyance, not owned by him or without permission of the owner, or when such vehicle or conveyance so used was mortgaged property, or if there be in or upon such conveyance so used or upon any person therein any firearms, or guns, he shall be deemed guilty of a felony, and be punished by imprisonment in the penitentiary not less than six months and not more than five years. (Id. § 10145b24.)

PART IV.

Miscellaneous Laws.

False Advertising.

216. False and Misleading Advertising Prohibited.—Any person, firm, corporation or association who, with intent to sell or in anywise dispose of foods, drugs, medicines, merchandise, securities, service, paints, varnishes, oils, clothing, wearing apparel, machinery or anything offered by such person, firm or corporation or association, directly or indirectly, to the public for sale or distribution, or with intent to increase the consumption thereof or to induce the public in any manner to enter into any obligation relating thereto or to acquire title thereto, or an interest therein, makes, publishes, disseminates, circulates or places before the public, or causes directly or indirectly, to be made, published, disseminated, circulated or placed before the public, in this State, in a newspaper or other publication or in form of a book, notice, handbill, poster, bill, circular, pamphlet, tag, label or letter, or in any other way, an advertisement of any sort regarding foods, drugs, medicines, patent and proprietary products, merchandise, securities, service, medical treatment, paints, varnishes, oils, clothing, wearing apparel, machinery or anything so offered to the public, which advertisement contains any assertion, representation or statement of fact which is untrue, deceptive or misleading, shall be guilty of a misdemeanor. (C. L. 1913, § 9989.)

217. Powers and Duties of Officers as to Enforcement of Law Prohibiting False and Misleading Advertising.—It shall be the duty of the State's attorneys, sheriffs, police officers, health officers and the Food Commissioner* to enforce the provisions of this statute, and for the purpose thereof they shall have ingress and egress to all places of business where it is believed that violations of this statute, hereinbefore defined, are being made. Grand juries and State's attorneys shall have full inquisitorial powers over offenses committed under this act, and State's attorneys shall make investigations and prosecutions when proper evidence is furnished to them. (Id. § 9990.)

218. Penalty For False and Misleading Advertising.—Any person, firm, corporation or association violating the provisions of this statute, or who aids another to violate the same, shall be guilty of a misdemeanor, and on conviction shall be fined not less than ten dollars ($10.00) nor more than one hundred dollars ($100.00) for the first offense and for each subsequent offense shall be fined not less than one hundred dollars ($100.00), or sixty (60) days in jail, or both, at the discretion of the court. (Id. § 9991.)

Flag Desecration.

219. Flag; Punishment For Desecration of.—Any person who in any manner, for exhibition or display, shall place, or cause to be placed, any words or figures, or number, or marks, or inscription, or picture, or design, or device, or symbol, or token, or notice, or drawing, or any advertisement of any nature whatever, upon any flag, standard, color or ensign of the United States, or shall expose, or cause to be exposed, to public view, any such flag, standard, color or ensign of the United States, upon which shall be printed, painted or otherwise placed, or to which shall be attached, appended, affixed or annexed, any words, or figures, or numbers, or marks, inscriptions, or pictures, or design, or device, or symbol, or token, or notice, or drawing, or any advertisement of any nature or kind whatever, or who shall expose to public view, or shall manufacture, or sell, or expose for sale, or have in possession for sale, or for use, any article or thing or substance, being an article of merchandise, or a receptacle of merchandise, upon which shall have been printed, painted or attached, or otherwise placed, a representation of any such flag, standard, color or ensign of the United States, to advertise, or call attention to, or to decorate, or to ornament, or to mark, or to distinguish, the article or thing on which so placed, or shall publicly mutilate, trample upon, or publicly deface, or defy, or defile, or cast contempt, either by words or act, upon any such flag, standard, color or ensign of the United States, shall be guilty of a misdemeanor. (C. L. 1913, § 10232.)

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*See No. 29b.

220. Flag, etc.; Meaning of.—The words flag, standard, color or ensign of the United States, as used in this chapter, shall include any flag, any standard, any color, any ensign, or any representation of a flag, standard, color or ensign, or a picture of a flag, standard, color or ensign made of any substance whatever, and of any size whatever, evidently purporting to be either of said flag, standard, color or ensign of the United States, or a picture, or a representation of either thereof, upon which shall be shown the colors, the stars and stripes, in any number of either thereof, or by which the person seeing the same, without deliberation, may believe the same to represent the flag, or the colors, or the standard, or the ensign of the United States of America. (Id. § 10233.)

221. Exceptions.—This chapter shall not apply to any act permitted by the statutes of the United States or by the United States army and naval [navy] regulations, nor shall this chapter be construed to apply to the regular issue of a newspaper or other periodical, on which shall be printed said flag, disconnected from any advertisement. (Id. § 10234.)

222. Penalty.—Any person offending against the provisions of this chapter shall be deemed guilty of a misdemeanor, and upon conviction thereof before a court of competent jurisdiction shall be punishable by a fine of not less than five, or to exceed twenty-five dollars, or by thirty days' imprisonment in the county jail, or by both such fine and imprisonment, in the discretion of the court. (Id. § 10235.)

Tobacco—Tobacco Products.

223. Adulteration Prohibited.—Any person within the State who manufactures, sells or gives to any one, or uses any cigarette containing any substance foreign to tobacco, shall be punished by a fine of not more than fifty dollars or imprisonment in a county jail for not more than thirty days. (C. L. 1913, § 9799.)

224. Penalty.—Any person within this State who sells, gives to or in any way furnishes any cigarette, cigars or tobacco, in any form, to any person under eighteen years of age, except upon written order of parent or guardian, or to any minor pupil in any school, college or university, shall be punished by a fine not to exceed fifty dollars or imprisonment in the county jail not to exceed thirty days for each offense. (Id. § 9800.)

225. Use of, by Minors, Prohibited.—Any person under eighteen years of age, or any minor pupil, as described in section 9800, who shall smoke or use cigarettes, cigars or tobacco in any form on any public highway, street, alley, park or other lands used for public purposes, or in any public place of business, shall be arrested by any officer of the law, who may be cognizant of such offense and it shall be the duty of all such officers, upon complaint of any citizen, to arrest such offenders, without warrant, and take them before the proper court. The court shall impose a punishment at its discretion, in a sum of not to exceed ten dollars, or imprisonment in the county jail not to exceed five days for each offense; provided, if said minor person shall give information which may lead to the arrest of the person or persons violating the provisions of section 9800, in giving to, selling or in any way furnishing said minor person tobacco, and shall give evidence as a witness in such proceedings against said party or parties, the court shall have power to suspend sentence against such minor person. (Id. § 9801.)

226. Unlawful to Congregate to Use; Penalty; Exception.—Any person who harbors or grants to persons under eighteen years of age or to minor pupils as described in section 9800, privilege of gathering upon or frequenting any property or lands held by him, for the purpose of indulging in the use of cigarettes, cigars, or tobacco in any form, shall be held in the same penalty as provided for in section 9800; provided, that no part of this chapter shall be so construed as to interfere with the rights of parents or lawful guardians in the rearing and management of their minor heirs or wards, within the bounds of their own private premises. (Id. § 9802.)

227. Offenses; How Investigated.—Grand juries and State's attorneys shall have full inquisitorial powers over offenses committed under this chapter. (Id. § 9803.)

228. Sale of Snuff Unlawful.—It shall be unlawful for any person, by himself, clerk, servant, employee or agent, or any clerk, servant, employee or agent of any person, directly or indirectly upon any pretense, or by any device, to sell, exchange, barter, dispose of or give away to, or furnish to, or buy, or procure for any person under the age of twenty-one (21) years, or to distribute for advertising purposes, any snuff, or any substitute therefor under whatever name called, and as defined in this act. (Id. § 10180; L. 1927, c. 253.)

229. Snuff Defined.—For the purpose of this chapter, snuff is defined as any tobacco that has been fermented, or dried, or flavored, or pulverized, or cut, or scented, or otherwise treated, or any substitute therefor or imitation thereof, intended to be taken by the mouth, or nose. Provided, however, that ordinary plug, fine cut, or long cut chewing tobacco as now commonly known to the trade of this State, shall not be included in such definition. (Id. § 10181.)

230. Officers to Enforce.—It shall be the duty of the State's attorney, sheriffs, police officers, health officers and the Food Commissioner* to enforce the provisions of this statute, and for the purpose thereof they shall have ingress and egress to all places of business where it is believed that snuff, as hereinbefore defined, is kept in violation of this chapter. Grand juries and State's attorneys shall have full inquisitorial powers over offenses committed under this chapter, and State's attorneys shall make investigation and conduct prosecutions when proper evidence is furnished to them. The Attorney-General shall revoke the permit of any person, firm or corporation, authorized to sell snuff in this State, who has violated any of the provisions of this act, and no permit can again be issued to such person, firm or corporation for a period of two (2) years thereafter. (Id. § 10182.)

231. Penalty for Violating Section 1 (Section 10180).—Any person violating any provisions of section 1 of this act shall be deemed guilty of a misdemeanor, and upon conviction thereof shall for the first offense be punished by a fine of not less than fifty dollars, nor more than one hundred dollars; and for the second and each subsequent offense, by a fine of not less than one hundred dollars, nor more than three hundred dollars, or by imprisonment in the county jail for not less than ten or more than ninety days, or both such fine and imprisonment. (Id. § 10183.)

231a. General Penalty.—Any person, firm or corporation violating any provisions of this act,† or maintaining a place where snuff, or any substitute therefor is sold, or kept with intent to sell in violation of the provisions of this act, shall be deemed guilty of keeping and maintaining a nuisance, and the building or place so used for the sale, or keeping for sale of snuff or any substitute therefor in violation of the provisions of this act shall be deemed to be a nuisance, and such person, firm or corporation may be enjoined and such building or place abated as a nuisance, and the procedure for the actions to enjoin and abate such nuisance, or for contempt in violating an order of injunction, shall be, as far as applicable, the same as those now provided by the laws of the State for enjoining and abating liquor nuisances. Provided, further, that the possession by any consumer thereof, of cigarettes or snuff in the original package or box, upon which stamps are by this act required to be affixed, without such stamps being so affixed thereto; shall be prima facie evidence of an infraction and evasion of the provisions of this act, and shall be and constitute a misdemeanor. (L. 1927, c. 253, § 5.)

232. Sale of Cigarettes, Etc., Without Permit Prohibited.—No person, firm or corporation shall sell cigarettes or cigarette papers or snuff in the State of North Dakota without first obtaining a permit therefor which said permit shall be granted and issued by the Attorney-General on or before July 1st of each year, and said permit shall be in force and effect for one year following July 1st after its issue unless sooner revoked, and shall be granted only to the person, firm or corporation owning or operating the premises from which said sale is to be made and shall not be transferable; which permit shall have a number and show the residence and place of business of the holder. Such permit must be posted in a conspicuous place in the holder's place of business, in which place the sale of cigarettes, cigarette papers or snuff is to be made. The Attorney-General shall revoke the permit of any person who has violated any of the provisions of this act, and no such permit shall again be issued for a period of two years thereafter. The Attorney-General shall, upon the issuance or revocation of any permit hereunder, immediately notify the State Treasurer. (C. L. Suppl. 1925, § 10183-a1; L. 1927, c. 106.)

233. Bond.—No permit shall be issued until the applicant therefor shall file a bond, to be approved by the Attorney-General, which bond shall be payable to the State of North Dakota, and shall be in an amount of not less than $500.00, and conditioned upon the faithful observance of all the provisions of this act, including the payment of all taxes, fines, penalties, and costs herein provided for. Such bond shall be signed by the obliger as principal, and by a surety company authorized to transact business in this State, or by two sureties who shall justify in double the amount of the bond, and neither of whom shall be surety on another like bond. (Id. § 10183-a2.)

234. License Fee.—No permit shall be issued until the applicant shall have paid to the Attorney-General a mulct tax of $12.50, as a license fee. The Attorney-General shall receipt for such payments and shall forthwith pay all such remittances

*See No. 29b.
†See Nos. 228-231.

to the State Treasurer, and such funds shall be turned into the general fund of the State. (Id. § 10183-a3.)

235. Same.—Every person, partnership or corporation carrying on the business of selling or keeping for sale cigarettes or cigarette papers or snuff, or maintaining a place where such cigarettes, cigarette papers or snuff are kept with intent to sell the same, shall pay the mulct tax provided for in section 3 hereof, payable on the first day of July in each year. (Id. § 10183a4.)

236. Taxes.—From and after the taking effect of this act, there is hereby levied and assessed and shall be collected and paid to the State Treasurer upon all cigarettes, cigarette papers or wrappers and tubes, and snuff sold in North Dakota to consumers, the following taxes, to be paid prior to the time of sale and delivery thereof to the consumer;

Class A—On cigarettes weighing not more than three pounds per thousand, one and one-half mill on each such cigarette.

Class B—On cigarettes weighing more than three pounds per thousand, two mills on each such cigarette.

Class C—On cigarette papers or wrappers or any papers made or prepared for the purpose of making cigarettes made up in packages, books or sets; on each such package, book or set containing not more than fifty papers, one-half cent; containing more than fifty papers but not more than one hundred papers, one cent; containing more than one hundred papers, one-half cent for each fifty papers or major fractional part thereof.

Class D—On tubes, one cent for each fifty tubes or major fractional part thereof.

Class E—On snuff, two cents on each one and one-fourth ounces or major fractional part thereof.

All cigarettes sold in this State under the provisions of this act shall be put up in packages containing 5, 8, 10, 12, 15, 16, 20, 24, 40, 50, 80 or 100 cigarettes each. All snuff sold in this State under the provisions of this act shall be put up in packages containing not more than twelve ounces thereof each. Before being delivered to the consumer each package of cigarettes or snuff and each package, book or set of papers or of tubes, shall have securely affixed thereto, in such manner as to seal the opening of the package and be destroyed by the opening thereof, a suitable stamp denoting the tax thereon, and said stamp shall be properly cancelled prior to such sale or removal for consumption, under such regulations as the State Treasurer shall prescribe. Provided, that cigarettes or snuff sold to a consumer in cartons, rolls or other containers having more than one package or box, therein, shall have affixed thereto in the manner herein provided, stamps in the amount by this act required to be placed upon the several packages, boxes or receptacles, therein contained. Each package of snuff or cigarette and each package, or book or set of papers or of tubes displayed, exhibited, stored or possessed in original cartons or containers or otherwise, within or upon the premises from which sale thereof may be made to the consumers shall be conslusively presumed to be intended for sale to consumers and to be displayed, exhibited, stored or possessed for such purpose; and each such package of snuff or cigarette and each such package book or set of papers or of tubes, at the time the same is so displayed, exhibited, stored or possessed upon such premises, shall have securely affixed thereto a suitable stamp, or stamps, denoting the tax thereon, which stamps shall be cancelled at the time and in the manner hereinbefore required; and the possession of any such package of snuff, cigarettes, package, book or set of cigarette papers or of tubes, within or upon any such premises, except in an unbroken carton or container, shall be prima facie evidence of a sale made in violation of this act; provided, however, that such presumption and the requirements as to stamps shall not apply to wholesale dealers selling to retail dealers for resale by the latter to consumers. The premises from which such sale to consumers may be made shall be deemed to include basements, rooms and store rooms within and upon or adjacent and contiguous to the premises described in the permit of the person, firm or corporation owning or operating the premises described in the permit, when such basement rooms or store rooms are in the possession of or used by such person, firm or corporation.

For any violation of any of the foregoing provisions of this section, the offender, upon conviction thereof, shall be fined not less than $100 nor more than $300 and costs of prosecution, and shall be committed to the county jail until such fine and costs are paid, but not for a period exceeding six months; and all cigarettes, cigarette papers or wrappers, and papers made or prepared for the purpose of making cigarettes, and snuff in his possession or in his place of business, shall be confiscated and forfeited to the State.

It shall be unlawful for any person not authorized hereby, with intent to defraud the State, to make, alter, forge, or counterfeit any license or stamp provided for in this act or to have in his possession any forged, counterfeited, spurious or altered license or stamp, knowing the same to be forged, counterfeited, spurious or altered,

and any person found guilty of any violation of this provision shall be fined not more than $1,000.00 and shall be imprisoned in the State Penitentiary for a period of not more than three years. (Id. § 10183-a5.)

237. Stamps.—The State Auditor shall prepare and have suitable stamps for use on each kind of package prescribed in section 5 of this act. Upon requisition from the State Treasurer, the State Auditor shall deliver to his order the stamps designated in such requisition, and shall charge the State Treasurer with the stamps thus delivered, and shall keep an accurate record of all stamps coming into and leaving his hands. The State Treasurer shall sell the stamps herein provided for only to dealers holding permits issued as provided in this act, and the moneys received from the sale of said stamps shall be turned into the general fund of the State. (Id. § 10183-a6.)

238. Enforcement of Act.—In the enforcement of this act, the Attorney-General may call to his assistance any State's Attorney or any peace officer. The State Treasurer and the Attorney-General are hereby authorized to appoint such necessary additional assistants as may be necessary to carry out the provisions of this act. (Id. § 10183-a7.)

239. Nuisance; Injunction.—Any person, firm or corporation violating any of the provisions of this act, or maintaining a place where such cigarettes, snuff or cigarette papers are sold or kept with intent to sell in violation of the provisions of this act, shall be deemed guilty of keeping and maintaining a nuisance, and the building or place so used for the sale or keeping for sale of cigarettes, snuff or cigarette papers, or wrappers, in violation of the provisions of this act shall be deemed to be a nuisance, and such person, firm or corporation shall be enjoined, and such building or place abated as a nuisance, and the procedure for the actions to enjoin and abate such nuisance, or for contempt in violating an order of injunction, shall be, so far as applicable, the same as those now provided by the laws of this State for enjoining and abating intoxicating liquors. (Id. § 10183-a8.)

240. Sale; When Unlawful.—It shall be unlawful for any person by himself, clerk, servant, employee or agent, or any clerk, servant, employee or agent of any person, directly or indirectly, upon any pretense or by any device, to sell, exchange, barter, dispose of or give away to, or to furnish to, or buy or procure for, any person under the age of twenty-one years any cigarette, cigarette paper or cigarette wrapper, prepared or designed to be used for filling with tobacco for smoking. (C. L. Suppl. 1925, § 10184.)

241. Keeping; Prima Facie Evidence.—The keeping of cigarettes, or cigarette papers or wrappers in his public place of business by any owner or proprietor thereof, by himself, clerk, servant, employee or agent shall be prima facie evidence of the keeping of the of the same for sale: Provided, that this section shall not apply to such cigarettes, or cigarette papers or wrappers, in reasonable quantities, that are carried upon the person of such owner or proprietor, or his clerks or employees for their own personal use. (Id. § 10184a1.)

242. Revocation of Permit.—The Attorney-General shall revoke the permit of any person, firm or corporation, authorized to sell cigarettes and cigarette papers in this State, who has violated any of the provisions of this act, and no such permit can again be issued to such person, firm or corporation for a period of two years thereafter. (Id. § 10184a2.)

243. Penalty.—Any person violating any of the provisions of section 1 of this act shall be deemed guilty of a misdemeanor, and upon conviction thereof shall for the first offense be punished by a fine of not less than $50.00 nor more than $100.00; and for the second and each subsequent offense, by a fine of not less than $100.00 nor more than $300.00, or by imprisonment in the county jail for not less than ten or more than ninety days, or both such fine and imprisonment. The enforcement of the penal provisions of this act is enjoined upon every officer and official whose duty it is to enforce the laws of this State and any such officer failing to enforce the penal provisions hereof, shall be subject to removal from office in manner by law provided. (Id. § 10185.)

243a. Nuisance; Injunction; Abatement; Contempt.—Any person, firm or corporation violating any of the provisions of this act, or maintaining a place where cigarettes or cigarette papers are sold or kept with intent to sell in violation of the provisions of this act, shall be deemed guilty of keeping and maintaining a nuisance, and the building or place so used for the sale or keeping for sale of cigarettes or cigarette papers, or wrappers, in violation of the provisions of this act shall be deemed to be a nuisance. and such person, firm or corporation may be enjoined and such building or place abated as a nuisance, and the procedure for the actions to enjoin and abate such nuisance. or for contempt in violating an order of injunction, shall be, so far as applicable, the same as those now provided by laws of this State for enjoining and abating intoxicating liquors. (Id. § 10185a.)

243b. Prohibiting in Specified Places; Penalty.—It shall be unlawful for any person within this State to use tobacco by smoking in cigars, cigarettes, pipes or in any other form in the dining-room of any hotel, or in any cafe, restaurant or eating room in which both men and women are being served, or in any street car, or railway coach, except in rooms, coaches and compartments specially provided for that purpose; or for the proprietor of any hotel, cafe, restaurant or eating room, or the conductor of any street car, or railway coach to knowingly permit any such act in any such place. Any person violating any provision of this act shall upon conviction thereof be punished by a fine in any sum not less than $5.00 and not more than $25.00. (Id. § 10185-b.)

Trade-Marks, Etc.

244. Trade-Marks.—One who produces or deals in a particular thing or conducts a particular business may appropriate to his exclusive use as a trade-mark any form, symbol or name which has not been so appropriated by another to designate the origin or ownership thereof; but he cannot exclusively appropriate any designation, or part of a designation, which relates only to the name, quality or the description of the thing or business, or the place where the thing is produced or the business carried on. (C. L. 1913, § 5464.)

244a. Trade-Mark Genuine.—One who sells or agrees to sell any article to which there is affixed or attached a trade-mark thereby warrants that mark to be genuine and lawfully used. (Id. § 5982.)

244b. Truth of Marks of Quantity or Quality.—One who sells or agrees to sell any article to which there is affixed or attached a statement or mark to express the quantity or quality thereof or the place where it was in whole or in part produced, manufactured or prepared, thereby warrants the truth thereof. (Id. § 5983.)

244c. Good Will.—The good will of a business is the expectation of continued public patronage, but it does not include a right to use the name of any person from whom it was acquired. (Id. § 5465.)

244d. Is Property—Transferable.—The good will of a business is property, transferable like any other. (Id. § 5466.)

244e. Exclusive Trade-Mark Obtained; How.—Any person desiring to secure within this State the exclusive use of any name, mark, brand, print, designation or description for any article of manufacture or trade, or for any mill, hotel property, machine shop or other business as a trade-mark, shall deliver or cause to be delivered to the Secretary of State a particular description or facsimile of such mark, brand, name, print, designation or description as he desires to use, and if there is not an application already filed for the same or a similar mark, brand, name, print, designation or description, he shall immediately record the same in a book to be provided and kept for that purpose, which book shall be at all times subject to public inspection and examination, and after the same shall have been recorded as herein provided the person causing the same to be recorded shall have the exclusive right to the use thereof; provided, that nothing herein contained shall be construed to authorize the use of figures, letters or Roman numerals. (Id. § 2601.)

245. Protection of Manufacturers of Soda Water, etc.; Registration of Trade-mark.—It shall be the duty of the register of deeds of any county in this State, on the application of any person, firm or corporation lawfully manufacturing, selling or bottling, within this county, soda water, mineral water and other like beverages, to record in a book suitable for such purposes, a description of the names, brands, trade-marks and labels, or any of them, used by such person, firm or corporation for making his or its casks, kegs, barrels, bottles, jugs, fountains, boxes or other packages, which book shall be and remain a public record in his office. The register of deeds shall collect of any such person, firm or corporation making application to have any such description of name, brand or trade-mark recorded in said Register of Deeds's office, a registration fee of fifty cents for each and every such description of name, brand, label or trade-mark before the same shall be received for record and entered upon the books of the Register of Deeds's office. (Id. § 2922.)

246. Counterfeiting Trade-mark.—Every person who willfully forges, counterfeits or procures to be forged or counterfeited any trade-mark usually affixed by any person to any goods of such person, with intent to pass off any goods to which such forged or counterfeited trade-mark is affixed or intended to be affixed, as the goods of such person, is guilty of a misdemeanor. (Id. § 9711.)

247. Keeping Dies of Trade-mark.—Every person who, with intent to defraud, has in his possession any die, plate or brand, or any imitation of the trade-

mark of any person, for the purpose of making any counterfeit or imitation of any description whatever of such trade-mark, or of selling the same when made, or affixing the same to any goods, and selling or offering the same for sale or disposal as the original goods of any other person, and every person who so uses or sells the same, or who fraudulently uses the genuine trade-mark of another with intent to sell or offer for sale or disposal, any goods not the goods of the person to whom such trade-mark properly belongs as genuine and original, is guilty of a misdemeanor. (Id. § 9712.)

248. Appropriating Brands to Deceive.—Every person who, either:

1. Uses or causes to be used any brand, mark, name, print, designation or description, the same as or similar to any recorded to any other person, or on the place recorded to another; or,

2. Uses or causes to be used any second-hand sack, box, barrel, can, package or other article on which has been placed any brand, mark, name, print, designation or description, the property of another, for purposes of deception or profit, is guilty of a misdemeanor, and upon conviction thereof is punishable by fine of not less than one hundred and not exceeding one thousand dollars. (Id. § 9713.)

249. Selling Goods Bearing Counterfeit.—Every person who sells or keeps for sale any goods upon which any counterfeit trade-mark has been affixed, and intended to represent such goods as the genuine goods of another, knowing the same to be counterfeited, is guilty of a misdemeanor. (Id. § 9714.)

250. Colorable Imitations.—Every person who, with intent to defraud, affixes or causes to be affixed to any goods or to any bottle, case, box or other package containing any goods, any description of label, stamp, brand, imprint, printed wrapper, label or mark, which designates such goods by any word or token which is wholly or in part the same to the eye or to the ear, as the word or any of the words or tokens used by any other person as his trade-mark, and every person who knowingly sells or keeps or offers for sale, any such bottle, case, box or other package, with any such label, stamp, brand, imprint, printed wrapper, ticket or mark affixed to or upon it, in case the person affixing or causing to be affixed such mark, or so selling or exposing or offering for sale such bottle, case, box or other package, was not the first to employ or use such words as his trade-mark, is guilty of a misdemeanor, and in addition to the punishment prescribed therefor is liable to the party aggrieved in the penal sum of one hundred dollars for each and every offense, to be recovered by him in a civil action. (Id. § 9715.)

251. Trade-mark Defined.—The word "trade-mark," as used in the sections preceding, includes every description of word, letter, device, emblem, stamp, imprint, brand, printed ticket, label or wrapper, usually affixed by any mechanic, manufacturer, druggist, merchant or tradesman, to denote any goods to have been imported, manufactured, produced, compounded or sold by him, other than any name, word or expression generally denoting any goods to be of some particular class or description. (Id. § 9716.)

252. Goods Defined.—The word "goods," as used in the sections preceding, includes every kind of goods, wares, merchandise, compound or preparation, which may be lawfully kept or offered for sale. (Id. § 9717.)

253. Affixing Defined; When Crime Complete.—The offense of affixing a false trade-mark to goods is equally complete within the meaning of sections 9711, 9714 and 9715, whether such mark is affixed to the goods themselves, or to any box, bale, barrel, bottle, case, cask, wrapper or other package or vessel, or any cover or stopper thereof, in which such goods are put up. (Id. § 9718.)

254. Refilling or Selling Bottles.—Whenever any person, firm or corporation engaged in the manufacturing, bottling or sale of soda water, mineral water and other like beverages, in any county of this State, shall have recorded or filed with the register of deeds of the proper county, as is now provided, or shall thereafter be provided by law, the name, brand, label and trade-mark, or any of them, used by him, or which is for the purpose of the business of such purpose, firm or corporation, every other person who, without the written consent of such manufacturers or dealers, refills with any beverage, whether genuine or otherwise, with the intent to sell the same, any bottles, stamped with or bearing such name, brand, trade-mark or label, and every person who sells, disposes of, purchases or traffics in such bottle, is liable to a penalty of fifty cents for each and every bottle so filled, sold, bought, disposed of, or trafficked in, for the first offense, and five dollars for each and every bottle so filled, bought, disposed of or trafficked in for every subsequent offense. (Id. § 9719.)

255. Keeping Bottles With Intent to Refill.—Every person who keeps any bottles such as are designated in the last section, without the written consent of the manufacturer so to do, unless it appears that they were not kept with intent to

refill or use or sell them in violation of the last section, is liable to the penalty therein prescribed. (Id. § 9720.)

256. Complaint; Search; Penalty.—Whenever any manufacturer or dealer designated by section 9719, or his agent, shall make oath or affirmation before any magistrate that he has reason to believe and does believe, that any of his bottles stamped and registered as mentioned in said sections are being unlawfully used by any person or persons selling or manufacturing mineral water or other beverages, or that any junk dealer or vendor of bottles, has any of such bottles secreted in any place, such magistrate shall thereupon issue a search warrant to discover and obtain the same under the provisions of law upon search warrants, which are hereby declared to relate fully to the purposes of this chapter; and the magistrate may summarily bring or cause to be brought before him the person in whose possession the bottles are found, to examine into the circumstances of his possession, and if such magistrate on summary examination finds that such person has been guilty of a violation of section 9719, such magistrate shall proceed to impose the fine therein prescribed, and if the same is not paid, to commit such person to prison for a term not exceeding fifteen days. (Id. § 9721.)

257. Trade-mark Defined.—There is hereby established a trade-mark to be used on North Dakota products of a standard grade as established under the provisions of this act; the said trade-mark to consist of an arch, the keystone of which will have the words "Quality and Measure" printed on same; hanging directly below the keystone will be a set of scales, and on the main body of the arch will be the words "North Dakota," directly below the scales "Standard," will be printed on a ribbon. Below the ribbon aforementioned and in front of the four Ionic pillars will be the map of North Dakota. Directly below said map will be the words "State Trade-mark." And provisions shall be made for receiving license number. The entire superstruction will be supported by a foundation representing steps; on the lower step will be printed the words "North Dakota Backs It Up." Place will also be left for the firm name when so desired. The said trade-mark may be in colors or in black and white, as provided for by the Food Commissioner.* (C. L. Suppl. 1925, § 1880a1.)

258. Duties of the Food Commissioner.—It shall be the duty of the Food Commissioner* at Fargo to see that the provisions of the said act are enforced and complied with, and the Food Commissioner shall have authority to establish standards of purity, quality and strength for all products and classes of products on which the North Dakota trade-mark may be used; and the said trade-mark shall be used upon no other products than those for which standards have been established and proclaimed as official by the Food Commissioner. (Id. § 1880a2.)

259. Rules and Regulations.—The Food Commissioner shall make such rules and regulations as may be necessary within the provisions of this act that the same may be put in force, and do such other matters relative to the successful execution of the provisions of this act as he shall deem proper. (Id. § 1880a3.)

260. License, How Procured.—Any person, firm, corporation or organization desiring to use the North Dakota trade-mark on any article grown, manufactured or produced in North Dakota, shall make application to the Food Commissioner, on blanks properly prepared, setting forth the nature of the article on which the said trade-mark is to be used, and after investigation the Food Commissioner shall issue an order on the Secretary of the State for a license for one year for the use of said trade-mark on an article conforming with the standards established for the said article or product. (Id. § 1880a4.)

261. License, When Forfeited.—Any person, firm, corporation or organization who uses the said license in any way without due authority of law on products which do not conform with the standards as established, or who fails to insert the license number, or falsely inserts any number not assigned thereto, shall have his license revoked by the Food Commissioner. (Id. § 1880a5.)

262. Duties of the Secretary of State.—All applications for licenses, when approved by the Food Commissioner, shall be transmitted to the Secretary of State, who, on the authority of the Food Commissioner, shall issue the said license and a license number for the product on which the trade-mark is to be used and shall keep at all times, of easy access to the public, a record showing the names of all persons, firms, corporations or organizations who have authority to use the trade-mark, together with their addresses. When a license has been issued by the Secretary of State he shall so notify the Food Commissioner, furnishing also the number assigned. (Id. § 1880a6.)

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*See No. 29b.

263. Fees.—The fees for registration and permission to use the North Dakota trade-mark shall be $5.00 and $1.00 annually for renewals, the same to be paid to the Food Commissioner on making application for a license. (Id. § 1880a7.)

264. Who Shall Furnish Trade-mark.—The trade-mark in various sizes as needed shall be furnished by the Food Commissioner on payment of cost of producing the same to all those who have made proper registration and to whom a license has been issued during the life of said license. (Id. § 1880a8.)

265. Penalties.—Any person, firm, corporation or organization using the said North Dakota trade-mark, as herein provided for, without complying with the provisions of the law, or without first having registered their product, or who fails to include in the trade-mark, as provided for, his license number, or who uses a license number not assigned to him, or who uses the trade-mark upon an article not conforming with the standards as provided for, is guilty of a misdemeanor and shall be fined for the first offense from $10.00 to $100.00, together with all costs; for the second offense the fine shall not be less than $100.00 nor more than $1,000.00, together with costs, or sixty (60) days in jail, or both, at the discretion of the court. (Id. § 1880a9.)

266. Investigations.—It shall be the duty of the Food Commissioner or his authorized deputies to make investigations to determine the character of the products offered for sale in the State or which are shipped from the State under the North Dakota trade-mark, and the information so gathered shall be published from time to time as bulletins, and the said Food Commissioner shall make an annual report accounting for all funds for each fiscal year and give a list of all products licensed together with the name, address and license number assigned. (Id. § 1880a10.)

267. Standing Appropriation.—All moneys which shall come into the Food Commissioner on account of the trade-mark law and the licenses thereunder for North Dakota, or so much thereof as may be necessary, are hereby annually appropriated for the payment of the salaries, fees and expenses provided for in this article to be disbursed on the order of the Food Commissioner; and all such moneys so received shall be paid at the end of each month by the Food Commissioner into the hands of the Treasurer of the Agricultural College. Any unused portion at the end of the year shall remain and be known as the "Trade-mark Fund," to be used for the purpose of investigation and publishing the information with regard to the products and standards used in connection therewith. And for this purpose the Food Commissioner is authorized to publish bulletins giving information by him deemed of value to the general public. (Id. § 1880a11.)

NOTE: See also Nos. 62b-62c and 83.

Trading Stamps.

268. What Devices Covered by Provisions.—Every person, firm or corporation who shall use, and every person, firm or corporation who shall furnish to any other person, firm or corporation to use in, with or for the sale of any goods, wares or merchandise, any stamps, coupons, tickets, certificates, cards or other similar schemes or devices which shall entitle the purchaser receiving the same with such sale of goods, wares or merchandise to procure from any person, firm or corporation any goods, wares or merchandise, free of charge or for less than the retail market price thereof, upon the production of any number of said stamps, coupons, tickets, certificates, cards or other similar devices, shall before so furnishing, selling or using the same obtain a separate license from the auditor of each county wherein such furnishing or selling or using shall take place for each and every store or place of business in that county, owned or conducted by such person, firm or corporation from which such furnishing or selling, or in which such using shall take place. Provided, that this act shall not apply to using or furnishing coupons, tickets, certificates, cards or similar devices contained in or attached to the original package of said goods, wares or merchandise, by the manufacturer, jobber, distributor or packer thereof, and directly redeemable, by the manufacturer, jobber, distributor, packer or retailer of such goods, wares or merchandise. (C. L. Suppl. 1925, § 3020a1.)

269. License.—In order to obtain such license, the person, firm or corporation applying therefor shall pay to the county treasurer of the county for which such license is sought the sum of six thousand dollars, and upon such payment being made to the county treasurer he shall issue his receipt therefor, which shall be presented to the auditor of the same county, who shall, upon the presentation thereof, issue to the person, firm or corporation making such payment, a license to furnish or sell, or a license

to use for one year, the stamps, coupons, tickets, certificates, cards or other similar devices mentioned in section 1 of this act. Such license shall contain the name of the grantee thereof, the date of issue, the date of its expiration, the town or city in which and the location at which the same shall be used, and such license shall be used at no place other than that mentioned therein. (Id. § 3020a2.)

270. **Sales of Stamps Forbidden.**—No person, firm or corporation shall furnish or sell to any other person, firm or corporation, to use in, with or for the sale of any goods, wares or merchandise, any such stamps, coupons, tickets, certificates, cards, or other similar devices for use in any town, city or county in this State other than that in which such furnishing or selling shall take place. (Id. § 3020a3.)

271. **Violation of Provisions.**—Any person, firm or corporation violating any of the provisions of this act shall be guilty of a misdemeanor. (Id. § 3020a4.)

Weights and Measures.

272. **Sheriff as Inspector and Sealer; Deputy.**—The sheriff of each county within the State shall be the inspector and sealer of weights and measures. He shall have power to appoint a deputy to perform the duties hereinafter provided, who must be a person qualified by experience and training to intelligently perform the same, but he may be a regular deputy sheriff provided he has the qualifications above described. The deputy shall have the same power and perform the same duties under this article as the inspector and sealer, and shall take and subscribe the oath required by other county officers. (C. L. Suppl. 1925, § 2998.)

273. **Tests Made When; Record.**—The inspector and sealer or his deputy shall once in each year, test all weights and measures, scale beams, patent balances, steelyards and other instruments used in weighing or measuring any commodity sold by weight or measure in his county by the duplicates of said weights and measures as hereinafter provided; provided, the inspector of weights and measures or his deputy may test wagon scales oftener than once each year if he has reason to believe that the same are not weighing correctly. He shall give to the person in charge of such weights or measures a certificate of the correction [sic] thereof, if found to be correct, and if found to be incorrect, he shall cause the same to be corrected, if he can, and if not he shall mark the same "condemned" and in case of short weights or measures that cannot be corrected he shall condemn, confiscate and keep the same for evidence. He shall keep a record of all such certificates issued by him and of all his transactions under this article, and shall file with the county auditor during the month of December of each year's statement showing the date of examination and giving the names of the persons, firms or corporation whose scales, weights and measures have been by him examined, and setting out against such names and enumeration of any scales, weights or measures by him so condemned. (Id. § 2999.)

274. **Standard Established.**—The standard of weights and measures shall be the standard adopted by the government of the United States, and any person who knowingly uses for the purpose of purchase or sale or keeps for public use a weight, measure, scale, balance or beam, which does not conform to the standard of weights and measures adopted by the State, or who alters a weight, measure, scale, balance or beam after it has been adjusted and sealed so that it does not conform to such standard and fraudulently makes use thereof, shall be fined for each offense fifty dollars. (Id. § 3000.)

275. **Dry Measure.**—The standard measure of capacity for commodities sold by dry measure, shall be the bushel containing 2150.42 cubic inches. The half bushel, peck, half peck, quarter peck, quart and pint shall be derived by successively dividing that measure by two. (Id. § 3000a1.)

276. **Liquid Measure.**—The standard measure of capacity for liquids shall be the wine gallon, containing 231 cubic inches; and 31.50 gallons shall constitute a barrel, and 63 gallons a hogshead. (Id. § 3000a2.)

277. **Hundredweight.**—In contracts for the sale of goods or commodities the term "hundredweight" shall mean 100 pounds avoirdupois. (Id. § 3000a4.)

278. **County Commissioners to Purchase Duplicate Weights and Measures.**—The board of county commissioners of each county shall purchase such dupcilates of weights and measures enumerated in section 10 of this act (§ 3005a2, post), as are deemed necessary for the use of the inspector in the carrying out of the provisions of this article, which duplicates shall be paid for by the county and be delivered to the inspector, who shall be responsible to the county under his bond as sheriff for their delivery to his successor in office. (Id. § 3001.)

279. **Fees.**—The Inspector of Weights and Measures shall demand and receive for the inspection herein provided for, and the furnishing to the person whose

weights and measures are inspected, a certificate of such inspection, the following fees, which shall belong to the inspector and need not be turned over to the county:

For inspecting and sealing railroad and tracks scales of capacity of twenty tons and upwards	$3.00
For inspecting and sealing dormant scales, each	2.00
For inspecting and sealing movable platform scales	1.00
For inspecting and sealing beams weighing one hundred pounds and upwards	.25
For inspecting and sealing hopper scales, each	1.50
For inspecting and sealing counter scales, each	.25
For inspecting and sealing every balance, beam, steelyard or other instrument used for weighing other than the above enumerated, each	.25
For inspecting and sealing any two-bushel or one-bushel measure	.25
For inspecting and sealing any other dry measure, each	.10
For inspecting and sealing liquid measures of a capacity of five gallons or more, each	.25
For inspecting and sealing anything less than one gallon	.10
For inspecting and sealing liquid measures of less than five gallons and not less than one gallon	.15
For inspecting and sealing any board or cloth measure, each	.10

When the inspector or his deputy shall find any of the instruments or articles used in weighing or measuring to be wrongly adjusted, misconstructed, out of repair, or in any other condition which can be remedied by him, it shall be his duty to correct such scale or measure and he shall collect for such services seventy-five cents per hour for the actual and necessary time consumed in making such corrections and just compensation for any material used in such correction. (Id. § 3002.)

280. Penalty for False Weights and Measures.—If any person knowingly uses a false weight, measure, scale, balance or beam after such weight, measure, scale, balance or beam has been adjusted and sealed and alters it so that it does not conform to the public standard and fraudulently makes use of it, he shall forfeit for each offense fifty dollars, and every inspector and sealer who has reasonable cause to believe that a weight, measure, balance or beam has been altered since it was last adjusted and sealed shall enter the premises in which it is kept or used and shall examine the sale and if found tampered with, shall have the power to seal them in such a manner that they cannot be used until such disability is removed and such scale, balance or beam shall be kept sealed until such fine is paid. The inspector or sealer shall in no case seal or mark as correct any weights, measures or balances which do not conform to the standard. If such weights, measures or balances can be readily adjusted as heretofore provided, he may adjust and seal them, but if they cannot by him he adjusted he shall affix to such weights, measure or balance a notice prohibiting their use until he is satisfied that they have been so adjusted as to conform to the standard, and whoever removes said notice without the consent of the officer affixing the same, shall for each offense forfeit a sum not exceeding fifty dollars. The sealer or deputy sealer of weights and measures may seize without warrant such weights, measures or balances as may be necessary to be used as evidence in case of violation of the law relating to the sealing of weights and measures, such weights, measures or balances to be returned to the owner or forfeited as the court may direct. (Id. § 3003.)

281. Complaints; How Lodged.—Any person believing any dealer is violating the provisions of this act may make complaint, in writing, to any inspector or sealer or his deputy and deposit with him five dollars, setting forth the particular facts relating to such violation and that he has reason to believe that the same are true. Upon such complaint such sealer or his deputy shall forthwith test the scales, weights and measures respecting the matter complained of, by his duplicates, and if found to conform thereto he may convert the five dollars so deposited to his own use as his fee for such services. If he finds that any of the matters so complained of are true he shall return the five dollars to the complainant and it shall be his duty forthwith to arrest the person in charge of such scale, and take him before a justice of the peace in the county for trial and upon conviction such person, whether the owner or not, shall be guilty of a misdemeanor and punished accordingly. In all such cases the sealer or deputy sealer making the test shall make and swear to the complaint and shall be entitled to the same fees as allowed officers making an arrest upon a warrant, besides the sum of one dollar for making the test. (Id. § 3004.)

282. Penalty for Obstructing or Misleading Inspector.—Any person who shall willfully obstruct or mislead the inspector or sealer in the execution of his duties as herein provided, shall be subject to conviction and punishment therefor

in the same manner as is now provided for the conviction and punishment of persons opposing or hindering an officer, ministerial, judicial or executive, under the laws of the State, and the inspector and sealer shill have full power and authority for the various purposes named to examine any weights, measures, scales, balances or beams. (Id. § 3005.)

283. Transfer of Standards.—All standards of weights and measures and all other property, apparatus for weighing and measuring supplies, records and correspondence now in the possession of the State Inspector of Grades, Weights and measures, as provided in Chapter 241 of the Session Laws of North Dakota for the year 1919, shall be transferred to the Commissioner of Agriculture and Labor who shall then become responsible to the State of North Dakota for the proper use and care of the same. (Id. § 3005a1.)

284. Standards to be Kept in Office of Commissioner of Agriculture and Labor.—The Commissioner of Agriculture and Labor shall procure and keep in his office the following standards of weights and measures, which shall conform in every particular to the United States standards of weights and measures: One bushel, one-half bushel, one peck, one-half peck, one quart, one wine gallon, one wine half-gallon, one wine quart, one wine pint, one wine gill. Such measures shall be made of copper or other suitable and substantial material; also one surveyor's chain, thirty-three standard feet in length, one yard measure, one foot measure and one inch measure; also one one hundred pound weight, one fifty pound weight, one twenty-five pound weight, one ten pound weight, one one pound weight, one half pound weight, one quarter pound weight, one one-eighth of a pound, one one-sixteenth of a pound or one ounce weight, one set of apothecaries' weights from one pound to one grain, one set of troy weights from one pound to one grain; besides such other scales, beams and balances as shall be necessary to test other weights by these standards; which measures, weights, scales, beams and balances are hereby declared to be the legal standards of weights and measures for this State. Such Commissioner of Agriculture and Labor shall be charged with the custody and be accountable to the State for the proper use and care of the same. Such standards shall be used only for testing the standards provided for in this article, and such Commissioner of Agriculture and Labor shall keep a record of all county weights, measures, beams and balances marked and tested by him. (Id. § 3005a2.)

285. Standard Weight of Bushel.—In contracts for the sale of any of the following articles, the term "bushel" shall mean the number of pounds avoirdupois herein stated:

Alfalfa, 60 pounds.
Apples, 50 pounds.
Apples, dried, 28 pounds.
Barley, 48 pounds.
Beans, 60 pounds.
Beans, White Runner Pole, 50 pounds.
Beans, Broad Windsor, 47 pounds.
Beans, Lima, 55 pounds.
Blue Grass seed, 14 pounds.
Bran, 20 pounds.
Beets, 60 pounds.
Buckwheat, 42 pounds.
Broom corn seed, 30 pounds.
Bromus inermis, 14 pounds.
Corn, shelled, 56 pounds.
Corn, sweet, 48 pounds.
Corn, in the ear, 70 pounds.
Clover seed, 60 pounds.
Coal, stone, 80 pounds.
Chestnuts, 50 pounds.
Cucumbers, 48 pounds.
Carrots, 45 pounds.
Cranberries, 36 pounds.
Flaxseed, 56 pounds.
Hempseed, 50 pounds.
Hickory nuts, 50 pounds.
Hungarian grass seed, 48 pounds.
Lime, 80 pounds.
Millet, 50 pounds.
Oats, 32 pounds.
Onions, 52 pounds.
Onions, bottom sets, 32 pounds.
Onions, top sets, 28 pounds.
Orchard grass seed, 14 pounds.
Potatoes, sweet, 46 pounds.
Potatoes, Irish, 60 pounds.
Peas, 60 pounds.
Peanuts, 22 pounds.
Peaches, dried, 28 pounds.
Pears, 45 pounds.
Parsnips, 42 pounds.
Plastering hair, unwashed, 8 pounds.
Plastering hair, washed, 4 pounds.
Rye, 56 pounds.
Rapeseed, 50 pounds.
Rutabagas, 52 pounds.
Rhubarb, 50 pounds.
Salt, 80 pounds.
Speltz, 40 pounds.
Sorghum seed, 57 pounds.
Turnips, 60 pounds.
Timothy seed, 45 pounds.
Tomatoes, 50 pounds.
Wheat, 60 pounds.
Walnuts, 50 pounds.

(Id. § 3006.)

286. Standard of Weights and Measures Kept by State Treasurer.—The State Treasurer shall procure and keep in his office the following standards of weights and measures, which shall conform in every particular to the United States standards of weights and measures: One bushel, one-half bushel, one peck, one-half peck , one quart, one wine gallon, one wine half-gallon, one wine quart, one wine pint, one wine gill. Such measures shall be made of copper or other suitable and substantial material; also one surveyor's chain thirty-three standard feet in length, one yard measure, one foot measure and one inch measure; also one one hundred pound weight, one fifty pound weight, one twenty-five pound weight, one ten pound weight, one one pound weight, one half pound weight, one quarter pound weight, one one-eighth of a pound, one one-sixteenth of a pound or one ounce weight, one set of apothecaries' weights from one pound to one grain, one set of troy weights from one pound to one grain; besides such other scales, beams and balances as shall be necessary to test other weights by these standards; which measures, weights, scales, beams and balances are hereby declared to be the legal standards of weights and measures for this State. Such treasurer shall be charged with the custody and be accountable to the State for the proper use and care of same. Such standards shall be used only for testing the standards provided for in this article, and such treasurer shall keep a record of all county weights, measures, beams and balances marked and tested by him. (C. L. 1913, § 3009.)

287. Standard Weight of Coal, Charcoal and Ice.—In all contracts for the sale of coal, charcoal and ice the term "ton" shall mean 2,000 pounds. A sale of coal, charcoal and ice, except by weight is hereby prohibited. (C. L. Suppl. 1925, § 3009a2.)

288. Standard Weight of Flour.—In all contracts for the sale of flour, the term "barrel" shall mean 196 net pounds avoirdupois. (Id. § 3009a3.)

289. Fractional Parts.—All contracts for the sale of a fractional part of a bushel, barrel, ton or cord of any article or commodity on which the legal weight or measurement per bushel, barrel, ton, cord, gallon or fractional parts has been established, shall require and mean a like fractional part of the legal and established weight or measurement per bush, barrel, ton or cord. (Id. § 3009a4.)

290. Penalty for Violation.—Whoever in buying shall take any greater number of pounds or cubic feet to the bushel, barrel, ton, cord, gallon or fractional part, as the case may be and as herein allowed and provided, or in selling shall give any less number shall be guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not less than ten dollars ($10.00) nor more than one hundred dollars ($100.00) or by imprisonment for not less than ten (10) days nor more than ninety (90) days in the county jail and the cost of such proceeding. (Id. § 3009a5.)

291. Variation.—The State Inspector of Grades, Weights and Measures shall establish uniform tolerance or reasonable variances to take care of unavoidable shrinkage and all scale variations in handling and weighing any of the articles mentioned in this act. (Id. § 3009a6.)

292. Unlawful to Buy at Other Than Legal Weight; Dockage.—It shall be unlawful for any person, firm, association, copartnership or corporation doing business in the State to purchase or receive any wheat, oats, barley, flax or other grains at a different weight for the bushel measure than the number of pounds fixed by the laws of our State, and no dockage shall be taken or received on same, excepting on such grains as the grain inspection boards for the terminal markets of the States of Minnesota and Wisconsin place a dockage. (C. L. 1913, § 3014.)

293. Penalty.—Any person, firm, association, co-partnership or corporation found guilty of violating the provisions of this article shall be guilty of a misdemeanor and be fined not less than twenty-five nor more than one hundred dollars for each and every offense. (Id. § 3015.)

294. County Commissioners to Establish Scales.—The board of county commissioners of any county is authorized in its discretion, when petitioned by fifteen or more residents and actual farmers of the county, to establish and locate public scales at suitable railway stations in its county. (Id. § 3016.)

295. Care and Capacity of Scales.—Such scales shall be purchased by the county, and shall be under cover, and of not less than five tons' weighing capacity, and shall be the property of the county, and at all times under its control and subject to removal when the county commissioners shall so require. (Id. § 3017.)

296. Appointment of Weighmasters; Bond.—The board shall also appoint at each place where it establishes such scales, a public weighmaster, who shall have the custody and care of such property, and who shall give a bond in the sum of five hundred dollars, conditioned for the safe keeping of the same and for the faithful and impartial discharge of his duties. (C. L. Suppl. 1925, § 3018.)

297. **Weighmaster to Keep Record.**—Each public weighmaster shall keep a stub record of all weighing, which record and the receipt of such weighmaster shall show for whom property was weighed, and shall, with such receipt, constitute prima facie evidence of the facts therein contained. (C. L. 1913, § 3019.)

298. **Compensation; Removal.**—Such public weighmasters shall receive such compensation and shall be governed by such rules and regulations as may be adopted by the board of county commissioners, and may be removed at any time by such board for cause. (Id. § 3020.)

299. **Fraudulently Increasing Weight.**—Every person who, in putting up in any bag, bale, box, barrel or other package, any hops, cotton, hay or other goods usually sold in bags, bales, barrels or packages, by weight, puts in or conceals therein anything whatever for the purpose of increasing the weight of such bag, bale, box, barrel or package, is punishable by a fine of twenty-five dollars for each offense. (Id. § 9764.)

300. **False Weights and Measures.**—If any person with intent to defraud, uses a false balance, weight or measure, in the weighing or measuring of anything whatever that is purchased, sold, bartered, shipped or delivered, for sale or barter, or that is pledged or given in payment, he shall be punished by fine not exceeding one hundred dollars nor less than five dollars, or by imprisonment in a county jail not more than thirty days, or by both such fine and imprisonment, and shall be liable to the injured party in double the amount of damages. (Id. § 9983.)

301. **Retaining Same.**—Every person who retains in his possession any weight or measure, knowing it to be false, unless it appears beyond a reasonable doubt that it was so retained without intent to use it, or permits it to be used in violation of the last section, shall be punished as herein provided. (Id. § 9984.)

302. **Officer May Seize Same.**—Every person who is authorized or enjoined by law to arrest another person for a volation of sections 9983 and 9984, is equally authorized and enjoined to seize any false weights or measures found in the possession of the person so arrested, and to deliver the same to the magistrate before whom the person so arrested is required to be taken. (Id. § 9985.)

303. **May be Tested and Destroyed.**—The magistrate to whom any weight or measure is delivered, pursuant to the last section, shall, upon the examination of the accused, or, if the examination is delayed or prevented, without awaiting such examination, cause the same to be tested by comparison with standards conformable to law; and if he finds it to be false, he shall cause it to be destroyed, or to be delivered to the State's Attorney of the county in which the accused is liable to prosecution or trial, as the interests of justice in his judgment may require. (Id. § 9986.)

304. **Duty of State's Attorney.**—Upon the conviction of the accused, such State's Attorney shall cause any weight or measure in respect whereof the accused stands convicted, and which remains in the possession or under the control of such State's Attorney, to be destroyed. (Id. § 9987.)

305. **Stamping False Weight or Tare.**—Every person who knowingly marks or stamps false or short weight or false tare on any cask or package, or knowingly sells or offers for sale any cask or package so marked, is guilty of a misdemeanor. (Id. § 9988.)

NOTE: See also Nos. 6, 7, 18, 41, 62-62a, 113a, 113e, 119, 244b, and 257 et seq.

PART V.

CASES.

1. General Food and Drug Law.

Food Commissioner—Unauthorized Acts May be Enjoined: State ex rel. Ladd v. District Court in and for Cass County et al., 17 N. D. 285, 115 N. W. 675, 15 L. R. A. (N. S.) 331 (1908).

2. Special Food Laws.

Beverages—Artificial Fruit Juice: State v. Danials, 53 N. D. 403, 206 N. W. 78 (1925).

Beverages—Patent Medicines: State v. Williams, 14 N. D. 411, 104 N. W. 546 (1905).

Creamery—License: *Cofman v. Ousterhous & Hagan, 40 N. D. 390, 168 N. W. 826, 18 A. L. R. 219 (1918).

Lard—Standard Weights: See *Weights and Measures,* post.

3. Special Drug Laws.

Pharmacy: *Kermott v. Bagley, 19 N. D. 345, 124 N. W. 397 (1910).

4. Civil Action to Recover Damages for Injury Alleged to Have Been Caused by Consumption of Product.

Drugs: Scherer v. Schlaberg & Griffin, 18 N. D. 421, 122 N. W. 1000, 24 L. R. A. (N. S.) 520 (1909).

Hog Medicine: Johnson v. Kittleson, 49 N. D. 92, 189 N. W. 837 (1922).

5. Miscellaneous.

False Advertising: Brissman v. Thistlethwaite, 49 N. D. 417, 192 N. W. 85 (1922); Same, 49 N. D. 429, 192 N. W. 90 (1922).

Grain: *Farmers' Grain Co. of Embden v. Langer et al., 273 Fed. 635 (C. C. A.) (1921), affirmed in *Lemke et al. v. Farmers' Grain Company of Embden, 258 U. S. 50, 42 S. Ct. 244, 66 L. Ed. 458 (1922).

Paint: *Heath & Milligan Manufacturing Company v. Worst, 207 U. S. 338, 28 S. Ct. 114, 52 L. Ed. 236 (1907).

Snuff: *State v. Olson, 26 N. D. 304, 144 N. W. 661, L. R. A. 1918 B, 975 (1913), petition for writ of error dismissed in Olson v. North Dakota, 245 U. S. 676, 38 S. Ct. 13, 62 L. Ed. 542 (1917).

Trading Stamps: *Olson v. Ross, 39 N. D. 372, 167 N. W. 385 (1918).

Weights and Measures: *State v. Armour & Co., 27 N. D. 177, 145 N. W. 1033, Ann. Cas. 1916 B, 1149 (1913), affirmed in *Armour & Co. v. North Dakota, 240 U. S. 510, 36 S. Ct. 440, 60 L. Ed. 771, Ann. Cas. 1916 D, 548 (1916).

OHIO.*

PART I.

General Food and Drug Law.

1. Adulterated and Misbranded Drugs or Food.—No person, within this State, shall manufacture for sale, offer for sale, sell or deliver, or have in his possession with intent to sell or deliver, a drug or article of food which is adulterated within the meaning of this chapter, or offer for sale, sell or deliver, or have in his possession with intent to sell or deliver, a drug or article of food which is misbranded within the meaning of this chapter. (G. C. 1926, § 5774.)

2. Definition of the Terms "Drug," "Food" and "Flavoring Extract."—The term "drug," as used in this chapter, includes all medicines for internal or external use or inhalation, antiseptics, disinfectants and cosmetics. The term "food," as used in this chapter, includes all articles used by man for food, drink, flavoring extract, confectionery, or condiment, whether simple, mixed or compound. The term "flavoring extract," as used in this chapter, includes all articles used as a flavor for foods or drinks, whether used or sold as an extract, flavor, essence, tincture or by another name. (Id. § 5775.)

3. Samples of Drugs and Food for Analysis.—A person manufacturing, offering or exposing for sale, or delivering to a purchaser, a drug or article of food included in the provisions of this chapter, shall furnish to a person interested or demanding it, applying to him therefor and tendering him its value, a sample thereof sufficient for the analysis of such drug or article of food. (Id. § 5776.)

4. What is Adulteration of Drugs.—A drug is adulterated within the meaning of this chapter (1) if, when sold under or by a name recognized in the tenth decennial revision of the United States Pharmacopœia, or in the fifth edition of the National Formulary, it differs from the standard of strength, quality or purity laid down therein; (2) if, when sold under or by a name not recognized in the tenth decennial revision of the United States Pharmacopœia, or the fifth edition of the National Formulary, but which is found in some other pharmacopœia, or other standard work on materia medica, it differs materially from the standard strength, quality or purity laid down in such work; (3) if its strength, quality or purity falls below the professed standard under which it is sold; (4) if it is an imitation of, or offered for sale under the name of another article; (5) if the contents of the package as originally put up shall have been removed, in whole or in part, and other contents shall have been placed in such package; (6) if it contains any methyl or wood alcohol. (Id. § 5777, as amended in 1927.)

5. What is Adulteration as to Food, Drink, Confectionery, Etc.—Food, drink, confectionery or condiments are adulterated within the meaning of this chapter (1) if any substance or substances have been mixed with it, so as to lower or depreciate or injuriously affect its quality, strength or purity; (2) if any inferior or cheaper substance or substances have been substituted wholly, or in part, for it; (3) if any valuable or necessary constituent or ingredient has been wholly, or in part, abstracted from it; (4) if it is an imitation of, or is sold under the name of another article; (5) if it consists wholly, or in part, of a diseased, decomposed, putrid, infected, tainted or rotten animal or vegetable substance or article, whether manufactured or not or in the case of milk, if it is the product of a diseased animal; (6) if it is colored, coated, polished or powdered, whereby damage or inferiority is concealed, or if by any means it is made to appear better or of greater value than it really is; (7) if it contains any added substance or ingredient which is poisonous or injurious to health; (8) if, when sold under or by a name recognized in the tenth decennial revision of the United States Pharmacopœia, or the fifth edition of the National Formulary, it differs from the standard of strength, quality of [or] purity laid down therein; (9) if, when sold under or by a name not recognized in the tenth decennial revision of the United States Pharmacopœia, or the fifth

*CITATION: "G. C. 1926" refers to Throckmorton's General Code of the State of Ohio, 1926, published by the Baldwin Law Publishing Company.

edition of the National Formulary, but if found in some other pharmacopœia, or other standard work on materia medica, it differs materially from the standard of strength, quality or purity laid down in such work; (10) if the strength, quality or purity falls below the professed standard under which it is sold; (11) if it contains any methyl or wood alcohol. (Id. § 5778.)

6. What is Misbranding of Drugs.—A drug shall be misbranded within the meaning of this chapter: (1) if the package fails to bear a statement on the label of the quantity or proportion of grain or ethyl alcohol, morphine, opium, cocaine, heroin, alpha or beta eucaine, chloroform, cannabis, chloral hydrate, acetanilid or any derivate or preparation of such substances contained therein, provided, that the provisions of this section shall not apply to the prescriptions of regular licensed physicians, dentists and doctors of veterinary medicine, nor to such drugs and preparations as are officially recognized in the tenth decennial revision of the United States Pharmacopœia, or the fifth edition of the National Formulary, and which are sold under the name by which they are so recognized; (2) if the package containing it or any label thereon bears a statement, design or device regarding it or the ingredients or substances contained therein, which is false or misleading in any particular; (3) if the package containing it or any label thereon bears or contains any statement, design or device regarding the curative or the therapeutic effect of such article or any of the ingredients or substances contained therein, which is false and fraudulent. (Id. § 5784.)

7. What Deemed Misbranding of Food, Etc.—Food, drink, flavoring extracts, confectionery or condiment shall be misbranded within the meaning of this chapter:

1. If the package fails to bear a statement on the label of the quantity or proportion of morphine, opium, cocaine, heroin, alpha, or beta eucaine, chloroform, cannabis indica, chloral hydrate, or acetanilide, or any derivative or preparation of such substances contained therein.

2. If it is labeled or branded so as to deceive or mislead the purchaser, or purport to be a foreign product when not so.

3. If in package form, and the contents are stated in terms of weight or measure, they are not plainly and correctly stated on the outside of the package.

4. In case of a flavoring extract for which no standard exists there is not printed in English, conspicuously, legibly, and clearly on the label the quantity by volume of alcohol, in said extract.

5. If the package containing it or a label thereon bears a statement, design or device regarding it or the ingredients or substances contained therein, which is false or misleading in any particular; provided, that this section shall not apply to mixtures or compounds recognized as ordinary articles or ingredients of articles of food or drink, if each package sold or offered for sale is distinctly labeled in words of the English language as mixtures or compounds, with the name and percentage, in terms of one hundred per cent of each ingredient therein.

The word "compound" or "mixture" shall be printed in letters and figures not smaller in height or width than one-half the largest letter upon any label on the package and the formula shall be printed in letters and figures not smaller in height or width than one-fourth the largest upon any label on the package, and such compound or mixture must not contain any ingredient that is poisonous or injurious to health. (G. C. 1926, § 5785.)

8. Adoption of Standards and Enforcement of Laws; Inspections and Prosecutions.—The Secretary of Agriculture* shall establish standards of quality, purity and strength for foods, when such standards are not otherwise established by any law of this State. Such standard shall conform to the standards for foods adopted by the United States Department of Agriculture. The Secretary of Agriculture shall make such uniform rules and regulations as may be necessary for the enforcement of the food, drug, dairy and sanitary laws of the State. Such rules and regulations shall, where applicable, conform to and be the same as the rules and regulations adopted from time to time for the enforcement of the act of Congress, approved June 30, 1906, and amended March 3, 1913, and known as "the food and drug act." The Secretary of Agriculture shall inspect drugs, butter, cheese, lard, syrup and other articles of food or drink, made or offered for sale in the State and prosecute or cause to be prosecuted each person, firm or corporation engaged in the manufacture or sale of an adulterated drug or article of food or drink, in violation of law, and shall enforce all laws against fraud, adulteration or impurities in foods, drinks, or drugs, and unlawful labeling within the State. (Id. § 1177-12.)

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*See No. 17a et seq. This law is to be corrected accordingly.

9. Right of Entry to Make Examinations.—The Secretary of Agriculture in the performance of his duties may enter a creamery, factory, store, salesroom, drug store, laboratory or other place where he believes or has reason to believe drugs, food, drink, or linseed oil, is made, prepared, dispensed, sold or offered for sale, examine the books therein, and open a cask, tub, jar, bottle or other package containing or supposed to contain a drug or an article of food or drink and examine or cause to be examined and analyzed the contents thereof. (Id. § 1177-13.)

10. Refusing Secretary of Agriculture Entrance to Factory, Etc.; Penalty.—Whoever refuses to allow the Secretary of Agriculture, his inspectors or agents, to enter a creamery, factory, store, salesroom, drug store, laboratory, booth, vehicle, steam or electric car or place which he or such inspector or agent desires to enter in the discharge of his official duty, or interferes with such secretary or his inspector or agent in such discharge, or refuses to deliver to him or his inspector or agent, a sample of food, drug or linseed oil made, sold, offered for sale, by such person, upon request therefor and tender of the value thereof, shall be fined not less than fifty dollars nor more than two hundred dollars, and, for each subsequent offense, shall be fined not less than one hundred dollars nor more than three hundred dollars or imprisoned in jail not less than thirty days nor more than one hundred days, or both. (Id. § 12757.)

11. Selling Adulterated and Misbranded Food or Drug.—Whoever manufactures for sale, offers for sale or sells a drug, article of food, or flavoring extract which is adulterated or misbranded as the terms "drugs," "food," "flavoring extract," "adulterated" and "misbranded" are defined and described by law, or manufactures, offers or exposes for sale or delivers a drug or article of food and fails, upon demand and tender of its value, to furnish a sample thereof for analysis, shall be fined not less than twenty-five dollars nor more than one hundred dollars, and, for each subsequent offense, shall be fined not less than one hundred dollars nor more than two hundred dollars or imprisoned in the county jail not less than thirty days nor more than one hundred days, or both. (Id. § 12758.)

12. Additional Penalty.—A person found guilty of manufacturing, offering for sale or selling an adulterated article of food or drug, as described in the next preceding section, shall pay all necessary costs and expenses incurred in inspecting and analyzing such adulterated article. (Id. § 12759.)

Miscellaneous General Provisions.

13. Selling, Etc., Unwholesome Provisions.—Whoever sells, offers for sale, or has in possession with intent to sell, diseased, corrupted, adulterated or unwholesome provisions without making the condition thereof known to the buyer, shall be fined not more than fifty dollars or imprisoned twenty days, or both. (G. C. 1926, § 12760.)

14. Special Jurisdiction of Police Judges, Mayors and Justices.—Justices of the peace, police judges and mayors of cities and villages shall have jurisdiction, within their respective counties, in all cases of violation of any law relating to:

1. Adulteration or deception in the sale of dairy products and other food, drink, drugs and medicines. . . . (Id. § 13423.)

15. Criminal Penalty; Penalty When Violation Relates to Bread, Meat, Vegetables, Etc.—A violation of any or all of the provisions of this chapter* is a conspiracy against trade, and a person engaged in such conspiracy or taking part therein, or aiding or advising in its commission, or, as principal, manager, director, agent, servant or employer, or in any other capacity, knowingly carrying out any of the stipulations, purposes, prices or rates, or furnishing any information to assist in carrying out such purposes, or orders thereunder, or in pursuance thereof, or in any manner violating a provision of this chapter, shall be fined not less than fifty dollars nor more than five thousand dollars or imprisoned not less than six months nor more than one year, or both. Provided, however, that when the violation of the provisions of this chapter consists of a combination to control the price or supply, or to prevent competition in the sale of bread, butter, eggs, flour, meat or vegetables or any one of said articles, the person or persons thus engaged shall upon conviction thereof be fined in any sum not less than five hundred dollars and be imprisoned in the penitentiary not less than one nor more than five years. Each day's violation of any of the provisions of this chapter shall constitute a separate offense. (Id. § 6396.)

16. Administering Medicine When Intoxicated.—Whoever, while in a state of intoxication, prescribes or administers a poison, drug or medicine to another

*Chapter 31, entitled "Trusts."

which endangers the life of such other person, shall be fined not more than one hundred dollars and imprisoned not more than twenty days. (Id. § 12410.)

17. Administering Secret Medicine.—Whoever prescribes a drug or medicine to another, the true nature and composition of which, if required of, he does not truly make known but falsely represents it to be a secret medicine or composition, and thereby endangers the life of such other person, shall be fined not more than one hundred dollars and imprisoned not more than twenty days. (Id. § 12411.)

17a. Officers, Boards, Commissions, Etc., Abolished.—The following officers, boards, commissions, arms and agencies of the State Government heretofore created by law are hereby abolished: . . .

The Board of Agriculture of Ohio.

The Secretary of Agriculture.

The head of the Bureau of Markets and Marketing under the Board of Agriculture of Ohio.

The Chief of the Bureau of Horticulture under the Board of Agriculture of Ohio.

The Inspector of Canneries under the Board of Agriculture of Ohio.

The Board of Control of the Ohio Agricultural Experiment Station.

The Agricultural Advisory Board. . . .

The Commissioner of Health. . . . (Id. § 154-26, as amended in 1927.)

17b. Administrative Departments Created.—The following administrative departments are created: . . .

The Department of Agriculture, which shall be administered by the Director of Agriculture, hereby created;

The Department of Health, which shall be administered by the Director of Health, hereby created: . . .

The director of each department shall, subject to the provisions of this act, exercise the powers and perform the duties vested by law in such department. (Id. § 154-3.)

18. Offices Created in the Several Departments.—Offices are created within the several departments as follows: . . .

In the Department of Agriculture:

Chiefs of divisions as follows:

Animal industry.

Fish and game.

Foods and dairies.

Plant industry.

State fair. . . . (Id. § 154-6.)

19. Department of Agriculture; Powers, Duties.—The Department of Agriculture shall have all powers and perform all duties vested by law in the Board of Agriculture, the Secretary of Agriculture, the Agriculture Advisory Board, the Chief of the Division of Fish and Game under the Board of Agriculture, and all officers and employees in such division, and in all other bureaus and offices established or authorized by law under the Board of Agriculture or the Secretary of Agriculture. Wherever powers are conferred or duties imposed by law upon such Board of Agriculture or Secretary of Agriculture, or upon bureaus or offices under either of them, such powers and duties shall be, excepting as herein provided, construed as vested in and imposed upon the Department of Agriculture. (G. C. 1926, § 154-42.)

20. Hearing by Board of Secretary.—Any investigation, inquiry or hearing which the Board of Agriculture is empowered by law to hold or undertake may also be held or undertaken by or before the Secretary of Agriculture. (Id. § 1085.)

21. Place of Office and of Holding Meetings; Equipment and Supplies.—The Board of Agriculture shall maintain its office in the State Capitol in the city of Columbus and shall provide a suitable room or rooms, necessary office furniture, stationery, books, periodicals, maps, instruments and other necessary supplies. The Board of Agriculture may hold sessions at any place within the State. The necessary expense shall be audited and paid as other expenses are audited and paid. (Id. § 1086.)

22. General Powers and Duties of Secretary.—From and after the taking effect of this act, the Secretary of Agriculture shall do all the work and perform all the duties which, by any of the laws of the State, are placed upon the agricultural commission, and wherever the words "Agricultural Commission" are found in the laws of the State, they shall be construed to refer to the "Secretary of Agriculture." (Id. § 1087-1.)

23. Conferences With Officers of U. S. and Other States.—The Board of Agriculture or the Secretary of Agriculture, or authorized representatives may confer and meet with the officers of other States and officers of the United States on any matter pertaining to their official duties. (Id. § 1096.)

24. Rules and Regulations Shall be Adopted.—The Board of Agriculture shall adopt reasonable and proper rules and regulations to govern its proceedings and to regulate the mode and manner of all investigations, inspections and hearings not otherwise specifically provided for. (Id. § 1098.)

25. Power to Conduct Hearings, Administer Oaths, Etc.—The Board of Agriculture or any member thereof, the Secretary of Agriculture and every person appointed by him to conduct investigations, inquiries or hearings shall, for the purposes contemplated in this act, have power to administer oaths, certify to official acts, take depositions, issue subpœnas, compel the attendance of witnesses and the production of books, accounts, papers, records, documents and testimony. (Id. § 1100.)

26. Inspection of Books, Accounts and Records of Persons, Firms, Etc.—To carry out the purpose of the laws which they are required to administer, the Board of Agriculture, or any member thereof, the Secretary of Agriculture, or any person or persons designated by the secretary for that purpose, shall, upon demand, have the right to inspect books, accounts, records, and memoranda of any company, firm, corporation, person, association, or co-partnership, subject to the provisions of such laws, and to examine under oath any person, including any officer, agent or employee of any such company, firm, corporation, person, association or co-partnership. Any person, other than a member of such Board of Agriculture, or the Secretary of Agriculture, who shall make such a demand, shall produce his authority to make such inspection. (Id. § 1101.)

27. Production of Books, Accounts, Papers, Etc.; Forfeiture.—The Board of Agriculture, or the Secretary of Agriculture, may require, by order of subpœna, to be served on any company, firm, corporation, person, association or co-partnership in the same manner that a summons is served in a civil action at such time and place as they or either of them may designate, the production of any books, accounts, papers or records kept by it in any office or place within or without the State of Ohio, or verified copies in lieu thereof, if the board, or the secretary, shall so order, in order that an examination thereof may be made by the board, or the secretary, or under their direction. Any such company, firm, corporation, person or co-partnership failing or refusing to comply with any such order or subpœna shall, for each day it fails or so refuses, forfeit any [and] pay into the State treasury a sum of not less than fifty dollars nor more than five hundred dollars. (Id. § 1102.)

28. Appointment of Agent for Investigation; Powers and Duties.—For the purpose of making any investigation with regard to any company, firm, corporation, person, association or co-partnership, subject to the provisions of the laws which the Board of Agriculture or Secretary of Agriculture is required to administer, the Secretary of Agriculture shall have the power to appoint, by an order in writing, an agent whose duty shall be prescribed in such order. In the discharge of his duties such agent shall have every power whatsoever of an inquisitorial nature granted by the law to the Secretary of Agriculture and the same powers as a notary public, with regard to the taking of deposition; and all powers given by a law to a notary public relative to depositions, are hereby given to such agent. Except in his report to the Secretary of Agriculture or when called on to testify in any court or proceedings, any such agent who shall divulge any information acquired by him in respect to the transaction, property or business of any company, firm, corporation, person, association or co-partnership while acting or claiming to act under such order, shall be fined not less than fifty dollars, nor more than one hundred dollars, and shall thereafter be disqualified from acting as such agent in any other capacity under the appointment or employment of the Secretary of Agriculture. (Id. § 1103.)

29. Contemporaneous Investigations.—Any number of such investigations may be conducted contemporaneously and the Secretary of Agriculture may delegate to any agent the taking of all testimony bearing upon any investigation or hearing. (Id. § 1104.)

30. Legal Adviser; Furnishing of Books and Stationery.—The Attorney-General shall be the legal advisor of the Board of Agriculture and the Secretary of Agriculture in all matters relating to their powers and duties, and the Secretary of State shall furnish to the Board of Agriculture and the Secretary of Agriculture such stationery as they require for the proper discharge of their duties and blank books necessary to record their transaction. (Id. § 1105.)

31. Who Shall Institute and Prosecute Actions.—Upon the request of the Secretary of Agriculture, the Attorney-General, or under his direction, the prosecuting attorney of any county, shall aid in any investigation, hearing or trial had under the laws which the Board of Agriculture or the secretary is required to administer, and shall institute and prosecute all necessary actions or proceedings for the enforcement of such laws, and for the punishment of all violations thereof, arising within the county in which he was elected. (Id. § 1106.)

32. Officials Required to Execute Orders.—Sheriffs and constables in the several counties shall execute all lawful orders of the Board of Agriculture or the Secretary of Agriculture in such counties, and shall immediately communicate to such secretary any notice given them under the provisions of law relating to live stock. (Id. § 1110.)

33. Co-operation With U. S. Authorities.—The Secretary of Agriculture may accept, on behalf of the State the rules and regulations prepared by the Secretary of Agriculture of the United States under authority of an Act of Congress, and co-operate with the authorities of the United States in the enforcement of their provisions. (Id. § 1118.)

34. Penalty for Non-compliance With Rules.—A person, firm or corporation who fails to comply with the rules of the Board of Agriculture, or with the rules of the Secretary of Agriculture, fails to respect any lawful regulations, prescribed by them or either of them, when notified to do so, shall be fined and pay not less than fifty dollars nor more than five hundred dollars. (Id. § 1119.)

35. Disposition of Fines, Fees and Costs.—All fines, fees and costs collected under prosecutions begun, or caused to be begun, by the Secretary of Agriculture, shall be paid by the court to the Secretary of Agriculture within thirty days after collection, unless error proceedings have been properly begun and prosecuted and in case the judgment of the justice of the peace is sustained the fine shall be paid within thirty days after such judgment or affirmance, and by the secretary paid into the State treasury to the credit of the general revenue fund. (Id. § 1177-14.)

36. Suit by Secretary on Failure of Court to Pay.—If the court fails to pay such fine within the time specified in the preceding section and after demand has been made therefor, the Secretary of Agriculture shall add ten per cent thereto and certify such claim and penalty to the Auditor of State under the provisions of section 20 of the General Code. (Id. § 1177-15.)

37. Enumeration of Powers and Duties of the Bureau of Markets;* Inspection Fund.—It shall be the duty of said Bureau of Markets:

To investigate the cost of production and marketing in all its phases.

To gather and disseminate information concerning supply, demand, prevailing prices, and commercial movements, including common and cold storage of food products and maintain market news service for the purpose of disseminating such information.

To promote, assist and encourage the organization and operation of co-operative and other associations and organizations for improving the relations and services among producers, distributors and consumers of food products.

To have power to make rules and regulations for the grading, packing, handling, storage and sale of all food products within the State, not contrary to law and to enforce such rules and regulations by actions or proceedings in any court of competent jurisdiction.

To investigate the practice and methods and any specific transaction of commission merchants and others who receive, solicit, buy, handle on commission, or otherwise, food products.

To act as mediator or arbitrator, when invited, in any controversy or issue that may arise between producers and distributors and which affect the interest of the consumer.

To act on behalf of the consumers in conserving and protecting their interest in every practicable way against excessive prices.

To act as market advisor for producers and distributors, assisting them in economical and efficient distribution of food products at their prices.

To encourage the establishment of retail municipal markets and to develop direct dealing between producers and consumers.

To encourage the consumption of Ohio grown products within the State; to inspect and determine the grade and condition of farm produce both at collecting and receviing centers.

To take such means and use such powers, relative to shipment, transportation and storage of foodstuffs of any kind, as may be necessary and as it may deem advisable or desirable in case of emergency creating or threatening to create a scarcity of food within the State.

The Director of Agriculture shall adopt and may amend from time to time schedules of fees to be charged for inspecting farm produce at collecting and receiving centers or such other services as may be rendered under this act. All such fees shall be made with a view to the minimum cost and to make this branch of the

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*See No. 17a et seq.

Department of Agriculture self-sustaining. All fees shall be turned into the State treasury and credited to the "inspection fund" hereby created and for use in carrying out the purposes of this act. If, in any year, the balance in said "inspection fund" is not sufficient to meet the expenses incurred pursuant to this act, the deficit shall be paid from funds appropriated for the use of the Department of Agriculture. (Id. § 1089-2.)

38. Chemical and Bacteriological Laboratory.—The State Board of Health* may establish and maintain a chemical and bacteriological laboratory for the examination of public water supplies, and the effluent of sewage purification works, for the diagnosis of diphtheria, typhoid fever, hydrophobia, glanders and such other diseases as it deems necessary, and for the examination of food suspected to be the cause of disease. The board shall examine and report each year the condition of all public water supplies. (Id. § 1241.)

39. Duties of District Board.—In addition to the duties now required of boards of health, it shall be the duty of each district board of health to study and record the prevalence of disease within its district and provide for the prompt diagnosis and control of communicable diseases. The district board of health may also provide for the medical and dental supervision of school children, for the free treatment of cases of venereal diseases, for the inspection of schools, public institutions, jails, workhouses, children's homes, infirmaries, and other charitable, benevolent, correctional institutions. The district board of health may also provide for the inspection of dairies, stores, restaurants, hotels and other places where food is manufactured, handled, stored, sold or offered for sale, and for the medical inspection of persons employed therein. The district board of health may also provide for the inspection and abatement of nuisances dangerous to public health or comfort, and may take such steps as are necessary to protect the public health and to prevent diseases.

Provided that in the medical supervision of school children as herein provided, no medical or surgical treatment shall be administered to any minor school child except upon the written request of a parent or guardian of such child; and provided further, that any information regarding any diseased condition or defect found as a result of any medical school examination shall be communicated only to the parent or guardian of such child and if in writing shall be in a sealed envelope addressed to such parent or guardian. (Id. § 1261-26.)

NOTE: See also Nos. 409 and 507.

PART II.

Special Food Laws.

Bakeries—Bakery Products.†

40. Bakery Defined.—The word "bakery" is defined, for the purpose of this act, as a building or part of a building wherein is carried on the production, preparation, packing, storing, display or sale of bread, cake, pies or other bakery products, including any separate room or rooms used for the convenience or accommodation of the workers; provided, that §§ 3, 4, 6, 7, 8 and 20‡ shall not apply to retail stores where bakery products are sold but not produced. (G. C. 1926, § 1090-22.)

41. Standards Prescribed by the Secretary of Agriculture.—The standards and requirements hereinafter prescribed shall conform to such rules as may be adopted by the Secretary of Agriculture. (Id. § 1090-23.)

42. Specifications as to Construction of Bakeries.—Every bakery shall be constructed, drained, lighted, ventilated and maintained in a clean and sanitary condition, and when and where necessary screened against flies, shall have plumbing and drainage facilities together with suitable wash basins, wash sinks and toilets or water-closets, which shall be kept in a clean and sanitary condition. The said toilets or water-closets shall be in rooms having no direct connection with any room

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*See No. 17a et seq.

†See No. 17a et seq. This law is to be corrected accordingly.

‡G. C. 1926, §§ 1090-24, 1090-25, 1090-27, 1090-28, 1090-29, and 1090-41.

in which bakery products or ingredients are prepared, stored, handled, or displayed. (Id. § 1090-24.)

43. Room for Changing Apparel.—In connection with every bakery a suitable room or rooms shall be provided for the changing and hanging of the wearing apparel of the workers or employees, which shall be separate and apart from the work, storage and sales rooms, and shall be kept in a clean and sanitary condition. (Id. § 1090-25.)

44. Sitting on Tables, Shelves, Etc., Prohibited.—No person shall sit, lie or lounge or be permitted to sit, lie or lounge upon any of the tables, shelves, boxes or other equipment or accessories used in connection with the production, preparation, packing, storing, display or sale of bakery products. No animals or fowls shall be kept in or permitted to enter any bakery. (Id. § 1090-26.)

45. Washing Before Handling Ingredients.—Before beginning work of preparing, mixing or handling any ingredients used in the production of bakery products, every person engaged in such work shall wash the hands and arms, and after using toilets or water-closets, every person therein engaged shall wash the hands and arms thoroughly and then rinse in clean water; and for this purpose the owner or operator of the bakery shall provide sufficient facilities. (Id. § 1090-27.)

46. Employment of Person Having Contagious or Infectious Disease Prohibited.—No owner or operator of a bakery shall require or permit any person affected with any contagious, infectious or other disease or physical ailment which may render such employment detrimental to the public health, or any person who refuses to submit to the examination required in section 8 [1090-29] to work therein. (Id. § 1090-28.)

47. Examination of Employee May be Required.—The State Department of Health or Commissioner of Health or the chief health officer in the several cities and towns, or the Secretary of Agriculture may require any person intending to work or working in a bakery to submit to a thorough examination for the purpose of ascertaining whether or not he is afflicted with any contagious, infectious or other disease or physical ailment. All such examinations shall be made by the district health commissioner. (Id. § 1090-29.)

48. Building, Receptacles, Etc., Must be Kept in Sanitary Condition.—The floors, walls and ceilings of each bakery, the equipment used in the handling or preparation of bakery products or their ingredients, and the boxes, baskets and the interior of the vehicles and other receptacles in which bakery products are transported shall be kept by the owner or operator of the bakery or the carrier or distributor of said product in a clean and sanitary condition and at all times free from dirt, dust, flies, insects and other contaminating matter. Shipping baskets and other containers for transporting bakery products shall be kept clean and shall not be used for any other than bakery products by any person or concern. (Id. § 1090-30.)

49. Show Cases Must be Covered and Ventilated.—All show cases, shelves and other places where unwrapped bakery products are sold or exposed for sale shall be kept by the dealer well covered, properly ventilated, adequately protected from dust, flies and other contaminating matter, and shall at all times be maintained in a sweet, clean and wholesome condition. (Id. § 1090-31.)

50. Products Kept Beyond Reach of Contamination.—Boxes or other permanent receptacles or containers for the storing, receiving or handling of bakery products shall be so placed and constructed as to be beyond the reach of the contamination from streets, alleys and sidewalks, or from animals, and shall be kept by the dealer clean and sanitary. (Id. § 1090-32.)

51. Storing and Handling Must be Sanitary.—All bakery products and their ingredients shall be stored, handled, transported and kept in such manner as to protect them from spoilage, vermin, contamination, disease and unwholesomeness. No ingredient, or material, including water, shall be used therein which is spoiled or contaminated or which may render the product unwholesome, unfit for food, or injurious to health. (Id. § 1090-33.)

52. Ingredients Used Must be Labeled, Etc.—No ingredient shall be used in any bakery product likely to deceive the consumer or which lessens its nutritive value without being plainly labeled, branded or tagged, or having a sign making plain to the purchaser or consumer the actual ingredients; provided, however, that in case of unwrapped bread to be sold by the loaf; such labeling, branding or tagging shall be placed upon the same label, as hereinafter provided, which shows the name of the manufacturer, and the net weight of the loaf. Said ingredients and the sale or offering for sale of said products shall otherwise comply with the existing provisions of law regulating the sale of foods and not inconsistent herewith. (Id. § 1090-34.)

53. Return of Products From Customer to Dealer or Baker, Etc., Prohibited.—No bakery products, except as hereinafter provided, shall be returned from any consumer or other purchaser to the dealer or baker, nor from any dealer to the baker, and no baker or dealer shall directly or indirectly accept any returns or make any exchange of bakery products from any dealer, restaurant or hotelkeeper, consumer or other person. All such products shall be kept moving to the consumer without unreasonable delay and without any exchange, return or practice whatsoever which may disseminate contamination or disease or inflict fraud upon them, among consumers, or disseminate "rope," so-called, or other infection in bakeries, or which may cause waste in the food supply; provided, that this section shall not apply to crackers or other bakery products which are packed at the place of production in cartons, cans, boxes or similar permanent containers, and which are so packed and sealed at such place as to fully insure their freshness and wholesomeness and protect them from contamination, adulteration and deterioration in the course of trade, and which remain in the original unbroken package as packed, except in so far as may be necessary to prevent waste in the food supply; and provided, further, that "permanent containers" shall not be construed to include the paper or parchment wrappers used in wrapping loaves of bread. (Id. § 1090-35.)

54. Disposition of Unsold Stock; Rules May be Established.—The Secretary of Agriculture may, by rule establish such exemptions as may be necessary to facilitate the sale of any accumulated or unsold stocks of wholesome bakery products, and in other cases not inconsistent with the purposes of this act. (Id. § 1090-36.)

55. Bread Sold by Weight; Units Specified—Statements on Loaf or Wrapper Required.—Bread shall not be sold or offered or exposed for sale otherwise than by weight and shall be manufactured for sale and sold only in units of sixteen or twenty-four ounces, or multiples of one pound. When multiple loaves are baked each unit of the loaf shall conform to the weight required by this section. The weights herein specified shall be construed to mean net weights twelve hours after baking and to be determined by the average weight of at least twenty-five loaves. Such unit weights shall not apply to rolls and such bread as shall be defined as fancy bread by the Secretary of Agriculture. Every loaf of bread manufactured for sale, sold, offered or exposed for sale shall have affixed thereon a plain statement in plain position of the weight of the loaf of bread, the business name of the maker, baker, or manufacturer. In the case of wrapped bread such information shall be stated on the wrapper of each loaf and in the case of unwrapped bread shall be stated by means of a pan impression or other mechanical means or shall be stated on a label using plain legible type. Such label affixed to an unwrapped loaf shall not be affixed in any manner or with any gums or pastes which are unsanitary and unwholesome, and there shall not be more than one label of a loaf or unit. (Id. § 1090-37.)

56. Rules and Regulations for Enforcement of Provisions of Law; Notice Before Prosecution.—The Secretary of Agriculture shall prescribe such rules and regulations as may be necessary to enforce the preceding section, including reasonable tolerances or variations within which all weights shall be kept, provided, however, that such tolerances or variations shall not exceed one ounce per pound over or under the standard unit for single loaves, provided, however, that tolerance permitted in the weighing of twenty-five or more loaves shall not exceed one-half ounce per pound. The said secretary, and under his direction, the local sealers of weights and measures, shall cause the provisions of this section to be enforced. Before any prosecution is begun under this section the parties against whom the complaint is made shall be notified and be given an opportunity to be heard by said secretary. (Id. § 1090-38.)

57. Notice in Writing to Delinquent Manager.—If, after inspection, it is found that a bakery is not constructed, maintained, operated, or the distribution of its products not conducted in accordance with this act, notice in writing shall be given to the owner or manager, stating the delinquency, and fixing a reasonable time within which the same shall be remedied and for a hearing to any party in interest. (Id. § 1090-39.)

58. When and How Bakery Ordered Closed.—In case a bakery is unfit for the production and handling of food or dangerous to the health of its employees, the State or city department making the inspection may order the bakery or such part as may be found so unfit or so dangerous closed; provided, that any aggrieved person shall have the right to be heard before said department, or board, as the case may be, and shall also have a right of appeal, before or after the execution of such order, but within thirty days of its issuance, to the courts. (Id. § 1090-40.)

59. Registration of Bakery Within 60 Days; Fee.—Within sixty days after the taking effect of this act each bakery in the State of Ohio shall register with the Secretary of Agriculture. For such registration the owner or operator of each

bakery shall pay an annual fee of $2.00 for each oven operated in said bakery and said registration shall be renewed annually during the month of September. The registration of said bakery shall show its location, including street and number, name of ownership and name of manager. (Id. § 1090-41.)

60. Building Plans and Equipment Must be Approved; Right of Appeal.—No new bakery shall be established unless the building plans and equipment proposed to be used have been approved by the Department of Agriculture or by the board of health of the city or town. Said department or board shall refuse a permit to such bakery if the building and equipment do not comply with the provisions of this act and the rules and regulations made hereunder; provided, however, that any party in interest shall have the right of appeal to the Department of Agriculture or to the courts. Said department or court may affirm, reject or modify the findings of the board, and the said board shall thereupon proceed in accordance with the order of the court or department. (Id. § 1090-42.)

61. Violation of Act; Penalty.—A violation of any provision of this act or any rule or regulation adopted herein, shall, for the first offense, be fined not less than $25.00 nor more than $100.00, and for each subsequent offense not less than $100.00 nor more than $300.00. (Id. § 1090-43.)

62. Plumbing and Ventilation of Bakeries.—All bakeries shall be drained and plumbed in a sanitary manner and provided with such air-shafts, windows or ventilating pipes, as the chief inspector of workshops and factories or a district inspector directs. No cellar or basement shall be used as a bakery. (Id. § 1012.)

63. Wash Rooms, Etc., Apart From Bakery.—Each bakery shall be provided with a suitable wash room and water-closet apart from the bake room where manufacturing of food products is conducted. No water-closet, earth-closet, privy or ash pit shall be in or communicate directly with a bake shop or any bakery for a hotel or public restaurant. (Id. § 1013.)

64. Height of Room; Side Walls and Ceiling.—Each room used for the manufacture of flour and meal food products shall be at least eight feet in height. Side walls of such a room shall be plastered or wainscoted and the ceiling plastered or ceiled with lumber or metal. If required by the inspector of workshops and factories, such side walls and ceilings must be whitewashed or painted at least once in three months. The furniture, utensils and machinery of each room shall be so arranged as to be easily moved and the furniture and floor kept thoroughly cleaned and in a sanitary condition. (Id. § 1014.)

65. Storage of Manufactured Products.—Manufactured flour or meal food products shall be kept in dry and airy rooms so arranged that the floors, shelves and other facilities for storing them can be easily and thoroughly cleaned. (Id. § 1015.)

66. Sleeping Places.—The sleeping places for persons employed in a bakery shall be kept separate from a room in which flour and meal products are manufactured or stored. The chief inspector of workshops and factories or a district inspector may inspect such sleeping places, if they are on the same premises as the bakery, and order them cleaned and changed in compliance with sanitary principles. (Id. § 1016.)

67. Certificate of Chief Inspector.—If, on inspection of a bakery, it is found that the provisions herein relating to bakeries have been complied with, the Chief Inspector of Workshops and Factories may issue a certificate to the owner or operator of such bakery that is being conducted in accordance with such provisions. (Id. § 1017.)

68. Compliance With Order Before Certificate.—If an order has been issued by the inspector to improve the condition of a bakery, such certificate shall not be issued until such order has been complied with. (Id. § 1018.)

69. Penalty.—Whoever violates any provision herein relating to bakeries or refuses to comply with a requirement of the Chief Inspector of Workshops and Factories or a district inspector made as provided herein shall be fined not less than twenty dollars nor more than fifty dollars, and not less than fifty dollars nor more than two hundred dollars, or imprisonment not more than ten days, for each succeeding offense. (Id. § 1019.)

70. Duties of District Inspectors Assigned to Bakeries.—Each inspector of workshops and factories assigned to a district or the inspection of bakeries therein, shall visit each bakery in his district as often as practicable, see that the laws relating to workshops and factories and the laws relating to bakeries are strictly enforced, and perform such other duties pertaining to the Department of Workshops and Factories as the chief inspector directs. (Id. § 990.)

NOTE: See also Nos. 15, 212 et seq. (in particular, 258), and 322 et seq.

Beverages.*

71. Term "Soft Drinks" Defined—License Required—Application; Examination; Fee, Inspection.—The term "soft drinks" as used in this act shall be held to mean and include any carbonated soda water, artificial or natural mineral water, and all other similar non-alcoholic carbonated or non-carbonated beverages.

No person, firm or corporation shall manufacture and bottle for sale within this State any such soft drink without a license issued by the Secretary of Agriculture of Ohio.

Such license shall be issued only on written application stating the location at which such manufacture is to be conducted, and the applicant shall furnish the Secretary of Agriculture with a sample of each such soft drink so proposed to be manufactured. Upon receipt of the application the Secretary of Agriculture shall cause an examination to be made into the sanitary conditions of such place of manufacture, and may also cause an analysis to be made of such samples, or any of them. If the buildings so to be used be found by the Secretary of Agriculture in a sanitary condition, and if the analysis of said samples show the same to be unadulterated and free from harmful drugs and other ingredients injurious to health, the Secretary of Agriculture, upon the payment of a license fee of fifty dollars ($50.00), shall cause a license to be issued authorizing the applicant to manufacture any such soft drinks as hereinafter provided. Said license shall run one year unless sooner revoked as herein provided, and shall be renewed annually thereafter upon the payment of the same fee and compliance with same conditions.

All such soft drinks and places of manufacture of same shall be subject to inspection as hereinafter provided. (G. C. 1926, § 1089-3.)

72. Soft Drinks From Outside the State, Subject to Inspection; Registration; Fee.—No such bottled soft drink that is manufactured out of the State of Ohio shall be sold or offered for sale within this State unless the same is first inspected and analyzed and approved as above by the Secretary of Agriculture, and registered by him, which shall be upon a like application as above provided, and a fee of fifty dollars ($50.00) shall be paid therefor. Like samples for such inspection and analysis shall be furnished as above provided. Such registration shall be renewed annually upon the same terms and conditions and subsequent inspections and analysis may be made by the Secretary of Agriculture at any time in his discretion for the purpose of ascertaining whether or not the standard and quality of such soft drinks is being maintained. (Id. § 1089-4.)

73. Retailer Must Register All Soft Drinks in Possession; License Fee.—No person, firm or corporation shall sell or offer for sale, or have in his possession with intent to sell, any soda water syrup or extract, or soft drink syrup, to be used in making, drawing or dispensing soda water or other soft drinks, without first registering his name and address and the name and address of the manufacturer thereof, and the number and variety of such syrups or extracts so intended to be sold, the trade name or brand thereof, if any be adopted, with the Secretary of Agriculture, together with such samples of the same as the Secretary of Agriculture may from time to time request for the purpose of analysis. He shall also pay into the State treasury at the time of making such registration a license fee of five dollars ($5.00) and said license shall not be granted by the Secretary of Agriculture unless he determine that said syrup or extract is free from all harmful drugs and other ingredients injurious to health. Said registration shall be renewed annually upon like terms; provided that whenever any manufacturer, agent or seller shall have paid his fee, his agent or seller using the same shall not be required to do so.

The provisions of this section shall not apply to local sellers of soft drinks as to such syrups and extracts made by themselves for their own use exclusively.

All moneys collected by the Secretary of Agriculture under the provisions of this act shall be paid into the State treasury. (Id. § 1089-5.)

74. Appointment of Inspector; Revocation of License.—The Secretary of Agriculture is authorized to appoint an inspector, in addition to those already employed in his department, whose duty shall be to represent and assist him in the enforcement of the provisions of this act.

The Secretary of Agriculture shall have the power to revoke any license issued under the provisions of this act whenever he shall determine that any provisions of this act have been violated. Any person, firm or corporation whose license has been so revoked shall discontinue the manufacture and sale of soft drinks, syrups

*See No. 17a et seq. This law is to be corrected accordingly.

and extracts, until the provisions of this act have been complied with and a new license issued.

The Secretary of Agriculture may revoke such license temporarily until there is a compliance with such conditions as he may prescribe, or permanently for the unexpired term of such license. (Id. § 1089-6.)

75. Notice of Revocation; Hearing.—Before revoking any license the Secretary of Agriculture shall give written notice to the licensee affected, stating that he contemplates the revocation of the same and giving his reasons therefor. Said notice shall appoint a time of hearing, before said secretary and may be sent by registered mail to the licensee. On the day of hearing, the licensee may present such evidence to the secretary as he deems fit, and after hearing all testimony, the secretary shall decide the question in such manner as to him appears just and right. (Id. § 1089-7.)

76. Appeal to Common Pleas Court.—Any such person whose license has been revoked or registration cancelled, as above provided, who feels aggrieved at the decision of the Secretary of Agriculture, may appeal from said decision within ten days to the Common Pleas Court of Franklin county, or of the county in which such manufactory or the principal place of business of such seller of syrups and extracts is located, and issue shall be made up in said court upon said appeal, and the same shall be tried and disposed of therein. (Id. § 1089-8.)

77. Bottled Soft Drink Defined.—For the purpose of this act a bottled soft drink, except pure non-alcoholic fruit juices, shall consist of a beverage made from pure cane or beet sugar syrup containing pure flavoring materials with or without added fruit acid, with or without added color, and shall contain in the finished product not less than 7 per cent sugar, provided that nothing in this act shall prohibit the use of any other harmless ingredient in the manufacture of such soft drinks, but any substitute for sugar used in such manufacture shall be equal in sweetening power to 7 per cent cane or beet sugar, and the use of saccharin is prohibited. And provided further that, whenever artificial coal tar colors are used, nothing but the certified colors as approved by the Federal government are permissible. The provisions of this section shall not apply to retailers who do not bottle soft drinks, except as to saccharin; and all bottled soft drinks not in compliance with the standards established by this act shall be deemed to be adulterated. All adulterations of any of the drinks, extracts or other article mentioned in this act shall be unlawful. (Id. § 1089-9.)

78. When Soft Drinks Shall be Labeled "Artificially Colored and Flavored," Etc.—Whenever artificial colors and artificial flavors are used in the manufacture of soft drinks to imitate a natural product, the bottle or other container shall be distinctly labeled "Artificially Colored and Flavored" by a printed label upon the side thereof, or said words may be upon the metal crown or cap thereon. All other non-alcoholic ciders, fruitades, fruit juices or other similar drinks that are made in imitation of the natural products shall be properly and distinctly labeled in the manner above provided with the word "imitation" followed by the name of the beverage. If the drinks and beverages above mentioned and containing artificial coloring or artificial flavoring of any character are sold in bulk, label or sign containing the words "Artificially Colored, Artificially Flavored," or "Artificially Colored, Imitation Flavor," and printed or painted in letters not less than one inch long and of appropriate comparative width shall be displayed in a conspicuous place on the counters or shelves, or in all stands, booths or other places where such drinks or beverages are sold or dispensed. When such drinks or beverages contain artificial color and natural fruit flavor, it shall be sufficient to label the same "Artificially Colored." When they contain artificial flavors and no artificial color they may be labeled "Artificial Flavor" or "Imitation Flavor." (Id. § 1089-10.)

79. When Manufactured Waters Shall be Labeled.—All manufactured waters, whether compounded and made in imitation of specified natural water or not, shall be labeled either as "Artificial" or "Imitation." The word "Artificial" or "Imitation" shall be placed at the top of the label, and shall be in letters of a size equal to or greater than any other wording on the label and equally as prominent, and the label shall have a uniform background.

All natural waters which have anything added to them or abstracted from them shall be labeled in the same manner with either of said words, and the manner in which the same has been so altered shall be clearly stated on the label.

Waters made in imitation of any natural spring water or mineral water, and bearing the name of such spring water or mineral water, as provided above, shall contain the same chemical ingredients and composition as the natural water after which they are so named.

All mineral waters whether of natural or artificial origin sold or offered for sale must be of good quality when judged by the results of the sanitary chemical

analysis, special significance being attributed to the presence of nitrite, to free ammonia in excess of 0.05 miligram per liter, and to an undue amount of organic matter, if not so found, they shall be deemed to be adulterated. (Id. § 1089-11.)

80. Sterilizing Containers and Apparatus.—All bottles except siphons used in the manufacture of soft drinks, before being filled, shall be sterilized by soaking in a hot caustic solution of not less temperature than one hundred and twenty degrees Fahrenheit, that shall contain not less than three per cent, caustic or alkali expressed in terms of sodium hydrate for a period of not less than five minutes, then thoroughly rinsed in clean water until free from alkali or sodium hydrate. Each and every bottle so sterilized, when filled with a soft drink, must be distinctly labeled with the true name thereof in the manner above provided. (Id. § 1089-12.)

81. Ventilation of Building.—All buildings, stores, factories or other places where such soft drinks are manufactured or bottled shall be well lighted and ventilated and shall be kept at all times in a clean and sanitary condition. All machines, bottles, jars or other utensils used in the manufacture of soft drinks shall be kept at all times in a clean and sanitary place and in a sanitary condition. (Id. § 1089-13.)

82. Provisions as to Rubber Stopper.—No bottles shall be used in the manufacture of soft drinks in which the metal or rubber part of the stopper comes in contact with the beverage.

The provisions of this section shall not apply to carbonated water put up in "siphons." (Id. § 1089-14.)

83. Enforcement of Law.—The Secretary of Agriculture shall enforce the provisions of this act and shall make suitable rules and regulations for carrying out its provisions. (Id. § 1089-15.)

84. Penalty for Violations.—Any person, firm or corporation who shall do any of the acts or things prohibited, or neglect or refuse to do any of the acts or things required by this act, or in any way violates any of its provisions, or who neglects or refuses to comply with any order of the Secretary of Agriculture, or in any manner obstructs or resists him in the performance of his duties, shall be deemed guilty of a misdemeanor and fined not more than one hundred dollars ($100); and for the second or subsequent offense may be fined a like sum or imprisoned in the county jail for a period of not more than ninety days, or both, at the discretion of the court. (Id. § 1089-16.)

85. Manufacturing or Selling Poisoned Liquors.—Whoever uses an active poison in the manufacture or preparation of intoxicating liquor or sells intoxicating liquor so manufactured or prepared, shall be imprisoned in the penitentiary not less than one year nor more than five years. (Id. § 12675.)

86. Poisonously Adulterated Liquors.—Whoever for the purpose of sale, adulterates spirituous, alcoholic or malt liquor used or intended for drink or medicinal or mechanical purposes, with cocculus indicus, vitriol, grains of paradise, opium, alum, capsicum, copperas, laurel water, log wood, Brazil wood, cochineal, sugar of lead, aloes, glucose, tannic acid or any other substance which is poisonous or injurious to health, or with a substance not a necessary ingredient in the manufacture thereof, or sells, offers or keeps for sale liquors so adulterated, shall be fined not less than twenty dollars nor more than one hundred dollars or imprisoned not less than twenty days nor more than sixty days, or both. (Id. § 12676.)

87. Costs and Expenses.—In addition to the penalties provided in the next preceding section, a person convicted thereunder shall pay all necessary costs and expenses incurred in inspecting and analyzing liquors so adulterated, sold, kept or offered for sale. (Id. § 12677.)

88. Putting Adulterated Liquors in Branded Packages.—Whoever puts adulterated liquor into a barrel, cask or other vessel, branded or marked "pure" by an inspector in this State, or knowingly sells or offers such liquor for sale in packages so branded, shall be imprisoned in the penitentiary not more than twelve months. (Id. § 13211.)

89. Failing to Properly Brand Packages of Liquor.—Whoever, manufacturing and selling intoxicating liquor, fails to brand on each package thereof the name of the person or company manufacturing, rectifying or preparing it, and the words "containing no poisonous drugs or other added poison," shall be fined not more than one thousand dollars and imprisoned not less than one month nor more than six months. (Id. § 13212.)

90. Adulterated Liquors.—Whoever adulterates spirituous or alcoholic liquor, except for medicinal or mechanical purposes, by mixing a substance with it or sells or offers such liquor for sale, knowing it to be so adulterated, shall be fined not less than one hundred dollars nor more than five hundred dollars, and imprisoned not less than ten days nor more than thirty days. (Id. § 13213.)

91. Selling Uninspected Liquors.—Whoever sells or offers to sell spirituous liquors, not inspected as provided by law, shall be fined not less than one hundred dollars nor more than five hundred dollars and imprisoned not less than ten days or more than thirty days. (Id. § 13214.)

NOTE: See also Nos. 38, 212 et seq. (in particular, 251 et seq.), 304 et seq., 408 et seq., 460 et seq., and 475.

Biscuit.

See No. 212 et seq., and in particular 258.

Bread.

See Nos. 15, 40 et seq., and 322 et seq.

Canned Goods.*

92. Unlabeled Canned Fruits and Vegetables.—Whoever, being a packer or dealer in preserved or canned fruits, vegetables or other articles of food, offers them for sale unless they bear a mark to indicate the grade or quality, and the name and address of the person, firm or corporation packing or dealing therein, except such as are brought from foreign countries, shall be fined not less than fifty dollars if a vender, nor more than one thousand dollars if a manufacturer or packer. (G. C. 1926, § 12775.)

93. Falsely Stamping Fruit or Vegetable Packages.—Whoever falsely stamps or labels cans or jars containing preserved fruit, vegetables or other articles of food or knowingly permits such false stamping or labeling, shall be fined not less than five hundred dollars nor more than one thousand dollars; and whoever sells or offers to sell such cans or jars shall be fined not less than fifty dollars. (Id. § 12776.)

94. Label of "Soaked" Goods.—Whoever manufactures, sells or offers to sell "soaked" goods or goods put up from products dried before canning, without plainly marking them with an adhesive label having on its face the word "soaked," in letters not less in size than two line pica of solid and legible type, shall be fined not less than fifty dollars, if a vender, and not less than five hundred dollars nor more than one thousand dollars, if a manufacturer or packer. (Id. § 12777.)

95. Board of Health to Prosecute Under Three Preceding Sections.—Every board of health shall prosecute a person, firm or corporation which it has reason to believe has violated any provision of the next three preceding sections; and, after deducting the costs of trial, retain the residue of fines recovered for the use of such board. (Id. § 12778.)

96. Commercial Canneries Under the Supervision of State Secretary; Inspection.—All commercial vegetable and fruit canneries located within the State of Ohio shall be under the supervision and subject to the regulations of the Secretary of Agriculture. For the purpose of this act a commercial cannery is hereby defined to be a place or building where fruits or vegetables are packed in hermetically sealed containers and sterilized, and the products of which are placed on the market for general consumption as human food; but shall not be held to include private homes where farmers or others pack such fruits and vegetables for their own use and make occasional sales of a surplus thereof. At such times as the Secretary of Agriculture may deem proper he shall cause to be inspected all such canneries where fruits or vegetables are packed and preserved, and shall require the correction of all insanitary conditions, and may enter and search all places in or about the premises of any such cannery for the purposes of such inspection and investigation. (Id. § 1090.)

97. Inspectors of Canneries; Duties.—The Secretary of Agriculture shall appoint and assign, upon the passage of this act, an efficient and experienced inspector of canneries who has a thorough knowledge of the canning business, who shall have charge of such inspection, and whose duties it shall be to visit and inspect commercial fruit and vegetable canneries as often as may be required; see that such canneries and the operation thereof shall comply with the provisions of this act and with the regulations made by the Secretary of Agriculture hereunder; superintend the work of special inspectors stationed at canneries; and make reports thereof to the Secretary of Agriculture. (Id. § 1090-1.)

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*See No. 17a et seq. This law is to be corrected accordingly.

98. Special Inspector; Duties.—The Secretary of Agriculture shall, whenever he deems it necessary, furnish an efficient special inspector to be stationed at a commercial cannery or group of canneries while in operation, who shall see that such canneries and the operation thereof shall at all times comply with the provisions of this act and with such regulations made by the Secretary of Agriculture and that none but fit, wholesome and sound raw material is used in the preparation of such canned food products. (Id. § 1090-2.)

99. When Fruit Shall be Condemned.—Fruits or vegetables unfit for human food shall not be packed at any cannery, and shall be condemned as being unfit for such use by the Inspector of Canneries or by such special inspector. (Id. § 1090-3.)

100. When Canned Fruits, Vegetables, Etc., May be Labeled and Sold; Certificate of Inspection—Certain Label May be Authorized.—Any person, firm or corporation owning or operating such cannery where fruits or vegetables are packed, canned or preserved in hermetically sealed containers to be sold as food, may label and sell the same as having been packed in compliance with the laws of Ohio and the regulations of the Secretary of Agriculture, provided the person, firm or corporation packs, cans or preserves a product which is made from sound, fit and wholesome raw materials and which is absolutely free from chemical coloring matter and adulterants of any kind and whose canneries and cannery operations comply with the provisions of this act and the regulations of the Secretary of Agriculture. The Secretary of Agriculture shall furnish to each cannery that shall have fully complied with the provisions of this act and with such regulations, a certificate of inspection that such cannery has been inspected and has complied with all such laws and regulations. The Secretary of Agriculture may authorize the owner, owners or operators of such canneries to use a label or certificate on his products to read substantially as follows: "Packed and inspected in compliance with the laws of Ohio and regulations of the Department of Agriculture," or such other device or certificate with the words "Inspected and Approved" thereon, as the Secretary of Agriculture may from time to time designate by published regulations. (Id. § 1090-4.)

101. Location Must be in Sanitary Place.—No commercial cannery shall be located in an insanitary place or one which cannot be made sanitary or maintained in a sanitary condition, or where it is impossible to receive the raw material in a cleanly manner without danger of damage or contamination; or where sewage, garbage and other refuse can not be quickly and effectively removed. (Id. § 1090-5.)

102. Removal of Garbage and Waste Daily.—All garbage and waste material shall be removed daily to a distance of not less than one hundred feet from any building used in preparing or handling fruits and vegetables intended for canning, provided, however, that this section does not apply to the storage upon the premises of a cannery of by-products in silos or other structures or containers or in sacks, if such storage is made in an approved manner and is not a direct menace to proper sanitation. (Id. § 1090-6.)

103. Keeping Live Stock Near Cannery.—Horses, cattle or other live stock shall not be kept or fed within seventy-five feet of any building, shed, room or place while used for the preparation of canned fruits or vegetables or for the storage of raw materials intended for canning. (Id. § 1090-7.)

104. Ventilation and Light; Floor Construction.—Any building used in the preparation or handling of fruits or vegetables intended for canning shall be suitably ventilated and lighted either by artificial or natural means. All floors in such buildings shall be so constructed as to permit proper washing or cleaning, and sufficient drains, gutters or sewers provided to insure the proper removal of water and liquid waste. First floors shall be waterproofed in such manner as will prevent the ground below from becoming wet, sloppy or insanitary. (Id. § 1090-8.)

105. Provisions as to Toilets.—Separate toilet rooms for each sex shall be provided upon the premises of all canneries, said toilets to be completely separated from work rooms by tight partitions and properly lighted and having an opening to the outside air. When outdoor toilets without modern plumbing and sewerage systems are used, such toilets shall be located at least 75 feet from any building, room or place used in the preparation or canning of fruits and vegetables. All doors, windows and other openings in toilets, whether same be located within buildings or out of doors shall be screened against flies. (Id. § 1090-9.)

106. Wash Rooms, Lavatories, Etc.—Wash rooms, wash stations or lavatories for employees shall be provided in or adjacent to rooms or places used for the preparation or canning of fruits and vegetables, and such rooms or stations must be properly lighted and ventilated and provided with facilities necessary for keeping them in a sanitary condition. (Id. § 1090-10.)

107. Smoking or Spitting.—It shall be unlawful for any person to smoke or to spit on floors or walls in any room or building where fruit or vegetables intended for canning are being prepared or handled. (Id. § 1090-11.)

108. Employment of Diseased Person Prohibited.—Persons affected with tuberculosis or other communicable or infectious disease shall not be employed in or about any commercial cannery. (Id. § 1090-12.)

109. Clean Garments.—All employees who assist in preparing or handling fruit or vegetables intended for canning shall wear clean garments of washable fabrics and all female employees engaged in the same work shall wear clean washable caps covering the hair. (Id. § 1090-13.)

110. Utensils and Equipment Must be Kept in Sanitary Condition.—All machinery, belts, chains, conveyors, utensils, and other equipment used in the preparation or handling of food or materials intended for food in commercial canneries shall be thoroughly cleaned daily and kept in a clean and sanitary condition. All cans and other containers intended for the hermetic sealing of such food products shall be washed, steamed or sterilized before filling. (Id. § 1090-14.)

111. Fruits, Etc., Must be Washed and Cleaned.—All fruits and vegetables in preparation for canning shall be thoroughly washed or cleaned before being scalded, blanched, cooked or filled into containers. (Id. § 1090-15.)

112. Syrups, Brine, Etc.—Only potable water shall be used for making syrups or brine for canned fruits or vegetables or for washing equipment coming in contact with such material intended for canning. (Id. § 1090-16.)

113. License Required—Application; Investigation; Fee—Suspension or Surrender of License—Notice; Hearing; Evidence—Appeal to Board; Hearing.——No person, firm or corporation shall engage in the business of operating a commercial cannery, without first obtaining a license for the operation of each such cannery from the Secretary of Agriculture.

In order to obtain such license an application shall be made, for which the Secretary of Agriculture may prescribe the form and which shall be accompanied by a fee of fifteen dollars. The Secretary of Agriculture shall thereupon cause an investigation to be made, and if it be found that the applicant is supplied with the facilities necessary for complying with this act, and that such commercial cannery is in sanitary condition, such license shall be issued and shall run for one year and shall be thereafter renewed upon the same conditions and payment.

The Secretary of Agriculture may suspend any such license temporarily for failure to comply with the provisions of this act or any regulation or order made by him hereunder, and shall have the power finally to revoke the same for such cause.

Before any such suspension or revocation of a license is made the Secretary of Agriculture shall give written notice to the licensee that he contemplates the suspension or revocation of the same and giving his reasons therefor. Such notice shall appoint a time for hearing before said Secretary of Agriculture and may be sent by registered mail to the licensee. On the day of the hearing the licensee may present such evidence as he desires and after hearing the evidence the Secretary of Agriculture shall decide the matter in such manner as to him appears just and right.

A licensee shall have the right to appeal to the Board of Agriculture from any such decision of the Secretary of Agriculture suspending or revoking his license, within three days from the time of receiving notification of such suspension or revocation, and such appeal shall stay the enforcement of such suspension or revocation until the decision of the Board of Agriculture. The Board of Agriculture shall fix a time for hearing such appeal and give such licensee opportunity to be heard and to produce evidence, and after hearing such evidence the Board of Agriculture shall either affirm or disaffirm or modify said decision of the Secretary of Agriculture. (Id. § 1090-17.)

114. Publication of Bulletins of Information.—At such times as the Secretary of Agriculture may deem proper he shall issue public bulletins of information, report and publish the conditions found in canneries, furnish and disseminate information regarding the canning industry and for that purpose may arrange for educational exhibits, demonstrations, public meetings, and give instructions to processors, superintendents, and managers of canneries as to the meaning and interpretation of this act and the regulations made by him hereunder. Such information shall be available to any person who is a resident of this State, and those now engaged in the business of canning, and to those who may hereafter engage therein, who may properly apply therefor. (Id. § 1090-18.)

115. Funds Authorized.—The Secretary of Agriculture is hereby authorized to use funds available for the appropriations made for the general use of his department to enable him to carry this act into effect. (Id. § 1090-19.)

116. Enforcement of Law.—The Secretary of Agriculture shall enforce the provisions of this act and shall make suitable rules and regulations for carrying out its provisions. (Id. § 1090-20.)

117. Penalty for Violations of Law.—Whoever shall, without authorization by the Secretary of Agriculture, and without inspection by the Inspector of Canneries or special inspectors appointed by the Secretary of Agriculture, use the certificate or label as provided for in section 4 of this act [1090-3], or any other device authorized by the Secretary of Agriculture, or who shall use any raw materials, articles, or substances forbidden to be used in canning, or who shall violate any of the provisions of this act shall be guilty of a misdemeanor and shall upon conviction for the first offense be fined not less than fifty dollars nor more than two hundred dollars, and for the second offense shall be fined not less than one hundred dollars nor more than five hundred dollars, or imprisoned in the county jail for not less than ten days nor more than sixty days, or both.

This act shall take effect and be in force from and after the earliest period allowed by law. (Id. § 1090-21.)

NOTE: See also No. 322 et seq.

Canneries.

See Nos. 17a, 92 et seq., and 322 et seq.

Cider.

See Nos. 78, 302, 304, 413, and 460 et seq.

Cold Storage.*

118. "Cold Storage" Defined.—The term "cold storage," as used in this act, shall mean the storage of food, at or below a temperature of forty degrees Fahrenheit, in a cold storage warehouse. (G. C. 1926, § 1155-1.)

119. "Cold Storage Warehouse" Defined.—The term "cold storage warehouse," as used in this act, shall mean a place artificially cooled by the employment of refrigerating machinery or ice or other means, in which articles of food are stored, for thirty days or more, at a temperature of forty degrees Fahrenheit, or lower. (Id. § 1155-2.)

120. "Food" Defined.—The term "food" as used in this act, shall mean the fresh flesh of animals, and fresh products therefrom, the fresh flesh of fowls, fish, eggs and butter, which have been stored in a cold storage warehouse. (Id. § 1155-3.)

121. "Container" Defined.—The word "container" as used in this act, shall be taken to mean any bag, barrel, basket, bottle, box, caddy can, canister, carton, crate, firkin, hogshead, jar, jug, keg, stopper, vessel, wrapper, frozen bulk, or any similar or analagous utensil, receptacle, band or wrapper in which food may be kept, stored, sold, or offered for sale. (Id. § 1155-4.)

122. "Marked" Defined.—The word "marked" as used in this act, shall be taken to mean written, printed, stamped or painted, or any other means whereby words or figures may be indicated in or on a container, or any cover attached thereto. (Id. § 1155-5.)

123. "Wholesome" Defined.—The term "wholesome" as used in this act, shall mean fit for human food. (Id. § 1155-6.)

124. License to Operate Cold Storage Warehouse; Examination.—No person, firm, or corporation shall operate a cold storage warehouse without a license issued by the Director of Agriculture of Ohio. Such license shall be issued only on written application stating the location of such warehouse. Upon receipt of the application the Director of Agriculture shall cause an examination to be made into the sanitary conditions of such warehouse. If it be found to be in a sanitary condition and properly equipped for the purpose of cold storage, the Director of Agriculture shall cause a license to be issued authorizing the applicant to operate a cold storage warehouse. No license shall be issued until the applicant therefor shall have paid to the Director of Agriculture the sum of fifty dollars. Such license shall be issued and shall run for one year, and shall be thereafter renewed annually upon the same conditions and payment. A license shall be required for each separate warehouse building within the State. (Id. § 1155-7.)

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*See No. 17a et seq. This law is to be corrected accordingly.

125. When Warehouse Shall be Closed.—Whenever any warehouse licensed under the provisions of this act, or any portion of such warehouse, shall be deemed by the Secretary of Agriculture to be in an unsanitary condition, it shall be the duty of the secretary to cause such warehouse, or portion thereof, to be closed. (Id. § 1155-8.)

126. Record of Receipts and Withdrawals of Food Required; Quarterly Statement of Kinds and Quantities of Food Products Held.—It shall be the duty of every person, firm, or corporation that shall be licensed to operate a cold storage warehouse to keep an accurate record of the receipts and withdrawals of food therefrom. The agents of the Secretary of Agriculture shall have free access to such records at all times. It shall be the duty of each person, firm, or corporation licensed to operate a cold storage warehouse to file in the office of the Secretary of Agriculture on or before the sixth day of January, April, July and October, of each year, a report setting forth in itemized form the kind and quantities of food products held in cold storage in such warehouse. The report shall be made on printed forms prepared and supplied by the Secretary of Agriculture. The Secretary of Agriculture may cause such other reports to be filed and at such times as it may deem advisable. (Id. § 1155-9.)

127. Unlawful to Place Unwholesome Food in Cold Storage.—It shall be unlawful for any person, firm or corporation to place in any cold storage warehouse, to keep therein, or to sell, offer or expose for sale, any diseased, tainted, or otherwise unwholesome food, or to place in cold storage any slaughtered animals or parts thereof unless the entrails and other offensive parts have first been properly removed. (Id. § 1155-10.)

128. Date of Deposit Stamped on Food.—All food shall at the time it is deposited in any cold storage warehouse bear the date of such deposit plainly stamped thereon. Such food shall also bear a stamp indicating the date of removal. The marking of food as provided in this section shall be under such further regulations as may be prescribed by the Secretary of Agriculture. (Id. § 1155-11.)

129. Unlawful to Sell Without Printed Placard "Wholesome Cold Storage Food" Attached.—It shall be unlawful for any person, firm, or corporation, or any agent thereof to sell, or offer or expose for sale, or have in possession with intent to sell at wholesale, any cold storage food, unless there shall be placed on each container thereof, in a conspicuous place in full view of the purchaser, a placard with the word "wholesome cold storage food" printed thereon, in plain uncondensed gothic letters not less than one-half inch in length. In addition, all such food shall be marked with the date when it is withdrawn from such cold storage warehouse. There shall also be displayed upon every open container containing such food in the same manner, in a conspicuous position, in full view of the purchaser, a placard with the words "wholesome cold storage food" printed thereon in the same form as above described in this section, when such food is sold from such container or otherwise at retail. (Id. § 1155-12.)

130. Length of Time Certain Foods May be Kept in Cold Storage.—No person, firm or corporation shall sell, or offer, or expose for sale, any of the following foods which have been held for a longer period of time than herein specified in a cold storage warehouse: Whole carcasses of beef, or any parts thereof, twelve months; whole carcasses of pork, or any parts thereof, twelve months; whole carcasses of sheep, or any parts thereof, twelve months; whole carcasses of lamb, or any parts thereof, twelve months; whole carcasses of veal, or any parts thereof, twelve months; dressed fowl, twelve months; eggs, twelve months; butter, twelve months; and fresh fish, twelve months. (Id. § 1155-13.)

131. Food Withdrawn May Not be Returned to Storage.—After food has been withdrawn from any cold storage warehouse for the purpose of placing it on the market for sale, it shall be unlawful for any person, firm, or corporation to return such food, or any portion thereof, to such warehouse, or any other similar warehouse. Food may be transferred from one cold storage warehouse to another; provided, that the total length of time such food shall remain in cold storage, for the purpose of sale, shall not exceed the time specified in section thirteen of this act. (Id. § 1155-14.)

132. Sale of Food Kept in Storage Outside of State.—No food shall be sold, or offered or exposed for sale, in this State, which shall have been placed or stored in any cold storage warehouse outside of this State, unless it first shall have been marked as provided for in section twelve of this act; provided, however, that no such food shall be sold, or offered or exposed for sale, in this State, if the total length of time that such food has remained in cold storage shall exceed the time specified in section thirteen of this act. (Id. § 1155-15.)

133. Transactions to Which Act Does Not Apply.—Nothing in this act shall be construed to prohibit the shipping, consigning or transporting of fresh food in properly refrigerated cars within this State to points of destination; nor to prohibit such food when received from being held in a cooling room for a period of forty-eight hours; nor to prohibit the keeping of fresh food in ice boxes or refrigerators in retail stores while the same is offered or exposed for sale. (Id. § 1155-16.)

134. Enforcement of Act.—It shall be the duty of the Secretary of Agriculture to enforce all the provisions of this act and to make all rules and regulations, not otherwise herein provided, necessary for the enforcement of the same. (Id. § 1155-17.)

135. Application of Fees and Fines.—All license fees, fines and penalties imposed and recovered for the violation of any of the provisions of this act shall be paid into the State treasury to the credit of the general revenue fund. (Id. § 1155-18.)

136. Penalty.—Whoever violates any of the provisions of this act shall be guilty of a misdemeanor and upon conviction thereof shall for the first offense be fined not more than five hundred dollars, and for the second and each subsequent offense not more than one thousand dollars, and in addition thereto imprisoned in the jail of the proper county not less than thirty nor more than ninety days, or both. (Id. § 1155-19.)

NOTE: See also Nos. 37 and 322 et seq.

Confectionery.

137. Manufacture and Sale of Adulterated Candy; Samples.—Whoever manufactures for sale, sells or offers for sale, candy with an admixture of terra alba, barytes, talc or other mineral substance, or with poisonous colors or flavors or other ingredients deleterious or detrimental to health, or, being a manufacturer of or dealer in candy, refuses, upon demand and a tender of payment therefor, to furnish a sample thereof for analysis, shall be fined not less than twenty-five dollars nor more than one hundred dollars or imprisoned not less than thirty days nor more than one hundred days, or both, and shall pay all costs and expenses incurred in inspecting and analyzing such adulterated candy which shall be forfeited and destroyed under the direction of the court. (G. C. 1926, § 12762.)

NOTE: See also Nos. 5, 7, and 322 et seq.

Dairy Products—Substitutes for Dairy Products.*

138. Definition of Adulterated Milk.—In all prosecutions under this chapter, if milk is shown upon analysis to contain more than eighty-eight per cent of watery fluid, or to contain less than twelve per cent of solids or three per cent of fats, it shall be deemed to be adulterated. (G. C. 1926, § 12716.)

139. Per Cent. of Milk Fat Cream Shall Contain.—Cream shall consist of that portion of milk, rich in milk fat, which rises to the surface of milk on standing, or is separated from it by centrifugal force. It shall contain eighteen per cent of milk fat. Whipping cream is cream which contains not less than thirty per cent of milk fat. The word cream or any combination or association of the word cream, shall not be used as a name or part of a name or any imitation of, or substitute for cream or milk or skim milk mixture of less than eighteen per cent. milk fat in connection with the sale of such imitation or substitute, or in any hotel, restaurant or place where cream is sold, delivered or served. (Id. § 12716-1.)

140. Sale or Exchange of Cream Which Does Not Conform With Requirements, Unlawful; Penalty.—Whosoever sells, exchanges, delivers or has in his custody or possession with intent to sell or exchange, or exposes or offers for sale or exchange cream or whipping cream which does not conform with the requirements in section 1 [12716-1] of this act, and whoever uses the word cream or any combination or association of the word cream in violation of the provisions of section 1 [12716-1] of this act shall be fined not less than fifty dollars nor more than two hundred dollars; and for a second offense shall be fined not less than one hundred dollars nor more than three hundred dollars, or imprisoned in the jail or workhouse not less than thirty days nor more than sixty days. Nothing in this act shall be construed to prohibit the sale of a mixture of milk or cream with skim-milk

*See No. 17a et seq. This law is to be corrected accordingly.

powder, milk powder, or condensed milk and sold or delivered for manufacturing purposes when properly labeled and the content stated thereon. (Id. § 12716-2.)

141. Sale of Adulterated Milk.—Whoever sells, exchanges, or delivers, or has in his custody or possession with intent to sell or exchange, or exposes or offers for sale or exchange, adulterated milk, or milk to which water or any foreign substance has been added, or milk from cows fed on wet distillery waste or starch waste, or from cows kept in a dairy or place which has been declared to be in an unclean or unsanitary condition by certificate of any duly constituted board of health or duly qualified health officer within the county in which said dairy is located, or from diseased or sick cows, shall be fined not less than fifty dollars nor more than two hundred dollars; and for a second offense, shall be fined not less than one hundred dollars nor more than three hundred dollars, or imprisoned in the jail or workhouse not less than thirty days nor more than sixty days. (Id. § 12717.)

142. Penalty for Subsequent Offense.—For a subsequent offense, a person violating the next preceding section shall be fined fifty dollars and imprisoned in the jail or workhouse not less than sixty days nor more than ninety days. (Id. § 12718.)

143. Misrepresentation as to Pure Milk—Standardized Milk Not Prohibited, When Labeled.—Whoever sells, exchanges, delivers or has in his custody or possession with intent to sell or exchange, or exposes or offers for sale as pure milk, any milk from which the cream or part thereof has been removed, shall be fined not less than fifty dollars nor more than two hundred dollars. For a second offense he shall be fined not less than one hundred dollars nor more than three hundred dollars or imprisoned in the jail or workhouse not less than thirty days nor more than sixty days, and, for a subsequent offense, shall be fined fifty dollars and imprisoned in the jail or workhouse not less than sixty days nor more than ninety days.

The provisions of this chapter shall not be construed to prohibit the sale, exchange or delivery or having in custody or possession with intent to sell, exchange or deliver, standardized milk, which is milk or [of] which the original fat content has been changed by partial skimming or by the addition of skimmed milk, cream or milk rich in fat, and which contains not less than three and one-half per cent of milk fats and twelve per cent total solids, if the can or vessel containing such milk be labeled standardized milk and the percentage of butter fat contained in such milk or in unstandardized milk sold at retail be plainly stated on the label permitting a two-tenths of one per cent tolerance on one or more bottles, cans or vessels, but an average of twenty-five bottles, vessels or cans shall contain the required stipulated percentage of fat. (Id. § 12719.)

144. "Skimmed Milk" Must be so Labeled.—Whoever sells, exchanges, delivers or has in his custody or possession with intent to sell, exchange or deliver, milk from which the cream or part thereof has been removed, except standardized milk complying with the provisions of section 12719, unless in a conspicuous place above the center and upon the outside of each vessel, can or package, from which or in which such milk is sold, the words "skimmed milk" are distinctly marked in uncondensed Gothic letters not less than one inch in length, shall be fined not less than fifty dollars nor more than two hundred dollars. (Id. § 12720.)

145. Price Paid Producers Based Upon Percentage of Butter Fat.—The price paid to the producers of milk by the dealers or manufacturers shall be based upon milk containing 3.5 per cent butter fat; and a differential may be paid which should be greater for milk containing more than 3.5 per cent butter fat and less for milk containing less than 3.5 per cent butter fat. And whoever is guilty of a violation of this provision shall be fined not less than fifty dollars nor more than two hundred dollars. (Id. § 12720-1.)

146. Subsequent Offense.—For a second offense, a person violating the next preceding section shall be fined not less than one hundred dollars nor more than three hundred dollars or imprisoned in the jail or workhouse not less than thirty days nor more than sixty days, and, for a subsequent offense, shall be fined fifty dollars and so imprisoned not less than sixty days nor more than ninety days. (Id. § 12721.)

147. Standard Milk Measure or Pipette.—Whoever uses a standard measure of milk or cream other than that which is defined in this section, where milk or cream is purchased by or furnished to creameries or cheese factories and where the value of such milk and cream is determined by the per cent of butter fat contained therein by the Babcock test, shall be fined not less than twenty-five dollars nor more than one hundred dollars. In the use of the Babcock test the standard milk measures or pipettes shall have a capacity of 17.6 cubic centimeters and the standard

test tubes or bottles for milk shall have a capacity of two cubic centimeters for each ten per cent marked on the necks thereof. The standard unit of cream for testing shall be eighteen grams. (Id. § 12722.)

148. Selling or Offering Incorrectly Marked Measures.—Whoever offers for sale or sells a milk pipette or measure, test tube or bottle which is not correctly marked or graduated as provided in the next preceding section, shall be fined not less than twenty-five dollars nor more than one hundred dollars. (Id. § 12723.)

149. Manipulating the Babcock Test.—Whoever, at a cheese factory, creamery, condensed milk factory or other place where milk is tested for quality or value, manipulates, underreads or overreads the Babcock test or any other contrivance used for determining the quality or value of milk or cream, or makes a false determination by the Babcock test or otherwise, shall be fined not less than twenty-five dollars nor more than one hundred dollars. (Id. § 12724.)

150. Condensed Milk.—Whoever manufactures, sells, exchanges, exposes or offers for sale or exchange, condensed milk unless it has been made from pure, clean, fresh, healthy, unadulterated and wholesome milk, from which the cream has not been removed and in which the proportion of milk solids shall be the equivalent of twelve per cent of milk solids in crude milk, twenty-five per cent of such solids being fat, and unless the package, can or vessel containing it is distinctly labeled, stamped or marked with its true name, brand, and by whom and under what name made, shall be fined not less than fifty dollars nor more than two hundred dollars, and, for each subsequent offense, shall be fined not less than one hundred dollars nor more than five hundred dollars and imprisoned not less than ten days nor more than ninety days. (Id. § 12725.)

151. Delivery of Adulterated Milk to Cheese and Butter Factories.—Whoever, with intent to defraud, sells, delivers, or causes to be delivered, to a cheese or butter factory, milk which is adulterated or diluted within the meaning of the law, or from which any cream has been taken, or from which the part known as "stripping" has been withheld, or keeps or renders a false account of the quantity or weight of milk furnished at or to a factory or sold to a manufacturer, shall be fined not less than fifty dollars nor more than two hundred dollars, and, for each subsequent offense, shall be fined not less than one hundred dollars nor more than five hundred dollars and imprisoned not less than ten days nor more than ninety days. (Id. § 12726.)

152. Impure or Unhealthy Milk.—Whoever sells, exchanges, or offers for sale or exchange, unclean, impure, unhealthy or unwholesome milk, shall be fined not less than fifty dollars nor more than two hundred dollars, and for each subsequent offense, shall be fined not less than one hundred dollars nor more than five hundred dollars and imprisoned not less than ten days nor more than ninety days. (Id. § 12727.)

153. Milk, Falsely Branded or Labeled.—Whoever sells, exchanges, exposes, offers for sale, or exchange, has in his possession or disposes of milk which is falsely branded, labeled, marked or represented as to grade, quantity or place where produced or procured, shall be fined not less than fifty dollars nor more than two hundred dollars, and for each subsequent offense shall be fined not less than one hundred dollars nor more than five hundred dollars and imprisoned not less than ten days nor more than ninety days. (Id. § 12728.)

154. Keeping Unhealthy Cow.—Whoever keeps a cow for the production of milk in a cramped or unhealthy condition, or feeds it on unhealthy food, or on food which produces impure, unhealthy or unwholesome milk, shall be fined not less than fifty dollars nor more than two hundred dollars, and for each subsequent offense, shall be fined not less than one hundred dollars nor more than five hundred dollars and imprisoned not less than ten days nor more than ninety days. (Id. § 12729.)

155. Refilling Milk and Cream Bottles.—Whoever fills or refills with milk, cream, or other milk product a glass jar or bottle, with intent to sell such milk, cream or other milk product, unless such glass jar or bottle is first thoroughly cleansed or sterilized, shall be fined not more than one hundred dollars. (Id. § 12730.)

156. Licensing Ice Cream Plants and Defining and Regulating the Sale of Ice Cream.—For the purposes of this act the various forms of ice cream as a commercial product in this State are hereby defined as follows:

(a) Ice cream is a frozen product made from pure, wholesome, sweet unneutralized cream and sugar with or without wholesome, harmless flavoring, and if desired the addition of pure wholesome milk solids and not to exceed one-half of one per cent by weight of harmless thickener or stabilizer and containing not less than eight per cent by weight of milk fat. The acidity shall not exceed three-tenths of one per cent and it shall not weigh less than four and one-fourth pounds per gallon.

(b) Fruit ice cream is a frozen product made from pure, wholesome, sweet cream and sugar and fruit mixture, and if desired the addition of pure wholesome milk solids and not to exceed one-half of one per cent, by weight, of harmless thickener or stabilizer and containing not less than eight per cent, by weight, of milk fat.

(c) Nut ice cream is a frozen product made from pure, wholesome, sweet cream, sugar and sound, non-rancid nuts, and if desired the addition of pure wholesome solids and not to exceed one-half of one per cent, by weight, of harmless thickener or stabilizer and containing not less than eight per cent, by weight, of milk fat.

(d) Egg ice cream is a frozen product made from pure, whole, sweet cream, sugar and fresh, wholesome eggs, and if desired the addition of pure wholesome milk solids and not to exceed one-half of one per cent, by weight, of harmless thickener or stabilizer and containing not less than eight per cent, by weight, of milk fat. (Id. § 12730-1.)

157. Product Upon Which the Name Ice Cream May Not be Used.—The word ice cream, or a combination or association of the word ice cream, shall not be used as a name or a part of a name of any imitation or substitute for cream or milk or skim-milk mixture, of less than eight per cent of milk fats in ice cream, and eight per cent milk fats in fruit, nut or egg ice cream, in any hotel, restaurant, or place where ice cream is sold, delivered or served. (Id. § 12730-2.)

158. License Must be Obtained Before Manufacture.—No person, firm or corporation, shall be engaged in the business of operating a commercial ice cream plant without first obtaining a license for the operation of such a factory from the Secretary of Agriculture. Application for such license shall be made to the Secretary of Agriculture in such manner as he may prescribe and shall be accompanied by a fee of one dollar and fifty cents ($1.50) for each gallon capacity of the freezer or freezers used. The Secretary of Agriculture shall thereupon cause an investigation to be made and if it be found that the applicant is supplied with the facilities necessary to operate a sanitary ice cream plant, and the plant is in a sanitary condition, the Secretary of Agriculture shall cause a license to be issued which shall be in effect for one year and may be renewed upon the same conditions and payment of the same fee, annually thereafter. (Id. § 12730-3.)

159. Suspension of License; Notice of Hearing.—The Secretary of Agriculture may suspend any such license temporarily for failure to comply with the provisions of this act, or any regulations or order made by him hereunder, and shall have the power finally to revoke the same for such cause. Before any such suspension or revocation of a license is made, the Secretary of Agriculture shall give written notice to the licensee that he contemplates the suspension or revocation of the same and giving his reasons therefor. Such notice shall appoint a time for hearing before said Secretary of Agriculture and may be sent by registered mail to the licensee. On the day of the hearing, the licensee may present such evidence as he desires, and after hearing the evidence, the Secretary of Agriculture shall decide the matter in such manner as to him appears just and right. (Id. § 12730-4.)

160. Appeal by Licensee to Board of Agriculture.—A licensee shall have the right to appeal to the Board of Agriculture from any such decision of the Secretary of Agriculture suspending or revoking his license, within three days from the time of receiving notification of such suspension or revocation, and such appeal shall stay the enforcement of such suspension or revocation until the decision of the Board of Agriculture. The Board of Agriculture shall fix a time for hearing such appeal and give such licensee opportunity to be heard and to produce evidence, and after hearing such evidence, the board of Agriculture shall either affirm or disaffirm or modify such decision of the Secretary of Agriculture. (Id. § 12730-5.)

161. Operation in Violation of Law; Penalty.—Whoever sells, exchanges, delivers, or has in his custody or possession with intent to sell, exchange or deliver, ice cream not made in accordance with the provisions of § 1 [12730-1] of this act, or, whoever, engages in the operation of a commercial ice cream plant without first obtaining a license from the Secretary of Agriculture shall be fined not less than fifty dollars nor more than two hundred dollars, and for the second offense shall be fined not less than one hundred dollars nor more than five hundred dollars. (Id. § 12730-6.)

162. "Commercial Ice Cream Plant" Defined.—For the purpose of this act, a commercial ice cream plant is hereby defined as a place or building in which ice cream is manufactured for the purpose of being placed on the open market for general consumption as human food, in hotels, restaurants, ice cream parlors, or amusement places, by wholesale and retail dealers, but does not include ice cream manufactured in private homes, clubs or any gathering of a co-operative, social nature. (Id. § 12730-7.)

163. Placards to be Displayed by Dealers.—Whoever sells, deals in, keeps for sale, exposes or offers for sale or exchanges, a substance other than butter or cheese made wholly from pure milk or cream, salt and harmless coloring matter, which appears to be, resembles or is made in imitation of, or as a substitute for, butter or cheese, without keeping a card, not less than ten by fourteen inches in size in a conspicuous place where it may be easily seen and read in the store, room, stand, booth, wagon or place where such substance is, on which is printed upon a white ground in black Roman letters, not less in size than twelve line pica, the words "oleomargarine sold here," or "imitation cheese sold here," and no other words, or sells oleomargarine, suine, imitation cheese or other dairy product at retail or in any quantity less than the original package, tub, or firkin, unless he shall first inform the purchaser that the substance is not butter or cheese, but an imitation thereof, shall be fined not less than fifty dollars nor more than two hundred dollars, and for each subsequent offense shall be fined not less than one hundred dollars or more than five hundred dollars and imprisoned not less than ten days or more than ninety days. (Id. § 12731.)

164. Placards to be Displayed by Hotel Proprietors, Etc.—Whoever, being a proprietor, keeper, manager, or person in charge of a hotel, boarding house, restaurant, eating house, lunch counter, lunch room, boat, railroad car or other place, therein sells, uses, disposes of, furnishes, serves, or uses in cooking, a substance which appears to be, resembles, or is made in, or as an imitation of, or a substitute for butter or cheese which is not wholly made from pure milk or cream, salt and harmless coloring matter, without keeping a card in a conspicuous place therein, which shall be white and not less than ten by fourteen inches, in size, upon which shall be printed in plain, black Roman letters, not less than twelve line pica, the words "oleomargarine sold and used here," or "imitation cheese sold and used here," and no other words, or sells, furnishes or disposes of such substance as and for butter or cheese made from pure milk or cream, salt and harmless coloring matter, when butter or cheese is asked for, shall be fined not less than fifty dollars nor more than two hundred dollars, and for each subsequent offense shall be fined not less than one hundred dollars nor more than five hundred dollars, and imprisoned not less than ten days nor more than ninety days. (Id. § 12732.)

165. Unhealthy Dyes in Oleomargarine.—Whoever manufactures oleomargarine which contains methyl orange, butter-yellow, annatto, aniline dyes or other coloring matter, shall be fined not less than one hundred dollars nor more than five hundred dollars, and, for each subsequent offense, in addition to the above fine, may be imprisoned not more than ninety days. (Id. § 12733.)

166. Selling Oleomargarine Containing Same.—Whoever, not being a manufacturer thereof, offers or exposes for sale, sells or delivers, or has in his possession with intent to sell or deliver oleomargarine which contains methyl-orange, butter-yellow, annatto, aniline dyes or other coloring matter, shall be fined not less than fifty dollars nor more than one hundred dollars. (Id. § 12734.)

167. Oleomargarine Defined.—The word "oleomargarine" as used in the next two preceding sections means any substance, not pure butter of not less than eighty per cent of butter fats, which is made as a substitute for, in imitation of, or to be used as butter. (Id. § 12735.)

168. Notice to Guest or Patron of Hotel, Etc.—Whoever furnishes, or causes to be furnished, in a hotel, restaurant or lunch counter, "filled cheese" or "skimmed cheese," or a substance made in imitation or semblance of cheese, or as a substitute therefor, not made entirely from milk or cream, with salt, rennet and harmless coloring matter, to a guest or patron thereof, instead of cheese, and fails to notify him that the substance so furnished is not cheese, shall be fined not less than ten dollars nor more than fifty dollars for each offense. (Id. § 12736.)

169. Selling or Offering Imitation or Substitute When Cheese Called For.—Whoever sells or offers for sale, to a person asking, sending or inquiring for cheese, an article, substance or compound made in imitation or semblance of or as a substitute for cheese, not made entirely from milk or cream, with salt, rennet and harmless coloring matter, and containing not less than ten per cent pure butter fats, shall be fined not less than fifty dollars nor more than one hundred dollars or imprisoned in the county jail not less than ten days nor more than thirty days, and, for each subsequent offense, shall be fined not less than one hundred dollars nor more than two hundred dollars or imprisoned in the county jail not less than twenty days nor more than sixty days, or both. (Id. § 12737.)

170. Failure to Placard Sides of Vehicle.—Whoever peddles, sells, solicits orders for the future delivery of or delivers from a cart, wagon, or other vehicle, upon the public streets or ways, "filled cheese," "skimmed cheese" or a substance made in imitation or semblance of cheese or as a substitute for cheese, not made entirely from milk, or cream, with salt, rennet and harmless coloring matter, not

having on both sides of such cart, wagon, or other vehicle a placard in uncondensed Gothic letters not less than three inches in length containing the words "filled cheese" or "skimmed cheese" and no other words, shall be fined not less than fifty dollars nor more than one hundred dollars or imprisoned in the county jail not less than ten days nor more than thirty days, and, for each subsequent offense, shall be fined not less than one hundred dollars nor more than two hundred dollars or imprisoned in the county jail not less than twenty days nor more than sixty days or both. (Id. § 12738.)

171. Posting of Placard at Place of Business.—Whoever sells "filled cheese," "skimmed cheese" or a substance made in imitation or semblance of cheese, or as a substitute for cheese, not made entirely from milk or cream, with salt, rennet and harmless coloring matter, from a dwelling, store, office or public mart, without having conspicuously posted thereon a placard or sign in letters not less than four inches in length "filled cheese sold here," or "skimmed cheese sold here," and no other words, shall be fined one hundred dollars and one hundred dollars for each day's failure thereafter to conform to such provision of law. (Id. § 12739.)

172. Restrictions on Manufacture of Artificial Dairy Products.—Whoever manufactures out of any oleaginous substance, or a compound thereof, other than that produced from unadulterated milk or cream, salt and harmless coloring matter, an article designed to be sold as butter or cheese made from pure milk or cream, salt or harmless coloring matter, shall be fined not less than fifty dollars nor more than two hundred dollars, and, for each subsequent offense, shall be fined not less than one hundred dollars nor more than five hundred dollars and imprisoned not less than ten days nor more than ninety days. This section shall not prevent the use of pure skimmed milk in the manufacture of cheese. (Id. § 12740.)

173. Restrictions on Sale of Artificial Dairy Products.—Whoever sells, exposes or offers for sale or exchange, a substance purporting, appearing or represented to be butter or cheese, or having the semblance thereof, which is not made wholly from pure milk or cream, salt and harmless coloring matter, unless it is done under its true name and each vessel, package, roll or parcel of such substance has distinctly and durably painted, stamped, stenciled or marked thereon its true name and the name of each article or ingredient used or entering the composition thereof in ordinary bold faced letters, not less than five line pica in size, or sells or disposes of such substance without delivering with each amount sold or disposed of a label so marked, shall be fined not less than fifty dollars nor more than two hundred dollars, and, for each subsequent offense, shall be fined not less than one hundred dollars nor more than five hundred dollars and imprisoned not less than ten days nor more than ninety days. (Id. § 12741.)

174. Selling or Offering Imitation or Substitute Without Proper Brands and Placard.—Whoever sells or offers for sale, an article, substance or compound made in imitation or semblance of cheese, or as a substitute for cheese, not made entirely from milk or cream, with salt, rennet and harmless coloring matter, not marked and distinguished by all the marks, words and stamps required by law, and not having in addition thereto upon the exposed contents of every opened tub, box or parcel thereof, a conspicuous placard with the words, "filled cheese" or "skimmed cheese," as the case may be, printed thereon in plain, uncondensed letters not less than one inch long, shall be fined not less than fifty dollars nor more than one hundred dollars or imprisoned in the county jail not less than ten days nor more than thirty days, and, for each subsequent offense, shall be fined not less than one hundred dollars nor more than two hundred dollars or imprisoned in the county jail not less than twenty days nor more than sixty days, or both. (Id. § 12742.)

175. Branding "Full Milk Cheese" and "Ohio State Full Cream Cheese;" Penalty.—Whoever puts a brand indicating "full milk cheese" upon cheese made of milk from which any of the cream has been taken or uses such brand without having obtained from the Secretary of Agriculture in conformity to law, a stencil brand containing the words, "Ohio State full cream cheese," or uses such brand upon other than full cream cheese or a package containing such cheese, shall be fined not less than fifty dollars nor more than one hundred dollars or imprisoned in the county jail not less than ten days nor more than thirty days, and for each subsequent offense, shall be fined not less than one hundred dollars nor more than two hundred dollars or imprisoned in the county jail not less than twenty days nor more than sixty days or both. (Id. § 12743.)

176. Skimmed Cheese.—The next preceding section shall not prohibit the manufacture and sale of full skimmed cheese from pure, wholesome and unadulterated milk that is skimmed. (Id. § 12744.)

177. Sale of "Filled Cheese."—Whoever sells, exposes for sale or has in his possession with intent to sell, an article, substance or compound made in imitation or semblance of cheese, or as a substitute therefor, not made exclusively of milk or

cream, with salt, rennet and harmless coloring matter, or containing fats, oils or grease not produced from milk or cream, without having the words "filled cheese" stamped, labeled or marked in printed letters of plain, uncondensed Gothic type, not less than one inch in length so that the words can not easily be defaced, upon the side of each cheese, cheesecloth or band around it, and upon the top and side of each tub, firkin, box, or package containing it, shall be fined not less than fifty dollars nor more than one hundred dollars or imprisoned in the county jail not less than ten days or more than thirty days, and for each subsequent offense, shall be fined not less than one hundred dollars nor more than two hundred dollars or imprisoned in the county jail not less than twenty days nor more than sixty days, or both. (Id. § 12745.)

178. Label of "Skimmed Cheese;" Penalty.—Whoever sells, exposes for sale or has in his possession with intent to sell, cheese made exclusively of milk or cream with salt, rennet, and with or without harmless coloring matter and containing less than twenty-one per cent of pure butter fat, without having the words, "skimmed cheese," stamped, labeled or marked in printed letters of plain, uncondensed Gothic type not less than one inch in length so that the words can not easily be defaced, upon the side of each cheese, cheese cloth or band around it, and upon the top and side of each tub, firkin, box or package containing it, shall be fined not less than fifty dollars nor more than one hundred dollars or imprisoned in the county jail not less than ten days nor more than thirty days, and, for each subsequent offense, shall be fined not less than one hundred dollars nor more than two hundred dollars or imprisoned in the county jail not less than twenty days nor more than sixty days, or both. (Id. § 12746.)

179. Label of "Ohio Standard Cheese;" Penalty.—Whoever sells, exposes for sale or has in his possession with intent to sell, cheese made exclusively of milk or cream with salt, rennet, and with or without harmless coloring matter, containing 21 per cent, or more and less than 30 per cent, of pure butter fat without having the words "Ohio standard cheese" stamped, labeled or marked in printed letters of plain uncondensed Gothic type not less than one inch in length so that the words cannot easily be defaced, upon the side of each cheese, cheese cloth or band around it, and upon the top and side of each tub, firkin, box or package containing it, shall be fined not less than fifty dollars nor more than one hundred dollars. (Id. § 12746-1.)

180. Same Not in Original Package.—Whoever retails "filled cheese" or "skimmed cheese," as provided in the next two preceding sections, not in the original package, without attaching to each piece or package sold or delivered, a wrapper or label bearing in a conspicuous place on the outside of the package the words "filled cheese" or "skimmed cheese" in printed letters of plain, uncondensed Gothic type not less than one inch in length, shall be fined not less than fifty dollars nor more than one hundred dollars or imprisoned in the county jail not less than ten days nor more than thirty days, and, for each subsequent offense, shall be fined not less than one hundred dollars nor more than two hundred dollars or imprisoned in the county jail not less than twenty days nor more than sixty days, or both. (Id. § 12747.)

181. Erasing or Cancelling Label on Filled or Skimmed Cheese.—Whoever sells, exposes for sale or has in his possession with intent to sell, an article, substance or compound made in imitation or semblance of cheese, or as a substitute for cheese, except as provided in the next three preceding sections, or with intent to deceive, defaces, erases, cancels or removes a mark, stamp, brand, label or wrapper provided for in such sections, or falsely labels, stamps or marks a tub, box, article or package so marked, stamped or labeled, shall be fined not less than fifty dollars nor more than one hundred dollars or imprisoned in the county jail not less than ten days nor more than thirty days, and, for each subsequent offense, shall be fined not less than one hundred dollars nor more than two hundred dollars, or imprisoned in the county jail not less than twenty days nor more than sixty days, or both. (Id. § 12748.)

182. Fraudulent Shipments of Dairy Products.—Whoever packs, boxes, encloses, ships or consigns a substance as butter or cheese made from pure milk or cream, salt and harmless coloring matter in such a manner as to conceal an inferior article by placing a finer grade of butter or cheese upon the surface of it, shall be fined not less than fifty dollars nor more than two hundred dollars, and, for each subsequent offense, shall be fined not less than one hundred dollars nor more than five hundred dollars and imprisoned not less than ten days nor more than ninety days. (Id. § 12749.)

183. Falsely Marked Imitation Dairy Products.—Whoever sells, exchanges, exposes or offers for sale or exchange, disposes of or has in his possession a substance made in imitation or resemblance of, or a substitute for a dairy product which is falsely branded, stenciled, labeled or marked as to the place where made, the name or cream value thereof, its composition, or ingredients or in any other

respect, shall be fined not less than fifty dollars nor more than two hundred dollars, and, for each subsequent offense, shall be fined not less than one hundred dollars nor more than five hundred dollars and imprisoned not less than ten days nor more than ninety days. (Id. § 12750.)

184. Selling Falsely Branded Dairy Products.—Whoever sells, exchanges, exposes or offers for sale or exchange, disposes of or has in his possession a dairy product which is falsely branded, stenciled, labeled or marked, as to the place where made, date of manufacture, name or cream value thereof, composition, ingredients, or in any other respect, or cheese wholly made from skimmed milk not having on the box or can containing it the words, "made from skimmed milk," shall be fined not less than fifty dollars nor more than two hundred dollars, and, for each subsequent offense, shall be fined not less than one hundred dollars nor more than five hundred dollars and imprisoned not less than ten days nor more than ninety days. (Id. § 12751.)

185. Mixing Improper Articles With Butter or Cheese.—Whoever manufactures, mixes, compounds with or adds to pure milk, cream, butter or cheese, animal fat, animal, mineral or vegetable oils, acids or other deleterious ingredients, or manufactures an oleaginous or other substance not produced from pure milk or cream, salt and harmless coloring matter, or has in his possession or sells, offers or exposes it for sale or exchange, with intent to sell or dispose of it as and for butter or cheese made from unadulterated milk or cream, salt and harmless coloring matter, shall be fined not less than fifty dollars nor more than two hundred dollars, and, for each subsequent offense, shall be fined not less than one hundred dollars nor more than five hundred dollars and imprisoned not less than ten days nor more than ninety days. (Id. § 12752.)

186. Improper Use of Words "Butter," Etc.—Whoever places on a package, roll, parcel or vessel containing an imitation dairy product not made wholly from pure milk or cream, salt and harmless coloring matter the words "butter," "creamery" or "dairy" or any word or combination of words embracing them, shall be fined not less than fifty dollars nor more than two hundred dollars, and, for each subsequent offense, shall be fined not less than one hundred dollars nor more than five hundred dollars and imprisoned not less than ten days nor more than ninety days. (Id. § 12753.)

187. Use of Imitation Butter or Cheese at Public Institutions.—Whoever, in a charitable or penal institution of the State, having charge of the purchase of butter or cheese, knowingly purchases any butter or cheese which is not made wholly from pure milk or cream, salt and harmless coloring matter, and permits it to be used in such institution, shall be fined not less than fifty dollars nor more than two hundred dollars, and, for each subsequent offense, shall be fined not less than one hundred dollars nor more than five hundred dollars and imprisoned not less than ten days nor more than ninety days. (Id. § 12754.)

188. Manufacturing or Selling "Renovated Butter" or "Process Butter."—Whoever manufactures for sale, offers or exposes for sale, sells, exchanges, delivers or has in his possession with intent to sell, exchange or deliver, butter that is produced by taking original packing stock butter or other butter, or both, melting such butter so that the butter fat can be drawn off or extracted, mixing such butter fat with milk, cream, skimmed milk, or other milk product and reworking or rechurning such mixture, or manufactures for sale, offers or exposes for sale, sells, exchanges, delivers or has in his possession for any of such purposes butter which has been subjected to any process by which it is melted, clarified or refined, and made to resemble butter, and is commonly known as boiled, or cold extracted process or renovated butter, and which is hereby designated as "renovated butter" or "process butter," unless it is branded or marked as provided in the next succeeding section, shall be fined not less than fifty dollars nor more than two hundred dollars, and, for each subsequent offense, shall be fined not less than one hundred dollars nor more than three hundred dollars, or imprisoned in the county jail or workhouse not less than thirty days nor more than sixty days, or both. (Id. § 12755.)

189. Labeling and Packing Such Butter.—Whoever sells, exposes for sale or has in his custody or possession, with intent to sell, "renovated butter" or "process butter," as defined in the next preceding section, unless the words "renovated butter" or "process butter" are conspicuously stamped, labeled or marked in one or two lines and in plain Gothic letters, at least three-eighths of an inch square, so that such words cannot easily be defaced, upon two sides of each tub, fifkin, [firkin], box or package containing it or exposes such butter for sale uncovered or not in a case or package, unless a placard containing such words in the form above described, is attached to the mass in such manner as to be easily seen and read by the purchaser; or sells such butter from such package or otherwise at retail, in print, roll or other form, unless before delivering to the purchaser thereof, it is contained in wrappers

upon the outside of which is plainly printed or stamped the words "renovated butter," or "process butter" in one or two lines in plain Gothic letters at least three-eighths of an inch square without other words or printing thereon and in plain view of said purchaser and not concealed, shall be fined not less than fifty dollars nor more than one hundred dollars, and, for each subsequent offense, shall be fined not less than one hundred dollars nor more than three hundred dollars or imprisoned in the county jail or workhouse not less than thirty days nor more than sixty days, or both. (Id. § 12756.)

190. Branding "Full Milk Cheese."—A manufacturer of full milk cheese may put a brand upon each cheese manufactured by him indicating "full milk cheese," with the date and year when made, but a person shall not use such brand upon a cheese made from milk from which any of the cream has been taken. (Id. § 5781.)

191. Uniform Stencil Brand for Cheese; Registration; Record; Fee.—The Secretary of Agriculture shall procure and issue to the cheese manufacturers of this State upon proper application made on or before the first day of April of each year and under such regulations as to the custody and use thereof as he may prescribe, a uniform stencil brand bearing a suitable device or motto, and the words "Ohio State full cream cheese." Such brand shall be used upon the outside of each cheese, cheese-cloth or band around it and upon the box or package containing it, and shall bear a separate number for each factory. Such brand shall not be used upon other than full cream cheese or packages containing it; provided, that no cheese shall be so branded unless it contains at least thirty per cent of pure butter fat. The secretary shall keep a book in which shall be registered the name, location and number of each manufacturer using such brand, and the name or names of the person in each factory authorized to use it, and he shall receive one dollar for each registration according to the provision of this section, such fee to be paid by the person applying for such registration. (Id. § 5782.)

192. Skimmed Cheese.—The next two preceding sections shall not prohibit the manufacture and sale of pure skimmed cheese made from milk that is clean, pure, wholesome, and unadulterated except by skimming. (Id. § 5783.)

193. Manufacturer of Butter or Cheese to Keep Account of Material Used.—A person, firm, company or corporation engaged in the business of manufacturing butter or cheese, or both, for others, shall keep accurate accounts, showing the exact weight of the milk received to be manufactured, and of the product thereof in butter or cheese, or both. (Id. § 5883.)

194. Mixed Product Awarded Ratably.—If milk is received from more than one person, and mixed in the manufacturing thereof, the accounts described in the next preceding section shall show the exact weight of the milk received from each, and the product, at the end of the month, shall be awarded ratably among such persons whose milk was used therein. (Id. § 5884.)

195. To Keep Account of Sales.—If the manufacturer is authorized to sell the product, the accounts shall show each sale thereof, the place where and to whom sold, the price at which sold, the gross proceeds, the commission or compensation, and the net share of each person whose milk was used in such manufacture. Dividends on sales shall be made and paid as contracted for by and between the parties. (Id. § 5885.)

196. Action for Refusal to Permit Examination.—The accounts heretofore required to be kept, shall be open to the examination of a person interested therein, who may take a copy of an account in which he is interested; such examining and copying to be done only at reasonable hours and without interfering with the keeping of such accounts. (Id. § 5886.)

197. Penalty.—A manufacturer failing to keep such accounts in the manner herein specified, or unreasonably preventing or obstructing such examination or copying, or, for three days after the time specified in section fifty-eight hundred and eighty-five, and upon demands, refusing or neglecting to deliver to any person the share of the product of such manufacturer to which he is entitled or to pay to a person his share of the proceeds of sale, shall forfeit all commission or compensation to which he would otherwise be entitled; and be liable for the milk received, to be manufactured, or manufactured and sold, at the highest market price, during the month in which it was delivered. (Id. § 5887.)

198. Penalty When Violation Relates to Milk, Cream or Butter Fat.—Whoever, being engaged in the business of buying milk, cream or butter fat, shall, for the purpose of creating a monopoly, or to restrain trade, or to prevent or limit competition, or to destroy the business of a competitor, discriminate between different sections, localities, communities or cities of this State, by purchasing such commodity at a higher price or rate in one locality than in another, after making due allowance for the difference, if any, in the actual cost of transportation from the locality of purchase to the locality of manufacture, shall be deemed guilty of

unfair discrimination and, upon conviction thereof, shall be punished by a fine not exceeding five hundred dollars, or by imprisonment not exceeding six months. (Id. § 6402-1.)

NOTE: See also Nos. 5, 8-10, 14-15, 18, 39, 118 et seq., 212 et seq. (in particular, 218 and 257), 322 et seq., and 460 et seq.

Eggs.

See Nos. 15 and 118 et seq.

Feeding Stuffs.*

199. Printed Statement on Outside of Package, Etc., Contents of Statement.—Whoever sells or offers for sale within this State any feed stuffs or condimental stock or poultry feeds, animal or poultry regulators, conditioners, tonics, or similar articles, for any of which any food value is claimed in any manner by the manufacturer or seller thereof, in car load lots or in bulk packages thereof, shall furnish with each car load or quantity in bulk or package thereof or affix to each bag, barrel or other package thereof, in a conspicuous place on the outside thereof, a plainly printed certificate, which shall state the number of net pounds in each car or quantity in bulk or in each package, the name, brand, or trade-mark, under which it is sold or offered for sale, the name, and post office address of the manufacturer, shipper or vendor, and the names of each and all ingredients of which the article is composed. Such certificate shall contain also, a chemical analysis of the product to be sold, which shall state the minimum percentages of crude protein, and crude fat and the maximum percentage of crude fibre of the product to be sold, allowing one per cent of nitrogen to equal six and one-fourth per cent of protein. The minimum percentages only of crude protein and crude fat and the maximum percentage of crude fibre guaranteed shall be stated. (G. C. 1926, § 1141.)

200. Name and Sample of Feed Stuffs Deposited With Secretary Before Sale.—Before selling or offering for sale, any of the feed stuffs, condimental stock and poultry feeds, animal or poultry regulators, conditioners, tonics or similar articles defined in section 1141 within this State, each person, firm or corporation shall file for each and every brand of such feed stuffs, condimental stock and poultry feeds, animal or poultry regulators, conditioners, tonics or similar articles, a distinguishing name with the Secretary of Agriculture and a certified copy of the certificate required by the preceding section and forward prepaid, on request of said board a sealed glass jar or bottle containing not less than one pound of such feed stuffs, condimental stock and poultry feeds, animal or poultry regulators, conditioners, tonics or similar articles with an affidavit that the quantity so forwarded is a fair sample of the product to be sold. (Id. § 1142-1.)

201. Annual License Fee; Rejection of License.—Before selling or offering for sale within this State any of such feed stuffs, condimental stock and poultry feeds, animal or poultry regulators, conditioners, tonics, or similar articles, defined in section 1141, a person, firm or corporation manufacturing or compounding said articles, and selling or offering them for sale, either directly or indirectly in this State, shall pay each year a license fee to the Secretary of Agriculture for the sale of each brand of feed stuffs, condimental stock and poultry feeds, animal or poultry regulators, conditioners, tonics or similar articles, twenty dollars. The Secretary of Agriculture may reject any application for license if the certificate provided for in the preceding sections is misleading or not distinguishing. Upon the granting of such application and the payment of such fee said secretary shall issue a license for the current year. All licenses shall expire on the thirty-first day of December of each year. The payment of a license fee by such person, firm or corporation shall exempt an agent thereof, or dealer therein, from the requirements of this section; but until such license fee, which shall be the full license fee collected by the State for the privilege of selling or offering for sale any of the said brands in any one year, any person, firm or corporation selling or offering the same for sale shall be liable to the Secretary of Agriculture for said license fee of twenty dollars. (Id. § 1143.)

202. "Feed Stuffs," Defined.—"Feed stuffs" in general shall be held to include all feeds used for live stock and poultry, and the following and similar articles of commerce: linsead meal, linseed oil cake, cotton seed meal, cotton seed cake, pea meal, cocoanut meal, rice meal, rice bran, rice polish, peanut meal, bean meal,

*See No. 17a et seq. This law is to be corrected accordingly.

gluten feeds, dried brewers' grains, dried distillers' grains, dried beet refuse, malt sprouts, hominy feeds, cerealin feeds, oat feeds, mixed feeds, alfalfa meal, molasses feeds, sugar feeds, mixed buckwheat bran, buckwheat hulls and buckwheat middlings, corn and corncob meal, crushed ear corn, corn bran and corn siftings when added to other ground grains, wheat bran and screenings, ground or unground mixed feeds made from seeds or grains or grain offal, clover meals, dried blood, blood meal, tankage, ground beef or fish scraps or other animal or vegetable by-products; but such term shall not include hay, straw, whole seeds, unmixed meals made directly from the entire grains of wheat, rye, barley, Indian corn, buckwheat, broom corn, pure wheat bran or middlings, not mixed with other substances, when sold separately as distinct articles of commerce, nor entire grains of corn, oats, wheat, rye, barley, buckwheat ground together nor wheat bran and middlings not mixed with other substances. (Id. § 1144.)

203. Analysis of Feed Stuffs Each Year.—Each year at least one analysis shall be made of each brand of feed stuffs, condimental stock and poultry feeds, animal or poultry regulators, conditioners, tonics or similar articles, sold within this State. All such analyses shall be made under the direction of the Secretary of Agriculture, and the expenses thereof paid by said secretary from a fund arising from payment of license fees provided for in section 1143. (Id. § 1145.)

204. Authority to Take Samples for Analysis; Penalty for Obstructing the Taking of Samples.—For the purpose of analysis and comparison with the certificate deposited with it and with the certificate of any car load quantity in bulk, or package, the Secretary of Agriculture, or a person appointed by him, may take a quantity not exceeding two pounds from any car load, quantity in bulk or package of the feed stuffs, condimental stock and poultry feeds, animal or poultry regulators, conditioners, tonics or similar articles defined in section 1141 and exposed or offered for sale within this State, or in the possession of an agent, consumer or transportation company. In the performance of this duty said secretary, or a person appointed by him, may enter a car, warehouse, building or other structure containing such feed stuffs, condimental stock and poultry feeds, animal or poultry regulators, conditioners, tonics or similar articles. Any manufacturer, shipper, dealer, agent, clerk or other person, who shall impede, obstruct, hinder or otherwise prevent or attempt to prevent a duly authorized person from collecting samples as above described or otherwise shall be guilty of a misdemeanor and shall upon conviction, be fined not less than ten dollars nor more than fifty dollars. To have in one's possession any of the above-named articles shall for purposes of prosecution under this act be deemed to establish prima facie evidence that same is for sale. (Id. § 1146.)

205. Penalty for Failure to State or for Misstatement of Component Parts.—Whoever sells or offers for sale within the State feed stuffs, condimental stock and poultry feeds, animal or poultry regulators, conditioners, tonics or similar articles, defined in section 1141 without having complied with the provisions of this act relating to such feed stuffs, condimental stock and poultry feeds, animal or poultry regulators, conditioners, tonics or similar articles, and whoever sells or offers or exposes for sale any feed stuffs containing a smaller percentage of crude protein, or a smaller percentage of crude fat, or a larger percentage of crude fibre than it is certified to contain, and whoever sells or offers or exposes for sale, any condimental stock and poultry feeds, animal or poultry regulators, conditioners, tonics, or similar articles not containing ingredients they are certified to contain, and whoever substitutes one brand of feed for another without notifying the purchaser thereof of such substitution or attaching to each package or quantity in bulk a printed certificate as provided in section 1141 which shall state the true name, composition and chemical analysis of contents, and whoever sells or offers for sale adulterated feed shall be fined not less than fifty dollars nor more than two hundred dollars and shall be liable for damages sustained by the purchasers thereof. (Id. § 1147.)

206. What Shall be Deemed Adulteration.—For the purpose of this act feeding material should be deemed adulterated if it contains any saw dust, dirt, damaged feed, rice hulls, chaff, peanut shells, crushed corncob, oat hulls, or any foreign material whatever with little or no feeding value admixed. Provided, that no wholesome mixture of feed stuffs not containing any of the above-named adulterants shall be deemed to be adulterated if the ingredients composing same be plainly and clearly stated on the package and is made known to the purchaser, as hereinafter designated as commercial feed stuffs. (Id. § 1148.)

207. Courts Having Jurisdiction.—In all prosecutions under this act, a justice of the peace, police judge or mayor shall have final jurisdiction as in cases of violation of laws relating to the adulteration of food and drink and dairy products.

It shall be the duty of the Secretary of Agriculture or his deputized representative to bring prosecution for all violations under the provisions of this act, or the Attorney-General when requested to do so by said secretary. (Id. § 1149.)

208. **Annual Report of Secretary and Publication of Analyses.**—The Secretary of Agriculture shall make an annual report of, and may publish from time to time analyses made and chemists' findings of ingredients on samples drawn as provided in section 1146 together with the analysis and ingredients guaranteed by the manufacturer, shipper or person. Such annual report shall contain a statement of moneys received and expended, from license fees collected for the sale of feed stuffs, condimental stock and poultry feeds, animal or poultry regulators, conditioners, tonic or similar articles. Any unexpended balance shall be credited to the agricultural fund. (Id. § 1149-1.)

209. **Special Jurisdiction of Police Judges, Mayors and Justices.**—Justices of the peace, police judges and mayors of cities and villages shall have jurisdiction, within their respective counties, in all cases of violation of any law relating to: . . .

10. The sale, shipment or adulteration of commercial feed stuffs. . . . (Id. § 13423.)

Fish.

See Nos. 118 et seq., 212 et seq., and in particular 231 et seq.

Flavoring Extracts.

210. **Adulteration.**—A flavoring extract is adulterated within the meaning of this chapter* (1) if any substance or substances have been mixed with it, so as to lower or depreciate or injuriously affect its quality, strength or purity; (2) if any inferior or cheaper substance or substances have been substituted wholly, or in part, for it; (3) if any valuable or necessary constituent or ingredient has been wholly, or in part, abstracted from it; (4) if it is an imitation of, or sold under the name of another article; (5) if it is colored whereby damage or inferiority is concealed, or if it by any means is made to appear better or of greater value than it really is; (6) if it contains any added substance or ingredient which is poisonous or injurious to health; (7) if the strength, quality or purity falls below the professed standard under which it is sold; (8) if it contains any methyl or wood alcohol. (G. C. 1926, § 5779.)

211. **Same.**—A flavoring extract is also adulterated within the meaning of this chapter, if, when sold under or by any one of the following names it differs from the standard hereby fixed therefor: (1) Almond extract shall be the flavoring extract prepared from oil of bitter almonds, free from hydrocyanic acid, and shall contain not less than one per cent by volume of oil of bitter almonds; (2) anise extract shall be the flavoring extract prepared from oil of anise, and shall contain not less than three per cent by volume of oil of anise; (3) celery seed extract shall be the flavoring extract prepared from celery seed or the oil of celery seed, or both, and shall contain not less than three-tenths per cent by volume of oil of celery seed; (4) cassia extract shall be the flavoring extract prepared from oil of cassia, and shall contain not less than two per cent by volume of oil of cassia; (5) cinnamon extract shall be the flavoring extract prepared from oil of cinnamon, and shall contain not less than two per cent by volume of oil of cinnamon; (6) clove extract shall be the flavoring extract prepared from oil of cloves, and shall contain not less than two per cent by volume of oil of cloves; (7) ginger extract shall be the flavoring extract prepared from ginger, and shall contain in each one hundred cubic centimeters the alcohol soluble matters from not less than twenty grams of ginger; (8) lemon extract shall be the flavoring extract prepared from oil of lemons, or from lemon peel or both, and shall contain not less than five per cent by volume of oil of lemon; (9) terpenless extract of lemon shall be the flavoring extract prepared by shaking oil of lemon with dilute alcohol, or by dissolving terpenless oil of lemon in dilute alcohol, and shall contain not less than two-tenths per cent by weight of citral derived from oil of lemon; (10) nutmeg extract shall be the flavoring extract prepared from oil of nutmeg, and shall contain not less than two per cent by volume of oil of nutmeg; (11) orange extract shall be the flavoring extract prepared from oil of orange, or from orange peel, or both, and shall contain not less than five per cent by volume of oil of orange; (12) terpenless extract of orange shall be the flavoring extract prepared by shaking oil of orange

*See No. 1 et seq., of which law this is a part.

with dilute alcohol, or by dissolving terpenless oil of orange in dilute alcohol and shall correspond in flavoring strength to orange extract; (13) peppermint extract shall be the flavoring extract prepared from oil of peppermint or from peppermint, or both, and shall contain not less than three per cent by volume of oil of peppermint; (14) rose extract shall be the flavoring extract prepared from otto of roses, with or without rose petals, and shall contain not less than four-tenths per cent by volume of otto of roses; (15) savory extract shall be the flavoring extract prepared from oil of savory, or from savory, or both, and shall contain not less than thirty-five hundredths per cent by volume of oil of savory; (16) spearmint extract shall be the flavoring extract prepared from oil of spearmint, or from spearmint, or both, and shall contain not less than three per cent by volume of oil of spearmint; (17) star anise extract shall be the flavoring extract prepared from oil of star anise, and shall contain not less than three per cent by volume of oil of star anise; (18) sweet basil extract shall be the flavoring extract prepared from oil of sweet basil, or from sweet basil, or both, and shall contain not less than one-tenth per cent by volume of oil of sweet basil; (19) sweet marjoram extract or marjoram extract shall be the flavoring extract prepared from oil of marjoram or from marjoram or both, and shall contain not less than one per cent by volume of oil of marjoram; (20) thyme extract shall be the flavoring extract prepared from oil of thyme, or from thyme, or both, and shall contain not less than two-tenths per cent by volume of oil of thyme; (21) tonka extract shall be the flavoring extract prepared from tonka bean, with or without sugar or glycerine, and shall contain not less than one-tenth per cent by weight of coumarine extracted from the tonka bean, together with a corresponding proportion of the other soluble matters thereof; (22) vanilla extract shall be the flavoring extract prepared from vanilla bean, with or without sugar or glycerine, and shall contain in one hundred cubic centimeters the soluble matters from not less than ten grams of the vanilla bean; (23) wintergreen extract shall be the flavoring extract prepared from oil of wintergreen, and shall contain not less than three per cent by volume of oil of wintergreen. All of said flavoring extracts shall be a solution in ethyl alcohol of proper strength of the sapid and odorous principles derived from an aromatic plant, or parts of the plant, and shall conform in name to the plant used in its preparation. (Id. § 5780.)

NOTE: See also No. 1 et seq., and in particular Nos. 2, 7 and 11.

Flour, Etc.

212. Appointment of Inspectors.—When necessary, the probate judge of any county shall appoint one gauger and inspector of spirits, linseed oil, lard oil and coal oil; one inspector of flour, meal and biscuit; one inspector of beef, pork, lard and butter; one inspector of pot and pearl ashes; one inspector of fish; one inspector of sawed lumber and shingles, and one inspector of salt. Such judge, on complaint and sufficient cause shown, may remove such inspector and fill the vacancy for the unexpired term. The inspector shall serve for the term of three years and may appoint as many deputies as are required. (G. C. 1926, § 5987.)

213. Oath and Bond.—Before an inspector or deputy inspector enters upon the duties of his office, he shall take an oath that he will faithfully and impartially execute the duties required of him by law. The inspector shall enter into bond, with sufficient freehold security to be approved by the court, in such sum as the court may require, but not less than three hundred dollars nor more than one thousand dollars, and made payable to the State. Such bond, conditioned for the faithful and impartial performance of such duties shall be deposited with the treasurer of such county. (Id. § 5988.)

214. Suits on Bond.—A person injured by the incapacity, neglect or misconduct of such inspector or his deputy, may institute a suit on a copy of the bond, certified by the treasurer of such county, for the use of the person suing. Such bond shall not become void on the first or a subsequent judgment; but suit must be instituted within one year after the cause of action accrues. (Id. § 5989.)

215. General Duties.—Inspectors, or their deputies, on application within their respective counties, shall inspect wheat or rye flour, buckwheat meal, biscuit, butter, lard, pork, beef, fish, and pot or pearl ashes, and stamp with branding irons, to be provided by the inspector for that purpose, the name of this State, the county where inspected, the kind and quality of the article inspected, and the weight thereof on the hogshead, cask, box, package, barrel or part thereof, containing such inspected articles, which shall be conclusive evidence between vendor and vendee at the time of such inspection. Such branding irons shall be made and lettered as directed by the Probate Court. The inspector shall make, in a book to be provided by him for that purpose, entries of all articles inspected by him or his deputies,

with the names of the persons for whom such articles were inspected. When short weight is ascertained or under tare marked, the inspector so finding, shall be entitled for each hogshead, cask or box containing over one barrel, twenty cents, and for each barrel and under, ten cents. The charges for repacking and cooperage shall not be more than the average price paid for such work at the time such inspection is made, to be paid by the person demanding such inspection, or as the parties may agree. In case of forfeiture, the person for whose benefit it is condemned, shall pay such charges and if there is no condemnation, such inspector shall be entitled to like fees for the inspection of weight as for quality. (Id. § 5990.)

216. Duty of Inspector Finding Article Unmerchantable.—If the inspector or his deputy finds, on view, that any of the barrels, firkins or kegs herein mentioned are not made in conformity with the provisions of this chapter, he shall desist from further inspection of the contents thereof, judge them unmerchantable and condemn, brand or mark such barrel or other cask accordingly. This section shall not prevent a repacking of such articles in proper and sufficient barrels and casks, and when so repacked may be inspected and passed, if found good and merchantable, as in other cases under this chapter. (Id. § 5991.)

217. Penalty Against Inspector for Neglect of Duty.—If an inspector, or his deputy, fails or neglects to perform the duties of his office, or purchases, stores, freights, or deals in an article he is appointed to inspect, or is convicted of partiality, or of having acted contrary to the requirements of this chapter, he shall forfeit and pay, for each offense, not exceeding fifty dollars, with costs of suit, to be recovered for the use of the county, and shall forfeit his office, and be liable to the party injured for damages. (Id. § 5992.)

218. Manufacturer Undermarking Tare, Etc.—A manufacturer of flour or meal, or packer of meat, butter, lard or other packed article sold by weight, undermarking the tare upon a hogshead, cask, box or barrel, or part thereof, or placing thereon a less quantity than that marked or branded thereon as specified by law, shall forfeit the hogshead, cask, box or barrel, or part thereof, and half the contents thereof. One-fourth of such entire contents shall go to the party injured, prosecuting the case, with such other damages as he may sustain, and the other fourth to the use of the poor of the township where the conviction is had. The residue shall be accounted for to such manufacturer or packer, who shall be notified by such inspector. Such forfeiture shall not take place, nor conviction be had, when the light weight was occasioned after leaving such manufacturer or packer, if such packing was done according to law. (Id. § 5993.)

219. Inspector to Give Certificate.—When the inspector condemns an article enumerated in this chapter, he shall forthwith deliver to the owner thereof or his agent, on demand, a certificate, distinctly setting forth the time, place and cause of such condemnation. When such articles have been inspected and declared of good quality and merchantable, he shall deliver a certificate thereof on demand for the benefit of the owner thereof. (Id. § 5994.)

220. Fees of Inspector.—Inspectors, appointed under this chapter, shall receive the following fees for their services: For each barrel of wheat flour or rye flour, three cents; for each barrel of buckwheat meal, two cents; for each barrel of domestic spirits, five cents; for each barrel of biscuits, six cents; for each firkin or keg of butter or lard, three cents; for packing and inspecting each barrel of pork or beef, twenty cents; for each half-barrel thereof, fourteen cents; for packing, examining and inspecting each barrel of fish, twenty cents; and for inspecting each barrel of pot or pearl ashes, twelve cents. (Id. § 5995.)

221. Penalty Against Inspector for Taking Illegal Fees.—An inspector or deputy inspector demanding or receiving a greater sum than provided in the next preceding section, or purchasing an article inspected and condemned by him as unfit for exportation, unsaleable or unmerchantable, shall forfeit and pay to the State, for each offense, not exceeding fifty dollars, together with costs of suit. (Id. § 5996.)

222. Municipal Corporations May Appoint Inspectors.—This chapter shall not affect the power to appoint inspectors granted to a municipal corporation. (Id. § 5997.)

223. Inspection of Flour and Meal.—Flour and meal shall be packed in well-made barrels of seasoned timber, twenty-seven inches in length, when finished, with a cut head of seventeen and one-half inches, tightly bound, with ten smart hoops or six flat hoops, two inches broad, secured with four nails in each end hoop, and three nails in each outward bilge hoop. Such barrel shall contain one hundred and ninety-six pounds of flour or meal, and the tare thereof shall be marked on the head of such barrel by the miller, with a marking iron. The weight of the flour or meal shall be branded on the barrel with a branding iron, to be provided by him for that purpose. When flour or meal is exhibited for inspection, the inspector shall

bore and search it with a proper instrument, to ascertain if it be sweet, and of the kind and quality marked by such miller. If he judge it sweet and of good quality, he shall plug the hole tight, and cause such cask to be branded as is prescribed in this chapter. If, on such examination, the flour or meal is found to be sour, of bad quality or not merchantable, it shall be condemned; but if merchantable, though of a quality different from that represented by such miller's brand, such brand shall be erased, and the proper quality branded thereon by such inspector. (Id. § 5998.)

224. What Miller Shall Brand Upon Barrel or Sack.—A miller or mill owner shall brand or cause to be branded on the head of each barrel or side of each sack the weight and quality of the flour or meal contained therein, and the initial letter of his Christian name and his surname in full; or if the mill is owned or operated by more than one person, then the name of such persons or such company. If a miller, mill owner or company neglects to so brand such flour or meal, or packs or exposes it for sale in a barrel or sack of a less quantity or poorer quality than is branded thereon, he or they shall forfeit and pay for each offense ten dollars for the use of the county, and be liable to the person injured in double the amount of damages sustained. (Id. § 5999.)

225. Private Brands.—A miller or mill owner manufacturing flour for persons having private brands, may place the name and brand of such persons upon the barrels or sacks containing such flour, or such flour may be shipped by the miller or mill owner in blank packages to such persons, who shall place thereon their names and brands before offering it for sale. Persons receiving flour in blank packages shall be liable to the penalties of this chapter whenever it is offered for sale without the name and brand of such persons stamped upon the packages containing it. (Id. § 6000.)

226. Penalty for Packing Unmerchantable Flour.—A miller or other person packing or causing to be packed bran, shorts, middlings or unmerchantable flour, with intent to defraud another, shall forfeit and pay for such offense not less than one hundred dollars nor more than five hundred dollars, for the use of the county, and be liable to the party injured in damages. The statement of the amount and quality so placed upon such barrels or sacks shall be a warranty of the facts stated thereon. (Id. § 6001.)

227. Regulation Barrels for Beef or Pork.—Barrels for beef or pork shall be made of sound, well-seasoned white oak timber, clear of sap wood, twenty-nine inches in length, with a cut head of seventeen and a half inches in diameter, bound with strong hoops, one-third of the length thereof, at each end. When packed and headed up, the outward hoop on each end shall be secured with four nails of suitable size. (Id. § 6002.)

228. Regulation Half-barrels for Beef or Pork.—Half-barrels for beef or pork shall be made of sound, well-seasoned white oak timber, clear of sap, twenty-four inches in length, with a cut head fourteen inches in diameter, bound with hoops one-third the length thereof, at each end, the outward hoops thereof being secured with at least three nails of suitable size. (Id. § 6003.)

229. Weights and Contents of a Barrel of Beef or Pork.—A barrel of beef or pork, packed for exportation, shall contain two hundred pounds of sound, clean, well-slaughtered meat, that is well fattened. "Mess beef" shall be cut, if possible, into well-formed pieces of ten pounds, so that twenty pieces shall make the weight, and shall be well assorted, excluding legs, leg rounds, necks and shoulder clots. "Prime beef" shall be cut in like manner and well assorted, and may include not exceeding two leg rounds, excluding the point of the neck and clotted pieces. Fifty pounds of clean, fair, dry salt, and four ounces of saltpeter shall be packed into each barrel. When the barrel is packed and headed, it shall be filled with strong pickle. (Id. § 6004.)

230. What Barrel of Pork Shall Contain.—A barrel of "prime pork" shall consist of twenty-five pieces, weighing eight pounds each, if possible, making two hundred pounds, which may include one head and a half, and six shanks, excluding the legs, ears, and snouts, to be composed of the assorted meat of one hog and a half; or three shoulders, one head and a half, exclusive of the legs, snout and ears, and the remainder in side pieces. A barrel of "mess pork" shall consist of twenty-five pieces, of eight pounds each, if possible, making two hundred pounds of pork, from the middlings or sides of hogs weighing not less than two hundred pounds each. A barrel of "navy pork" shall consist of twenty-five pieces, of eight pounds each, if possible, making two hundred pounds of pork, assorted, excluding shanks and faces, no hog to weigh less than one hundred and fifty pounds net. Such pieces shall be packed on the edge, with at least fifty pounds of clean, fair salt, and two ounces of saltpeter to each barrel. When thus packed and headed each barrel shall be filled with strong pickle. (Id. § 6005.)

230a. Standard Weight of Gallon of Linseed, Flaxseed or Lard Oil.—When linseed, flaxseed or lard oil is sold by the barrel, without a special agreement as to the measurement thereof, the standard for linseed or flaxseed oil shall be seven and one-half pounds to the gallon; and for lard oil, seven and two-fifths pounds to the gallon. (Id. § 6006.)

230b. Regulation Barrels for Oil.—Barrels for linseed, flaxseed or lard oil shall be made of sound, well seasoned timber, bound with strong hoops, and the outward hoop on each end shall be secured with three nails of suitable size. (Id. § 6007.)

230c. Inspection of Barrels for Linseed and Flaxseed Oil.—Inspectors shall inspect barrels intended for linseed, flaxseed or lard oil, and, before filling them, ascertain the weight thereof, and when so inspected and weighed, mark on such barrel the weight thereof with marking irons, provided by the inspector for that purpose, with his name and the name of the county. (Id. § 6008.)

230d. Compensation for Such Inspection.—The inspector shall be entitled to ten cents for each barrel intended for linseed, flaxseed or lard oil inspected and weighed by him when the quantity required to be inspected and weighed at one time is less than twenty-five barrels; but when it exceeds twenty-five barrels, he shall receive five cents per barrel. He shall receive five cents for each mile necessarily traveled in the performance of his duty. (Id. § 6009.)

231. Inspection of Fish Caught in or Imported Into the State.—A person taking fish in the waters of this State or bringing or importing them into this State, if taken in waters without this State, upon bringing such fish on shore or importing them into a port or county in this State and before any part thereof is sold or bartered in barrels or casks or offered for sale or barter, shall forthwith cause such fish, excepting shad, mackerel and herring, to be inspected and branded at such port or place at which they are landed or brought into this State. (Id. § 6010.)

232. Penalty for Selling Fish, Without Inspection.—A person neglecting or refusing to comply with the provisions of the next preceding section, shall forfeit and pay for each hundred pounds of fish so sold or bartered or offered for sale, without being so inspected and branded, the sum of five dollars, to be recovered by civil action with costs of suit; such suit may be prosecuted in the name of the State. (Id. § 6011.)

233. Inspection of Fish in Barrels, Etc.—If fish are sold in barrels or half-barrels, such barrels or half-barrels shall be of the description specified in this chapter. Before offered for sale, such fish shall be inspected by an inspector appointed under this chapter, who, upon application for that purpose, shall forthwith attend, either by himself or deputy, make the inspection required, and keep entries thereof, as provided in this chapter. (Id. § 6012.)

234. Regulations as to Barrel and Contents.—Fish barrels shall be made of good, sound and seasoned timber, approved by the inspector, and be bound with at least twelve sufficient, smart hoops, or eight flat hoops, not less than two inches broad, secured with at least three nails in each chime hoop, and contain two hundred pounds of clean fish in each barrel, and one hundred pounds of clean fish in each half-barrel. Only one species of fish shall be packed into each barrel or half-barrel. All fish shall be salted with not less than fifty pounds of coarse salt, or fifty-six pounds of fine salt to each barrel, and in a like proportion to each half-barrel. (Id. § 6013.)

235. Duty of Inspectors.—When inspecting fish, the inspector shall cause the package containing them to be opened and examine and ascertain that such fish have been properly cleaned and salted, that they are of one species and of good quality. He shall cause them to be packed in good and sufficient barrels or half-barrels and with such quantity of salt as is necessary for preserving them. He shall cause to be branded on the head of each barrel or half-barrel the word "Ohio," the name of the port or county where inspected, the species of fish, the word and figure "No. 1" or "No. 2" according to their quality and the initial letter of his Christian name and his surname in full. The fee of such inspector for so inspecting each half-barrel of fish shall be fifteen cents. (Id. § 6014.)

236. Duty of Coopers as to Branding Vessels for Fish.—A cooper, master cooper, owner of a cooper-shop, or other person making casks, barrels, firkins or other vessels, which have to be inspected by an inspector, shall cause to be branded on the head thereof the initial letter of his Christian name and his surname in full, with the word "cooper" on the right thereof. Such inspector, for the want of such brands, shall condemn such vessels. When a barrel, cask or other vessel to be inspected has the brand of the cooper and is condemned by the inspector, he shall, upon demand of a person interested, certify the cause of such condemnation, whether

such cause is in the cooperage, or arises from the age, or the bad or improper usage thereof after it left the cooper's hands. (Id. § 6015.)

237. What Barrel of Fish Shall Contain.—A barrel of fish shall contain two hundred pounds, and a package or vessel, being or purporting to be a fractional part of such barrel, shall contain a like fractional part of two hundred pounds net, of fish, exclusive of salt, brine and package. A barrel or other vessel of fish packed or sold in this State, shall have the number of pounds contained therein distinctly branded upon the head thereof. (Id. § 6016.)

238. Bond by Person Engaged in Packing Fish.—A person or firm engaged in packing, repacking or selling packed fish in this State, may enter into bond to the State, with sufficient surety approved by the clerk of the Court of Common Pleas of the county wherein such person or firm is so engaged, in the sum of five thousand dollars, conditioned for the packing or repacking and branding of fish, according to law. Such bond shall be deposited and kept in such clerk's office, and may be proceeded on by a person aggrieved. (Id. § 6017.)

239. Such Person May Act as His Own Inspector.—A person or firm so entering into bond, may inspect and brand fish packed or sold by him or it. Such brand shall set forth the full name and place of business of such person or firm, the quality, kind and weight of fish so packed and sold, and be a guaranty of the facts so set forth, and for a breach thereof, such person or firm shall be liable on such bond. (Id. § 6018.)

240. Penalty Against Such Person for Violation of Law.—A person shall not pack a barrel or other vessel, without the weight, quality and kind of fish contained therein, is branded thereon, or knowingly sell or offer for sale such barrel or other vessel of fish without being so branded, or having in fact less quantity or a different quality or kind therein than that represented in the brand, unless the variation is distinctly noted in writing upon a card fastened upon the head of such barrel or vessel at the time of the sale or of the offer to sell. A person so offending, for each offense, shall forfeit and pay not less than ten dollars nor more than one hundred dollars and costs, recoverable before any justice of the peace having jurisdiction, at the suit and for the use of a person aggrieved, and be liable for damages. (Id. § 6019.)

241. Regulations as to Draining and Packing Salt.—Manufacturers of salt shall have it sufficiently drained, and packed in good barrels made of good, sound. seasoned timber; the head and bilge hoops to be nailed with not less than four nails in each hoop. The head shall be bored with a metallic instrument not less than one inch in size. The name of the manufacturer shall be distinctly branded on the head thereof. Salt sold at the manufactory shall be marked with the net weight in figures, directly under the name, with good, durable paint. (Id. § 6020.)

242. Manufacturer Failing to Comply With Provisions.—A manufacturer refusing to comply with the next preceding section shall forfeit for each offense the sum of fifty cents per barrel, to be collected by any person in a civil action. (Id. § 6021.)

243. Salt May be Shipped in Bulk.—This chapter shall not prohibit manufacturers from shipping salt in bulk. (Id. § 6022.)

244. Inspection of Salt.—Salt imported into this State in barrels or casks, unless inspected before entering this State, shall be inspected as hereinafter provided. This chapter shall not subject to inspection salt that is landed and intended to be re-shipped to another State. (Id. § 6023.)

245. Salt Inspected in Another State Not to be Re-inspected.—This chapter shall not require the re-inspection of salt imported from, and previously inspected in accordance with the laws of another State of the United States. (Id. § 6024.)

246. How Salt Inspected.—An inspector of salt, appointed under this chapter, shall forthwith provide himself with an auger, such as is used by the inspectors of flour. He shall bore a hole not exceeding one inch in diameter in the head of each barrel or cask inspected by him, and run the auger through to the other end thereof in a diagonal direction, and procure a fair sample of the salt. If the salt is of the first quality, he shall inscribe on the head of such barrel or cask, in fair and legible characters, "No. 1," and if of the second quality, "No. 2," and if of a very inferior quality, he shall inscribe the letter "R," thereon, which will stand for "refused" or "rejected," which he shall cause to be branded above his name. He shall cause a brand to be made for such purpose. (Id. § 6025.)

247. Fees for Inspecting Salt.—An inspector shall receive from the person owning or having charge of the salt, at the time of the inspection, three cents for each barrel or cask by him inspected. (Id. § 6026.)

248. Duty of Importers to Facilitate Inspection.—Importers of salt shall call upon the inspector, and put the salt in a convenient place to be inspected; and such inspector shall inspect and brand it with reasonable dispatch. (Id. § 6027.)

249. Penalty for Selling, Etc., Salt Without Inspection.—A person selling salt, liable to inspection by this chapter, at a place where an inspection is established, or removing or permitting it to be removed from the place of landing, without having it inspected, shall forfeit and pay one dollar for each barrel or cask by him sold, removed or permitted to be removed, to be recovered in a civil action in the name of the State, by a person suing for it, before any justice of the peace of the county in which such offense is committed. If salt is regularly inspected by virtue of this chapter, by an inspector of salt in this State, it shall not be required to undergo an inspection at another place. (Id. § 6028.)

250. How Tare of Salt Barrels Regulated.—The inspector of salt shall regulate the tare of barrels as follows: Barrels weighing less than three hundred pounds shall be tared at thirty pounds; barrels weighing over three hundred and less than four hundred, shall be tared at thirty-five pounds; and barrels weighing over four hundred pounds shall be tared at forty pounds. (Id. § 6029.)

251. Regulation Barrels for Domestic Spirits.—Barrels or casks containing domestic spirits shall be made of good, well seasoned white oak timber, clear of sap wood, bound with not less than ten good and sufficient hoops. (Id. § 6030.)

252. Inspection of Spirits.—An inspector of domestic spirits appointed under the provisions of this chapter, shall provide himself with the most common and approved instruments for ascertaining the capacity of a barrel or cask, and with the hydrometer used by United States inspectors for ascertaining the strength of spirituous liquors to test the quality or proof thereof and keep such instruments in good order. When called upon for that purpose, he shall forthwith gauge or ascertain the capacity and contents of a barrel or cask, and the quality or proof of the contents thereof, and mark on such barrel or cask the quantity that it will contain in wine gallons, the amount of wastage, and the quality or proof of such domestic spirits, with the word "Ohio" and the name of the county where inspected. (Id. § 6031.)

253. What Liquors to be Inspected.—An inspector shall inspect alcoholic liquors imported into or manufactured in the county for which he is an inspector, unless they bear the inspector's brand of another county in this State, which will be evidence of their purity. (Id. § 6032.)

254. Duty of Inspector.—An inspector shall keep an accurate account of liquors inspected by him, and mark on the casks or barrels the word "pure," if so found, and if otherwise, the word "impure." When he finds adulterated liquors, he shall give notice of the person owning or offering them for sale, to the prosecuting attorney of the county, who shall forthwith institute proceedings against such person as hereinafter provided. Upon the trial, if such person be found guilty of violating the foregoing provisions, such inspector shall forthwith destroy such liquor. The inspector shall be entitled to receive for his services two dollars per day and mileage at five cents per mile for each mile he necessarily travels in the discharge of his duties, from the owner of the liquor or the person offering to sell it. (Id. § 6033.)

255. Adulteration by Druggists, Etc.—This chapter shall not prevent druggists, physicians and persons engaged in the mechanical arts, from adulterating liquors for medicinal or mechanical purposes. (Id. § 6034.)

256. Inspector Purchasing Inspected Article.—An inspector and gauger of spirits, or linseed oil, purchasing, storing, freighting or dealing in articles he is appointed to inspect, shall forfeit and pay, for each offense, not exceeding one hundred dollars, and forfeit his office. (Id. § 6035.)

257. Inspection of Butter and Lard.—Butter and lard shall be packed in tight and well seasoned firkins or kegs, on each of which shall be marked with a marking iron, the tare and net weight of the contents thereof. The inspector or his deputy shall bore each thereof and examine it diagonally from one head to the other with a hollow instrument or searcher, to ascertain if it is clear of mold, or has a rancid or musty taste. He shall brand it as provided in this chapter. (Id. § 6036.)

258. Inspection of Biscuit.—Casks containing biscuits, packed for exportation, shall be of a like size and quality as those specified for flour in this chapter, and the tare and net weight shall be marked thereon with a marking iron. A true invoice of such cask shall be delivered by the owner thereof to the inspector or his deputy, when called on to inspect it. Such inspector or his deputy shall thereupon unhead each cask and inspect it, and, if it be good and merchantable, brand it as directed by this chapter. (Id. § 6037.)

259. Regulations as to Manufacturers of Soap and Candles.—Manufacturers of soap and candles shall mark upon each package or box thereof offered for sale

the name of the manufacturer, and the net weight avoirdupois of the contents thereof, in legible letters and figures. A manufacturer neglecting or refusing to comply with the provisions of this section or placing in such box or package a less quantity than is marked or branded thereon shall forfeit one dollar for each offense and pay the costs of prosecution. Forfeitures collected hereunder shall be paid into the treasury of the county in which they are collected. (Id. § 6039.)

260. Appointment of Tobacco Inspectors.—The probate court, upon application of the proprietor of a leaf-tobacco commission warehouse offering tobacco for sale at public auction, shall qualify one or more appointees of such commission warehouse, skilled in the inspection of leaf tobacco, to act as inspectors of tobacco at such warehouse, to serve during the pleasure of such warehouseman and until successors shall be appointed and qualified. The court shall grant a license to such proprietor to conduct his business in accordance with the provisions of this chapter. (Id. § 6041.)

261. Exemption From Duty for Auction Sales.—A duty or tax shall not be imposed or collected for sales of tobacco at auction at a leaf tobacco commission warehouse. (Id. § 6042.)

262. Warehouseman's Bond.—Before granting a license for the establishment of a tobacco warehouse, the court shall require the proprietor thereof to enter into bond, payable to the State, in the sum of twenty thousand dollars, with at least one sufficient surety, resident of the county, for the faithful discharge of his duties, which bond shall be filed in the probate court granting such license for the use of any person aggrieved by the non-fulfilment of such duties. (Id. § 6043.)

263. Fees for Issuing License, Etc.—The fees for issuing such license shall be five dollars, and for appointing inspectors and approving their bonds, three dollars each. (Id. § 6044.)

264. Entry of Appointment on Journal.—The court shall cause an entry of the appointment of an inspector to be made on the journal thereof, and a certificate of his appointment, under the seal thereof, shall be delivered to such inspector. (Id. § 6045.)

265. Form of Inspector's Oath.—An inspector of tobacco, before acting as such, under penalty of the forfeiture of three hundred dollars, shall take the following oath of office: "I, A. B., appointed inspector of tobacco at .... warehouse, do swear that I will, in all things, faithfully discharge my duty in the office of inspector according to the best of my skill and judgment, acording to law, without fear, favor, affection, malice or partiality, so help me God"; which oath any justice of the peace may administer. A copy thereof shall be transmitted to the court appointing such inspector, within ten days from the time such oath is administered. (Id. § 6046.)

266. Inspector's Bond.—Such inspector shall enter into bond in the sum of two thousand dollars, to the satisfaction of the probate judge, with sufficient sureties, payable to the State for the use of any person injured by the neglect or misconduct of such inspector, conditioned that he will diligently and carefully uncase and break each hogshead, barrel, package, case or box of tobacco in at least four places, or cause it to be done in his presence, and will examine all tobacco brought to any warehouse which he is called on to inspect, and that he will not receive, weigh, pass or mark tobacco or a hogshead, barrel, box or case of tobacco, prohibited by this chapter, and that, in all things, he will well and faithfully discharge and execute his duty in the office of the inspector according to the provisions of this chapter. Such bond shall be deposited with the probate judge, who shall file it in his office, and any person injured may bring suit thereon for a breach thereof. If the inspector discharges his duties before giving such bond, he shall forfeit eight hundred dollars. (Id. § 6047.)

267. Fees of Inspector.—Inspectors of tobacco shall be entitled to twenty-five cents for each hogshead, box or case of tobacco inspected, to be paid by the owner or agent delivering it at the warehouse. The proprietor of such warehouse shall be entitled to two dollars and fifty cents for each hogshead and one dollar for each box or case of tobacco for receiving, storing, weighing, marking and selling it at public outcry or at private sale, at the request of the owner or consignor, and collecting the proceeds thereof. One-half of such allowance to the warehouseman shall be paid by such owner or consignor and the other half by the purchaser thereof. The proprietor of a warehouse need not deliver tobacco stored with him until his legal charges and the inspector's fees are paid. (Id. § 6048.)

268. Penalty Against Inspector for Speculating.—An inspector, during his continuance in office, shall not buy or receive tobacco by barter, loan or exchange, or procure tobacco to be sold or consigned to a merchant, except the tobacco owned by such inspector, under the forfeiture of one hundred dollars for each hogshead so bought, received or procured to be sold or consigned, contrary to this chapter.

An inspector may receive his fees for inspection, and his proper rents or debts, in tobacco. (Id. § 6049.)

269. Penalty Against Altering, Etc., Inspector's Marks.—Whoever wilfully erases, alters or defaces a letter, mark, number or figure placed upon a hogshead of tobacco by an inspector, or counterfeits a letter, mark, number or figure thereon shall forfeit one hundred dollars for each offense. (Id. § 6050.)

270. Penalty Against Inspector for Taking Illegal Fees, Etc.—An inspector accepting or receiving a gratuity or reward for an act done by him in pursuance of this chapter, other than his fees, shall forfeit three hundred dollars, and be disqualified from holding the office of inspector. Whoever offers a gratuity, reward or bribe to an inspector for anything to be done by him, in pursuance of this chapter, for each offense, shall forfeit three hundred dollars. (Id. § 6051.)

271. Penalty Against Inspector for Neglect.—An inspector neglecting or refusing to attend, as directed by this chapter, unless prevented by sickness or unavoidable accident, shall forfeit to the party aggrieved twenty dollars for each neglect or refusal, or be liable to the person aggrieved for all damages sustained by reason of such neglect or refusal, together with costs. (Id. § 6052.)

272. Duty of Inspector.—An inspector shall uncase and break each hogshead, barrel, package, case or box or tobacco, or cause it to be done in his presence, which he is called on to inspect and weigh, in not less than four different places. If such inspector believes that such tobacco is sound, clean, in good order and condition, and merchantable, he shall cause it to be weighed. He shall cause the head, side or bulge of such hogshead, barrel, box or package to be marked with the tare thereof, the quantity of net tobacco contained therein and the name of the warehouse. He shall also mark the head of such hogshead, barrel, box or package with the initials of the name of the owner thereof and the number of such hogshead, barrel, box or package. (Id. § 6053.)

273. To Preserve Samples.—The inspector shall select two samples of each hogshead, barrel, box or package of tobacco inspected by him and passed as sound and merchantable. Such samples shall consist of not less than six hands or bundles, each of which he shall bind together with a cord and attach a label thereto. On such label shall be written the name of the person for whom, or in whose name such tobacco is inspected, with the number of the package, the gross weight, tare and net weight of such tobacco. One of such samples shall be delivered to the purchaser of the tobacco, with a note or certificate hereinafter provided for, and the other such inspector shall retain for one year after such inspection. (Id. § 6054.)

274. Record of Inspection to be Kept.—The inspector shall cause to be entered in a book provided for that purpose, each hogshead of tobacco viewed, passed and marked by him, and the quality thereof, mark and warehouse number, with the gross, tare and net weight thereof. (Id. § 6055.)

275. Re-assortment of Tobacco Rejected by Inspector.—When a hogshead of tobacco is brought to a warehouse for inspection, and the inspector refuses to receive and pass it, and the owner or other person bringing such tobacco will undertake to pick and separate the good from the bad, the inspector shall allow the use of one or more of his prizes for prizing such tobacco, so separated and repacked in such hogsheads. When there are several hogsheads of tobacco, belonging to several owners, to be packed, repacked and prized at a public warehouse, the owner or other person whose tobacco is first examined and refused, on bringing it, shall be first permitted to use such prize. A like rule shall be observed in prizing tobacco so picked and prized. (Id. § 6056.)

276. Inspector Appropriating Samples.—An inspector shall not convert to his own use or dispose of a draught, or sample of tobacco drawn out of a hogshead, and it shall be delivered to the owner or other person offering it for inspection under a penalty of seventy-five cents. (Id. § 6057.)

277. Storage Fees.—When a hogshead, box or case of tobacco has remained in a warehouse, licensed under this chapter, for longer than three months, the proprietor may charge additional storage thereon at the rate of twenty cents per month for each hogshead, box or case. A lien is hereby created in his favor for such storage, and all other charges on such tobacco delivered at his warehouse. (Id. § 6058.)

278. Warehouseman to Give Receipt.—Proprietors of warehouses licensed under this chapter, upon the delivery of a hogshead, box or case of tobacco at such warehouse, shall forthwith weigh and give a receipt for it upon demand of the owner or person bringing it. Such receipt shall be surrendered on the sale or redelivery thereof. (Id. § 6059.)

279. Inspector's Receipt.—An inspector who passes tobacco shall deliver to the owner as many receipts as may be required, not exceeding one receipt for each hogshead or cask. Such receipt shall state the place and time of reception, the mark, the warehouse number, gross, tare and net weight for the tobacco inspected and passed, and whether of the first or second quality. The first quality shall consist of tobacco clear of and unmixed with trash. The tobacco for which such receipt calls shall be delivered to the owner or bearer thereof on demand and surrender of such receipt. (Id. § 6060.)

280. Inspector Issuing False Receipts.—An inspector, under penalty of a forfeiture of one hundred dollars for each offense, shall not give a receipt for tobacco unless he has received and passed the quantity for which such receipt is given. (Id. § 6061.)

281. Proprietor Liable for Failure of Samples.—A proprietor of a commission leaf tobacco warehouse shall be liable to the purchaser of a hogshead, barrel, package, box or parcel of tobacco, inspected and weighed at such warehouse, for the failure of the samples drawn therefrom to fairly represent the tobacco packed therein. He shall also be so liable for underweight existing in such tobacco inspected and marked by such inspector as required by this chapter. (Id. § 6062.)

282. Posting of List; Contents; Prohibitive to Deliver or Receive Tobacco, When.—Is [it] shall be the duty of any tobacco warehouseman, corporation, firm or individual, who shall receive, or who shall undertake to receive or take care of leaf tobacco, for sale at public auction, whether with or without compensation or reward, to post at a point in the office of said warehouse, convenient and accessible for public inspection, a typewritten list showing the true name and postoffice address of the owner and producer and the number of pounds of tobacco of each person, firm or corporation whose tobacco will that day be offered for sale in said warehouse. No tobacco shall be delivered to or received by any warehousemen for sale at public auction unless the true names and postoffice addresses of the producer and owner of such tobacco are furnished said warehousemen by the person delivering same. (Id. § 6062-1.)

283. Posting of List, When.—It shall be the duty of said warehousemen to post said list of tobacco of any owner or producer to be sold that day, not less than thirty minutes prior to said sale of tobacco. (Id. § 6062-2.)

284. Failure or Refusal, Penalty.—Any warehousemen, corporation, firm or individual who shall fail or refuse to post said notices, as provided by this act, shall be subject to a fine in a sum not less than fifty dollars nor more than one hundred dollars for each day for so failing or refusing. (Id. § 6062-3.)

285. Falsifications; Penalty.—Any warehousemen, corporation, firm or individual who shall, in said notice, falsely list the names, postoffice addresses or number of pounds of tobacco of any producer, or owner whose tobacco will that day be offered for sale, or any person who shall furnish a false name or address of the owner or producer to any warehousemen, shall be subject to a fine in a sum not less than one hundred dollars nor more than five hundred dollars for each offense. (Id. § 6062-4.)

286. Proprietor's Failure to Give Bond.—A proprietor of a leaf-tobacco warehouse who refuses or neglects to procure a license, and the appointment of an inspector of tobacco at his warehouse as provided in this chapter, or neglects or refuses to perform the duties required of him by this chapter, shall forfeit to the State not less than fifty dollars nor more than one thousand dollars, at the discretion of the court. Each day's continuance in business, after written notice of such omission, shall be an additional offense within the provisions of this section. (Id. § 6063.)

NOTE: See also Nos. 15, 64 et seq., 457 et seq., and 506.

Fruits, Vegetables, Etc.

See Nos. 15, 17a, 37, 92 et seq., 476, and 481 et seq.

Grain.

See Nos. 481 and 506.

Maple Sugar—Maple Syrup.

287. Maple Sugar and Syrup Defined.—Maple sugar or pure maple sugar and maple syrup or pure maple syrup are the unadulterated product by the evaporation of pure sap from the maple tree. The standard of weight of a gallon of maple syrup of two hundred and thirty-one cubic inches shall be eleven pounds. A sub-

stance purporting to be maple syrup or maple sugar not made in compliance with this section shall be an adulteration of maple syrup or maple sugar, and maple syrup of less weight than herein required shall be an adulteration of maple syrup. (G. C. 1926, § 12763.)

288. Adulterated Maple Sugar or Syrup.—Whoever manufactures for sale, offers for sale, has in his possession with intent to sell, or sells or delivers, as and for maple syrup or maple sugar, an adulteration thereof shall be fined not less than fifty dollars nor more than two hundred dollars. (Id. § 12764.)

289. Fraudulent Use of Word "Maple."—Whoever offers for sale, has in in his possession with intent to sell, sells or delivers an adulteration of maple syrup or maple sugar in a box, can, bottle or other package having the word "maple," or a compound thereof, as the name or part of the name of the contents thereof or a device or illustration suggestive of maple syrup or sugar or the manufacture thereof, shall be fined not less than fifty dollars nor more than two hundred dollars. (Id. § 12765.)

290. Package Must Bear Label of Packer.—Whoever offers for sale, has in his possession with intent to sell, sells or delivers as and for maple syrup or maple sugar, an article which does not bear the name and address of the packer and also the State, Territory or country in which it was produced, in plain legible type upon the label, shall be fined not less than fifty dollars nor more than two hundred dollars. (Id. § 12766.)

Meal.

See Nos. 64 et seq., 212 et seq. (in particular, 218 and 223 et seq.), and 506.

Meat—Meat Products.

291. Selling Meat of Calf Less Than Four Weeks Old.—Whoever, for the purpose of selling, kills a calf less than four weeks old, or knowingly sells its meat or has such meat in his possession with intent to sell, shall be fined not more than fifty dollars or imprisoned twenty days, or both. (G. C. 1926, § 12761.)

292. Misrepresentation in Sale of Food Products, Unlawful.—Any person or persons, who with intent to defraud, sells or exposes for sale any meat or meat preparations or any fowl or preparations from fowl, and falsely represents the same to be "KOSHER" or as having been prepared under, and of a product or products sanctioned by the Orthodox Hebrew religious requirements, or falsely represents any food products or the contents of any package or container to be so constituted and prepared by having or permitting to be inscribed thereon the word "KOSHER" in any language, or have the word "KOSHER" inscribed on the front of their business establishment in any language, is guilty of a misdemeanor, punishable by fine of not less than twenty-five dollars or more than five hundred dollars. (Id. § 13111-1.)

293. Feeding Unwholesome Offal or Flesh to Swine, Etc.—Whoever feeds to animals, used for human food, the flesh of an animal which has died from such cause, or offal or flesh that become old, decrepit, infirm or sick, or which is putrid or unwholesome, shall be fined not less than fifty dollars nor more than two hundred dollars or imprisoned not more than thirty days, or both, and for each subsequent offense, shall be fined not less than fifty dollars nor more than two hundred dollars or imprisoned not more than six months, or both. (Id. § 12779.)

NOTE: See also Nos. 8, 15, 118 et seq., 212 et seq. (in particular, 218, 227 et seq., and 257), and 322 et seq.

Oils.

See No. 212 et seq., and in particular, No. 230a et seq.

Salt.

See No. 212 et seq., and in particular, No. 241 et seq.

Syrup.

See Nos. 8 and 287 et seq.

Vinegar.

294. Vinegar.—No person shall manufacture, offer or expose for sale, sell or deliver, or have in possession with intent to sell or deliver vinegar not in com-

pliance with the provisions of this chapter.* Vinegar shall be made wholly from the fruit or grain from which it purports, or is represented, to be made and shall not contain a foreign substance or less than four per cent, by weight, of absolute acetic acid. (G. C. 1926, § 5786.)

295. Cider or Apple Vinegar.—Vinegar manufactured, offered or exposed for sale, sold or delivered, or in the possession of a person with intent to sell or deliver, under the name of cider vinegar, apple vinegar, or any compounding of the word "cider" or "apple" as the name or part of the name of vinegar, shall be the product made by the alcoholic and subsequent acetous fermentations of the juice of apples, and shall not contain any foreign substance, drugs or acids, and is laevo-rotatory. It shall contain not less than four grams of acetic acid, not less than one and six-tenths grams of apple solids of which not more than fifty per cent are reducing sugars, and not less than twenty-five hundredths grams of apple ash in one hundred cubic centimeters at a temperature of twenty degrees centigrade. The water-soluble ash for one hundred cubic centimeters, at a temperature of twenty degrees centigrade, of the vinegar, shall contain not less than ten milligrams of phosphoric acid (P_2O_5) which shall require not less than thirty cubic centimeters of decinormal acid to neutralize its alkalinity. (Id. § 5787.)

296. Wine or Grape Vinegar.—Vinegar manufactured, offered or exposed for sale, sold or delivered or in the possession of a person with intent to sell or deliver, under the name of wine vinegar, or grape vinegar, shall be the product made by the alcoholic and subsequent acetous fermentations of the juice of grapes, and shall contain, in one hundred cubic centimeters, at a temperature of twenty degrees centigrade, not less than four grams of acetic acid, not less than one gram of grape solids and not less than thirteen hundredths grams of grape ash. (Id. § 5788.)

297. Malt Vinegar.—Vinegar manufactured, offered or exposed for sale, sold or delivered or in the possession of a person with intent to sell or deliver, under the name of malt vinegar, shall be the product made by the alcoholic and subsequent acetous fermentations, without distillation, of an infusion of barley malt or cereals whose starch has been converted by malt, is dextro-rotatory, and shall contain in one hundred cubic centimeters, at a temperature of twenty degrees centigrade, not less than four grams of acetic acid, not less than two grams of solids, and not less than two-tenths grams of ash. The water-soluble ash from one hundred cubic centimeters, at a temperature of twenty degrees centigrade, of the vinegar shall contain not less than nine milligrams of phosphoric acid (P_2O_5) which shall require not less than four cubic centimeters of decinormal acid to neutralize its alkalinity. (Id. § 5789.)

298. Distilled Vinegar.—Vinegar manufactured, offered or exposed for sale, sold or delivered or in the possession of a person with intent to sell or deliver, under the name of distilled vinegar, shall be the product made wholly or in part by the acetous fermentation of dilute distilled alcohol and shall contain in one hundred cubic centimeters, at a temperature of twenty degrees centigrade, not less than four grams of acetic acid, and shall be free from coloring matter, added during, or after distillation and from coloring other than that imparted to it by distillation. Vinegar made wholly or in part from distilled liquor shall be branded "distilled vinegar," and free from coloring matter, added during or after distillation, and from color other than that imparted to it by distillation. (Id. § 5790.)

299. Fermented Vinegar.—Vinegar made by fermentation and oxidation without the intervention of distillation shall be branded "fermented vinegar" with the name of the fruit or substance from which it is made. Fermented vinegar, not otherwise provided for in this chapter and not being distilled vinegar as defined in the next preceding section, shall contain not less than two per cent by weight, upon full evaporation at the temperature of boiling water, of solids, contained in the fruit or grain or substance from which such vinegar is fermented, and not less than two and one-half tenths of one per cent ash or mineral matter, the product of the material from which such vinegar is manufactured. (Id. § 5791.)

300. Injurious Ingredients in Vinegar; Brands.—A person shall not manufacture for sale, offer for sale, or have in his possession with intent to sell, vinegar found upon proper test to contain a preparation of lead, copper, sulphuric or other mineral acid, or other ingredients injurious to health. The head of a cask, barrel, package or keg containing vinegar shall be branded with the name and residence of the manufacturer and conform to the provisions of the next two preceding sections. (Id. § 5792.)

301. Brands on Casks of Cider Vinegar.—A person making or manufacturing cider vinegar, not a domestic manufacturer of cider or cider vinegar, shall brand on each head of each cask, barrel or keg containing such vinegar, the name and resi-

*See No. 1 et seq.

dence of the manufacturer, the date when manufactured, and the words "cider vinegar." Vinegar shall not be branded "fruit vinegar" unless it is made wholly from apples, grapes or other fruits. (Id. § 5793.)

302. Manufacturing Farmer.—A farmer may manufacture, in any one year, not more than twenty-five barrels of pure cider or fruit vinegar for sale. Such vinegar, so manufactured, must be branded "domestic cider vinegar," with the name of such farmer and date of manufacture. (Id. § 5794.)

303. Vinegar.—Whoever manufactures for sale, sells, delivers, offers or exposes for sale, or has in his possession with intent to sell or deliver, vinegar not made in compliance with law, or contained in packages not branded in compliance with law, or violates any provision of law relating to vinegar, adulterated vinegar, or "fermented" or "distilled" vinegar, shall be fined not less than fifty dollars nor more than one hundred dollars or imprisoned not less than thirty days nor more than one hundred days, or both, and pay all necessary costs and expenses incurred in inspecting and analyzing such vinegar. (Id. § 12774.)

NOTE: See also No. 413.

Water.

See Nos. 38 and 79.

Wine.

304. Adulterated Wine.—Liquors denominated as wine, or, if used as a beverage, by any other name or title, containing alcohol not produced solely by the fermentation of pure undried grape juice, or which are compounded with distilled spirits or other liquors, preserved fruit juices, compounded with substances not produced from undried fruit, intended to be used as beverages, wines which contain, or in the production or manner of manufacture of which there has been used, glucose and uncrystallized grape or starch sugar, cider, or pomace of grapes out of which the juice has been extracted and known as grape cheese, and wines, imitation of wines, or other beverages, produced from fruit into which carbonic acid has been artificially injected, or containing alum, baryta, salts, caustic lime, carbonate of soda, carbonate of potash, carbonic acid, salts of lead, salicylic acid or antiseptic or coloring matter other than that produced from undried fruits or pure sugar, or a foreign substance injurious to health, shall be designated as "adulterated wine." This section shall not mean that "compounded wine," as defined and described in section fifty-eight hundred, shall be deemed to be adulterated wine. (G. C. 1926, § 5795.)

305. "Wine" Defined.—The term "wine" means the fermented juice of undried grapes. The addition of pure white or crystallized sugar to perfect the wine, or using ingredients necessary solely to clarify, and refine it which are not injurious to health, shall not be adulterations. Such wine shall contain at least seventy-five per cent of pure grape juice, and shall not contain artificial flavoring. (Id. § 5796.)

306. Branding and Sale Thereof.—Wine, as defined in the next preceding section, shall be known as "wine," and shall be stamped, branded, labeled and sold as "wine," in a like manner as is provided in section 5799 in case of pure wine, except the words in this case shall be "wine" without the prefix "pure," and the provisions of such section, as far as applicable, shall govern the manufacture and sale of "wine" as defined in such preceding section. A person selling such wine, in the invoice thereof, shall plainly state and designate it as "wine" without using the prefix "pure." (Id. § 5797.)

307. "Pure Wine" Defined.—The term "pure wine" means the fermented juice of undried grapes, without the addition thereto of water, sugar, or foreign substance. Such wine shall be known as "pure wine," and shall be stamped, branded, labeled, designated and sold as "pure wine," and the name and kind of wine, the locality where such wine is made, and the name of the manufacturer, may also be added. (Id. § 5798.)

308. Branding and Sale Thereof.—It shall be unlawful to affix a stamp, brand or label containing the words "pure wine," either alone or with other words, on a vessel, package, bottle or other receptacle containing a substance other than pure wine as defined in the next preceding section, or to prepare or use on a vessel, package, bottle, or other receptacle containing liquid, an imitation or counterfeit of such stamp, label or brand, or a stamp, label or brand of such form and appearance as to deceive a person, or cause it to be supposed that the contents thereof are pure wine, or to use a vessel, package, bottle or other receptacle having such stamp, brand or label affixed thereon, except for pure wine as in such section defined. If the name of the manufacturer is added, the contents shall be of his make, providing it is pure wine. A person selling such wine, in the invoice thereof, shall plainly state and designate it as "pure wine." (Id. § 5799.)

309. "Compounded Wine" Defined.—The term "compounded wine" means wine containing less than seventy-five per cent of pure undried grape juice, and otherwise pure. Wines containing alcohol or other distilled spirits not produced by the natural fermentation of pure undried grapes shall be known as "compounded wine," and be branded, marked, labeled and sold as such, and the name of such wine may be added, or such wine shall be branded, labeled and marked by using the word "compounded" next preceding the name of such wine, as "compounded sweet catawba," or "compounded port wine," or the like. An addition of pure distilled spirits, not to exceed eight per cent of its volume, shall not be an adulteration thereof. (Id. § 5800.)

310. Branding and Sale Thereof.—Upon both ends of each package, barrel or other receptacle of compounded wine, containing more than three gallons, shall be stamped in black printed letters at least one inch high and of proper proportion, the words "compounded wine" or the name of such wine, preceded by the word "compounded," as provided in the next preceding section. Upon each package or other receptacle containing more than one quart and up to three gallons shall be stamped in plain printed black letters, at least one-half inch high, and of proper proportion, the words "compounded wine," or the name of such wine, preceded by the word "compounded" as in such section provided. Upon each package, bottle, or other receptacle of one quart or less, shall be placed a label securely pasted on which the words "compounded wine," or the name of the wine, preceded by the word "compounded," shall be plainly printed in black letters at least one-fourth of an inch high and of proper proportion. Should such packages or other receptacles be enclosed in a larger package, as a box, barrel, case or basket, such larger package shall receive the stamp "compounded wine" or the name of such wine preceded by the word "compounded," the letters to be the size according to the amount of such wine contained in such larger package. A person selling wine as defined by the next preceding section, shall plainly state and designate such wine, in the invoice thereof, as "compounded wine." (Id. § 5801.)

311. Penalties Under Last Six Sections.—A person who sells, offers for sale, manufactures or causes to be manufactured with intent to sell, wine stamped, labeled, branded or designated as "pure wine," either by including the word "pure" with "wine" alone or in connection with other words, which is not "pure wine" as in this chapter defined, or wine stamped, labeled, branded or designated as "wine" which is not wine as in this chapter defined, or violates a provision of sections 5796, 5797, 5798 and 5799, or sells, offers for sale, manufactures or causes to be manufactured with intent to sell, wine of the kind and character described in the next two preceding sections, not stamped, marked or labeled after the manner therein prescribed, or which is falsely stamped, marked or labeled, shall be liable to a penalty of one-half dollar for each gallon thereof sold, offered for sale, or manufactured with intent to sell or offer for sale. (Id. § 5802.)

312. How Penalties Recovered.—Penalties imposed by the next preceding section may be recovered with costs of action by a person in his own name, before a justice of the peace in the county where such violation was committed, if the amount does not exceed the jurisdiction of such justice. Such penalties may be recovered in a like manner in any court of record in the State, but on recovery in such case of a sum less than fifty dollars, the plaintiff shall only be entitled to costs equal to the amount of such recovery. (Id. § 5803.)

313. Where Penalties Paid.—Prosecuting attorneys shall prosecute actions in the name of the State of Ohio, for the recovery of the penalties allowed in section fifty-eight hundred and two upon receiving proper information thereof; and, in such action, one-half of the penalty recovered shall be paid to the persons giving the information upon which such action is brought, and the other half to the treasurer of the county in which such action is brought, within thirty days after its collection, which shall be placed to the credit of the poor fund of the village, city or township in which the cause of action arose. A judgment recovered in pursuance of this chapter, may be collected and enforced by like means and in a like manner as judgments in other cases. (Id. § 5804.)

314. Exceptions.—This chapter* shall not apply to medicated wines put up and sold for medicinal purposes only; or to currant wine or other wines made from fruits other than grapes, which are plainly labeled, branded or designated and sold, or offered for sale under names including the word "wine," and stating distinctly the fruit from which they are made, as "gooseberry wine," "elderberry wine," or the like. (Id. § 5805.)

315. Manufacture or Sale of Adulterated Wine.—Whoever manufactures or causes to be manufactured with intent to sell, or sells or offers to sell adulterated

*See No. 1 et seq.

wine as defined and described by law, shall be fined not less than two hundred dollars nor more than one thousand dollars or imprisoned in the county jail not less than thirty days nor more than six months, or both, and shall be liable to a penalty of one dollar for each gallon thereof sold, offered for sale or manufactured with intent to sell. (Id. § 12767.)

316. Same a Nuisance.—Such adulterated wine or beverage shall be a public nuisance and forfeited to the State and be summarily seized and destroyed by any health officer, marshal, constable or sheriff within whose jurisdiction it is found, and the reasonable expense of such seizure and destruction shall be paid out of the county treasury in a like manner and amount as costs in criminal cases where the State fails to convict. (Id. § 12768.)

317. Selling "Compounded Wine" Improperly Stamped.—Whoever sells, offers for sale, manufactures or causes to be manufactured with intent to sell, a wine of the kind and character described and defined by law to be "compounded wine," which is not stamped, branded, marked or labeled in the manner prescribed by law, or which is falsely stamped, branded, marked or labeled or violates any provision of law with reference to "compounded wine," shall be fined not less than one hundred dollars nor more than one thousand dollars or imprisoned in the county jail not less than thirty days nor more than six months, or both, and in addition thereto shall be liable to a penalty of one-half dollar for each gallon thereof sold, offered for sale or manufactured with intent to sell or offer for sale. (Id. § 12769.)

318. Improper Use of Word "Pure Wine."—Whoever sells, offers for sale, manufactures or causes to be manufactured with intent to sell, a wine stamped, labeled, branded or designated as "pure wine," either by including the word "pure" with "wine" alone or in connection with other words, which is not "pure wine" as defined and described by law, or which is not stamped, marked, branded or labeled in the manner prescribed by law, or which is falsely stamped, marked or labeled or violates any provision of law relating to "pure wine," shall be fined not less than one hundred dollars nor more than one thousand dollars or imprisoned in the county jail not less than thirty days nor more than six months, or both, and, in addition thereto shall be liable to a penalty of one-half dollar for each gallon thereof sold, offered for sale, or manufactured with intent to sell or offer for sale. (Id. § 12770.)

319. Improper Use of Word "Wine."—Whoever sells, offers for sale, manufactures or causes to be manufactured with intent to sell, wine stamped, labeled, branded or designated as "wine" but which is not wine as defined and described by law, or which is not stamped, marked or labeled in the manner prescribed by law, or which is falsely stamped, marked or labeled, or violates any provision of law relating to "wine," shall be fined not less than one hundred dollars nor more than one thousand dollars or imprisoned in the county jail not less than thirty days nor more than six months, or both, and, in addition thereto, shall be liable to a penalty of one-half dollar for each gallon thereof sold, offered for sale or manufactured with intent to sell or offer for sale. (Id. § 12771.)

320. Adulterated Domestic Wine.—Whoever adulterates wine made, or juice expressed from grapes grown within this State by mixing therewith a drug, chemical, cider, whisky or other liquor, or sells, or offers to sell such adulterated wine or grape juice knowing it to be adulterated, shall be fined not less than fifty dollars nor more than three hundred dollars. (Id. § 12772.)

321. Using Vessel With Private Stamp for Wine.—Whoever puts adulterated liquor into a barrel, cask or other vessel having the private stamp, brand, wrapper, label or trade-mark usually affixed by a maker of wine from grapes grown within this State, for the purpose of deceiving another by the sale thereof, shall be fined not more than one hundred dollars or imprisoned not less than three months nor more than twelve months, or both. (Id. § 12773.)

NOTE: See also No. 456.

Sanitation.

322. Unsanitary Bakery, Creamery, Dairy, Packing House, Etc.; Penalty.—Whoever, being the proprietor, owner or manager of a bakery, confectionery, creamery, dairy, dairy barn, milk depot, laboratory, hotel, restaurant, eating house, packing house, slaughter house, ice cream factory, canning factory or place where a food product is manufactured, packed, stored, deposited, collected, prepared, produced or sold for any purpose, fails to place it in a clean and sanitary condition within ten days after being duly notified in writing or by posting the notice provided for in the next succeeding section, or fails to keep it in such condition thereafter, shall be fined not less than fifty dollars nor more than two hundred dollars, and, for each subsequent offense, shall be fined not less than one hundred dollars nor

more than three hundred dollars or imprisoned in the county jail not less than thirty days nor more than one hundred days, or both. (G. C. 1926, § 12797.)

323. Posting Notices by Secretary of Agriculture.—It shall be the duty of the inspectors of the Secretary of Agriculture* of the State of Ohio to post in a conspicuous place in such of the places mentioned in the preceding section under their respective jurisdictions as directed by said Secretary of Agriculture a copy of the sanitary code adopted by it printed in plain, legible type at any time after the taking effect of this act. Upon said notice shall be stamped or written the date of such posting and such inspector shall make a record of such date in a book provided for that purpose. A certified copy of the record of such posting shall be received as prima facie evidence of such fact in the trial of any cause in any court of this State. (Id. § 12798.)

324. Special Jurisdiction of Police Judges, Mayors and Justices.—Justices of the peace, police judges and mayors of cities and villages shall have jurisdiction, within their respective counties, in all cases of violation of any law relating to: . . .

13. The failure to place and keep in a sanitary condition a bakery, confectionery, creamery, dairy, dairy barn, milk depot, laboratory, hotel, restaurant, eating house, packing house, slaughter-house, ice cream factory, or place where a food product is manufactured, packed, stored, deposited, collected, prepared, produced or sold for any purpose. . . . (Id. § 13423.)

NOTE: See also Nos. 8 et seq., 24, 39, 40 et seq., 71 et seq., 96 et seq., 118 et seq., and 138 et seq.

PART III.

Special Drug Laws.

Abortifacients and Contraceptives.

325. Selling or Giving Away Drugs to Prevent Conception.—Whoever sells, gives away, or keeps for sale or gratuitous distribution, a secret drug or nostrum purporting to be exclusively for the use of females, or for preventing conception or procuring abortion or miscarriage, shall be fined not more than one thousand dollars or imprisoned not more than six months, or both. (G. C. 1926, § 13033.)

326. Advertising Secret Drugs.—Whoever prints or publishes an advertisement of a secret drug or nostrum purporting to be for the exclusive use of females, or which cautions females against its use when in a pregnant condition, or publishes an account or description of a drug, medicine, instrument or apparatus for preventing conception, or for procuring an abortion or miscarriage, or keeps for sale or gratuitous distribution a newspaper, circular, pamphlet or book containing such advertisement, account or description, shall be fined not more than one thousand dollars or imprisoned not more than six months, or both. (Id. § 13034.)

327. Disposing of, Exhibiting, Advertising, Etc., Obscene Literature or Drugs for Criminal Purposes.—Whoever sells, lends, gives away, exhibits, or offers to sell, lend, give away or exhibit, or publishes or offers to publish or has in his possession for such purpose, an obscene, lewd or lascivious book, pamphlet, paper, writing, advertisement, circular, print, picture, photograph, drawing, representation, figure, image, cast, instrument or article of an indecent or immoral nature, or a drug, medicine, article or thing intended for the prevention of conception or for causing an abortion, or advertises any of them for sale, or writes, prints, or causes to be written or printed, a card, book, pamphlet, advertisement, or notice giving information when, where, how, of whom or by what means any of such articles or things can be purchased or obtained, or manufactures, draws, prints or makes such articles, or things, or sells, gives away or shows to a minor, a book, pamphlet, magazine, newspaper, story paper or other paper devoted to the publication or principally made up of criminal news, police reports, or accounts of criminal deeds, or pictures and stories of immoral deeds, lust or crime, or exhibits upon a street or highway or in a place which may be within the view of a minor, any of such books, papers or pictures, shall be fined not less than fifty dollars nor more than two thousand dollars or imprisoned not more than five years, or both. (Id. § 13035.)

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*See No. 17a et seq.

328. Sending Obscene Literature by Mail.—Whoever deposits in a post-office or places in charge of a person to be carried or conveyed, any of the obscene, lewd, indecent, or lascivious articles or things named in the next preceding section, or a circular, hand-bill, card, advertisement, book, pamphlet, or notice of the kind therein named, or gives oral information where, how, or of whom such obscene, lewd, indecent or lascivious articles or things can be purchased, or obtained or knowingly receives any of them with intent to carry or convey, or knowingly carries or conveys them, except in the United States mail, shall be fined not less than fifty dollars nor more than one thousand dollars or imprisoned not more than one year, or both. (Id. § 13036.)

329. Exceptions.—The next three preceding sections shall not affect teaching in regularly chartered medical colleges, the publication of standard medical books, or regular practitioners of medicine or druggists in their legitimate business. (Id. § 13037.)

330. Delivering or Depositing Immoral Literature.—Whoever, by himself, servant or agent, or as the servant or agent of another, knowingly leaves or places upon the doorstep or premises owned or occupied by another, or delivers or mails to a child under sixteen years of age, printed or written matter advertising or mentioning therein a drug, nostrum, receipt or method of treatment for venereal diseases or which refers to a method of treatment purporting to restore procreative organs injured by immoral practices, shall be fined not less than twenty-five dollars nor more than one hundred dollars or imprisoned not less than thirty days nor more than one hundred days or both, for each offense. (Id. § 13038.)

331. When Search Warrant May be Issued.—A justice of the peace, mayor or police judge may issue warrants to search a house or place: . . .

3. For books, pamphlets, ballads or printed papers containing obscene language, prints, pictures or descriptions manifestly tending to corrupt the morals of youth, and for obscene, lewd, indecent or lascivious drawings, lithographs, engravings, pictures, daguerreotypes, photographs, stereoscopic pictures, models or casts, and for instruments or articles of indecent or immoral use, or instruments, articles or medicines for procuring abortions, or for the prevention of conception, or for self-pollution; . . . (Id. § 13482.)

Antiseptics.

See Nos. 2 and 332-333.

Condimental Stock and Poultry Tonics, Etc.

See No. 199 et seq.

Cosmetics.

See Nos. 2 and 332-333.

Disinfectants.

See Nos. 2 and 332-333.

Distribution of Samples.

332. Prohibiting Careless Distribution of Samples Containing Drug or Poison; Penalty.—Whoever leaves, throws or deposits upon the doorstep or premises owned or occupied by another or hands, gives or delivers or causes the same to be done to any person, except in a place where it is kept for sale, a patent or proprietary medicine, preparation, pill, tablet, powder, cosmetic, disinfectant or antiseptic, or a drug or medicine that contains poison or any ingredient that is deleterious to health, as a sample, or for the purpose of advertising, shall be fined not less than twenty-five dollars nor more than one hundred dollars or imprisoned not less than thirty days nor more than one hundred days, or both. (G. C. 1926, § 12664.)

333. Terms Defined.—The terms drug, medicine, patent or proprietary medicine, pill, tablet, powder, cosmetic, disinfectant or antiseptic, as used in the next preceding section, shall include all remedies for internal or external use. (Id. § 12665.)

NOTE: See also No. 330.

Insecticides and Fungicides.*

334. Certificate of Contents on Outside of Package of Insecticides—Certificate a Guarantee to Purchaser.—Each person, firm or corporation who manufactures, sells or offers for sale, in this State, arsenate of lead, Paris green, lime sulphides, miscible combinations of mineral or vegetable oils, Bordeaux mixture or any insecticide or fungicide or essential ingredient thereof used for the control of insects or fungus diseases within the State, shall affix to each package in a conspicuous place on the outside thereof, a plainly printed or written certificate which shall state, in the case of solids, the number of net pounds, or in the case of paste arsenate of lead the number of net pounds on a fifty per centum water basis, or in the case of liquids, the number of gallons contained therein, the name, brand or trade-mark under which it is sold, or offered for sale, the name of the manufacturer and the place of manufacturing same. The certificate shall state also the percentages and chemical compositions of all essential substances or ingredients of said insecticides and fungicides or combinations of the same contained in said commodities, and in the case of lime-sulphur solutions the certificate on each package shall state the degree Baume and the percentage of sulphur. The certificate on each package shall be considered as constituting a guarantee to the purchaser of the contents therein. (G. C. 1926, § 1177-29.)

335. Copy of Certificate Filed With Secretary Before Sale.—Before selling or offering for sale arsenate of lead, Paris green, lime-sulphides, miscible combinations of mineral or vegetable oils, Bordeaux mixture or any insecticide or fungicide or essential ingredients thereof used for the control of insects or fungus diseases within the State, each person, firm or corporation shall file with the Secretary of Agriculture certified copies of the certificate required in the preceding section. (Id. § 1177-30.)

336. Insecticide and Fungicide Defined.—The term insecticide as used in this act shall include any substance or mixture of substances intended to be used for preventing, destroying, repelling or mitigating any insects which may infest vegetation, man or animals, or households, or to be present in any environment whatever. The term fungicide as used in this act shall include any substance or mixture or substances intended to be used for preventing, destroying, repelling or mitigating any and all fungi that may infest vegetation or be present in any environment whatsoever. (Id. § 1177-31.)

337. Sale of Adulterated or Misbranded Insecticide, Unlawful.—It shall be unlawful for any person, firm or corporation to manufacture, sell or offer for sale in the State any arsenate of lead, Paris green, lime-sulphides, miscible combinations of mineral or vegetable oils, Bordeaux mixture or any insecticide or fungicide or essential ingredient thereof used for the control of insects and fungus diseases within the State, which is adulterated or misbranded within the meaning of this act. (Id. § 1177-32.)

338. When Article Deemed to be Adulterated.—For the purpose of this act an article shall be deemed to be adulterated—

In the case of paste arsenate of lead: First, if it contains more than 50 per centum of water; second, if it contains total arsenic equivalent to less than twelve and one-half per centum of arsenic oxid; third, if it contains arsenic in water-soluble forms equivalent to more than seventy-five one-hundredths per centum of arsenic and arsenious oxids; fourth, if any substances have been mixed and packed with it so as to reduce, lower or injuriously affect its quality or strength: Provided, however, that extra water may be added to the arsenate of lead (as described in this paragraph) if the resulting mixture is labeled arsenate of lead and water, the percentage of extra water being plainly and correctly stated on the label.

In the case of powdered arsenate of lead: First, if it contains total arsenic equivalent to less than twenty-five per centum of arsenic oxide; second, if it contains arsenic in water-soluble forms equivalent to more than one and one-half per centum of arsenic or arsenious oxids; third, if any substances have been mixed and packed with it so as to reduce, lower or injuriously lower its quality or strength.

In the case of Paris green: First, if it does not contain at least fifty per centum of arsenious oxid; second, if it contains arsenic in water-soluble forms equivalent to more than three and one-half per centum of arsenious oxid; third, if any substance had been mixed and packed with it so as to reduce or lower or injuriously affect its quality or strength.

In the case of insecticides or fungicides, other than Paris green and lead arsenate: First, if its strength or purity fall below the professed standard or quality under

*See No. 17a et seq. This law is to be corrected accordingly.

which it is sold; second, if any substance has been substituted wholly or in part for the article; third, if any valuable constituent of the article has been wholly or in part abstracted; fourth, if it is intended for use on vegetation and shall contain any substance or substances which, although preventing, destroying, repelling, or mitigating insects, shall be injurious to such vegetation when used. (Id. § 1177-33.)

339. When Article Deemed to be Misbranded.—The term misbranded as used herein shall apply to arsenate of lead, Paris green, lime-sulphides, miscible combinations of mineral or vegetable oils, Bordeaux mixture or any other insecticide or fungicide or essential ingredient thereof used for the control of insects or fungus diseases or any other purpose within the State, the package or label of which shall bear any statement, design, or device regarding such article or the ingredients or substances contained therein which shall be false or misleading in any particular or which package shall be falsely branded as to the State, Territory or country in which it is manufactured or produced.

For the purpose of this act an article shall be deemed to be misbranded: In the case of insecticides, arsenate of lead, Paris green or fungicides: First, if it be an imitation, or offered for sale under the name of another article; second, if it be labeled or branded so as to deceive or mislead the purchaser, or if the contents of the package as originally put up shall have been removed in whole or in part and other contents shall have been placed in such package; third, if in package form, and the contents are stated in terms of weight or measure, they are not plainly and correctly stated on the outside of the package.

In the case of insecticides (other than Paris green and arsenate of lead and fungicides): First, if it contains arsenic in any of its combinations or in the elemental form and the total amount of arsenic present (expressed as per centum of metallic arsenic) is not stated on the label; second, if it contains arsenic in any of its combinations or in the elemental form and the amount of arsenic in water-soluble forms (expressed as per centum of metallic arsenic) if not stated on the label; third, if it consists partially or completely of an inert substance or substances which do not prevent, destroy, repel, or mitigate insects or fungi and does not have the names and percentage amounts of each and every one of such inert ingredients plainly and correctly stated on the label: Provided, however, that in lieu of naming and stating the percentage amount of each and every inert ingredient, the producer, may, at his discretion, state plainly upon the label the correct names and percentage amounts of each and every ingredient of the insecticides or fungicides having insecticidal or fungicidal properties, and make no mention of the inert ingredients, except in so far as to state the total percentage of inert ingredients present. (Id. § 1177-34.)

340. Dealers Prohibited From Altering or Changing Materials as Received.—It shall be unlawful for any dealer, agent, distributor or other person, who sells or disposes of any arsenate of lead, Paris green, lime-sulphides, miscible combinations of mineral or vegetable oils, Bordeaux mixture or any insecticide or fungicide or essential ingredient thereof used in the control of insects or fungus diseases within the State to adulterate, dilute, alter or change these materials in any way from the form as received in the original package. (Id. § 1177-35.)

341. Manufacturer's License Before Sale; Fee.—Before selling arsenate of lead, Paris green, lime-sulphides, miscible combinations of mineral or vegetable oils, Bordeaux mixture or any insecticide or fungicide or essential ingredient thereof used for the control of insects or fungus diseases within the State, each person, firm or corporation who manufactures any of the aforementioned commodities shall each year pay to the Secretary of Agriculture a license fee of twenty dollars with each certificate filed. Upon application and payment of such fee said Secretary shall issue a license for the current year. All licenses shall expire on the 31st day of December each year. The payment of such license fee by a person, firm or corporation shall exempt an agent thereof from the requirements of this section. (Id. § 1177-36.)

342. Annual Analysis Required.—Each year the Secretary of Agriculture shall cause to have taken samples of the different brands of arsenate of lead, Paris green, lime-sulphides, miscible combinations of mineral and vegetable oils, Bordeaux mixture or any insecticide or fungicide or essential ingredients thereof used for control of insects or fungus diseases within the State and the same shall be analyzed under the direction of the Secretary of Agriculture. The expenses incurred therefor shall be paid by him from a fund arising from the payment of license fees required in the preceding section. (Id. § 1177-37.)

343. How Samples Obtained for Analyses.—For the purpose of analyses and comparison with the certificate deposited with him, and with the certificate on such package, the Secretary of Agriculture, or a person appointed by him, may purchase in the open market of the State any unbroken original package of any insecticide or fungicide, and may take samples from bulk goods of these materials in the pos-

session of a dealer, consumer or transportation company within this State. Not less than one pound and not exceeding two pounds of solids, and not less than one pint or more than two quarts of liquids shall be taken from bulk goods. (Id. § 1177-38.)

344. Right of Entry to Take Samples.—The Secretary of Agriculture and such assistants, agents, experts and chemists, as he may duly authorize for the purpose, shall have the power to enter any car, warehouse, building, or any premises in the State where arsenate of lead, Paris green, lime-sulphides, miscible combinations of mineral and vegetable oils, Bordeaux mixture of [or] any insecticide or fungicide or essential ingredient thereof, are kept, and open any package or vessel containing or supposed to contain said commodities and take therefrom samples for analysis upon tendering the value of said samples. (Id. § 1177-39.)

345. Penalty for Selling in Violation of Act—Jurisdiction.—Whoever sells, within this State, any arsenate of lead, Paris green, lime-sulphides, miscible combinations of mineral and vegetable oils, Bordeaux mixture or any insecticide or fungicide or essential ingredient thereof used for the control of insects or fungus diseases within the State without complying with the provisions of this chapter, or permits an analysis to be attached to any package thereof stating that it contains a larger percentage of any constituent thereof than it does in fact contain shall be fined not less than fifty dollars nor more than two hundred dollars for the first offense and for any subsequent offense not less than two hundred dollars nor more than five hundred dollars.

In all prosecutions under this act, a justice of the peace, police judge or mayor shall have final jurisdiction as in cases of violation of laws relating to the adulterations of food and drink and dairy products. (Id. § 1177-40.)

346. Who shall Prosecute.—The attorney-general or any prosecuting attorney shall prosecute all violations of this chapter. (Id. § 1177-41.)

347. Annual Report and Publication of Analyses.—The Secretary of Agriculture shall make an annual report and may publish from time to time analyses made of samples taken as provided in section 1177-38 and the analyses guaranteed by the manufacturers. Such report shall contain a statement of monies received and expended from license fees collected for the sale of insecticides and fungicides. (Id. § 1177-42.)

Pharmacy, Poisons and Narcotics.

348. State Board of Pharmacy, Appointment and Term of Members.—There shall be a State Board of Pharmacy, consisting of five members, who shall be appointed by the Governor with the advice and consent of the Senate. The Ohio State Pharmaceutical Association may annually submit to the Governor the names of five registered pharmacists, and from the names so submitted or from others, at his discretion, the Governor each year shall appoint one member of the board for a term of five years and until his successor is appointed and qualified. (G. C. 1926, § 1296.)

349. Organization of Board; Compensation.—The State Board of Pharmacy shall organize by electing a president and a vice-president who shall be members of the board, and a secretary who shall be a registered pharmacist in good standing in his profession. Each of the officers so elected shall serve for a term of one year. The secretary shall receive a salary to be fixed by the board, and his necessary expenses incurred in the performance of his official duties. The members of the board shall rceive the sum of ten dollars for each day employed in the discharge of their official duties and their necessary expenses while engaged therein. (Id. § 1297.)

350. Bond of Secretary; Where Filed.—The Secretary of the State Board of Pharmacy shall give a bond to the State in the sum of one thousand dollars, with two or more sureties approved by the board, conditioned for the faithful discharge of the duties of his office. Such bond with the approval of the board indorsed thereon, shall be deposited with the Secretary of State and kept in his office. (Id. § 1298.)

351. Meetings.—The State Board of Pharmacy shall meet in Columbus on the second Monday of January, the third Monday of June, and the second Monday of October in each year, and at such other times and places as the board may direct. The board shall have a seal and prescribe such rules for its own government as it deems proper. (Id. § 1299.)

352. Records.—The State Board of Pharmacy shall keep a record of its proceedings and a register of all persons to whom certificates have been granted as pharmacists or assistant pharmacists, together with each renewal or revocation of a certificate. The books and registers of the board shall be prima facie evidence of the matters therein recorded. The president and secretary of the board may administer oaths. (Id. § 1300.)

353. Application for Registration; Examination.—A person desiring to be registered as a pharmacist or assistant pharmacist, shall file with the Secretary of

the State Board of Pharmacy a verified application giving his age, place or places at which he studied or practiced pharmacy and the time spent in such study or practice, and appear before the board and take an examintion in the following subjects: chemistry, botany, materia medica, toxicology and the theory and practice of pharmacy. Examination of those so applying for registration as pharmacists or assistant pharmacists shall be held at such times, during each year, and at such places as the board may determine. (Id. § 1301.)

354. Qualifications of Pharmacists.—An applicant for certificate as pharmacist shall be a citizen of the United States, shall be not less than twenty-one years of age, shall be a graduate from a school of pharmacy in good standing as defined in section 1303-2 of the General Code, shall have completed at least a two years' course in such school as defined in section 1303-2 of the General Code and shall have had at least two years of practical experience in a drug store in charge of a registered pharmacist where physician's prescriptions are compounded; provided, however, that if the applicant has taken a longer course in a school of pharmacy in good standing, each additional year successfully passed shall be counted as one year of practical experience. (Id. § 1302.)

355. Qualifications of Assistant Pharmacists.—An applicant for certificate as assistant pharmacist shall be a citizen of the United States, shall be not less than eighteen years of age, shall be a graduate from a two years' course in pharmacy from a school in good standing as defined in section 1303-2 of the General Code, or shall have had at least one year of practical experience in a drug store in charge of a registered pharmacist in which physicians' prescriptions are compounded and one year successfully passed in a school of pharmacy in good standing as defined in section 1303-2 of the General Cole. (Id. § 1303.)

356. Entrance Examiner; Qualifications; Duties.—The State Board of Pharmacy shall appoint an entrance examiner who shall not be directly or indirectly connected with a school of pharmacy and who shall have received the degree of B. A. or B. Sc., and who shall determine the sufficiency of the preliminary education of the applicants for admission to a school of pharmacy in good standing as defined in § 1303-2 of the General Code, and to whom all applicants shall submit credentials.

The following preliminary educational credentials shall be sufficient: A diploma from a legally constituted high school, normal school or academy, issued after at least four years of study; provided, however, that in the absence of the foregoing qualifications, the entrance examiner shall examine the applicant in such branches as are required to obtain them. Applicants desiring to enter a school of pharmacy in good standing as defined in § 1303-2 of the General Code must submit certificates to the entrance examiner from their school authorities describing in full the work completed: Provided, that in the absence of all or any part of the foregoing qualifications, the applicant must present himself before the entrance examiner for the scheduled examinations: Provided further, that the applicants upon presentation of certificates from their school authorities or in case of examination, must pay in advance to the Board of Pharmacy a fee as required in § 1311. If the entrance examiner finds that the preliminary education of the applicant is sufficient, he shall issue to the applicant a certificate therefor which shall be attested by the Secretary of the State Board of Pharmacy. The compensaion of the entrance examiner shall be fixed by the State Board of Pharmacy. (Id. § 1303-1.)

357. When School of Pharmacy Shall be Considered One in Good Standing.—The State Board of Pharmacy shall consider a school of pharmacy in good standing, within the meaning of sections 1302, 1303 and 1303-1 of the General Code which complies with the following: (1) All students wishing to enter a school of pharmacy in good standing, must present a certificate issued by the entrance examiner according to section 1303-1 of the General Code. (2) A two years' course in pharmacy shall cover a period of not less than fifty weeks of actual instruction, occupying two school years, and at least two months shall elapse between these two school years. Each school year work shall cover at least two hundred and fifty hours of class room instruction and three hundred and fifty hours of individual laboratory practice, which shall include at least the work outlined by the pharmaceutical syllabus of 1913. (Id. § 1303-2.)

358. Registration of Apprentice With State Board Required.—It shall be the duty of registered pharmacists, or other employers, who take into their employ an apprentice, for the purpose of his becoming a pharmacist, to register said apprentice within ninety days thereafter with the State Board of Pharmacy. The date of experience required of applicant for registered or assistant pharmacist shall be computed from the date of entering said apprenticeship; and if he or she fails to register, then he or she shall receive no credit for experience in a drug store or pharmacy when he or she makes application for examination. The said State Board of Pharmacy shall furnish proper blanks for this purpose and issue a certificate of registration as a reg-

istered apprentice upon payment of the fee as required in § 1311. An apprentice having served part or all of his time in a pharmacy without the State shall be given credit for the same when affidavit of his said employment is made by his employer showing the exact time served. (Id. § 1303-3.)

359. Preceding Sections Not Effective Until July, 1917.—Nothing in the five preceding sections shall apply to any person who can qualify to take the examination for pharmacist or assistant pharmacist, under the laws now existing, on or before the first day of July, nineteen hundred and seventeen. (Id. § 1303-4.)

360. Certificate to Practice.—If the State Board of Pharmacy is satisfied that the applicant for examination is of the required age, possessed of the practical experience required, and passes a satisfactory examination, it shall issue him a certificate authorizing him to practice the profession of a pharmacist or assistant pharmacist. (Id. § 1304.)

361. Credentials From Other States.—The State Board of Pharmacy may register a person as a pharmacist without examination and issue him a certificate of such registration if he is legally registered as a pharmacist and holds a certificate of such registration under the laws of another State, upon the following conditions: Each applicant for such registration must have been registered by examination and at the time of examination in the State in which he is registered must have filed with the board at least the credentials that were then required by this board for admission to the examination for a pharmacist certificate. (Id. § 1305.)

362. Standard of Qualifications and Requirement; Reciprocal Registration.—The standard of qualification and requirement as to competency in another State shall at least be as thorough as that established by the Board of Pharmacy of this State, provided however, that in case the qualifications established by any State are not as thorough as those established by the Board of Pharmacy of this State, such fact shall not prevent reciprocal registration to those applicants who at the time of examination and registration in another State had the requirements as demanded by the Board of Pharmacy of this State. The board shall not recognize certificates of registration granted by another State unless recognition is given to residents of this State holding certificates from its Board of Pharmacy. (Id. § 1306.)

363. Pharmacists and Assistants Who Served in Army or Navy Permitted to Practice for Six Months; Issue of Permits.—Every person registered as a pharmacist or as an assistant pharmacist or under a corresponding title in any other State or Territory of the United States of America, or in the District of Columbia, who has served in the army or navy of the United States while at war with Austria-Hungary and Germany, and who has been honorably discharged from the service of the United States army or navy shall be permitted within six months after such honorable discharge, upon proof thereof, and upon proof of such registration above mentioned, to the satisfaction of the State Board of Pharmacy, to practice the profession as a pharmacist or assistant pharmacist, as the case may be, within the State for a period not to exceed six months. The State Board of Pharmacy shall issue a permit to that effect to all persons applying therefor and complying with the requirements of this section. (Id. § 1306-1.)

364. When and How Pharmacists and Assistants Holding Permits May Register.—Any person who under the provision of section 1306-1, has received such permission for the period of six months to practice the profession as a pharmacist or assistant pharmacist, after having resided within this State for not less than three months, who upon oath declares an intention to permanently reside therein, may apply to the State Board of Pharmacy for registration as a pharmacist or assistant pharmacist, as the case may be, under the laws of this State, upon payment of the fees provided for in section 1311 of the General Code for issuing a certificate to a pharmacist or assistant pharmacist and proof of good character and reputation, subject to the rules and regulations for that purpose prescribed by the State Board of Pharmacy, and said board upon such application, satisfactory proof and payment of fees, shall issue a certificate of registration as pharmacist or assistant pharmacist, as the case may be, to such a person without requiring him to meet other provisions of law which may otherwise prevail for reciprocal registration within this State, subject, however, after registration, to all the other provisions of law which govern those who are registered within the State as pharmacist or assistant pharmacist. (Id. § 1306-2.)

365. Certificate to Practice; Causes for Refusal; Revocation, Suspension, Appeal.—Each certificate and each renewal certificate issued by the State Board of Pharmacy shall entitle the person to whom it is granted to practice the profession of pharmacist or assistant pharmacist for three years. The board may refuse to grant a certificate to a person guilty of felony or gross immorality, or addicted to the liquor or drug habit to such a degree as to render him unfit to practice pharmacy, and, after notice and hearing, may suspend or revoke a certificate for like cause or for fraud in procuring it. Within thirty days an appeal may be taken

from the action of the State Board of Pharmacy refusing to grant or suspending or revoking a certificate to the Common Pleas Court of Franklin county or to the Common Pleas Court of the county in which the person who has been refused a certificate or whose certificate has been suspended or revoked resides. The judgment of the Common Pleas Court may be reviewed upon proceedings in error in the Court of Appeals. No certificate shall be suspended for a longer period than two years. If during such suspension the existing certificate shall have expired the board may, at the end of such suspension, renew such certificate upon payment to the State Board of Pharmacy the fee prescribed in section 1311 of the General Code for renewal of a certificate. (Id. § 1307.)

366. Power of Board and the Accused in the Production of Evidence.—The State Board of Pharmacy or the accused shall have the power to require the attendance of such witnesses and the production of such books, records and papers as either may desire at any hearing of any matter of which the board has authority to investigate, and for that purpose either may require the secretary of the board to issue a subpœna for any witness or a subpœna duces tecum to compel the production of any books, records or papers, directed to the sheriff of the county where such witness resides or is found, which shall be served and returned in the same manner as a subpœna in a criminal case is served and returned. The fees and mileage of the sheriff and witnesses shall be the same as that allowed in the Common Pleas Court in criminal cases. Fees and mileage shall be paid from the fund in the State treasury for the use of the board in the same manner as other expenses of the said board are paid. Depositions of witnesses residing within or without the State may be taken by the board or the accused in the same manner prescribed by law for like depositions in civil action in the Common Pleas Court. In any case of disobedience thereto or neglect of any subpœna served on any person or the refusal of any witness to testify to any matter regarding which he may lawfully be interrogated, it shall be the duty of the Common Pleas Court of any county where such disobedience, neglect or refusal occurs, or any judge thereof, on application by the Secretary of the State Board of Pharmacy to compel obedience by attachment proceedings for contempt as in the case of disobedience of the requirements of a subpœna issued from such court or a refusal to testify therein. (Id. § 1307-1.)

367. Hearing Before Any Member or Members.—Any investigation, inquiry or hearing, which the State Board of Pharmacy is empowered by law to hold or undertake may be held or undertaken by or before any member or members of the State Board of Pharmacy and the finding or order of such member or members of said board shall be deemed to be the order of said board when approved and confirmed by it. (Id. § 1307-2.)

368. Certificate of Registration; Renewal; Fee.—Each person registered as a pharmacist or assistant pharmacist as provided herein, shall be entitled to practice his profession until the expiration of his certificate of registration. If a registered pharmacist or assistant pharmacist desires to continue the practice of his profession he shall file with the State Board of Pharmacy an application for a renewal of his certificate within thirty days next preceding its expiration; and if the board finds that the applicant has been duly registered in this State and is entitled thereto, it shall issue him a renewal certificate signed by its president and secretary. The right to obtain such a certificate shall not be denied a person within three years after the expiration of his certificate of registration. If a registered person fails to make application for such renewal within sixty days after the expiration of his certificate, he shall pay the Secretary of the State Board of Pharmacy a fee as provided for in § 1311. (Id. § 1308.)

369. Re-examination; When; Fee.—If a registered pharmacist or assistant pharmacist fails to make application to the board for a renewal certificate within a period of three years from the expiration of his certificate, he must pass an examination for registration; except that a person, who has been registered under the laws of this State and after the expiration of his registration, has continually practiced pharmacy in another State under a certificate issued by its authority, may obtain a renewal certificate upon payment to the Secretary of the State Board of Pharmacy the fee as provided for in § 1311. (Id. § 1309.)

370. Duplicate Certificates.—A duplicate certificate may be issued to persons registered as a pharmacist or assistant pharmacist whose certificate has been lost or destroyed, upon the following condition: The applicant must declare by affidavit that he actually resides within the State and in the affidavit set forth the facts concerning the loss or destruction of his certificate. A temporary certificate or letter of certification may be issued by the Secretary of the State Board of Pharmacy for a period of not more than one year, pending the determination of the validity of the application for a duplicate certificate. (Id. § 1309-1.)

371. To Others.—A duplicate certificate for other than pharmacist or assistant pharmacist may be issued to persons whose certificate has been lost or destroyed, provided, however, the applicant file an application under oath, setting forth the facts concerning his or her registration and how the certificate came to be lost or destroyed. (Id. § 1309-2.)

372. Certificate Shall be Exposed.—Each certificate of registration shall be conspicuously exposed in the pharmacy or drug store of which the pharmacist or assistant pharmacist to whom it is issued is the owner or manager, or in charge of or in which he is employed. (Id. § 1310.)

373. Fees.—The State Board of Pharmacy shall charge and collect the following fees:

For the examination of an applicant for a certificate as pharmacist, twenty dollars;

For the examination of an applicant for a certificate as assistant pharmacist, fifteen dollars;

For issuing a renewal certificate to a pharmacist, five dollars;

For issuing a renewal certificate to an assistant pharmacist, five dollars;

For issuing a certificate to a pharmacist on presentation of a certificate granted by another State, fifty dollars;

For issuing a renewal certificate for one that has lapsed for more than sixty days, twelve dollars;

For issuing a renewal certificate for one that has lapsed for more than three years, twenty-seven dollars;

For the examination or issuance of a preliminary education certificate, three dollars;

For a certificate of apprenticeship registration, one dollar;

For issuing a duplicate certificate to a pharmacist or assistant pharmacist, five dollars;

For issuing other duplicate certificates, one dollar;

For certifying examination grades, twenty-five cents;

For certifying registration and grades for reciprocal registration, one dollar;

The fee paid by the applicant shall not be returned to him if he fails to pass an examination. (Id. § 1311.)

374. Fees, Where Deposited.—All fees required by the previous section shall be paid in advance to the Secretary of the State Board of Pharmacy, and by him paid into the State treasury. (Id. § 1312.)

375. Board Shall Enforce All Laws Relating to Practice of Pharmacy.—The State Board of Pharmacy shall enforce, or cause to be enforced, the laws relating to the practice of pharmacy. If it has information that any provision of the law has been violated, it shall investigate the matter, and upon probable cause appearing, file a complaint and prosecute the offender. Fines assessed and collected under prosecutions commenced or caused to be commenced by the State Board of Pharmacy shall be paid into the State treasury to the credit of the general revenue fund. It is the intention herein that the State Board of Pharmacy shall enforce or cause to be enforced the provisions of sections 12705, 12706, 12707, 12708, 12709 and 12710 of the General Code. (Id. § 1313.)

376. Retail Drug Stores Must be Conducted by Legally Registered Pharmacist.—Whoever, not being a legally registered pharmacist, manages or conducts a retail drug store unless he has in his employ a full and actual charge of the pharmaceutical department of such store, a pharmacist legally registered under the laws of this State, and, whoever being a legally registered pharmacist shall manage or conduct a retail drug store without being personally in full and actual charge of such store, or unless he has in his employ in full and actual charge of the pharmaceutical department of such store a pharmacist legally registered under the laws of this State, shall be fined not less than fifty dollars nor more than two hundred dollars. Each day's violation of this section shall constitute a separate offense. A retail drug store, within the meaning of this section, shall be any room, rooms or place of business wherein drugs, poisons, chemicals or pharmaceutical preparations shall be offered or displayed for sale at retail, or upon which as a sign the words, "pharmacy," "drugs," "drug store," "pharmacist," "pharmaceutical chemist," "apothecary" or any of these words, or their equivalent in any language are or is displayed. (Id. § 12705.)

377. Unlawful Selling of Drugs; Penalty.—Whoever, not being a legally registered pharamacist or a legally registered assistant pharmacist employed in a pharmacy or drug store under the management or control of a legally registered pharmacist, compounds, dispenses, or sells a drug, chemical, poison or pharmaceutical preparation, shall be fined not less than fifty dollars nor more than two hundred dollars. Each day's violation of this section shall constitute a separate offense. (Id. § 12706.)

378. Exceptions to Last Two Sections.—The next two preceding sections shall not apply to a physician or prevent him from supplying his patients with such medicines as to him seems proper, the making or vending of patent or proprietary medicines by a retail dealer, the selling of copperas, borax, blue vitriol, saltpeter, sulphur, brimstone, licorice, sage, juniper berries, senna leaves, castor oil, sweet oil, spirits of turpentine, glycerine, Glauber's salt, cream of tartar, bicarbonate of sodium, quinine, rochelle salts, Epsom salts, alum, camphor gum, oil of cinnamon, oil of lemon, or prohibit a person from selling in the original packages, paregoric, essence of peppermint, essence of cinnamon, essence of ginger, hive syrup, syrup of ipecac, tincture of arnica, syprup of tolu, syrup of squills, spirits of camphor, number six, sweet spirits of nitre, compound cathartic pills, quinine pills and other similar preparations when compounded by a legally registered pharmacist and put up in bottles or boxes bearing the label of such pharmacist or a wholesale druggist, with the name of the article and directions for its use on each bottle or box. (Id. § 12707.)

379. Certain Preceding Sections do Not Prohibit Sale of Paris Green, Etc., When.—Section 12705 and section 12706 shall not prohibit a person from selling Paris green and other materials or compounds used exclusively for spraying and disinfecting when put up in bottles or boxes, bearing the name of a legally registered pharmacist or wholesale dealer, and labeled as required by law, or apply to or interfere with the exclusively wholesale business of a dealer. (Id. § 12708.)

380. Certain Preceding Sections do Not Prohibit Sale of Denatured or Wood Alcohol.—§§ 12705 and 12706 of the General Code shall not apply to, interfere with or prohibit any person, firm or corporation from selling completely denatured alcohol or wood alcohol. (Id. § 12708-1.)

381. Penalty.—Whoever shall have in his possession, or dispenses or sells packages or containers of completely denatured alcohol or wood alcohol containing five wine gallons or more without having marked or stenciled thereon the name and address of the seller, the degree of proof of such alcohol, the formula number, and, in letters of not less than one inch in height, the words, "Completely Denatured Alcohol" or "Wood Alcohol," as the case may be, and the names of two or more antidotes for the same, shall be fined not less than ten dollars nor more than fifty dollars. The provisions of this section, the next succeeding section and § 12667 of the General Code shall not interfere with the transfer of such alcohol from storage tanks to other packages or containers, nor require the placing of such mark or stencil upon transportation tanks, nor the registration or placing of mark or stencil upon fuel tanks, automobile radiators or similar containers for the final use or consumption of such alcohol and from which no further distribution thereof is made. (Id. § 12708-2.)

382. Penalty.—Whoever dispenses or sells completely denatured alcohol or wood alcohol in packages containing less than five wine gallons without having affixed thereto a label on which is printed or stenciled in plain, legible, red letters of equal prominence on a white gackground the words, "Completely Denatured Alcohol" or "Wood Alcohol," as the case may be, and in addition on the same label in red ink, under the skull and crossbones, symbol, the word "POISON" together with the following statement, "Completely denatured alcohol, or wood alcohol is a violent poison. It cannot be applied externally to human or animal tissue without serious injurious results. It cannot be taken internally without inducing blindness and general physical decay ultimately resulting in death," and without having stamped, stenciled or printed upon such label the name and address of the seller, the degree of proof, and the formula number thereof, shall be fined not less than ten dollars nor more than fifty dollars. Neither the word "pure" nor the single word "alcohol" alone shall appear on any label of completely denatured alcohol or wood alcohol. (Id. § 12708-3.)

383. Penalty.—Whoever, dispensing, selling or offering for sale completely denatured alcohol or wood alcohol, displays a sign or uses a label or advertises such alcohol having the word "pure" or single word "alcohol" alone thereon, or fails to state the degree of proof of such alcohol, or fails to have the letters displaying or advertising "Completely Denatured Alcohol" or "Wood Alcohol" plain, legible and of equal prominence, shall be fined not less than ten dollars nor more than fifty dollars. (Id. § 12708-4.)

384. Enforcement.—All provisions of §§ 12708-2, 12708-3 and 12708-4 shall be enforced as provided for in § 1313 of the General Code. (Id. § 12708-5.)

385. Swearing Falsely Before State Board of Pharmacy.—Whoever files with the State Board of Pharmacy a false or forged affidavit, or makes a false statement under oath, with intent to secure for himself or another a certificate of registration, or a renewal thereof, shall be imprisoned in the penitentiary not less than one year nor more than three years. (Id. § 12709.)

386. Failure to Display Pharmacist's Certificate.—Whoever, being a registered pharmacist or assistant pharmacist, fails to display in a conspicuous place his certificate of registration, as required by law, shall be fined not less than five dollars

nor more than twenty dollars. Each days violation of this section shall constitute a separate offense. (Id. § 12710.)

387. Regulating the Sale of Poisons.—Whoever, knowingly sells or delivers to any person otherwise than in the manner prescribed by law, or sells or delivers in the manner prescribed by law but without the written order of an adult, to a minor under sixteen years of age, any of the following described substances or any poisonous compounds, combinations or preparations thereof, to wit: The compounds and salts of antimony, arsenic, chromium, copper, lead, mercury, zinc, the concentrated mineral acids, oxalic and hydrocyanic acids and their salts, yellow phosphorus, carbolic acid, the essential oils of almonds, pennyroyal, tansy, and savin, croton oil, creosote, chloroform, chloral hydrate, cantharides, aconite, belladonna, bitter almonds, colchicum, cotton root, cocculus indicus, conium, cannabis indica, digitalis, hyoscyanus, ignatia, lobelia, nux vomica, opium, physostigma, phytolacca, stronphantus, stramonium, veratum viride, or any of the poisonous alkaloids or alkaloidal salts or other poisonous principles derived from the foregoing, or other poisonous alkaloids or their salts or other virulent poison shall be fined not less than ten dollars nor more than fifty dollars for each offense. (Id. § 12666.)

388. Further Regulations.—Whoever sells or delivers to any person a substance named in the next preceding section without having first learned by due inquiry that such person is aware of the poisonous character thereof and that it is desired for a lawful purpose or without plainly labeling the word "poison," and the names of two or more antidotes therefor, upon the box, bottle or package containing it or delivers such substance without recording in a book kept for the purpose, the name thereof, the quantity delivered, the purpose for which it is alleged to be used, the date of its delivery, and the name and address of the purchaser and the name of the dispenser or fails to preserve said book for five years and submit it at all times for inspection to proper officers of the law, shall be fined not less than ten dollars nor more than fifty dollars. (Id. § 12667.)

389. Exceptions to Two Preceding Sections.—The provisions of the next two preceding sections shall not apply to substances dispensed to or upon the order or prescription of persons believed by the dispenser to be lawfully authorized practitioners of medicine or dentistry, and the record of sale and delivery therein mentioned shall not be required of manufacturers and wholesalers selling any of such substances at wholesale, if the box, bottle or package containing such substance when sold at wholesale, is labeled with the name of the substance, the word "Poison," and the name and address of the manufacturer or wholesaler. (Id. § 12668.)

390. Same.—It shall not be necessary to place a poison label upon, nor record the delivery of preparations containing substances named in section twelve thousand six hundred and sixty-six, when a single box, bottle or other package of the bulk of one-half fluid ounce or the weight of one-half avoirdupois ounce does not contain more than an adult medicinal dose of such poisonous substance. (Id. § 12669.)

391. Further Exceptions.—It shall not be necessary to place a poison label upon nor record the delivery of, the sulphide of antimony, the oxide of carbonate of zinc, or colors ground in oil and intended for use as paints, nor of calomel, paregoric or other preparations of opium containing less than two grains of opium to the fluid ounce. (Id. § 12670.)

392. Same.—It shall not be necessary to place a poison label upon, nor record the delivery of preparations recommended in good faith for diarrhœa or cholera, when each bottle or package is accompanied by specific directions for use and a caution against the habitual use thereof, nor of liniments, or ointments when plainly labeled "for external use only," nor preparations put up and sold in the form of pills, tablets, or lozenges and intended for internal use, when the dose recommended does not contain more than one-fourth of an adult medicinal dose of such poisonous substance. (Id. § 12671.)

393. Enforcement Relating to Poison.—The State Board of Pharmacy shall enforce, or cause to be enforced, the laws relating to the labeling, recording, sale or delivery of poisons as provided in §§ 12664, 12665, 12666, 12667, 12668, 12669, 12670 and 12671 of the General Code. If it has information that any provision of the law has been violated, it shall investigate the same, and upon probable cause appearing, shall file a complaint and prosecute the offender. Fines assessed and collected under prosecutions commenced or cause to be commenced by the State Board of Pharmacy shall be paid into the State treasury to the credit of the General Revenue Fund. (Id. § 12671-1.)

394. Regulation of, Possession and Sale of Cocaine, Eucaine, Morphine, Etc.; Permits Necessary; Prescription and Record; Penalty; Does Not Extend to Wholesalers, Physicians, Etc., in Certain Cases.—Whoever purchases, sells, barters, furnishes or gives away, directly or indirectly, or has in his possession, for the

purpose of selling, bartering, furnishing or giving away, directly or indirectly, any quantity of cocaine, alpha or beta eucaine, alypin, morphine, heroin, opium, canabis indica, canabis sativa, or marijuana, or any of their alkaloids, salts, derivatives or compounds, or any synthetic equivalent thereof either as to the physical properties or physiological action, or has in his possession, for the purpose of using to satisfy the craving for any of the above named drugs or substances, except upon the original written prescription of the physician, dentist or veterinary surgeon duly licensed under the laws of the State, and having a Federal permit to prescribe narcotic drugs when prescribing for their patients for actual and necessary purposes in the proper practice of their respective professions, which prescription shall contain the name and address of the patient, the date of issue, the written signature, the address and Federal permit number of the physician, dentist, or veterinary surgeon issuing it, the specific directions for use as provided for under Federal narcotic law and regulations, or fails to keep such prescription in a separate file for at least two years, in such manner that it is accessible at all reasonable times to the inspection of the proper officer or officers of the law, and to the State Department of Agriculture or anyone acting in its behalf, or fills said prescription more than once, shall be fined not less than fifty dollars, nor more than five hundred dollars for the first offense, and for each subsequent offense shall be fined not less than one hundred dollars nor more than five hundred dollars or imprisonment in the penitentiary not less than one year nor more than five years or both at the discretion of the court. If it be made to appear to the court that the person so convicted is addicted to the use of any of the above named drugs or substances, the court, with the consent of the convicted person, may commit such person to a hospital or other institution for the treatment of such person. Any person who is not a wholesale dealer in drugs or who is not a pharmacist, physician, dentist or veterinary surgeon who possesses any of the above named drugs or substances, when not permitted, or any person who is not a wholesale dealer in drugs, or a pharmacist, physician, dentist or veterinary surgeon who writes, changes or misrepresents a prescription or order form for narcotic drugs, or has in his possession or procures or attempts to procure any of the above named drugs or substances on a changed or misrepresented prescription or order form shall be fined not less than two hundred dollars nor more than five hundred dollars or imprisoned not less than one year nor more than five years in the penitentiary, or both, at the discretion of the court.

This section does not extend to sales at wholesale of any quantity of the above named drugs or substances to duly registered pharmacists, physicians, dentists or veterinary surgeons, unless such sales, possession or use thereof is for the purpose of satisfying the craving for such drugs or subtances named. This section does not extend to preparations sold, or to the prescription of preparations sold, or the refilling thereof, when they do not contain more than two grains of opium, or not more than one-fourth grain of morphine, or not more than one-eighth grain of heroin, or not more than one-eighth grain of alpha or beta eucaine, or not more than one grain of codeine, in one fluid ounce, if a liquid, or, one avoirdupois ounce, if a solid or not more than twenty grains per ounce of solid extract of canabis indica or canabis sativa or marijuana. This section does not extend to the dispensing, administering or giving away of any of the above named drugs or substances by a licensed physician, dentist or veterinary surgeon to a bona fide patient under the personal attendance of such physician, dentist or veterinary surgeon, occurring in the regular practice of their respective professions; provided, however, that such dispensing, administering or giving away is not for the purpose of evading the provisions of this act. (Id. § 12672, as amended in 1927.)

395. Search of Premises; Obstructing; Penalty—Bond.—For the purpose of the enforcement of the next preceding section, anyone, so empowered to enforce as provided for in the following section, may enter and search any room, rooms or other place wherein the provisions of the next preceding section are believed to be violated. Any one who hinders, obstructs or interferes with the enforcement of the next preceding section shall be guilty of a misdemeanor and, on conviction, shall be fined not less than fifty dollars, nor more than two hundred dollars, together with the costs of prosecution. Anyone empowered to enforce the provisions of §§ 12672, 12672-1 and 12679 of the General Code may arrest, without warrant, any person found to be violating said laws relating to the traffic in narcotics, and take such person before any justice of the peace or other officer having jurisdiction in such proceeding, and take such other action as the law provides. Any one authorized to enforce the provisions of §§ 12672, 12672-1 and 12679 of the General Code shall give suitable bond for the faithful performance of their duties. (G. C. 1926, § 12672-1.)

396. State Department of Agriculture to Enforce Law.—It shall be the duty of the State Department of Agriculture or anyone acting in its behalf to enforce or cause to be enforced the provisions of §§ 12672, 12672-1 and 12679 of the General

Code and all fines or forfeited bonds, assessed and collected under prosecutions or prosecutions commenced, shall, within thirty days, be paid one-half to the Secretary of the State Department of Agriculture* and by him paid into the State treasury, and one-half to the treasury of the township or municipality in which the prosecution is held. (Id. § 12673.)

397. Opium Resort.—Whoever opens or maintains as a resort for others, a place where opium or any of its preparations is sold or given away to be smoked, or at such place sells or gives away opium or its said preparations to be there smoked or otherwise used, or whoever visits or resorts to such place for the purpose of smoking opium or its preparations, shall be fined not more than five hundred dollars or imprisoned in the county jail not more than three months, or both. (Id. § 12679.)

397a. Entry of Plant With Matches, Etc., or While Intoxicated Prohibited.—No employee or other person shall enter or attempt to enter any explosive plant with matches or other flame-producing devices, except electric incandescent flashlights nor shall any employee or other person enter or attempt to enter such premises with narcotics in his or her possession or control, or while under the influence of liquor or narcotics, or to partake of intoxicants or narcotics while within the plant nor shall any person smoke in a factory building or upon the premises thereof except as such places as shall be designated by the owner or his authorized representative, under penalty of misdemeanor.

The superintendent may authorize in writing any employee or other person to have approved safety matches in his possession or to depart from the other provisions of this section. (Id. § 5903-18.)

398. Conveying Intoxicating Liquors or Drugs Into Prison.—Whoever conveys or attempts to convey into the penitentiary, a jail or other place of confinement where a person is lawfully detained, intoxicating liquor or a stimulating, sedative or narcotic medicine, such as cocaine, opium, chloral, chloroform or ether, except in accordance with the rules of such penitentiary, jail or other place of confinement, and upon written prescription of the regularly appointed physician thereof, shall be fined not less than ten dollars nor more than one hundred dollars or imprisoned not more than one year, or both. (Id. § 12836.)

399. Special Jurisdiction of Police Judges, Mayors and Justices.—Justices of the peace, police judges and mayors of cities and villages shall have jurisdiction, within their respective counties, in all cases of violation of any law relating to: . . .

12. The conducting of a pharmacy, or retail drug or chemical store, or the dispensing or selling of drugs, chemicals, poisons or pharmaceutical preparation therein. . . . (Id. § 13423.)

NOTE: See also No. 255.

Tuberculin—Antitoxin.*

400. Who May Administer Tuberculin.—It shall be unlawful for any person, other than a licensed graduate veterinarian who is approved by the State Bureau of Live Stock Industry and United States Bureau of Animal Industry to administer tuberculin to cattle in Ohio. (G. C. 1926, § 1114-1.)

401. Unlawful to Sell Without Permit; Issue of.—It shall be unlawful to sell, offer for sale or give away any tuberculin in Ohio without a permit from the State Veterinarian. All persons, firms or corporations desiring to introduce or distribute tuberculin in Ohio must make written application to the State Veterinarian for a permit to do so. Such permits shall be issued only on the condition that each sale of tuberculin must be made to veterinarians approved by the State and a monthly report of all such sales showing date of each sale, amount of tuberculin and name and address of the veterinarian receiving the same shall be made to the State Veterinarian on forms provided for that purpose. Failure on the part of any person, firm or corporation to comply with the conditions under which the permit is issued shall be considered sufficient cause for revoking the permit. (Id. § 1114-2.)

402. Possession Without Permit Unlawful.—It shall be deemed unlawful for any person other than a veterinarian approved by the State or a person, firm or corporation having a permit from the State Veterinarian, to have tuberculin in his or her possession. (Id. § 1114-3.)

403. Penalty.—Any person, firm or corporation, violating any of the provisions of § 1 of this act, shall be punished by a fine of not less than fifty nor more than two hundred dollars. (Id. § 1114-4.)

404. Distribution of Antitoxin for Cure and Prevention of Diphtheria.—The State Board of Health shall make necessary arrangements for the production

*See No. 17a et seq. This law is to be corrected accordingly.

and distribution of diphtheria antitoxin, provided that such antitoxin shall in all respects be equal in purity and potency to the standard of requirements of the United States Public Health Service for antitoxin for interstate commerce. Diphtheria antitoxin shall be distributed in accordance with such rules and regulations as may be adopted by the State Board of Health. (Id. § 1239-1.)

405. Who May Receive Antitoxin Free for Treatment.—Any licensed physician practicing in the State of Ohio, or the superintendent of any State or county institution, shall be entitled to receive without charge such quantities of antitoxin as he may require for the treatment or prevention of diphtheria in poor or indigent persons, provided that such antitoxin shall be used only for persons residing in the State of Ohio, and that a sufficient supply is available for distribution. (Id. § 1239-2.)

406. Free Distribution of Antitoxin.—Each district board of health shall provide for the free distribution of antitoxin for the treatment of cases of diphtheria and shall establish sufficient distributing stations to render such antitoxin readily available in all parts of the district. (Id. § 1261-29.)

407. Selling Prohibited.—Any person or persons who shall sell any diphtheria antitoxin produced and distributed by the State Board of Health shall be guilty of a misdemeanor and upon conviction shall be fined in any amount not exceeding one hundred dollars. (Id. § 13421-1.)

Venereal Disease Drugs.

See No. 330.

Wood Alcohol.

See Nos. 4, 5, 210, 380 et seq., and 409.

Intoxicating Liquors.

408. Act Deemed an Exercise of the Police Power of the State.—This act shall be deemed to be an exercise of power granted in Article XV, section 9, of the Constitution of Ohio and the police power of the State and its provisions shall be liberally construed to carry out the provisions of this act. (G. C. 1926, § 6212-13.)

409. Interpretation; Definition of Words and Phrases.—In the interpretation of this act (1) the word "liquor" or the phrase "intoxicating liquor" shall be construed to include alcohol, brandy, whisky, rum, gin, beer, ale, porter, and wine, and in addition thereto any distilled, spirituous, malt, vinous, or fermented liquor, and also any liquid or compound whether or not same is medicated, proprietary, or patented, and by whatever name called, containing one-half of one per cent or more of alcohol by volume which is fit for use for beverage purposes: Provided, that the foregoing definition shall not extend to de-alcoholized wine, nor to any beverage or liquid produced by the process by which beer, ale, porter, or wine is produced, if it contains less than one-half of one per centum of alcohol by volume, and is made as prescribed in section 37, title II of the Act of Congress known as the "National Prohibition Act" passed October 28, 1919.

2. The term "given away" and the term "possess" shall not apply to intoxicating liquor in a bona fide private dwelling.

3. The word "person" shall mean and include actual persons, firms, associations, copartnerships and corporations.

4. The term "alcohol" shall mean ethyl alcohol. Whoever knowingly sells, furnishes or gives away wood alcohol or any preparation or compound containing wood alcohol or any intoxicating liquor to be used for beverage purposes and death results therefrom shall be guilty of murder in the second degree and shall be imprisoned in the penitentiary during life. (Id. § 6212-14.)

410. Who May Traffic in Intoxicating Liquors and How.—No person shall, after the passage of this act (G. C. §§ 6212-13 to 6212-20), manufacture, sell, barter, transport, import, export, deliver, furnish, receive, give away, prescribe, possess, solicit or advertise any intoxicating liquors, or solicit or receive, or knowingly permit his employees to solicit or receive, from any persons any order for intoxicating liquor, or give any information of how intoxicating liquor may be obtained, except as authorized in this act. Liquor, and liquor preparations and compounds for nonbeverage purposes, and wine for sacramental purposes, may be manufactured, purchased, sold, bartered, transported, imported, exported, delivered, furnished, received, given away, possessed, prescribed, solicited, advertised, and orders may be solicited and received for the same, but only in accordance with the provisions of Title II of the Act of

Congress known as the "National Prohibition Act," passed October 28, 1919. (Id. § 6212-15.)

411. Restrictions as to Permitted Uses of Liquor.—Notwithstanding the provisions of § 6212-15 of the General Code, no intoxicating liquor except pure grain or ethyl alcohol or spirituous liquor in quantities of one-half pint in any period of ten days, for the aged, infirm and known sick or alcoholic medicinal preparations which have been named or hereafter shall be named by the Federal Prohibition Commissioner and held to be fit for beverage purposes and listed in the U. S. P. and N. F. shall be manufactured, sold, prescribed or dispensed for medicinal purposes. (Id. § 6212-15a.)

412. Manufacture and Sale Prohibited Without Federal Permit.—No person unless he first obtains a permit in conformity with the Federal prohibition law in reference thereto, as may be required, to manufacture, use, sell, purchase or transport liquor, or to prescribe alcohol, or sell wine for sacramental purposes, or to manufacture liquor, or liquor preparations or compounds for nonbeverage purposes, or to manufacture liquor, or liquor preparations or compounds for nonintoxicating beverage purposes, shall manufacture, use, sell, purchase or transport any liquor, or prescribe alcohol, or sell wine for sacramental purposes, or manufacture any liquor preparations or compounds for nonbeverage purposes, or manufacture any liquor, or liquor preparations or compounds for nonintoxicating beverage purposes, respectively, provided, that this act shall not apply to ethyl alcohol lawfully denatured in accordance with formulas prescribed by the Commissioner of Internal Revenue under the provisions of section 10 of title III of the National Prohibition Act or any amendments thereto. (Id. § 6212-15b.)

412a. Possession of Liquor or Property to Manufacture, Etc., Prohibited; Search and Seizure.—It shall be unlawful to have or posesss any liquor, or property designed for the manufacture of liquor, intended for use in violation of law or which has been so used, and no property rights shall exist in any such liquor or property. A search warrant may issue, and proceedings had thereunder, as provided in sections 13482 to 13488 inclusive of the General Code so far as the same may apply and such liquor, the containers thereof, and such property so seized shall be subject to such disposition as the court may make thereof. If it is found that such liquor or property was so unlawfully held or possessed, or had been so unlawfully used, the liquor or property designed for the unlawful manufacture of liquor shall be destroyed unless the court shall order it to be disposed of as provided in public act 66, Federal statutes. No search warrant shall issue to search any private dwelling occupied as such unless it is being used for the unlawful sale of intoxicating liquor, or unless it is in part used for some business purpose such as store, shop, saloon, retaurant, hotel or boarding house. The term "private dwelling" shall be construed to include the room or rooms used and occupied not transiently but solely as a residence in an apartment house, hotel, or boarding house. The property seized on any such warrant shall not be taken from the officer seizing the same on any writ of replevin or other like process. (Id. § 6212-16.)

413. Penalties for Violations.—Except as herein provided, any person who violates the provisions of this act (G. C. §§ 6212-13 to 6212-20), for a first offense shall be fined not less than one hundred dollars nor more than one thousand dollars; for a second offense he shall be fined not less than three hundred dollars nor more than two thousand dollars; for a third and each subsequent offense, he shall be fined not less than five hundred dollars nor more than two thousand dollars and be imprisoned in the State Penitentiary not less than one year nor more than five years. Any person who in violation of this act (G. C. §§ 6212-13 to 6212-20) manufactures distilled liquors, for a first offense shall be fined not less than five hundred dollars nor more than three thousand dollars and be imprisoned in the State Penitentiary not less than one year nor more than five years and for a second and each subsequent offense shall be fined not less than one thousand dollars nor more than five thousand dollars and be imprisoned in the State Penitentiary not less than two years nor more than ten years. The penalties provided in this act shall not apply to a person for manufacturing vinegar, or nonintoxicating cider and fruit juices exclusively for use in his home, but such cider and fruit juices shall not be sold or delivered after they become intoxicating except to persons having permits from the United States government to manufacture vinegar. Nothing herein shall be construed to prevent the sale of vinegar and said penalties shall not apply to any such sale. No fine or part thereof imposed hereunder shall be remitted nor shall any sentence imposed hereunder be suspended in whole or in part thereof. (Id. § 6212-17.)

414. Conviction Prevents Violator From Selling or Dealing for Two Years and Thereafter Unless Bond Given.—If any person not the holder of any permit, as provided in the preceding section, be convicted for a violation of any State or Federal law relating to intoxicating liquors, and said conviction is unreversed, it

shall thereafter be unlawful for the space of two years for such person, to sell or otherwise deal in, for any purpose, any liquid or compound, whether or not the same is medicated, proprietary or patented, or by whatever name called, containing one-half of one per cent or more of alcohol by volume, and, after said two years, it shall likewise be unlawful for said person so to do, unless said person so convicted shall execute before and file with the Commissioner of Prohibition of Ohio, a good and valid bond, payable to the State of Ohio, in the sum of not less than two thousand dollars nor more than ten thousand dollars, with sureties acceptable to the Commissioner of Prohibition of Ohio that such person will not violate any law relating to intoxicating liquors, and will pay all fines and costs assessed against him for violating any such law. Provided that this section shall not apply to a registered pharmacist or physician except when convicted for trafficking in intoxicating liquor for beverage purposes. (Id. § 6212-17a.)

415. Penalty.—Whoever violates any of the provisions of this act shall, upon conviction, be punished as provided in § 6212-17 of the General Code. (Id. § 6212-17d.)

416. Enforcement of Law.—It shall be the duty of the Commissioner of Prohibition of Ohio to enforce the provisions of this act, and in so doing said commissioner, deputy and inspectors shall have the same rights and privileges as are granted under an act known as amended Senate Bill No. 17, passed February 2, 1921, and approved February 9, 1921. (Id. § 6212-17e.)

417. Obstruction of View of Interior of Pool Rooms, Billiard Parlors and Soft Drink Places Prohibited.—Any soft drink place or room where any liquid or liquor that contains alcohol is sold for beverage purposes, or any pool room, or billiard parlor shall be constructed and maintained that a clear and open view of the interior of said place may be had from the street on which said place of business fronts, and shall be free from screens, partitions, fixtures, obstructions, or painted or frosted windows, which may in any manner interfere with such view from the abutting street; provided, however, that such place of business, which is not located on the ground floor, or which room does not directly front on or abut on any street, shall be so constructed and maintained that such view of the interior, as above described, may be had from any entrance to said room. (Id. § 6212-40.)

418. Drug Stores Exempt.—This act shall not apply to a bona fide drug store. (Id. § 6212-41.)

419. Penalty for Violations.—Any person violating any of the provisions of this act shall, upon conviction, be fined not less than fifty dollars ($50.00) nor more than five hundred dollars ($500.00) for each offense, and each day's violation of any of the terms of this act shall be a separate offense. This act shall take effect and be in force from and after the earliest period allowed by law. (Id. § 6212-42.)

420. Assessment and Collection of State and Local Taxes Upon Alcoholic Liquor—Valuation, How Determined—Assessment of Delinquent Tax.—Upon all whiskey or other alcoholic liquor stored in bonded warehouses or other places or buildings shall be collected taxes at the rate current in the taxing districts in which such warehouse or warehouses or other places or buildings shall be situated for the year in which such State and local tax is to be paid and shall be assessed upon its true value in money. In determining the true value in money for taxation purposes of such whiskey or other alcoholic liquor so stored, the value placed thereon by the owner or his agent when declaring its value for shipment by express shall be prima facie evidence of its true value in money; and in cases where whiskey or other alcoholic liquor is not shipped by express and its value for such purpose not so declared then the true value in money for taxation purposes shall prima facie be the value last declared by an owner who has shipped similar whiskey or other alcoholic liquor by express from the same warehouse or other places or buildings. In case of removal from one bonded warehouse to another bonded warehouse either within or without the State, the value of such whiskey so removed shall be determined in the same way and shall be subjected to the tax as provided in this act. Delinquent taxes shall be assessable against such whiskey or other alcoholic liquor for the same period and in the same manner as provided for taxes against other property. (Id. § 5388-1.)

421. Removal Without Payment of Tax, Unlawful.—It shall be unlawful for the owner or owners of such warehouse or warehouses or other places or buildings where whiskey or other alcoholic liquor is stored to permit the removal or shipment of such whiskey or other alcoholic liquor therefrom until a tax receipt is presented showing the payment of all taxes. (Id. § 5388-2.)

422. Prosecution; Penalty—Application of Fines.—Any person or persons who refuse or fail to comply with the provisions of this act shall be subject to prosecution and for the first offense shall be assessed a fine which shall be double the amount of such taxes that should have been paid upon whiskey or other alcoholic

liquor so unlawfully removed, provided, however, that in no case shall the fine be less than five hundred dollars. And for each subsequent offense the fines shall be the same as hereinbefore mentioned and to this shall be added an imprisonment of six months. All fines so collected shall be paid into the county treasurer for distribution as provided for the tax levied under this act. (Id. § 5388-4.)

422a. Physician Making an Unlawful Prescription for Intoxicating Liquor.—Whoever, being a physician, issues a prescription for intoxicating liquor not in writing, or issues a written prescription therefor knowing such liquor is to be used as a beverage, or not containing the name and quantity of liquor prescribed, the name of the person for whom prescribed and the date on which such prescription is written and direction for the use of such liquor, shall be fined not less than two hundred and fifty dollars nor more than five hundred dollars, and, for a subsequent offense, shall be fined not less than five hundred dollars nor more than one thousand dollars. (Id. § 13217.)

422b. Further Punishment of Physician so Convicted.—Whoever, being a practicing physician, who has been convicted of issuing a verbal prescription for intoxicating liquor, or issuing a prescription therefor in a form which does not comply with law, or issuing a prescription, knowing such liquor to be for use as a beverage, issues a prescription for intoxicating liquor within two years from the date of such conviction, shall be fined not less than two hundred and fifty dollars nor more than five hundred dollars, and, for each subsequent offense, shall be fined not less than five hundred dollars, nor more than one thousand dollars. (Id. § 13218.)

423. Special Jurisdiction of Police Judges, Mayors and Justices.—Justices of the peace, police judges and mayors of cities and villages shall have jurisdiction, within their respective counties, in all cases of violation of any law relating to: . . .

8. The selling, giving away or furnishing of intoxicating liquors as a beverage, or keeping a place where such liquor is sold, given away or furnished in violation of any law prohibiting such acts within the limits of a township and without the limits of a municipal corporation. . . . (Id. § 13423.)

NOTE: See also No. 255.

PART IV.

Miscellaneous Laws.

Convict-Made Goods.

424. Brand, Etc., to be Placed Upon Convict-Made Goods.—Goods, wares and merchandise made by convict labor in a penitentiary, prison, reformatory or other establishment in this or any other State in which convict labor is employed and imported, brought or introduced into this State, shall be branded, labeled or marked as hereinafter provided before being exposed for sale, and shall not be so exposed without such brand, label or mark. (G. C. 1926, § 6213.)

425. Contents, Style and Use of Brand, Etc.—The brand, label or mark required by the next preceding section shall contain at the head or top thereof the words "convict made" followed by the year and name of the penitentiary, prison, reformatory or other establishment in which it was made, in plain English lettering of the style known as great primer Roman capitals. Such brand or mark, if the article will permit, shall be placed upon it, and when such branding or marking is impossible a label shall be used. (Id. § 6214.)

426. Label.—Such label shall be in the form of a paper tag to be attached by wire to each article, where the nature thereof will permit, and placed securely upon the box, crate or other covering in which such goods, wares and merchandise are packed, shipped or exposed for sale. (Id. § 6215.)

427. Where Placed.—Such brand, mark or label shall be placed outside of and upon the most conspicuous part of the finished article and its box, crate or covering. (Id. § 6216.)

428. Violations by Dealers in Convict-Made Goods, Etc.—A person dealing in convict-made goods, wares or merchandise, as described in this chapter, shall not knowingly have them in possession for the purpose of sale, or offering them for sale

without the brand, label or mark required by this chapter, or remove, conceal or deface the brand, mark or label thereon. (Id. § 6217.)

429. Prosecution of Violators.—Whoever violates any provisions of §§ 6213 to 6217 inclusive of the General Code shall be deemed guilty of a misdemeanor and, upon conviction, shall be fined not less than twenty-five, nor more than fifty dollars for the first offense and not less than fifty dollars nor more than two hundred dollars for each subsequent offense. (Id. § 6218.)

430. Selling "Convict-Made" Goods Without Label.—Whoever, dealing in goods, wares and merchandise made by convict labor in a penitentiary, prison, reformatory or other establishment where convict labor is employed, knowingly has them in possession for the purpose of sale or offers them for sale, without the brand, label or mark of "convict-made" as required by law, or removes, conceals or defaces such brand, mark or label, shall be fined not less than fifty dollars nor more than one thousand dollars or imprisoned not less than ten days nor more than twelve months, or both. (Id. § 13170.)

False Advertising.

431. Defining Fraudulent Advertising; Penalty.—Whoever, with intent to sell, or in any wise dispose of merchandise, securities, service, or anything offered by him, directly or indirectly, to the public for sale or distribution, or with intent to increase the consumption thereof, or to induce the public in any manner to enter into any obligation relating thereto, or to acquire title thereto, or an interest therein, causes, directly or indirectly to be made, published, disseminated, circulated, or placed before the public, in this State, in a newspaper or other publication, or in the form of a book, notice, handbill, poster, bill, circular, pamphlet or letter, or in any other way, an advertisement of any sort regarding merchandise, securities, service, or anything so offered to the public, which advertisement contains any assertion, representation or statement of fact which is untrue, or deceptive, shall be guilty of a misdemeanor and on conviction thereof shall be punished by a fine of not less than ten dollars nor more than one hundred dollars or by imprisonment in the county jail not exceeding twenty days or by both said fine and imprisonment. (G. C. 1926, § 13194.)

Flag Desecration.

432. Desecrating Flag of the State or United States.—Whoever prints, paints or places a word, figure, mark, picture or design, upon a flag, standard, color or ensign of the United States, or the State of Ohio, or causes it to be done, or exposes, or causes to be exposed, such flag, standard, color or ensign upon which is printed, painted or placed, or to which is attached or appended a word, figure, mark, picture or design, or manufactures or has in possession an article of merchandise upon which is placed or attached a representation of such flag, standard, color or ensign, or publicly mutilates, defiles, defaces or casts contempt upon such flag, standard, color or ensign, shall be fined not more than one hundred dollars, or imprisoned not more than thirty days, or both. (G. C. 1926, § 12396.)

433. Meaning of Certain Words.—The words "flag," "standard," "color" or "ensign" as used in the next preceding section, shall include any flag, standard, color or ensign or a picture or representation thereof, made of or represented on any substance, and purporting to be a flag, standard, color or ensign of the United States, of the State of Ohio, or a picture or representation thereof, upon which shall be shown the colors, the stars, and the stripes in any number thereof, or which might appear to represent a flag, standard, color or ensign of the United States or State of Ohio. (Id. § 12397.)

434. When This Shall Not Apply.—The next two preceding sections shall not apply to an act permitted by the Statutes of the United States or by the United States army and navy regulations, nor shall they apply to a newspaper, periodical, book, pamphlet, circular, certificate, diploma, warrant or commission of appointment to office, society, lodge or emblem, ornamental picture, or stationery for use in correspondence, on which shall be printed, painted or placed said flag disconnected from an advertisement. (Id. § 12398.)

Soap and Candles.

See No. 259.

Tobacco—Tobacco Products.

435. Display of Receipt for Tax by Dealers in Cigarettes.—Whoever, being engaged in the business of trafficking in cigarettes, cigarette wrappers or a substitute for either, fails to post and keep constantly displayed in a conspicuous place in the building where such business is carried on, a receipt signed by the county treasurer showing that the amount of the assessment required by law has been paid into the treasury of the county where such business is located, or sells or offers to sell cigarettes, cigarette wrappers or a substitute for either without complying with the provisions of law relating to cigarettes, shall be fined not less than one hundred dollars nor more than three hundred dollars and for each subsequent offense shall be fined not less than three hundred dollars nor more than five hundred dollars. (G. C. 1926, § 12680.)

436. Copy of Law Regulating Sale Must be Posted in Conspicuous Place; Penalty—Distribution of Copies of Law.—Whoever, being engaged in the business of trafficking in cigarettes, cigarette wrappers or a substitute for either, or cigars or tobacco, fails to post and keep constantly displayed in a conspicuous place in the building where such business is carried on, a copy of § 12965 of the General Code, regulating the sale of tobacco and cigarettes to minors, shall be fined not less than fifty dollars nor more than one hundred dollars, and for each subsequent offense shall be fined not less than one hundred dollars nor more than two hundred dollars. Copies of such law shall be obtained from the county auditor.

The Secretary of State shall distribute copies of the above mentioned section of the General Code to the county auditors of the various counties, who, in turn, shall distribute the same to any dealer in cigarettes or tobacco in the county who has made application therefor. (Id. § 12680-1.)

437. Selling, Etc., Cigarettes Containing Deleterious Substances.—Whoever sells, exchanges, gives away or offers to sell, exchange, or give away cigarettes, or a substitute therefor, containing a substance foreign to tobacco and deleterious to health, shall be fined not less than ten dollars nor more than fifty dollars. (Id. § 12681.)

438. Offering Inducements With Cigarettes.—Whoever sells, exchanges or disposes of cigarettes or attempts to do so, upon representation, advertisement, notice or inducement that a photograph, lithograph, picture or any other thing is to be delivered or received, or connected with or a part of the transaction, as a gift, prize, premium or reward, or sells, exchanges or disposes of a package, box or bundle of cigarettes containing a photograph, lithograph, picture coupon or anything other than cigarettes, except it be the usual label or trade-mark of the manufacturer, shall be fined not less than ten dollars nor more than fifty dollars. (Id. § 12682.)

439. Fines Under Three Preceding Sections.—In case of a conviction for the violation of any provisions of the next three preceding sections, the person who furnished the information from which such conviction resulted shall be paid one-half of the fine collected. (Id. § 12683.)

440. Age Limit; Penalty.—Whoever sells, gives or furnishes to a person under eighteen years of age a cigarette, cigarette wrapper or substitute for either, or a cigar or tobacco, shall be fined not less than twenty-five dollars nor more than one hundred dollars or imprisoned not less than two days nor more than thirty days, or both, and for each subsequent offense, shall be fined not less than fifty dollars nor more than three hundred dollars and imprisoned not less than five days nor more than sixty days. (Id. § 12965.)

441. Annual Tax, Wholesale and Retail Business.—A person, firm, company, corporation, or copartnership, engaged in the wholesale business of trafficking in cigarettes, cigarette wrappers or a substitute for either, shall annually be assessed and pay into the county treasury the sum of two hundred dollars, or, if so engaged in such traffic in the retail business, the sum of fifty dollars for each place where such business is carried on by or for such person, firm, company, corporation or copartnership. (Id. § 5894.)

442. Time for Payment; Part of Year.—The assessments provided in the next preceding section shall be paid by such person, firm, company, corporation or copartnership on or before the twentieth day of June of each year. When such business is commenced after the fourth Monday of May, such assessments shall be proportionate in amount to the remainder of the assessment year, except that it shall not be less than one-fifth of the whole amount to be assessed in any one year. (Id. § 5895.)

443. Refunder to Business Discontinued.—When the person, firm, company, corporation or co-partnership described in section fifty-eight hundred and ninety-four, which has been so assessed, and which has paid or is charged upon the tax duplicate with the full amount of such assessment, discontinues such business, the county

auditor shall issue to such person, firm, company, corporation or copartnership, a refunding order for a proportionate amount of the assessment. Provided that the amount of such assessment retained in the county treasury shall not be less than one-fifth of a whole year's assessment. (Id. § 5896.)

444. Assessors' Returns.—Each person, firm, company, corporation, or copartnership engaged in such business shall annually, on or before the fourth Monday of May, make out and deliver to the county auditor upon a blank to be furnished by such auditor for that purpose a statement showing the name of the person, firm, company, corporation or copartnership engaged therein, a brief and accurate description of the premises where it is conducted, and by whom owned. Such statement shall be signed and verified by such person, firm, company, corporation or copartnership. (Id. § 5897.)

445. Penalty for Failure to Make Returns.—If such person, firm, company, corporation or co-partnership, fails or refuses to furnish the requisite information for such statement, or to sign or verify it, the assessment shall be four times the amount provided in this chapter. The person, firm, company, corporation or copartnership entering into such business after the fourth Monday of May in any year, before so doing shall make the return herein required to the county auditor, and, failing to do so, such assessment shall be four times the amount provided in this chapter. (Id. § 5898.)

446. Informer to Receive.—A person furnishing the information to the county auditor upon which the tax is recovered against a person, firm, company, corporation or copartnership for selling, exchanging or disposing of cigarettes, cigarette wrappers or a substitute for either, or attempting to do so, without having paid the assessments provided in this chapter, shall be entitled to one-half of the assessment and penalty so recovered. (Id. § 5899.)

447. Distribution of Revenues and Fines.—The revenues and fines collected under the provisions of this chapter and the penal laws relating to cigarettes, shall be distributed as follows, to-wit: in each county, three-fourths of the money paid into the county treasury on account of such business in a city, village or township therein, shall be placed to the credit of the general revenue fund of the State, and paid into the State treasury by the county treasury as provided in other cases. (Id. § 5900.)

448. Distribution in City and Township.—One-eighth of the money paid into the county treasury on account of such business in a municipal corporation shall be paid, upon the warrant of the county auditor, into the treasury of such corporation to the credit of the police fund, or in a corporation having no police fund, to the credit of the general revenue fund. The remaining one-eighth thereof shall be credited to the poor fund of such county; but in counties having no county infirmary is [it] shall be credited to the infirmary fund or poor fund of the township, or city in which it was collected. In counties where such money is paid on account of such business conducted in a township outside of a city, one-eighth shall be credited to the poor fund of the county and one-eighth to the poor fund of the township; but in counties not having a poor fund, the last named two-eighths shall be credited to the poor fund of the township. (Id. § 5901.)

449. Provisions as to Certain Sections.—The provisions of sections sixty hundred and seventy-seven, sixty hundred and seventy-eight, sixty hundred and seventy-nine, sixty hundred and eighty, sixty hundred and eighty-five, sixty hundred and eighty-six and sixty hundred and ninety-two, sixty-one hundred and sixty-one hundred and one* are hereby extended to this chapter so far as they can be made to apply. (Id. § 5902.)

450. Forging Receipt of Tobacco Inspector.—Whoever forges or counterfeits a receipt or memorandum of an inspector of tobacco or alters the description of the quantity or quality of tobacco in such receipt or memorandum or offers in transfer or sale, such forged, counterfeit or altered receipts or memorandum, knowing it to be such, shall be imprisoned in the penitentiary not less than one year nor more than twenty years. (Id. § 13092.)

451. Placing in Packages Other Substance Than Tobacco.—Whoever intentionally places or causes to be placed in a hogshead, barrel, box, package or parcel of leaf tobacco, a substance other than tobacco, with intent that such hogshead, barrel, box, package or parcel shall be exposed to sale or sold, and that the purchaser thereof shall be in ignorance of such substance, or falsely packs or causes to be packed, in a manner commonly known as "nesting," a hogshead, box, package or parcel of leaf tobacco, with intent that it shall be exposed to sale or sold, and that the purchaser thereof shall be in ignorance of its real character, or delivers or causes to be delivered for sale, a hogshead, box, package or parcel of tobacco containing such

*Sections relate to collection of liquor taxes. Omitted herein.

foreign substance or falsely packed and nested tobacco, to a warehouseman, commission merchant, dealer in tobacco or manufacturer thereof, knowing it to contain such foreign substance or to be so falsely packed or nested, with intent that it shall be sold to purchasers ignorant of its real character, or changes or alters a sample selected by an inspector, as provided by law, with intent to defraud a purchaser or other person, shall be fined not less than one hundred dollars nor more than five hundred dollars or imprisoned in jail not less than thirty days nor more than six months, or both, and be liable in damages to the inspector and person injured for the amount of such injury. (Id. § 13147.)

451a. Rooms Used for Manufacture of Wearing Apparel or Tobacco Goods.—No dwelling or building or room or apartment thereof in or connected with a tenement, dwelling or other building shall be used, except by the immediate members of the family living therein, for carrying on any process of making wearing apparel or goods for wear, use or adornment, or for manufacturing cigars, cigarettes or tobacco goods in any form, if such wearing apparel or other goods are to be exposed for sale or sold by a manufacturer, wholesaler or jobber or by a retailer, unless such room or apartment is made to conform to the requirements and regulations herein provided. (Id. § 1020.)

451b. Penalty.—Whoever violates any of the provisions of the four preceding sections,* or whoever fails, refuses or neglects to comply with any order issued or requirement made under said sections by the Chief Inspector of Workshops and Factories shall, upon conviction, be fined not more than twenty-five dollars and not more than one hundred dollars for each succeeding offense. (Id. § 1023-1.)

451c. Unlawful to Give Work to Certain Persons, Firms or Corporations.—No person, firm or corporation shall give work to or contract with a person to make goods used for wearing apparel or adornment or to manufacture tobacco, after receiving notice from the Chief Inspector of Workshops and Factories or a district inspector that such person has not complied with the provisions of law relating to rooms in which such goods are manufactured. The notice shall remain in force, until such person has complied with the provisions of law. Each person, firm or corporation shall obtain and keep a record of all persons to whom work is given or with whom it is contracted for or from whom such goods or tobacco is purchased, which record must include their names and addresses, and be open to the inspection of the Chief Inspector of Workshops and Factories or a district inspector. (Id. § 1024.)

451d. Unlawful to Handle or Sell Certain Goods.—No person or corporation shall receive, handle or convey to others, or sell, hold in stock or expose for sale the goods named in the preceding section, unless such goods are made under the sanitary conditions prescribed herein, but this does not include the making of garments or other goods for another by personal order, which will be received for wear or use direct from the maker's hands. (Id. § 1025.)

451e. Penalty.—Whoever, being a person, firm or corporation, violates any provision of the preceding two sections shall be fined not less than fifty dollars nor more than one hundred dollars or imprisoned not less than thirty days nor more than sixty days, or both, which fine shall be collected by the court and paid into the State treasury to the credit of the General Revenue Fund. (Id. § 1026.)

NOTE: See also No. 260 et seq.

Trade-Marks, Etc.

452. Registration of Names, Marks, Brands, Etc.; of Ownership.—Any and all persons or corporations who may be the owners of cans, tubs, firkins, boxes, bottles, casks, barrels, kegs, cartons, tanks, fountains, vessels or containers, with his, her, its or their names, brands, designs, trade-marks, devices, or other marks of ownership stamped, impressed, labeled, blown in or otherwise marked thereon, may file with the Secretary of State, and also with the clerk of the Court of Common Pleas of the county in which such person or persons or corporation may have his, her, its or their principal place of business, a written statement or description verified by affidavit of such owner or his, her or its agent, of the names, brands, designs, trade-marks, devices or other marks of ownership so used by him, her, it or them, and of the said article or articles upon which the same are used; or if such principal place of business be without this State, then such written statement or de-

*Sections 1020 to 1023. Sections 1021 to 1023 relate to building and sanitary requirements for rooms used for the purposes named in section 1020 (No. 451a), and are omitted herein.

scription so verified may be filed with the clerk of the Court of Common Pleas, of any county in this State. (G. C. 1926, § 6240-1.)

453. Publication of Statement and Proof—Record.—The statement provided for in section 1 of this act [6240-1], shall be published once a week for four consecutive weeks in a newspaper printed in the English language, and of general circulation in the county in which such notice may have been filed with the clerk of the Court of Common Pleas as aforesaid; a copy of which publication proved in the same manner as proof of publication is now required to be made by law, when no special mode of proving the same is provided, shall also be filed with the Secretary of State, and with the clerk of the Court of Common Pleas of the county, where such statement is filed.

All such written statements or descriptions and all such certificates of publication so filed with the clerk of the Court of Common Pleas, shall be recorded by him in a book to be kept by him for such purpose; and such book shall be subject, at all reasonable hours, to the inspection of all persons who may choose to inspect the same. (Id. § 6240-2.)

454. Certified Copies.—The Secretary of State and the clerk of the Court of Common Pleas, of the county where such statement is filed, shall deliver to any person who may apply therefor, upon payment of the fees herein provided, copies of all such written statements or descriptions of names, brands, designs, trade-marks, devices, or other marks of ownership, and of all certificates of publication so filed with them, duly certified to by them in the usual manner; and such certified copies, so made by either the Secretary of State or the clerk of the Court of Common Pleas of the county where such statement is filed, shall be admissible in evidence in any suit, action or proceeding in law under this act, and shall be prima facie evidence that the provisions of this act have been complied with, and also prima facie evidence of the title of the owner or owners named therein, to the property upon which the name, brand, design, trade mark, device or other mark or marks of ownership of such owner or owners may appear as described therein. (Id. § 6240-3.)

455. Fee.—The Secretary of State and the clerk of the Court of Common Pleas shall each receive a fee of one dollar ($1.00), for each statement and certificate of publication filed, and also a fee of one dollar ($1.00), for each certified copy of such statement and certificate of publication. (Id. § 6240-4.)

456. Forging Brand, Stamp, Label, or Trade-Mark.—Whoever wilfully forges or counterfeits a representation, likeness, similitude, copy or imitation of the private brand, wrapper, label or trade-mark usually affixed to or upon the goods, wares, merchandise, preparation or mixture of a person, or by a maker of wine from grapes grown within this State, to the bottles or casks used by him to contain it, with intent to pass off work, goods, manufacture, wine, compound, preparation or mixture to which such forged or counterfeit representation, likeness, similitude, copy or imitation is affixed or intended to be affixed, as the work, goods, manufacture, wine, compound, preparation or mixture of such person, shall be fined not more than five hundred dollars or imprisoned not more than twelve months or both. (Id. § 13089.)

457. Forging Inspector's Brand.—Whoever wilfully forges or counterfeits a representation, likeness, similitude, copy or imitation of the brand or mark of an inspector, appointed according to law, or impresses such forged or counterfeited brand or mark on a cask, barrel, firkin, keg, box or package containing articles subject to inspection according to law, shall be fined not more than five hundred dollars or imprisoned in the penitentiary not more than twelve months, or both. (Id. § 13090.)

458. Having Brand, Label, Etc., in Possession, to Use Fraudulently.—Whoever has in his possession a die, plate, brand, engraving, printed label, stamp, imprint, wrapper or trade-mark or a representation, likeness, similitude, copy or imitation thereof, usually affixed by a person to or upon articles made, manufactured, prepared or compounded by him, for the purpose of making impressions or selling them when made, or using them upon other articles made, manufactured, prepared or compounded and passing such articles off as the original goods, manufacture, preparation or compound of another person or sells or uses them or wrongfully and fraudulently uses the genuine stamp, brand, imprint, wrapper, label or trade-mark, with intent to pass off as genuine and original, goods, wares, merchandise, mixture, compound or other article, not the manufacture of the person owning such stamp, brand, imprint, wrapper, label or trade-mark, shall be fined not more than five hundred dollars or imprisoned not more than twelve months, or both. (Id. § 13091.)

459. Selling Articles Having Forged Stamp, Brand or Label Affixed.—Whoever sells or keeps for sale goods, merchandise, a mixture or preparation, upon which a forged or counterfeit stamp, brand, imprint, wrapper, label or trade-mark is placed or affixed, intended to represent such goods, merchandise, mixture or preparation as

the true and genuine goods, merchandise, mixture or preparation of another, knowing it to be counterfeit, shall be fined not more than one hundred dollars. (Id. § 13111.)

460. Registration of Mark, Brand, Etc., of Owner on Containers; Publication of Mark, Brand, Etc., in Newspaper—Fee for Filing Mark or Brand.—Any person, firm or corporation engaged in the manufacturing, bottling, or selling of soda waters, mineral or aerated waters, ginger ale, porter, ale, beer, cider, small beer, milk, cream, lager beer, weiss beer, white beer, or other beverages or medicines, medical preparations, perfumery, oils, compounds, or mixtures, and using in the manufacture, sale and delivery of the same any bottles, siphons, siphon tops, tins, fountain tanks, kegs, bottle cases, or other containers, may mark and designate such bottles, siphon, siphon tops, tins, kegs, bottle cases, and other containers with his or its name or other mark or device branded, stamped, engraved, etched, blown or otherwise produced upon the same, and file in the office of the Secretary of State and also in the office of the clerk of courts of the county in which his or its principal place of business is situated a description of such name, mark or device and cause such description to be printed once in each week for three weeks successively in a newspaper published in such county. Provided, that if the principal place of business of any such person, firm or corporation is in another State, the filing of such description shall be made in the office of the Secretary of State and also in the office of the clerk of courts in any county of this State, and printed for three weeks successively in a newspaper published in such county. When any such person, firm or corporation shall have complied with the provisions of this section, he or it shall thereupon be deemed the proprietor of such name, mark or device and of every such bottle, siphon, siphon top, tin, fountain tank, keg, bottle case, or other container upon which may be branded, stamped, etched, engraved, blown or otherwise produced upon the same, such mark or device. Upon the filing with the Secretary of State and county clerk, as herein above referred to, such name, mark or device there shall be paid to the Secretary of State and the county clerk respectively one dollar for each such name, mark or device so filed. (Id. § 13169.)

461. Assignment of Mark, Brand, Etc.; Publication of Certificate of Assignment.—When any person, firm or corporation, having complied with the provisions of § 13169 of this act, assigns by sale or otherwise his or its business including such name, mark or device to another person, firm or corporation, the assignee shall have all the rights and immunities and obligations conferred by this act upon the original manufacturer, bottler or seller, relative to said bottles, siphons, siphon tops, tins, fountain tanks, kegs, bottle cases or other containers so assigned, provided such assignee shall, upon such assignment, file in the office of the Secretary of State and also in the office of the clerks of courts of the county in which his or its principal place of business is situated a certificate of said assignment, and cause such certificate to be printed once in each week for three weeks successively in a newspaper published in such county. If the principal place of business of such assignee is in another State the filing of such certificate of assignment shall be made in the office of the Secretary of State and also in the office of the clerk of courts in any county of this State, and printed once in each week for three weeks successively in a newspaper published in such county. (Id. § 13169-1.)

462. Unlawful Refilling of Containers by Other Than Owner, Without Purchase.—It is hereby declared unlawful for any person, firm or corporation to fill or refill, or cause to be filled or refilled, with soda water, mineral or aerated waters, ginger ale, porter, ale, beer, cider, small beer, milk, cream, lager beer, weiss beer, white beer or other beverages, or with medicines, medical preparations, perfumery, oils, compounds, or mixtures any bottle, siphon, siphon top, tin, fountain tank, keg, or other container so marked or designated as aforesaid by any name, mark or device of which a description shall have been filed and published, as provided in §§ 13169 and 13169-1 of this act; or to fill with bottles with intent to sell their contents any bottle case so marked or designated; or to deface, erase, obliterate, cover up, or otherwise remove or conceal any such name, mark or device thereon, or to sell, buy, give, take or otherwise dispose of or traffic in such bottles, siphon, siphon top, tin, fountain tank, keg, bottle case, or other container without the consent of, or unless the same shall have been purchased from the person, firm or corporation whose name, mark or device shall be in or upon the bottle, siphon, siphon tops, tin, fountain tank, keg, bottle case or other container so filled, refilled, trafficked in, used, or handled, as aforesaid. The provisions of this section shall not apply to any person, firm or corporation, as to filling or refilling with his or its product any bottle, siphon, tin, fountain tank, keg, bottle case, or other container, owned by and having the name, mark or designation of such person, firm or corporation pursuant to the provisions of this act, when such person, firm or corporation shall have complied with the rules and regulations of the dairy and food division of the Agricultural Commission of

Ohio, relative to the cleansing of such bottles, siphons, siphon tops, tins, fountain tanks, kegs, bottle cases or other containers. (Id. § 13169-2.)

463. Penalty for Violations of Law.—Whoever violates any of the provisions of this act shall be punished for the first offense by a fine of not less than ten dollars nor more than fifty dollars plus fifty cents for each and every such bottle, siphon, siphon top, tin, fountain tank, keg, bottle case or other container, by him so filled, refilled, sold, used, disposed of, bought, defaced or trafficked in and for each subsequent offense by a fine of not less than twenty-five dollars nor more than one hundred dollars plus five dollars for every such bottle, siphon, siphon top, tin, fountain tank, keg, bottle case or other container by him so filled, refilled, used, sold, disposed of, bought, defaced or trafficked in or by imprisonment not to exceed ninety days, or by both, such fine and imprisonment in the discretion of the magistrate or court before whom such offense shall be tried. (Id. § 13169-3.)

464. Courts Having Jurisdiction.—Justices of the peace, police judges and mayors of cities and villages shall have jurisdiction, within their respective counties, in all cases of violation of any law relating to the filling or refilling of registered containers by other than the owner, or the defacing of the marks of ownership thereon. (Id. § 13423-1.)

465. When Search Warrant May be Issued.—A justice of the peace, mayor or police judge may issue warrants to search a house or place: . . .

2. For forged or counterfeit coins, stamps, imprints, labels, trade-marks, bank bills or other instruments of writing, and dies, plates, stamps or brands for making them; . . . (Id. § 13482.)

NOTE: See also No. 321.

Trading Stamps.

466. What Trading Stamps May be Sold or Issued.—No person shall sell or issue a stamp, trading stamp, cash discount stamp, check, ticket, coupon or other device which entitles the holder thereof, on presentation thereof either singly or in definite number, to receive from the vendor or other person, money, goods, wares or merchandise, unless each of such stamps, trading stamps, cash discount stamps, checks, tickets, coupons or other devices has legibly printed or written upon the face thereof the redeemable value thereof in lawful money of the United States. (G. C. 1926, § 6386.)

467. Redemption of Trading Stamps.—A person selling or issuing to a person engaged in a trade, business or profession, a stamp, trading stamp, cash discount stamp, check, ticket, coupon or other device which entitles the holder thereof on presentation thereof either singly or in definite number, to receive from the vendor or other person, money, goods, wares or merchandise, shall redeem them upon presentation, either in goods, wares, merchandise or lawful money of the United States, at the option of such holder, at the value in lawful money printed on the face thereof, provided they are presented for redemption in number aggregating in money value not less than five cents in each lot. (Id. § 6387.)

468. Redemption of Trading Stamps by Persons in Trade, Business or Profession.—A person engaging in a trade, business or profession distributing, delivering or presenting to a person dealing with him, in consideration of an article or thing purchased, a stamp, trading stamp, cash discount stamp, check, ticket, coupon or other device entitling the holder thereof on the presentation thereof, either singly or in definite number, to receive from the person issuing or selling them from another person, money, goods, wares or merchandise, upon the refusal or failure of such person issuing them to redeem them, as provided in the next preceding section, shall be liable to the holder thereof for the face value thereof, and upon presentation thereof in lots aggregating in money value not less than five cents in each lot, shall redeem them either in goods, wares, merchandise or lawful money of the United States at the option of the holder thereof and at the value in lawful money printed on the face thereof. (Id. § 6388.)

469. When Not to Apply.—This chapter and the penal statutes relating thereto shall not apply to tickets, coupons or other vouchers placed by a merchant or manufacturer in or upon packages of goods sold or manufactured by him if such tickets, coupons or other vouchers are to be redeemed by such merchant or manufacturer. (Id. § 6389.)

470. Trading Stamps.—Whoever violates any provision of law relating to trading stamps shall be fined not less than fifty dollars nor more than one hundred dollars. (Id. § 13399.)

NOTE: See also No. 438.

Weights and Measures.*

471. Standards, Those Furnished by United States Government; Metric System.—The standard weights and measures furnished this State by the Secretary of the Treasury of the United States under a resolution of Congress, approved June 14, 1836, shall be the legal standard of weights and measures throughout the State. This chapter shall not prevent the use of the weights and measures of the metric system, authorized by [the] Congress of the United States, as it appears in the revised statutes of the United States. (G. C. 1926, § 6403.)

472. By What Standard Contracts Construed.—Contracts for work to be done, or for anything to be sold by weight or measure, shall be construed according to the standards hereby adopted as the standards of this State. (Id. § 6404.)

473. Standard Weights.—The units or standards of weight from which all other weights shall be derived and ascertained shall be the standard avoirdupois and troy weights furnished this State by the United States Government. (Id. § 6410.)

474. Definition of a Pound and Its Subdivisions; Ton.—The avoirdupois pound, which bears to the troy pound the ratio of seven thousand to five thousand seven hundred and sixty, shall be divided into sixteen equal parts called ounces. The hundredweight except of pig iron and iron ore, shall consist of one hundred avoirdupois pounds, and twenty hundred weight shall constitute a ton. The troy ounce shall be equal to the twelfth part of a troy pound. (Id. § 6411.)

475. Gallon the Standard Measure for Liquids.—The unit or standard measure of capacity for liquids, from which all other measures of liquids shall be derived and ascertained, shall be the standard gallon, and its parts, furnished this State by the Government of the United States. (Id. § 6412.)

476. Contents of Barrel and Hogshead and Branding Thereof.—The barrel shall contain thirty-one and one-half gallons, and two barrels shall constitute a hogshead. Barrels, for the purpose of containing apples, potatoes, onions or other fruit, produce or vegetables, shall be made of staves of seasoned timber, twenty-eight and one-half inches in length with cut heads of seventeen and one-eighth inches in diameter and shall measure at the bulge not less than sixty-six inches in circumference, outside measure. Such barrel shall be known as "the standard barrel," and on the outside of one or more of the staves thereof shall be stamped or branded the words "State of Ohio, standard," the name of the cooper or manufacturer thereof and the name of the city or town nearest to which the cooper shop or place of business of such manufacturer is located. (Id. § 6413.)

477. Half-Bushel the Standard Measure for Substances.—The unit or standard measure of capacity for substances other than liquids, from which all other measures of such substances shall be derived and ascertained, shall be the standard half-bushel measure furnished this State by the Government of the United States, the interior diameter of which is thirteen inches and thirty-nine-fortieths of an inch, and the depth is seven inches and one-twenty-fourth of an inch. (Id. § 6414.)

478. Dimensions and Contents of Measures for Commodities Other Than Liquid.—The peck, half-peck, quarter-peck, quart and pint measures for measuring commodities other than liquids, shall be of the interior dimensions and capacities as follows, to wit: the peck measure shall be eleven inches in interior diameter, five and five-eigthths inches in interior depth, shall contain five hundred and thirty-seven and six-tenths cubic inches; the half-peck measure shall be eight and one-half inches in interior diameter, four and three-quarter inches in interior depth, and shall contain two hundred sixty-eight and eight-tenths cubic inches; the quarter-peck measures shall be six and five-eighths inches in interior diameter, three and seven-eighths inches in interior depth, and shall contain one hundred and thirty-four and four-tenths cubic inches; the quart measure shall be five and five sixteenths inches in interior diameter, three inches in interior depth, and shall contain sixty-seven and two-tenths cubic inches; the pint measure shall be four and one-half inches in interior diameter, two and nine-twenty-fifths inches in interior depth, and shall contain thirty-three and six-tenths cubic inches. (Id. § 6415.)

479. Heaped Measures.—Articles usually sold by heaped measure shall be heaped in a conical form as high as such articles permit. (Id. § 6416.)

480. How Dry Commodities Measured.—Measures for measuring dry commodities not usually heaped shall be struck with a straight stick, with the edges rounded. Commodities other than liquids, when sold by the gallon or less, shall be sold by the dry measure. (Id. § 6417.)

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*See No. 17a et seq. This law is to be corrected accordingly.

481. Standard Weight of Bushel; Penalty.—A bushel, in averdupois weight, of every article herein mentioned shall be, viz.: of wheat, sixty pounds; of Indian corn in the ear, sixty-eight pounds; of Indian corn shelled, fifty-six pounds; of corn meal, forty-eight pounds; of popcorn in the ear, forty-two pounds; of sweet corn shelled, forty-five pounds; of Kaffir corn, fifty-six pounds; of broom corn, forty-five pounds; of oats, thirty-two pounds; of rye, fifty-six pounds; of barley, forty-eight pounds; of buckwheat, fifty pounds; of Irish potatoes, sixty pounds; of sweet potatoes, fifty pounds; of beans, sixty pounds; of peas, sixty pounds; of onions, fifty-six pounds; of onion sets, twenty-eight pounds; of tomatoes, fifty-six pounds; of turnips, sixty pounds; of parsnips, fifty pounds; of beets, fifty-six pounds; of carrots, fifty pounds; of hominy, sixty pounds; of malt, thirty-four pounds; of apples, forty-eight pounds; of dried apples, twenty-four pounds; of peaches, forty-eight pounds; of dried peaches, thirty-three pounds; of grapes, forty-eight pounds; of plums, fifty pounds; of clover seed, sixty pounds; of timothy seed, forty-five pounds; of millet seed, fifty pounds; of Hungarian grass seed, fifty pounds; of flax seed, fifty-six pounds; of sorghum seed, fifty pounds; of hemp seed, forty-four pounds; of domestic walnuts, fifty pounds; of hickory nuts, fifty pounds; of lime, seventy pounds; of coke, forty pounds; of bituminous coal, eighty pounds; of cannel coal, seventy pounds. Unless otherwise agreed to, all of the above mentioned articles shall when dealt in by the bushel, be bought and sold upon such actual bulk weight, and no test for moisture shall be used to change the standards herein provided. The prosecuting attorney of each county shall enforce the provisions of this act. Any person, firm, company, corporation, agent or employee violating any of the provisions of this section shall be deemed guilty of misdemeanor, and upon conviction shall be fined not more than one hundred dollars, or imprisoned in the county jail (if a company or corporation its president), not more than six months, or both. (Id. § 6418.)

482. Standards for Climax Baskets for Fruits and Vegetables.—Standards for Climax baskets for grapes and other fruits and vegetables shall be the two-quart basket, four-quart basket and twelve-quart basket respectively:

(a) The standard two-quart Climax basket shall be of the following dimensions: Length of bottom piece, nine and one-half inches; width of bottom piece, three and one-half inches; thickness of bottom piece, three-eighths of an inch; height of basket, three and seven-eighths inches, outside measurement; top of basket, length eleven inches and width five inches outside measurement. Basket to have a cover of five by eleven inches, when a cover is used.

(b) The standard four-quart Climax basket shall be of the following dimensions: Length of bottom piece, twelve inches; width of bottom piece, four and one-half inches; thickness of bottom piece, three-eighths of an inch; height of basket, four and eleven-sixteenths inches, outside measurement; top of basket, length fourteen inches, width six and one-fourth inches, outside measurement. Basket to have cover six and one-fourth inches by fourteen inches, when cover is used.

(c) The standard twelve-quart Climax basket shall be of the following dimensions: Length of bottom piece, sixteen inches; width of bottom piece, six and one-half inches; thickness of bottom piece, seven-sixteenths of an inch; height of basket, seven and one-sixteenth inches, outside measurement; top of basket, length nineteen inches, width nine inches, outside measurement. Basket to have cover nine inches by nineteen inches, when cover is used. (Id. § 6422-1.)

483. Standard for Small Fruits and Vegetables.—Standard basket or other container for small fruits, berries and vegetables shall be of the following capacities: namely, dry one-half pint, dry pint, dry quart, or multiples of the dry quart.

(a) The dry half-pint shall contain sixteen and eight-tenths cubic inches.

(b) The dry pint shall contain thirty-three and six-tenths cubic inches.

(c) The dry quart shall contain sixty-seven and two-tenths cubic inches.

The dimensions of the one-quart box used in the sale of berries or other small fruits shall be as follows: Five and one-tenth inches square on top, four and three-tenths inches square on the bottom and three inches in depth. (Id. § 6422-2.)

484. Standard Hampers for Fruits and Vegetables.—The standard hampers for fruits and vegetables shall be the one peck hamper, one-half bushel hamper, one bushel hamper, and one and one-half bushel hamper respectively.

(a) The standard one peck hamper shall contain five hundred and thirty-seven and six-tenths cubic inches, and conform to the following specifications: The inside diameter between staves at upper edge of the top inside hoop shall be ten and three-eighths inches; the inside diameter of the bottom shall be six and one-half inches; the inside length of the staves shall be nine and five-eighths inches; the inside top hoop shall be one-tenth inch thick and set with its upper edge even with the upper ends of the staves; there shall be ten staves, each not less than one-tenth inch thick and ten and one-eighth inches long; and the bottom piece shall be one-half inch thick.

(b) The standard one-half bushel hamper shall contain one thousand, seventy-five and twenty-one one-hundredths cubic inches, and conform to the following specifications: The inside diameter between staves at upper edge of the top inside hoop shall be thirteen inches; the inside dimeter of the bottom shall be eight inches; the inside length of staves shall be twelve and one-half inches; the inside top hoop shall be one-ninth of an inch thick and set with its upper edge even with the upper ends of the staves; there shall be ten staves, each not less than one-tenth of an inch thick and thirteen and one-eighth inches long; and the bottom piece shall be five-eighths of an inch thick.

(c) The standard one bushel hamper shall contain two thousand, one hundred fifty and forty-two one-hundredths cubic inches, and conform to the following specifications: The inside diameter between staves at upper edge of the top inside hoop shall be fifteen and one-eighth inches; the inside diameter of the bottom shall be nine inches; the inside length of the staves to the upper edge of the top inside hoop shall be nineteen inches; the inside top hoop shall be one-eighth of an inch thick and set with its upper edge three-eighths of an inch below the upper ends of the staves; there shall be either ten or twelve staves, each not less than one-eighth of an inch thick and twenty inches long; and the bottom piece shall be five-eighths of an inch thick.

(d) The standard one and one-half bushel hamper shall contain three thousand, two hundred twenty-five and sixty-three one hundredths cubic inches, and conform to either of the following specifications:

(1) The inside diameter between staves at upper edge of the top inside hoop shall be sixteen and one-fourth inches; the inside diameter of the bottom shall be nine inches; the inside length of the staves to the upper edge of the top inside hoop shall be twenty-five and thirteen-sixteenths inches; the inside top hop shall be one-eighth of an inch thick and set with its upper edge three-eighths of an inch below the upper ends of the staves; there shall be ten staves, each not less than one-sixth of an inch thick and twenty-seven inches long; and the bottom piece shall be five-eighths of an inch thick.

(2) The inside diameter between staves at upper edge of the top inside hoop shall be sixteen and three-fourths inches; the inside diameter of the bottom shall be ten inches; the inside length of the staves to the upper edge of the top inside hoop shall be twenty-three inches; the inside top hoop shall be one-eighth of an inch thick and set with its upper edge three-eighths of an inch below the upper ends of the staves; there shall be ten staves, each not less than one-eighth of an inch thick and twenty-four inches long, and the bottom piece shall be five-eighths of an inch thick. (Id. § 6422-3.)

485. Standard Round Stave Baskets for Fruits and Vegetables.—The standard round stave baskets for fruits and vegetables shall be one-half bushel basket, one bushel basket, one and one-half bushel basket and two bushel basket respectively.

(a) The one-half bushel round stave basket shall contain one thousand seventy-five and twenty one-hundredths cubic inches, and conform to the following specifications: The inside diameter at the upper inner edge of the top inside hoop shall be thirteen and one-half inches; the average inside depth shall be not less than eight and one-half inches; the web shall consist of twenty intersecting staves, each not less than one-eighteenth of an inch thick and of such length that they will form the sides and bottom of a basket which shall contain sixteen quarts standard dry measure.

(b) The one bushel round stave basket shall contain two thousand, one hundred fifty and forty-two one-hundredths cubic inches, and conform to the following specifications: The inside diameter at upper inner edge of the top inside hoop shall be seventeen inches; the average inside depth shall be not less than ten and three-fourths inches; the web shall consist of twenty intersecting staves, each not less than one-eighteenth of an inch thick and of such length that they will form the sides and bottom of a basket which shall contain thirty-two quarts standard dry measure.

(c) The one and one-half bushel round stave basket shall contain three thousand, two hundred and twenty-five and sixty-three one-hundredths cubic inches, and conform to the following specifications: The inside diameter at upper inner edge of the top inside hoop shall be nineteen inches; the average inside depth shall be not less than twelve and three-fourths inches; the web shall consist of twenty-four intersecting staves, each of not less than one-sixteenth of an inch thick and of such length that they will form the sides and bottom of a basket which shall contain forty-eight quarts standard dry measure.

(d) The two-bushel round stave basket shall contain four thousand, three hundred, and eighty-four one hundredths cubic inches, and conform to the following specifications: The inside diameter at upper inner edge of the top inside hoop shall be twenty and three-fourths inches; the average inside depth shall be not less than thirteen and three-fourths inches; the web shall consist of twenty-four intersecting staves, each not less than one-sixteenth of an inch thick and of such length that they will

form the sides and bottom of a basket which shall contain sixty-four quarts, standard dry measure. (Id. § 6422-4.)

486. Penalty for Violation of Law.—It shall be unlawful to ship or deliver, for shipment within the State of Ohio, Climax baskets, small fruit baskets, hampers, or round stave baskets, for fruits or vegetables, either filled or unfilled or parts of such Climax baskets, small fruit baskets, hampers or round stave baskets, that do not comply with this act; or fruits or vegetables in Climax baskets, small fruit baskets, hampers or round stave baskets, that at the time of such shipment, delivery for shipment, or offer for sale, are not filled to the full capacity thereof, stricken measure. Any individual, partnership, association or corporation, that wilfully violates this section shall be deemed guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not exceeding $100.00 or imprisonment not exceeding sixty days, or both. (Id. § 6422-5.)

487. Rules and Regulations; Examinations and Tests.—The Secretary of Agriculture is authorized to prescribe such regulations as he may find necessary for carrying into effect the provisions of this act, and to cause such examinations and tests to be made as may be necessary in order to determine whether Climax baskets, small fruit baskets, hampers and round stave baskets or parts thereof subject to this act, meet its requirements. For said purpose the authorized officers and agents of the Secretary of Agriculture may visit factories, stock rooms, and other places of business where such hampers or baskets or parts thereof are manufactured or held for sale or shipment or offered for sale, may enter cars, vessels, other vehicles and places under the control of carriers engaged in the transportation of such hampers or baskets or parts thereof, and may take samples of such hampers or baskets or parts, the cost of which samples, upon request, shall be paid to the person entitled thereto. (Id. § 6422-6.)

488. Enforcement of Law and Rules.—It shall be the duty of the Secretary of Agriculture to enforce all the provisions of this act, and to prescribe such rules and regulations not otherwise herein provided, as he may deem necessary, for the efficient execution of the provisions of the same, including the amount of tolerance necessary in the enforcement of this act, because of the impossibility of perfect scientific exactitude in the manufacture of such Climax baskets, small fruit baskets, hampers and round stave baskets; and which regulations and tolerances shall be in conformity with those from time to time promulgated by the United States Department of Agriculture. (Id. § 6422-7.)

489. Different Forms of Baskets May be Permitted.—The Secretary of Agriculture for good and sufficient reasons may permit the use of Climax baskets, small fruit baskets, hampers and round stave baskets of a different form from the baskets prescribed in this act but of the same capacity. (Id. § 6422-8.)

490. When Dealer Shall Not be Prosecuted.—No dealer shall be prosecuted under the provisions of this act when he can establish a guaranty signed by the manufacturer, wholesaler, jobber, or other party residing within the United States from whom such Climax basket, baskets, or other containers as defined in this act, were purchased, to the effect that said Climax basket, baskets, or other containers are correct within the meaning of this act. Said guaranty, to afford protection, shall contain the name and address of the party or parties making the sale of Climax basket, baskets, or other containers, hampers or round stave baskets, to such dealer, and in such case said guarantor shall be amenable to the prosecutions, fines and other penalties which would attach in due course to the dealer under the provisions of this act. (Id. § 6422-9.)

491. State Sealer; Duties.—The Secretary of Agriculture shall be State Sealer, and shall make, promulgate and enforce such rules and regulations as may be necessary to the prompt and effective enforcement of the weights and measures laws of this State. The standards of weights and measures adopted by this State shall be deposited in a suitable room at Columbus, and be kept in suitable cases, to be opened only for the purpose of comparing them with such standards and copies which by law are furnished for the use of the several counties or villages unless by joint resolution of the General Assembly, or upon a call of either house for information or by order of the Governor for scientific purposes. The Secretary of Agriculture shall, upon the passage of this act, and once every three years thereafter, require each county auditor and city or village sealer, in this State, to present all standards of weights and measures in their possession to him for comparison with the standards adopted by the State, and he shall condemn and destroy all of such standards as do not conform with the standards adopted by the State. Each county auditor and each city and village sealer shall be required to procure copies of all the original standards adopted by the State named in section 7966 of the General Code, except such standards now in their possession as the Secretary of Agriculture shall find to conform with the standards adopted by the State. It shall be the

duty of the Secretary of Agriculture to advise and assist all county, city and village sealers, and generally be charged with the enforcement of all laws relating to weights and measures; and in the performance of such duties it may use the service of any person employed in his department. The Secretary of Agriculture or any person employed by him for that purpose may try and prove any weights, measures, balance and any other weighing or measuring device, on request from any person, and when the same are found or made to conform to the State standards shall cause the same to be sealed and marked, as provided in section 2616 of the General Code. (Id. § 7965.)

492. Inspection and Tests of Weights and Measures.—The Secretary of Agriculture or his deputy, or any other duly authorized sealer of weights and Measures or his deputy, may inspect and test any weight, measure, balance or other weighing or measuring device, wherever the same is used or maintained for use, and if such weight, measure, balance or other weighing or measuring device is found to be false or fraudulent, or cannot be made to conform to the legal standard the same shall be condemned and confiscated by the said sealer or deputy sealer. (Id. § 7965-1.)

493. Examining and Testing Devices Used to Register Price and Weight.—The Secretary of Agriculture or any duly authorized sealer of weights and measures or his deputy shall inspect and test any weights and measures, balances and weighing or measuring devices having a device for indicating or registering the price as well as the weight or quantity of commodities both as to correctness of weight or quantity and value indicated by them, the secretary or any sealer of weights and measures or his deputy shall seal such weights and measures, or balances and weighing and measuring devices as shall be tested and found correct, and, after ten days' notice, in writing, to the owner shall condemn or seize such as are found to be incorrect, and shall seal such weights and measures, balances, weighing and measuring devices having a device for indicating or registering the price as well as the weight or quantity of commodities only when correct, both in indications of weight or quantity and value, and shall condemn or seize such in which the graduations or indications are found to be false or inaccurately placed, either as to weight or quantity or value. (Id. § 7965-2.)

494. Copies of Standards for Use of Counties.—Copies of the original standards of the following materials, shall be procured by the State Sealer for the use of each county in this State, not already furnished, in pursuance of law, and be delivered by him to the auditor thereof; one-half bushel measure, of one-eighth inch copper, with brass rim; one gallon measure, of one-sixteenth inch copper, with brass rim and handle; one-half gallon, one quart, one pint, and one-half pint measure, to be made in the same manner and of the same material; fifty, twenty-five, twenty, ten, five, four, three, two, and one pound weights, avoirdupois, to be made of cast iron, turned, polished, and trimmed; and one-half pound, one-quarter pound, two ounces, one ounce, half ounce, and quarter ounce weights, troy to be made of brass; one brass yard measure, graduated into feet, inches and tenths. (Id. § 7966.)

495. Device on County Standards.—The State Sealer shall cause to be impressed on each of the copies, so to be delivered to the counties, the letter "O," and such other device for each county as he directs before its deposit in the county auditor's office. Such device shall be recorded in the State Sealer's office, and a copy thereof furnished to the auditor of the proper county. (Id. § 7967.)

496. Like Copies to be Furnished to Cities and Villages.—The State Sealer shall furnish like copies of the original standards to the sealer of any city or village upon application therefor, and payment of the cost thereof, by such city or village. (Id. § 7968.)

497. County Sealer.—By virtue of his office, the county auditor shall be county sealer of weights and measures and shall be responsible for the preservation of the copies of the original standards delivered to his office. It shall be the duty of the county auditor to see that all State laws relating to weights and measures be strictly enforced throughout his county and to assist generally in the prosecution of all violations of such laws. (Id. § 2615.)

498. Duties of County Sealer; Penalty.—The county sealer shall compare all weights and measures, brought to him for that purpose, with the copies of standards in his possession. When they are made to confirm [conform] to the legal standards, the officer comparing them shall seal and mark such weights and measures. No weight, measure, balance or other weighing or measuring device shall be used or maintained for weighing and measuring in this State unless such weight, measure, balance or other weighing or measuring device has been sealed or marked by the Secretary of Agriculture or any employee of the secretary detailed for that purpose, or by the county sealer of the city or village in which the same is used or maintained,

and by stamping upon each the letter "O" and the last two figures of the year in which it has been compared with legal standards, adjusted and found or made to conform to said standards, with seals so provided by said Secretary of Agriculture, for that purpose. Whoever violates any of the provisions of this section shall be fined not less than fifty dollars nor more than one hundred dollars for the first offense and for each subsequent offense shall be fined not less than one hundred dollars, nor more than five hundred dollars and imprisoned for not more than ninety days or both. A justice of the peace, police judge, or mayor shall have jurisdiction in such cases as in cases of violation of law relating to the adulteration of food and drink and dairy products. (Id. § 2616.)

499. County Sealer Shall Deliver Copies to Successor.—When a county sealer resigns, is removed from office, or removes from the county, he shall deliver to his successor in office the standards, beams, weights, and measures in his possession. In case of the death of a county sealer his representative shall, in like manner, deliver to his successor in office such beams, weights, and measures. (Id. § 2617.)

500. Penalty for Refusal.—In case of neglect or refusal to deliver such standards entire and complete, the successor in office may maintain a civil action against the person so refusing or neglecting, and recover double the value of such standards as have not been delivered, with costs of suit, which shall be by him appropriated to the purchase of such standards as are required in his office. (Id. § 2618.)

501. Penalty for Using False Weights and Measures.—If any person hereafter uses any weights, measures, or beams, in weighing or measuring, which do not conform to the standards of the State, or any other measures established by law, whereby a dealer in, purchaser, or seller of, any commodity or article of traffic is injured or defrauded, such dealer, purchaser, or seller, may maintain a civil action against the offender, and if judgment is rendered him, he shall receive double damages and costs of suit. (Id. § 2620.)

502. When Not to be Enforced.—The provisions of the preceding two sections* shall not be enforced in any county, unless it has been furnished with copies of the standards of this State, at least six months previous to such measuring or surveying. (Id. § 2621.)

503. Appointment of Deputy Under Seal; Salary.—Each county sealer of weights and measures shall appoint by writing under his hand and seal, a deputy who shall compare weights and measures wherever the same are used or maintained for use within his county, or which are brought to the office of the county sealer for that purpose, with the copies of the original standards in the possession of the county sealer, who shall receive a salary fixed by the county commissioners, to be paid by the county, which salary shall be instead of all fees or charges otherwise allowed by law. Such deputy shall also be employed by the county sealer to assist in the prosecution of all violations of laws relating to weights and measures. (Id. § 2622.)

504. Fees.—Each sealer may receive for his services, the following fees; For sealing and marking every beam, ten cents; for sealing and marking measures of extension, at the rate of ten cents per yard, not exceeding twenty-five cents for any one measure; for sealing and marking each weight, five cents; for sealing and marking liquid or dry measures, if of one gallon or more, ten cents, and if less than one gallon, five cents; and a reasonable compensation for marking such weights and measures, so as to conform to the standards. (Id. § 2623.)

505. Selling by False Weights; Penalty.—Whoever, in buying or selling any property, or directing or permitting an employee so to do, makes or gives a false or short weight or measure; or whoever has charge of scales or steelyards fixed for the purpose of misweighing an article bought or sold, or, having scales or steelyards for the purpose of weighing property, reports a false or untrue weight; or whoever uses in the sale of a commodity a computing scale or device indicating the weight and price of such commodity upon which scale or device the graduations or indications are false, or inaccurately placed, either as to weight or price, shall be fined not more than five hundred dollars. (Id. § 13106.)

506. Miller, Grain Dealer, Etc., Must Use Standard Half-Bushel.—Whoever, being a commission merchant, miller, dealer, grain inspector, corporation, firm, association or person, or an officer, agent or employee thereof purchasing or receiving wheat in barter or exchange for flour, or otherwise from the original producer, his agent or employee, for testing or determining the weight, grade, milling or market value thereof, uses a measure other than the standard half-bushel or uses a measure that is a fractional part of such standard half-bushel, furnished this State by the United States, shall be fined not less than twenty-five dollars nor more than one hundred dollars or imprisoned in jail not more than thirty days, or both. Fines col-

*Reference is to sections 2619 and 2620. Section 2619 relates to surveyors' chains and measures. Omitted herein.

lected under this section shall be paid into the county treasury to the credit of the county fund. (Id. § 13109.)

507. Failure to Mark Weight or Quantity on Package; Exceptions—Transfer of Brand, Mark or Stamp—Wrapping Not Included as Part of Weight—Penalty for Failure to Comply With Law.—Whoever puts up or packs goods or articles sold by weight or count into a sack, bag, barrel, case or package, or whoever puts up or fills a bottle, barrel, keg, drum, can or other container with any commodity sold or offered for sale by liquid measure, shall mark thereon in plain letters and figures the exact quantity of the contents thereof in terms of weight, measure or numerical count; provided, however, that reasonable tolerances and variations and also exemptions as to small packages shall be established by rules made by the Secretary of Agriculture and shall conform to those of the Federal law, and provided, further, that this act shall not apply to such packages or containers, weighed, put up, packed or filled in the presence of the customer.

Whoever, with intent to defraud, transfers a brand, mark or stamp placed upon a case or package by a manufacturer to another case or package, or with like intent, repacks a case or package so marked, branded or stamped, with goods or articles of quantity [quality] inferior to those of such manufacturer shall be deemed guilty of a violation of this section.

Any article or commodity packed and sold by weight shall be sold by net weight only, and no wood, paper, burlap, cord, paraffin or other substances used for wrapping or packing, shall be included as a part of the weight of such commodity sold.

Provided, however, that nothing in this section shall prohibit making a reasonable separate charge for any wrapper or container used in packing or preparing such article or commodity for sale, if such be agreed to by the purchasers of such article or commodity at time of sale. Any person, firm, company, corporation or agent, who fails to comply with any provisions of this act, shall be fined not less than twenty-five dollars ($25.00) nor more than five hundred dollars ($500.00). . . . (Id. § 13128.)

508. Special Jurisdiction of Police Judges, Mayors and Justices.—Justices of the peace, police judges and mayors of cities and villages shall have jurisdiction, within their respective counties, in all cases of violation of any law relating to: . . .

15. The prevention of short weighing and measuring and all violations of the weights and measures laws. . . . (Id. § 13423.)

NOTE: See also Nos. 7, 55-56, 147 et seq., 212 et seq., and 287.

PART V.

Cases.

1. General Food and Drug Law.

Administrative Code: *State ex rel. Durbin v. Smith, 102 Ohio St. 591, 133 N. E. 457 (1921); *State ex rel. Burke v. Smith, *State ex rel. Durbin v. Price, 102 Ohio St. 673, 133 N. E. 480 (1921).

Affidavit Charging Violation of Act of March 20, 1884—Need Not Charge Adulterated Food Was Sold for Use as Human Food: State v. Kelly, 54 Ohio St. 166, 43 N. E. 163 (1896), reversing Kelly v. State, 1 N. P. 238, 2 Ohio Dec. 239 (1895).

Analysis of Alleged Adulterated Food by Order of Court: Breckenridge v. State, 3 N. P. 313, 4 Ohio Dec. 389 (1896); State v. Breckenridge, 5 Ohio Dec. 546 (1897).

Beer Containing Salicylic Acid Without Label Notice Thereof—Adulterated: State v. Hutchinson, 55 Ohio St. 573, 45 N. E. 1043 (1897).

Breakfast Cocoa—Extraction of Oil from Cocoa Bean—Not Adulteration: Rose v. State, 11 Cir. Ct. 87, 5 Cir. Dec. 72 (1896), reversing Same, 2 N. P. 270, 4 Ohio Dec. 44 (1895).

Coffee—Coated With Sugar and Egg Compound—Not Adulterated: White v. State, 12 Ohio Dec. 659 (1901). See also: *Arbuckle et al. v. Blackburn, 113 Fed. 616, 51 C. C. A. 122 (1902), appeal dismissed in *Arbuckle v. Blackburn, 191 U. S. 405, 24 S. Ct. 148, 48 L. Ed. 239 (1903).

Constitutional: *Arbuckle et al. v. Blackburn, 113 Fed. 616, 51 C. C. A. 122 (1902), appeal dismissed in *Arbuckle v. Blackburn, 191 U. S. 405, 24 S. Ct. 148, 48 L. Ed. 239 (1903).

Definition of Adulteration—Abstraction of Valuable or Necessary Ingredient: Rose v. State, 11 Cir. Ct. 87, 5 Cir. Dec. 72 (1896), reversing Same, 2 N. P. 270, 4 Ohio Dec. 44 (1895).

Definition of Adulteration—Mixture or Compound Proviso: White v. State, 12 Ohio Dec. 659 (1901). See also the Rose and Arbuckle cases, ante.

Definition of Adulteration—Mixture or Compound Proviso—Negative Averment of Facts Within Proviso is Not Required in Affidavit Charging Offense, But Such Facts May be Offered in Evidence as Defense Under Plea of Not Guilty: State v. Hutchinson, 55 Ohio St. 573, 45 N. E. 1043 (1897).

Food Commissioner—Authorized to Publish Violations: *Williams et al. v. McNeal, 7 Cir. Ct. 280, 4 Cir. Dec. 596 (1892).

Food Commissioner—Court Will Not Enjoin His Publication of Statement That a Food is Adulterated and Its Sale is Unlawful and Wherein Those Who Sell it Are Threatened With Prosecution, Whether Such Statement is Correct or Erroneous: *Arbuckle et al. v. Blackburn, 113 Fed. 616, 51 C. C. A. 122 (1902), appeal dismissed in *Arbuckle v. Blackburn, 191 U. S. 405, 24 S. Ct. 148, 48 L. Ed. 239 (1903).

Food Commissioner—Law is Not Rendered Unconstitutional and Its Enforcement Will Not be Enjoined Because Commissioner May Erroneously Construe it: *Arbuckle et al. v. Blackburn, 113 Fed. 616, 51 C. C. A. 122 (1902), appeal dismissed in *Arbuckle v. Blackburn, 191 U. S. 405, 24 S. Ct. 148, 48 L. Ed. 239 (1903).

Ignorance of Adulteration—Good Defense: Haas v. State, 1 N. P. 248, 2 Ohio Dec. 93 (1895).

Ignorance of Adulteration—No Defense: Strong et al. v. State, 2 N. P. 93, 3 Ohio Dec. 284 (1895); State v. Kelly, 54 Ohio St. 166, 43 N. E. 163 (1896), reversing Kelly v. State, 1 N. P. 238, 2 Ohio Dec. 239 (1895); Bissman v. State, 54 Ohio St. 242, 43 N. E. 164 (1896), affirming Same, 9 Cir. Ct. 714, 6 Cir. Dec. 712 (1895); Portage Markets Co. v. George, 111 Ohio St. 775, 146 N. E. 283 (1924).

Injunction—Court Will Not Enjoin Prosecutions Under Valid Law: *Arbuckle et al. v. Blackburn, 113 Fed. 616, 51 C. C. A. 122 (1902), appeal dismissed in *Arbuckle v. Blackburn 191 U. S. 405, 24 S. Ct. 148, 48 L. Ed. 239 (1903).

Interstate Commerce—Application of Law to Food Introduced from Another State and Sold in Original Package: *Arbuckle et al. v. Blackburn, 113 Fed. 616, 51 C. C. A. 122 (1902), appeal dismissed in *Arbuckle v. Blackburn, 191 U. S. 405, 24 S. Ct. 148, 48 L. Ed. 239 (1903).

Ketchup Containing Salicylic Acid—Manager of Corporation is Liable for Sale of Adulterated Food by Agent of Said Corporation, Acting Within Scope of His Authority: Bissman v. State, 54 Ohio St. 242, 43 N. E. 164 (1896), affirming Same, 9 Cir. Ct. 714, 6 Cir. Dec. 712 (1895).

Liquid Coffee—Sale of Liquid Coffee and Chicory as Liquid Coffee is an Offense: State v. Dreher, 55 Ohio St. 115, 44 N. E. 510 (1896).

Molasses—Containing Glucose: State v. Kelly, 54 Ohio St. 166, 43 N. E. 163 (1896), reversing Kelly v. State, 1 N. P. 238, 2 Ohio Dec. 239 (1895).

Mustard—Adulterated: Breckenridge v. State, 3 N. P. 313, 4 Ohio Dec. 389 (1896); State v. Breckenridge, 5 Ohio Dec. 546 (1897).

Mustard—Adulterated by Addition of Starch: Haas v. State, 1 N. P. 248, 2 Ohio Dec. 93 (1895).

Oleomargarine—Introduction of Coloring Matter Into Oleomargarine is Adulteration of Food and Offense Within Jurisdiction of Justice of Peace: State v. Ruedy, 57 Ohio St. 224, 48 N. E. 944 (1897).

Patent—No Defense: *Arbuckle et al. v. Blackburn, 113 Fed. 616, 51 C. C. A. 122 (1902), appeal dismissed in *Arbuckle v. Blackburn, 191 U. S. 405, 24 S. Ct. 148, 48 L. Ed. 239 (1903).

Police Judge or Mayor of City or Village—Jurisdiction Confined to Offenses Committed in His City or Village: State v. Peters, 67 Ohio St. 494, 66 N. E. 521 (1903), affirming Peters v. State, 8 N. P. 595, 11 Ohio Dec. 555 (1901).

Pure Drug Law—Affidavit Charging Sale of Drug Differing from Standard of Strength Defined in United States Pharmacopœia, Without Stating Whether Said Drug is Above or Below Such Standard, is Insufficient for Indefiniteness, Even Though it is in Words of Statute: *Groenland v. State, 4 N. P. 122, 6 Ohio Dec. 313 (1897), affirmed without opinion in State v. Groenland, 57 Ohio St. 653, 50 N. E. 1134 (1897).

Pure Drug Law—Extends to All Persons and Makes no Distinction on Account of Intended Use of Drug: State v. Hutchinson, 56 Ohio St. 82, 46 N. E. 71 (1897).

Sale—Not Complete Until Goods Are Paid For: Heider v. State, 4 Ohio Dec. 227 (1896).

Sale—When Purchase by Agent of State Does Not Involve a Sale Under Law: Dinkelbihler v. State, 4 N. P. 96, 6 Ohio Dec. 99 (1897).

Samples—Refusal to Furnish for Analysis: Margolius v. State, 1 N. P. 264, 4 Ohio Dec. 354 (1895); State ex rel. Reynolds v. Capital City Dairy Co. et al., 62 Ohio St. 123, 56 N. E. 651 (1900).

United States Pharmacopœia—An Authoritative Compilation: State v. Hutchinson, 56 Ohio St. 82, 46 N. E. 71 (1897).

United States Pharmacopœia—Reference is to Edition in General Use When Statute Was Enacted: State v. Emery, 55 Ohio St. 364, 45 N. E. 319 (1896), affirming Emery v. State, 3 N. P. 204, 5 Ohio Dec. 121 (1896).

Unwholesome Provisions—Common Law Offense: Ohio v. Lafferty, Tappan 81 (1817).

Whiskey is Recognized by That Name in United States Pharmacopœia and is a Drug Within Pure Drug Law, Though Sold as a Beverage: State v. Hutchinson, 56 Ohio St. 82, 46 N. E. 71 (1897).

2. Special Food Laws.

Bakeries: Bernhardt v. Kearns, 12 N. P. (N. S.) 298, 22 Ohio Dec. 707 (1912); Bernhardt v. Wise, 15 Cir. Ct. (N. S.) 158, 24 Cir. Dec. 114 (1912), affirming *Same, 12 N. P. (N. S.) 545, 23 Ohio Dec. 230 (1912). See also: Bondi v. Gambino, 21 Cir. Ct. (N. S.) 196 (1907).

Beverages—Fruit Juices: Rotuno v. State, 25 N. P. (N. S.) 350 (1923).

Beverages—Grape Juice: Lancione v. State, 18 Ohio App. 380 (1923); State v. Giunca, 19 Ohio App. 173 (1923).

Beverages—Jamaica Ginger: Ballabanos v. State, 15 Ohio App. 520 (1922).

Beverages—Soft Drinks—License: *Koeberle v. City of Akron et al., 23 N. P. (N. S.) 267 (1921).

Beverages—Soft Drinks—Regulation of Sale: Sullivan v. City of Wellston, 12 Cir. Ct. (N. S.) 108, 54 W. L. B. 227 (1909).

Beverages—Soft Drinks—Use of Saccharin Prohibited: *Longbrake v. State, 112 Ohio St. 13, 146 N. E. 417, 41 A. L. R. 925 (1925).

Bread—Standard Size and Weight: *Allion v. City of Toledo, 99 Ohio St. 416, 124 N. E. 237, 6 A. L. R. 426 (1919), affirming *City of Toledo v. Allion, 11 Ohio App. 1, 30 O. C. A. 487 (1917), which reversed *Allion v. City of Toledo, 20 N. P. (N. S.) 353, 28 Ohio Dec. 337 (1917).

Cold Storage: State ex rel. Schlesinger v. Columbus Packing Co. & Fairmount Creamery Co., 22 N. P. (N. S.) 108, 30 Ohio Dec. 213 (1919); *Leonard v. State, 100 Ohio St. 456, 127 N. E. 464 (1919); Columbus Packing Co. v. State, ex rel. Schlesinger et al., 106 Ohio St. 469, 140 N. E. 376, 37 A. L. R. 1525 (1922), overruling Same, 100 Ohio St. 285, 126 N. E. 291, 29 A. L. R. 1429 (1919); State ex rel. Schlesinger v. Columbus Packing Co. et al., 25 N. P. (N. S.) 307 (1925). State ex rel. Seney v. Swift & Co. et al., 260 U. S. 146, 43 S. Ct. 22, 67 L. Ed. 176 (1922), dismissing appeal from *Same, 270 Fed. 141 (C. C. A.) (1921).

Flavoring Extract—Illegal Sale—Identity of Purchaser Not Essential Element of Offense: Yunker v. State, 8 Ohio App. 157 (1917).

Grocery Store—License: *Thomas v. Town of Mount Vernon, 9 Ohio 291 (1839).

Ice Cream—Sale on Highway or Public Grounds Forbidden Unless Contained in Sealed, Locked or Other Approved Container: *Nemis Metropolis v. City of Elyria, 23 Cir. Ct. (N. S.) 544, 49 Cir. Dec. 374 (1912).

Lard: Miller v. State, 22 N. P. (N. S.) 106, 30 Ohio Dec. 252 (1919).

Liquors—Adulteration: Cheadle v. State, 4 Ohio St. 477 (1855); Woodworth v. State, 4 Ohio St. 487 (1855); Peacock, Woodside & Co. v. Grannan, 3 Western Law Monthly 155 (1861). See also: Smith v. Kibbee, 9 Ohio St. 563 (1859).

Maple Syrup: Scanlon v. State, 16 Cir. Ct. (N. S.) 115, 37 Cir. Dec. 607 (1909).

Markets: City of Cincinnati v. Buckingham, 10 Ohio 257 (1840); Gall et al. v. City of Cincinnati et al., 18 Ohio St. 563 (1869); Kraft v. City of Cincinnati, 3 N. P. 195, 6 Ohio Dec. 8 (1896); Keck v. City of Cincinnati, 6 Ohio Dec. 97 (1897).

Meat—Markets: See *Markets.*

Meat—Power of Municipality to Grant Monopoly for Transporting and Utilizing Dead Animals Not Slaughtered for Food: *Stadler v. City of Cleveland, 4 N. P. (N. S.) 649, 17 Ohio Dec. 340 (1906).

Meat—Slaughterhouse: Steiner v. Hennon et al., 5 N. P. (N. S.) 314, 17 Ohio Dec. 585 (1907); Shute v. City of Elyria, 20 Cir. Ct. (N. S.) 383, 41 Cir. Dec. 369 (1912).

Meat—Slaughterhouse—"Manufacturer" (R. S. 2669): Incorporated Village of Tippecanoe v. Boercher, 5 Cir. Ct. 6 (1890).

Meat—Veal: See Portage Markets Co. v. George, 111 Ohio St. 775, 146 N. E. 283 (1924).

Meat—Unwholesome: State v. Roach, 87 Ohio St. 527, 102 N. E. 1132 (1913).

Milk—Affidavit Need Not Charge it is An Article of Human Food—Jurisdiction of Justice of Peace: State ex rel. Smith v. Smith, 69 Ohio St. 196, 68 N. E. 1044 (1903).

Milk—Bottles—Law Regulating Their Use: *State v. Doyle, 17 Cir. Ct. (N. S.) 289, 32 Cir. Dec. 147 (1910); *Jury v. State, 20 Cir. Ct. (N. S.) 139, 25 Cir. Dec. 514 (1912).

Milk—Examination—Permit: *Walton v. City of Toledo, 3 Cir. Ct. (N. S.) 295, 13 Cir. Dec. 547 (1902), affirmed without opinion in *Same, 69 Ohio St. 548, 70 N. E. 1134 (1903).

Milk—Filled Milk: *Hebe Co. et al. v. Shaw et al., 248 U. S. 297, 39 S. Ct. 125, 63 L. Ed. 255 (1919); *Hebe Co. et al. v. Calvert et al., 246 Fed. 711 (1917).

Milk—Fraudulent Sale of Skimmed Milk—Evidence of Other Unlawful Transactions of the Kind Admissible: Bainbridge v. State, 30 Ohio St. 264 (1876).

Milk from Cows to Which Distillery Waste Has Been Fed—Sale Prohibited: Clifton Springs Distilling Co. v. Brown et al., 8 N. P. (N. S.) 105, 19 Ohio Dec. 661 (1909); *Herzog v. State, 9 N. P. (N. S.) 349, 20 Ohio Dec. 458 (1910).

Milk—Maximum Watery Fluids and Minimum Solids and Fats Standard: State ex rel. Smith v. Smith, 69 Ohio St. 196, 68 N. E. 1044 (1903); Diersing v. State, 9 Cir. Ct. (N. S.) 214, 19 Cir. Dec. 469 (1907); Unkrich v. State, 16 Cir. Ct. (N. S.) 287, 36 Cir. Dec. 553 (1908); Bitner v. State, 103 Ohio St. 522, 134 N. E. 451 (1921), reversing Same, 22 N. P. (N. S.) 294, 31 Ohio Dec. 15 (1919).

Milk—Principal Responsible for Act of Agent: Stranahan Bros. Catering Co. v. Coit, 55 Ohio St. 398, 45 N. E. 634 (1896).

Milk—Sale at Retail in Sealed Glass Bottles, Required: *Staas v. State, 23 Cir. Dec. 159 (1908), affirmed without opinion in *Same, 81 Ohio St. 497, 91 N. E. 1139 (1909).

Milk—Sale in Tightly Closed and Capped Bottles, Required: *Klopfer v. Board of Health of City of Dayton, 9 N. P. (N. S.) 33, 20 Ohio Dec. 384 (1909).

Milk—Skimmed Milk—"Dealer" Defined: Guilder v. State, 4 Cir. Ct. (N. S.) 73, 16 Cir. Dec. 221 (1904).

Milk—Skimmed Milk—Designation: Bitner v. State, 103 Ohio St. 522, 134 N. E. 451 (1921), reversing Same, 22 N. P. (N. S.) 294, 31 Ohio Dec. 15 (1919).

Milk—Statement of Driver of Milk Wagon as to Ownership of Wagon—Hearsay: Cordes v. State, 4 N. P. 14, 6 Ohio Dec. 5 (1896).

Milk—Vegetables—Vehicle License: *Sterling v. City of Bowling Green, 5 Cir. Ct. (N. S.) 217, 16 Cir. Dec. 581 (1904).

Milk With Temperature Above 45 F.—Subject to Confiscation and Destruction: *Kaiser v. Walsh, 4 N. P. (N. S.) 507, 17 Ohio Dec. 324 (1906), affirmed without opinion in *Same, 80 Ohio St. 742, 89 N. E. 1121 (1909).

Oleomargarine: Ryan v. State, 5 Cir. Ct. 486, 3 Cir. Dec. 238 (1891); State v. Ruedy, 57 Ohio St. 224, 48 N. E. 944 (1897); *Holtgrieve v. State, 7 N. P. 389, 5 Ohio Dec. 166 (1900); State v. Ransick, 62 Ohio St. 283, 56 N. E. 1024 (1900); *State ex rel. Attorney-General v. Capital City Dairy Co., 62 Ohio St. 350, 57 N. E. 62, 57 L. R. A. 181 (1900), affirmed in *Capital City Dairy Co. v. Ohio, 183 U. S. 238, 22 S. Ct. 120, 46 L. Ed. 171 (1902); State v. Ehinger, 67 Ohio St. 51, 65 N. E. 148, 65 L. R. A. 833 (1902); State v. Peters, 67 Ohio St. 494, 66 N. E. 521 (1903), affirming Peters v. State, 8 N. P. 595, 11 Ohio Dec. 555 (1901); State v. Arata, 69 Ohio St. 211, 68 N. E. 1046 (1903), reversing Arata v. State, 12 Ohio Dec. 730 (1902); Williams v. State, 4 Cir. Ct. (N. S.) 193, 15 Cir. Dec. 673 (1902), affirmed without opinion in Same, 69 Ohio St. 570, 70 N. E. 1135 (1904); State v. Rippeth, 71 Ohio St. 85, 72 N. E. 298 (1904); *In re Worthen, 58 Fed. 467 (1891); *Ohio v. Thomas, 173 U. S. 276, 19 S. Ct. 453, 43 L. Ed. 699 (1899), affirming *In re Thomas, 87 Fed. 453, 31 C. C. A. 80 (1898), which affirmed *Same, 82 Fed. 304 (1897).

Oleomargarine—Substitute for Butter—Unlawful Sale—Patent No Defense: *Palmer v. State, 39 Ohio St. 236, 48 Am. Rep. 429 (1883).

Vinegar—Addition of Artificial Color or Injurious Ingredients, Prohibited: *Williams et al. v. McNeal, 7 Cir. Ct. 280, 4 Cir. Dec. 596 (1892); *Weller v. State, 53 Ohio St. 77, 40 N. E. 1001 (1895), affirming Same, 8 Cir. Ct. 467 (1894), which affirmed Same, 1 Ohio Dec. 196 (1894).

Vinegar—Cider Vinegar—Misbranding: See Ninety-five Barrels, More or Less, Apple Cider Vinegar v. United States, 289 Fed. 181, 183 (C. C. A.) (1923), reversed in United States v. Ninety-five Barrels, More or Less, Alleged Apple Cider Vinegar, 265 U. S. 438, 44 S. Ct. 529, 68 L. Ed. 1094 (1924).

Wine: Altschul v. State, 8 Cir. Ct. 214, 1 Ohio Dec. 446 (1894); Vester v. State, Horsley v. State, 1 N. P. 240, 2 Ohio Dec. 170 (1895); Meyer v. State, 54 Ohio St. 242, 43 N. E. 164 (1896), affirming Same, 10 Cir. Ct. 226, 6 Cir. Dec. 477, 3 Ohio Dec. 198 (1895), which affirmed Same, 1 N. P. 241, 2 Ohio Dec. 233 (1895); State v. Haynes, 7 N. P. 624, 8 Ohio Dec. 678, 35 W. L. B. 94 (1896).

3. Special Drug Laws.

Hog Virus: *State ex rel. Interstate Vaccine Co. v. Board of Agriculture of Ohio et al., 98 Ohio St. 469, 121 N. E. 648 (1918).

Medical Administering—Not Sale: Schaffner v. State, 8 Ohio St. 642 (1858).

Narcotics: *In re Allen, 91 Ohio St. 315, 110 N. E. 535 (1915); *State v. Lathrop, 93 Ohio St. 79, 112 N. E. 209 (1915); *Miller v. State, 13 Ohio App. 171, 31 O. C. A. 289 (1920), reversed in Same, 101 Ohio St. 535, 130 N. E. 939 (1920). See also: Seitz v. Ohio State Medical Board, 24 Ohio App. 115 (1926).

Patent for Medicine—Does Not Authorize Practice of Medicine: Jordan v. Overseers of Dayton, 4 Ohio 295 (1831).

Pharmacy: Sickles et al. v. State, 7 N. P. (N. S.) 338, 19 Ohio Dec. 117 (1908); Vincent v. State, 12 Cir. Ct. (N. S.) 142, 21 Cir. Dec. 343 (1909).

Poison Law—Application to Proprietary Medicine Containing Morphine—Jurisdiction of Justice of Peace: Marvin v. State, 5 N. P. 209, 7 Ohio Dec. 204 (1898).

Poison Law—Denatured Alcohol: Krizen v. State, 26 N. P. (N. S.) 358 (1926).

Poisons: See Davis v. Guarnieri, 45 Ohio St. 470, 15 N. E. 350, 4 Am. St. Rep. 548 (1887); Galvin v. Overbeck, 2 N. P. (N. S.) 63, 15 Ohio Dec. 13 (1903).

Practice of Medicine—Prescribing and Sale of Own Proprietary Medicines Incidental to Treatment of Patients: Tucker et al. v. Williamson et al., 229 Fed. 201 (1915).

4. Civil Action to Recover Damages for Injuries Alleged to Have Been Caused by Consumption or Use of Product.

Drugs: McClardy v. Chandler, 3 Ohio Dec. Repr. 1, 2 W. L. G. 1 (1858); Davis v. Guarnieri, 45 Ohio St. 470, 15 N. E. 350, 4 Am. St. Rep. 548 (1887); Ronker et al. v. St. John, 21 Cir. Ct. 39, 11 Cir. Dec. 434 (1900); Galvin v. Overbeck, 2 N. P. (N. S.) 63, 15 Ohio Dec. 13 (1903); Meyer v. Flannery, 18 N. P. (N. S.) 361, 29 Ohio Dec. 505 (1915); Edelstein et al. v. Cook, 108 Ohio St. 346, 140 N. E. 765, 31 A. L. R. 1333 (1923). See also: Hechler v. Make-Man Tablet Co., 16 Cir. Ct. (N. S.) 235, 27 Cir. Dec. 623 (1908); Machlitt v. Myers et al., 22 Ohio App. 520, 155 N. E. 248 (1926).

Drugs—Explosion in Drug Store: Kerr v. Clason, 4 Western Law Monthly, 488 (1862).

Food: Allen v. Marvin, 46 W. L. B. 208, affirmed without opinion in Same, 64 Ohio St. 608, 61 N. E. 1139 (1901); Portage Markets Co. v. George, 111 Ohio St. 775, 146 N. E. 283 (1924). See also: Witte v. Shaffer & Leonard, 3 W. L. G. 65, 3 Ohio Dec. Repr. 73 (1859); Tufts v. Schmuck, 8 N. P. 461, 11 Ohio Dec. 564 (1901); Mihalovitch-Fletcher Co. v. Bartlett, 12 Cir. Ct. (N. S.) 160 (1909); Kean v. Bachelor, 23 Cir. Ct. (N. S.) 129, 4 Ohio App. 350 (1915).

Narcotics—Sale to Husband—Action by Wife: Flandermeyer v. Cooper, 85 Ohio St. 327, 98 N. E. 102, 40 L. R. A. (N. S.) 360, Ann. Cas. 1913 A, 983 (1912).

Steel Wool: Rogers v. Kresge Co., 23 N. P. (N. S.) 448 (1921).

5. Miscellaneous.

Cigarettes: *Metz v. Hagerty et al., 51 Ohio St. 521, 38 N. E. 11 (1894).

Convict-Made Goods: *Arnold v. Yanders, 56 Ohio St. 417, 47 N. E. 50, 60 Am. St. Rep. 753 (1897).

False Advertising: *State v. Schaengold, 13 O. L. R. 130; Straum v. State, 15 Ohio App. 32 (1921).

Tobacco: State v. Casey, 38 Ohio St. 555 (1883).

Trade-Marks: McGowan Brothers Pump & Machine Co. et al., v. McGowan, 2 Cinn. Super. Ct. Rep. 313 (1872); Smith v. Kernan et al., 5 W. L. B. 145, 8 Ohio Dec. Repr. 32 (1880); Richardson v. Westjohn & Jones, 6 Ohio Dec. Repr. 1043, 9 Am. Law Rec. 723 (1881); Mueller & Mueller v. McDonough, 7 W. L. B. 65, 8 Ohio Dec. Repr. 310 (1882); Cohn v. Kahn & Kahn, 8 W. L. B. 154, 8 Ohio Dec. Repr. 472 (1882); Wiltberger v. Walker, 9 W. L. B. 42, 8 Ohio Dec. Repr. 588 (1883); Societe Anonyme, Etc., v. Micalovitch, Fletcher & Co., 18 W. L. B. 362, 10 Ohio Dec. Repr. 95 (1884); Buckland v. Rice, 40 Ohio St. 526 (1884); Brill v. Singer Mfg. Co., 41 Ohio St. 127, 52 Am. Rep. 74 (1884), reversing Singer Mfg. Co. v Brill, 6 Ohio Dec. Repr. 958, 9 Am. Law Record 43 (1880); Wilson v. Needermann, 19 W. L. B. 268, 10 Ohio Dec. Repr. 226 (1888); Hoeb et al. v. Bishop et al., 22

W. L. B. 151, 10 Ohio Dec. Repr. 595 (1889); Lloyd Bros. v. Merrill Chemical Co., 11 Ohio Dec. Repr. 236, 25 W. L. B. 319 (1891); Peurrung Bros. & Co. v. Compton, Ault & Co., 6 Cir. Ct. 483, 3 Cir. Dec. 548 (1892); Brass & Iron Works Co. v. Payne, 50 Ohio St. 115, 33 N. E. 88, 9 L. R. A. 82 (1893); Rothchild's Sons' Co. v. Brunswick-Balke-Collender Co., 12 Cir. Ct. 741, 4 Cir. Dec. 105 (1894); *Cigar Makers' Protective Union No. 4 v. Lindner, 2 N. P. 114, 3 Ohio Dec. 244 (1895); The Piso Co. of Warren, Pa., v. Voight et al., 4 N. P. 347, 6 Ohio Dec. 479 (1897); Burkhardt & Burkhardt v. A. E. Burkhardt Fur & Hat Co., 4 N. P. 358, 9 Ohio Dec. 84 (1897); Lippman v. Martin, 5 N. P. 120, 8 Ohio Dec. 485 (1898); Feder et al. v. Brundo, 5 N. P. 275, 8 Ohio Dec. 179 (1898); Harvey v. Lamoureaux et al., 5 N. P. 473, 7 Ohio Dec. 455 (1898); Reeder v. Brodt, 4 N. P. 265, 6 Ohio Dec. 248 (1897); Cigar Makers' International Union of America v. Burkhardt et al., 6 N. P. 342, 9 Ohio Dec. 459 (1898); Burch v. Toledo Plow Co., 15 Cir. Ct. 482, 8 Cir. Dec. 201 (1898); George A. Thayer Carpet Cleaning & Rug Mfg. Co. v. George A. Thayer Co., 6 N. P. 300, 9 Ohio Dec. 288 (1899); Brown Bros. v. Bucher & Bucher Co. & Torrence, 6 N. P. 379, 9 Ohio Dec. 362 (1899); Cincinnati Vici Shoe Co. v. Cincinnati Shoe Co., 7 N. P. 135, 9 Ohio Dec. 579 (1899); Robinson v. Harrison et al., 7 N. P. 273, 9 Ohio Dec. 701 (1900); United Hatters of America v. Loeb & Shired, 22 Cir. Ct. 339, 12 Cir. Dec. 272 (1901); Ironsides Co. v. Ironsides Chemical Co., 1 N. P. (N. S.) 346 (1903); Drake Medicine Co. & Drake v. Glessner, 68 Ohio St. 337, 67 N. E. 722 (1903); Block Light Co. v. Tappehorn et al., 2 N. P. (N. S.) 553, 15 Ohio Dec. 593 (1904); Rannells v. Albaugh et al., 6 Cir. Ct. (N. S.) 627, 17 Cir. Dec. 742 (1905), affirmed without opinion in Albaugh et al. v. Rannells, 75 Ohio St. 611, 80 N. E. 1122 (1906); Union Painless Dentists Co. v. Mullens et al., 6 O. L. R. 475, 19 Ohio Dec. 136 (1908); Giacin v. French Brothers Dairy Co., 84 Ohio St. 483, 95 N. E. 1148 (1911), affirming French Brothers Dairy Co. v. Giacin, 12 Cir. Ct. (N. S.) 134, 21 Cir. Dec. 395 (1909), which affirmed Same, 8 N. P. (N. S.) 549, 20 Ohio Dec. 638 (1909); W. F. Mason Hat Co. v. Abbey et al., 18 Cir. Ct. (N. S.) 420, 33 Cir. Dec. 134 (1910); Star Distillery Co. v. Mihalovitch-Fletcher Co., 12 N. P. (N. S.) 113, 23 Ohio Dec. 342 (1911); Cleveland Transfer & Carriage Co. v. Brailey et al., 23 Cir. Ct. (N. S.) 486, 30 Cir. Dec. 673 (1912); M. Werk Co. v. Ryan Soap Co., 14 Cir. Ct. (N. S.) 122, 23 Cir. Dec. 629 (1911), affirmed without opinion in Same, 88 Ohio St. 539 (1913); Globe-Wernicke Co. v. Safe-Cabinet Co., 92 Ohio St. 532, 112 N. E. 478 (1915), modifying decree in Safe-Cabinet Co. v. Globe-Wernicke Co., 19 Cir. Ct. (N. S.) 31, 3 Ohio App. 24 (1914); *Renner Brewing Co. v. Rolland, 96 Ohio St. 432, 118 N. E. 118 (1917); Black & White Taxicab Co. v. Goldstein, 20 N. P. (N. S.) 599, 29 Ohio Dec. 82 (1918); Buob et al. v. Brown Carriage Co. et al., 30 O. C. A. 133, 11 Ohio App. 266 (1919); Big Store Co. v. Levine et al., 22 N. P. (N. S.) 469, 31 Ohio Dec. 351 (1920); Plasterer et al. v. Cross et al., 17 Ohio App. 265 (1922); Citizens' Wholesale Supply Co. v. Downing, 107 Ohio St. 422, 140 N. E. 683 (1923); Witt v. McLaren Products Co., 25 N. P. (N. S.) 155 (1924); McDonald v. Pitz et al., 25 N. P. (N. S.) 243 (1924); Globe-Wernicke Co. v. Safe-Cabinet Co., 110 Ohio St. 609, 144 N. E. 711 (1924); French Bros. Bauer Co. v. Townsend Bros. Milk Co., 25 N. P. (N. S.) 548 (1925); Martin M. Feerer, Inc., v. Klivans et al., 19 Ohio App. 388, 24 O. L. R. 127 (1925); Henry Gehring Co. v. M'Cue, 154 N. E. 171 (1926); Cleveland Opera Co. v. Cleveland Civic Opera Assn's, Inc., 154 N. E. 352 (1926).

Trading Stamps: See Corn Products Refining Co. v. The Roser-Runkle Co., 10 N. P. (N. S.) 596, 22 Ohio Dec. 663 (1910).

Weights and Measures: *City of Cincinnati v. Broadwell, 3 Ohio Dec. Repr. 286 (1855); Huddleson v. Ruffin, 6 Ohio St. 604 (1856); Heminger v. City of Cleveland, 2 Ohio Dec. Repr. 428, 3 W. L. M. 46 (1860); State ex rel. Bellows v. City Council of Cincinnati, 11 Ohio St. 544 (1860); *Yeazill v. State, 20 Cir. Ct. 646, 10 Cir. Dec. 794 (1898); *Gates v. Cleveland, 18 Cir. Ct. (N. S.) 349, 33 Cir. Dec. 80 (1911), reversing *Same, 11 N. P. (N. S.) 545, 21 Ohio Dec. 141 (1911); State ex rel. Buch v. Burns, 18 Cir. Ct. (N. S.) 526, 33 Cir. Dec. 183 (1911); *In re Steube, 91 Ohio St. 135, 110 N. E. 250, L. R. A. 1916 E, 377 (1914), affirming *Same, 16 N. P. (N. S.) 401, 25 Ohio Dec. 32 (1913); *Eppinger et al. v. City of Cincinnati et al., 16 N. P. (N. S.) 257, 29 Ohio Dec. 666 (1914); *Williams et al. v. Sandles et al., 93 Ohio St. 92, 112 N. E. 206 Ann. Cas. 1918 D, 154 (1915), appeal dismissed in Same, 245 U. S. 680, 62 L. Ed. 544, 38 S. Ct. 222 (1918); City of Steubenville v. Bougher, 10 Ohio App. 178 (1916); State ex rel. Franke v. Minshall, 10 Ohio App. 86 (1917); *Allion v. City of Toledo, 99 Ohio St. 416, 124 N. E. 237, 6 A. L. R. 426 (1919), affirming *City of Toledo v. Allion, 11 Ohio App. 1, 30 O. C. A. 487 (1917), which reversed *Allion v. City of Toledo, 20 N. P. (N. S.) 353, 28 Ohio Dec. 337 (1917). See also: *In re Preston, 63 Ohio St. 428, 59 N. E. 101, 81 Am. St. Rep. 642, 52 L. R. A. 523 (1900).

OKLAHOMA.*

PART I.

General Food and Drug Law.

1. Scope of the Law; Penalty.—The manufacture, production, preparation, compounding, packing, selling, offering or keeping for sale within the State of Oklahoma, or the introduction into the State from any other State or Territory or the District of Columbia, or from any foreign country, of any article of food, drug or medicine which is adulterated, mislabeled or misbranded within the meaning of this article is hereby prohibited. Any person who shall import or receive from any other State or Territory or the District of Columbia, or from any foreign country, or who, having so received, shall deliver, for pay or otherwise, or offer to deliver to any other person, any article of food, drug or medicine mislabeled or misbranded within the meaning of this article, or any person who shall manufacture or produce, prepare, compound, pack or sell, or offer to keep for sale in the State of Oklahoma any such adulterated, mislabeled or misbranded food, drug or medicine, shall be guilty of a misdemeanor: Provided, that no article of food, drug or medicine shall be deemed adulterated, mislabeled or misbranded within the provisions of this article where prepared for export beyond the jurisdiction of the United States and prepared or packed according to specifications or directions of the foreign purchaser, when no substance is used in the preparation or packing thereof in conflict with the laws of the foreign country to which said article is intended to be shipped. (C. S. 1921, § 8833.)

2. Application of Law.—When construing and enforcing the provisions of this article, the act, the omission or failure of any officer, agent or other person acting for or empowered by any firm, corporation, society or association within the scope of employment of his office shall in either case be also deemed to be the act, omission or failure of such firm, corporation, society or association as well as that of the person. (Id. § 8834.)

3. "Food" and "Drug" Defined.—The term "food" as used in this article shall include all articles of food, meat, drink, liquor, beverage, confectionery or condiment, and substances used in the preparation of any such article of food, drink, liquor, beverage, confectionery or condiment, whether simple, mixed or compound, used by man or other animal. The term "drug" as used in this article shall include all drug and medicinal preparations recognized in the United States Pharmacopœia or National Formulary for internal and external use, and any substance or mixture of substances to be used for the care, protection or prevention of disease, either of man or other animal. (C. S. Supp. 1926, § 8835.)

4. Standards of Purity.—The standard of purity of foods shall be that proclaimed by the Secretary of the Department of Agriculture of the United States. The standard of purity of drugs and medicines shall be the United States Pharmacopœia and National Formulary, and the regulations and definitions adopted for the enforcement of the National Food and Drugs act of June 30, 1906, shall be adopted for the enforcement of this article, together with such other rules and regulations as the State Commissioner of Health shall make from time to time, not in conflict herewith. (C. S. 1921, § 8836.)

5. Adulteration of Food Defined.—Food shall be deemed adulterated within the meaning of this article in any of the following cases:

First. If any substance has been mixed or packed with the food so as to reduce or lower or injuriously affect its quality, purity, strength or food value.

Second. If any substance has been substituted wholly or in part for the article of food.

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*CITATIONS: "C. S. 1921" refers to the Compiled Statutes of Oklahoma, 1921, annotated by Bunn and published by authority of Chapter 125, Laws of 1921. "C. S. Supp. 1926" refers to the supplement thereto of that year.

Third. If any essential or valuable constituent or ingredient of the article of food has been wholly or partly abstracted.

Fourth. If it be mixed, colored, powdered, coated or stained in any manner whereby damage or inferiority is concealed.

Fifth. If it contain any added poisonous or other added deleterious ingredient in the food.

Sixth. If it consists in whole or in part of a filthy, decomposed or putrid animal or vegetable substance, or any portion of an animal unfit for food, whether manufactured or not, or if it is the product of a diseased animal, or one that has died otherwise than by slaughter. (Id. § 8837.)

6. When Food Deemed Mislabeled, or Misbranded.—Food shall be deemed mislabeled within the meaning of this article in any of the following cases:

First. If it be in imitation of, or offered for sale under the distinctive name of another article of food.

Second. If it be labeled, branded or colored so as to mislead or deceive the purchaser, or if it be falsely labeled in any respect, or if it purport to be a foreign product when not so, or if the contents of the package as originally put up shall have been removed in whole or in part and other contents shall have been placed in such package, or if the carcasses of slaughtered animals which are to be sold or offered for sale for human consumption shall be mislabeled or not stamped or marked in plain and legible manner so as to show the grade or class of the animal on foot as classified by the purchaser at the time of purchase. Provided, that the provisions of this act shall not apply to carcasses of slaughtered animals raised by the individual owner and sold or offered for sale direct to the consumer.

Third. If in package form and the contents stated in terms of weight or measure they are not plainly and correctly stated on the outside of the package.

Fourth. If the package, containing it or its label shall bear any statement, design or device regarding the ingredients or the substance contained therein, which statement, design or device shall be false or misleading in any particular.

Fifth. When the package bears the name of the manufacturer, jobber or seller, or the grade of the product, it must bear the name of the real manufacturer, jobber or seller, and the true grade or class of the product, the same to be expressed in clear, distinct English words in legible type; provided, that an article of food shall not be deemed misbranded if it be a well known food product of a natural quality and appearance, and so exposed to public inspection as not to mislead or deceive, or tend to mislead or deceive a purchaser, and not misbranded and not of the character included within definitions one to four of this section: Provided, further, that all packages of imitation butter and cheese shall be so labeled. (C. S. Supp. 1926, § 8838.)

7. When Drug Deemed Adulterated.—Drugs shall be deemed adulterated within the meaning of this article in any of the following cases:

First. If, when a drug is sold under or by a name recognized in the United States Pharmacopœia or National Formulary, it differs from the standard of strength, quality or purity as determined by the tests laid down in the United States Pharmacopœia or National Formulary official at the time of the investigation. Provided, that no drug defined in the United States Pharmacopœia or National Formulary shall be deemed adulterated under the provisions of this article of [if] the standard of strength, quality or purity or [are] plainly stated upon the package thereof, although the standard may differ from that determined by the test laid down in the United States Pharmacopœia or National Formula [Formulary].

Second. If the strength or purity fall below the professed standard of quality under which it is sold. (C. S. 1921, § 8839.)

8. When Drug Deemed Mislabeled or Misbranded.—A drug shall be deemed mislabeled or misbranded within the meaning of this article in any of the following cases:

First. If it be an imitation of or offered for sale under the name of another article.

Second. If the contents of the package as originally put up shall have been removed in whole or in part and other contents shall have been placed in such package; or if the package offered for sale at wholesale or retail fails to bear the statement on the label of the quantity of any morphine, opium, cocaine, heroin, alpha or beta eucaine, chloroform, cannibis indica, chloral hydrate, acetanilid or other derivation or preparation of any such substance combined therein, except when prescribed by a licensed physician, licensed dentist or licensed veterinary surgeon. (Id. § 8840.)

9. "Misbranded" Shall Apply to What.—The term "misbranded" as used herein shall apply to all articles of food and drugs, or articles which enter into the composition of foods and drugs, the package or label of which shall bear any statement, design or device regarding such article or the ingredients or substances contained therein, which shall be false or misleading in any particular. (Id. § 8841.)

10. "Package" Defined.—The term "package" as used in this article shall be construed to include the original unbroken package, phial, bottle, jar, demijohn, carton, bag, case, can, box, barrel or any receptacle, vessel or container of whatever material or nature which may be used by a manufacturer, producer, jobber, packer or dealer for inclosing any article of food or any drug or medicine, when exposed or offered for sale. (Id. § 8842.)

11. Prima Facie Evidence of Violation.—The possession of any adulterated, mislabeled or misbranded article of food, drug or medicine, or the offering for sale, or the sale of any adulterated, mislabeled or misbranded food, drug or medicine by any manufacturer, producer, jobber, packer or dealer in foods, drugs or medicine, or broker or commission merchant, agent, employee or servant of any such manufacturer, producer, jobber, packer or dealer shall be prima facie evidence of the violation of this article. Provided, that whenever it shall appear to the State Commissioner of Health that any person has violated or is violating any of the provisions of this act [article], said commissioner shall notify such person or persons and shall give him or them an opportunity to be heard under such rules and regulations as may be prescribed therefor. (Id. § 8843.)

12. Duty of Hotel, Restaurant or Boarding House.—Whenever any hotel, tavern, restaurant or boarding house shall knowingly serve, for the use of its patrons, such food as is defined in this article as compounds, imitations, blends (except coffee), renovated butter, imitation cheese, adulterated milk or adulterated lard, it shall keep conspicuously posted, or printed in a bill form, in plain and legible words, a list of the articles of food so served, and shall give the brands or labels upon the original package, or show the constituent parts of such food articles. (Id. § 8844.)

13. Use of Certain Chemicals Prohibited.—It shall be unlawful for any person to manufacture, sell or expose for sale or exchange any article of food to which has been added formaldehyde, borax, boracic acid, benzoic acid, sulphurous acid, salicylic acid, adrastal, betanaphtha, fluorine compounds, saccharine: Provided, that in the case of molasses and syrups and bleached dried fruits, in the finished products, sulphurous acid, fluorine compound and chlorine shall be entirely removed, subject to the rules of the National Pure Food Commission: Provided, further, that the spreading of dry borax over the surface of meat cannot be construed to be a violation of this article. (Id. § 8848.)

14. Taking Orders to be Deemed a Sale.—The taking of orders or the making of agreements or contracts by any person, firm or corporation, or by an agent or representative thereof, for the future delivery of any of the articles, products, goods, wares, merchandise embraced within the provisions of this article, shall be deemed a sale within the meaning of this article. (Id. § 8854.)

15. Removal or Counterfeit of Brand or Label a Misdemeanor.—Whoever shall falsely brand, mark, stencil or label any article or product required by this article to be branded, marked, stenciled or labeled, or shall remove, alter, deface, mutilate, obliterate, imitate or counterfeit any brand, mark, stencil or label so required shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not less than fifty dollars nor more than five hundred dollars, or by imprisonment in the county jail for not less than six months nor more than one year, or by both such fine and imprisonment for each and every offense. (Id. § 8855.)

16. Any Violation a Misdemeanor.—Whoever shall do any of the acts or things prohibited, or willfully neglect or refuse to do any of the acts or things enjoined by this article, or in any way violate any of its provisions, shall be deemed guilty of a misdemeanor, and when no specific penalty is prescribed by this article shall be punished by a fine of not less than twenty-five dollars nor more than five hundred dollars, or by imprisonment in the county jail for a period of not less than ninety days, or by both such fine and imprisonment. (Id. § 8857.)

17. Possession of Adulterated or Misbranded Articles.—If any person shall have in his possession or control any article of adulterated or misbranded or mislabeled food, drugs or medicines, contrary to the provisions of this article, he shall be held to have possession of property with intent to use it as a means of committing a public offense, and all the provisions of the chapter in the statutes of the State

of Oklahoma relating to search warrants and proceedings* thereon shall apply. (Id. § 8864.)

18. Regulating Sale of Foods, Drugs, Medicines; Reports.—It shall be the duty of the State Commissioner of Health to carry into effect the provisions of this article and all other laws relating to foods, drugs and medicines; and said commissioner is hereby authorized and empowered to promulgate and enforce such rules and regulations not inconsistent with the provisions of this article, as he may deem proper and necessary, and to amend, alter and abolish the same from time to time. The said commissioner shall make an annual report to the Governor on or before the first day of November of each year, giving in a concise manner in said report, a full statement of his work relative to the enforcement of this article, and accounting for all receipts and disbursements therein. Said commissioner shall be authorized and empowered to print such rules, regulations and announcements from time to time, as he may deem necessary. The annual report of said commissioner relative to food, drugs and medicine shall be printed, published and distributed in the same manner as reports of the State commissioner. (Id. § 8865.)

19. State Laboratory; Chemists and Assistants; Examinations for Adulterations.—For the purpose of this article there is hereby established a State laboratory for the analysis of food, drugs and medicines, which shall be under the supervision of the State Commissioner of Health. Said laboratory shall be established and located at the office of the State Commissioner of Health, who shall have power to employ such additional chemists and assistants as are necessary to properly and expediently examine and analyze such articles of foods, drugs and medicines as are sent to the said laboratory for the purpose of determining whether such articles are adulterated, mislabeled, or misbranded within the meaning of this article; and if it shall appear that any such specimens are adulterated, mislabeled or misbranded within the meaning of this article, the State Commissioner of Health shall certify the facts to the county attorney in the county in which such sample was taken, with a copy of the results of the analysis, duly authenticated by the analyzer. (Id. § 8866.)

20. Compensation and Allowances.—The State Commissioner of Health shall be allowed and shall be paid his traveling and other expenses necessarily incurred in the performance of his duties under the provisions of this article, to be paid monthly upon voucher approved by the Governor. The food and drug inspectors shall be paid a salary not to exceed twelve hundred dollars per annum each, together with their traveling expenses necessarily incurred in the performance of their duties, to be paid monthly upon voucher approved by the State Commissioner of Health. Other clerical and professional assistants employed from time to time under the provisions of this article shall receive such compensation as shall be fixed by the State Commissioner of Health, and shall be paid monthly or otherwise, upon vouchers approved by said commissioner. (Id. § 8867.)

21. Inspectors to Secure Analyses; Prosecutions.—It shall be the duty of the pure food and drug inspectors to make or cause to be made by the director of the State Laboratory examinations and analyses of foods or drugs on sale in Oklahoma, suspected of being adulterated, mislabeled, misbranded, impure or unwholesome, in contravention of the law. And if, upon examination or analysis, it is found that said food or drug is adulterated, mislabeled, misbranded, impure or unwholesome, it shall be the duty of the pure food inspector to make complaint against the manufacturer or vendor thereof in the proper county, and to furnish the evidence thereon, and to obtain a conviction of the offense charged. (Id. § 8868.)

22. Duties of Sheriff; Samples.—The sheriffs of the respective counties of the State are hereby appointed and constituted agents for the enforcement of this article, and the pure food inspector or any sheriff shall have free access at all reasonable hours for the purpose of examining any place where it is suspected that any article of adulterated, mislabeled, misbranded, impure or unwholesome medicine or drug exists, and such food inspector or sheriff, upon tendering the market price of such article, if a sale be refused, may take from any person, firm or corporation, samples of any article suspected of being adulterated, mislabeled, misbranded, impure or unwholesome, for the purpose of examination or analysis, and divide the said article into three parts, and each part shall be sealed by the pure food inspector or sheriff seizing the said article, with a seal provided for that purpose. If the package be less than four pounds or in volume less than two quarts, three packages of approximately the same size shall be purchased, and the marks and tags upon each package noted as above. One shall be delivered to the party from whom

*Chapter 7, entitled "Procedure—Criminal."

purchased, or the party guaranteeing such merchandise, one sample shall be sent or delivered to the director of the State Laboratory for examination and analysis, and the third shall be held by the sheriff of the county in which said article was seized, under his seal, for future reference should the case come to trial. (Id. § 8869.)

23. Sheriff's Fees and Expenses.—For his services hereunder the sheriff shall be allowed the same fees for travel as allowed by law to sheriffs on service of criminal process, together with such compensation as by the board of county commissioners of his county may be deemed reasonable; and amounts expended by him in procuring and transmitting the samples of suspected matter, which fees and expenses shall be audited and allowed by said board of county commissioners and paid by said county as other bills of said sheriff are paid. (Id. § 8870.)

24. Duty of Health and Prosecuting Officers.—It shall be the duty of all prosecuting officers of the State to prosecute to completion all suits brought under the provisions of this article, upon complaint of the State Commissioner of Health, or any food or drug inspector, or any other citizen of the State of Oklahoma. It shall be the duty of all city and county health officers to take cognizance of and report all prosecutions or violations of this article which may be brought to their notice or of which they have cognizance within their jurisdiction. (Id. § 8871.)

25. Disposition of Fines.—One-half of all fines collected by any court or judge for the violation of the provisions of this article shall be paid to the State Treasurer; one-half shall be paid into the treasury of the county where such cases are prosecuted, and covered into the fine and forfeiture fund of such county. (Id. § 8872.)

26. Refusal to Sell to Officer; Punishment.—It shall be a misdemeanor for any person, firm or corporation to refuse to sell to a food or drug inspector or sheriff or any health officer, any sample of food or drug suspected of being adulterated, misbranded, mislabeled, impure or unwholesome, upon the tender of the market price thereof, or to conceal such food, liquor, drug or medicine from such officer, or to withhold from him information as to where such food or drug is kept or stored. Any such person so refusing to sell or concealing such food, medicine, or drug, or withholding such information from said officer, upon conviction shall be punished by a fine of not less than twenty-five nor more than one hundred dollars, or by imprisonment in the county jail for not less than thirty days, nor more than ninety days. (Id. § 8873.)

27. Guaranty by Wholesaler; Personal or Under National Law.—No dealer shall be prosecuted under the provisions of this article when he can establish a guaranty, signed by the wholesale jobber, manufacturer or other party residing in the United States, from whom he purchased such article, to the effect that the same is not adulterated, mislabeled or misbranded within the meaning of this article. Said guaranty, to afford protection, must contain the name and address of the party or parties making the sale of such articles to said dealer, and an itemized statement showing the article purchased; or a general guaranty may be filed with the Secretary of the United States Department of Agriculture by the manufacturer, wholesale jobber or other party in the United States, and be given a serial number, which number shall appear on each and every package of goods sold under such guaranty, with the words "Guaranteed Under the Food and Drug Act, June thirtieth, nineteen six." In case the wholesale jobber, manufacturer or other party making such guaranty to such dealer resides without this State, and it appears from the certificate of the director of the State Laboratory that such article or articles were adulterated, mislabeled or misbranded within the meaning of this article or the national pure food act approved June 30, 1906, the Attorney-General of this State must forthwith notify the Attorney-General of the United States of such violation. (Id. § 8874.)

28. Possession of Articles Prior to Act of 1907 a Defense.—In any prosecution for any violation of this article, relative to the manufacture, possession or sale of any alleged food, product or drug, it shall be a valid defense for the defendant to prove that the article or articles described in the complaint were in his possession as a part of his stock in trade in this State prior to the time of the passage and approval of the act creating a food, drug and dairy commission for the State of Oklahoma, approved May 21, 1908. (Id. § 8875.)

29. Registration and Fee.—All manufacturers of foods and drugs doing business in the State of Oklahoma, or all such persons as shall bring into and offer for sale within the State any article of food or drug, shall annually register their firm or corporate names and addresses with the State Commissioner of Health, and shall pay to the commissioner a fee of $1.00 for such registration on or before the first day of July of each year. Such fees shall be turned over by the Commissioner of Health to the State Treasurer. Provided, that all manufacturers of food and drugs, resident in the State, and who have paid the mer-

chant's license of one dollar per year shall not be required under this act* to pay the registration fee. (Id. § 8876.)

30. Penalty for Violation.—Whoever shall do any of the acts or things prohibited, or willfully neglects or refuses to do any of the acts or things enjoined by this act,* or in any way violates any of its provisions, shall be deemed guilty of a misdemeanor, and shall be punished by a fine of not less than $25.00 nor more than $200.00. (Id. § 8877.)

Miscellaneous General Provisions.

30a. Further Powers and Duties of Commissioner.—The State Commissioner of Health shall have power to make and enforce any and all needful rules and regulations for the prevention and cure, and to prevent the spread of, any contagious, infectious or malarial diseases among persons; to establish quarantine and isolate any persons affected with contagious and infectious diseases; to remove or cause to be removed any dead, decaying or putrid body, or any decayed, putrid or other substance that may endanger the health of persons or domestic animals; to condemn or cause to be destroyed any impure or diseased article of food that may be offered for sale; to superintend the several boards of health in the counties cities, villages, towns and townships; to establish rules and regulations for the keeping and reporting of all vital statistics, births, deaths, marriages and divorces as provided by this article. (C. S. 1921, § 8667.)

30b. Assistant Commissioner of Health—Duties—Salary.—The State Commissioner of Health is hereby authorized to appoint an Assistant State Commissioner of Health, who shall have power to direct the affairs of the office in the absence of the commissioner, sign requisitions for supplies, approve expense and salary vouchers, and who shall perform any other duties of the office assigned him by the Commissioner of Health. Said Assistant State Commissioner of Health shall take and subscribe the constitutional oath of office, and shall receive as full compensation eighteen hundred dollars per annum, payable monthly out of the salaries, traveling and expense fund, of the pure food and drug division. (Id. § 8668.)

PART II.

Special Food Laws.

Beverages.

See Nos. 98 et seq., 105 et seq., 142 et seq., and 170 et seq.

Bread.

31. Bread.—It shall be unlawful for any person in this State to sell or offer to sell any loaf of bread manufactured outside of the State of Oklahoma without having pasted on each loaf of such bread a label having written or printed thereon the date and hour of the day the same was baked, and it shall be unlawful to sell any bread over seventy-two hours after the same was baked, without informing each person purchasing or offering to purchase the same, that it is "stale bread." (C. S. 1921, § 8862.)†

NOTE: See also No. 90 et seq.

Canned Foods.

See No. 90 et seq.

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*Nos. 29-30.

†For penalty see No. 16.

Cider.

See No. 154.

Coffee.

See No. 12.

Condiments.

See No. 88.

Confectionery.

32. Adulterated Candies; Punishment for Sale.—Any person manufacturing for sale or selling or offering to sell or exchange any candies or confections, adulterated by mixture of terra alba, barytes, talc or other earthy mineral substances, or any poisonous colors, flavors or extracts, or other deleterious ingredients detrimental to health, shall, upon conviction thereof before a court of competent jurisdiction, be punished by a fine of not less than ten nor more than one hundred dollars, or by imprisonment in the county jail not less than ten days nor more than thirty days, or by both such fine and imprisonment. (C. S. 1921, § 8863.)

NOTE: See also Nos. 3 and 90 et seq.

Dairy Products—Substitutes for Dairy Products.

33. Department of Dairying Created.—There is hereby established the department of dairying, which shall be under the direction and control of the State Board of Agriculture. The chief of such department shall be styled and known as the State Dairy Commissioner. (C. S. 1921, § 3722.)

34. State Dairy Commissioner.—With[in] twenty days after this act shall go into effect the State Board of Agriculture shall appoint a suitable person to be known as State Dairy Commissioner, who shall either be a graduate of an accredited dairy department or shall have had at least three (3) years' practical experience in the commercial handling and grading of dairy products, and who shall hold his office at the pleasure of the State Board of Agriculture, subject to removal by them for inefficiency, neglect or violation of duties. He shall give bond in the sum of ten thousand ($10,000.00) dollars conditional for the faithful performance of his duties, with sureties to be approved and filed with the State Board of Agriculture. Said commissioner shall receive a salary of eighteen hundred dollars a year, payable monthly, and his necessary traveling expenses while in the discharge of his official duties, as other State salaries are paid. He shall make a report to the State Board of Agriculture when required upon the approval of the State Board of Agriculture. (Id. § 3723.)

35. Inspection, Rules and Bulletins.—It shall be the duty of the State Board of Agriculture to inspect, or cause to be inspected, all creameries, public dairies, butter and cheese factories, milk depots, milk and cream collecting stations, market houses where dairy products are sold, buildings occupied by retail dealers in milk, cream, butter or cheese, all wagons or vehicles used for the distribution of milk and cream, and all railroad cars, boats and other means of transporting milk and cream to markets, at least once a year and more often if possible; to prescribe such reasonable rules and regulations for their operation as he deems necessary to fully carry out the provisions of law now in force or that may be hereafter enacted relative to the dairy products, which shall be published in bulletins issued by him for the promotion and maintenance of the public health and safety. He shall devote his whole time to the duties of his office and during his term shall hold no other official or business position nor any professorship in any educational institution. (Id. § 3724.)

36. Powers of Commissioner and Deputies.—In the performance of his official duties the State Dairy Commissioner, or his deputies, are hereby authorized and empowered to enter, during business hours, all creameries, public dairies, butter and cheese factories, milk depots, milk and cream collecting stations, market houses or other places where dairy products are sold or kept for sale, or any railroad cars, wagons, boats or other vehicles used in transporting dairy products, or any barn, stable or enclosure where dairy products are kept or produced, or any factory or building where ice cream or renovated butter, process butter or any other article of human food made from dairy products are manufactured, for

the purpose of inspecting the same. He may take samples anywhere of any dairy product or imitation thereof suspected of being made or sold in violation of law, and cause the same to be analyzed or satisfactorily tested by the State Experiment Station Chemist, and such analysis or test shall be recorded and preserved as evidence. He may require the owner, agent or manager of every creamery, public dairy, butter and cheese factory, milk depot, milk and cream collection stations, market houses and other places where dairy products are sold or kept for sale, to report monthly, on or before September 1st of each year before the year ending July 1st, on blanks to be furnished by the State Dairy Commissioner, full and accurate information concerning the quantity of milk and cream bought, sold or used, the average price of same, the quantity of butter and cheese produced or sold and price of same, the number of cows used in contributing to the operations of such creameries, dairies and factories, and the number, name and address of the patrons, and the number of gallons of milk sold to each creamery, public dairy, butter or cheese factory by each of the patrons thereof, and such other information as shall to the State Dairy Commissioner seem expedient and necessary for the proper tabulation of accurate and complete statements of the extent and magnitude of the dairy industry and dairy products of the State, and for this purpose he may examine, under oath or otherwise, any person whom he may believe has knowledge concerning the operations of any creamery, public dairy, butter or cheese factory; may issue subpœna requiring the appearance of witnesses and the production of books and papers, and may administer oath with like effect as is done in courts of law in this State, and any witness so summoned and examined shall receive the same fees therefor as is [are] now provided for like services in justice courts. And it shall be the duty of any district, superior or county court or judge thereof, upon the application of said commissioner, to issue an attachment for such witnesses, and compel him or them to attend before the commissioner and give testimony upon such matters as he, or they, shall be lawfully required by such commissioner and said court or judge shall have power to punish for contempt as in other cases of refusal to obey the orders and processes of the court. (Id. § 3725.)

37. Penalties.—Any person or persons, firm or corporation who shall hinder or obstruct or in any way interfere with the State Dairy Commissioner or his deputies while discharging the duties of inspection or who shall refuse or fail to make the reports provided for by section 4 [3725], or who shall refuse or neglect to conform to the rules and regulations of the State Dairy Commissioner, which have been published as provided herein regarding the care or condition of any animal kept for dairy purposes, or for the sanitary conditions of any buildings in which such animals are kept, or the sanitary conditions of any room, building or place where dairy products are kept either for storage or for the purpose of sale and distribution, or who shall in any way obstruct or hinder said Dairy Commissioner from carrying out the full meaning and intent of sections of this act, shall be guilty of a misdemeanor and shall be fined a sum not less than twenty-five dollars ($25.00) nor more than three hundred dollars ($300.00). (Id. § 3726.)

38. Prosecutions.—All prosecutions brought for violations of the provisions shall be brought in any court having competent jurisdiction, and it shall be the duty of all prosecuting attorneys in whose county any violations of said sections may occur to attend and prosecute such cases, and for so doing he shall be entitled to the same fees as are now provided for like services in the same court. (Id. § 3727.)

39. "Sour Cream."—On and after October 1st, 1919, all sour cream purchased by cream stations, creameries or other agents or representatives shall be purchased by grade. The regular price quotation for sour cream shall be for first grade, and second grade cream shall be paid for on the basis of three (3c.) cents per pound butter fat less than for first grade cream. (Id. § 3728.)

40. Grading of Cream.—Cream shall be graded in three (3) classes, as follows: First grade cream shall consist of cream that is clean and palatable to the taste, has no undesirable odor, is free from curd and lumps and which is sweet or slightly sour, having less than forty-hundredths of one per cent (.40%) acidity from October 1st to March 30th, inclusive, and less than fifty-hundredths of one per cent (.50%) acidity from April 1st to September 30th, inclusive, first grade cream shall test over twenty-five per cent (25%) butter fat.

Second grade cream shall consist of cream too sour to grade as first, but which is clean and palatable, having no bad odors. It may be slightly curdy or lumpy. It may test less than twenty-five per cent (25%) butter fat.

Third grade cream shall consist of cream which, when offered for sale, is stale, yeasty, foamy or cheesy, or cream which is musty, dirty, putrid or otherwise objectionable as a food product. The sale of such cream shall be considered unlawful

and must not be accepted by any creamery company or their agents, operators or representatives. (Id. § 3729.)

41. Records of Cream Purchased.—All creamery companies, cream station buyers or their agents or representatives that purchase cream, shall keep a careful record of all cream bought as first grade and second grade and shall render such report weekly to the creamery or factory receiving the cream, one copy to remain at the creamery, the other to be mailed weekly by the cream buyer to the dairy commissioner. (Id. § 3730.)

42. Pasteurization Required.—All milk and cream used in the manufacture of creamery butter and ice cream for commercial purposes, and all milk bought to be resold, must be pasteurized to a temperature of 145 degrees F. for twenty-five minutes, or to 150 degrees F. and held for twenty minutes using the holding system of pasteurization, or shall be heated to 170 degrees F. with the flash (continuous) system of pasteurization. (Id. § 3731.)

43. Imported Ice Cream and Butter.—All ice cream and butter received by dealers from without the State must meet the requirements as provided in this act. (Id. § 3732.)

44. Pasteurization of By-Products.—Any and all by-products leaving a creamery, cheese factory or ice cream plant shall be pasteurized as provided in this act. (Id. § 3733.)

45. Revocation of License.—The State Dairy Commissioner shall have the authority to revoke any license for violation of the provisions of this act. (Id. § 3734.)

46. Users to Cleanse Containers.—It shall be the duty of every person, firm or corporation within this State, upon receiving from any creamery or dairy company, either by wholesale or retail, any creamery can, bucket, bottle, or any utensil used for conveyance of ice creams, sherbets, or frozen dainties, sweet milk, buttermilk, sweet cream and all products thereof, as soon as said creamery cans, buckets, bottles or utensils are empty, to thoroughly cleanse same with hot water at a temperature of not less than 180 degrees Fahrenheit. Such bottles shall be thoroughly drained, and such cans, containers and buckets shall be washed and thoroughly dried immediately upon emptying same. (Id. § 3735.)

47. Penalty.—Any person, firm or corporation receiving such articles and upon failure to comply with all provisions of this act shall be deemed guilty of a misdemeanor, and upon conviction, be fined not less than twenty-five ($25.00) dollars nor more than fifty ($50.00) dollars for each and every offense. (Id. § 3736.)

48. How Enforced.—It shall be the duty of the county commissioner of health and the county dairy commissioner and all other peace officers to enforce this act. (Id. § 3737.)

49. Marking of Glassware; Manufacturer's Bond.—Any and all pieces of testing glassware shipped into or manufactured within the State shall have clearly blown, or otherwise permanently marked, in the side of the bottle, the word "Sealed," and in the side or bottom of the piece the name, initials or the trade-mark of the manufacturer and designating number, which designating number shall be different for each manufacturer and may be used in identifying the bottles. The designating number shall be furnished by the State Dairy Commission or commissioner upon application by the manufacturer, and upon filing by the manufacturer of a bond in the sum of one thousand ($1,000) dollars, with sureties to be approved by the Attorney-General, conditioned upon their conformance with the requirements of those sections relating to specifications therefor. A record of the bonds furnished, the designating numbers, and to whom furnished, shall be kept in the office of the State Dairy Commission or commissioner. (Id. § 3738.)

50. Penalty.—Any manufacturer who sells testing glassware to be used in this State that fails to comply with the specifications in the section relating thereto, shall suffer the penalty of five hundred ($500.00) dollars, to be recovered by the Attorney-General in an action against the offender's bondsmen, to be brought in the name of the people of the State. (Id. § 3739.)

51. Inspection and Tests.—(a) State inspectors of dairy products are required to examine all glassware in creameries, cream stations and in all other places where milk or cream is bought or sold by test, as provided in this act, for butter fat, and determine whether such glassware is properly marked and sealed, and shall be required from time to time to collect samples of glassware to be calibrated and examined by the Experiment Station chemist of Oklahoma, for the purpose of determining the capacity of the graduated portions of the necks of test bottles and whether or not the glassware meets all the provisions of the sections pertaining thereto.

(b) All users of glassware where milk or milk products are bought or sold on a butter fat test shall be required to submit, within ninety (90) days after this act shall go into effect, all pieces of glassware to be used by them to the Experiment Station Chemist of Oklahoma, to be calibrated, and such pieces as pass inspection shall be permanently marked with the letters "S. D. C." and returned at the owner's expense. Provided, that nothing in this act shall apply in case of violations of provisions in this section. (Id. § 3740.)

52. Standard Test Bottles.—The standard test bottles for milk shall have a capacity of two cubic centimeters for each ten (10) per cent marked on the necks thereof.

The necks of the standard milk test bottles shall be graduated from zero to ten (10) per cent and the graduated scale shall be seventy-five (75) millimeters in length, with an allowable tolerance of five (5) millimeters either above or below. The graduated scale shall be plainly divided into per cent and fifty (50) per cent divisions by lines of different lengths. Each per cent graduation shall be numbered and the tolerance for the entire graduated scale or for either half thereof shall not exceed one-tenth of one per cent.

(a) Milk pipettes shall deliver 17.6 cubic centimeters of distilled water, the last drop being expelled by pressing the finger over the suction tube and holding the bulb of the pipette in the hand.

(b) When filled with water at 20° C. delivery shall be in 4 to 8 seconds. The tolerance in excess of deficiency shall not exceed .05 cubic centimeters.

(c) Cream test bottles: Cream test bottles shall be of three types and shall comply with the following specifications:

Type A—Fifty (50) per cent, 9 gram, 6 inches, one-half (½) per cent graduation. Each ten (10) per cent of the neck of the bottle shall represent a volume of one cubic centimeter.

The neck of the bottle shall be graduated from zero to fifty per cent and the graduated scale shall be ninety (90) millimeters in length, with an allowable tolerance of ten (10) millimeters above or below. The graduated scale shall be plainly divided into five (5%) per cent, one (1%) per cent and one-half (½%) per cent divisions, by lines of different lengths. Each five (5%) per cent or ten (10%) per cent graduation shall be numbered. The allowable tolerance for calibration shall not exceed one-half (½%) per cent for the entire graduated scale or for either half thereof.

Type B—Thirty (30%) per cent, eighteen (18) grams, six (6) inches, one-half (½%) per cent graduations. Each five (5%) per cent on the neck of the bottle shall represent a volume of one cubic centimeter. The neck of the bottle shall be graduated from zero to thirty (30%) per cent, and the graduated scale shall be seventy-five (75) millimeters in length. All other specifications are to be the same as Type A.

Type C—Fifty (50%) per cent, 18 gram, 9 inches, one-half per cent graduations. The neck of the bottle shall be graduated from zero to fifty per cent and the graduated scale shall be one hundred and twenty-five (125) millimeters in length, with an allowable tolerance of five (5) millimeters, either above or below, each five (5%) per cent on the neck of the bottle shall represent a volume of one cubic centimeter. All other specifications are to be the same as for type A. (Id. § 3741.)

53. Testing Dairy Products.—It shall be unlawful for any person, by himself, his servant or agent, or as the servant of [or] agent of another, to falsely manipulate or under-read or over-read or make any false determination by the test as provided in this act, or any other contrivance used for determining the quality or value of milk or cream delivered to a creamery, cheese factory, cream receiving station, ice cream factory, or at any other place when sold or purchased. Cream shall be tested by weight only.

All tests must be free from curd, charr or other foreign matter, and shall be read at a temperature of 130 degrees to 140 degrees F., and glymol shall be used to reduce the meniscus, before the reading is taken on cream tests. (Id. § 3742.)

54. Cream Scales.—Cream test scales shall be sensitive and accurate to one-tenth part of one gram. The test of accuracy shall be made by noting the action of the scale when a 100 mg. weight is placed on the pan when the scale is in a balanced position. (Id. § 3743.)

55. Penalty.—Anyone violating any of the provisions of this act shall be deemed guilty of a misdemeanor and shall, upon conviction, be fined not less than twenty-five ($25.00) dollars, nor more than fifty ($50.00) dollars, or imprisoned

in the county jail for thirty days, or both such fine and imprisonment. (Id. § 3744.)

NOTE: See also Nos. 6, 12 and 73a et seq.

Dried Fruits.

See No. 13.

Eggs.

See No. 73a et seq.

Feeding Stuffs.

56. "Concentrated Commercial Feeding Stuffs"; What Included.—The term concentrated commercial feeding stuffs, as herein used, shall include wheat bran, wheat shorts, linseed meals, cottonseed meals, pea meals, cocoanut meals, gluten meals, gluten feeds, maize feeds, starch feeds, sugar feeds, dried brewer's grain, malt sprouts, hominy feeds, cereal feeds, corn and oat chops, corn chops, rice meals, rice bran, rice polish, rice hulls, alfalfa meals, oat feeds, ground beef or mixed fish feeds and all other materials of similar nature not included in section 1 [3769] of this act. (C. S. 1921, § 3769.)

57. Same; What Excluded.—The term concentrated commercial feeding stuffs as herein used, shall not include hay and straw, the whole seed or grains of wheat, barley, rye, oats, Indian corn, rice, buckwheat, or broom corn or any other whole or unground grain or seed. (Id. § 3770.)

58. Tax Tag for Each Package; Statement on Tag.—Every lot or parcel of concentrated commercial [feeding] stuffs as defined in section 1 [3769] of this act, used for feeding farm live stock, sold, offered or exposed for sale in the State of Oklahoma for use within this State, shall have printed on a tax tag, described in section 5 [3773] of this act, a plainly printed statement clearly and truly certifying:

(a) The number of net pounds of feeding stuff in the package;

(b) The name or names of materials of which such weight is composed where the contents are of a fixed nature;

(c) The name, brand or trade-mark under which the article is sold;

(d) The name and address of the manufacturer or importer;

(e) The place of the manufacture;

(f) Such information as is required by section 12 [3780] if any;

(g) The minimum percentage it contains of cured protein, allowing one per cent of nitrogen to equal six and one-quarter per cent of protein;

(h) The minimum per cent it contains of crude fat;

(i) The minimum per cent it contains of nitrogen-free extract;

(j) The maximum percentage it contains of crude fibre; these constituents to be determined by the methods in force at the time by the Association of Official Agricultural Chemists of the United States. (Id. § 3771.)

59. Samples With Statement to Be Furnished Board of Agriculture.—Befor[e] any concentrated commercial feeding stuff as defined in section 1 [3769] of this act, is sold, offered or exposed for sale, the importer, manufacturer, or party who caused it to be sold, or offered for sale within the State of Oklahoma for use within this State shall, for each and every feeding stuff bearing a distinguishing name and trade-mark, file with the Oklahoma State Board of Agriculture a certified copy of the statement named in section 3 [3771] of this act, and shall deposit with said Oklahoma State Board of Agriculture a sealed glass jar or bottle containing not less than one pound of the feeding stuff to be sold or offered for sale, accompanied by an affidavit that it is a fair average sample thereof and corresponds within reasonable limits to the feeding stuff which it represents in the percentage of protein, fat, crude fibre, and nitrogen-free extract which it contains. This shall not be construed to apply to farmers who grind their own feed stuff and do not adulterate same. (Id. § 3772.)

60. Inspection Tax; Tags.—The manufacturer, importer, agent or seller of each concentrated commercial feeding stuff, as defined in section 1 [3769] of this act, shall, before the article is offered for sale, pay to the Oklahoma State Board of Agriculture an inspection tax of ten cents per ton for each ton of such concentrated commercial feeding stuffs sold or offered for sale in the State of Oklahoma for use within this State, and shall affix to each lot shipped in bulk and to each bag, barrel or other package of such concentrated commercial feeding stuffs a tag to be furnished by said Oklahoma State Board of Agriculture stating that all

charges specified in this act have been paid. The Oklahoma State Board of Agriculture is hereby empowered to prescribe the form of such tags and to adopt such regulations as may be necessary for the enforcement of this law. Whenever the manufacturer, or importer, or shipper of concentrated commercial feeding stuffs shall have filed a statement made in section 3 [3771] of this act, and have paid the inspection tax, no agent or seller of said manufacturer, importer, or shipper, shall be required to file such statement or pay such tax. The amount of the inspection tax and penalties received by said Oklahoma State Board of Agriculture shall be paid into the treasury of the State of Oklahoma. (Id. § 3773.)

61. Violations of Act; Punishment.—Any manufacturer, importer, or agent selling, offering or exposing for sale any concentrated commercial feeding stuff as defined in section 1 [3769] of this act, without the statement required by section 3 [3771] and the tax tag required by section 5 [3773] of this act, or with a label stating that said concentrated commercial feeding stuff contains substantially a larger percentage of protein, fat or nitrogen-free extract, or a smaller quantity of crude fibre than is contained therein, and any person violating any other provisions of this act, shall on conviction in a court of competent jurisdiction be fined not less than one hundred dollars or more than five hundred dollars for the first conviction or less than five hundred dollars or more than one thousand dollars for each subsequent conviction. (Id. § 3774.)

62. Same—Misuse of Tage [Tags].—Any person who shall counterfeit or use a counterfeit of the tag or tags prescribed by this act, knowing the same to be counterfeited, or who shall use them a second time after the said tag shall have been once attached shall be guilty of a misdemeanor, and upon conviction thereof shall be fined in a sum not exceeding five hundred dollars, one-half of which shall be paid to the informer; which fine shall be double[d] or tripled at each second or third conviction and so on progressively for subsequent convictions. (Id. § 3775.)

63. Board of Agriculture's General Power of Regulation.—The Oklahoma State Board of Agriculture is hereby empowered to adopt standards and definitions for concentrated commercial feeding stuffs and such regulations as may be necessary for the enforcement of the law. The said Oklahoma State Board of Agriculture shall have the power to refuse the registration of any feeding stuffs under a name which would be misleading as to the material of which it is made up, or which does not conform to the standards and definitions aforesaid. Should any of said materials be registered, and it is afterwards discovered that they are in violation of the above provisions, the said Oklahoma State Board of Agriculture shall have the power to cancel the registration ten days after notice. The Oklahoma State Board of Agriculture is hereby empowered to adopt such regulations as may be necessary for the enforcement of all the provisions of this act. (Id. § 3776.)

64. Board to Be Furnished With Information Relative to Foods.—All manufacturers and importers of concentrated commercial feeding stuffs, or dealers in same shall when requested furnish the Oklahoma State Board of Agriculture with a complete list of names or trade-marks of such feeding stuffs. (Id. § 3777.)

65. "Importer"—Definition.—The term importer for all the purposes of this act shall be taken to mean all such persons as shall bring into or offer for sale within the State concentrated commercial feeding stuffs manufactured without this State. (Id. § 3778.)

66. Board Annually to Sample and Analyze Foods; Procedure.—The Oklahoma State Board of Agriculture, or its duly authorized representative, is hereby authorized to take a sample not exceeding two pounds in weight for analysis from any lot or package of concentrated commercial feeding stuffs which may be in the possession of any manufacturer, importer, agent, dealer or buyer in this State; but said sample shall be drawn or taken in the presence of said party or parties at interest or their representative, and shall be taken from a parcel, lot or number of parcels which shall not be less than five per cent of the whole lot inspected, and shall be thoroughly mixed and divided into two samples and placed in glass or metal vessels carefully sealed and a label placed on each stating the name or brand of the feeding stuff or material sampled, and the name of the party from whose stock the sample is drawn and the date and place of taking such sample, and said label shall be signed by the Oklahoma State Board of Agriculture or its duly authorized representative, and the party or parties at interest, or their representative present at the time of the taking and sealing of said sample; provided, that where the party or parties at interest refuse to be present and take part in the sampling of said feeding stuffs, the Oklahoma State Board of Agriculture or its duly authorized representative may take said samples in the presence of two disinterested witnesses, and one of said duplicate samples shall be retained by the Oklahoma State Board of Agriculture

or its duly authorized representative and the other shall be left with the party whose stock was sampled, and the sample or samples retained by the Oklahoma State Board of Agriculture or its duly authorized representatives shall be for comparison with the certified statements made in sections 3 and 4 [3771 and 3772] of this act. The Oklahoma State Board of Agriculture shall cause one analysis or more to be made annually of each concentrated commercial feeding stuff, sold or offered for sale under the provisions of this act. The result of the analysis of the sample or samples so prescribed together with such additional information as circumstances advise, shall be published in reports or bulletins by the Oklahoma State Board of Agriculture from time to time. (Id. § 3779.)

67. Adulterations; Punishment.—Any person manufacturing, selling, or offering for sale any adulterated feeding stuff within this State shall, upon conviction thereof, be punished by a fine of not more than one hundred dollars for the first violation and not less than one hundred dollars for each subsequent violation. In addition to this penalty the lot of feeding stuffs shall be subject to seizure, condemnation and sale as the court may direct; the proceeds from such sale to be paid into the State treasury. The court may, in its discretion, release the feeding stuffs so seized when the requirements of the provisions of this act have been complied with, and upon payment of all costs and expenses incurred by the State in any proceeding connected with such seizure. For the purpose of this act a feeding stuff shall be deemed to be adulterated if it contains any sawdust, dirt, damaged feed or any foreign matter whatever, or if it is in any respect not what it is represented to be, or if any rice hulls or chaff, peanut shells, corn cobs, oat hulls or other similar substances of little or no feeding value are admixed therewith, provided, that no wholesome mixture of feeding stuff shall be deemed to be adulterated if the true percentage of constituents thereof is [are] plainly and clearly stated on the package and made known to the purchaser at the time of the sale. It shall be the duty of the Oklahoma State Board of Agriculture to examine, or have examined, for adulteration, all suspicious samples of feeding stuffs and such other samples of feeding stuffs as may be desirable. (Id. § 3780.)

68. Appropriation for Enforcement of Act.—There is hereby appropriated out of the general funds of the State, not otherwise appropriated, the sum of ten thousand ($10,000.00) dollars per annum for the period ending June 30, 1913, or so much thereof as may be necessary to defray the expenses of the Oklahoma State Board of Agriculture in enforcing the provisions of this act. The State Auditor is hereby authorized to draw warrants on the State Treasurer for the purpose specified in this act, or so much thereof as is necessary out of said appropriation; provided, that no amount shall be audited unless an itemized statement is furnished, verified by affidavit, showing that said appropriations are to be applied to the specified purpose of this act, and in addition bearing the approval of the president and secretary of the Oklahoma State Board of Agriculture, and attested under the official seal of said board. (Id. § 3781.)

NOTE: See also No. 191 et seq.

Fish.

See No. 86.

Flavoring Extracts.

69. Imitation Flavoring Extracts.—It shall be unlawful for any person to manufacture, sell or offer to [or] expose for sale or exchange as flavoring extracts any so-called extracts which were not made from the natural fruit, unless the same are labeled "Imitation:" Provided, that the word "Imitation" must immediately precede the name of the flavoring in the same type and style; and provided, further, that such flavoring shall be free from coloring matter deleterious to health. (C. S. 1921, § 8849.)*

70. Imitation Vanilla Extract.—It shall be unlawful for any person to manufacture, sell, offer or expose for sale or exchange, extract of vanilla, essence of vanilla, not wholly made from the extracted matter of vanilla beans. (Id. § 8851.)*

Flour—Flour Compound and Meal—Meal Compound.

71. Adulterated Wheat Flour to be Labeled.—Within this State no person shall manufacture or offer or expose for sale or keep in his possession with intent

*For penalty see No. 16.

to sell or exchange, any flour, made from wheat, containing any products of corn, rice or other foreign substance unless each and every package thereof be distinctly and legibly branded or labeled "Flour Compound" in letters not less than one-half inch in length, to be followed with the name of the maker and mill, and the location of such flouring mill. (C. S. 1921, § 8858.)*

72. Evidence.—The possession of any "flour compound" or "meal compound" which is not branded as hereinbefore required and directed upon the part of any person engaged in the public or private sale of such article, shall, for the purpose of this article, be deemed prima facie evidence of intent to sell the same. (Id. § 8859.)*

73. Taking of Orders for Adulterated Flour to Be Deemed a Sale.—The taking of orders or the making of agreements or contracts by any person, firm or corporation or by an agent or representative thereof, for the future delivery of any "flour compound" or "meal compound," shall be deemed a sale, within the meaning of this article. (Id. § 8860.)*

NOTE: See also Nos. 90 and 191 et seq.

Fruits, Vegetables, Etc.

73a. State Market Commission.—There is hereby created a State Market Commission to be composed of three members. The Governor shall be one member, the President of the State Board of Agriculture shall be one member, and the director of the extension division of the Oklahoma Agricultural and Mechanical College shall be one member. The said Market Commission shall appoint a secretary who shall have had experience in grading and marketing fruit and vegetable products who shall be general manager of the Market Commission, and shall devote his entire time and attention thereto. (C. S. Supp. 1926, § 3860.)

73b. Community Associations Defined.—The term "community associations" as used in this act, shall be deemed to mean any local, county, district or State Association. The term "farm products" as used in this act, shall be deemed to include the produce of the farm derived from the pursuit of agriculture, viticulture, forestry, live stock, poultry, bees and all other lines of productive activity. (Id. § 3860-1.)

73bb. Officers.—The following positions are hereby created for the State Market Commission and the amounts set opposite each named position are hereby fixed as the annual saalry for the same:

One secretary, salary,	$3,000.00 per year
One produce man, salary,	2,100.00 per year
One grader and inspector, salary,	3,000.00 per year
One traffic man, salary,	3,000.00 per year
One chief clerk, salary,	1,620.00 per year
Two stenographers, salary,	1,500.00 each
Five field agents, salary,	1,800.00 each
Additional field agents to be employed for periods of times less than one year, when needed during the periods when perishable crops are being marketed,	2,400.00

(Id. § 3861.)

73c. Organization.—First.—To organize or assist in organizing community associations under any of the co-operative laws of Oklahoma, and if it deems it will subserve the public interest to organize through the extension division of the Oklahoma Agricultural and Mechanical College, co-operating with the United States Department of Agriculture, Community and County Market Associations, the same as hereby provided.

Second.—To standardize farm products, including poultry and dairy products, under adequate rules and sale of commodities exchanged within the State of Oklahoma or produced in the State of Oklahoma and sold outside of the State of Oklahoma.

Third.—To provide for agents of the Oklahoma State Market Commission in large cities and populous centers that are markets for Oklahoma products, who will direct the selling of all shipments from various communities and county associations according to the rules of the Oklahoma State Market Commission, such officers to be appointed where, in the judgment of the Oklahoma State Market Commission, the interest of the shipper will be benefited thereby. (Id. § 3862.)

*For penalty see No. 16.

73cc. Local Market Association.—Any community in any county in this State, may organize a local market association under rules and regulations formulated by the Oklahoma State Market Commission by making application to the county agent of the Agricultural Extension Division, or direct to the said market commission at any time, provided application is made within thirty days prior to the time in which it is desired to market any product. (Id. § 3863.)

73ccc. Notice to State Market Commission.—Any community association organized under the law and in compliance with the rules of the said commission in marketing its products, shall give the State Market Commission notice of such intention at least ten days prior to the time its products are ready for market. (Id. § 3863-1.)

73d. Rules to Govern.—The Oklahoma State Market Commission shall formulate rules not in conflict with this act, nor the laws of this State, for its own government and for the organization and government of county and community market associations and for membership in such associations, but must include in such rules the provision that no citizen of this State can ship products through the Oklahoma State Market Commission or Market Association under the direction of the Oklahoma State Market Commission, who has not complied with the rules relative to spraying, grading, packing and marketing, and shall provide a penalty or dismissal for one year for any violation of such rules, and any community association that permits its members to violate the rules of the Oklahoma State Market Commission relative to spraying, grading, packing and marketing shall be denied the privileges of the association and may be dismissed for a period of not longer than one year. The secretary of the Oklahoma State Market Commission and every county agent of the Farm Extension Bureau in this State shall be furnished with such rules, and they shall furnish each local organization with a copy, which shall be placed in the keeping of the secretary of such organization. (C. S. 1921, § 3864.)

73dd. A. & M. College to Conduct Correspondence Course.—The Oklahoma Agricultural and Mechanical College shall prepare and conduct practical correspondence courses on the subject of production and marketing of farm crops, including poultry and dairy products. These courses shall be printed in pamphlet or bulletin form, and shall cover such matters as are required by the rules of the Oklahoma State Market Commission, and statutes pertaining thereto, relating to standardizing market products. When a county agent has organized a community association, he shall furnish each member with a copy, when so desired, and shall collect for each such copy the sum fixed by the Oklahoma State Market Commission to cover actual cost of publication and delivery to the county agent. (Id. § 3865.)

73ddd. Meetings.—Community market associations shall hold meetings for the purpose of discussing the Oklahoma Agricultural and Mechanical College correspondence courses and to formulate plans in assisting one another in making preparations for carrying on the work of the association. The Agricultural Extension Division shall, when requested by the State Market Commission, give demonstrations in every county having marketing associations, in servng the ends for which they are instituted. Previous notice of such demonstrations shall be given all community associations of the county, each of which is required to have representatives in attendance, in case a majority of the membership thereof is unable to attend. (C. S. Supp. 1926, § 3866.)

73e. Rules for Grading Products.—The Oklahoma State Market Commission shall prepare such rules for cleaning, grading, sacking, packing, or otherwise preparing farm products for storage and market which shall be printed in pamphlet or bulletin form and shall be furnished to any county agent of the Agricultural Extension Division upon application. Such county agent shall furnish each member of the community associations with such rules, and shall collect such sums of money for each copy as shall be fixed by the Oklahoma State Market Commission to cover actual cost of publication and delivery to the county agent. (C. S. 1921, § 3867.)

73f. Commission to Appoint Agents.—The Oklahoma State Market Commission shall appoint agents for the State of Oklahoma, when in the judgment of the said commission the interests of the shippers will be benefited, who shall be placed in cities or populous centers of the United States, that are in the judgment of the commission the best markets for Oklahoma products to whom shall be consigned the products of the community associations of the State of Oklahoma, and who shall, as agents of the people of Oklahoma, sell such products at the best possible price. Such agents shall be required to give bond in an amount that, in the judgment of the Oklahoma State Market Commission, is sufficient to protect the shippers of the State. Such agents shall quote daily, if required, the market on

such products as they are required to sell, to the Secretary of the Oklahoma State Market Commission, or as directed by such secretary. Salaries of such selling agents shall be fixed by Oklahoma State Market Commission. (Id. § 3868.)

73g. **Rates Fixed.**—A commission shall be charged upon all products shipped and sold by the Oklahoma State Market Commission, and such commission shall fix rates, which rates shall be furnished all State selling agents. When a selling agent shall have sold a carload of Oklahoma products he shall deduct the commission and forward the amount of the receipts to the proper person as designated by the rules of the Oklahoma State Market Commission. The amount deducted for commission shall be forwarded to the secretary of the Oklahoma State Market Commission who shall, after making a record of the same, turn it into the State treasury. In the event a shipment is made where the Oklahoma State Market Commission has no selling agent, and sale is made through a commission merchant, then the secretary of the community association through which the shipment was made shall deduct the commission and forward same to the person designated by the commission. (Id. § 3869.)

73h. **Agents to Keep Records.**—Selling agents shall be required to keep permanent records of all shipments, passing through their agencies, showing the consignor, the character of product, car number, crates, bushels or whatever the denomination of total amount may be, to whom sold, receipts, amount of commission, amount of net sale, date of remittance, as well as any other information necessary to properly identify the consignment and its sale. (Id. § 3870.)

73hh. **Supplies.**—The State Market Commission is hereby authorized and empowered to purchase such office equipment and supplies as may be necessary. All salaries and necessary expenses, including traveling expenses for such officers, and employees under the provisions of this act, shall be paid after the manner provided for the payment of salaries, expenses and traveling expenses of other State officials and employees; and for that purpose there is hereby appropriated out of any funds in the State treasury not otherwise appropriated, the sum of fifty thousand ($50,000.00) dollars for the fiscal year ending June 30, 1924, and a like amount for the fiscal year ending June 30, 1925, provided all moneys collected under this act shall be paid into the State treasury. (C. S. Supp. 1926, § 3871.)

73hhh. **Associations; Benefits.**—Any person, firm, corporation or association, or farm-owned or controlled association now existing or hereafter formed under the laws of Oklahoma, may avail itself of the services of the State Market Commission by giving previous notice of such intention. (Id § 3871-2.)

73i. **License—Bond of Licensee—Revocation.**—No person, firm, exchange, association or corporation shall receive, sell, or offer for sale on commission which is to be paid by the producer, any kind of farm products without a license, as required by this act, and for the purpose of this act, the persons, firms, exchanges, associations or corporations above described in this section shall be designated as dealers. Every dealer in this State as defined in this act receiving any of the products above mentioned for sale shall annually file an application with the State Market Commission for a license to transact their business. Such application shall state the kind, or kinds of farm products which the applicant proposes to handle on commission, the full name of the person, firm, exchange, association or corporation applying for such license, and if the applicant be a firm, exchange, association or corporation, the full name of each member of the same, or the names of the officers of the exchange, association or corporation, and the name of the local agent of the exchange, association or corporation, and the city, town or village, and street number at which the business is to be conducted shall be given in the application; such applicant shall further satisfy the State Market Commission of his, or its character, responsibility and good faith in seeking to carry on the business of a dealer. The State Market Commission shall thereupon issue to such applicant upon the execution and delivery of a bond as hereinbefore provided, a license entitling the applicant to conduct the business of receiving and selling on commission, farm products as such dealer in the place named in the application, until the first day of January next following. The fee for such license shall be twenty-five ($25.00) dollars of dealers whose annual gross volume of sales amount to one hundred thousand ($100,000.00) dollars or less; twenty-five ($25.00) dollars for dealers whose annual gross volume of sales exceed the sum of one hundred thousand ($100,000.00) dollars, plus an additional sum of ten ($10.00) dollars for each fifty thousand ($50,000.00) dollars or major fraction thereof, in excess of one hundred thousand ($100,000.00) dollars. All license fees collected under the provisions of this act shall be paid into the general fund of the State treasury within ten (10) days from the date of the collection thereof; provided that this act shall

not apply to dealers whose gross volume of commission business amounts to less than five thousand ($5,000.00) dollars per year.

Before any license shall be issued, the applicant therefor shall make and execute to the State a good and sufficient bond in the sum of not less than five thousand ($5,000.00) dollars which bond shall be increased as the State Market Commission may require, according to the volume of business of the licensee; said bond to be conditioned upon the faithful accounting and payment to the consignor the proceeds of all farm products sold and handled on commission by said dealer. Any consignor may bring action upon said bond in any court of competent jurisdiction, in the county of the residence of the consignor or consignee, to recover payment for farm products shipped on commission through said dealer, or to recover money received thereon by such dealer and not paid over to the consignor within the time required by law. The State Market Commission shall have the power, and it is hereby authorized, before granting a license to any dealer applying therefor, to investigate the character and standing of such applicant and shall have power to investigate and inspect, upon the verified complaint of any interested person, or irrespective of such complaint, any transaction, solicitation, receipts, sale or attempted sale of any farm products by said dealer as defined in this act; failure to make proper and true account of sales and settlement thereon as in this act required, the making of false statement as to condition, quality and quantity of any products received or in storage; the making of false statements as to market conditions with the intent to deceive and defraud or the failure to make payment for farm products within the time required by this act; or any other injurious transactions; and, in furtherance of such investigation or inspection, the State Market Commission or any authorized agent or representative of the State Market Commission, may examine that portion of the ledgers, books, accounts, memoranda or other documents, farm products, scales, measures and other articles and things used in connection with the business of such dealer, relating to the transactions involved and may take testimony thereon, under oath. When a consignor of farm products fails to obtain satisfactory settlement in any transaction, after having notified the dealer, verified complaint may be filed with the State Market Commission which shall undertake to effect a settlement; in the event it shall fail to effect such settlement, it shall cause a copy of such complaint, together with a notice of time and place for hearing of such complaint, to be served personally or by mail, upon such dealer. Such service shall be made at least seven days before the hearing, which shall be held in the city, village or township in which is situated the place of business of the dealer. At the time and place appointed for such hearing, the State Market Commission or its agent, shall hear the parties to such complaint, and in furtherance thereof, shall have power to administer an oath and shall enter in the office of the State Market Commission at Oklahoma City, a decision either dismissing such complaint or specifying the facts which it deems established on such hearing. Copies of record, inspection certificate, certified reports and all papers on file in the office of the State Market Commission shall be evidence in all courts of this State.

That the State Market Commission may refuse to grant a license and may revoke any license as the case may require, when it shall be satisfied of the existence of the following facts:

1. That fraudulent or illegal charges have been made by the applicant, or licensee, for the handling, sale or storage of, or for rendering any service in connection with the handling, sale or storage of any farm products.

2. That the applicant, or licensee, has failed or refused to render an account of sales, or to make settlement thereon, within the time and in the manner by this act rquired.

3. That the applicant or licensee has made any false statement as to the condition, quality or quantity of farm products received, handled, sold or stored by him, on commission.

4. That the applicant or licensee, with the intent to deceive or defraud has made any false or misleading statement as to the conditions of the market for any farm products.

5. That the applicant or licensee, has entered into, is or has been, a party to any combination or agreement in restraint of trade in violation of any law of this State, prohibiting pools, trusts and monopolies.

6. That the applicant or licensee, is involved in assignment, bankruptcy or receivership proceedings, or if in the opinion of the State Market Commission, such applicant or licensee, is insolvent and there is probable cause for such proceedings.

7. That the State Market Commission has reason to believe that the applicant, or licensee is incapable or unable to conduct the business of a dealer, or that the

methods of dealing of such applicant or licensee are such that the State Market Commission has reason to believe that such applicant or licensee intends ultimately to deceive or defraud consignors of farm products.

8. That the licensee was guilty of practicing deception or fraud, in the procurement of such license.

9. That the licensee shall fail or refuse to make any additional bond required by the State Market Commission under the authority of this act or to make a new bond, if any, when the State Market Commission shall demand such new bond on the grounds of insufficiency thereof, or of the insolvency of the principals or sureties of said bond.

Any action of the State Market Commission with reference to granting, or the refusal to grant any license, or with reference to the revocation of any license granted under the provisions of this act, may be reviewed by the District Court, upon appeal from said commission, but pending final determination of any such appeal, in the case of an order of the State Market Commission, revoking the license of any dealer, such license shall be deemed in full force and effect until the final determination of such proceedings, unless such license shall sooner expire by limitation. Every license issued or granted under the provisions of this act, shall be deemed to have expired by limitation at midnight of the last day of the period for which such license was granted in the first instance. (Id. § 3871-3.)

73j. Market Prices.—It shall be the duty of the State Market Commission to furnish to any citizen, corporation, association, or any farmer-owned or controlled association, the market price of any product of the farm, and the most active and available markets for said farm products at the time the information is given, and it shall be their further duty on request of any of the persons above named to assist them in marketing any of their products, and for this purpose the State Market Commission is hereby empowered to call upon any or all of the county agents in the State, for their co-operation. (Id. § 3871-4.)

73k. Violation of Provisions of Statute.—Any person, firm, exchange, association or corporation who shall violate any of the provisions of this act, shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not less than fifty ($50.00) dollars and not more than five hundred ($500.00) dollars: Provided, that no city or incorporated town or county shall ever compel any producer of any farm, dairy or poultry product to pay a license fee to sell products raised or produced by him. (Id. § 3871-5.)

73l. Commission a Court of Record.—The Oklahoma State Market Commission shall have the power and authority to enforce the provisions of this act, and the rules and regulations promulgated by said Oklahoma State Market Commission in accordance with the provisions hereof, and for such purpose shall have the power and authority of a court of record, to administer oaths, to compel the attendance of witnesses, and the production of papers, to punish for contempt, and to enforce compliance with any of its lawful orders or requirements by its own proper process. (C. S. 1921, § 3872.)

73m. County Market Commission—Creation.—There is hereby created in Tulsa county, State of Oklahoma, a county market commission which shall be composed of the members of the board of county commissioners of said county. Said county market commission shall have authority and it is hereby empowered to acquire, by purchase, gift, lease, condemnation proceedings or otherwise, market sites and assembling places at any location within the corporate limits of the city of Tulsa, and to construct on said market sites or assembling places so acquired any buildings or other structures deemed necessary to establish and carry on any marketing business hereinafter provided for. In the acquisition of said sites or assembling places, the said board of county commissioners of said county is hereby given power to acquire the necessary real estate by condemnation proceedings, in the same manner and under the same procedure as is now or may hereafter be provided by the statutes of the State of Oklahoma for the acquisition by counties of lands for rights of way and for public roads and bridges. (C. S. Supp. 1926, § 3872-1.)

73n. Sites—Market Master.—Said county market commission is hereby authorized and empowered to equip said sites so acquired and all structures built thereon in such manner as may be necessary for the maintenance and operation of markets, and to maintain and operate, on its own account or otherwise, markets for the purpose of selling and distributing to the public all farm, dairy, live stock and poultry products, and any other commodities or articles of merchandise handled by public markets generally; to employ a market master to manage and control said market, together with other employees deemed necessary, and to fix the salaries or compensation to be paid such employees, and in the conduct of said markets, the

said commission is authorized and empowered to establish and prescribe all rules or regulations deemed proper or advisable by it for the purpose of managing said markets and conducting the businesses incidental thereto. Said county market commission is hereby authorized and empowered to lease all market sites or assembling places acquired pursuant to the provision hereof, or any portion or part thereof for the purpose of carrying out the intent of this act, in establishing and operating a public market or markets in said county. (Id. § 3872-2.)

73o. **Board of County Commissioners—Estimates.**—The board of county commissioners of said county is hereby authorized and empowered to include in its estimate of the needs for Tulsa county, Oklahoma, for the fiscal years 1925-26, 1926-27, 1927-28, each, an estimate of the moneys that will be required during said fiscal years, or any of them, for the purpose of carrying out the terms of this act; the said estimate for any one year for the purposes included in this act shall not exceed the sum of one-half mill on the valuation of all taxable property in said county, and the excise board of said county is hereby directed, upon receipt of such estimate from the board of county commissioners, to make a levy therefor, not to exceed in any one year one-half of a mill upon all of the property in said county subject to ad valorem taxation, and include same within the county levy for that fiscal year, said levy to be in addition to all other levies authorized by law for current expenses in said county, and said taxes when collected shall be deposited with the treasurer of Tulsa county, Oklahoma, and credited to a county market commission account and disbursed upon the approval of the board of county commissioners as other county funds are now disbursed. (Id. § 3872-3.)

73p. **County Market Commission—Payments.**—The said county market commission hereby created is authorized and empowered to pay the costs of such market sites or assembling places, or the improvements thereon, or the maintenance and operation costs thereof, out of the funds, credited to the public market commission account, and all rentals or other incomes derived from the maintenance or operation of said markets shall go into the general fund of Tulsa county, Oklahoma. (Id. § 3872-4.)

NOTE: See also Nos. 13, 90 et seq., and 189.

Grain.

73q. **United States Grain Standards—Adoption.**—The State of Oklahoma hereby adopts the grades for grain as established under the United States Grain Standards Act that have become effective, and as they may hereafter become effective, and they shall be the official grades of the State and all grain on which the grades are effective under the United States Grain Standards Act, bought and sold in the State must be on the grades adopted by the State. (C. S. Supp. 1926, § 11105-1.)

NOTE: See also No. 205.

Honey.

74. **Imitation Honey.**—It shall be unlawful for any person to sell, offer or expose for sale or exchange any honey which has not been home-made by bees, unless the same is labeled "Imitation" and contains nothing that is injurious to health. (C. S. 1921, § 8850.)*

74a. **Shipping Honey Into State—Regulations.**—All bees or honey shipped into the State of Oklahoma, shall bear an inspection tag on each hive, package or shipping cages, crates or packages, from the State Foul-Brood Inspector of the State in which such shipment originated, showing the apiary from which shipment originated to be free from foul-brood or other infectious diseases, and the said certificate shall be made not more than ninety days previous to date of such shipment. In the absence of any foul-brood laws in the State from which the same are to be shipped, the same shall have attached a certificate, sworn to before a notary public or justice of the peace, showing that no disease existed in the apiary where the shipment originated and bearing date of not to exceed sixty days previous to said shipment. (Id. § 3758.)

74b. **Penalty—Sale of Uninspected Foreign Honey.**—Any person offering or attempting to sell or barter any such shipment or parts of shipments of bees or honey in the State of Oklahoma, such being shipped from any other State and not bearing such certificate or tag, as provided for in section nine [3758] shall be

*For penalty see No. 16.

deemed guilty of a misdemeanor and on conviction thereof be fined not less than fifty dollars nor more than one hundred dollars, or imprisonment not less than one month nor more than two months, or both. (Id. § 3759.)

NOTE: See also No. 73a et seq.

Ice.

75. Manufacture and Distribution.—The manufacture, sale and distribution of ice within the State of Oklahoma is hereby declared to be a public business, as defined by section 11032, of the Compiled Statutes of Oklahoma. (C. S. Supp. 1926, § 6619-1.)

76. Corporation Commission; License.—No person, persons or corporation shall be permitted to manufacture, sell and distribute, ice within the State of Oklahoma without first having secured a license for such purpose from the Corporation Commission of the State of Oklahoma. The license fee hereunder shall be the sum of fifty cents (50c.) per ton, per annum, of the daily capacity of ice manufactured, sold or delivered, but the minimum license shall be five dollars ($5.00). (Id. § 6619-2.)

77. Hearing on Application for License.—The Corporation Commission shall not issue license to any person, firm or corporation for the manufacture, sale and distribution of ice, or either of them, within this State, except upon a hearing had by said commission at which said hearing, competent testimony and proof shall be presented showing the necessity for the manufacture, sale or distribution of ice, or either of them, at the point, community or place desired. If the facts proved at said hearing disclose that the facilities for the manufacture, sale and distribution of ice by some person, firm or corporation already licensed by said commission at said point, community or place, are sufficient to meet the public needs therein, the said Corporation Commission may refuse and deny the applicant for said license. In addition to said authority, the said commission shall have the right to take into consideration the responsibility, reliability, qualifications and capacity of the person, firm or corporation applying for said license and of the person, firm or corporation already licensed in said place or community, as to afford all reasonable facilities, convenience and services to the public and shall have the power and authority to require such facilities and services to be afforded the public; provided, that nothing herein shall operate to prevent the licensing of any person, firm or corporation now engaged in the manufacture, sale and distribution of ice, or either of them, in any town, city or community of this State, whose license shall be granted and issued by said commission upon application of such person, firm or corporation and payment of license fee. (Id. § 6619-3.)

78. Written Applications.—No hearing as aforesaid shall be had by said commission except upon written application of the person, firm or corporation applying for said license, which said application shall set forth the name of the person, firm or corporation applying for said license; the city, town or place it is desired to engage in the manufacture, sale or distribution of ice or either of them; the amount of ice, based on daily tonnage, it is desired to manufacture, sell or distribute therein; the amount of capital to be invested in said undertaking and facts which will show the public need therefor. Upon receipt of said application the commission shall make an order setting said application down for hearing at a date not less than fifteen (15) nor more than thirty (30) days from the date said application was received and shall give notice of such hearing by mailing a notice thereof to the town or city clerk of the town named in said application wherein it is desired to engage in said business at least ten (10) days prior to the date of said hearing and by publication in some newspaper of general circulation published in said town, city or community at least ten (10) days prior to the date of said hearing. If there be no newspaper published in said town, city or community, then said publication shall be had in some newspaper published elsewhere in the State and of general circulation in said town, city or community. (Id. § 6619-4.)

79. Corporation Commission; Powers.—The Corporation Commission shall have the same power and authority to be charged with the duty of regulating and controlling the manufacture, sale and distribution of ice in all matters relating to the performance of public duties and the charges therefor, and correcting abuses and preventing unjust discrimination and extortion, as is exercised by said commission as to transportation and transmission companies, and shall have the same power to fix rates, rules, charges and regulations to be observed by such person, firm or corporation engaging in the manufacture, sale and distribution of ice, or either of them and the affording of all reasonable conveniences, facilities and service,

as it may impose as to the transportation and transmission companies. (Id. § 6619-5.)

80. Orders.—All and any orders made by said commission fixing rates, charges, rules and regulations as to any person, firm or corporation engaged in the manufacture, sale and distribution of ice, or either of them, may be reviewed on appeal by the Supreme Court of the State of Oklahoma. (Id. § 6619-6.)

81. License; Engaging in Business Without.—Any person, firm or corporation who shall engage in the business of manufacturing, selling and distributing ice or engage in either of said businesses, without first obtaining a license, provided for herein, shall be guilty of a misdemeanor and any such person shall be punishable by a fine not to exceed twenty-five dollars ($25.00), and each day's violation shall constitute a separate offense; provided, the Corporation Commission is hereby authorized to promulgate general orders not in conflict with this act, and to enforce such orders against any person, firm or corporation manufacturing, selling or distributing ice or engaging in either of said businesses, by imposing a fine for the violation thereof not to exceed five hundred dollars for each of said violations. (Id. § 6619-7.)

82. Complaints; Hearings.—Any person, persons or corporations aggrieved by any rate, or service, may file an application for a hearing under the terms and conditions of this act. (Id. § 6619-8.)

Meal—Meal Compound.

See Nos. 71 et seq. and 191 et seq

Meat—Meat Products.

83. Certain Lard Substitutes Excepted.—The provisions of this article shall not apply to substances for sale in this State, made in the semblance of lard, if the ingredients or component parts shall consist of pure lard, leaf or pure stearine, and cottonseed oil, that is one per cent of legitimate and exclusive fat of the hog, or pure lard, pure stearine or beef fat, and ninety-nine per cent of cottonseed oil, and the tierce, tub, pail or package containing the same is distinctly and legibly branded, marked or labeled "Lard Compound," or "Compound Lard," or "Lard Substitute," in letters proportioned to the size of the package; and if such mixtures contain any other substance than pure lard, pure stearine or beef fat or pure cottonseed oil, then the person or corporation so manufacturing shall cause the tierce, barrel, tub, pail or package containing the same to be distinctly and legibly branded, marked or labeled "Adulterated Lard." The term "Lard Compound" or "Compound Lard," as used herein, shall include all articles of food used as lard or made in the semblance of lard which shall be composed of two or more ingredients or component parts consisting of either cottonseed oil, pure lard or hog lard, beef fat or pure stearine, the percentage of either of the two or more ingredients used to be in the discretion of the manufacturer. The term "Lard Substitute," as used herein, shall apply to any compound which may consist of two or more of the aforesaid ingredients or of cottonseed oil alone. Neither shall the provisions of this article apply to mixtures or compounds consisting of mixtures of beef suet, beef fat or pure stearine, and cottonseed oil, or of cottonseed oil alone, when said mixtures or compounds used as ordinary articles of food or cooking "compound" are manufactured and sold under their proper trade-mark, and when the tierce, barrel, tub, pail or package containing the same shall be distinctly and legibly branded or labeled in letters proportioned to the size of the package with the name of the mixture or compound and the name and location of the person, firm or corporation manufacturing the same. (C. S. 1921, § 8845.)*

84. Label Required on Lard Substitutes.—Every manufacturer, trader or dealer, who, by himself or agent, or as the servant or agent of another person, offers or exposes for sale or sells or exchanges any form of lard substitute or adulterated lard, as hereinbefore defined, shall securely fix or cause to be affixed to the package wherein the same is contained, offered for sale or sold, a label, upon the outside and face of which is distinctly and legibly printed in letters not less than one-half inch in length, the words "Lard Substitute" or "Adulterated Lard" or "Lard Compound," or other appropriate words which shall correctly express its nature and use. (Id. § 8846.)*

85. Same—Non-Compliance Evidence of Intent to Sell.—The possession of any lard substitute or adulterated lard compound, as hereinbefore defined, which is not branded or labeled as hereinbefore required or directed upon the part of any manufacturer, trader or dealer, or any person engaged in the sale of such articles,

*For penalty see No. 16.

shall, for the purpose of this article, be deemed prima facie evidence of intent to sell or exchange the same. (Id. § 8847.)*

86. Meats, Etc., in Transportation to be Covered.—Every dealer or peddler in slaughtered fresh meats, fish, fowl or game for human food, at wholesale or retail, in the transportation of such food from place to place to customers, shall protect the same from dust, flies and other vermin or substance which may injuriously affect it by securely covering it while being so transported. (Id. § 8853.)*

86a. Unclean Slaughterhouses.—If any owner or occupier of any slaughterhouse or any premises where hogs, beeves or other animals are slaughtered, shall permit the same to remain unclean, to the annoyance of the citizens of this State, or any of them, every person so offending shall be fined upon conviction for every such offense in any sum not less than five nor more than twenty-five dollars, and if said nuisance be not removed within five days thereafter, it shall be deemed a second offense against the provisions of this section. (Id. § 1965.)

86b. Selling or Buying Carcass.—If any person shall barter, sell or dispose of the carcass of any swine or other domestic animals infected with cholera or other infectious diseases at the time of death, to any person for the purpose of manufacturing the same into lard, soap or for any other purpose; or if any person shall buy or otherwise obtain the carcass of any swine or other domestic animals infected with cholera or other infectious diseases at the time of death, for manufacturing purposes as aforesaid or any other purpose except that of burial or burning, he shall be fined in any sum not to exceed fifty dollars, or be imprisoned in the county jail not more than thirty days. (Id. § 1966.)

86c. Inspectors to Keep Records and Appoint Deputies.—It shall be the duty of the inspectors provided for by this article to provide themselves with record books in which they shall record age, brand and color of all cattle slaughtered within their respective districts for the purpose of sale to the public, either wholesale or retail; and to appoint in each county of his district one or more deputies for the purpose of inspecting animals for slaughter, as provided for by this article, whenever he shall be requested to so appoint by a petition in writing signed by fifty qualified voters of said county. It shall be the duty of all persons slaughtering cattle for public sale and use to notify the inspector of the district, or his local deputy appointed by him for that purpose, of their intention so to do. The inspector or his deputy shall at once proceed to inspect said cattle, and if he shall find that they are affected or infected with any disease which will render them unfit for human food, he shall inform the person not to slaughter the same, but should said cattle be found to be free from all disease, then he shall record the color, age and brands of same, and said cattle shall be considered fit for slaughter and sale. Any person offering the meat of cattle for sale without having them inspected as aforesaid shall be deemed guilty of a misdemeanor, and upon conviction thereof be fined ten dollars for every animal so unlawfully slaughtered. The inspectors or their deputies shall be entitled to a fee of twenty-five cents for each head of cattle inspected, to be paid by the person having the same done. (Id. § 3692.)

86d. Farmers May Appoint Neighbors.—In rural districts, where there is no convenient resident inspector or deputy inspector, when any resident citizen of such districts desires to slaughter, for food, any cattle or other animals within such district, he may, instead of obtaining regular inspection, call any two of his immediate neighbors, who are not related to him nor to each other, nor owners of any interest in such cattle, nor in any other property in which he owns an interest and who know his cattle, and who may consent to do so, to inspect such cattle for slaughter; and if, immediately before slaughtering the same, such inspectors find upon examination of the cattle and from their own prior knowledge of the same, or of others with which it has long been associated, that the cattle to be slaughtered are not affected nor infected with any disease which would render it unfit for human food and is otherwise fit for such food, such inspectors may deliver to the person desiring to slaughter the same a written statement, over their signatures, as to the facts so found and believed; and in such cases regular inspection may be dispensed with: Provided, however, that such cattle and other animals for food must be slaughtered immediately after such inspection; and provided, further, that the privileges of this section shall only extend to and be available to the owners of cattle so slaughtered, and only when regular inspection can not reasonably be had. (Id. § 3693.)

86e. Violation a Misdemeanor.—Any person called and inspecting any cattle or other animals for food, under the provisions of the preceding section, who shall fail to exercise reasonable care and diligence in examining the same and in

*For penalty see No. 16.

making inquiries in that regard or who shall willfully make any false or misleading statement authorizing or causing the person desiring to slaughter such cattle or other animals for food for sale to the public to do so, shall be deemed guilty of a misdemeanor and punished accordingly by fine of not less than fifty dollars and imprisonment in the county jail thirty days. (Id. § 3694.)

86f. Inspectors to Report Weekly.—It is hereby made the duty of all inspectors in this State, at the end of each week, to transmit to the secretary of the Board of Agriculture a report showing in detail the number of animals inspected by him or his deputies during the week, the number rejected as being unfit for human food, with recommendations as to the disposition to be made of the same, the number of animals recommended as fit for slaughter, with a complete description of the marks and brands on each animal inspected, giving location of the same, and to give the person slaughtering the animal a duly certified health certificate with the description of the animal or animals found to be fit for human food; the certificate to contain all marks and brands upon said animal or animals. (Id. § 3695.)

86g. Sheriff to Report.—It is hereby made the duty of all sheriffs in this State to make known at once to the county attorneys and the grand juries of their respective counties, as well as to said live stock inspectors and other proper authorities of this State, any and all violations of this chapter which may come to their knowledge; and, further, to report to said live stock inspectors and other proper authorities any violations of the rules and regulations and orders of said inspectors and other authorities coming to the knowledge of said sheriffs; and all district judges are hereby required to give this article in charge to the grand juries of their respective counties at each term of their courts. (Id. § 3696.)

86h. In What County Violators Prosecuted.—Any person who violates any of the provisions of this article as hereinbefore mentioned may be prosecuted in the county of his residence, or in any county in this State in which he may be found, or in any county in which any live stock owned or controlled by him may be found in violation of any of the provisions of this article, or in any county in which any violation of any provision of this article may be committed by him. (Id. § 3697.)

86i. Penalty for Violation.—Except as otherwise provided in this article, any person who shall violate, disregard or evade, or attempt to violate, disregard or evade any of the provisions of this article, or who shall violate, disregard or evade, or attempt to violate, disregard or evade, any of the rules, regulations, directions or orders of the Board of Agriculture, or any of its inspectors, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined not less than one hundred dollars nor more than five thousand dollars, or be imprisoned in the county jail for not less than thirty days nor more than one year, or may be punished by both such fine and imprisonment. (Id. § 3698.)

86j. Packing Plants—Location—Conditions.—Any person, firm or corporation is hereby permitted to construct, maintain and operate plants for the purchase, slaughter and sale of live stock at any place within the State of Oklahoma and any of the cities, towns and villages thereof, provided that no such plant shall hereafter be established within the limits of any incorporated city, town or village, or within one-half mile thereof, without first procuring a resolution of the council or other governing board, consenting to such establishment at a location to be described. (Id. § 4063.)

86k. Records—Exemptions.—When any such plant has the capacity for slaughtering twenty-five hundred head of live stock in twenty-four hours, such plant shall not be required to keep a record of the marks, brands, color, sex or age of the live stock slaughtered therein, nor shall persons purchasing hides or pelts from such plant be required to keep such records, and it shall not be necessary for hides purchased or sold by such plants to be kept together for the purpose of inspection or for other purposes. (Id. § 4064.)

86l. Inspection—Federal in Lieu of State.—When the live stock slaughtered at any such plant having said capacity of twenty-five hundred head per day or the products thereof, are inspected by the officers, agents or employees of the United States that no inspection thereof shall be required or made by the officers, agents or employees of this State. (Id. § 4065.)

86m. Location of Slaughterhouse.—It shall be unlawful for any person to maintain a slaughterhouse within less than one-half mile of any tract of land platted into lots and blocks as an addition to any town or city within the State of Oklahoma, or to maintain such slaughterhouse within one-half mile of any tract of land platted into acre tracts for the purpose of being sold for residence, and in which tracks of land have actually been sold for residence purposes. (Id. § 7885.)

86n. Such Nuisance May be Enjoined.—The maintaining of any slaughter-house or location and use of any graveyard or cemetery in violation of the provisions of this article, is declared to be a nuisance, and any person owning real estate within any such addition to a town or city or within lands so platted and set apart to be sold for residence purposes, may maintain an action in the courts to abate such nuisance and to enjoin their continuance, and if it appears that they are being carried on in violation of this article, a perpetual injunction shall be granted against the parties maintaining such nuisance. (Id. § 7887.)

86o. Duty of Officers.—It shall be the duty of any sheriff, constable or other police officer to make complaint against such nuisance and hasten its abatement as herein provided. (Id. § 7888.)

NOTE: See also Nos. 6, 12, 13, 73a et seq., and 90 et seq.

Molasses.

See No. 13.

Sea Foods.

87. Sale of Chemically Preserved Sea Foods a Misdemeanor.—Any corporation, firm or person, either in person or by an agent, who shall sell, or expose for sale, within the State of Oklahoma, any oysters, clams or other sea food products to which salicylic acid, formaldehyde or any drug or other preservative has been added, or in preserving which any poisonous or deleterious substance has been used, shall be deemed guilty of a misdemeanor. (C. S. 1921, § 8856.)*

Spices and Condiments—Compounds.

88. Adulterated Spices and Condiments.—It shall be unlawful for any person to manufacture, sell, offer or expose for sale or exchange to the residents of this State any spices and condiments, either ground or unground, which are adulterated with any foreign substance or substances within the meaning of this article, which are injurious to health: Provided, that where foreign substances are used, the package containing said articles offered for sale shall bear the word "Compound." The terms "spices" and "condiments," as used herein, shall embrace all substances known and recognized in commerce as spices and used as condiments, whether the same be in natural state or in the form which would result from the grinding, milling, mixing or compounding of the natural product. (C. S. 1921, § 8852.)*

Syrups.

See Nos. 13 and 106-107.

Vinegar.

89. Sale of Colored Distilled Vinegar Unlawful.—It shall be unlawful for any person, firm or corporation to sell or offer for sale in this State any colored distilled vinegar. (C. S. 1921, § 8861.)*

Sanitation.

90. Bakeries and Other Food Stuff Factories.—Every room or building occupied as a bakery or confectionery, canning, packing, pickling or preserving establishment, or for the manufacture of any food product, shall be drained and plumbed in a manner conducive to its healthful and sanitary condition, and constructed with air-shafts and windows or ventilating pipes sufficient to insure ventilation, as the factory inspector shall direct. No cellar or basement shall hereafter be used as a bakery, and no cellar occupied by a bakery on or before the passage of this act, when once closed, shall be again opened for such use. Every bakery shall be provided with a washroom and a water-closet apart from the bake-room and rooms where the manufacturing of such food products is conducted; no water-closet, earth closet or privy shall be within, or communicate directly with, a bake-shop. Rooms used for the manufacture of flour or meal food shall be at least eight feet in height. The side walls of such room shall be plastered or wainscoated, the ceiling plastered or ceiled with lumber or metal, and, if required by the factory inspector, shall be whitewashed at least once in

*For penalty see No. 16.

three months; the furniture, utensils and floor of such room shall be kept in a healthful, sanitary condition. The manufactured flour or meal products shall be kept in dry, clean and airy rooms. The sleeping places for persons employed in a bakery shall be separate from the rooms where food products are manufactured or stored. (C. S. 1921, § 7240.)

91. Same—Personal Cleanliness.—No employer shall permit any person to work in his bake-shop or other institution in which foodstuffs are manufactured who is affected with pulmonary tuberculosis, scrofulous or venal [venereal] diseases, or with a communicable skin affection, and every employer shall maintain himself and his employees in a clean and sanitary condition while engaged in the manufacture, handling or sale of such food products. Every owner, agent or lessee of any establishment where food products are manufactured shall provide cuspidors or vessels to be used for expectoration purposes by employees; chairs shall also be furnished and employees are hereby prohibited from sitting on any dough boards or tables used for the purpose of manufacturing, in any way whatever, any food products. (Id. § 7241.)

92. Compliance With Orders of Factory Inspector.—The owner, agent or lessee of any property used as a bakery or in manufacturing foodstuffs, shall, within thirty days after the service of notice upon him of an order issued by the factory inspector, comply therewith, or cease to use or allow the use of such premises as a bake-shop. Such notice shall be in writing and may be served upon such owner, agent or lessee, either personally or by mail, and a notice of registered letter, mailed to the last known address of such owner, agent or lessee, shall be sufficient service. A copy of the foregoing sections shall be conspicuously posted in each workroom of every establishment affected by the provisions of this act. (Id. § 7242.)

93. Ventilation of Factories and Shops.—There shall be sufficient means of ventilation provided in each workroom of every manufacturing or mercantile establishment, laundry, renovating works, bakery or printing office within this State, and the factory inspector shall notify the owner, agent or lessee, in writing, to provide, or cause to be provided, ample and proper means of ventilation for such workroom, and shall prosecute such owner, agent or lessee if such notification be not complied with within the time specified by the factory inspector, after service of such notice. (Id. § 7243.)

94. Authority of Factory Inspector; Arrest.—The Chief Factory Inspector, and deputy inspector are hereby empowered to act as police officers with full power to arrest and detain any person found violating any of the provisions of this act, or any laws pertaining to factory inspection or parts thereof, or against whom there is found any evidence of a previous violation of such laws: Provided, however, that no such person shall be detained for any period of time longer than twenty-four hours without warrant or the filing of a charge against him in a court of competent jurisdiction. (Id. § 7244.)

95. Same—Repair of Unsafe Buildings.—If, in the opinion of the factory inspector or deputy factory inspector, any building being used as a manufacturing establishment or work-shop is in an unsafe or dilapidated condition, thereby endangering human life or property, he shall immediately notify the owner, agent or lessee thereof, specifying the defect, and require such repairs and improvements to be made as he may deem necessary, and the owner of said premises shall immediately repair or correct such defects. (Id. § 7245.)

96. Compliance With Orders of Factory Inspector.—Every owner or person in charge of any manufacturing establishment, factory or work-shop shall comply with any order issued by the factory inspector or deputy factory inspector, within the time specified by such inspector, and notify the Department of Labor upon affidavit when such order has been complied with. (Id. § 7246.)

97. Violation of Act; Punishment.—Any person, firm or corporation who fails to comply with any provisions of this act except as otherwise provided, shall be deemed guilty of a misdemeanor and on conviction thereof shall be fined in a sum not less than ten dollars ($10) nor more than one hundred dollars ($100) for each offense. (Id. § 7247.)

98. Inspection; Hotels; Food and Drink Dispensers; License.—From and after the passage of this act, all hotels, lodging and rooming houses, drug stores, grocery stores, restaurants, drink fountains, confectioners, fruit stores, bakeries, and meat markets of the State of Oklahoma shall be required to pay to the State Commissioner of Health a license fee as hereinafter specified in lieu of all inspection fees provided for under the existing laws. Upon the payment of said license fee, an annual license shall be issued by the State Commissioner of Health, all licenses to be dated July 1st, and run for a period of one year. (Id. § 8789.)

99. Commissioner of Health; Time of Inspection.—Said State Commissioner of Health shall make or cause to be made a sanitary inspection one or more times each year and under said inspection to make such orders as are now authorized by law. (Id. § 8790.)

100. Fee; Hotels.—The fee for license to conduct such hotels, lodging and rooming houses shall be two ($2.00) dollars per annum, except hotels that contain twenty (20) sleeping rooms, in which case the fee shall be three ($3.00) dollars, and for every additional ten rooms a fee of one ($1.00) dollar shall be charged, which shall be paid to the State Commissioner of Health before said license shall issue. (Id. § 8791.)

101. Fee; Sellers of Drugs, Food, Drinks.—The fee for license to conduct drug stores, grocery stores, restaurants, drink fountains, confectioneries, bakeries, fruit stores and meat markets shall be one ($1.00) dollar per annum, to be paid to the State Commissioner of Health as set out in section 3 [8791]. (Id. § 8792.)

102. Fees, Disposition; License Posted.—The State Commissioner of Health on the first day of each month shall pay into the State treasury all fees collected for licenses issued during the preceding month, and the persons, firms, associations or corporations receiving such licenses shall keep the same posted in a conspicuous place in the premises so licensed. (Id. § 8793.)

103. Violation of License Provisions; Forfeiture of License—Penalty.—Whenever any person, firm, association or corporation licensed under the provisions of this act shall fail to comply with the laws of the State of Oklahoma and the regulations of the State Commissioner of Health with reference to sanitation and alter their methods of running their respective places of business as ordered by him, such license shall be forfeited and in addition thereto, upon conviction such person or persons having such business in charge shall be fined a sum not less than twenty-five ($25.00) dollars or more than one hundred ($100.00) dollars and shall not be allowed to re-enter business until said order shall have been complied with and a new license provided as hereunder directed. (Id. § 8794.)

104. Unsanitary Place, County Attorney to Prosecute; Health Commissioner to Report.—It shall be the duty of the State Commissioner of Health to report to the county attorney of the county in which infractions of this law are found to exist, giving the name of the person or persons offending, the charge against him or them, and thereupon the county attorney shall take proper action under the criminal laws to prosecute the offender, or civil action to abate the nuisance found to exist. (Id. § 8795.)

105. Buildings; How Constructed.—All persons, firms or corporations manufacturing or bottling any soft drinks in this State shall be maintained in a building constructed of suitable material. The building shall be well screened, whitewashed or painted on the inside, and shall be free from dust, cobweb, and no rubbish of any character or kind whatsoever, shall be permitted to accumulate in or around said building. The floor of said building shall be so constructed that no crevices nor opening through which moisture can enter [exist]. All persons now engaged in the manufacturing and bottling of soft drinks or that may hereafter be engaged in the manufacture of soft drinks in the State of Oklahoma, shall secure a license from the State Board of Health before engaging in said bottling business and shall pay thereafter a fee or license of $5.00, and said license [so] be issued, to be cancelled by said board for violation of any of the provisions of this act. (Id. § 8878.)

106. Rooms; How Arranged.—The syrup room, where such drinks are compounded must be well screened, so as to prevent flies and other vermin from entering same, which room shall be on the main floor or on the manufacturing floor or raised above it when possible, and when on the main floor, the floor of said syrup room shall be of cement and well drained. That no toilet shall be allowed in the bottling room unless thoroughly enclosed and ventilated and the same must be of an approved sanitary construction according to the rules and regulations of the State Board of Health. (Id. § 8879.)

107. Syrups; How Kept.—All apparatus and vessels used in the manufacture of said drinks shall be maintained in a sweet and wholesome condition by washing not less than once every day except in case of storage tanks. The syrup shall be cut off from the bottle filling machine at the close of each day's work, and the syrup thoroughly washed from the inside of the machine at the close of each day's work, and no vessels shall be used in the handling or mixing syrup except glass, stoneware, or vessels that are porcelain lined, block tin lined or made of some other suitable impervious material. (Id. § 8880.)

108. Water; Purified.—Only pure water shall be used in the manufacture of said beverages, and such water must be acceptable to and approved by the State

Board of Health, and it shall be compulsory upon the part of any person, firm or corporation manufacturing said drinks to submit a sample of the water used therein to the State Board of Health for its approval during the months of May and August of each year, and at such other times as the State Board of Health may call upon such bottler to submit a sample of said water for examination and analysis, which examination and analysis shall be without cost to the bottlers of the State. (Id. § 8881.)

109. Bottles Cleansed.—All bottles used by manufacturers of said drinks before the drinks are placed in said bottles shall be immersed in a hot chemical solution and remain therein from ten to twenty minutes, and when taken from this solution, the bottles shall have two complete rinsings in clear water before they are used for said beverage. All employees who are in any way connected with the compounding of drinks or bottling of same must be dressed in clean clothes and entirely free from any contagious or loathsome disease. (Id. § 8882.)

110. Penalty.—All persons, firms or corporations or their agents or employees in this State are hereby required after all bottles containing soft drinks have been emptied,* shall be inverted in the case or container, so that the same may be thoroughly drained. That all persons violating the provisions of this section shall be guilty of a misdemeanor [and] upon conviction shall be fined not less than $5.00 and not to exceed $50.00. (Id. § 8883.)

111. Stables; What Distance.—No stable in which horses or other animals are kept shall be permitted within a distance of twenty-five feet from the bottling plant, and no rubbish, trash or filth of any kind or character shall be permitted to accumulate around said bottling plant within a distance of twenty-five feet of same. (Id. § 8884.)

112. Violation; Misdemeanor.—All persons violating any of the provisions of this act, not otherwise provided for, shall be deemed guilty of a misdemeanor and upon conviction shall be fined not less than twenty-five dollars and not more than one hundred dollars for each and every offense, or by confinement in the county jail for a period not to exceed sixty days and if any such person shall be guilty of a second offense, his fine shall be double that of first offense. (Id. § 8885.)

NOTE: See also the dairy law, No. 33 et seq.; the meat law, No. 86 et seq.

PART III.

Special Drug Laws.

Pharmacy, Poisons and Narcotics.

113. Pharmacy Board; Membership.—The Board of Pharmacy shall consist of five persons who have been registered not less than five years, who have had not less than ten years' practical experience as retail pharmacists, who are members of the Pharmaceutical Association, and who are licensed as pharmacists and actively engaged in the practice of pharmacy within this State, who shall be appointed by the Governor, by and with the advice of the Senate, from a list of names elected by a vote of the members of the Pharmaceutical Association, at its annual meeting. Provided, the provisions of this act shall not apply to present members of the Board of Pharmacy. (C. S. 1921, § 8730.)

114. Board Members; Term of Office.—The members of the board first appointed shall hold their offices for one, two, three and four years respectively, as shall be designated in their several commissions. Provided, that no person shall be appointed on the Board of Pharmacy who habitually uses intoxicating liquors as a beverage, or habit forming drugs, or who has paid to the United States government the special liquor dealer's tax, subsequent to the passage and approval of this act. Annually the secretary of the Oklahoma Pharmaceutical Association shall submit to the Governor the names of ten persons so elected and eligible to the appointment, and from this list the Governor shall appoint one

* So in the law.

member to fill the vacancy annually occurring on the Board of Pharmacy and the vacancies occurring from other causes shall be filled in like manner. The secretary of the board shall be appointed by the Governor by and with the advice of the Senate, from a list of all members of the Oklahoma Pharmaceutical Association, who are eligible to appointment and who shall hold office for four years from the date of his appointment or until his successor shall be appointed and qualified. The secretary shall devote his entire time to the duties of his office, under the direction of the State Board of Pharmacy, and shall furnish information to the proper authorities for any violation of this act. (Id. § 8731.)

115. Registered and Assistant Pharmacists Only to Dispense Drugs.—It shall be unlawful for any person, other than a registered pharmacist or assistant pharmacist, as hereinafter defined, to retail, compound or dispense drugs, medicines or pharmaceutical preparations in the State of Oklahoma or to institute, conduct or manage a pharmacy, store or shop for the retailing, compounding or dispensing of drugs, medicines or pharmaceutical preparations in said State of Oklahoma, unless such person shall be a registered pharmacist, as this article provides, or shall place in charge of said pharmacy, store or shop a registered pharmacist, except as hereinafter provided. (Id. § 8732.)

116. Registered Pharmacists.—Registered pharmacists shall comprise persons regularly registered as such in the State of Oklahoma for the year ending March 1, 1909, and all other persons registered as licentiates in pharmacy for the aforesaid period, who have been authorized to conduct or manage a pharmacy in the State of Oklahoma, and all persons over twenty-one years of age, having four years' practical experience in compounding and dispensing physicians' prescriptions, who shall be of good moral character and shall pass a satisfactory examination before the State Board of Pharmacy. Provided, that on and after July 16, 1921, all applicants for a certificate as registered pharmacist shall be required to furnish evidence of having attended a school of pharmacy, approved by the Board of Pharmacy, for a period of one year. Provided, further, that after July 15, 1923, all applicants for certificate as registered pharmacists shall be required to furnish evidence of graduation from a school of pharmacy, requiring not less than two years of school work, which shall be approved by the Board of Pharmacy. Provided, further, that nothing in this act shall disqualify any person who has become an assistant pharmacist prior to January 1, 1922, from becoming a registered pharmacist after having passed a satisfactory examination before the Board of Pharmacy. Provided, further, that the Board of Pharmacy shall have the power to issue reciprocal certificates to applicants from other States having like requirements, and for which they shall charge a fee of fifteen dollars ($15.00). (Id. § 8733.)

117. Assistant Pharmacists.—Assistant pharmacists, in the meaning of this article, shall comprise all persons regularly registered as licentiates in pharmacy in the State of Oklahoma for the year ending March 1, 1909, who have been authorized to assist in the dispensing and compounding of physicians' prescriptions under the supervision of a properly qualified person; and all persons over eighteen years of age, having two years' practical experience in the compounding and dispensing of physicians' prescriptions, who shall pass such examination as the State Board of Pharmacy shall require. Assistant pharmacists shall not be permitted to conduct or manage a pharmacy on their own account, or assume the management of such business for others. (Id. § 8734.)

118. Organization and Duties of Board.—The said board shall, within thirty days from its appointment, meet in the capital city of the State and organize by the election of a president and treasurer, who shall serve for the term of one year, and who shall perform the duties prescribed by the board. Meetings for the examination of applicants for registration, granting of certificates and the transaction of such other necessary business shall be held at least once in four months, and at such times and places as may be fixed by the board; provided, that ten days' public notice of the time and place of each meeting at which there is an examination of candidates for registration shall be given. It shall be the duty of the board to receive all applications for examination and registration submitted in proper form; to grant certificates to such persons as may be entitled to the same under this act; to cause the prosecution of all persons violating any of the provisions of this act; to report annually to the Governor and to the State Association upon the condition of pharmacy in the State of Oklahoma, which report shall so furnish a record of the proceedings of the board, as well as the names of all persons registered under this act; to keep a book for registration in which shall be registered the names and places of business of all persons registered under this act, on what grounds and under what particular section of this act

each was registered and any other facts pertaining to the granting of the certificates. The said board has power to make any by-laws for the full and proper execution of its duties under this act, to provide the forms and methods of application, examination and registration, to demand and receive from applicants the fees herein provided, which shall be held by the board and applied to the payment of salaries and other necessary expenses incident to the discharge of duties. (Id. § 8735.)

119. Salaries and Allowances.—Each member of said board shall receive five dollars ($5.00) for each day of actual service and all legitimate expenses incurred in the discharge of official duties. The secretary of said board shall receive an annual salary of twenty-five hundred dollars ($2,500.00) and all necessary expenses. He shall pay to the treasurer at each meeting, or whenever the board may direct, such funds of the board as may be in his possession, and take the treasurer's receipt therefor. Provided, that no part of the salaries or expenses of the board shall be paid out of the State treasury. In its annual report to the Governor and the State Pharmaceutical Association the board shall render an account of all moneys received and disbursed pursuant to this act; and the secretary and treasurer shall give such bond as the board shall from time to time direct. (Id. § 8736.)

120. Examination and Registration of Certain Persons.—Every person seeking registration under this article whose registration is not otherwise provided for, shall make application in form and manner prescribed by the board, and deposit with the secretary of the board a fee of ten dollars; then, on presenting himself at the time and place directed by the board, and sustaining a satisfactory examination, he shall be granted an appropriate certificate setting forth his particular qualifications. Provided, that in case of failure of applicant to pass a satisfactory examination he shall be entitled to a second examination, without charge, at the next succeeding meeting of the board. Provided further, that persons provided for in section [6840],* shall receive a permit on application and satisfactory proof of good moral character and sobriety. (Id. § 8737.)

121. Pharmacists Register Annually.—Every registered pharmacist and every assistant pharmacist in the meaning of this article who desires to continue in the pursuit of pharmacy in this State shall annually, after the expiration of the first year of registration, and on or before the second day of July of each year, pay to the secretary of the Board of Pharmacy a renewal fee to be fixed by the board, which shall not exceed three dollars, in return for which a renewal registration shall be issued. Provided, that persons receiving permits under section 6840* shall pay a fee of one dollar per annum to the board. If any person shall fail or neglect to procure his annual registration or permit, as herein specified, notice of such failure having been mailed to his post office address, the board may, after the expiration of thirty days following the issue of said notice, deprive him of his registration and all other privileges conferred by this article, and in order to regain registration, it shall be necessary for such person to make application and pass examination as provided in the preceding section; and provided, further, that the State Board of Pharmacy shall have power upon proper evidence to cancel the certificate of a registered or an assistant registered pharmacist who habitually uses intoxicating liquors as a beverage or habit forming drugs: And, provided, further, that the State Board of Pharmacy shall each year turn over to the State Pharmaceutical Association for the advancement of the science and art of pharmacy, out of the annual fees collected by it, such sum as it may deem advisable, but not to exceed one dollar for each pharmacist, and one dollar for each assistant pharmacist, who shall have paid his renewal fee during such year. Said association shall annually report to said board on the condition of pharmacy in the State. (Id. § 8738.)

122. Certificate, Size and Display of.—Every person registered under this article shall receive from the State board an appropriate certificate, not exceeding in size one hundred and twenty square inches, which shall be conspicuously displayed at all times in his place of business. If the holder be entitled to manage or conduct a pharmacy in this State for himself or another, the fact shall be set forth in the certificate. (Id. § 8739.)

123. Penalty For Using Title of Pharmacist.—Any person who shall unlawfully and without authority take, use or exhibit, the title of a registered pharmacist or assistant, in the State of Oklahoma, shall be liable to a fine of one hundred dollars for each offense; a like penalty shall attach to any assistant pharmacist who shall, without authority, take, use or exhibit the title of a registered pharmacist in the State of Oklahoma. (Id. § 8740.)

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*Reference is to § 8741. See No. 124.

124. Penalty for Sundry Violations; Exceptions.—Any proprietor of a pharmacy, or other person, who shall permit the compounding and dispensing of physicians' prescriptions for the vending of drugs, medicines or pharmaceutical preparations in his store or place of business, except by a registered pharmacist, or assistant pharmacist, in the meaning of this article, or under the immediate supervision of one, or who, while continuing the pursuit of pharmacy in the State of Oklahoma, shall neglect to procure his annual registration, or any person who shall willfully make any false representations to procure for himself, or for another, registration under this article, or who shall violate any other provisions of this article, shall, for each offense, be liable to a fine of one hundred dollars. Provided, that nothing in this article shall interfere with the business of those merchants who keep on sale such poisons, acids and chemicals as are regularly used in agriculture, mining and the arts, when kept and sold for such purposes only in sealed and plainly labeled packages. Provided, further, that nothing in this act [article] shall in any manner interfere with the business of any physician in regular practice, nor prevent him from supplying his patients such articles as may to him seem proper, nor with the marketing and vending of proprietary and patent medicines in towns of three hundred inhabitants or less, nor with the exclusive wholesale business of any dealers, except as hereinafter provided: And, provided, further, that nothing in this article shall in any manner interfere with the business of merchants in towns having less than three hundred inhabitants, in which there is no licensed pharmacy, or with country merchants, in selling or vending such medicines, compounds and chemicals as are required by the general public, and in form and manner prescribed by the board of pharmacy. (Id. § 8741.)

125. Habitual Users of Intoxicants, Not to be Licensed.—No one who habitually uses intoxicating liquor as a beverage shall be licensed as a pharmacist or assistant pharmacist. The examining board shall in all cases require each applicant to file his written declaration, duly sworn to, to the effect that he does not habitually use vinous, malt or alcoholic liquors as a beverage, and that he has never been illegally engaged in the business of selling liquors in the State of Oklahoma. Any one swearing falsely in the affidavit so filed shall be guilty of perjury, the same to apply to persons getting permits as provided for in the preceding section. (Id. § 8742.)

126. Sale of Poisons.—It shall be unlawful for any person to retail any of the following poisons: Arsenic and its preparations, corrosive sublimate, white precipitate, red precipitate, biniodide of mercury, cyanide of potassium, hydrocyanic acid, strychnine and all other poisonous vegetable alkaloids and their salts, essential oil of bitter almonds, opium and its preparations, except paregoric and other preparations of opium containing less than two grains to the ounce, aconite, belladonna, colchicum, conium, nuxvomica, henbane, savin, ergot, cotton root, cantharides, creosote, digitalis and their pharmaceutical preparations, croton oil, chloroform, chloral hydrate, sulphate of zinc, mineral acids, carbolic acid and oxalic acid, without distinctly labeling the box, vessel or paper in which the said poison is contained, with the name of the article, the word "poison," and the name and the place of business of the seller. Nor shall it be lawful for any registered pharmacist, or other person, to sell any of the poisons above enumerated without causing an entry to be made in a book kept for that purpose, before delivering the same to the purchaser, stating the date of sale, the name and address of the purchaser, the name of the poison sold, the purpose for which it is represented by the purchaser to be required, and the name of the dispenser; such a book to be always open for inspection by the proper authorities, and to be preserved for at least five years. The provisions of this section shall not apply to the dispensing of poisons in not unusual quantities or doses, upon the prescription of practitioners of medicine. Any violation of the provisions of this section shall make the offender liable to a fine of not less than twenty-five dollars and not more than one hundred dollars, and upon conviction for the second offense, in addition to the fine, he shall have his name stricken from the register. (Id. § 8743.)

127. Prescriptions Required for Certain Drugs.—It shall be unlawful for any person, firm or corporation to sell, furnish or give away any cocaine, alpha or beta eucaine, opium, morphine, codeine, heroin or any salt or compound of any of said substances, or their salts or compounds, except upon the original written order or prescription of a lawfully authorized practitioner of medicine, dentistry or veterinary medicine, which order or prescription shall be dated and shall contain the name of the person for whom prescribed, or, if ordered by a practitioner of veterinary medicine, shall state the kind of animal for which ordered and shall be signed by the person giving the prescription or order; such written order or

prescription shall be permanently retained on file by the person, firm or corporation, who shall compound or dispense the article ordered or prescribed, and it shall not be again compounded or dispensed except upon the written order of the original prescriber for each and every subsequent compounding or dispensing. No copy or duplicate of such order or prescription shall be made or delivered to any person, but the original shall at all times be open to inspection by the prescriber and properly authorized officer of the law. Provided, however, that the above provisions shall not apply to preparations containing opium, morphine, codeine, heroin or any salt or compound of the foregoing substances, and recommended and sold in good faith; each bottle or package [of] which is accompanied by specific directions for use, nor to powder of ipecac and opium, commonly known as Dover's powder, nor to liniments or ointments when plainly labeled "for external use only." Provided, further, that the above provisions shall not apply to the sales at wholesale by jobbers, wholesalers and manufacturers to retail druggists or qualified physicians or to each other, nor to the sale at retail by retail druggists to regular practitioners of medicine or dentistry nor the sales made to manufacturers of proprietary or pharmaceutical preparations for use in the manufacture of such preparations nor to sales to hospitals, colleges, scientific or public institutions; and provided, further, that all prescriptions mentioned in this act [section] must be filled by legally registered pharmacists of the State of Oklahoma. (Id. § 8744.)

128. Restrictions Upon Prescriptions.—It shall be unlawful for any practitioner of medicine, dentistry or veterinary medicine to prescribe for the use of any habitual user of the same any cocaine, heroin, alpha or beta eucaine, opium, morphine or any salt or compound of any of the foregoing substances or any preparation containing any of the foregoing substances, or their salts or compounds; and it shall also be unlawful for any practitioner of dentistry to prescribe any of the foregoing substances for any person not under his treatment in the regular practice of his profession, or for any practitioner of veterinary medicine to prescribe any of the foregoing substances for the use of any human being. Provided, however, that the provisions of this section shall not be construed to prevent any lawfully authorized practitioner of medicine from prescribing in good faith for the use of any habitual user of narcotic drugs who is under his professional care, such substances as he may deem necessary for their treatment, when such prescriptions are not given for the purpose of evading the provisions of this act. (Id. § 8745.)

129. Penalty For Violation.—Any person, officer, representative, agent or employee of any firm, association or corporation violating any of the provisions of this act [Sections 8744 and 8745] shall be guilty of a misdemeanor and for the first offense shall pay a fine of not less than one hundred dollars and not more than three hundred dollars and costs; for each subsequent conviction a fine of not less than three hundred dollars and not more than five hundred dollars and costs, or imprisonment in the county jail not less than three months, nor more than one year. (Id. § 8746.)

130. Enforcement.—It shall be the duty of peace officers to see that the provisions of this act [Sections 8744 and 8745] are faithfully executed within their respective jurisdictions, and when they are informed or have reason to believe that this act has been violated they shall file information to that effect against the offending party before a magistrate, who shall thereupon proceed according to law. The county attorney shall prosecute violations of this act. (Id. § 8747.)

131. Surplus Money of Board Paid to State.—Annually, on the first day of July, the State Board of Pharmacy shall pay into the treasury of Oklahoma, all moneys then held by said board over and above the sum of three hundred dollars, which may have been received by said board as penalties for violation of this article, or as registration fees for the expiring year. Provided, that the moneys thus paid into the State treasury shall be held and used as a fund for educational and scientific purposes. (Id. § 8748.)

132. Language to be Used in Prescriptions.—No practicing physician or surgeon shall write or cause to be written any prescription or recipe in any characters, figures or ciphers other than in the English or Latin language, generally in use among medical practitioners; and for every violation hereof the offender shall forfeit not less than five nor more than twenty-five dollars. (Id. § 8749.)

133. Expense Paid by City or Town.—All expenses incurred under this article, except such as are herein otherwise chargeable, shall be paid by the town or city in which the same are incurred. (Id. § 8750.)

134. Apothecary Liable For Negligence.—Every apothecary or every person employed as clerk or salesman by an apothecary, or otherwise carrying on busi-

ness as a dealer in drugs or medicines, who, in putting up any drugs or medicines, willfully, negligently or ignorantly omits to label the same, or puts any untrue label, stamp or other designation of contents upon any box, bottle or other package containing any drugs or medicines, or substitutes a different article for any article prescribed or ordered, or puts up a greater or less quantity of any article than that prescribed or ordered, or otherwise deviates from the terms of the prescription or order which he undertakes to follow, in consequence of which human life or health in [is] endangered, is guilty of a misdemeanor. (Id. § 1971.)

135. "Narcotic Drugs" Defined.—As used in this act, the term "narcotic drugs" shall be construed to mean and comprehend opium or coca leaves or any compound, manufacture, salt, derivative, or preparation thereof including paregoric except preparations and remedies which do not contain more than two grains of opium, or more than one-fourth of a grain of morphine, or more than one-eighth of a grain of heroin, or more than one grain of codeine, or any salt or derivative of any of them in one fluid ounce, or, if a solid or semi-solid preparation, in one avoirdupois ounce, and except liniments, ointments or other preparations which are prepared for external use only, other than liniments, ointments or other preparations which contain cocaine or any of its salts or alpha or beta cocaine [eucaine] or any of their salts or any synthetic substitute for them; and except decocanized coca leaves or preparations made therefrom, or other preparations of coca leaves which do not contain cocaine; provided that such excepted remedies and preparations are sold, distributed, given away, dispensed or possessed as medicines and not for the purpose of evading the intentions or provisions of this act. (Id. § 8886.)

136. Sale; Use or Transportation, Etc., Prohibited.—It shall be unlawful for any person, firm or corporation, or any employee of any person, firm or corporation, to sell, give away, dispense, manufacture, produce, deal in, administer or distribute, or to receive, conceal, buy, or in any manner facilitate the transportation, concealment, or sale of, or distribution, of any of the aforesaid narcotic drugs, except such persons, firms or corporations as shall be licensed or authorized so to do as provided by an act of the Congress of the United States of America of December 17th, 1914, and except as otherwise provided or permitted by this act. It shall be prima facie evidence of the violation of this act for any person other than a registered pharmacist, physician, dentist or veterinary surgeon, regularly licensed and in actual practice of his or her profession as such, to have in his or her possession any form or blank issued by the Commissioner of Internal Revenue of the United States, pursuant to section 2 of said act of Congress of the United States of America of December 17th, 1914, purporting to authorize the purchase or otherwise acquiring of such narcotic drugs; and it shall further be prima facie evidence of the violation of this act for any person to be registered with the collector of internal revenue, as provided by section 1 of said act of Congress of December 17th, 1914, unless and except such person so registered shall be a pharmacist regularly and duly licensed by the State Board of Pharmacy, wholesale druggist, licensed physician, dentist, or veterinary surgeon. It shall also be unlawful for any person who shall not be so registered as provided by the said act of Congress, and who shall not, also, be a regularly licensed pharmacist as aforesaid, or who shall not be a regularly licensed and actually practicing physician, dentist or veterinary surgeon, or who shall not be a railroad or express company which shall have made, for the preceding year to the corporation commission of the State the report required by law to be made to such commission annually by transportation companies, to have in his or her possession or under his or her control or to have concealed in or about premises in his or her possession or under his or her control, any quantity whatsoever of the aforesaid narcotic drugs other or more than one dose of such narcotic drugs, acquired and procured upon the prescription of a regularly licensed and actively practicing physician, dentist or veterinary surgeon, for legitimate medicinal use. It shall also be unlawful for any such registered pharmacist to sell, give away or otherwise furnish or deliver to any person any of such narcotic drugs except and unless upon the bona fide prescription of an actively practicing, duly licensed physician, dentist, veterinary surgeon, or except to actively practicing, duly licensed physician, dentist, veterinary surgeon or registered pharmacist, upon the order forms supplied by the United States internal revenue collector, any quantity whatsoever of such narcotic drug.

Nor shall such pharmacist sell upon any one such prescription an amount or quantity of such narcotic drugs in excess of an amount or quantity thereof, indicated by the prescribed dosage sufficient, under the proper and customary practice, for forty-eight hours treatment. Nor shall such pharmacist, whether wholesaler or retailer, sell or furnish to any such physician, dentist, or veterinary surgeon, upon

any one such order form an amount in excess in the aggregate of 32 grains of such narcotic drug and their salts or derivatives; nor shall any such physician, dentist or veterinary surgeon have in his possession at any one time any quantity of such narcotic drugs in excess in the aggregate of 32 grains of such narcotic drug, or their salts, or derivatives.

Provided, that nothing in this act shall prevent a physician engaged in administering treatment for the relief from the narcotic habit, from acquiring such quantity of such drug for administration as may be required in the usual course of treatment therefor; provided, however, that any quantity other than those above provided which is designated for such habitual user shall be so stated on the prescription or order form. It shall also be unlawful for any person to transport, carry or take from one point within the State to another point within the State, of however short distance, any of the aforesaid narcotic drugs, unless such person shall be a transportation company, as defined by the constitution of the State, which has made to the corporation commission of the State of Oklahoma for the preceding year the report required by law to be made by transportation companies to such commission, or an agent, servant or employee of such transportation company bona fidely employed by such transportation company in carrying such narcotic drugs in the performance of the duties of such transportation company as common carrier.

It shall also be unlawful for any physician, dentist or veterinary surgeon to prescribe or administer, in any form whatsoever, any of the said narcotic drugs to any person addicted to the habit of using such narcotic drugs, or to habitually prescribe or administer, in any form whatsoever, any of said narcotic drugs to any person, unless and except in those cases and instances in which, according to the recognized practice of the medical profession, it shall be necessary to administer the same in the treatment of such narcotic habit for the reformation and relief of the patient from such habit; provided, further, that it shall not be necessary to negative any of the aforesaid exceptions in any complaint, information, or indictment, or any writ of proceeding laid or brought under this act; and the burden of proof of any such exemption or exception shall be upon the defendant. Any of such narcotic drugs found or discovered to be held or possessed by any person, firm or corporation except as permitted by this act shall be confiscated and delivered by the person or officer finding or discovering the same to the hospital of the medical department of the University of Oklahoma. (Id. § 8887.)

137. **Penalty.**—Any person who violates any of the requirements or provisions of this act shall, upon conviction, be deemed guilty of a felony and be fined not less than five hundred dollars nor more than five thousand dollars and shall be imprisoned not less than one year nor more than seven years, or both, and, additionally, if a physician, dentist, veterinary surgeon, or pharmacist, shall be convicted of violating any or either of the provisions of this act relating to persons engaged in such occupation or professions, respectively, such conviction shall automatically work a permanent forfeiture of the license of such person to practice or engage in such profession. (Id. § 8888.)

137a. **Petition for Treatment at County Expense.**—Any inhabitant of this State who is of kin to, or a friend of, any habitual drunkard who is a resident of this State and the head of a family, may petition the board of county commissioners of the county of the residence of such habitual drunkard for leave to send such person, at the expense of said county, to an institute for the medical treatment of drunkenness and morphinism, as the said board of county commissioners may designate; but the sending of such person to an institute for treatment shall be discretionary with the said commissioners, and not more than four persons shall be sent from the same county in any one year. The petition shall set forth the name, age, sex and condition of such person, and that such person or those of his kin petitioning, are not financially able to incur the expense of his cure, and shall set forth that said person is willing and will agree to attend such institution for the cure of drunkenness and morphinism, which petition shall be verified by the person making such request, and shall contain in addition thereto the written agreement of such person to take treatment and to abide by and comply with the rules of said institute, together with the names of three taxpayers in the county of his residence, stating that they are familiar with the facts set forth in the petition, and that they are familiar with the financial condition and circumstances of such person, and of the petitioning kin, and deem it a proper case for assistance from the county wherein said person resides. (Id. § 6620.)

137b. **Limit of Expense.**—When such petition is filed, the county commissioners, if satisfied from examination that the facts set forth in the petition are true, and that the said person has been a resident of the county named in said

petition for one year next preceding the application, and that such person of his own free will desires to take such treatment, then such person may be sent, at the expense of the county, to an institute for the cure of drunkenness or morphinism, provided said institution is located in the State of Oklahoma, and that the managers of such institute will agree to treat such person for a sum not to exceed one hundred dollars, including board and lodging. The county commissioners may make an order that the expense of such treatment shall be paid out of the treasury of the county named in said petition, as the case may be, in the same manner that other claims against the county are paid. (Id. § 6621.)

137c. Authority of Institute.—The officers of such institute as may be designated for the treatment of such persons, payment for whose cure is provided by this chapter, shall have authority to enforce such reasonable rules as may be necessary for the administration of proper treatment to the patient entrusted to their care, but they shall receive no fee or compensation other than the sum provided for and limited by the preceding section. (Id. § 6622.)

137d. Drunkard Defined.—A drunkard, as mentioned in the foregoing sections of this chapter, shall be deemed to include any person who has acquired the habit of using spirituous, malt, or fermented liquors, cocaine or other narcotics, to such an extent or degree as to deprive him of reasonable self-control. (Id. § 6623.)

Serum, Etc.

138. For Manufacture of Hog Cholera Vaccine.—There is hereby appropriated out of money not otherwise appropriated the sum of seven thousand and five hundred dollars ($7,500.00), or so much thereof as may be necessary to the Agricultural and Mechanical College at Stillwater, for the purpose of aiding said college in manufacturing, maintaining and furnishing to the people of Oklahoma hog cholera vaccine. (C. S. 1921, § 3852.)

139. Serum and Virus; How Sold.—No person, firm or corporation shall sell, barter, give away or exchange, within the State of Oklahoma, or for use within such State, anti-hog cholera serum or hog cholera virus, unless such virus and serum have been produced under the immediate supervision of a competent veterinarian in the employ of the Federal government, and subject to the test of the Federal government and according to its standard. And such serum companies shall have a license from the Federal government authorizing them to manufacture such serum for sale, and such serum must bear a label showing that it is manufactured under the immediate direction of such official, and shall meet every necessary test for potency and protective qualification and freedom from foreign organism as may cause infection or other disease. All plants manufacturing serum and virus for sale in this State or plants selling serum or virus in the State manufactured at other places, shall each keep a complete record of all [sales] scales of such serum and virus at their places of business in this State, or at their distributing points, and furnish the Oklahoma State Board of Agriculture with a monthly report, showing date of manufacturing, amount of serum and virus sold to each party, and said record shall be open to inspection of any person designated by the Board of Agriculture of this State to examine such books and records of sales at any time they may see fit. All serum companies shipping serum and virus into this State shall first obtain permission from the State Board of Agriculture, and they shall be required to furnish said board with a complete record of the amount shipped into the State each month, with an O. K. from the government inspector in charge, giving date of manufacture, date of test, stating whether or not it is slaughter-bled serum or tail-bled serum. All serum companies manufacturing or companies shipping serum or virus into the State shall stamp the date of manufacture, date of test, and if slaughter-bled serum or tail-bled serum, on each and every package containing such serum, and virus, nor shall any serum company or distributing point doing business in the State, sell, barter, give away or exchange any virus over thirty days old or thirty days after it comes off the test or any serum over six months old or over six months after it comes off the test. (Id. § 3856.)

140. Penalty.—Any violation of any of the provisions of this act shall result, upon conviction, in a fine of any sum not less than twenty-five ($25.00) dollars, and not more than one hundred ($100.00) dollars, for the first offense, and for the second and subsequent offenses a fine of not less than fifty ($50.00) dollars, nor more than five hundred ($500.00) dollars, or imprisonment in the county jail for a period of thirty (30) days, or by both such fine and imprisonment. (Id. § 3858.)

Venereal Disease Drugs.

141. Furnishing Medicines Without Prescription.—It shall be unlawful for any dealer to treat or offer to treat any infected person or to sell, furnish or give to any infected person or to any other person whomsoever any medicine of any kind that may be advertised or used for treatment of venereal diseases before requiring such person to produce and file with such dealer a proper prescription for such medicine issued and signed by a reputable physician, which said prescription shall be by said dealer kept on file for a period of one (1) year from the date of his receiving the same, and subject, at all reasonable hours, to the inspection of the health authorities in this State. A violation of any of the provisions of this section shall be punished by a fine of not less than one hundred dollars ($100.00) nor more than five hundred dollars ($500.00) or by confinement in the county jail for a term of not less than thirty (30) days and not more than six (6) months or by both such fine and imprisonment. (C. S. 1921, § 9011.)

Intoxicating Liquors.

142. Sale for Medicinal and Industrial Purposes; Regulations by Governor.—The Governor is hereby authorized and empowered, subject to the limitations hereinafter imposed, to prescribe rules and regulations, in accordance with the Constitution and the laws of the United States, for the sale of pure grain alcohol for medicinal purposes; and for the sale for industrial purposes of alcohol which shall have been denaturized by some process approved by the United States Commissioner of Internal Revenue; and for the sale of alcohol for scientific purposes to such scientific institutions, universities and colleges as are authorized to procure the same free of tax under the laws of the United States; and for the sale of alcohol to any apothecary, druggist or pharmacist who shall have executed a bond, to the State of Oklahoma, approved by the Governor, in the sum of not less than one thousand dollars ($1,000.00), conditioned that none of said alcohol shall be used or disposed of for any purpose other than in the compounding of prescriptions or other medicines, the sale of which would not subject him to the payment of the special tax required of liquor dealers by the United States. (C. S. 1921, § 6982.)

143. Same; Warehouses Authorized.—Under the power and authority hereby conferred upon the Governor to prescribe such rules and regulations, he may, in his discretion, establish a warehouse or warehouses, and appoint a manager or managers thereof, who shall, in accordance with the rules and regulations prescribed by the Governor, handle all orders for alcohol made in accordance with the laws and Constitution of this State. Provided, however, that such warehouse manager shall bear all expense necessary and incident to said business, and shall fill, promptly, all proper orders for alcohol, at a price, delivered at said warehouse, not to exceed five per centum in excess of the current market price of alcohol laid down at such warehouse; and such warehouse manager shall retain all moneys received for the sale of such alcohol for the purpose of reimbursing himself for the original cost of the alcohol, the maintenance and operation of the warehouse, and as his compensation for the duties performed and the services rendered in the premises. (Id. § 6983.)

144. Bond of Warehouse Manager.—Any warehouse manager appointed by the Governor, pursuant to the last preceding section, shall, before entering upon the duties incident to such appointment, give a good and sufficient bond, to the State of Oklahoma, in the sum of not less than three thousand dollars ($3,000.00) and conditioned upon the faithful discharge and performance of all duties incident to such appointment. Such bond shall be approved by the Governor and filed with the Secretary of State. (Id. § 6984.)

145. Unlawful Possession in Residence; Amount Limited; Punishment.—In order to suppress the unlawful practice of selling, bartering, giving away and otherwise furnishing liquors, the sale of which is prohibited by this act, from private residences, that it shall be unlawful for any person within this State to have or keep at, in, or about his place of residence, at any one time, more than one (1) gallon of spirituous, or one (1) gallon of vinous (the provisions of this act shall not apply to that for sacramental purposes) liquors, or any imitation thereof, or substitute therefor; nor more than one cask of malt liquors, or any imitation thereof, or substitute therefor, nor more than one cask of any liquors or compounds of any kind or description whatsoever, whether medicated or not, which contain as much as one-half of one per centum of alcohol measured by volume, and which is capable of being used as a beverage, except preparations compounded

by any licensed pharmacist, the sale of which would not subject him to the payment of the special tax required by the laws of the United States. Provided, that this section shall not be construed in any way, to legalize the keeping of such liquors at or about a place of residence for an unlawful purpose. A violation of any provision of this section shall be a misdemeanor and shall be punished by a fine of not less than fifty dollars ($50.00), nor more than five hundred dollars ($500.00), and imprisonment of not less than thirty days nor more than six months. (Id. § 6985.)

146. Subsequent Convictions; Punishment.—For the second and all subsequent convictions for the violation of any of the provisions of this act, the penalty shall be a fine of not less than fifty ($50.00) dollars, nor more than two thousand ($2,000.00) dollars, and by imprisonment of not less than thirty (30) days in the county jail, nor more than five (5) years in the State Penitentiary, and it shall be mandatory upon the trial judge in cases where anyone has been convicted under any provision of this act to pronounce sentence within ten days from the date of conviction. (Id. § 6991.)

147. Punishment; "Hard Labor."—In all cases where the judgment of the court includes imprisonment as a penalty for violating any of the provisions of this act, the sentence shall include and mean "at hard labor." (Id. § 6992.)

148. Third Offense Punished as Felony.—Any person violating any provision of the laws of this State enacted for the suppression of the liquor traffic, commonly called the prohibition laws, who has theretofore been twice convicted for the violation of any of the provisions of such laws, shall be guilty of being "an habitual violator of the prohibition laws of this State," and shall be so charged in the presentment, or indictment, or information, along with the violation of the law, and be tried, in the court having jurisdiction of felonies, and upon conviction thereof shall be punished by imprisonment in the penitentiary of this State for not less than one year nor more than five years. (Id. § 6993.)

149. Meaning of "This Act."—Wherever the words "this act" appears in any of the laws of this State enacted for the suppression of the liquor traffic, commonly called prohibition laws, they shall be construed to mean and include all such prohibition laws of this State. (Id. § 6994.)

150. Acting as Agent for Liquor Houses; Revenue License as Evidence.—It shall be unlawful for any person to act as agent for any wholesale liquor house, brewery or distillery, or any other liquor house, in any manner whatever, either for transmitting orders for such wholesale liquor house, brewery or distillery, or any other liquor house, or for the purpose of distributing any of their liquors of any kind, whether it be spirituous, vinous, fermented or malt liquors, or any imitation thereof, or substitute therefor; or any liquors or compounds of any description whatsoever, whether medicated or not, which contain as much as one-half of one per centum of alcohol, measured by volume, and which is capable of being used as a beverage, except preparations compounded by any licensed pharmacist the sale of which would not subject him to the payment of the special tax required by the laws of the United States. The payment of a retail liquor dealer's tax, or a wholesale liquor dealer's tax, or a retail malt liquor dealer's tax, or a wholesale malt liquor dealer's tax, to the United States government, shall be prima facie evidence of an intention to violate this section. Any person violating any provision of this section shall be punished by a fine of not less than fifty ($50.00) dollars, nor more than two thousand ($2,000.00) dollars, and by imprisonment of not less than thirty (30) days in the county jail, nor more than five (5) years in the State Penitentiary. (Id. § 6998.)

151. Quantity in Possession as Evidence of Unlawful Intent.—The keeping in excess of one quart of any spirituous, vinous, fermented or malt liquors, or any imitation thereof, or substitute therefor; or any liquor or compounds of any kind or description whatsoever, whether medicated or not, which contains as much as one-half of one per cent of alcohol, measured by volume, and which is capable of being used as a beverage, except preparations compounded by any licensed pharmacist, the sale of which would not subject him to the payment of the special tax required by the laws of the United States, or in any manner permitting any other person to have or keep any such liquors in or about his place of business or his residence, or any place of amusement, or recreation, or any public resort, or any clubroom. Provided, however, that the foregoing provisions of this section shall not apply to bonded apothecaries, druggists or pharmacists, as to alcohol purchased by them pursuant to the rules and regulations promulgated by the government in accordance with the provisions of the laws of this State; or the keeping in excess of one quart of spirituous, or one quart of vinous, or more than one quart of malt liquors, or any imitation thereof, or substitute therefor; nor

more than one quart of any liquor or compounds of any kind or description whatsoever, whether medicated or not, which contain as much as one-half of one per cent of alcohol, measured by volume and which is capable of being used as a beverage, except preparations compounded by any licensed pharmacist, the sale of which would not subject him to the payment of the special tax required by the laws of the United States shall be prima facie evidence of an intention to convey, sell or otherwise dispose of such liquors. Provided, further, that this section shall not be construed in any way to legalize the keeping of any liquors for unlawful purposes irrespective of the amount. (C. S. Supp. 1926, § 6999.)

152. Bone Dry Law.—It shall be unlawful for any person in this State to receive, directly or indirectly, any liquors, the sale of which are prohibited by the laws of this State, from a common or other carrier.

It shall also be unlawful for any person in this State to possess any liquors, the sale of which are prohibited by the laws of this State, received directly or indirectly from a common or other carrier in this State. This section shall apply to such liquors intended for personal use, as well as otherwise, and to interstate as well as intrastate shipments or carriage. Any person violating any provision of this section shall be guilty of a misdemeanor, and upon conviction shall be fined not less than $50.00 nor more than $500.00 and by imprisonment for not less than thirty days nor more than six months. Provided, however, that scientific institutions, universities and colleges, and bonded apothecaries, druggists, hospitals or pharmacists may receive and possess pure grain alcohol, as provided by the laws of this State, to be used only for such purposes as are prescribed by the laws of this State. (C. S. 1921, § 7001.)

153. Misdemeanor to Manufacture, Sell, or Furnish Liquor.—It shall be unlawful for any person, individual or corporate, to manufacture, sell, barter, give away or otherwise furnish except as in this chapter provided, any spirituous, vinous, fermented or malt liquors, or any imitation thereof or substitute therefor; or to manufacture, sell, barter, give away or otherwise furnish any liquors or compounds of any kind or description whatsoever, whether medicated or not, which contain as much as one-half of one per cent of alcohol, measured by volume, and which is capable of being used as a beverage, except preparations compounded by any licensed pharmacist, the sale of which would not subject him to the payment of the special tax required by the laws of the United States; or to ship or in any way convey such liquor from one place within this State to another place therein except the conveyance of a lawful purchase as herein authorized; or to solicit the purchase or sale of any such liquors, either in person or by sign, circular, letter, card, price list, advertisement or otherwise, or to distribute, publish or display any advertisement, sign or notice where any such liquor may be manufactured, bartered, sold, given away, or otherwise furnished, or to have the possession of any such liquors with the intention of violating any of the provisions of this chapter. A violation of any provisions of this section shall be a misdemeanor and shall be punished by a fine of not less than fifty dollars nor more than five hundred dollars, and by imprisonment for not less than thirty days, nor more than six months. Provided, however, that the provisions of this chapter shall not apply to the manufacture and sale of unfermented cider and wine made from apples, grapes, berries or other fruit grown in this State, and to the use of wine for sacramental purposes in religious bodies. (Id. § 7002.)

154. Sale of Apple Cider Lawful.—It shall be lawful to sell in this State apple cider manufactured either within or without the State from the unadulterated juice of apples, if the same is of such a character as not to be subject to a special tax under the internal revenue laws of the United States, and shall comply with the requirements of the pure food laws of the United States, and of this State. (Id. § 7003.)

155. Payment of Special Tax Prima Facie Evidence.—The payment of the special tax required of liquor dealers by the United States by any person within this State, except local agents appointed as hereinbefore provided, shall constitute prima facie evidence of an intention to violate the provisions of this chapter. (Id. § 7006.)

156. Physician or Druggist Shall Forfeit License Upon Second Conviction.—After the second conviction of any physician, apothecary, druggist or pharmacist for violating any of the provisions of this chapter, it shall be a part of the judgment of conviction that the license to practice medicine or pharmacy, of such physician, apothecary, druggist or pharmacist is revoked, and the court before whom such person shall be tried and convicted shall cause a certified copy of such judg-

ment of conviction to be certified to the State board having authority to issue such license. (Id. § 7035.)

157. Punishment for Misdemeanor When Not Prescribed.—Whenever a violation of any provision of this chapter is made a misdemeanor, and the punishment is not prescribed, such punishment shall be a fine of not less than fifty dollars, nor more than five hundred dollars and by imprisonment of not less than thirty days nor more than six months. (Id. § 7038.)

158. Intoxicating Liquors; Manufacture Unlawful.—It shall be unlawful for any person or persons, within this State, to manufacture, ferment or possess any compound mixture, mash, wort or wash fit for distillation, or for the manufacture of beer, wine, distilled spirits or other alcoholic liquors, the sale, barter, giving away or otherwise disposing of which is prohibited by the laws of the State of Oklahoma. (C. S. Supp. 1926, § 7039-8.)

159. Misdemeanor; Violation of Act.—Any person who shall violate any provisions of this act shall be guilty of a misdemeanor and upon conviction shall be punished by a fine of not less than fifty ($50.00) dollars, nor more than five hundred ($500.00) dollars, and by imprisonment in the county jail for not less than thirty (30) days, nor more than six (6) months. (Id. § 7039-14.)

PART IV.

Miscellaneous Laws.

False Advertising.

160. Fraudulent Advertising Prohibited.—Any person, firm, corporation or association who, with intent to sell or in any wise dispose of merchandise, securities, service or anything offered by such person, firm, corporation or association, directly or indirectly, to the public for sale or distribution, or with intent to increase the consumption thereof, or to induce the public in any manner to enter into any obligation relating thereto, or to acquire title thereto, or an interest therein, makes, publishes, disseminates, circulates or places before the public, or causes directly or indirectly to be made, published, disseminated, circulated or placed before the public in this State, in a newspaper or publication or in form of a book, notice, handbill, poster, bill, circular, pamphlet or letter, or in any other way, an advertisement of any sort regarding merchandise, securities, service or anything so offered to the public, which advertisement contains any assertion, representation or statement of fact which is untrue, deceptive or misleading, shall be guilty of a misdemeanor and on conviction thereof shall be punished by a fine of not less than $10.00 nor more than $50.00 or by imprisonment in the county jail not exceeding twenty (20) days, or both such fine and imprisonment. (C. S. 1921, § 2164.)

Flag Desecration.

161. Use in Advertising Prohibited.—Any person or persons, corporation or company, who shall use the flag or the coat of arms of the United States, or any pattern, imitation or representation thereof, either by printing thereon or attaching thereto, any advertisement or device for the purpose of gain or profit, or as a trade-mark or label, shall be guilty of misdemeanor. (C. S. 1921, § 2266.)

162. Mutilation, Etc.—Any person who shall tear down, mutilate, deface, defile, defy, treat with indignity, or wantonly destroy, the flag or coat of arms of the United States of America, shall be guilty of a misdemeanor. (Id. § 2267.)

163. Penalty.—Any person, corporation or company violating any provision of this act, shall, upon conviction thereof, be punished by a fine not exceeding one hundred dollars ($100.00) or by imprisonment for not more than thirty days, or both, in the discretion of the court. (Id. § 2268.)

Tobacco—Tobacco Products.

164. Persons Liable; Minors.—Any person who shall furnish to any minor by gift, sale or otherwise any cigarettes or cigarette papers, shall be guilty of a

misdemeanor and upon conviction thereof, shall be sentenced to pay a fine of not less than twenty-five dollars nor more than two hundred dollars and be confined in the county jail not less than ten days nor more than ninety days for each offense. (C. S. 1921, § 1973.)

165. Disclosing Information.—Any minor being in possession of cigarettes or of cigarette papers and being by any police officer, constable, juvenile court officer, truant officer, or teacher in any school, asked where and from whom such cigarettes or cigarette papers were obtained, who shall refuse to furnish such information, shall be guilty of a misdemeanor and upon conviction thereof before the county court, or any justice of the peace, such minor being of the age of sixteen years or upwards shall be sentenced to pay a fine not exceeding five ($5.00) dollars or to undergo an imprisonment in the jail of the proper county not exceeding five days, or both; if such minor shall be under the age of sixteen years, he or she shall be certified by such magistrate or justice to the juvenile court of the county for such action as said court shall deem proper. (Id. § 1974.)

166. Penalty; Fine and Punishment.—It shall be unlawful for any individual or corporation to sell, offer for sale, give away, barter or otherwise dispose of upon any pretext or advertisement or to bring into the State for purpose of selling, offering for sale, giving away, bartering or otherwise disposing of any cigarettes, cigarette papers or substitutes therefor, or to solicit the purchase or sale of any such cigarettes or cigarette papers or substitute therefor, either in person or by sign, circular, letter, card, price list, advertisement, sign or notice, wherein such cigarette papers or substitutes therefor may be manufactured, sold, given away, bartered, found or otherwise disposed of without having first procured a license therefor, and the execution of a bond as hereinafter provided; a violation of any provision of this section shall constitute a misdemeanor and shall be punished by a fine of not less than one hundred dollars nor more than one thousand dollars, and by incarceration in the county jail for a period not exceeding one year; provided, that the provisions of this section shall not apply to jobbers and wholesalers of cigarettes and cigarette papers. (Id. § 1975.)

167. Fees Paid to Informer.—Of all sums recovered hereunder as fines, one-fourth shall be paid to the complaining witness, if not a public officer, the remainder to be paid into the county road fund and be used in the construction and maintenance of the public roads of the county to be distributed as are other county road funds. (Id. § 1976.)

168. County Clerk to Issue License.—It shall be the duty of the county clerk, upon the application of any responsible person, to issue annual license to such person for the sale of cigarettes and cigarette papers for each place of business in such county upon the payment of a license fee of twenty-five dollars and the execution of a good and sufficient bond in the sum of one thousand dollars with a surety company as surety, or two or more individual sureties, one of whom shall be a resident of the county, to be approved by the county clerk, conditioned for the faithful compliance with the provisions of section 1 [1973] of this act. All license fees provided for herein shall go into the county road fund and be used in the construction and maintenance of public roads. (Id. § 1977.)

169. County Attorney; Duties.—It shall be the duty of the county attorney to bring action for the forfeiture of bonds herein provided for upon a violation of the provisions of section 1 [1973] of this act by any licensee for the sale of cigarettes and cigarette papers, and upon recovery thereon fifty dollars shall be paid to the complaining witness, one hundred dollars to the county attorney prosecuting such action in addition to the salary now provided by law, the remainder to be paid into the county road fund of the county to be distributed as are other county road funds. (Id. § 1978.)

Trade-Marks, Etc.

170. Filing Trade-Mark; Notice.—All manufacturers or dealers in carbonated goods, soda waters, mineral or aerated waters, porter, ale, beer, cider or other beverages, requiring the use of kegs, casks, barrels, boxes, siphons, bottles or any other vessels or containers, on which the names, brands, marks or trade-marks or other designation of ownership or proprietorship is stamped, engraved, etched, blown in, impressed, or otherwise produced upon such kegs, casks, barrels, boxes, siphons, bottles or any other vessels or containers may file in the office of the Secretary of State a facsimile or description of the name or names, marks or devices so used by such manufacturer or dealer in such wares herein enumerated, and cause such description to be published in a public newspaper published at the capital of the State for two successive weeks, and the fact of so filing and

causing to be recorded by said Secretary of State and publishing shall operate as a trade-mark, entitling the said manufacturer to the sole and exclusive use in Oklahoma of said mark, name or device. (C. S. 1921, § 11004.)

171. Trade-Mark Protected.—It is hereby declared to be unlawful for any person other than the proprietor or by his written consent, to fill for the purpose of traffic or for sale, with any compound whatever, any keg, cask, barrel, box, siphon, bottle or other container so marked, recorded in the office of the Secretary of State and published as aforesaid, or to deface, erase, obliterate, cover up or otherwise remove or cancel such mark or device. (Id. § 11005.)

172. Same.—Any person who shall refuse to surrender any of the goods enumerated herein, after the liquid contents of same have been disposed of, or shall use, buy, sell or dispose of any such vessel with or without contents of any kind, without the consent of the proprietor, or shall willfully and maliciously break, damage, mar, injure or destroy any such vessel shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined in any sum not exceeding one hundred dollars. (Id. § 11006.)

173. Fines to Go to School Fund.—All moneys collected as fines or penalty, under the provisions of this chapter, shall be returned by the justice of the peace into the county treasury, to become a part of the school fund. (Id. § 11007.)

174. Unlawful to Counterfeit Trade-Mark or Label.—Whenever any person or any association or union of workingmen has adopted or used any label, trade-mark, term, design, device or form of advertisement for the purpose of designating, making known or distinguishing any goods, wares, merchandise or other product of labor, as having been made, manufactured, produced, prepared, packed or put on sale by such person or association or union of workingmen, or by a member of such association or union, it shall be unlawful to counterfeit or imitate such label, trade-mark, term, design, device or form of advertisement, or to use, sell, offer for sale, or in any way utter or circulate any counterfeit or imitation of such label, trade-mark, term, design, device or form of advertisement. (Id. § 11008.)

175. Penalty for Violation and Selling Goods so Marked.—Whoever counterfeits or imitates any such label, trade-mark, term, design, device or form of advertisement, or sells, offers for sale, or in any way utters or circulates any counterfeit or imitation of any such label, trade-mark, term, design, device or form of advertisement, or keeps or has in his possession, with intent that the same shall be sold or disposed of, any goods, wares, merchandise or other product of labor to which, or on which, any such counterfeit or imitation is printed, painted, stamped or impressed, or knowingly sells or disposes of any goods, wares, merchandise or other product of labor contained in any box, case, can or package to which, or on which any such counterfeit or imitation is printed, painted, stamped or impressed, or knowingly sells or disposes of any goods, wares, merchandise or other product of labor contained in any box, case, can or package to which, or on which, any such counterfeit or imitation is attached, affixed, printed or painted, stamped or impressed, or keeps or has in his possession, with intent that the same shall be sold or disposed of, any goods, wares, merchandise or other product of labor in any box, case, can or package to which or on which any such counterfeit or imitation is attached, affixed, printed, painted, stamped or impressed, shall be punished by a fine or [of] not more than one hundred dollars or by imprisonment for not more than three months. (Id. § 11009.)

176. Trade-Mark and Label Filed With Secretary of State.—Any such person, association or union that has adopted or used a label, trade-mark, term, design, device or form of advertisement, as provided in the second preceding section, may file the same for record in the office of the Secretary of State by leaving two copies, counterparts or facsimiles thereof with said Secretary of State, and by filing therewith a sworn application specifying the name or names of the person, association or union on whose behalf such label, trade-mark, term, design, device or form of advertisement shall be filed; the class of merchandise and a description of the goods to which it has been or is intended to be appropriated, stating that the party so filing, or on whose behalf such label, trade-mark, term, design, device or form of advertisement shall be filed, has the right to the use of the same; that no other person, firm, association, union or corporation has the right to such use, either in the identical form or in any such near resemblance thereto as may be calculated to deceive, and that the facsimile or counterparts filed therewith are true and correct. There shall be paid for such filing and recording a fee of one dollar. The secretary shall deliver to such person, association or union so filing or causing to be filed any such label, trade-mark, term, design, device or form of advertisement,

as many duly attested certificates of the recording of the same as such person, association or union may apply for, for each of which certificates the Secretary of State shall receive a fee of one dollar. Any such certificate of record shall, in all suits and prosecutions under this chapter, be sufficient proof of the adoption of such label, trade-mark, term, design, device or form of advertisement. Said Secretary of State shall not record for any person, union or association any label, trade-mark, term, design, device or form of advertisement that would probably be mistaken for any other label, trade-mark, term, design, device or form of advertisement. (Id. § 11010.)

177. Penalty for Fraudulently Filing Label.—Any person who shall for himself, or on behalf of any other person, association or union, procure the filing of any label, trade-mark, term, design, or form of advertisement in the office of the Secretary of State under the provisions of this chapter, by making any false or fraudulent representations or declarations verbally or in writing, or by any fraudulent means, shall be liable to pay any damages sustained in consequence of any such filing, to be recovered by, or on behalf of the party injured thereby, in any court having jurisdiction, and shall be punished by a fine not exceeding one hundred dollars, or by imprisonment not to exceed three months. (Id. § 11011.)

178. Unauthorized Use of.—Any such person, association or union adopting or using a label, trade-mark, term, device or form of advertisement as aforesaid, may proceed by suit to enjoin the manufacture, use, display or sale of any counterfeits or imitations thereof, and all courts of competent jurisdiction shall grant injunctions to restrain such manufacture, use, display or sale, and may award the complainant in any such suit, damages resulting from such manufacture, use, sale or display as may be by the said court deemed just and reasonable, and shall require the defendants to pay to such persons, associations or union, all profits derived from such wrongful manufacture, use, display or sale, and such court shall also order that all counterfeits or imitations in the possession or under the control of any defendant in such cause be delivered to an officer of the court, or to the complainant, to be destroyed. (Id. § 11012.)

179. Penalty for Using Genuine Label Improperly.—Any person who shall use or display the genuine label, trade-mark, term, design, device or form of advertisement of any such person, association or union, in any manner not being authorized so to do by such person, union or association, shall be deemed guilty of a misdemeanor and shall be punished by imprisonment for not more than three months or by a fine of not more than one hundred dollars. In all cases where such associations or unions are not incorporated, suits under this chapter may be commenced and prosecuted by an officer or member of such association or union on behalf of, and for the use of, such association or union. (Id. § 11013.)

180. Penalty for Selling Goods Labeled Without Authority.—Any person who shall in any way use the name or seal of any such person, association or union, or officer thereof, in and about the sale of goods or otherwise, not being authorized to so use the same, shall be guilty of a misdemeanor and shall be punished by imprisonment for not more than three months, or by a fine of not more than one hundred dollars. (Id. § 11014.)

Weights and Measures.

181. False Increase of Weight.—Every person who puts or conceals in any bag, bale, box, barrel or other package of goods usually sold by weight any other thing whatever for the purpose of increasing the weight of such package shall be punished by a fine of twenty-five dollars for each offense. (C. S. 1921, § 2144.)

182. False Weights and Measures.—If any person with intent to defraud, use a false balance, weight or measure, in the weighing of measuring of anything whatever that is purchased, sold, bartered, shipped or delivered, for sale or barter, or that is pledged, or given in payment he shall be punished by a fine not exceeding one hundred dollars nor less than five dollars, or by imprisonment in the county jail not more than thirty days, or by both such fine and imprisonment, and shall be liable to the injured party in double the amount of damages. (Id. § 2196.)

183. Retaining Same Knowingly.—Any person who retains in his possession any weight or measure, knowing it to be false, unless it appears beyond a reasonable doubt that it was so retained without intent to use it or permit it to be used in violation of the last section, shall be punished as therein provided. (Id. § 2197.)

184. False Weights and Measures May be Seized.—Any person who is authorized or enjoined by law to arrest another person for violation of the first two sections of this article,* is equally authorized and enjoined to seize any false weights or measures found in the possession of the person so arrested, and to deliver the same to the magistrate before whom the person so arrested is required to be taken. (Id. § 2198.)

185. Weights May be Tested and Destroyed.—The magistrate to whom any weight or measure is delivered, pursuant to the last section, shall, upon the examination of the accused, or if the examination is delayed or prevented, without awaiting such examination, cause the same to be tested by comparison with standards conformable to law; and if he finds it to be false he shall cause it to be destroyed, or to be delivered to the county attorney of the county in which the accused is liable to indictment or trial, as the interests of justice in his judgment require. (Id. § 2199.)

186. Shall be Destroyed, When.—Upon the conviction of the accused, such county attorney shall cause any weight or measure in respect whereof the accused stands convicted and which remains in the possession or under the control of such county attorney, to be destroyed. (Id. § 2200.)

187. False Weight or False Tare.—Any person who knowingly marks or stamps false or short weight, or false tare on any cask or package or knowingly sells or offers for sale any cask or package so marked is guilty of a misdemeanor. (Id. § 2201.)

188. Enforced by Board of Agriculture.—The State Board of Agriculture shall be charged with the duties of enforcing the provisions of this chapter. (Id. § 11184.)

189. Weights of Legal Bushels; Ton.—Whenever the articles hereinafter named shall be sold by the bushel, and no agreement as to weights or measures thereof shall be made by the parties, the bushel shall consist of the following number of pounds, viz.: Salt, lime and mineral coal, eighty; corn in shuck, seventy-two; unshelled corn, seventy; wheat, beans, peas and split peas, beets, Irish potatoes, clover seed, including alfalfa and alsike (or Swedish), sixty; onions, fifty-seven; rye, shelled corn, flaxseed, green peas (unshelled), and kaffir corn, fifty-six; sweet potatoes, fifty-five; buckwheat, fifty-two; carrots, rutabagas, corn meal, millet, sorghum seed and rape, fifty; barley, apples, peaches, pears, cucumbers, Hungarian grass seed and broom corn seed, forty-eight; castor beans, forty-six; tomatoes and timothy seed, forty-five; parsnips and hemp seed, forty-four; common turnips, forty-two; Bermuda grass seed, forty; malt, thirty-eight; Osage orange seed, thirty-six; dried peaches, thirty-three; oats and cotton seed, thirty-two; top onion sets, twenty-eight; dried apples, twenty-four; peanuts, twenty-two; bran, twenty; the seed of blue grass, red top and orchard grass, fourteen; coke and charcoal, twenty-six hundred and eighty cubic inches per bushel. A ton shall consist of two thousand pounds of the article or commodity named. (Id. § 11185.)

190. Legal Ton of Hay.—A ton of hay shall consist of two thousand pounds, or, by measurement, three hundred and forty-three cubic feet, after the same shall have been stacked thirty days, or such time as may be agreed upon between the parties. (Id. § 11186.)

191. Standard Weights of Mill Products.—Mill products hereinafter mentioned shall have the following standard weights: Barrels of flour, in wood, one hundred and ninety-six pounds net; half barrels, in wood, ninety-eight pounds net; one-fourth barrels, in sack, forty-eight pounds gross; one-eighth barrels, in sacks, twenty-four pounds gross. Corn meal, in sacks, thirty-five pounds gross; half sacks, seventeen and one-half pounds gross; one-fourth sacks, eight and three-fourths pounds gross. And all feed made from cereals of any kind, whether pure, mixed or adulterated, one hundred pounds per sack gross. (Id. § 11188.)

192. Name and Weight Stamped on Package.—The correct name and true weight of the contents of each and every barrel, box, sack, bale, cask or package of any of the foregoing products, whether sold in single packages or lots, shall be plainly marked, branded or stenciled in letters and figures, not less than two inches in length and not less than one-eighth of an inch in width, upon the exterior of such barrel, box, sack, bale, cask or package, in a conspicuous place as the head in case of barrel, and the front or branded side in case of sacks, bales or packages, and it shall be unlawful for any person, firm or corporation, or the agent, employee or representative of any firm or corporation to sell or exchange any such

*See Nos. 182-183.

product so packed or contained until the provisions hereof have been complied with. (Id. § 11189.)

193. Violation; Punishment.—If any person shall knowingly violate the provisions of this chapter, he shall be deemed guilty of a misdemeanor, and on conviction thereof shall be fined in any sum not less than twenty-five dollars, nor more than one thousand dollars, and each violation shall be deemed a separate offense, which fine or fines shall be recovered in any court of competent jurisdiction, without bond or advance costs. (Id. § 11190.)

194. Obstructing Inspectors.—Any manufacturer, dealer or other person who shall impede, obstruct, hinder or otherwise prevent or attempt to prevent any inspector or other person in the performance of his duty in connection with this chapter shall be guilty of a misdemeanor and shall, upon conviction, be fined not less than twenty-five dollars, nor more than one hundred dollars. (Id. § 11191.)

195. Seizure of Products for Violations.—Any member of the board of agriculture shall have the privilege of seizing any mill product and cereal sold in the State in violation and contravention of the provisions of this chapter, and may proceed by writ of provisional seizure against the mill products and cereals so sold in the hands of whomsoever they may be and wheresoever he may find them, regardless of the residence of the owner thereof, to recover the fines and penalties due for the illegal sale thereof, by presenting a petition to a competent judge or magistrate, within whose jurisdiction said mill products and cereals are found, stating on oath at the foot of the petition the amount and nature of the demand, the mill products or cereals on which the privilege exists, and praying that the mill products and cereals be seized to satisfy the claim and pay the costs of the suit. (Id. § 11192.)

196. State Bureau Established; Officers; Location.—There shall be established a State Bureau of Standards of weights, measures and tests of all kinds. This bureau shall be located at the State University of Oklahoma, which shall provide rooms and equipment for its use. The president of the State University of Oklahoma shall appoint as director of the Bureau of Standards a member of the regular faculty of the university. Upon the recommendation of the director, the president of the State University of Oklahoma shall appoint at least two members from the faculty, as assistant directors. The director and assistant directors shall constitute a Board of Control, of the Bureau of Standards. The members of the Board of Control shall serve without salary. (Id. § 11193.)

197. Assistants.—In order properly to carry on the work of the Bureau of Standards, the president of the State University of Oklahoma shall upon the recommendation of the Board of Control, appoint as assistants to the Board of Control, men already in the service of the university, assigning to these men such titles as he desires. In case additional assistance is necessary, this assistance shall be supplied by the State Board of Education. (Id. § 11194.)

198. Standards and Methods; Federal Standards.—The Board of Control shall have charge of the various standards of weights [and] measures and testing devices received by the State of Oklahoma from the United States under a resolution of Congress, approved June 14, 1836, and July 27, 1866, and such additional standards as may or shall be received from the United States in the future. The board shall also have charge of the various State or office standards purchased by the State University, or by the State for the bureau.

The board shall also have charge and control of the standard methods of weighing, measuring and testing in the State. The Board of Control shall maintain the standards in good order and shall submit a set of standards, called the primary standards, at proper intervals, to the National Bureau of Standards for certification. (Id. § 11195.)

199. Powers and Duties; General Control.—The Bureau of Standards shall be available to all State departments, municipal and private corporations and citizens of the State. The bureau shall be, for the State of Oklahoma, the highest official authority in regard to standards of weights, measures and tests, and methods of weighing, measuring and testing. The findings of the Bureau of Standards in any case or question shall be considered prima facie evidence of the correctness thereof. All enforcing officers of weights, measures and tests legislation in the State of Oklahoma, shall submit their weighing, measuring, and testing devices to the State Bureau of Standards at such periods as set by the Board of Control for certification and seal. The Board of Control shall adopt a seal for this purpose. The Board of Control shall have authority to place any test or question referred to it to the proper individual or laboratory in the university. (Id. § 11196.)

200. Fees; Expenses.—The Board of Control shall establish fees for all tests and certifications made by the bureau. The fees shall in no case exceed those established for similar work by the National Bureau of Standards. The fees shall be paid to the treasurer of the university and shall be disbursed by him upon the proper approval of the board of making tests and for equipment. Any fees unspent at the end of each biennium shall revert to the State. (Id. § 11197.)

201. Information Published.—The bureau shall publish from time to time through the University of Oklahoma press for general distribution such literature and directions in regard to weights, measures and tests, and methods of weighing, measuring and testing as deemed advisable by the Board of Control. (Id. § 11198.)

202. Report to Governor.—The Board of Control shall report biennially to the Governor of the State—this report to cover the details of all operations of the bureau during the biennium. It shall report to each Legislature, making such recommendations as it deems advisable with reference to proper legislation on weights, measures and tests and methods of weighing, measuring and testing. (Id. § 11199.)

203. County Weigher; Duties.—Hereafter it shall be the duty of each county weigher, each public weigher, and each person, firm or corporation holding themselves out to the public as weighers of produce, together with the other duties of such weighers as now required by law, to make and keep a record of each and every mark, brand, letter, figure or other means of identification appearing upon each bale of cotton so weighed by such weigher, which record shall be kept and made accessible to any person desiring information regarding the identification of any such bale of cotton. (C. S. Supp. 1926, § 11199-1.)

204. Penalty.—Any person violating any of the provisions of this act shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined in any sum of not less than five ($5.00) dollars, nor more than twenty-five ($25.00) dollars, for the failure to make and keep such record, and each particular case shall constitute a separate offense. (Id. § 11199-2.)

205. Containers.—In order that the farmer may have the privilege of selling his wheat on State inspection where such arrangement can be made with the buyer, it shall be the duty of every mill, elevator or other buyer who buys and ships grain to keep on hand at all times a supply of air-tight containers that will hold approximately two quarts of grain, so that this much of the sample that is sent in for inspection will not lose its moisture before it has been graded. The grain dealer may charge the former for this container at cost price. (Id. § 11105-14.)

NOTE: See also No. 6 and the dairy law, No. 33 et seq.

PART V.

Cases.

1. General Food and Drug Law.

Liquor—Label Required by Federal Food and Drugs Act as Evidence: Gilliland v. State, 15 Okla. Cr. 635, 179 Pac. 786 (1919).

2. Special Food Laws.

Beverages—Jamaica Ginger: Gilliland v. State, 15 Okla. Cr. 635, 179 Pac. 786 (1919); Key v. State, 234 Pac. 791 (1925); Saddler v. State, 255 Pac. 719 (1927).

Hog Food—By-products of Restaurant As: See Bishop v. City of Tulsa, 21 Okla. Cr. 457, 209 Pac. 228, 27 A. L. R. 1008 (1922).

Meat—Sale of Diseased Meat: Kern & Standley v. State, 4 Okla. Cr. 484, 113 Pac. 214 (1910).

Meat—Slaughter for Sale—Failure to Inspect: State v. Clifford, 3 Okla. Cr. 419, 106 Pac. 557 (1910).

Meat—Slaughterhouse: Weaver v. Kuchler & Kuchler, 17 Okla. 189, 87 Pac. 600 (1906); *Kuchler et al. v. Weaver, 23 Okla. 420, 100 Pac. 915 (1909).

3. Special Drug Laws.

Narcotics: Harrison v. State, 12 Okla. Cr. 398, 157 Pac. 707 (1916); *Ex parte Bryson, 21 Okla. Cr. 152, 205 Pac. 190 (1921); Sullivan v. State, 21 Okla. Cr. 444, 209 Pac. 193 (1922); Alexander v. State, 218 Pac. 543 (1923); *Hurst v. State, 219 Pac. 151 (1923); *Carr v. State, 220 Pac. 479 (1923); Alexander v. State, 221 Pac. 516 (1924); *Stout v. State, 224 Pac. 375 (1924); Huffman v. State, 230 Pac. 272 (1924); *Gaines v. State, 230 Pac. 946 (1924); Barr et al. v. State, 231 Pac. 322 (1924); Ex parte Clarke, 236 Pac. 66 (1925); Smith v. State, 240 Pac. 656 (1925); Gilbert v. State, 240 Pac. 758 (1925); Pitts v. State, 241 Pac. 1117 (1925); Adams v. State, 243 Pac. 258 (1926); Jefferson v. State, 244 Pac. 460 (1926); Scruggs v. State, 244 Pac. 838 (1926); Briggs v. State, 246 Pac. 655 (1926); Thomas v. State, 246 Pac. 658 (1926); McDaniels v. State, 253 Pac. 1041 (1927); Baker v. State, 254 Pac. 512 (1927); Brady v. State, 254 Pac. 513 (1927).

Pharmacy: Erwin v. State, 19 Okla. Cr. 297, 200 Pac. 250 (1921.)

4. Civil Action to Recover Damages for Injury Alleged to Have Been Caused by Consumption or Use of Product.

Feeding Stuffs: Coyle & Smith v. Baum, 3 Okla. 695, 41 Pac. 389 (1895).

Food: See Wood & Co. v. Val Blatz Brewing Co., 112 Okla. 119, 240 Pac. 115 (1925); Northern Implement & Produce Co. v. Turner-Clinton Co., 117 Okla. 136, 245 Pac. 646 (1926).

Hog Cholera Serum: Eagle Biological & Supply Co. et al. v. Breed, 90 Okla. 7, 215 Pac. 424 (1923).

5. Miscellaneous.

Cigarettes: Allen v. State, 10 Okla. Cr. 75, 133 Pac. 1138 (1913).

Convict-Made Goods: *Choctaw Pressed Brick Co. v. Townsend et al., 108 Okla. 235, 236 Pac. 46 (1925).

Gift-Enterprise: Conqueror Trust Co. v. Simmon, 62 Okla. 252, 162 Pac. 1098 (1917).

Trade-Marks: See O. K. Bus & Baggage Co. v. O. K. Transfer & Storage Co., 63 Okla. 311, 165 Pac. 136, L. R. A. 1918A, 956 (1916); Edward C. Hofstra Co. et al. v. Hofstra Manufacturing Co., 251 Pac. 745 (1926).

Weights and Measures: *Oklahoma City et al. v. Colt, 40 Okla. 202, 137 Pac. 359 (1913); *Taylor v. Anderson et al., 40 Okla. 316, 137 Pac. 1183, 51 L. R. A. (N. S.) 731 (1914); Inland Compress Co. et al. v. Lee, 47 Okla. 101, 147 Pac. 775 (1915); *Lockhart et al. v. Anderson et al., 62 Okla 209, 162 Pac. 946 (1917); *Interstate Compress Co. v. Colley, 88 Okla. 42, 211 Pac. 413 (1922); Hollis v. Adams Gin Co. et al., 115 Okla. 25, 241 Pac. 744 (1925). See also: Sapulpa Co. v. Kimball & Reading, 59 Okla. 93, 158 Pac. 935 (1916); Oklahoma Hay & Grain Co. v. T. D. Randall & Co., 66 Okla. 277, 168 Pac. 1012 (1917); Snyder Co-operative Association v. Brown et al., 70 Okla. 13, 172 Pac. 789 (1918).

OREGON.*

PART I.

General Food and Drug Law.

1. **Dairy and Food Commissioner—Election, Term, Salary and Expenses.**—At the general election held in November, 1916, and every four years thereafter, there shall be elected by the electors of the State of Oregon a commissioner who shall be known as the "Dairy and Food Commissioner," who shall hold his office for a term of four years and until his successor is elected and qualified, who shall qualify within thirty days from the time of his election by taking and filing with the Secretary of State an oath to faithfully perform the duties of said office, and who shall receive for his services a salary of $4,000 per year from and after the passage of this act, and his actual traveling, office and other expenses, incurred in the discharge of the duties of his office, not to exceed twenty-two hundred dollars ($2,200) per year, said money to be used in the expenses actually incurred in the performance of the duties connected with the execution of the work pertaining to the office and to be allowed and paid upon vouchers verified under oath and filed with the Secretary of State; provided, however, that the present Dairy and Food Commissioner, elected at the general election held in November, 1924, shall continue to hold such office until his successor is elected and qualified and shall have all power and perform all duties of the Dairy and Food Commissioner herein provided; and the expense fund of twenty-two hundred dollars ($2,200) herein provided shall be available at once. (Ore. Laws 1920, § 8653, as amended L. 1927, c. 221.)

2. **Commissioner's Duties—Authority to Inspect and Purchase Samples—Shall Report on Samples—Inspect Creameries, Etc.**—Said commissioner shall perform all the duties provided in this act, and shall enforce its provisions. In the performance of said duties he, his deputies and such other persons as he may authorize to act in his behalf, shall have access, ingress and egress to all places or things where any food or dairy product is stored, kept, prepared, compounded, manufactured, transported, sold or offered or exposed for sale. And he shall also have the power and authority to open any package, case or vessel containing such article, which may be manufactured, kept, exposed or offered for sale or sold, and any owner or person in possession of such package, case or vessel, containing articles of food, shall deliver to the Dairy and Food Commissioner or his deputy any sample of food or drink, for analysis or testing, upon a tender of the price thereof, in money.

The Dairy and Food Commissioner, or other State, city or town officer, who obtains a sample of a food product for analysis shall, within ten days after obtaining the result of said analysis, send it to the person from whom the sample was taken or to the person who is responsible for the condition of such food product; provided, that nothing in this act shall prohibit any person or persons from whom samples are taken for proof and analysis requiring the Dairy and Food Commissioner or such other officer to leave a similar sample with said person or persons, duly sealed with the seal of said officer; when requested, a duplicate sample duly sealed shall be delivered to the person in possession of, or responsible for, such adulterated food at the time said sample was taken. It shall be the further duty of the Dairy and Food Commissioner, in person or by deputy, to visit and inspect as often as practicable and at least once in every year, every creamery and cheese factory operated within the State of Oregon, and he shall also visit and inspect in person or by deputy, as often as practicable, the several dairy herds of the State, and the methods of feeding, caring for and stabling the same, and disseminate such information as may be calculated to develop the dairy industry within the State. (Ore. Laws 1920, § 8654, as amended L. 1921, c. 262, § 2.)

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*CITATIONS: "Ore. Laws 1920" refers to the Oregon Laws of 1920, compiled and annotated by Olson and published by authority of Chapter 266, Laws of 1919. "L." refers to the session laws of the year cited.

3. **Commissioner Shall Establish Office—Shall Keep Account of Business—Report to Legislature.**—The Dairy and Food Commissioner shall establish and maintain his office in the city of Portland, Oregon, and shall keep full and accurate account of all business done by him, his deputies, chemist and agents, and shall report the same to the Legislature. (Ore. Laws 1920, § 8655.)

4. **Shall Publish Quarterly Bulletin.**—It shall be the duty of the Dairy and Food Commissioner to publish a quarterly bulletin containing a report of all analytical and chemical examinations made by him or under his direction of food products or drinks found or offered for sale in the markets of the State, which report shall include the name of the brand examined, the name and address of the manufacturer and shall state whether the same is pure or adulterated, properly branded, or misbranded, and he shall publish in said bulletin all food standards, rules and regulations made and promulgated by him for the purpose of enforcing any of the provisions of this act. The necessary expense therefor shall be paid out of the general fund of the State. (Id. § 8656.)

5. **Shall Appoint Deputies and Clerks.**—The Dairy and Food Commissioner may, at any time after the passage of this act, appoint a chief deputy who shall receive for his services the salary of $1,200 per annum; one deputy who shall have the qualifications of a chemist and who shall receive for his services a salary of $1,200 per annum; one deputy who shall be learned in the science of modern butter and cheese manufacture, and shall be a graduate of the dairy department of an agricultural college, or shall have had at least two years' experience in practical butter and cheese making, and who shall receive for his services a salary of $1,200 per annum; and three deputies who shall be versed in modern scientific and practical dairy husbandry, and who shall have had at least two years' actual experience in the management of a dairy or shall be graduates from the dairy department of an agricultural college, each of whom shall receive for his services a salary of $1,200 per annum; and such number of special deputies, as he may determine; such special deputies shall receive no salary for their services, but shall have all the power and authority of other deputies provided for in this act; and a clerk who shall have the qualifications of a stenographer and who shall receive for his salary not to exceed $800 per annum. The Dairy and Food Commissioner shall have the authority to appoint, in addition to those hereinbefore provided for, one deputy, who shall be versed in modern scientific and practical dairy husbandry and cheese manufacture, and who shall have had at least two years' actual experience in the management of a dairy or shall be a graduate from the dairy department of an agricultural college, who shall be assigned to duty exclusively in Tillamook county in connection with Tillamook County Creamery Association, and who shall receive a salary to be fixed by the county court of Tillamook county, but not to exceed $2,400 per annum, out of which he shall pay all expenses incurred in the performance of his duties, to be paid from the general fund of said county in the same manner that other county officers are now paid. It shall be the duty of such deputy to visit and inspect, as often as practicable, and at least once in every year, every cheese factory, dairy, dairy herd and dairy barn in Tillamook county; to disseminate such information as may be calculated to develop the dairy and cheese industries within said county; and to report to the Dairy and Food Commissioner to Tillamook County Creamery Association concerning the methods of feeding, caring for and stabling herds, and the care of the milk and equipment used in connection therewith, both in the dairies and in the cheese factories, together with his recommendations concerning the same. The Dairy and Food Commissioner shall have authority to employ such additional clerical help as may be necessary and proper; provided, however, that he shall not expend for such purposes more than two hundred dollars ($200) in any one year. (Id. § 8657.)

6. **Additional Provision on Subject of Previous Section.**—The Dairy and Food Commissioner may at any time after the passage of this act appoint a chief deputy, one deputy who shall have the qualifications of a chemist, one deputy who shall be learned in the science of modern butter and cheese manufacture and shall be a graduate of the dairy department of an agricultural college or shall have had at least two years' experience in practical butter and cheese making, and three deputies who shall be versed in modern scientific and practical dairy husbandry, and who shall have had at least two years' actual experience in the management of a dairy or shall be graduates from the dairy department of an agricultural college; and such number of special deputies as he may determine; such special deputies shall receive no salaries for their services, but shall have all the power and authority of other deputies provided for in this act; and a clerk who shall have the qualifications of a stenographer, each of whom shall receive for his services a salary to be fixed by the Dairy and Food Commissioner. The Dairy and Food Commissioner shall have authority to employ

such additional clerical help as may be necessary and proper. The Dairy and Food Commissioner shall have the authority to appoint, in addition to those hereinbefore provided for, one deputy who shall be versed in modern scientific and practical dairy husbandry and who shall have had at least two years' actual experience in the management of a dairy or who shall be a graduate of the dairy department of an agricultural college, who shall be assigned to duty exclusively in Coos county, and who shall receive a salary not to exceed $1,800 per annum, to be fixed by the county courts of Coos and Curry counties, to be paid out of the general funds of said counties in the manner that other county officers are now paid. It shall be the duty of such deputy to visit and inspect as often as practicable, and at least once in every year, every dairy, dairy herd and dairy barn in said county, to disseminate such information as may be calculated to develop the dairy, cheese, butter and milk industry within said county and to report to the Dairy and Food Commissioner concerning sanitary conditions of stable, milk houses, other buildings and utensils used in connection therewith, and to make recommendations concerning the same. (Id. § 8658, as amended L. 1921, c. 300.)

7. Deputies Shall File Oath.—Each of said deputies shall take and file with the Secretary of State an oath that they possess the qualifications herein prescribed for their respective positions and that they will faithfully perform the duties assigned to them, and they, and the said clerk, shall hold their appointments at the pleasure of the Dairy and Food Commissioner. (Ore. Laws 1920, § 8659.)

8. Deputies' Authority and Duty.—Said deputies shall have the power and authority and it shall be their duty to perform all duties assigned to them by the Dairy and Food Commissioner and their acts while so engaged shall have the same force and effect as though performed by the Dairy and Food Commissioner personally. (Id. § 8660.)

9. Deputies' Traveling Expenses.—There shall also be paid to each of said deputies his necessary and actual expenses incurred in the discharge of his official duties, on the approval of the Dairy and Food Commissioner; provided, such expenses do not exceed in the aggregate a sum equal to a sum which in the aggregate shall not exceed one thousand dollars ($1,000) each per year. (Id. § 8661, as amended L. 1921, c. 262, § 3.)

10. Persons Shall Render Assistance to Dairy and Food Commissioner—No Person Shall Interfere.—All clerks, bookkeepers, express agents, railroad officials, and employees of common carriers shall render the Dairy and Food Commissioner and his deputies all the assistance in their power in tracing, finding or discovering the presence or disposition of any food product and the name and address of any shipper or consignee of any food product. Any person who hinders or interferes with the Dairy and Food Commissioner, his deputy or agent in the performance of his duties in the enforcement of this act shall be deemed guilty of a violation of this act. (Ore. Laws 1920, § 8662.)

11. Shall Not Connive or Assist in Violation.—It shall be unlawful for the Dairy and Food Commissioner, or any of his deputies, inspectors, agents or employees to connive or assist in the violation of any of the provisions of this act. (Id. § 8663.)

12. Shall Not be Interested in Business.—It shall be unlawful for the Dairy and Food Commissioner, or any deputy, chemist, clerk, or assistant under him, to be directly or indirectly interested in any manner as proprietor, partner, salesman, agent or employee in the manufacture, sale, handling, or shipping of any food, drink or dairy product. (Id. § 8664.)

13. Commissioner Shall Prosecute—May Employ Experts—Not Required to Give Security.—It shall be the duty of the Dairy and Food Commissioner to prosecute any person violating any provisions of this act, and for this purpose the Dairy and Food Commissioner may, if necessary, employ experts, and may further designate some person connected with his office, or some other suitable person, to make complaints in his behalf; and in making complaints for violation of this act the person so designated shall not be required to enter into any recognizance or to give security for the payment of costs. (Id. § 8665.)

14. Commissioner Shall Make Rules and Regulations.—It shall be the duty of the Dairy and Food Commissioner to make uniform rules and regulations for the purpose of carrying out and enforcing the provisions of this act, and he shall cause such rules and regulations to be published in the quarterly bulletin, hereinbefore provided for, but such rules and regulations shall not go into effect until thirty days have elapsed after their publication. (Id. § 8666.)

15. Commissioner Shall Adopt Standards.—It shall be the duty of the Dairy and Food Commissioner from time to time to adopt and establish standards of quality, purity, and strength of articles of food, liquor and drinks, for which no standards

are prescribed by law, and such standards so adopted and established by the Dairy and Food Commissioner shall, in no case, be higher than those provided by the United States Department of Agriculture, and he shall cause such standard so established to be published in the quarterly bulletin hereinbefore provided for. Any person who shall store, keep, sell, offer or expose for sale any articles of food, liquor or drink which falls below such standard so established shall be deemed guilty of a violation of this act and punished accordingly; provided, however, such standards shall not be effective until thirty days shall have elapsed after their publication. (Id. § 8667.)

16. Commissioner Shall Seize and Hold Articles of Food—How Disposed of if Adulterated.—It shall be the duty of the Dairy and Food Commissioner and his deputies to seize and hold any articles of food stored, sold, kept, offered or exposed for sale in violation of any of the provisions of this act; and immediately thereafter he shall give notice in writing of such seizure to the owner or person from whose possession such article of food was taken and such owner or person may thereafter appear before the commissioner at such time as the commissioner may set, but not exceeding ten days from the giving of said notice, and show cause why such article shall not be confiscated. If it shall appear at such hearing that such article is being stored, sold, kept, offered or exposed for sale contrary to the provisions of this act, said article shall be confiscated and disposed of as hereinafter provided, and if not, the same shall be returned to the owner or person from whose possession it was taken. If the Dairy and Food Commissioner shall determine that such article is being stored, sold, kept, offered or exposed for sale in violation of any of the provisions of this act, then such article shall be destroyed unless the owner shall execute and deliver to the Dairy and Food Commissioner a good and sufficient bond to the effect that such article shall not be sold, disposed of or used contrary to the provisions of the laws of the State of Oregon and the rules and regulations promulgated thereunder. The owner or person in the possession of any article of food so ordered confiscated and destroyed shall have the right to appeal from the decision of the Dairy and Food Commissioner to the Circuit Court in the same manner and upon the same conditions as civil causes may be appealed to said court from the justice courts. If any seized article be found adulterated or misbranded, not being unwholesome or unfit for food, the owner thereof may obtain possession of the same by relabeling and rebranding the same in compliance with law and the rules and regulations of the Dairy and Food Commissioner. It shall be unlawful for any person to remove, deface, cancel, or conceal any brand, label or mark placed, or caused to be placed upon any article of food or its container by the Dairy and Food Commissioner, his deputy or agent. (Id. § 8668.)

17. Chemist of Agricultural College Shall Analyze and Test.—It shall be the duty of the chemist of the State Agricultural College to correctly analyze and test any and all of the substances the said Dairy and Food Commissioner may send him for such purposes and the certificate of analysis or test of said chemist, duly signed and certified to by him, shall be prima facie evidence in all courts of justice of the matters and facts certified to therein. (Id. § 8669.)

18. Certificate of Analysis Prima Facie Evidence.—The certificate of analysis or tests, made by the Dairy and Food Commissioner or his deputies, of any food product, duly signed and certified to by said Dairy and Food Commissioner or his deputy, shall be prima facie evidence in all the courts of justice of the matters and facts certified to therein. (Id. § 8670.)

19. Fines—How Disposed of.—In all prosecutions under this act, the fine or fines collected by and under the same shall be transmitted by the officer collecting the same to the State Treasurer at the State Capitol, and which fine or fines so remitted shall become a part of the general fund of the State, and all other fees and payments made to the Dairy and Food Commissioner shall be disposed of and accounted for in the same manner as such fines. (Id. § 8671.)

20. Adulterated Food—Sale Prohibited.—No person shall within this State manufacture for sale, have in his possession with the intent to sell, offer or expose for sale, or sell, any article of food which is adulterated within the meaning of this act. The taking of orders or the making of any agreement or contract by any person, firm or corporation, or by an agent or representative thereof for the future delivery of any of the articles, products, goods, wares, merchandise, embraced within the provisions of this act, shall be deemed a sale within the meaning of this act. (Id. § 8672.)

21. The Term "Food" Shall Include.—The term "food" as used herein, shall include all articles used for food or drink, or intended to be eaten or drank by man, whether simple, mixed or compound. (Id. § 8673.)

22. Food Deemed Adulterated, When.—An article shall be deemed to be adulterated within the meaning of this act:

First—If any substance has been mixed with it so as to lower or depreciate or injuriously affect its quality, strength or purity.

Second—If any inferior or depreciating substance has been substituted wholly or in part for it.

Third—If any valuable or necessary constituent or ingredient has been wholly or in part abstracted from it.

Fourth—If it is [in] imitation of or sold under the name of another article.

Fifth—If it consists wholly or in part of filthy, diseased, decomposed, putrid, tainted or rotten animal or vegetable substance or article, whether manufactured or not; or, in the case of milk, if it is the product of a diseased animal.

For the purpose of this act, the term "filthy" shall be deemed to apply to food not securely protected from flies, dust, dirt and, as far as may be necessary, by all reasonable means, from all foreign or injurious contaminations.

Sixth—If it is colored, coated, polished or powdered, whereby a damaged or inferior article is sold for an article of greater value than it really is, or if by any means it is made to appear better or of greater value than it really is.

Seventh—If it contains any added substance or ingredient which is poisonous or injurious to health.

Eighth—Butter that contains more than sixteen per cent water.

Ninth—Butter that contains less than eighty (80) per cent of milk fat.

Tenth—Milk that contains more than eighty-eight (88) per cent water.

Eleventh—Milk that contains less than three and two-tenths (3.2) per cent butter fat.

Twelfth—Milk that contains less than eight and five-tenths (8.5) per cent solids, other than butter fat.

Thirteenth—Ice cream that contains less than eight (8) per cent butter fat, except as otherwise provided in this act.

Fourteenth—Milk drawn from cows within fifteen days next before and five days after parturition, or from cows fed on unwholesome food, or the flesh of any calf that has been slaughtered under the age of four weeks.

Fifteenth—Cream that contains less than eighteen (18) per cent butter fat.

Sixteenth—Candy containing terra alba, barytes, talc, chrome yellow or any other mineral substances, poisonous color, or flavor or other ingredient injurious or detrimental to the health of consumers.

Provided, that nothing in this act shall prevent the coloring of pure butter, cheese or ice cream with harmless coloring matter; provided, further, that the provisions of subdivisions first, second and third of this section shall not apply to a mixture or compound recognized as ordinary articles or ingredients of food in which every package sold or offered for sale has the name and address of the manufacturer and is distinctly labeled under its own distinctive name and in a manner to plainly and correctly show that it is a mixture or compound. (Id. § 8674.)

23. Possession of Food Prima Facie Evidence.—The possession by a manufacturer, dealer or distributor of foodstuffs of [or] any article of food adulteration as herein described, and not labeled as herein required is prima facie evidence of a violation of this act. (Id. § 8675.)

24. Misbranded Food—Unlawful to Sell.—It shall be unlawful for any person, firm or corporation to manufacture, sell or offer or expose, or have in possession with intent to sell within this State, any article of food which is misbranded within the meaning of this act, and possession by any manufacturer, dealer or distributor of any such misbranded article of food shall be prima facie evidence of a violation of this act. (Id. § 8686.)

25. "Misbranded" Term Defined—Food, When Deemed.—The term "misbranded," as used herein, shall apply to all articles of food or articles which enter into the composition of food, the package or label of which bears any statement, design, or device regarding such article, or the ingredients or substance contained therein which shall be false or misleading in any particular, and to any food product which is falsely branded as to the State, territory, county or country in which it is manufactured or produced. That, for the purpose of this act, an article shall be deemed to be misbranded:

First—In case of drugs:* If its package or label shall bear or contain any statement, design or device regarding the curative or therapeutic effect of such article or any of the ingredients or substances contained therein which is false and fraudulent.

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*This is the only reference to drugs in the law here stated. Otherwise it relates to foods. For the general drug law, see also Nos. 31 and 253 et seq. Note Hoefler v. Mickle, 78 Ore. 399, 153 Pac. 417 (1915).

Second—If it be an imitation, or offered for sale under a distinctive name of another article.

Third—If it be labeled, branded, or placarded so as to deceive or mislead the purchaser, or purport to be foreign product when not so, or if the contents of the package as originally put up shall have been removed in whole or in part, and other contents shall have been placed in such package, or if it fail to bear a statement on the label of the quantity or proportion of any alcohol, morphine, opium, cocaine, heroin, formaldehyde, saccharine, salicylic acid, boric acid, alpha or beta eucaine, cannabis indica, chloral hydrate, acetanilide or any derivative or preparation of any such substances, or any other poisonous acid or substance.

Fourth—If in package form, the quantity of the contents be not plainly and conspicuously marked on the outside of the package in terms of weight, measure, or numerical count; provided, however, that reasonable variations shall be permitted; and tolerance shall be established by rules and regulations made in accordance with the provisions of section 8666. No geographical name shall be used in connection with a food product not manufactured or produced in that place, when such name indicates that the article was manufactured or produced in that place; provided, that the use of the geographical name in connection with a food product shall not be deemed a misbranding when by reason of long usage such name has come to represent a generic term, and is used to indicate a style, type or brand, but in all such cases the State, territory or country where any such article was manufactured or produced shall be stated upon the label. The size of the type shall not be smaller than eight point capitals; provided, that in case the size of the package will not permit the use of said type the size of the type may be reduced proportionately.

Fifth—If the package or its label shall bear any statement, design or device regarding the ingredients or substance contained therein, which statement, design or device be false or misleading in any particular; provided, that an article of food which does not contain any added poisons or deleterious substance shall not be deemed to be adulterated or misbranded in the following cases: (1) In case of mixtures or compounds which may be now or from time to time known as articles of food, under their own distinctive name, and not an imitation of or offered for sale under a distinctive name of another article, if the name be accompanied on the same label or brand with a statement of the name and address of the manufacturer and the place where said article was manufactured or produced. (2) In case of articles labeled, branded or tagged so as to plainly indicate that they are compounds, imitations or blends, and the word "compound," "imitation" or "blend" as the case may be, is plainly stated on the package in which it is offered for sale; provided, that the blend as used therein shall be construed to mean a mixture of like substances, not excluding harmless coloring or flavoring ingredients used for the purpose of coloring and flavoring only; and, provided further, that nothing in this act shall be construed as requiring or compelling proprietors or manufacturers of proprietary foods which contain no unwholesome and added ingredients, to disclose their trade formulas, except in so far as the provisions of this act may require to secure freedom from adulteration or misbranding. (Id. § 8687.)

26. False Branding or Removing of Label Illegal.—Whoever shall falsely brand, mark, stencil or label any article required by this act to be branded, stenciled or labeled, or shall remove, alter, deface, mutilate, obliterate, imitate or counterfeit any brand, mark, stencil, or label so required, shall be deemed guilty of a violation of this act. (Id. § 8688.)

26a. Benzoate of Soda in Catsup and Other Foods.—No person shall within this State manufacture for sale, offer for sale, have in possession with intent to sell, or sell, any tomato catsup, containing more than one-tenth of one per centum of sodium benzoate, the presence of which said one-tenth of one per centum shall in every case be stated on the label of said tomato catsup in type as large or larger than eight-point; provided, that the provisions of this section shall also apply to such other articles of food or drink as the Dairy and Food Commissioner may from time to time determine cannot be successfully marketed without the addition of the aforesaid sodium benzoate in the said percentage of not more than one-tenth of one per centum. (Id. § 8690.)

27. Civil Action to Recover Purchase Price.—From and after the passage of this act in all civil actions to recover the purchase price of any product used for food or drink by man, it shall be competent for the defendant, in every such case, to prove that said product was adulterated or misbranded within the meaning of this act, and proof thereof being made shall amount to a good and legal defense to the plaintiff's demand. (Id. § 8696.)

27a. Guaranty by Manufacturer or Jobber to Protect Dealer.—No dealer shall be prosecuted for the violation of the provisions of this act when he can establish a guaranty signed by a wholesaler, jobber or manufacturer or other party from whom he purchased such article of food or feed, if such wholesaler, jobber, manufacturer or other party be a resident, and inhabitant of this State, to the effect that the same is not adulterated or misbranded within the meaning of this act, designating it. Said guaranty, to afford such protection, shall contain the name and address of the party or parties making the sale of such articles to such dealer and in such case said party or parties making the sale of such article shall be amenable to the prosecution, fines, or other penalties which would attach in due course to the dealer under the provisions of this act. (Id. § 8753.)

28. Penalty for Violation.—Any person who shall by any act whether of commission or omission violate any of the provisions of this act shall be deemed guilty of a misdemeanor and upon conviction shall be punished by a fine of not less than ten dollars ($10) nor more than one thousand dollars ($1,000) or by imprisonment in the county jail not exceeding one year or by both such fine and imprisonment; provided, however, that upon a second conviction for the violation of any of the provisions of this act such person shall be punished by a fine of not less than fifty dollars ($50) nor more than one thousand dollars ($1,000) or by imprisonment in the county jail for not less than ten days nor more than one year or by both such fine and imprisonment. (Id. § 8754.)

29. Word "Person" Defined.—The word "person" as used in this act includes corporations, firms, partnerships, and associations as well as natural persons; and the singular number includes the plural, and the plural the singular. (Id. § 8755.)

30. Justice Courts, Municipal Courts, District Courts, Jurisdiction.—Justice courts, district courts, and municipal courts sitting as justice courts shall have concurrent jurisdiction with the circuit courts of all prosecutions arising under this act. The district or county attorney is authorized to institute prosecutions for violations of this act by information or the same may be instituted by indictment or by complaint verified before any magistrate. (Id. § 8756.)

Miscellaneous General Provisions.

31. Adulterating Drugs so as to Render Injurious to Health.—If any person shall adulterate for the purpose of sale any drug or medicine, in such manner as to render the same injurious to health, or shall knowingly sell or offer for sale any such adulterated drug or medicine, such person, upon conviction thereof, shall be punished in the manner provided in section 2224,* and such adulterated drugs or medicines shall be forfeited and destroyed. (Ore. Laws 1920, § 2226.)

32. Bacteriological Examinations by Laboratory of State Board of Health of Water, Milk, Etc.—For Whom.—For the better protection of the public health the laboratory of the State Board of Health shall make such bacteriological examinations of water, milk, blood, secretions and tissues required by any State, county or city institution or officer, or for any regularly licensed physician in accordance with the rules and regulations of the State Board of Health. (Id. § 8480.)

NOTE: See also Nos. 178, 270 and 410.

PART II.

Special Food Laws.

Apples.

See No. 433 et seq.

Baking Powder.

33. Baking Powder—Ingredients Must be Named.—It shall be unlawful for any person to sell, offer or expose for sale any baking powder whether made within the State or without the State which does not have printed on the label in plain

*Repealed.

English, free from all technical or chemical phrases (unless accompanied by its English equivalents of the same import or meaning), the names of all the ingredients composing said baking powder. (Ore. Laws 1920, § 8691.)*

Beverages.

34. Cider.—No person shall manufacture, sell, expose or offer for sale, cider or any preparation thereof containing salicylic acid, formalin, preservative, antiferment, or any other drug, chemical, or substance that is injurious to health. (Ore. Laws 1920, § 8685.)*

35. Certain Beverages Deemed Adulterated.—All wines containing alcohol, except such as have been produced by natural fermentation of pure, undried fruit juices, or combined with distilled spirits, whether denominated wines, or by any other name, which may be used as a beverage, or combined with other liquors intended for use, and all compounds of the same with pure wine, and all preserved juices and compounded with substances not produced from undried fruit, intended for use as a beverage, or for use in the fermentation or preparation of liquors intended for such use, and all wines, imitations of wines or other beverages produced from fruit which shall contain alum, baryta, salts, caustic lime, carbonate of soda, carbonic acid, salts of lead, glycerine, salic acid, or any other antiseptic coloring matter not produced from undried fruit, artificial flavoring, essence of ether, or any other foreign substance injurious to health shall be known as or deemed to be adulterated wine, and shall not be sold, offered for sale, or manufactured with intent to sell within the State. All such wine and every such beverage shall be deemed a public nuisance and forfeited to the State and summarily seized and destroyed by any health officer within whose jurisdiction it shall be found, and the reasonable expense of such seizure shall be a county charge. (Id. § 8693.)*

36. Pure Wine Defined.—For the purpose of this act, pure wine shall be deemed to mean the fermented juice of undried grapes or other undried fruits, but the addition of pure sugar to perfect wine or distilled wine to preserve it, not to exceed eight per cent of its value, or the use of things necessary to clarify or refine the wine, not injurious to health, shall not be construed as adulteration if such wine contain at least seventy-five per cent of pure grape or other undried juices. (Id. § 8694.)*

37. Half Wine.—For the purpose of this act, any wine that contains less than seventy-five per cent and more than fifty per cent of pure grape or other undried fruit juice, and is otherwise pure, shall be known as half wine, and upon each and every package of such wine manufactured with intent to sell, sold or offered for sale within this State, if containing more than three gallons, there shall be stamped on both ends of the package containing the same, in black printed letters at least one inch in height, the proper proportion in width, the words "Half Wine," and if containing more than one quart and not more than three gallons, there shall be stamped on each package in plain printed black letters at least one-half inch high, and of the proper proportion as to width, the words "Half Wine," and in a package or bottle of one quart or less, there shall be placed a label, securely pasted thereon, having the words "Half Wine" plainly printed in black letters, at least one-quarter of an inch high, and of the proper proportions as to width. If any number of small packages are inclosed in a larger package, as a box, barrel, case or cask, such outside package shall have thereon the stamp "Half Wine" in letters of a size according to the size of such outer package. Every person who shall sell, offer for sale, or manufacture with intent to sell, any wine containing less than fifty per cent of pure grape or other undried fruit juice, and otherwise pure, shall cause all the packages containing the same to be stamped, marked and labeled with the words "Made Wine," so required in this section to be stamped, marked and labeled, and all such wine shall be known and sold as "Made Wine." (Id. § 8695.)*

NOTE: See also Nos. 32, 99 et seq., 169, 227a et seq., 228 et seq., and 286 et seq.

Bread—Bakery Products.

38. Standardizing the Weights of Bread.—No person, firm or corporation shall hereafter manufacture, sell, offer or expose for sale bread, except in the following weights, which shall be net weights twelve hours after baking: One pound, one and one-half pounds, two pounds, three pounds, four pounds and five pounds, or

*For penalty, see No. 28.

other pound weights. Variations at the rate of one ounce per pound over, and one ounce per pound under above specified unit weights are permitted in individual loaves, but the average weight of not less than twenty-five loaves of any one unit of any one kind shall not be less than the weight prescribed by these regulations for such unit. (Ore. Laws 1920, § 2180-6.)

39. Same—Exchange of Sold Products Forbidden.—No person, firm or corporation engaged in the manufacture of bread, or other bakery products, for sale, shall hereafter, directly or indirectly, accept under any guise or arrangement whatever, returns of bread or other bakery products from any person, firm or corporation, nor make cash payments, nor allow credit to any retailer or other person for any unsold bread or other bakery products; nor shall any manufacturer of bread or other bakery products exchange any bread or other bakery products for other bread or other bakery products previously sold by said manufacturer. (Id. § 2180-7.)

40. Same—Courts Given Jurisdiction.—Justice courts, district courts and municipal courts sitting as justice courts, shall have concurrent jurisdiction with the circuit courts of all prosecutions arising under sections 2180-6 and 2180-7. The district or county attorney is authorized to institute prosecutions for violation of this act by information, or the same may be instituted by indictment or by complaint verified before any magistrate. It shall be the duty of the Dairy and Food commissioner to enforce all the provisions of this act. (Id. § 2180-8.)

41. Same—Penalty.—Any person who shall violate any of the provisions of sections 2180-6 to 2180-8 shall be deemed guilty of a misdemeanor and upon conviction shall be punished by a fine of not less than ten dollars ($10) nor more than one thousand dollars ($1,000) or by imprisonment in the county jail not exceeding one year, or by both such fine and imprisonment; provided, however, that upon a second conviction for the violation of any of the provisions of this act such person shall be punished by a fine of not less than fifty dollars ($50) nor more than one thousand dollars ($1,000) or by imprisonment in the county jail for not less than ten days nor more than one year, or by both such fine and imprisonment. (Id. § 2180-9.)

NOTE: See also Nos. 140, 178 and 228 et seq.

Canned Goods.

42. Canned or Preserved Fruit.—No packer or dealer in preserved or canned fruits, vegetables or other articles of food, shall sell, expose or offer for sale, such canned articles, unless such articles shall be entirely free [from] substances or ingredients deleterious to health. (Ore. Laws 1920, § 8678.)*

43. Packers of Fruit or Vegetables Must Label them as "Oregon Grown" or "Packed in Oregon."—All persons, firms or corporations operating under their own private brand in the State of Oregon in the business of packing or canning fruit or vegetables, either fresh, canned, evaporated or otherwise, shall plainly designate on such private brand that goods were Oregon grown or packed in Oregon. For the purpose of this act it will be sufficient for the firms whose headquarters are in Oregon to either designate the local address of the cannery or to designate the location of their main office in the State of Oregon. This act shall not apply to sales to wholesalers, packers or others for repacking. (Id. § 8697.)

44. Penalty for Violation.—Any person, firm or corporation which shall fail, neglect or refuse to comply with the terms of this act† shall upon conviction thereof, be fined for each offense in a sum not less than $10 nor more than $50. (Id. § 8698.)

NOTE: See also Nos. 163 et seq., 169 et seq., and 228 et seq.

Catsup, Etc.

45. Benzoate of Soda in Catsup and Other Foods.—No person shall within this State manufacture for sale, offer for sale, have in possession with intent to sell, or sell, any tomato catsup, containing more than one-tenth of one per centum of sodium benzoate, the presence of which said one-tenth of one per centum shall in every case be stated on the label of said tomato catsup in type as large or larger than eight point; provided, that the provisions of this section shall also apply to such other articles of food or drink as the Dairy and Food Commissioner may from time to time determine cannot be successfully marketed without the addition of the aforesaid

*For penalty see No. 28.
†Nos. 43-44.

sodium benzoate in the said percentage of not more than one-tenth of one per centum. (Ore. Laws 1920, § 8690.)*

Cider.

See Nos. 34 and 289.

Cold Storage.

See No. 176n.

Condiments.

See Nos. 223-224.

Confectionery.

See Nos. 22, 140, and 228 et seq.

Dairy Products—Substitutes for Dairy Products.

46. Cows and Stables—How Kept.—When cows are kept by any person for dairy purposes, either for the production of butter or cheese or for the production of milk or cream for sale and are confined in stables, such cows so confined shall each be allowed at least five hundred cubic feet of air space and such cows so stabled shall not be confined facing each other closer than ten feet, and all stables where such cows are kept shall be well ventilated and kept in a good healthful condition, and if there be any suspected diseased cows or other animals belonging to or about any dairy, the owner or person in charge of such dairy shall report the same to the Dairy and Food Commissioner. The stables or barns where such cows are kept shall be thoroughly cleansed every day and kept in a sanitary condition. The cow's udder shall be well cleansed immediately before each milking, and when the udder is soiled by mud or other filth it must be thoroughly washed with water and wiped with a clean dry cloth. If any dairy as above stated is found to be in a filthy or unhealthful condition the Dairy and Food Commissioner shall notify the proprietor that said dairy shall be put in a healthful condition; and in the event of the failure of said proprietor to put said dairy in a healthful condition within a reasonable time from the receipt of said notice, he shall be deemed guilty of a violation of this act. (Ore. Laws 1920, § 8699.)†

47. Cream Separators Kept Clean.—It shall be unlawful for any person who skims his milk by cream separator process to offer or expose for sale or sell any milk or cream coming from a separator that is not thoroughly washed and cleansed within three hours after each use thereof, or to offer or expose for sale or sell any milk or cream coming from a separator that is kept in any stable or other building where any animal is housed or in any other place that is unsanitary or where bad air exists; provided, that this does not prohibit keeping such separator in a room that is wholly separated by tightly ceiled partitions from that part of the stable in which animals are housed. All tinware and woodenware and other utensils used about any dairy shall be kept in a clean and sanitary condition. (Id. § 8700.)

48. Milk or Cream, Unwholesome, Not to be Sold.—Whenever it is determined by the Dairy and Food Commissioner, his deputy or inspector, that any person is using, selling or furnishing to any skimming station, creamery, cheese factory, condenser, milk depot, milk dealer, the retail trade, or to any consumer of milk, any impure or unwholesome milk or cream, caused by the unsanitary or filthy condition of the premises where cows are kept, or by the unsanitary or filthy care in handling these cows, the use of unclean utensils, unwholesome food, holding the cream too long before shipping, or for any other cause, the person so offending shall be notified and warned by the commissioner, his deputy or inspector, not to use, sell or furnish such milk or cream at any of the places or to any of the persons above mentioned. A failure to obey such notice and warning or the continued use, sale or furnishing of such milk or cream shall be deemed a violation of this act. (Id. § 8701.)

49. Cream, Unfit, Not to be Used by Creamerymen—Sweet Cream Defined.—It shall be unlawful for any person engaged in the manufacture of butter for commercial purposes to use in the manufacture of said butter any cream that is pronounced unfit for use by the Dairy and Food Commissioner, his deputy or inspector. Possession of cream unfit for use in the manufacture of a food product shall be considered prima facie evidence of intent to use the same and shall be deemed a

*For penalty, see No. 28.

†For penalty for violating the sections quoted in Nos. 46-76, see No. 28.

misdemeanor within the meaning of this act, unless said person possessing said unfit cream shall have made complaint immediately upon receipt of said cream to the Dairy and Food Commissioner and requested his inspection of said cream, in which case, if the cream is found upon inspection to be unfit, it shall be confiscated, and such person shall not be liable to fine and shall not be required to pay for said cream. Sweet cream is hereby defined as the fresh, wholesome fatty portion of pure milk that rises to the top when milk is at rest or is separated by other means, and which contains not less than eighteen per cent butter bat. (Id. § 8702.)

50. Milk and Cream Samples Must be Kept One Day.—Every Creamery, cheese factory, or condenser must take samples of all milk and cream purchased by it and must keep such samples for a period of one day subject to the inspection of the Dairy and Food Commissioner, or his deputies. (Id. § 8703.)

51. Babcock Test—Unlawful to Over-read or Under-read.—It shall be unlawful for the owner, manager, agent, or any employee of a creamery, cheese or condensed milk factory to manipulate, or under-read or over-read the Babcock test, or any other contrivance used for determining the quality or value of milk or cream, or to make any false determination by any test. (Id. § 8704.)

52. Imitation or Counterfeit Seal.—Whoever makes, causes to be made, uses or has in his possession, any imitation or counterfeit of the seal of the Dairy and Food Commissioner, or whoever changes or tampers with the sample taken under said seal shall be deemed guilty of a violation of this act. (Id. § 8705.)

53. Milk Producer Not Liable.—A producer of milk or cream shall not be liable to prosecution for the reason that the milk or cream produced by him is not of good standard quality, unless a sample of such milk or cream was taken by the Dairy and Food Commisisoner or his deputy or inspector or by a State, city or town health officer from his premises or while in possession or under his or his agent's control and a sealed sample thereof was given to him if requested. (Id. § 8706.)

54. Condensed Milk—Standards.—No person shall within this State manufacture for sale, have in his possession with the intent to sell, offer or expose for sale, or sell any condensed or evaporated milk hereafter manufactured unless it shall conform to the following standards and conditions:

1. It shall be prepared by evaporating the fresh, pure, whole milk of healthy cows, obtained by complete milking and excluding all milkings within fifteen days before calving and seven days after calving; provided, at the end of this seven-day period the animals are in perfectly normal condition.

2. It shall contain total solids of 25.5 per cent and the percentage of milk fat shall be not less than 7.8 per cent.

3. It shall contain no added butter or butter oil incorporated either with whole milk or skimmed milk or with the evaporated milk at any stage of the manufacture. (Id. § 8707.)

55. Ice Cream Defined.—Ice cream shall be deemed adulterated, within the meaning of this act, if it shall not conform to the following definitions and standards:

(a) Ice cream is the frozen product made from pure, wholesome sweet cream, sweet butter or sweet evaporated or condensed milk and sugar, with or without flavoring, and, if desired, the addition of not to exceed one (1) per cent by weight of a harmless thickener, and contains not less than twenty (20) per cent of milk solids which must not be less than ten (10) per cent by weight of milk fat, and the acidity shall not exceed three-tenths (.3) of [one] (1) per cent.

(b) Fruit ice cream is the frozen product from pure, wholesome sweet cream, sweet butter or sweet evaporated or condensed milk, sugar and sound, clean, mature fruits, and, if desired, the addition of not to exceed one (1) per cent by weight of a harmless thickener, and contains not less than eighteen (18) per cent of milk solids which must not be less than eight (8) per cent by weight of milk fat.

(c) Nut ice cream is the frozen product made from pure, wholesome sweet cream, sweet butter or sweet evaporated or condensed milk, sugar and sound, nonrancid nuts, and, if desired, the addition of not to exceed one (1) per cent by weight of a harmless thickener, and contains not less than eighteen (18) per cent milk solids which must not be less than eight (8) per cent by weight of milk fat. (Id. § 8708, as amended L. 1923, c. 41.)

56. Ice Cream, Unwholesome, Defined.—Unwholesome ice cream is defined as:

(a) Ice cream which is made, stored or held for sale in a dark, unclean, unventilated or unsanitary basement, room, booth or store, or under conditions in violation of any of the provisions of this act relating to cleanliness, sanitation and ventilation, or protection against contamination.

(b) Ice cream that has been made in an unclean or unsanitary freezer or utensil.

(c) Ice cream that has been held for sale or stored for more than ten days in any store or booth.

(d) Ice cream that has been refrozen after being exposed for sale in any store or booth.

(e) Ice cream that contains disease producing germs or that contains an excessive number of bacteria.

(f) Ice cream that has been manufactured in any room located on the same floor level of a building as that on which any toilet or lavatory is located, unless the room in which such ice cream is manufactured is wholly separated by tightly ceiled partitions from such other parts of such floor level, free from use as a passageway and used exclusively for the manufacture of ice cream.

(g) Ice cream manufactured from cream or milk which has been exposed for mixing, or mixed, for manufacture into ice cream, except in a room used exclusively for the purpose of mixing and freezing ice cream, so located as to permit direct ventilation and free circulation of air to all parts thereof, and so constructed and maintained as otherwise provided by this act to afford protection against flies, dust, dirt and other foreign substances or injurious contaminations.

It shall be unlawful to sell, offer or expose for sale, ice cream other than such as has been manufactured, stored and kept in conformity with the requirements of this act, or to sell or offer for sale ice cream that has been stored or kept in cabinets or other receptacles wherein other food products, vegetables, or other articles are kept or stored for cooling or otherwise, and the lid shall be kept thereon to prevent outside contamination; provided, that ice cream factories now established and operating in conformity with the laws and regulations now in force in this State shall be allowed six months after the passage of this act in which to make such alterations or changes in the construction of their factories as may be necessary to comply with the provisions of this act; and provided further, that during said period allowed for making such alterations, the product of ice cream factories now in operation, and as now constructed, may be sold without violating the provisions of this act. (Ore. Laws 1920, § 8709.)

57. Homogenized Ice Cream.—Nothing in this act shall prevent the use of fresh, wholesome, unsalted butter and skimmed milk, or other dairy product, homogenized and used in the place of cream in the manufacture of ice cream. (Id. § 8710, as amended L. 1921, c. 262, § 4.)

58. Ice Cream Unwholesome or Below Standard Must Not be Sold.—It shall be unlawful for any person within this State, to manufacture for sale, offer for sale, or hold in possession with intent to sell, or sell any unwholesome ice cream or ice cream which does not conform to the standards and provisions of this act. (Ore. Laws 1920, § 8711.)

59. Creameries, Cheese Factories and Condenseries Must Report Annually.—Every person who manufactures for sale in quantities exceeding twenty-five pounds per week, butter, cheese or condensed milk in this State, shall report to the dairy and Food Commissioner annually at the end of each years as follows:

First—The name and address of manufacturer.

Second—Number of persons supplying milk.

Third—Number of persons supplying cream.

Fourth—Number of pounds of milk purchased.

Fifth—Number of pounds of butter fat used in the manufacture of butter.

Sixth—Number of pounds of butter fat used in the manufacture of cheese.

Seventh—Number of pounds of butter fat used in the manufacture of ice cream and other products.

Eighth—Number of pounds of butter made.

Ninth—Number of pounds of cheese made.

Tenth—Number of pounds of condensed milk manufactured; provided that the amount of butter, cheese and condensed milk made by any such person shall not be published if the maker so requests. (Id. § 8712.)

60. Definitions—Butter, Various Kinds Defined.—"Creamery butter" is butter churned from milk or cream supplied from several herds, and manufactured at a creamery located in a sanitary building, equipped with a cream ripener, power churn, and mechanical butter worker.

"Dairy butter" is butter manufactured on a farm or dairy and not manufactured at a creamery.

"Storage butter" is creamery butter or dairy butter, or both, which has been stored or kept for more than ninety days after the date when first placed in storage.

"Re-worked butter" is the product obtained from rechurning or mixing creamery or dairy butter, or both, manufactured on different dates or at different places; provided, that the mixing of clean, fresh trimmings or remnants from one day's churning

or cutting with the butter from the next day's churning at the same creamery does not constitute reworked butter.

"Renovated butter" is the product obtained by taking creamery, dairy, storage, reworked or other butter, or any combination thereof, melting the same, drawing off or extracting the butter fat and mixing such fat with milk or cream or any other milk product and rechurning or reworking such mixture, or any product produced by any process commonly known as boiling, processing or renovating. (Id. § 8713.)

61. Creamery Butter, How Labeled.—Any person, firm or corporation who shall, within the State of Oregon, manufacture, distribute, cut or cut and wrap creamery butter, shall register with the Dairy and Food Commissioner and be given a number, and all creamery butter sold, offered or exposed for sale, shall have printed upon the wrapper of each roll, print or square, the number of the creamery, distributor, or the place where the butter is cut, or cut and wrapped. (Id. § 8714, as amended L. 1921, c. 262, § 5.)

62. Dairy Butter.—All dairy butter sold, or offered or exposed for sale, in rolls, prints or squares, shall have printed or stamped upon the wrapper the words, "Dairy Butter," and the name and address of the manufacturer and the net weight. If dairy butter is sold or offered or exposed for sale in a box or tub such label shall be placed upon the box or tub, or if sold from bulk a placard with the words, "Dairy Butter," and the name and address of the manufacturer in letters not less than one inch in height shall be placed upon the bulk so as to be readily seen by the prospective purchasers. (Ore. Laws 1920, § 8715.)

63. Reworked Butter.—It shall be unlawful for any person to offer or expose for sale, or sell, reworked butter unless the same be plainly and durably branded with the words, "Reworked Butter," printed in letters not smaller than twelve point, full-faced capitals, in case said butter is sold in squares or rolls or prints; in case said reworked butter is sold, offered or exposed for sale in boxes or tubs, each box or tub containing the same shall be branded with the words, "Reworked Butter" in letters not less than one inch in height, and if sold from bulk a placard with the words, "Reworked Butter" and the name and address of the manufacturer in letters not less than one inch in height shall be placed upon the bulk so as to be readily seen by the purchaser. In all branding of reworked butter, the words, "Reworked Butter" shall not be a part of any other sentence or statement. (Id. § 8717.)

64. Renovated Butter.—It shall be unlawful for any person to sell or offer or expose for sale, renovated butter unless the words, "Renovated Butter" shall be plainly printed in full-faced letters at least three-fourths-inch in length, on the top and side of each receptacle, package or wrapper in which it is kept. And if such butter is exposed for sale uncovered or not in a receptacle, package or wrapper then a placard bearing the words, "Renovated Butter," printed in style and manner as aforesaid shall be attached to the mass of butter in such manner as shall be easily and readily seen by intending purchasers. (Id. § 8718.)

65. Oregon State Brand Abolished.—The device or motto adopted and furnished by the Dairy and Food Commissioner and known as the Oregon State brand is hereby abolished, and any person, firm, association or corporation using the said device or motto on any wrapper, package or box of butter after January 1, 1916, shall be deemed guilty of a violation of this act. (Id. § 8719.)

66. Brands Unlawful to Use.—It shall be unlawful for any person to use the brand or label of any other creamery or dairyman without his written consent, a copy of which consent shall be filed with the Dairy and Food Commissioner. (Id. § 8720.)

67. Butter Not Made in Oregon, Unlawful to Sell as Oregon Butter.—It shall be unlawful for any person to sell, offer or expose for sale in the State of Oregon any butter put up in rolls, prints or squares, made in any State other than Oregon in wrappers bearing the words, "Oregon Creamery Butter," or any other words that will imply that said butter was made in Oregon. (Id. § 8723.)

68. Short Weight Butter.—It shall be unlawful for any person to sell, offer or expose for sale any short-weight butter within the State of Oregon. All butter sold, or exposed or offered for sale in rolls, prints or squares within the State of Oregon, shall be plainly marked with the net weight thereof, and every roll, print or square sold, or offered or exposed for sale shall contain the weight marked thereon. (Id. § 8724.)

69. Imitation Butter, Oleomargarine, Not to be Colored or Sold as Butter.—No person by himself, or his agent or employee, shall render, manufacture, or offer or expose for sale, take orders for future delivery, or have in his possession with intent to sell, or sell as butter, any article, product or compound made wholly or partly out of any fat, oil, oleaginous or compound thereof not directly or wholly produced from pure, unadulterated milk, or cream of the same, which has been, or is colored to imitate yellow butter produced from pure, unadulterated milk or cream

of the same; provided, that nothing in this act shall be so construed as to prohibit the manufacture or sale of oleomargarine in a separate and distinct form in such manner as will advise the consumer of its real character, free from coloring matter and ingredients causing it to look like butter. (Id. § 8725.)

70. Dining-room Notice of Imitation Foods Used.—In any public dining room or eating room where oleomargarine, renovated butter, process butter, skim milk, or imitation fruit jellies, butters or juices are in use, the bill-of-fare shall state the facts in the same sized type as is used in printing the body of said bill-of-fare, and printed notice thereof shall be posted in a conspicuous place in said dining room so as to be easily and readily seen and read by anyone entering such room. Such notice shall be in letters not less than one inch in size and known as full-faced type and shall state that oleomargarine or process butter, renovated butter, skim milk, or imitation fruit jellies, butters or juices is or are used here, as the case may be. (Id. § 8726.)

71. Dealer Must Keep Sale Book for Oleomargarine, Renovated Butter, Etc.—Every person who sells oleomargarine, butterine, renovated or process butter or any imitation butter whatsoever, or other imitation dairy products in this State, shall keep a sales book in which all sales made to hotels, restaurants, and public dining rooms shall be entered at the time of the sale. Said sale book shall state the amount sold and the date of sale, together with the name and address of the purchaser, and said book shall be open to the inspection of the Dairy and Food Commissioner or his deputy at all times. (Id. § 8727, as amended L. 1921, c. 100.)

72. Cheese—Grades Defined, Must be Labeled.—Every person who shall manufacture cheese in the State of Oregon shall, at the place of manufacture, brand distinctly and durably, in letters not less than one-half inch in height, on the bandage of every cheese and box containing the same the true grade of said cheese as follows, to wit: "Oregon full cream cheese," or "Oregon half skimmed cheese," or "Oregon quarter skimmed cheese," or "Oregon skimmed cheese," as the case may be. All cheese marked "Oregon full cream cheese" must contain in the water-free substance not less than 50 per cent of milk fat. All cheese marked "Oregon half skimmed cheese" must contain in the water-free substance not less than 25 per cent of milk fat. "Oregon quarter skimmed cheese" must contain in the water-free substance not less than 12 per cent of milk fat. All cheese not plainly marked or branded as to its quality must contain in the water-free substance not less than 50 per cent of milk fat. Milk fat is the fat of milk and has a Reichert-Meissel number not less than twenty-four (24) and specific gravity not less than 0.905 (40° C.). Brick cheese, commonly known as "Cream Brick," made from whole milk shall contain not less than 50 per cent milk fat, nor more than 42 per cent moisture with tolerance of 1 per cent; Emmenthaler cheese, commonly known as domestic Swiss cheese, shall contain in the water-free substance not less than 43 per cent of milk fat; provided, that nothing in this section shall be construed to apply to "Edam," "Pineapple," "Limburger," or hand-made cheese not made by the ordinary cheddar process. (Ore. Laws 1920, § 8728, as amended L. 1927, c. 179.)

73. Cheese Sold at Retail Must Be Placarded.—All cheese other than full cream cheese offered or sold or exposed for sale at retail shall bear a label or placard containing letters not less than one-half inch in height setting forth whether such cheese is "half skimmed," "quarter skimmed," or "skimmed," according to the percentage of butter fat therein contained, as provided in section 8728, Oregon Laws. But this section shall not apply to "Edam," "Pineapple," "Limburger," or hand-made cheese not made by the ordinary cheddar process. (Id. § 8729.)

74. Filled Cheese Must be Labeled.—Any person who sells, offers or exposes for sale, or has in his possession with the intent to sell, any substance in imitation of cheese not made exclusively and wholly of milk or cream with salt, rennet, and with or without harmless coloring matter, and containing fats, oils, or grease, not produced from milk and cream, shall have the words "Filled Cheese" stamped or printed thereon in a conspicuous manner. (Ore. Laws 1920, § 8730.)

75. Cheese—Grades to be Numbered Before Offered for Sale.—Every person who shall manufacture cheese in the State of Oregon, shall apply to the Dairy and Food Commissioner for a factory number, giving the quality or grade of cheese as provided in section 8728, and each box of cheese sold, or offered or exposed for sale, shall bear said number on the side of the box and on each cheese. (Id. § 8731, as amended L. 1921, c. 262, § 7.)

76. Milk Preservatives Not to be Sold or Used.—No person shall manufacture for sale, advertise, offer or expose for sale any mixture or compound intended for use as an adulterant or preservative of milk, butter or cheese, nor shall any person add to the milk or butter or cheese, or during the process of their manufacture, any borax, boric acid, salicylic acid, formaldehyde, formalin, or any other sub-

stance or substances in the nature of adulterants, anti-ferments, or preservatives; provided, however, that this section shall not apply to pure salt added to butter or cheese. (Ore. Laws 1920, § 8733.)

77. Discrimination in the Purchase of Milk and Cream Illegal.—Any person, firm or corporation engaged in the business of buying milk, cream or butter fat for the purpose of manufacture, either by himself or another, who shall, with the intention of creating a monopoly, destroying the business of a competitor or restraining in any manner an open competition in said business, discriminate between the different section[s], localities, communities or cities of this State by purchasing or offering to purchase such commodity at a higher price in any one locality than is paid or offered for the same commodity by such person, firm or corporation in any other locality after making due allowance for the difference, if any, in the grade or quality, and in the actual cost of transportation from the place of purchase to the place of manufacture, sale or storage, shall be deemed guilty of a misdemeanor and punished as hereinafter provided. (Id. § 8758.)

78. Hauler Shall Weigh, Sample and Report Accurately.—It shall be unlawful for any hauler of milk, or cream, or any person, firm or corporation receiving or purchasing milk or cream by weight or test or both, or by measure or test or both, to fraudulently manipulate the weight, measure or test of milk or cream of any person or to take unfair samples thereof, or to fraudulently manipulate such samples. The hauler or other agent shall weigh or measure the milk or cream of each patron accurately and correctly and shall report such weights or measurements accurately and correctly to the creamery or factory and the seller of said product. He shall thoroughly mix the milk or cream of each patron by pouring or stirring until such milk or cream is uniform and homogeneous in richness, before the samples are taken from such milk or cream. When the weighing or sampling is done at the creamery, shipping station or factory, the same rule shall apply. The seller or agent of any seller or sellers of such milk, cream or butter fat, shall have the right to be present at the time and place where any such tests are made or samples are taken or such product is weighed or measured by the purchaser, to see that such tests are fairly made or fair samples taken, or that said product is fairly and properly weighed or measured, and such seller or agent shall have the right to take reasonable samples of such milk, cream or butter fat so sold, in order to have independent tests thereof made. That upon request of any such seller or his agent, such person, firm or corporation receiving or purchasing milk, cream or butter fat by weight or test, or both, or measurement or test, or both, shall notify such seller or his agent of the time and place where such test shall be made, samples taken, or product weighed or measured. That in case of violation of any of the provisions of this act or of said chapter 344* of the General Laws of Oregon, enacted by the legislative assembly of 1915, in addition to the penalties provided in said chapter 344 of said General Laws of Oregon, enacted by the legislative assembly of 1915, said seller shall have the right to recover the full amount of any damage sustained by him by reason of the purchaser thereof having taken and reported to the seller improper tests, improper weights or improper samples of any such milk, cream or butter fat, together with a reasonable attorney's fee to be fixed and allowed by the court. (Id. § 8759.)

79. Creameries, Etc., Shall Use Standard Glassware and Scales.—Every person, firm or corporation receiving or purchasing milk or cream on the basis of the amount of butter fat contained therein as determined by the Babcock test, shall use the standard Babcock test bottles, pipettes and accurate weights and scales as defined in sections 8769, 8770, and all Babcock test bottles and pipettes shall have been inspected for accuracy by the Oregon Agricultural College or its agent and shall be legibly and indelibly marked by the Oregon Agricultural College or its agent with the letters "S. G. O." (Standard Glassware Oregon). It shall be unlawful for any firm or corporation or any of their agents to use any other than standard test bottles and pipettes which have been examined and marked as provided by this section, to determine the amount of fat in milk or cream received or purchased on the butterfat basis. (Id. § 8760.)

80. Babcock Test, Under-reading or Over-reading, or Falsifying Records, Illegal.—It shall be unlawful for any person, firm or corporation, by himself or as the agent, servant, employee or officer of any person, firm or corporation receiving or purchasing milk or cream on the basis of the amount of butter fat contained therein, to under-read, over-read or otherwise fraudulently manipulate the Babcock test used for determining the per cent of butter fat in milk or cream, or to falsify

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*Act and chapter 344 referred to are covered by sections 8758 to 8772, inclusive, of the Oregon Laws, 1920.

the records thereof or to read the test at any other temperature than the correct one which is one hundred and thirty degrees to one hundred and forty degrees Fahrenheit, or to pay on the basis of any measurement of weight except the true measurement or weight which is seventeen and six-tenths (17.6) cubic centimeters for milk and nine (9) grams or eighteen (18) grams for cream; provided that in all tests for cream the cream shall be weighed into the test bottle. (Id. § 8761.)

81. Testers Must Have License, Issued by Dairy and Food Commissioner—License May be Revoked.—All testing of milk or cream purchased on the basis of the amount of butter fat contained therein shall be done by a licensed tester who shall be responsible for the operation of the Babcock test of milk or cream. The license shall be issued to such person by the Dairy and Food Commissioner upon the presentation by the applicant of satisfactory evidence of his qualifications, and upon payment of a license fee as provided for in section 8765. A permit to test may be granted by the Dairy and Food Commissioner and such permit shall have the full force and effect of a license to carry on the work of a tester but the length of time that such permit may hold good shall be at the discretion of the Dairy and Food Commissioner. The license shall be valid during the life of the licensee unless sooner revoked, and shall be revoked by the Dairy and Food Commissioner if, after due notice, the licensee has failed to comply with the laws, rules and regulations under which the license was granted; provided, that the provisions of this section shall not apply to individuals, hotels, restaurants or boarding houses buying milk or cream for private use. (Id. § 8762, as amended L. 1921, c. 15, § 2.)

82. Creameries, Etc., Must Have License.—Every creamery, shipping station, milk factory, cheese factory, ice cream factory, condensory, or any person, firm or corporation receiving or purchasing milk or cream on the basis of butter fat contained therein, shall be required to hold a license so to do. The license shall be issued to such creamery, shipping station, milk factory, condensory, ice cream factory, cheese factory, or person, firm or corporation by the Dairy and Food Commissioner upon complying with all sanitary laws, rules and regulations of the State of Oregon and upon complying with the provisions of sections 8759-8762, inclusive, and upon payment of a license fee as provided for in section 8765. This license shall be valid for the term of one year unless sooner revoked, and shall be revoked by the Dairy and Food Commissioner if, after due notice, the licensee fails to comply with the laws, rules and regulations under which it was granted; provided, that the provisions of this section shall not apply to individuals, hotels, restaurants, and boarding houses buying milk or cream for private use. (Ore. Laws 1920, § 8764.)

83. Fees for Licenses and for Testing Glassware.—The tester's license shall be issued upon compliance with the provisions under section 8762, and upon the payment by the applicant to the Dairy and Food Commissioner of the sum of $5. The creamery license shall be issued upon compliance with the provisions under section 8764, and upon the payment by the applicant to the Dairy and Food Commissioner, for each creamery, milk factory, milk depot, ice cream factory, cheese factory and condensary $5, and for each shipping station $2.50. For all testing of glassware by the said Oregon Agricultural College or its agent, a fee of 3 cents shall be paid by the owner of said glassware to the Oregon Agricultural College for every piece of glassware so examined, and said fee shall be used by the Oregon Agricultural College to defray the cost of testing such glassware. (Id. § 8765, as amended L. 1927, c. 225.)

84. Fees, How Disposed of.—The money for license fees as provided for in section 8765 shall be paid to the Dairy and Food Commissioner by whom it shall be transmitted to the State Treasurer to be deposited in the general fund. (Ore. Laws 1920, § 8766.)

85. Prosecuting Attorney Shall Proceed Against Violators.—It shall be the duty of every prosecuting attorney to whom the Dairy and Food Commissioner shall report any violation of the provisions of this act to cause proceedings to be commenced against the person or persons so violating the provisions of this act, and to prosecute the same to final termination according to the laws of the State of Oregon. (Id. § 8767.)

86. Penalty for Violation.—Any employee of a firm, company, association, corporation or persons receiving or purchasing milk or cream on the basis of the amount of butter fat contained therein, violating any of the provisions of this act, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined in the sum of not more than two hundred fifty ($250) dollars or be imprisoned in the county jail for not more than twelve months, or both. Any person, firm or corporation purchasing milk or cream on the basis of the amount of butter fat contained therein, violating any of the provisions of this act, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not

more than $1,000, or imprisoned in the county jail for a period of not more than one year, or both such fine and imprisonment. (Id. § 8768.)

87. Glassware, Standards for.—The term "Standard Babcock Testing Glassware" shall apply to glassware and weights complying to the following specifications: (a) Graduation for milk test bottles. The total per cent graduation shall be 8. The graduated portion of the neck shall have a length of not less than 63.5 millimeters (2½ inches), the graduations shall represent whole per cent, five-tenths per cent, and tenths per cent. The tenths per cent graduation shall not be less than three millimeters in length; the five-tenths per cent graduations shall be one millimeter longer than the tenths per cent graduations, projecting one millimeter to the left; the whole per cent graduations shall extend at least one-half way around the neck to the right and projecting two millimeters to the left of the tenths per cent graduations. Each per cent graduation shall be numbered, the number being placed on the left of the scale. The error at any point of the scale shall not exceed one-tenth per cent.

Neck—The neck shall be cylindrical and the cylindrical shape shall extend for at least nine millimeters below the lowest and above the highest graduation mark. The top of the neck shall be flared to a diameter of not less than ten millimeters.

Bulb—The capacity of the bulb up to the junction of the neck shall not be less than 45 c. c. (Cubic centimeters). The shape of the bulb may be either cylindrical or conical with the smallest diameter at the bottom. If cylindrical, the outside diameter shall be between 34 and 36 millimeters; if conical, the outside diameter of the base shall be between 31 and 33 millimeters, and the maximum diameter between 35 and 37 millimeters. The charge of the bottle shall be 18 grams. The total height of the bottle shall be between 150 and 165 millimeters (5⅞ and 6½ inches).

(b) Three types of bottles shall be accepted as standard cream test bottles, a 50 per cent nine gram, short-neck bottle, a 50 per cent nine gram long-neck bottle, and a 50 per cent 18 gram long-neck bottle.

Fifty per cent, nine gram, short-neck bottle:

Graduation—The total per cent graduation shall be 50. The graduated portion of the neck shall have a length of not less than 63.5 millimeters, (2½ inches). The graduations shall represent five per cent, one per cent and 5/10 per cent. The five per cent graduations shall extend at least halfway around the neck, to the right.

The 5/10 per cent graduations shall be at least three millimeters in length, and the one per cent graduations shall have a length intermediate between the five per cent and the 5/10 per cent graduations. Each five per cent graduation shall be numbered, the number being placed on the left of the scale. The error at any point of the scale shall not exceed 5/10 per cent.

Neck—The neck shall be cylindrical and the cylindrical shape shall extend at least nine millimeters below the lowest and nine millimeters above the highest graduation mark. The top of the neck shall be flared to a diameter of not less than ten millimeters.

Bulb—The capacity of the bulb up to the junction of the neck shall not be less than 45 c. c. The shape of the bulb may be either cylindrical or conical with the smallest diameter at the bottom. If cylindrical, the outside diameter shall be between 34 and 36 millimeters; if conical, the outside diameter of the base shall be between 31 and 33 millimeters and the maximum diameter between 35 and 37 millimeters.

The charge of the bottle shall be nine grams.

All bottles shall bear on the top of the neck above the graduations in plainly legible characters, a mark defining the weight of the charge to be used (nine grams).

The total height of the bottle shall be between 150 and 165 millimeters (5⅞ and 6½ inches), same as standard milk test bottles.

Fifty per cent, nine gram, long-neck bottle—The same specifications in every detail as specified for the 50 per cent nine gram, short-neck bottle, shall apply for the long-neck bottle, with the exception, however, that the total height of this bottle shall be between 210 and 234 millimeters (8¼ and 8⅞ inches) and that the total length of the graduation shall be not less than 120 millimeters.

The fifty per cent, eighteen gram, long-neck bottle—The same specifications in every detail as specified for the 50 per cent, nine gram, long-neck bottle, shall apply, with the exception that the charge of the bottle shall be eighteen grams, and the mark defining the weight of the charge placed at the top of neck shall be eighteen.

The total length of the Standard Babcock Pipette shall be not more than 330 millimeters (13¼ inches). Outside diameter of suction tube six to eight millimeters. Length of suction tube 130 millimeters. Outside diameter of delivery tube 4.5 to 5.5 millimeters. The length of delivery tube 100 to 120 millimeters. Distance of

graduation mark above bulb 30 to 60 millimeters. Nozzle straight. Delivery 17.6 c. c. of water at 20 degrees centigrade in five to eight seconds. (Id. § 8769.)

88. Scales, Sensibility of.—The sensibility of all scales used for weighing cream samples into the test bottles shall be not more than 30 milligrams and the standard weights shall be nine grams and eighteen grams. (Id. § 8770.)

89. Speed of Babcock Testers.—In all testing of milk or cream where the same is received or purchased upon the basis of the amount of butter fat contained therein, the Babcock tester shall be operated at the proper speed which is as follows:

For tester with diameter of fourteen inches, the speed shall be between 875 and 925 revolutions per minute.

For tester with diameter of sixteen inches, the speed shall be between 825 and 875 revolutions per minute.

For tester with diameter of eighteen inches, the speed shall be between 775 and 825 revolutions per minute.

For tester with diameter of twenty inches, the speed shall be between 725 and 775 revolutions per minute.

For a tester with a diameter of twenty-four inches, the speed shall be between 575 and 625 revolutions per minute. (Id. § 8771.)

90. Courts, Jurisdiction of.—Justice courts, district courts, and municipal courts sitting as justice courts, shall have concurrent jurisdiction with the circuit courts of all prosecutions arising under the act. The district or county attorney is authorized to institute prosecutions for violation of this act by information or the same may be instituted by indictment or by complaint verified before any magistrate. (Id. § 8772.)

91. Definitions.—The term "person" as used in this act, when not otherwise stated, includes corporations, firms, partnerships and associations as well as natural persons, and their agents.

The words "milk products" as used therein shall mean either milk, cream, skimmed milk, or compound milk drinks or other dairy products.

The word "container" as used herein shall mean any bottle, can, carton, crate or other container used in the ordinary commercial distribution of the milk products.

The term "bottling" as used herein shall mean all operations in the processing and preparation of milk products for ordinary commercial sale and/or distribution thereof, including the placing of said milk products in containers.

The word "brand" as used herein shall mean any name, design, mark or device of any kind or character used for the purpose of designating the person engaged either in the bottling, selling or distribution of milk products.

The term "branded" as used herein shall mean the placing of a brand upon any container either by printing, engraving, blowing, cutting, carving, embossing, impressing or in any other manner annexing or attaching the same.

The term "secondary distributor" as used herein shall mean any person who buys or receives, from any other person engaged in the business of bottling milk products, such milk products in branded containers for resale and/or distribution in the ordinary commercial way. (L. 1927, c. 352, § 1.)

92. Filing of Brands.—All persons except secondary distributors engaged either in the bottling, selling or distributing of milk products in branded containers within the State of Oregon may file with the Secretary of the State of Oregon a description of said brand. After filing a description of said brand the Secretary of State of the State of Oregon, the owner thereof shall cause notice of such filing containing a description of the said brand to be published at least once a week for two consecutive weeks in a newspaper published and of general circulation within the State of Oregon. Proof of publication of such notice by affidavit of the printer of the newspaper in which such notice is published shall thereafter be filed with the Secretary of State of the State of Oregon. Upon the filing of such proof of publication of such notice with the Secretary of State of the State of Oregon, said brand shall be considered as registered for the purposes of this act and any container having thereon a registered brand shall be considered as registered for the purposes of this act. (Id. § 2.)

93. Use of Containers Without Authority of Owner Unlawful.—No person other than the owner of the registered brand appearing upon a registered container shall, for the purpose of sale and/or distribution in the ordinary commercial way, fill any such container with milk products. No person, other than the owner of the registered brand appearing upon a registered container, or a secondary distributor with an express contract from the owner of the registered brand appearing upon a registered container, shall in the ordinary commercial way sell, deliver, distribute, offer or expose for sale or traffic in milk products in such containers. No sale, transfer or conveyance of any registered brand or any interest therein, shall be

made by the owner thereof excepting in the case of a sale of his business as a whole or of some interest therein. (Id. § 3.)

94. Mutilation of Registered Brands of Containers of Owner Prohibited.—No person shall willfully deface, erase, alter, obliterate, cover up or otherwise remove or cancel any registered brand other than his own appearing on any registered container and thereafter fill said container with milk products for the sale and/or distribution thereof and no person shall sell, deliver, distribute, offer or expose for sale or traffic in milk products in such containers. (Id. § 4.)

95. Same.—No person shall willfully destroy or otherwise injure or secrete, hide, or store away any registered or unregistered containers other than his own. Any owner of a registered brand to whom his own registered bottle shall be returned shall give to the person returning the same, in exchange therefor, the latter's own registered or an unregistered bottle of a like size for each registered bottle returned; and upon demand of the owner, any other container shall be delivered to him by any person having possession thereof. (Id. § 5.)

96. Sale of Registered Containers Regulated.—Registered brands and used or second-hand registered containers shall not be sold except by written bill of sale signed by the owner of the registered brand or container, a copy of which bill of sale shall be filed with the Secretary of State of the State of Oregon. Title by bill of sale shall not pass to the vendee therein named until the copy of said bill of sale has been filed with the Secretary of State of the State of Oregon. The ordinary commercial sale and delivery of milk products in registered containers shall not be deemed to be a sale of the containers, notwithstanding the owner of such brands or containers requires a cash deposit for the return thereof. (Id. § 6.)

97. Duty of Dairy and Food Commissioner.—It shall be the duty of the Dairy and Food Commissioner to enforce the provisions of this act and to make such rules and regulations as may be necessary to carry into effect the provisions of this act. (Id. § 7.)

98. Penalty.—Any person who shall violate any provision of this act shall be guilty of a misdemeanor and, upon conviction thereof, shall, for the first offense, be punishable by a fine of not more than $100 and, upon conviction of any subsequent offense, shall be punishable by a fine of not in excess of $500 and imprisonment in the county jail for not to exceed 90 days, or by both said fine and imprisonment. (Id. § 8.)

99. Private Brand for Container of Dairy Product, Etc., May be Filed With Secretary of State.—Any person or persons owning or using milk cans, milk bottles, milk jars, butter boxes valued each at fifty cents or more, ice cream cans, ice cream molds, ice cream tubs, aerated mineral water bottles and siphon bottles, soda water bottles, or other containers with his or her or their name or names or any other private mark or marks respectively branded, stamped, etched, or blown thereon, may file in the office of the Secretary of State a description of the names used or other private mark or marks to be branded, stamped, etched, or blown thereon. (Ore. Laws 1920, § 8781.)

100. Other Persons Than Owners Not to Use Such Containers—Penalty.—It is hereby declared to be unlawful for any person or persons, hereafter, other than the lawful owner or owners, as mentioned and referred to in the first section of this act [8781], to fill with milk, cream, butter, ice cream, mineral aerated water, or soda water for any purpose whatever any such milk can, butter box, ice cream can, ice cream molds, ice cream tub, aerated water bottles and siphon bottles, soda water bottles and other containers, or to use, traffic in, purchase, sell, dispose, or to detain, convert, mutilate or destroy or willfully or unreasonably refuse to return or deliver to such owner, upon demand being made, any such milk can, butter box, valued at fifty cents or more, ice cream can, ice cream mold, ice cream tub, aerated mineral water bottles and siphon bottles, soda water bottles, and other containers, so branded, stamped, etched, or blown, or from which said brand, stamp, etched or blown had been removed, cut off, defaced, or obliterated, or to remove, cut off, deface, or obliterate, or to stamp other brands, stamps, etched or blown on the same without the permission of such original or lawful owner or owners thereof, or unless there shall have been a sale in express terms of any such article, exclusive of the ingredient contained therein, to such person or persons by said original or lawful owners; any person so convicted shall, upon conviction, be deemed guilty of a misdemeanor, to be punished for the first offense by a fine of $10 for each and every such milk can, butter box, ice cream can, ice cream mold, ice cream tub, aerated mineral water bottle or siphon bottle, soda water bottle, or other containers so filled, trafficked in, purchased, so disposed, detained, converted, mutilated, or destroyed, or not so delivered or returned and by a fine of $20, or by imprisonment in the county jail of not less than one and not more than three months for each and every subsequent

offense, to be recovered in the same manner as fines are now recoverable. (Id. § 8782.)

101. Search Warrant, When May Issue.—Any such owner or owners or the agent of such owner or owners, who shall make oath or confirmation [affirmation] before any justice of the peace or any magistrate having jurisdiction in criminal matters, that he has reason to believe, setting forth the facts upon which said belief is founded, and does believe that any of the above named articles belong to him or them, so branded, stamped, etched, or blown as aforesaid, or from which the brands, stamps, etched or blown, have been cut off, removed, defaced, or obliterated, or which have been mutilated or willfully detained after demand has been made by any person or persons owning or using milk cans, butter boxes, ice cream cans, ice cream molds, ice cream tubs, aerated mineral water bottles and siphon bottles, soda water bottles, or other containers, or that any junk dealer, cast dealer, or any other person or persons whomsoever shall have in his, her, or their possession any of the articles described, unlawfully as aforesaid, or secreted in his, her, or their premises, or any other place under his, her, or their control, said magistrate shall thereupon, on proof of such demand having been made, issue a search warrant directed to any constable or other proper officer to search the premises of the offender or offenders or such place, where any such articles are alleged to be, properly describing such premises or place, and if, upon search, any such article shall be found, to take possession of the same and bring the person or persons in whose possession or control any such articles shall be found, before such magistrate to be tried as provided by law for the trial of misdemeanors and be punished in the manner set forth in section 8782. (Id. § 8783.)

102. Construction of Terms "Milk" and "Milk Products."—For the purposes of this act, milk shall be construed to include cream; and milk products shall include butter, cheese, ice cream, condensed milk, evaporated cream, ice milk, skim milk, buttermilk and whey. (Id. § 8784.)

103. Milk for Human Consumption to Pass Tuberculin Test or be Pasteurized.—From and after September 1, 1917, it shall be unlawful for any person, firm, company, corporation or association, to sell or exchange or offer or expose for sale or exchange, for human consumption any milk from cows that have not passed the tuberculin test, unless such milk shall have been pasteurized as hereinafter provided. It is understood and hereby expressly stated that nothing in this section shall apply to the delivery of milk or cream to creameries or cheese or condensed milk factories by the producer of such milk or cream, or in bulk to the wholesale trade. (Id. § 8785.)

104. Milk Products—Same.—It shall be unlawful for any person, firm, company, corporation or association to deliver, exchange, sell or offer or expose for delivery, exchange or sale any milk product made from milk, except cheese, from cows that have not passed the tuberculin test, unless such milk product, before, during or subsequent to any manufacturing process used to produce such milk product, shall have been pasteurized as provided in this act. (Id. § 8786.)

105. Process of Pasteurization.—The process of pasteurization as applied to milk, and milk products, is hereby defined to be a thermal process for the elimination therefrom of bacteria or germ life, which process shall consist of uniformly heating such milk or milk products to a temperature of not less than one hundred and forty degrees Fahrenheit, and of holding the same at the said temperature for a period of not less than thirty (30) minutes, and immediately thereafter of cooling the same to a temperature of not above fifty degrees Fahrenheit, or by heating said milk, or milk products, as the case may be, to a temperature of not less than one hundred and eighty degrees Fahrenheit, and immediately thereafter cooling the same to a temperature of not above fifty degrees Fahrenheit, provided, however, that when cream is pasteurized to be used and is used in the manufacture of butter, or when milk is pasteurized to be used and is used in the manufacture of a milk product, and where the process of manufacture, in either case, is to begin immediately, then it shall not be required that such cream or milk be cooled to a lower temperature than is necessary for such manufacturing process. (Id. § 8787.)

106. Where Pasteurized.—All pasteurized cream or milk used in the manufacture of pasteurized butter or milk products, shall be pasteurized at and in the plant where such butter or milk product, as the case may be, is manufactured therefrom. Repasteurization of milk is hereby expressly forbidden. (Id. § 8788.)

107. False Marking Unlawful.—It shall be unlawful for any person, company, corporation or association, to sell, exchange or deliver or have in his or its possession for sale, exchange or delivery, any milk product or any by-product from the manufacture of such milk product marked or in any manner indicated to be pasteurized as shall not have been pasteurized as hereinbefore specified. (Id. § 8789.)

108. Dairy and Food Commissioner to Prepare Rules.—It shall be the duty of the Dairy and Food Commissioner to provide such rules and regulations as may be necessary to carry the provisions of this act into effect; and it shall be unlawful to violate any such rule or regulation. (Id. § 8790.)

109. Application for Tuberculosis Test to Exempt Milk.—Milk from any cow or cows whose owner or lessee shall apply to the State Live Stock Sanitary Board to have such cow or cows tuberculin tested, shall be exempt from all of the provisions of this act until such cows shall have been so tested. (Id. § 8791.)

110. Penalty Clause.—Any person who shall violate any of the provisions of this act,* upon conviction thereof, shall be fined not less than ten dollars ($10) nor more than one hundred dollars ($100), for each violation thereof. Any company, corporation or association violating any of the provisions of this act shall be liable to a penalty of not less than ten dollars ($10) nor more than one hundred dollars ($100), for each violation, and any officer or agent who shall direct, conceal, perform or omit to perform such act in violation of any of the provisions of this act, upon conviction thereof, shall be fined not less than ten dollars ($10) nor more than one hundred dollars ($100), for each violation thereof. All penalties imposed for violation of any of the provisions of this act shall be recovered by an action at law by the State. (Id. § 8792.)

110a. Jurisdiction of Courts.—Justice courts, district courts and municipal courts sitting as jusitce courts shall have concurrent jurisdiction with the circuit courts of all prosecutions arising under this act. The district attorney or county attorney is authorized to institute prosecutions for violations of this act by information or the same may be instituted by indictment or by complaint verified before any magistrate. (Id. § 8793.)

111. Definition of Terms "Butter-Maker" and "Cheese-Maker."—For the purpose of this act, the terms "butter-maker" and "cheese-maker" shall respectively mean and include any person employed in, engaged in, acting in or who may be employed in any butter or cheese factory, who has charge of any supervision over the actual process of manufacturing butter or cheese, but shall not include a person employed in the butter or cheese factory for the purpose of aiding or assisting in the manufacture of such products. This act shall not affect a person making up a product produced on his own farm. (Id. § 8794.)

112. License of Butter and Cheese Manufacturers.—From and after July 1, 1917, it shall be unlawful for any person to engage in the manufacture of butter or cheese, as a butter-maker or cheese-maker, as above defined, unless he shall have first secured a license from the Dairy and Food Commissioner of this State. Such license for butter or cheese makers shall be issued by the Dairy and Food Commissioner under such rules and regulations as he shall prescribe relating to the qualification of applicants for securing such license. Such qualifications shall include, among other things, previous record in operating and keeping in sanitary condition the butter or cheese factory in which he has been employed. (Id. § 8795.)

113. Application Blanks Furnished by Dairy and Food Commissioner—Temporary Permit.—Application for a butter-maker's or cheese-maker's license shall be made upon application blank furnished by the Dairy and Food Commissioner. Upon receipt of any such application the Dairy and Food Commissioner may, in his discretion, issue a permit to such applicant to carry on the work of butter-maker or cheese-maker for such period as may be prescribed therein, not exceeding sixty days. Such permit shall have the full force and effect of a license to carry on the work of a butter-maker or cheese-maker during the period mentioned therein. At the time such permit is issued the Dairy and Food Commissioner shall furnish to the applicant the rules and regulations incident to securing a license and also suggestions relating to the proper method of operating butter or cheese factories. (Id. § 8796.)

114. Amount of License Fee.—Each application for such license shall be accompanied by a fee of $1, payable to the Dairy and Food Commissioner, and no license shall be issued until such fee has been paid to the Dairy and Food Commissioner by whom it shall be transmitted to the State Treasurer to be deposited in the general fund. In case license is refused, the fee accompanying such application shall be returned by the Dairy and Food Commissioner to the applicant with notification of refusal. (Id. § 8797.)

115. Revocation of License.—Each butter-maker's or cheese-maker's license shall be subject to revocation by the Dairy and Food Commissioner upon reasonable notice that the butter-maker or cheese-maker, as the case may be, has violated any of the rules and regulations prescribed by the Dairy and Food Commissioner, or has

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violated any of the laws of the State of Oregon in relation to milk or cream, or milk or cream products. (Id. § 8798.)

116. Expiration of License.—Each butter-maker's or cheese-maker's license shall expire on the first day of July next succeeding the date of its issue. (Id. § 8799.)

117. Rules and Regulations.—The Dairy and Food Commissioner shall make such rules and regulations as may be necessary to carry into effect the provisions of this act, and for the government of licensees under this act. (Id. § 8800.)

118. Penalty for Violating Act.—Any person violating any of the provisions of this act,* shall, upon conviction thereof, be fined not less than $25, nor more than one hundred fifty dollars ($150) for each violation of this act. (Id. § 8801.)

119. Unlawful Use of Words in Advertising Dairy Products.—It shall be unlawful for any person, firm, corporation or association engaged in the business, in whole or in part, of manufacturing, selling, offering for sale, advertising or otherwise dealing in or with any product used or intended or designed to be used as a substitute for milk, butter, cheese or any other pure dairy product, to use as a part of his, their or its trade or corporate name, or as a name or description of his, their or its product, or to use in or on his, their or its labels, packages, containers or advertising matter or sales literature thereto relating, any of the following names: "Milk," "butter," "cream," "creamery," "churn," "cheese," "cow" or "dairy," nor shall any pictorial or other representations resembling any or all of the foregoing be used in or on the labels, packages, containers, advertising matter or literature referred to; provided, however, that nothing in this act shall apply to products manufactured in this State for the purpose of shipping out of the State, and not offered for sale in this State, and that it shall not be unlawful to use the word "milk" when immediately preceded by the word "imitation" when displayed with equal prominence; and provided, further, that this act shall not be construed to forbid a true statement of or concerning the ingredients or composition of any such product or of the contents of any such package or container, when such statement is not misleading or in any way deceptive, or to forbid a caution against the use of such product as a substitute for a genuine dairy product. (L. 1921, c. 157, § 1.)

120. Penalty.—Any violation of this act shall be punished by a fine of not to exceed $500, together with the necessary expenses and costs incurred in the prosecution of the case. (Id. § 2.)

121. Imitation Milk Defined.—Imitation milk is hereby defined to be any mixture or compound composed of milk, skim milk, condensed milk, evaporated milk or powered [powdered] milk of any kind and any edible oil or fat not natural milk fat, whether with or without any other ingredient. It shall include any mixture or compound made in imitation or semblance or having the appearance or semblance of milk, condensed milk or evaporated milk, or when so made or having such appearance or semblance, calculated or intended, whether by the intent of the compounder or any other person, or by reason of its appearance, or any other characteristic of the mixture or compound, for use or disposition as for milk, condensed milk or evaporated milk, or to induce its purchase or use as or for milk, condensed milk or evaporated milk. (L. 1921, c. 372, § 1.)

122. Sale, Etc., Except in Compliance With Act, Prohibited.—No person, firm, corporation or association shall render, manufacture, sell, offer, expose or have or possess with intent to sell, or use, or serve to the patrons of any restaurant, lunch counter, eating house, hotel or dining car, any imitation milk except in compliance with the provisions of this act. (Id. § 2.)

123. Labeling of Containers.—Every barrel, can or other container of more than one gallon capacity used in the manufacture, storing or sale of imitation milk, as defined in this act, shall be labeled or marked with the trade name, if any, of the product in letters not smaller than one by one and one-half inches in size, and as a compound of oil or fat and milk, skim milk, condensed milk, evaporated milk or powered [powdered] milk as the case may be, in letters not less than one-half inch in height.

Every bottle, can or other container of a capacity of one gallon or less shall be separately labeled with the trade name, if any, of the product, and as a compound of oil or fat and milk, skim milk, condensed milk, evaporated milk or powdered milk, as the case may be, and the words "Do not use in place of milk for infants" in bold and conspicuous type, not less than ten point, shall be prominently displayed thereon, and said label shall plainly state all the ingredients of such compound or mixture and the percentages thereof. (Id. § 3.)

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*Nos. 111-118.

124. Adulterations, What Constitute.—Imitation milk, not evaporated or condensed, within the meaning of this chapter, is declared adulterated if same shall be found to contain less than 3.2 per cent of any edible fats or oils, and if evaporated or condensed shall be found to contain less than 7.8 per cent of any edible fats or oils and shall be found to contain less than 25.5 per cent total solids. (Id. § 4.)

125. "Imitation Milk" Sign to be Displayed.—Restaurants, lunch counters, eating houses and hotels using or serving imitation milk shall prominently display at their lunch counters and dining rooms the words "Imitation milk used and served here" in bold letters not smaller than three inches high by two inches wide. (Id. § 5.)

126. Penalty.—Any person, firm or corporation violating any of the provisions of this act shall be fined not to exceed $1,000 and the cost. (Id. § 6.)

127. Milk Products—Regulating Manufacture and Sale—Prevention of Fraud and Adulterations.—It shall be unlawful for any person or corporation to manufacture for sale, [or to] sell or exchange, or expose or offer for sale or exchange, any condensed or evaporated milk, or any substance containing any milk or milk products and designed or intended to be used or capable of being used for or as a substitute for condensed or evaporated milk, unless the milk used in the manufacture thereof is pure, clean, fresh, healthful, unadulterated and wholesome milk; provided, that nothing herein contained shall be construed as prohibiting the manufacture or sale of condensed or evaporated milk manufactured from pure, fresh, healthful, unadulterated and wholesome skimmed milk; and it shall be unlawful for any person or corporation to manufacture for sale [or to] sell or expose, or offer for sale or exchange, any condensed or evaporated milk containing any vegetable fat. (L. 1925, c. 90, § 1.)

128. Penalty.—Any person violating any of the provisions of this act shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine not exceeding $100, or by imprisonment in the county jail not exceeding thirty days, or by both such fine and imprisonment, at the discretion of the court; and for each subsequent violation hereof such person thereof having been previously convicted of the violation of any of the provisions of this act shall, upon conviction, be punished by a fine of not less than $100 and not exceeding $500, or by imprisonment in the county jail not less than thirty days, nor more than six months, or by both such fine and imprisonment, at the discretion of the court. (Id. § 2.)

129. Prohibiting Use of Certain Names in Connection With Dairy Products.—It shall be unlawful for any person, firm, corporation or association to use in any corporate or firm name or in the name of any association or in any advertisement, trade-mark or brand, the name of any breed of dairy cattle such as "Jersey," "Guernsey," "Ayrshire," "Holstein" or "Brown Swiss" unless said product sold, advertised, offered or exposed for sale by such person, firm, corporation or association shall be produced from the breed of dairy cattle so named; provided, that the owner of any herd of cows shall be entitled to the use of the term "Jersey," "Guernsey," "Ayrshire," "Holstein" or "Brown Swiss" when each cow in said herd shall carry not less than fifty per cent of the blood of the breed name so used. (L. 1925, c. 112, § 1.)

130. Application for Permission to Use Certain Names to be Made to Dairy and Food Commissioner.—Any person, firm, corporation or association desiring to use the name of any breed of dairy cattle in connection with any advertisement, trade-mark, brand, or sale of any dairy product, or otherwise, shall make application to the Dairy and Food Commissioner for permission so to do, who in turn shall take the matter up with the secretary of the respective cattle club or breed association representing the particular breed of dairy cattle named and upon receipt of satisfactory assurance that the applicant is entitled to the use of such name, permission shall be granted so to do by the Dairy and Food Commissioner in compliance with this act and the rules and regulations pertaining thereto. (Id. § 2.)

131. Penalty for Violation of Act.—Any person, firm, corporation or association violating any of the provisions of this act, shall, upon conviction, be fined not more than twenty-five dollars ($25) for the first offense, and not more than one hundred dollars ($100) and not less than fifty dollars ($50) for each subsequent offense. (Id. § 3.)

132. Milk and Cream Tests—Permanent Record of Duplicate Test Sheets, Etc.—A permanent record in duplicate of all tests of milk or cream purchased or received on the basis of butter fat contained therein must be made by a tester, licensed by the Dairy and Food Commissioner of the State of Oregon, on standard forms in accordance with the specifications for such records, adopted by the said Dairy and Food Commissioner. Each test shall be legibly recorded with indelible pencil or ink and shall be accompanied by the patron's name or number in such manner as to correctly identify the test obtained upon the milk or cream of each

patron. Each sheet or page shall be authenticated by the signature of the tester, licensed by the Dairy and Food Commissioner, and a duplicate record shall be deposited by said licensed tester immediately after completing the test on the day's samples in a box provided by the purchaser or receiver of milk or cream, said box to be constructed, sealed, locked and maintained in accordance with the rules and regulations adopted by the said Dairy and Food Commissioner as provided for in this act. The original record shall be immediately delivered to the purchaser or receiver of said milk or cream, who shall retain said original record for a period of at least three months. (L. 1925, c. 127, § 1.)

133. Dairy and Food Commissioner to Make Rules and Regulations.—The Dairy and Food Commissioner shall make such rules and regulations as may be necessary to carry into effect the provisions of this act, and for the government of licenses under this act. (Id. § 2.)

134. Penalty for Violation.—Any employee, of a firm, company, association, corporation or persons receiving or purchasing milk or cream on the basis of the amount of butter fat contained therein, violating any of the provisions of this act, shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be fined in the sum of not more than two hundred and fifty dollars ($250), or be imprisoned in the county jail for not more than twelve months, or both. Any person, firm or corporation purchasing milk or cream on the basis of the amount of butter fat contained therein, violating any of the provisions of this act, shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be punished by a fine of not more than one thousand dollars ($1,000), or imprisoned in the county jail for a period of not more than one year, or both such fine and imprisonment. (Id. § 3.)

135. Inspection of Animals Belonging to State Institutions.—It shall be the duty of the State Veterinarian or his deputy to test with tuberculin at least once each year, all of the cows that supply milk, cream, butter milk, or skimmed milk to any State institution or their inmates, and all animals failing to pass such test shall be at once removed from the dairy and herd so supplying milk, and the further use of their milk is prohibited except under such restrictions as the State Live Stock Sanitary Board may prescribe. It is hereby made the duty of the officers in charge of such State institutions to report quarterly to the State Veterinarian the names and addresses of all persons from whom such institutions obtain milk, cream, butter milk, or skimmed milk; and any person who shall knowingly supply to any State institution or its inmates, milk, cream, buttermilk or skimmed milk from cows suffering from tuberculosis or any other disease, shall be guilty of a misdemeanor, and upon conviction shall be fined not less than $50 nor more than $250. (Ore. Laws 1920, § 9140.)

136. "Bagging" Cows.—It shall be unlawful for any person to sell or offer for sale for dairy purposes at public auction any cows giving milk intended to be used for dairy purposes that have not been milked out entirely dry within not more than twelve (12) hours preceding the opening of the sale at which said cows are offered for sale or sold. (L. 1925, c. 278, § 1.)

137. Affidavit.—Any person who shall sell, or offer for sale any cows in milk at public auction, intended to be used for dairy purposes, shall file with the auctioneer of said sale the affidavits of two freeholders to the effect that they have knowledge that said cows have been milked entirely dry within the time specified in this act. (Id. § 2.)

138. Penalty.—Any person violating any of the provisions of this act shall, upon conviction thereof, be fined not less than one hundred dollars ($100), nor more than five hundred dollars ($500). (Id. § 3.)

NOTE: Chapter 421, pages 795 to 799, General Laws of Oregon 1919, being "An act to regulate and license the manufacture and sale of oleomargarine, nut margarine, butterine, renovated butter, process butter, or any butter substitute, and to provide license fees to be paid by manufacturers, wholesale dealers and proprietors of hotels, restaurants, dining rooms and boarding-houses; to prevent and punish fraud and deception in such manufacture and sale as an imitation of butter, and to prescribe penalties and punishment for violations of this act and means and methods of procedure for its enforcement," was submitted to the legal electors of the State of Oregon for their approval or rejection upon referendum ordered by petition filed in the office of the Secretary of State of the State of Oregon May 27, 1919, and rejected by a majority of the votes cast thereon at the general election held in the State of Oregon on the second day of November, 1920, there were 67,101 votes cast for said measure and 119,126 cast against the same. (Laws 1921, p. 9.)

Chapter 168, pages 241 and 242, General Laws of Oregon, 1923, being

"An act relating to milk products, to prevent fraud therein and the adulteration thereof, regulating the manufacture and sale thereof, and providing a penalty for the violations of this act,"

was submitted to the legal electors of the State of Oregon for their approval or rejection, upon referendum ordered by petition filed in the office of the Secretary of State May 7, 1923, and rejected by a majority of the votes cast thereon at the general election held in the State of Oregon November 4, 1924. There were 91,597 votes cast for said measure and 157,324 votes cast against the same. (Laws 1925, p. 8.)

See also Nos. 1 et seq., 22, 32, 176n, 210b, 228 et seq., and 394.

Eggs.

139. Sale of Eggs Unfit for Human Food Prohibited.—No person, firm or corporation shall sell, or offer or expose for sale, any egg unfit for human food unless the same is broken in shell and then denatured so that it can not be used for human food. For the purpose of this act an egg shall be deemed unfit for human food if it be addled or moldy; if it contains black spots, black rot, white rot, or blood ring; or if it has an adherent yolk or bloody or green white; or if it consists in whole or in part of a filthy, decomponsed or putrid substance. (L. 1925, c. 246, § 1.)

140. Definition of Words and Phrases.—Unless the context otherwise requires, the words and phrases employed in this act shall have the meanings hereinafter defined:

(a) Addled or white rot, means an egg that is putrid or rotten.

(b) Moldy means an egg which through improper care has deteriorated so that mold spores have formed within the egg.

(c) Black spot means an egg in which mold or bacteria have developed in isolated areas inside the shell.

(d) Black rot means an egg which has deteriorated to such an extent that the whole interior presents a blackened appearance.

(e) Blood ring means an egg in which the germ has developed to such a state that blood is formed.

(f) Adherent yolk means an egg in which the yolk has settled to one side and become fastened to the shell.

(g) Consumer means any person purchasing eggs for his own family use or consumption, or a restaurant, hotel, boarding house, bakery, or other institution purchasing eggs for serving to guests or patrons, or for its or their use in cooking or baking.

(h) All eggs imported into the State of Oregon from foreign countries shall be sold as such. The case or container in which they are shipped shall have the words "foreign eggs," or the word "eggs," preceded by the name of the country where produced displayed thereon in letters two inches high. All retailers of said eggs shall sell them from the container in which he [they] received them and shall inform each purchaser that said eggs are foreign eggs. All restaurants, hotels, cafes, bakeries and confectioneries using or serving foreign eggs in any form must place a sign in letters not less than four (4) inches in size in some conspicuous place where the customer entering their place of business can see it, to read, "We Use Foreign Eggs," or the same words with the exception that the name of the country where the eggs were produced may be substituted for the term "foreign."

(i) Incubated eggs shall include eggs which have been subjected to incubation, whether natural or artificial, for more than forty-eight hours and it shall be unlawful to offer or expose for sale or sell incubated eggs unless branded or stamped with the word "Incubated." (Id. § 2.)

141. Unlawful Sale of Eggs.—It shall be unlawful for any person, firm or corporation to represent, advertise or sell as fresh eggs any eggs that do not conform to the classifications provided for fresh eggs in this act. (Id. § 3.)

142. Grades for Salable Eggs Prescribed—Sale Unlawful Unless Purchaser Notified of Same.—It shall be unlawful for any person, firm or corporation to sell or offer or expose for sale any eggs intended for human consumption without notifying by suitable sign or label the person or persons purchasing or intending to purchase the same of the exact grade or quality and the size or weight of such eggs, according to the grades prescribed herewith:

(a) A fresh egg is an egg of recent production, clean, full, with "fixed air space" of not more than three-eighths of an inch in depth, sweet, strong of body and unimpaired in quality. The albumen must not appear watery. A larger air

space with a movable lower line indicates a stale egg, or one that is becoming weak or watery.

(b) A fresh standard egg is a fresh egg, as defined in paragraph (a), weighing not less than one and five-sixths ounces.

(c) A fresh medium egg is a fresh egg weighing not less than one and seven-twelfths ounces.

(d) A fresh undersize egg is any fresh egg weighing less than one and seven-twelfths ounces.

(e) All standard eggs, medium eggs and undersize eggs shall be packed separately and the grade plainly marked on the end of the case, showing the particular grade of eggs in the case.

(f) Undergrade eggs are good, edible eggs, but with an air space more than three-eighths of an inch in depth and not good enough to grade as standard in the different classifications herewith defined. (Id. § 4.)

143. Eggs for Resale to Have True Grade Stamped on Container—Exceptions—Definitions.—When eggs are removed from the original container for resale, the true grade of said eggs must be stamped upon the subsequent container in letters not less than one-third (⅓) inch in height. If placed on display for sale, a sign must be placed immediately over said eggs in letters not less than one (1) inch in height, giving the true grade of said eggs. When eggs are sold in lots of half cases or more, the container must be marked, showing plainly and truly the grade or grades of eggs therein contained and an invoice must accompany said sale plainly and truly indicating the grade or grades of eggs sold; provided, that the provisions of this act shall not apply to any eggs being handled for, or in transit to, or sold to dealers in commercial centers to be candled and graded, but all such eggs offered for sale in half cases or more shall be plainly stamped or branded "Not candled" upon the outside of the container in letters one (1) inch in height. The word person, as used in this act, shall mean and include individuals, firms and members of firms, and their employees or agents, corporations and officers of corporations and their employees and agents. (Id. § 5.)

144. Enforcement of Act, Etc.—It shall be the duty of the Dairy and Food Commissioner to enforce the provisions of this act and to make such rules and regulations as may be necessary for the enforcement of the act. (Id. § 6.)

145. Penalties for Violations of Act.—Every person who violates any of the provisions of this act shall be guilty of a misdemeanor, and, upon conviction for the first offense, shall be punished by a fine of not less than ten dollars ($10) and not more than one hundred dollars ($100), and for each subsequent conviction thereof shall be punished by a fine of not less than twenty-five dollars ($25) and not more than two hundred dollars ($200). (Id. § 7.)

145a. Jurisdiction.—Justice courts, District Courts and municipal courts sitting as justice courts, shall have concurrent jurisdiction with the Circuit Courts of all prosecutions arising under this act. (Id. § 9.)

Feeding Stuffs.

146. Title of Act.—This law shall be known as the commercial feeding stuffs law. (L. 1921, c. 36, § 1.)

147. "Commercial Feeding Stuffs"—What to Include.—The term "commercial feeding stuffs" shall be held to include all feeding stuffs used for feeding live stock and poultry, except the following:

(a) Whole seeds or grains;

(b) The unmixed meals made directly from and consisting of the entire grains of corn, wheat, rye, barley, oats, buckwheat, flaxseed and grain sorghums;

(c) Whole hays, straws, screenings, cottonseed hulls, corn stover, feed molasses and oat hulls whole or ground when unmixed;

(d) All other materials containing 60 per centum or more of water. (Id. § 2.)

148. Label—What to Contain.—On or after July 1, 1921, every lot or parcel of commercial feeding stuffs as specified in section 2, sold, offered or exposed for sale or distributed within this State shall be labeled or have affixed thereto a tag in a conspicuous place on the outside thereof, containing a legible and plainly printed statement in the English language clearly and truly certifying:

(a) The net weight of the contents of the package, lot or parcel;

(b) The name, brand or trade-mark;

(c) The name and principal address of the manufacturer or person responsible for placing the commodity on the market;

(d) The minimum per centum of crude protein;

(e) The minimum per centum of crude fat;

(f) The maximum per centum of crude fiber;

(g) The maximum per centum of ash;

(h) In the case of poultry feeds, the maximum per centum of grit and shell or other mineral matter;

(i) The specific name of each ingredient used in its manufacture.

The crude protein, crude fat, crude fiber and ash shall be determined by the methods in force at the time by the association of official agricultural chemists of North America. (Id. § 3.)

149. Statement—Exception—Sample—Affidavit.—Before any manufacturer, importer, jobber, firm, association, corporation or person shall sell, offer or expose for sale or distribute in this State any commercial feeding stuffs, he or they shall file with the Dairy and Food Commissioner a certified copy of the statement specified in section 3, with the exception of subdivision (a), for each brand of commercial feeding stuffs; said certified copy to be accompanied, when the Dairy and Food Commissioner shall so request, by a sealed package containing at least one pound of the commercial feeding stuffs to be sold, offered or exposed for sale or distributed in this State, and the company or person furnishing said sample shall thereupon make affidavit that the said sample is representative of the commercial feeding stuffs offered for registration. (Id. § 4.)

150. Registration Fee.—Each and every manufacturer, importer, jobber, firm, association, corporation or person manufacturing or selling any commercial feeding stuffs as defined in section 2 of this act, shall pay to the Dairy and Food Commissioner on or before January 1 of each year, a registration fee of $10 per brand for each brand of commercial feeding stuffs sold, offered or exposed for sale or distributed in this State; provided, that for brands registered on or after July first of any year one-half of the prescribed registration fee shall be paid for the remainder of said year. (Id. § 5.)

150a. Powers and Duties of Food Commissioner.—The Dairy and Food Commissioner shall have power to refuse to register any commercial feeding stuffs under a name, brand, or trade-mark, which would be misleading or deceptive, or which would tend to mislead or deceive as to the materials of which it is composed, or when the specific name of each and all ingredients used in its manufacture are not stated. He shall also have the power to refuse to register during any year or the succeeding year more than one commercial feeding stuff under the same name or brand when offered by the same manufacturer, importer, jobber, firm, association, corporation or person. Should any commercial feeding stuffs be registered in this State, and it is afterward discovered that such registration is in violation of any of the provisions of this act, the Dairy and Food Commissioner shall have the power to cancel such registration. The Dairy and Food Commissioner shall have the power to refuse to allow any manufacturer, importer, jobber, firm, association, corporation or person to lower the guaranteed analysis or change the ingredients of any brand of his or their commercial feeding stuffs during the term for which registered, unless satisfactory reasons are presented for making such change or changes. (Id. § 6.)

151. No Agents or Person Other Than Manufacturer, Etc., Required to File Statement or Pay Registration Fee.—Whenever a manufacturer, importer, jobber, firm, association, corporation or person manufacturing or selling a brand of commercial feeding stuffs shall have filed the statement required by section 4 and paid the registration fee as required by section 5 of this act, no other agent, importer, jobber, firm, association, corporation or person shall be required to file such statement or pay such fee upon such brand. (Id. § 7.)

152. Access to Premises—Samples May be Taken for Analysis.—The Dairy and Food Commissioner is authorized in person or by deputy to have free access to all places of business, mills, buildings, carriages, cars, vessels and parcels of whatsoever kind used in the manufacture, transportation, importation, sale or storage of any commercial feeding stuffs, and shall have the power and authority to open any parcel containing or supposed to contain any commercial feeding stuffs, and upon tender and full payment of the selling price of said sample, to take therefrom in the manner prescribed in section 9, samples for analysis, and said Dairy and Food Commissioner shall annually cause to be analyzed at least one sample so taken of every commercial feeding stuffs that is found sold, offered or exposed for sale or distributed in this State. (Id. § 8.)

153. Samples, How Procured—Analysis of the Same.—A representative sample of each brand of commercial feeding stuffs found sold, offered or exposed for sale shall be taken by the said Dairy and Food Commissioner or his duly authorized representative in the presence of at least one witness. No action shall be maintained for a violation of the provisions of this act, based upon an analysis of a sample from less than five separate original packages unless there be less than five separate original packages in the lot, in which case portions for the

official sample shall be taken from each original package; if the commercial feeding stuffs is in bulk, portions shall be taken from not less than five different places in the lot; provided, that this does not exclude sampling in bulk when not exposed sufficiently to take portions from five different places, in which case portions are to be taken from as many places as practicable. If the sample thus secured is larger than is required, it shall be mixed and quartered until a sample of suitable size remains. Said sample shall be divided into two parts, and shall be placed in packages and sealed in the presence of said witness; one of said packages so sealed shall be tendered, and, if accepted, delivered to the person apparently in charge of such feeding stuffs; the other package the said Dairy and Food Commissioner shall analyze or cause to be analyzed, and the result of such analysis, together with such additional information as the said Dairy and Food Commissioner may deem advisable, shall be promptly transmitted to the manufacturer or person responsible for the placing of the commodity on the market, and shall be published in reports or bulletins from time to time. If the manufacturer or person responsible for the placing of any commodity so sampled upon the market be unable to secure the sample delivered to the person apparently in charge of the feeding stuffs sampled, he shall, upon request to the Dairy and Food Commissioner, be furnished with a portion of the official sample referred to in this section. The methods of analysis shall be those in force at the time by the association of official agricultural chemists of North America. (Id. § 9.)

154. Unlawful to Manufacture or Sell Adulterated Commercial Feeding Stuffs—When Deemed Adulterated — Seizure — Confiscation — Appeal — When Feeding Stuffs May be Relabeled and Reregistered—Unlawful to Remove, Etc., Brand or Label, When.—No person, firm or corporation, or their agent, shall, within the State of Oregon, manufacture for sale, have in his possession with intent to sell, offer or expose for sale, or sell any lot or parcel of commercial feeding stuffs which is adulterated within the meaning of this act. For the purpose of this act commercial feeding stuffs shall be deemed to be adulterated if it shall include in any form any buckwheat hulls, rice hulls, cottonseed hulls, peanut shells, corncobs, cocoanut shells, ground or shredded straw, sawdust, cellulose, moldy or decayed feed, mill, elevator or other sweepings or dust, marble dust, or any injurious, deleterious or, for feeding purposes, worthless or damaged ingredient; provided, that nothing in this act shall prevent the sale of corn and cob meal containing no larger proportion of cob than the natural proportion of cob to corn on the ear. It shall be the duty of the Dairy and Food Commissioner and his deputies to seize and hold any lot or parcel of commercial feeding stuffs, stored, sold, kept, offered or exposed for sale in violation of any of the provisions of this act; and immediately thereafter he shall give notice in writing of such seizure to the owner or person from whose possession such lot or parcel was taken and such owner or person may thereafter appear before the commissioner at such time as the commissioner may set, but not exceeding ten days from the giving of said notice, and show cause why such article should not be confiscated. If it shall appear at such hearing that such article is being stored, sold, kept, offered or exposed for sale contrary to the provisions of this act, said article shall be confiscated and disposed of as hereinafter provided, and if not, the same shall be returned to the owner or person from whose possession it was taken. If the Dairy and Food Commissioner shall determine that such article is being stored, sold, kept, offered or exposed for sale in violation of any of the provisions of this act, then such article shall be destroyed, unless the owner shall execute and deliver to the Dairy and and Food Commissioner a good and sufficient bond to the effect that such article shall not be sold, disposed of, or used contrary to the provisions of the laws of the State of Oregon and the rules and regulations promulgated thereunder. The owner or person in possession of any lot or parcel of commercial feeding stuffs so ordered confiscated and destroyed shall have the right to appeal from the decision of the Dairy and Food Commissioner to the Circuit Court in the same manner and upon the same conditions as civil causes may be appealed to said court from the justice court. If any seized article be found adulterated or misbranded, not being deleterious or unfit for food, the Dairy and Food Commissioner may permit the owner to relabel and reregister the same in compliance with this act and the rules and regulations of the Dairy and Food Commissioner. It shall be unlawful for any person to remove, deface, cancel or conceal any brand, label or mark placed or caused to be placed upon any article of commercial feeding stuffs or its container by the Dairy and Food Commissioner, his deputy or agent. (Id. § 10, as amended L. 1925, c. 287, § 1.)

155. Penalties.—Any person, firm, corporation or agent that shall offer or expose for sale or sell any package or sample or any quantity of any commercial feeding stuffs which has not been registered with the Dairy and Food Commissioner

as required by section 4 of this act, or who has not paid the fee for such registration as specified in section 5, or who does not have affixed to it the tag or label required by section 3, or which is found by analysis made by or under the direction of the chemist in the Commercial Feeding Stuffs Department of the Dairy and Food Commissioner to contain a smaller percentage of crude protein or fat, or a larger percentage of crude fiber or ash than stated in the guarantee or who shall affix a tag or label which is false or misleading in any respect, or who shall adulterate any commercial feeding stuffs, or who shall adulterate with any substance injurious to the health of domestic animals shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be fined in a sum not to exceed one hundred dollars ($100) for the first offense and in a sum not to exceed five hundred dollars ($500) for each subsequent offense. In all litigation arising from the purchase or sale of any commercial feeding stuffs in which the composition of same may be involved, a certified copy of the official analysis, signed by the chemist of the Commercial Feeding Stuffs Department of the Dairy and Food Commissioner, shall be accepted as prima facie evidence of the composition of such commercial feeding stuff. No person, firm, corporation or agent shall manufacture, sell, offer or expose for sale, within the State of Oregon, any commercial feeding stuffs containing more than twelve per cent crude fiber as determined by the method of analysis in force at the time by the Association of Official Agricultural Chemists of North America; provided, that this section shall not prohibit the sale of copra, clover or alfalfa meal, or any single feeding stuff that carries a natural fiber content to exceed the twelve per cent as stated in this act, or any single feed carrying a natural fiber content in excess of twelve per cent that has been treated with molasses; provided, however, that alfalfa meal that has been treated with molasses shall contain not more than twenty-six per cent of crude fiber and not less than ten per cent of crude protein; but no fiber can be added to any single feeding stuff and no feeding stuff can carry more fiber than the natural amount contained in the ingredients of said feed; and provided further, that this section shall not prohibit the sale of mixed feeds not conforming to the standards as to protein and fiber content, as herein specified, if said mixed feeds are sold in sacks or other containers plainly labeled or tagged so as to show the percentage of each ingredient of the mixed feed therein contained. (L. 1921, c. 36, § 11, as amended L. 1925, c. 287, § 2.)

156. Jurisdiction of Courts—County Attorney to Prosecute.—Justice courts, district courts and municipal courts sitting as justice courts shall have concurrent jurisdiction with the circuit courts of all prosecutions arising under this act. The district or county attorney is authorized to institute prosecutions for violation of this act by information or the same may be instituted by indictment or by complaint verified before any magistrate. (L. 1921, c. 36, § 12.)

157. Disposition of Fees or Other Moneys Received From Operation of Act by Dairy and Food Commissioner.—It shall be the duty of the Dairy and Food Commissioner and of any other official of the State of Oregon receiving any fees, charges, fines, costs or other moneys resulting from the operation of the provisions of this act, to pay into the State treasury of the State of Oregon within ten days after the beginning of each month all such fees, charges, fines, costs and other moneys or sums received by him under the provisions of this act, during the preceding calendar month, and thereupon the State Treasurer shall place any sums so received to the credit of the general fund, and any such payment or payments so made shall constitute and be considered as, and are hereby made, an appropriation of such sums or amount from the general fund of the State for the purpose of carrying into full force and effect the specific provisions of this act. All expenses of whatsoever nature incurred in carrying out the provisions of this act shall be audited by the Secretary of State in the same manner as other claims against the State and paid out of the moneys hereby appropriated upon the presentation of duly verified claims therefor, after approval by the Dairy and Food Commissioner. (Id. § 13.)

158. Enforcement of Act.—The Dairy and Food Commissioner is hereby empowered to enforce the provisions of this act and to appoint such deputies as may be necessary to properly inspect and analyze all commercial feeding stuffs sold, offered or exposed for sale within this State and to prescribe the form of labels or tags to be used and to prescribe and enforce such rules and regulations relating to the sale or distribution of commercial feeding stuffs as he may deem necessary to carry into effect the full intent and meaning of this act. In prescribing the form of labels or tags, and rules and regulations relating to the sale or distribution of commercial feeding stuffs, the Dairy and Food Commissioner shall specify the date or dates when the same shall become effective and shall give public notice, not less than ninety days in advance, by such means as he deems proper. (Id. § 14.)

NOTE: See also No. 438 et seq.

Fish.

159. "Case of Fish" Defined.—For the purpose of this act, a case of fish is defined to consist of forty-eight one-pound cans or bottles, or equivalent in weight. (L. 1921, c. 105, § 34.)

160. "Salmon" Defined.—Wherever the word "salmon" is used in any of the laws of Oregon, the same shall be deemed and held to include chinook, silversides, steelheads, blueback, sockeye and all anadromous species of salmon and trout, except as to steelheads in the waters of the Rogue River, where the said steelheads are classified as game fish. (Id. § 36.)

161. "Unlawful to Purchase" Construed.—Whenever it shall state in the laws of the State that it shall be unlawful to purchase salmon or other food fish, illegally caught, said prohibition shall be construed to mean that it shall be unlawful to knowingly purchase. (Id. § 38.)

162. Unlawful to Waste Salmon.—It shall be unlawful for any person, firm or corporation wantonly to waste or destroy salmon or other food fish taken or caught in any of the waters of the State of Oregon, or over which the State of Oregon has concurrent jurisdiction, and no person engaged in the canning, preserving or curing of salmon or other food fish shall purchase or engage a greater quantity of fish than he is able to can, preserve, cure or artificially chill within sixty hours after the same are taken from the water. (Id. § 42.)

163. Canning Salmon Regulated.—It shall be unlawful to can or preserve for food any salmon, shad or sturgeon that have been removed from the water for a longer period than sixty hours, unless such fish have been artificially chilled. (Id. § 43.)

164. Salmon Unfit for Human Consumption; Procedure.—It is hereby made the duty of the fish commission, or its authorized representatives, whenever it or they find that salmon, shad or sturgeon about to be packed, canned, preserved in ice, or sold in the open market, are unfit for human consumption, the packer or possessor of the same shall be notified of the fact, and, if in spite of any warning which may be given to said packer or possessor, said fish are packed, demand shall be made upon the packer to keep same separate and apart from the balance of his output or pack, and a full report shall be made of the matter to both the State and the Federal health authorities. (Id. § 44.)

165. Unlawful to Take or Deal in Fish Without License.—It shall be unlawful to take, catch or fish for, buy, sell, can, pack or otherwise deal in or handle any salmon fish or sturgeon or other food or shell fish in this State, or in any waters of this State, or in any waters over which this State has concurrent jurisdiction, without first obtaining a license therefor, as provided by law, and any person, upon conviction thereof, for each and every offense, shall be punished as hereinafter provided. (Id. § 121.)

166. Unlawful to Deal in Salmon Without License.—It shall be unlawful for any person or persons, firm or corporation to engage in the business of buying, selling, canning, packing, preserving, peddling or otherwise dealing in salmon, shad or sturgeon, or other anadromous or food or shell fish within the State of Oregon, without first having obtained a license therefor from the Master Fish Warden, as hereinafter provided. In all prosecutions under this section, it shall be no defense that the person or persons, or firm or corporation, caught his or their or its own salmon, shad or sturgeon, or other anadromous or food or shell fish, or not. All licenses issued under the provisions of this section shall expire on the thirty-first day of March following the issuance thereof. (Id. § 122.)

167. Fish Warden to Keep Records; Authority; Appeals.—The Master Fish Warden shall keep and preserve a record of all applications for license filed. The Master Fish Warden is not bound by statements therein made as to the amount of salmon, shad, sturgeon or other anadromous or food or shell fish canned, packed, caught or handled, and for the purpose of ascertaining the true amount thereof which any canner, packer, taker or dealer in said fish, as herein provided, has canned, packed, caught or handled, said Master Fish Warden or any of his deputies has full authority and is hereby authorized to inspect the cannery, cold storage plant, packing establishment and places of business of such parties, and the books of such showing the amount of their pack or the amount handled or caught, but the information derived therefrom shall not be made public, and if in the opinion of the Master Fish Warden the facts set forth in the affidavit of the applicant for a license are untrue, and the canner, packer, taker or dealer, as herein provided, has not tendered or paid the proper fee, the Master Fish Warden shall immediately cancel the license already issued and demand from such canner, packer, taker or dealer, as

herein specified, a new license fee in a sufficient sum to cover the amount of said fish canned, packed, caught or handled. Any person, firm or corporation feeling aggrieved by the decision of the Master Fish Warden may appeal from his decision to the Circuit Court of the State of Oregon for the county in which his or its business is situated. Such appeal is taken by a written notice of such appeal on the Master Fish Warden, or his deputy residing in the county, and filing same with proof of service indorsed thereon within ten days from receiving notice of such cancellation of said license by such Master Fish Warden, together with a bond with one or more sufficient sureties, to be approved by the clerk of the Circuit Court, conditioned to pay whatever judgment may be rendered against him on the appeal, in the office of the clerk of the State of Oregon for the county in which said business is located; and the case shall be tried in the said Circuit Court as a suit in equity, and judgment entered by the court accordingly, and the decision shall be final, and the judgment of the court shall be enforced as other judgments are, and shall have like force and effect. No costs shall be taxed against the Master Fish Warden in any event. Nothing in this section shall be construed to prevent the Fish Commission of the State of Oregon, the Master Fish Warden, or any of the deputies, from giving in evidence at the trial of such appeal any fact or information derived by them from inspection of the books or papers of any canner, packer, taker or dealer in fish, or from offering in evidence in any court the affidavit of any person required by this act. (Id. § 130.)

167a. Canners' Licenses.—Every person, firm or corporation engaged in canning salmon, shell or other food fish shall pay the following fees for licenses yearly:

For each license to operate a cannery for the purpose of canning salmon and other food fish, the sum of twenty-five dollars ($25.)

For each license to operate a cannery for the purpose of packing or canning clams, clam nectar, crabs, shrimp and other shell fish, ten dollars ($10) plus 2 cents per case for each case of clams, clam nectar, crabs, shrimp and other shellfish so packed or canned.

For the purpose of this act a case of shellfish is defined to consist of forty-eight one pound cans or bottles or equivalent in weight. (Id. § 136, as amended L. 1923, c. 295.)

167b. Closed Season for Crabs for Canning or Shipping.—It shall be unlawful for any person or persons, firm or corporation, or any person whatsoever, to take or fish from any of the waters of the State of Oregon, except in Lincoln, Curry, Tillamook, Clatsop and Douglas counties, or have in their possession after the same have been taken, for the purpose of canning or shipping out of the county in which they are taken, any crabs during the months of July, August and September of any year. (Id. § 143.)

167c. Limit of Number of Crabs to be Taken in One Week.—It shall be unlawful for any person or persons, firm or corporation to kill, take, or fish, from any of the waters of the State of Oregon any greater number than sixty (60) dozen crabs in any one week. (L. 1921, c. 105, § 144.)

167d. Possession of Small Crabs Regulated.—It shall be unlawful for any person or persons, firm or corporation, to take or have in their possession for the purpose of sale or canning, where it is lawful to sell and can same, any male or female crab measuring less than six and one-half (6½) inches from point to point across its back. It shall be unlawful for any person or persons, firm or corporation to take or catch in the waters of Alsea bay or river any crabs by the use of rakes or submerged pots or any other device except the regular open crab nets, commonly known as rings or hoops. (Id. § 145, as amended L. 1925, c. 313.)

167e. Penalty; Reward for Informer.—(a) Any person violating any rules or regulations which may hereafter be adopted or promulgated under authority of this act, shall be guilty of a misdemeanor, and upon conviction thereof, shall be punished by a fine of not less than $50, nor more than $500, unless otherwise herein provided, and costs of such suit or action, or by imprisonment in the county jail in the county wherein such unlawful act was committed, for not less than thirty days, nor more than six months, or by both such fine and imprisonment.

(b) Any person or persons violating any of the provisions of this act shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be punished by a fine of not less than $50, nor more than $500, and the costs of the action, or by imprisonment in the county jail not less than thirty days, nor more than six months, or by both such fine and imprisonment; provided, in case of fine only that he be imprisoned in the county jail until such fine and costs of action be paid, he shall be credited on such fine and costs the sum of $2 for each day of imprisonment.

(c) In all actions for violations of the provisions of this act, one-third of the fine collected shall be paid to the informer or prosecuting witness; provided,

such informer or prosecuting witness is not a regularly appointed and salaried deputy fish warden; the remaining two-thirds, or all, as the case may be, shall be paid to the Master Fish Warden and by him deposited with the State Treasurer, to be placed in the hatchery fund for the district in which said fine was imposed.

(d) Any person violating any provision of this act, either by neglecting to observe its requirements or by directly violating the same, whether or not such violation is specifically declared to be a misdemeanor, shall be guilty of a misdemeanor and, upon conviction thereof, for each and every offense shall be subject to a fine of not less than fifty dollars ($50), nor more than five hundred dollars ($500), and the costs of such suit or action, or imprisonment in the county jail for not less than thirty days, nor more than six months, or to both such fine and imprisonment; provided, however, that the provisions of this section as to penalties shall not apply to violations of those sections wherein a specific penalty is fixed. (L. 1921, c. 105, § 169.)

167f. Penalty.—Any person violating any of the provisions of this act where no other penalties have been provided shall be guilty of a misdemeanor and shall be punished under the provisions of section 169, chapter 105, General Laws of Oregon, 1921. (L. 1925, c. 313, § 23.)

NOTE: See also Nos. 230, 233 and 403.

Flavoring Extracts.

168. Extracts, How Labeled.—All extracts or flavorings sold, or offered or exposed for sale, if not made from the plant or product which name it bears, shall be labeled "Artificial" or "Imitation" on the carton in which the same is kept for sale, and also on the bottle or package containing the same, in the same sized letters as the other lettering thereon. (Ore. Laws 1920, § 8692.)*

Flour.

See No. 425 et seq.

Fruit Jelly—Fruit Butter.

See Nos. 70 and 177-178.

Fruit Juices.

See Nos. 70 and 289.

Fruit Sauces.

See No. 225.

Fruits and Vegetables.

169. Unlawful to Import or Sell Infested Fruit.—It shall be unlawful for any person, firm or corporation to import or sell any infested or diseased fruit of any kind in the State of Oregon, except that such fruit may be sold to evaporators, fruit canneries, fruit product factories, or other by-product factories under the following conditions:

First—Such fruit so sold shall be used solely for the production of manufactured fruit products, beverages, or other manufactured products or by-products.

Second—The nature of the infestation or infection shall not be such as to make the article of food or beverage manufactured from such fruit unhealthful or unfit for use as a food or beverage. (Ore. Laws 1920, § 8881.)

170. Packing, Etc., or Delivering for Shipment Infected Fruit, Etc., a Misdemeanor.—Every person who packs or prepares for shipment to any point within the State, or who delivers or causes to be delivered to any express agent or railroad agent, or other person, or to any transportation company or corporation, for shipment to any point within the State, any fruit or fruits, either fresh, cured, or dried, that is infected with insect pests or diseases injurious to trees, shrubs, plants, fruits, or vegetables, is guilty of a misdemeanor. (Id. § 8882.)

171. Penalty for Violating Provisions of Act.—Any person, firm, or corporation violating any of the provisions of this act shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not less than $25 nor more than $100. (Id. § 8883.)

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*For penalty, see No. 28.

172. Commissioner of Horticulture to Present Evidence, and District Attorney to Prosecute.—It shall be the duty of the Commissioner of the State Board of Horticulture of the district in which a violation of this act occurs to present the evidence of the case to the district attorney, whose duty it shall be to prosecute any person guilty of a violation of this act, which prosecution may be brought in any of the justice courts of this State. (Id. § 8884.)

173. Green Fruit Packed for Market to be Labeled.—Any person, firm, association or corporation engaged in growing, selling or packing green fruits of any kind within the State of Oregon, shall be required, upon packing any such fruit for market, whether intended for sale within or without the State of Oregon, to stamp, mark or label plainly on the outside of every box or package of green fruit so packed, the name and post office address of the person, firm, association, or corporation packing the same; provided, further, that when the grower of such fruit be other than the packer of the same, the name and post office address of such grower shall also prominently appear upon such box or package as the grower of such fruit. (Id. § 8885.)

174. False Representations as to Place of Raising or Packing Fruit Forbidden.—It shall be unlawful for any dealer, commission merchant, shipper or vendor, by means of any false representations whatever, either verbal, printed or written, to represent or pretend that any fruits mentioned in section 8885, were raised produced or packed by any person or corporation, or in any locality, other than by the person or corporation, or in the locality where the same were in fact raised, produced or packed, as the case may be. (Id. § 8886.)

175. Possession of Fruit Falsely Labeled—Evidence.—If any dealer, commission merchant, shipper, vendor or other person, shall have in his possession any of such fruits so falsely marked or labeled contrary to the provisions of section 8885, the possession by such dealer, commission merchant, shipper, vendor, or other person, of any such fruits so falsely marked or labeled shall be prima facie evidence that such dealer, commission merchant, shipper, vendor, or other person, has so falsely marked or labeled such fruits. (Id. § 8887.)

176. Penalty for Violation of Act.—Any person violating any of the provisions of this act* shall be deemed guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not less than $5 nor more than $500, or by imprisonment in the county jail not less than ten nor more than one hundred days, or by both such fine and imprisonment at the discretion of the court. (Id. § 8888.)

176a. Name and Address of Consignor and Consignee on Shipments Into State.—Each carload, case, box, package, crate, bundle, or bale of trees, shrubs, plants, vines, cuttings, grafts, scions, buds, fruit pits, fruit or vegetables imported or brought into this State shall have plainly and legibly marked thereon in a conspicuous manner and place, the name and address of the person, firm or corporation shipping the same and the name and address of the consignee; also the name of the country, State or territory where the contents were grown and must show that it contains nursery stock, seedlings or seeds. (Id. § 8873.)

176b. State Board of Horticulture.—In this act the term "board" means the Oregon State Board of Horticulture. "Horticultural products" shall include horticultural, viticultural and any vegetable products; the word "person" shall include individuals, partnerships, corporations, associations, or two or more individuals having a joint or common interest; words used import the singular or the plural, as the case may demand. (L. 1923, c. 57, § 1.)

176c. Powers.—In order to promote, protect, further and develop the horticultural interests of this State the board is hereby authorized and empowered, after investigation and public hearing, to fix and promulgate official standards for grading and classifying any or all horticultural products grown or produced in this State and to fix and promulgate official standards for containers of horticultural products and to change any of them from time to time. (Id. § 2.)

176d. Standards.—In promulgating the standards or any alterations or modifications of such standards the board shall specify the date or dates when the same shall become effective and shall give public notice not less than thirty days in advance of such date or dates, by such means as it deems proper, and it is hereby authorized and empowered to employ reasonable methods for diffusing information concerning the standard that may be fixed by it for any horticultural product or container. (Id. § 3.)

176e. Same.—The board is authorized to fix and promulgate as the official standard for this State for any horticultural product or container the standard for

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*Nos. 173-176.

such product or container which may have been promulgated or announced therefor under the authority of the Congress of the United States, and in carrying out the provisions of this act the board is authorized to co-operate with the United States or any department thereof in accomplishing the matters and things provided for herein. (Id. § 4.)

176f. Inspection.—The board is hereby authorized to designate any competent employee or agent of the board to inspect or classify horticultural products in accordance with such regulations as it may prescribe at such places as the volume of business may be found to warrant the furnishing of such inspection service, at the request of persons having an interest in such products, and to ascertain and certify to such persons the grade, classification, quality or condition thereof, and such other pertinent facts as the board may require. The board is authorized to fix, assess and collect or cause to be collected fees for such services when they are performed by employees or agents of the board, such fees to be on a uniform basis in an amount reasonably necessary to cover the cost of such inspection and the administration of this act. (Id. § 5.)

176g. Appeal.—Whenever any quantity of any horticultural product shall have been inspected hereunder and a question arises as to whether the certificate issued therefor shows the true grade, classification, quality or condition of such product, any interested person, subject to such regulations as the board may prescribe, may appeal the question to the board and it is authorized to cause such investigation to be made and such tests to be applied as it may deem necessary and to determine and issue a finding of the true grade or classification of the product or the quality or condition thereof. Whenever an appeal shall be taken to the board under this act, it shall charge and assess and collect, or cause to be collected, a reasonable fee, to be fixed by it, which shall be refunded if the appeal is sustained. (Id. § 6.)

176h. Certificate.—A certificate when not superseded by a finding on appeal, or a finding on appeal of the grade, classification, quality or condition of any horticultural product, issued under this act, and all certificates issued under authority of the Congress of the United States relating to the grade, classification, quality or condition of horticultural products shall be accepted in any court of this State as prima facie evidence of the true grade, classification, condition or quality of such horticultural product at the time of its inspection. (Id. § 7.)

176i. Regulations.—The board is hereby authorized and empowered to promulgate regulations for carrying out the purpose and provisions of this act. All fees and moneys collected or received by the board, its employees or agents, under this act and the regulations which may be promulgated hereunder shall be covered into its treasury to be there maintained in a separate fund and used for carrying out the provisions of this act. (Id. § 8.)

176j. Employees.—The board may appoint employees and agents to assist in carrying out the provisions of this act, and may fix their compensation. It may require any such employee or agent under this act to execute and file with it a good and sufficient bond, payable to the State in such sum, not exceeding five hundred dollars ($500), and with such surety or sureties as it may prescribe, conditioned upon the faithful performance by such employee, agent or inspector of his duties as such employee, agent or inspector. Any person injured by the failure of such employee, agent or inspector faithfully to perform such duties shall be entitled to sue on such bond in his own name in any court of competent jurisdiction for the recovery of such damages as he may have sustained by reason of such failure. (Id. § 9.)

176k. Same.—Any employee, agent or inspector employed under this act who shall knowingly inspect, grade or classify improperly any horticultural product or shall knowingly give any incorrect certificate of grade, classification, quality or condition, or shall accept money or other consideration directly or indirectly for any incorrect or improper performance of duty, and any person who shall improperly influence or attempt to improperly influence any such employee, agent or inspector in the performance of his duty shall be guilty of a misdemeanor and upon conviction thereof shall be fined not more than one hundred dollars ($100) or be imprisoned not more than one year or both [such fine and imprisonment]. (Id. § 10.)

176l. Penalty.—If any quantity of any horticultural product shall have been inspected and a certificate issued hereunder showing the grade, classification, quality or condition thereof no person shall represent that the grade, classification, quality or condition of such product at the time and place of such inspection was other than as shown by such certificate. Whenever any standard for the grading or classification of any horticultural, viticultural or vegetable product becomes effective under this act, and any word or words, figure or letter has been adopted by the Oregon State Board of Horticulture to indicate the grade or quality of horticultural, viticultural or

vegetable product contained in any container or package, it shall be unlawful for any person, firm or corporation to use any of said words, letters or figures, in connection with any container or package, to represent the grade or quality of horticultural, viticultural or vegetable product contained therein, to be sold or offered for sale, if the product contained therein does not meet the requirements of the grade indicated by the marking. Whenever any standard for a container for any horticultural product becomes effective under this act no person thereafter shall pack for sale, offer for sale, consign for sale, or sell and deliver in a container any such horticultural product to which the standard is applicable, unless the container conforms to the standard, subject to such variations therefrom as may be allowed in the regulations made under this act, unless such product be brought from outside the State and offered for sale, consigned for sale or sold in the original package. Any person violating this section shall be guilty of a misdemeanor and upon conviction thereof shall be fined not more than one hundred dollars ($100) or be imprisoned not more than one year or both. (Id. § 11, as amended L. 1927, c. 23.)

176m. State Market Agent.—There is hereby established the State Market Agent. (L. 1923, c. 271, § 1.)

176n. Powers.—The powers and duties invested by this act in the State Market Agent shall be as follows:

1. He shall act as adviser to producers, distributors and consumers, when requested, assisting them to the best of his ability in the economical and efficient distribution of grain and grain products, hay and products thereof, live stock and all meat products, dairy products, poultry and poultry products and agricultural implements produced, manufactured, processed in or transported into the State of Oregon.

2. He shall gather and disseminate, by means of bulletins or press notices, impartial information concerning supply, demand, prevailing prices, commercial movements within the State, from within out of the State, and from without into the State, including quantities in common and cold storage of any such commodities; and he shall prepare and give out for publication a daily market report of representative prices based on actual sales of grain, hay, potatoes, live stock, dairy products and poultry products.

3. He shall promote, assist and encourage the establishment of associations and organizations for improving the market relations and services among producers, distributors and consumers, of any such products, and shall especially protect and conserve the interests of the producers and consignors of such products.

4. He shall investigate complaints and, upon request, act as mediator or arbitrator in any controversy or issue that may arise among producers, distributors and consumers of such products, and in case the parties to the dispute fail to reach an adjustment, he may make his findings public.

5. He shall co-operate with the directors and managers of all associations established under the co-operative laws of Oregon and they shall submit to him, upon blanks which he shall furnish such reports as may be necessary to obtain a clear record of their business. Where any such business appears to be in an unsatisfactory condition he shall do all within his power to protect the interests of members and patrons.

6. He shall foster and encourage the inspection, grading, standardizing, labeling and branding of all such products and shall exercise, under the direction of the Governor, all the rights, powers and duties vested by law in the Public Service Commission under chapter 333 of General Laws of Oregon of 1917 and amendments thereto, being sections 6112 to 6159, Oregon Laws.*

7. He shall promote the standardization of packages and containers for such products. All duties required by law to be discharged by the State Treasurer in his capacity as the State Sealer of Weights and Measures, the Deputy State Sealer of Weights and Measures and their representatives and employees, shall, upon the expiration of the term of office of the present State Treasurer, be discharged by the State Market Agent, and all laws and regulations now or hereafter enacted relative to weights and measures and to other standards of quantity shall apply to said State Market Agent in the same manner and to the same effect as they formerly applied to said State Sealer of Weights and Measures, Deputy State Sealer of Weights and Measures, their representatives and employees.

8. He shall certify for the protection of owners, buyers or creditors, when so requested, samples and warehouse receipts for any such products, verifying quantities and qualities thereof, and he shall charge for such services such fees as he shall deem sufficient to make this service self-supporting.

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*See No. 176v and note thereto.

9. He shall grant, upon request, such assistance as may be within his power, to co-operative associations and other distributing agencies, in perfecting and standardizing their accounting systems and shall charge for such services such fees as he shall deem sufficient to make this service self-supporting.

10. In co-operation with the Public Service Commission, he shall use his best endeavors with all transportation agencies to secure for such products better rates and services.

11. When requested, he shall assist communities in determining the feasibility of establishing and maintaining public markets.

12. By means of preliminary surveys, he shall, upon request, aid farmers and others in determining the feasibility of forming co-operative associations, and when, in his opinion, the evidence seems to show that such associations have a fair chance of succeeding, he shall assist their prospective members in the various steps necessary to establish their organization.

13. In co-operation with the Agricultural College and the Federal Bureau of Agricultural Economics, he shall assist in collecting, assembling and disseminating statistics bearing upon the market conditions of any such products. (Id. § 2.)

176o. Same.—In the exercise of the various powers and duties herein vested in the State Market Agent, he shall use his best judgment in the expenditure of his funds and efforts to secure the most needful results from the forces and funds at his disposal. (Id. § 3.)

176p. False Statements.—It shall be unlawful for any person, firm, corporation or other association of persons to make any statement or perform any act, the reasonable effect of which would be to create a false impression of actual market conditions and prices of any such products. (Id. § 4.)

176q. Agent to Co-operate.—In order to avoid duplication of effort and to secure co-ordination among the various agencies working for the ends herein sought, the State Market Agent shall become a member of the Oregon Co-operative Council and shall work in close harmony with the Bureau of Agricultural Economics of the United States Department of Agriculture and with the Oregon Agricultural College. (Id. § 5.)

176r. Funds.—All unexpended funds, materials, equipment, and other property acquired by the Public Service Commission under the provisions of chapter 333 of the General Laws of Oregon of 1917,* including the sum of seven thousand five hundred dollars ($7,500) initially appropriated by said chapter 333 of the Laws of Oregon for 1917* for the purpose of inaugurating the work of grain inspection therein provided and including all sums heretofore appropriated for the said work by the emergency board, and all property and funds pertaining to the work performed by the office of the State Sealer of Weights and Measures, shall, upon the going into effect of this act, be transferred to the office of the State Market Agent; providing, that the property and funds pertaining to the work of the State Sealer of Weights and Measures shall be retained by the present office during the incumbency of the present State Treasurer. (Id. § 6.)

176s. Evidence.—In order to secure the information necessary to perform and exercise the duties and powers conferred upon the State Market Agent by this act, he shall have the power to require the production of evidence in any public hearing or delivered privately in accordance with blanks and instructions furnished by him, and to administer oaths to any persons appearing before him. It shall be the duty of any person, firm, corporation or association of persons to comply with the requests from the State Market Agent for information in accordance with the provisions of this act; and any person, firm, corporation or association of persons failing or neglecting to comply with such requests shall be guilty of a misdemeanor and subject to the penalties herein provided. (Id. § 7.)

176t. Same.—All evidence collected from private individuals, firms, corporations and co-operative associations shall be regarded by the State Market Agent as strictly confidential except when the evidence is brought out in public hearings. Such evidence shall be used in statistical tables and bulletins of information compiled in such a way as shall not disclose the identity of any person, firm, corporation or co-operative association. (Id. § 8.)

176u. Penalty.—Any person, firm, corporation or other association of persons violating or refusing to comply with any of the provisions of this act shall be guilty of a misdemeanor and subject to a fine of not less than ten dollars ($10) nor more than five hundred dollars ($500), or imprisonment in the county jail of not more than one year, or by both such fine and imprisonment. The Circuit Court of the State of Oregon and any justice court of the State shall have concurrent juris-

*Oregon Laws 1920, sections 6112-6159. See No. 176v and note thereto.

diction in enforcing the provisions of this act. It shall also be the duty of the Circuit Court of the State of Oregon for any county or the judge of said court, on application of the State Market Agent, to compel obedience to subpœnas issued and served pursuant to the provisions of this act and to punish disobedience of any such subpœna or any refusal to testify at any hearing called under the provisions of this act in the same manner as a refusal to testify in the Circuit Court or the disobedience of the requirements of a subpœna issued from said court is punished. (Id. § 9.)

NOTE: See also Nos. 42 et seq., 177-178, 213 et seq., 289, 409, and 419 et seq.

Grain.

176v. Standard Grades for Hay and Grain—To be Kept on File in Warehouse—Alteration and Change—Hearing Thereon—Posted Notice of Standard Grades.—The commission shall fix and establish standard grades to apply to all grain and hay bought or handled by public or terminal warehouses in this State. All such grades shall be known as Oregon grades. The commission shall adopt as State grade standards all grades for grain and hay now or hereafter established by the United States Department of Agriculture. Standards for grain and hay not provided for by the United States Department of Agriculture shall be established or changed only after a public hearing, notice thereof to be given by publication in three newspapers of the State at least ten days prior to such hearing. Grade standards or any alteration or modification of such standards which the commission may establish shall not become effective within thirty days after publication, except in the case of grades established by the United States Department of Agriculture, which shall become effective ten days after publication. All interested persons desiring to be heard shall be permitted to give testimony, and such other witnesses may be subpœnaed as the commission may deem necessary, which witnesses shall be entitled to the same fees and mileage as are provided for witnesses in civil actions. Such grain or hay standards shall not apply to grain or hay contracted for previous to their adoption. The commission shall, after such hearing, make and issue reasonable rules and regulations governing the dockage which shall be made on inferior grades, and in all executory contracts thereafter entered into where the price or amount to be paid therefor depends upon terminal weight or grade, such rules and regulations shall control the dockage in so far as the same affects the price to be paid, and such rules and regulations shall become part of the contract of sale unless expressly agreed to the contrary in such executory contract. It shall be the duty of the Chief Grain Inspector, immediately after the establishment of such grades, and the promulgation of rules and regulations fixing dockage, as herein provided, to supply all public and terminal warehousemen, which the records in his office show are then or thereafter engaged in operating such warehouses, with a copy of such grades, rules and regulations. It shall be the duty of every public and terminal warehouseman to keep such copy on file in a convenient place in every such warehouse, and if an office is maintained in connection with such warehouse, a copy of such grades, rules and regulations shall be kept on file in such office, and a placard notice posted in a conspicuous place in every such warehouse and such office, reading as follows:

"A copy of Oregon grades, rules and regulations is on file here for information of interested parties."

Every such warehouseman shall exhibit such copy of grades, rules and regulations to any interested party applying therefor, at any such warehouse or office, and permit such interested party to examine and consult such copy.

In all contracts hereinafter entered into for the sale of unscoured wheat, pertaining to the classes soft red winter, common white, and white club wheat, under the official grain standards of the United States Department of Agriculture, and under rules adopted in Oregon by the Public Service Commission, where the price or amount to be paid depends upon the weight of grade, no discount or differential shall be made on account of test weight per bushel, if the grain delivered under said contract weighs not less than fifty-eight pounds to the measured bushel; provided, however, that the grain so delivered grades No. 2 or better under the standards above described. For wheat weighing in excess of fifty-eight pounds to the measured bushel and grades No. 2 or better, there shall be paid a premium over the price at country point for said grade at a rate of not less than eight-tenths of 1 per cent for each pound test weight over the minimum of said grade when test weight is the determining factor, and in case of delivery on contract of grain of lower grade on account of test weight per bushel the discount or differential, shall be at a rate not to exceed eight-tenths of 1 per cent of the price for said grade at country point for each pound test below the minimum test weight for the grade on which

the contract is based, unless the test weight be below fifty-five and at a rate not to exceed 1.6 per cent of the price at country point for each pound test below fifty-five down to and including wheat having a test weight of fifty-one pounds per measured bushel.

The discount on mixed wheat may not exceed 2 per cent below the purchase price paid at country point for the same grade of the class of wheat which predominates in the mixture.

Said discounts, together with the rules and regulations above provided, shall become part of every contract of sale of wheat of the classes named. (Ore. Laws 1920, § 6123, as amended L. 1921, c. 152, § 1.)

NOTE: For the grain inspection law, see Oregon Laws 1920, § 6112 et seq., as amended. See also Nos. 176n, 176r and 440.

Ice.

See No. 402.

Imitation Jelly, Etc.

177. Imitation Jelly, How Labeled—If Colored, Cannot be Sold.—No person shall manufacture for sale, sell, offer or expose for sale as fruit jelly or fruit butter, any jelly or imitation fruit butter, or similar compound made or compounded in whole or in part of glucose, dextrin, starch, or other substances, and colored in imitation of fruit jelly or butter; nor shall any such jelly, fruit butter, or compound be manufactured or sold under any name or designation whatsoever unless the same be composed entirely of ingredients not injurious to health, and not colored in imitation of fruit jelly; and every can, pail, or package of such jelly or butter sold in this State shall be distinctly and durably labeled "Imitation Fruit Jelly or Butter," and shall state the percentages of the various ingredients contained therein, and name and address of manufacturer. (Ore. Laws 1920, § 8676.)*

178. Bakers and Restaurants Must Post Notice.—Any baker or other manufacturer of cakes, pies, or other food, who uses or incorporates in such cakes, pies, or other foods, any imitation fruit jellies or butters, shall place a conspicuous notice in his place of business stating that imitation jellies, butters and fruit juices are used; provided, that this section shall apply to all restaurants or public eating houses who sell or serve cakes, pies, or other foods in which said imitation jellies, butters or fruit juices are used. (Id. § 8677.)*

Maple Syrup.

179. Maple Syrup.—All maple syrup sold, offered or exposed for sale, that contains any other ingredient than pure maple sugar syrup or maple sap syrup shall bear a label which shall truly state the ingredients from which said maple syrup is made in type of equal size with any on said label. (Ore. Laws 1920, § 8682.)*

Meat—Meat Products.

180. Terms "Meat" and "Meat-Food Products" Defined.—The terms "meat" and "meat-food products," wherever used in this act, shall include the carcasses or parts of carcasses of cattle, sheep, other ruminants, and swine, and the meat of such animals and the meat-food products of such animals. (Ore. Laws 1920, § 8802.)

181. Term "Unwholesome" Defined.—The term "unwholesome," as used in this act, shall be understood to include all meats or meat-food products which are diseased, contaminated, putrid, unsound, unhealthful, or unfit for food. (Id. § 8803.)

182. Establishment Includes What.—The word "establishment," as used in this act, shall include (1) any building or structure in which slaughtering, butchering, meat canning, meat packing, meat manufacturing or rendering is carried on; and (2) the ground upon which such building or structure is erected, and so much ground adjacent thereto as is used in carrying on the business of such establishment; and (3) any place or any vehicle where meat or meat-food products are prepared, manufactured, stored, sold, offered for sale, exposed for sale, or transported by land or by water. (Id. § 8804.)

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*For penalty see No. 28.

183. Equipment Defined.—The word "equipment," as used in this act, shall include all machinery, fixtures, containers, vessels, tools, implements, and apparatus used in and about an establishment. (Id. § 8805.)

184. Terms "Person," "Board," "Food Commissioner" Defined—Cities, Classified.—The word "person" shall include individuals, partnerships, corporations, and associations. Masculine words shall include the feminine or neuter. The singular shall include the plural. The word "board" shall mean the "State live stock sanitary board." The words "food commissioner" shall mean the "State Dairy and Food Commissioner." The words "city of the first class" as used in this act shall include all cities within the State of Oregon having at the time of the last Federal census a population of one hundred and fifty thousand or over; "city of the second class" shall include all cities within the State of Oregon having a population of two thousand or over and under one hundred and fifty thousand at the time of the last Federal census; "cities, towns or districts of the third class" shall include all cities or towns having at the time of the taking of the last Federal census, a population of less than two thousand inhabitants. (Id. § 8806.)

185. Establishment to be Kept Clean.—Every establishment, including all equipment therein or thereon, shall be kept in a clean and sanitary condition. (Id. § 8807.)

186. Feed Swine Offal, Blood, Etc.—It is unlawful to feed offal, blood, or slaughterhouse refuse to swine within two hundred feet of an establishment other than a vehicle. (Id. § 8808.)

187. Unlawful to Sell Unwholesome Food.—It is unlawful to manufacture for food, prepare for food, sell, offer for sale, expose for sale, or have in one's possession for the purpose of sale, any unwholesome meat or unwholesome meat-food product. (Id. § 8809.)

188. Handling and Exposure of Meat.—It is unlawful in an establishment to permit any meat or meat-food product to be touched or handled by any person other than the owner, lessee, or manager of an establishment, or other than the agent or employee of such owner, lessee, or manager, or to permit any meat or meat-food products to be exposed to insects, animals, or fowls. (Id. § 8810.)

189. Unlawful to Sell Meat, Etc., From Swine Fed on Carrion.—It is unlawful to sell, offer for sale, or to expose for sale, any meat or meat-food product from swine to which have been fed any carrion. (Id. § 8811.)

190. Enforcement of Act by Federal Employees—County Veterinarians—Appointment of Agents—Qualifications.—The board, in enforcing the provisions of this act, may appoint employees of the United States Department of Agriculture, engaged in the examination of animals, meats, or meat-food products. County veterinarians, veterinarians or employees engaged in the examination of animals, meats or meat-food products, for any city or municipality within the State of Oregon, regularly licensed graduate veterinarians, regularly licensed practitioners of human medicine, or any experienced handler of meats, or meat-food products, other than the owner or party in charge of any abattoir or meat-killing establishment, as agents under the provisions of this section, who shall receive no compensation as such agents from the State of Oregon. In addition to the agents provided for above in this section, the board may, in enforcing this act, assign any employee of the board to perform duties as agent under this act, and may enter into a co-operative agreement with the State Dairy and Food Commissioner of the State of Oregon whereby such deputies or assistants to said dairy and food commissioner shall be empowered to perform the duties as agents under this act; and the board may further enter into a co-operative agreement with the several regularly appointed county agricultural agents of the State of Oregon whereby such agents shall be empowered to perform the duties as agents under this act without additional expense to the State, county or the owner of the butchering or meat-packing establishment with which they perform their duties as herein specified. Each employee assigned to serve as agent under this act shall have knowledge of the diseases of meat-producing animals, and shall be versed in the conditions that affect the wholesomeness of animal food products. An appropriate standard of fitness for such agents shall be maintained by the board. The appointment, qualifications, powers and duties of each such agent shall be governed by the provisions of this act, and by such rules and regulations for the enforcement of this act as may be adopted and promulgated by the board. Each such agent may be dismissed at any time by the board. (Id. § 8812.)

191. Entry of Establishment by Agent.—Any duly authorized agent or employee of the board may at any time enter any establishment and examine the same, to ascertain whether the provisions of this act are being observed. (Id. § 8813.)

192. Unlawful to Hinder or Prevent Agent From Entering Establishment.—It is unlawful to hinder, impede, or prevent any duly authorized agent or employee of the board from entering any establishment in the performance of his duty, or from making any examination duly ordered in enforcing this act. (Id. § 8814.)

193. Agent to Mark Unwholesome Meat, Etc.—Any agent authorized under this act to examine, may, under the rules and regulations prescribed by the board, mark, stamp, or otherwise designate any animal or meat or meat-food product found on examination to be wholesome and fit for food. (Id. § 8815.)

194. Condemnation and Disposition of Unwholesome Meat.—If, upon examination of any establishment, any diseased animal or any unwholesome meat, or any unwholesome meat-food product is found, such animal or meat or product shall be condemned, properly marked or designated, and treated in such a way that it cannot thereafter be used for food. (Id. § 8816.)

195. Report of Unsanitary Condition to Board—Notice to Owner—Closing Establishment.—If, upon examination, it is found that any establishment, or any part of an establishment, or any equipment, is in an unclean or unsanitary condition, or is being conducted or used in such a manner as to make it probable that the meat or meat-food products therein or produced therein may be rendered unwholesome, or is being conducted or used in violation of this act, the agent making such examination shall report the unlawful condition to the board, and shall at the same time notify, in writing, the owner, lessee, or manager of the establishment. Upon receipt of such report, the board in co-operation with the food commissioner, by their executive officers, or otherwise as they may direct, shall notify the proper owner, lessee, or manager of the result of the examination, and direct that the unlawful condition be remedied within the time specified in the notice; provided, that the time so specified shall be not less than twenty-four hours, unless the unlawful condition mentioned in said notice is of such character and nature as, in the opinion of the board and food commissioner, their executive officers, or agents, can be removed immediately. If, upon the expiration of the time specified in the notice, the condition so reported to exist shall not have been remedied, the board or food commissioner by their executive officers may order the establishment closed. It is unlawful to operate an establishment, or any part thereof, which has been closed by order of the executive officer of the board or food commissioner, until the unlawful condition reported to exist has been remedied to the satisfaction of said officer of the board or food commissioner. The closing of an establishment, or any part thereof, shall not preclude prosecution for violation of this act. (Id. § 8817.)

196. What Establishments Excepted from Operation of Act.—Butchering or packing establishments supplying meat and meat-food products to any city within the State of Oregon designated as a city of the first class shall be exempted from the provisions of this act so long as there is maintained a system of municipal meat inspection within said city; and all establishments operating within the State of Oregon under a system of Federal meat inspection shall be exempted from the provisions of this act. Butchering or packing establishments supplying meat and meat-food products to any city within the State of Oregon designated as a city of the second class shall be exempted from the provisions of this act if the said establishments are operating in any city having municipal meat inspection, or upon a system of municipal meat inspection approved by the board being established within the said city of the second class. Butchering and packing establishments supplying meat and meat-food products to any city, town or district of the third class shall come under the provisions of this act at all times and except only when a written inspection exemption permit is issued by the board. (Id. § 8818.)

197. Unlawful for Agent of Board to do Certain Things.—It is unlawful for any agent of the board, or any special meat hygiene agent:

1. To approve or pass any diseased animals intended to be slaughtered for food, or any unwholesome meat, or any unwholesome meat-food product;
2. To fail to condemn and mark, and cause to be rendered unfit for food, any diseased animal, unwholesome meat, or unwholesome meat-food product, found on examination of an establishment to be unfit for food;
3. To fail to report as required any violation of this act;
4. Directly or indirectly to accept or agree to accept anything of value, monetary or otherwise, given or offered to such agent to influence him in the discharge of his duties. (Id. § 8819.)

198. Influencing Agent by Gift Unlawful.—It is unlawful to give or offer to give, directly or indirectly to an agent or employee of the board, or to a special meat hygiene agent, anything of value, monetary or otherwise, with intent to influence such agent or employee in the discharge of his duties under the provisions of this act. (Id. § 8820.)

199. Duplicating Tags, Stamps, Etc., Unlawful.—It is unlawful to make, imitate, duplicate, reproduce, or counterfeit any stamp, mark, tag, certificate, or emblem used or authorized by the board to be used, for marking or designating animals or meat or meat-food products that have been either approved or condemned under the provisions of this act, or to fail to report the owner's name and address of any diseased animal, if known. It is unlawful, without specific authority in writing from the board, to use for any purpose any such stamp, mark, tag, certificate or emblem. (Id. § 8821.)

200. Promulgation of Rules and Regulations.—This act shall be enforced by the board. To that end it may adopt and promulgate such rules and regulations as it may deem necessary. So far as practicable the regulations of the meat hygiene service of the United States Department of Agriculture shall be included in the rules and regulations of the board. (Id. § 8822.)

201. Penalty Clause—Disposition of Fines.—Any person, who shall violate any of the provisions of this act shall be guilty of a misdemeanor, and, upon conviction thereof, shall be sentenced to pay a fine not exceeding five hundred dollars, or to undergo an imprisonment not exceeding one year, or both. If the violation shall be by a corporation, partnership or association, the directors of such corporation or the members of such partnership or association, its agents or employees, with guilty knowledge of the fact, shall also be guilty of a misdemeanor, and on conviction thereof, shall be punished as aforesaid. The fines imposed as aforesaid shall be for the use of the State, shall be paid to a duly authorized agent of the board and shall be by the board paid into the State treasury. (Id. § 8823.)

202. Administration of Act.—Any duty imposed upon, or power given to the board by this act, may be done or exercised as the board may, by standing or special order, direct. (Id. § 8824.)

203. Definitions in Act Regulating Importation of Meats from Foreign Country.—For the purpose of this act,* the word "person," "firm," "company," or "corporation" shall include wholesalers, retailers, jobbers, and every place, shop or storehouse where meats [which] have been shipped or imported from any point or place outside of the United States of America are sold or offered for sale. (Id. § 8825.)

204. Stamping and Branding Foreign Meats.—Every person, firm, company or corporation who sells, offers for sale, or has in his or their possession for sale, or who consigns, ships or presents to nay dealer, commission merchant, consumer, or other person or persons, any meat or meats which have been shipped or imported from any point or place outside of the United States of America shall, before so doing, cause to be stamped, marked, branded or printed upon the wrapper of such meat or meats or upon a tag attached to the meat, in black-faced letters not less than one-half of an inch in height, the words, "Imported Foreign Meat." (Id. § 8826.)

205. Dealers in Foreign Meats to Post Notice.—Every person, firm, company or corporation, selling or offering for sale any meats within the State of Oregon that have been shipped or imported from any point or place outside of the United States of America shall display in a conspicuous place in his or their public salesroom, a sign which shall not be less than one foot in height and six feet in length, bearing the words, "Imported Foreign Meat Sold Here," in black-faced letters not less than six inches in height and one inch in width upon a white background. (Id. § 8827.)

206. Penalty Clause.—Every person, firm, company or corporation who shall fail to comply with this act or any of the provisions thereof, shall be deemed guilty of a misdemeanor and upon conviction shall be punished by imprisonment in the county jail for a period of not less than three months nor more than six months, or by a fine of not less than $100 nor more than $250 or by both such fine and imprisonment, in the discretion of the court. (Id. § 8828.)

207. Goat Meat Must be Labeled.—It shall be unlawful to sell, offer or expose for sale the dressed meat of any goat or kid unless the same shall be labeled in a conspicuous place in legible stamp or writing the words "Goat Meat" or "Kid Meat," as the case may be. (Id. § 8689.)†

207a. Goat Meat to be Labeled.—Before offering for sale the dressed meat of any goat or kid, the packer, butcher, retailer or other firm, corporation, partnership or association so doing shall cause the said meat to be labeled by placing thereon in a conspicuous place in legible stamp or writing the words "goat meat," or "kid meat," as the case may be. (Id. § 2232-1.)

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*Nos. 203-206.

†For penalty see No. 28.

207b. Penalty.—Any person, firm, corporation or other association selling or offering for sale any dressed goat or kid meat without first labeling same as provided in this act, shall be deemed guilty of a misdemeanor and upon conviction thereof shall be punished by a fine not exceeding one hundred ($100) dollars. (Id. § 2232-2.)

207c. Enforcement of Act.—It shall be the duty of the Dairy and Food Commissioner, or his duly authorized deputies, to enforce the provisions of this act.* (Id. § 2232-3.)

208. When Unlawful to Sell Goat Meat.—It shall be unlawful to sell or trade or offer to sell or trade for the purpose of human consumption any carcass of a buck goat, a ridgeling goat, or any male goat which has not been altered or castrated prior to three months of age. (L. 1921, c. 380, § 1.)

209. Repealing Clause.—All other State laws† relating to goat meat which do not apply in general to all other meat are hereby repealed. (Id. § 2.)

210. Penalty.—Any person violating any of the provisions of this act shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not more than $100. (Id. § 3.)

210a. Unclean Slaughterhouses, Penalty for Permitting to Remain.—If any owner or owners, occupier or occupiers of any slaughterhouse, or of any premises where hogs, beeves, or other animals are slaughtered, shall permit the same to remain unclean, to the annoyance of the people of this State, or any of them, every person so offending shall be fined for every such offense any sum not less than $5 nor more than $50; and if said nuisance be not removed within five days thereafter, it shall be deemed a second offense against the provisions of this act, and every like neglect of each succeeding five days thereafter shall be considered an additional offense against the provisions of this act. (Ore. Laws 1920, § 2242.)

210b. Deputizing of Municipal Veterinarian as State Deputy.—Whenever any incorporated city in this State shall have in its employ any veterinary sanitary officer engaged in the inspection of meat, milk or animals, and the qualifications of such officer are equal to those in this act provided for Deputy State Veterinarian, then the State Live Stock Sanitary Board may appoint such city veterinary sanitary officer a Deputy State Veterinarian, and when so appointed such deputy shall possess the full authority of a Deputy State Veterinarian, but such officer shall not be entitled to claim reimbursement from the State for any services rendered or expenses incurred; and his appointment at any time shall be revocable by the board. (Id. § 9124.)

NOTE: For county meat inspection, see Oregon Laws 1920, §§ 9152-9157; L. 1927, c. 348. See also Nos. 22, 176n, and 228 et seq.

Nuts.

211. Walnuts or Filbert Nuts Offered for Sale to be Branded.—Any person, firm, association or corporation offering walnuts or filbert nuts for sale shall plainly indicate upon the container thereof or in case the same can not be indicated on the container thereof then the same shall be indicated upon a tag attached to the container thereof the place where such nuts were grown, but this act shall not apply to containers delivered to consumers. (L. 1923, c. 15, § 1.)

212. Penalty.—Any person, firm, association, or corporation violating any of the provisions of this act shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be punished by a fine of not less than ten dollars ($10) nor more than one hundred dollars ($100), or by imprisonment in the county jail not less than ten nor more than fifty days, or by both such fine and imprisonment, at the discretion of the court. (Id. § 2.)

Oysters.

See No. 403.

Pickles.

See No. 225.

Potatoes.

213. U. S. Standard Potato Grades Adopted, Etc.—The United States grades for potatoes as defined by the United States Department of Agriculture in circular

*Nos. 207a-207c.
†See Nos. 207-207c.

238, issued July, 1922, or as they may thereafter be lawfully modified by the Secretary of Agriculture, are hereby adopted as standard potato grades for the State of Oregon; provided, that the State Inspection Department shall have authority, after thorough investigation and public hearing, to fix Oregon grades and rules and regulations governing such Oregon grades for Oregon grown potatoes not adequately provided for in the United States grades for potatoes. (L. 1925, c. 240, § 1.)

214. Publication of Notice to Establish Oregon Grades.—A notice of the time and place of hearings to establish such Oregon grades for potatoes shall be published in a newspaper having state-wide circulation at least two weeks prior to holding such hearing. A notice of any grade so established shall be published in a newspaper of state-wide circulation at least thirty days before putting it into force. (Id. § 2.)

215. Conformity to Standards, Etc.—Exemptions.—All potatoes sold or offered for sale or shipment in the State of Oregon shall conform to the United States or Oregon grades for potatoes; provided, however, that potatoes that have been passed as "standard" seed or "certified" seed by and in conformity with the published standards, rules and regulations as they now are, or may be amended by the potato certification board of the Oregon Agricultural College, are exempt from further inspection. (Id. § 3.)

216. Defining "No Grade" Potatoes.—Potatoes failing to meet the requirements of the United States grades, or grades established under the provisions of this act, shall be known as "no grade" potatoes. (Id. § 4.)

217. Labeling of Containers—Information Thereon.—All potatoes hereafter sold or offered for sale or shipment in the State of Oregon in lots of fifty (50) pounds or more shall be labeled by stenciling or printing on the container a label consisting of block letters one inch or larger which shall be clear and easily read and containing the following information:

1. Name of the State in which potatoes were grown.
2. Grade of potatoes in the container.
3. Name and address of the grower.
4. The name of the variety, if sold for seed; provided, however, that in the case of "standard," or "certified" seed, as hereinafter provided, the words "certified seed," or "standard seed," may be used instead of the grade; provided, that the requirements for stenciling or labeling containers shall not be compulsory on potatoes consigned to points outside the State, whether said potatoes be seed potatoes or otherwise. (Id. § 5.)

218. Additional Requirements for Certain Grades.—All "certified" or "standard" seed potatoes sold or offered for sale or shipment in the State of Oregon shall bear, in addition to the label heretofore required, the official tag or seal of the potato certification board of the Oregon Agricultural College, or, if certified in another State, the official tag or seal of the certifying agent of that State; provided, that no potatoes may be sold as certified seed potatoes in the State of Oregon unless they have passed the certification requirements of the Oregon Agricultural College, or, if certified in another State, unless they have been passed by the official certifying agent of that State, using standards found by such certification board to be at least equal in all respects to those of the Oregon Agricultural College. (Id. § 6.)

219. U. S. No. 1 Grade Potatoes to be Uniform, Etc.—All containers of potatoes of United States No. 1 or better grade sold or offered for sale or shipment in the State of Oregon shall be uniform, sound and clean and all sacks containing same shall be new sacks or "number 1 second" grain sacks. (Id. § 7.)

220. Inspection—Fees.—All potatoes shipped in lots of ten or more tons shall be inspected by the State Inspection Department of the State of Oregon in accordance with the standards provided for in this act and under such rules and regulations in conformity therewith as may be made by the State Inspection Department. The State Inspection Department is authorized to fix, assess and collect or cause to be collected fees for such inspection on a uniform basis in an amount reasonably necessary to cover the cost of such inspection and the administration of this act. (Id. § 8.)

221. Enforcement—Evidence—Co-operation with U. S.—It shall be the duty of the State Inspection Department to enforce the provisions of this act. Certificate of inspection of potatoes issued by the State Inspection Department shall be prima facie evidence of the facts contained therein. In carrying out the provisions of this act the State Inspection Department may co-operate with the United States or any department thereof. (Id. § 9.)

222. **Penalty.**—Any person, firm, association or corporation selling or offering for sale or shipment any potatoes in violation of the provisions of this act or of the rules and regulations of the State Inspection Department made under the provisions of this act, shall be guilty of a misdemeanor, and, upon conviction thereof shall be punished by a fine of not less than ten dollars ($10) nor more than one hundred dollars ($100), or by imprisonment in the county jail not less than ten (10) nor more than thirty (30) days, or by both such fine and imprisonment. (Id. § 10.)

NOTE: See also Nos. 176n and 436-437.

Spices and Condiments.

223. **Spices and Condiments.**—The term "spices and condiments," as used herein, shall include all substances known and recognized in commerce as spices and used as condiments, whether in their natural state or in the form which would result from the grinding, milling, or mixing, or the compounding of the natural product. (Ore. Laws 1920, § 8683.)*

224. **Adulterated Spices—Label.**—Any person selling or delivering any spice or condiment adulterated as hereinbefore defined, shall label on the outside and face of each package containing the same, upon the background of a single color, in English language, and in legible type no smaller than double pica, the name and location of the person, firm or corporation manufacturing or distributing the same, and the words "mixture" or "adulterated" and the common English name of the spice or condiment which said box or package contains. (Id. § 8684.)*

Vinegar.

225. **Pickles—Fruit Sauces—Cider Vinegar.**—Pickles and fruit sauces shall contain no other sweetening matter than pure sugar. No person shall manufacture, sell, offer or expose for sale, or possess with intent to sell or deliver, any vinegar, not in compliance with the provisions of this act. No vinegar shall be sold as apple, orchard or cider vinegar which is not the legitimate product of pure apple juice, known as apple cider or vinegar, not made exclusively of apple cider or vinegar, into which foreign substances, drugs or acids have been introduced, and upon test shall contain not less than one and one-half per cent by weight of cider vinegar solids and twenty-five hundredths per cent of ash, and not less than four per cent absolute acetic acid. (Ore. Laws 1920, § 8679.)*

226. **Distilled and Fermented Vinegar.**—All vinegar made wholly or in part from grain of any kind, syrup, or refuse from sugar refineries by process of mashing and distilling and then converting into vinegar, shall be branded "distilled vinegar," and such vinegar shall be free from coloring matter added during or after distillation, and from color other than that imparted to it by distillation. All fermented vinegar other than cider vinegar not distilled shall contain not less than one and one-fourth per cent by weight upon full evaporation (at the temperature of boiling water) of solids contained in the fruit or grain from which said vinegar is fermented, and shall contain not less than two and one-half tenths of one per cent ash. All vinegar shall be made wholly from the fruit or grain from which it purports to be made, and contain no foreign substance and contain not less than four per cent by weight of absolute acetic acid. (Id. § 8680.)*

227. **Vinegar Must be Free from Mineral Acids—Proper Labels.**—No person shall manufacture for sale, offer for sale, or possess with intent to sell, any vinegar found upon proper test to contain any preparation of lead, copper, sulphuric or other mineral acids, or ingredients injurious to health. All packages, bottles, and any other vessel containing vinegar, other than pure cider vinegar, shall be marked, stenciled, or branded on the cask, barrel, keg, bottle or other vessel containing such vinegar, with the name and residence of the manufacturer, together with the kind of vinegar. (Id. § 8681.)*

NOTE: See also Nos. 229 and 289.

Water.

227a. **General Provisions Covering Drinking Water—State Board of Health to Have General Control of All Inland Waters, and Make Rules and Regula-**

*For penalty see No. 28.

tions—Advise as to Water Supply and Drainage and Sewerage.—In the interest of the public health, every person, company or municipal corporation or agency thereof selling water to the public for drinking and household purposes shall take every reasonable precaution to protect from contamination and assure the healthfulness of such water, and any provisions in any charters heretofore granted to such persons, companies, or municipal corporations in conflict with the provisions of this section are hereby repealed. The State Board of Health shall have the general oversight and care of all inland waters, and shall from time to time, as it may deem advisable, cause examinations of said waters and their sources and surroundings to be made for the purpose of ascertaining whether the same are adapted for use as water supplies for drinking and other domestic purposes, or are in a condition likely to impair the interests of the public or of persons lawfully using the same, or to imperil the public health. For the purpose aforesaid, it may employ such expert assistants as may be necessary. The said board shall make such reasonable rules and regulations as in its judgment may be necessary to prevent contamination and to secure other purifications as may be required to safeguard the public health. The State Board of Health shall from time to time consult with and advise the boards of all State institutions, the authorities of cities and towns, corporations or firms already having or intending to introduce systems of water supply, drainage or sewerage, as to the most appropriate source of supply, the best practical methods of assuring the purity thereof; or of disposing of their drainage or sewage, having regard to the present and prospective needs and interests of other cities, towns, corporations or firms which may be affected thereby. (Ore. Laws 1920, § 8460.)

227b. **Municipal Water Supplies—Plans Subject to Approval.**—Any incorporated town or city in the State desiring to provide a new water supply or to change, modify or extend an old water supply for drinking or culinary purposes or for use in swimming pools or any person or corporation who shall undertake to provide a new water supply for a town or city or for any number of persons exceeding ten families or a total of fifty persons shall, before performing any work on the ground, other than making examination or surveys for the preparation or provision of such water supply, submit to the State Board of Health plans showing the source of the supply, and the transmission and distribution systems, with further information as to the amount proposed to be taken and transmitted, the drainage areas from which the waters are to be derived, the purity and wholesomeness of the supply, the kind and character of the works for gathering, storing and transmitting the water, and the number of persons to be supplied, together with any additional data which the Board of Health may require as in its judgment proper to enable it to pass intelligently upon the effect of such water supply upon the public health. No such work shall be undertaken or proceeded with until the Board of Health shall have approved such plans, either as originally offered or as modified pursuant to its requirements. (Id. § 8461.)

227c. **Analysis of Drinking Water—Samples Furnished—Sterilized When.**—For the purpose of determining the purity of all water supply used for culinary or drinking purposes used in the preparation of all articles for food consumption by schools, towns, cities, or food manufacturers, there shall be submitted monthly or oftener if required, to the State Board of Health Laboratory, officially collected samples of such water by the county and city health officers in their respective districts; said laboratory to report the result of its analysis to the said county or city health office, and when such water is condemned as unfit for the purposes intended the users thereof shall be notified and such water shall not be used without its being sterilized until its purity is re-established, in accordance with the rules and regulations of the State Board of Health. (Id. § 8465.)

NOTE: See also No. 32.

Sanitation.

228. **Buildings Must be Kept Sanitary and Healthful.**—Every building, room, basement or cellar, occupied or used as a bakery, confectionery, cannery, packing house, bottling house, slaughterhouse, restaurant, hotel, dining car, grocery, meat market, dairy, creamery, butter factory, cheese factory or other places used for the preparation for sale, manufacture, packing, storage, sale or distribution of any food shall be properly lighted, drained, plumbed, ventilated and kept and maintained in a clean, healthful and sanitary condition, and any failure to comply with the above conditions shall be deemed a violation of this act. (Ore. Laws 1920, § 8734, as amended L. 1923, c. 166, § 1.)

229. Unclean, Unhealthful and Insanitary Conditions Shall Not Exist.—Whenever it is determined by the Dairy and Food Commissioner, his deputy or inspector that any floor, sidewalk, ceiling, locker, closet, furniture, receptacle, implements or machinery, of any establishment or place where food intended for sale or distribution is manufactured, packed, stored, sold or distributed, or any truck or vehicle used in the transportation of food products is kept in an unclean, unhealthful or insanitary condition, the Dairy and Food Commissioner, his deputy or inspector, shall notify the owner or person in charge of such establishment or place where such food is manufactured, packed, stored, sold or distributed that such establishment, place, truck or vehicle shall not be used for the purpose of manufacturing, packing, storing, selling or distributing food until such establishment, place, truck or vehicle is put in a sanitary condition by making the changes ordered by the Dairy and Food Commissioner, his deputy or inspector in said notice, and shall post a notice upon such establishment, place, truck or vehicle found in an unclean, unhealthful or insanitary condition, to the effect that the same is condemned for further use on account of such unclean, unhealthful or insanitary condition, which notice shall not be removed from any such establishment, place, truck or vehicle until the same has been put in a sanitary condition. A continued use of such establishment, place, truck or vehicle, without making the changes ordered by the Dairy and Food Commissioner, his deputy or inspector, or unauthorized removal of such notice shall be deemed a violation of this act.

"Unclean," "unhealthful," "insanitary," defined: Unclean, unhealthful and insanitary conditions shall be deemed to exist if food in the process of manufacture, preparation, packing, storing, sale, distribution or transportation is not securely protected from flies, dust, dirt and, as far as may be necessary, by all reasonable means from all other foreign or injurious contamination; or if the refuse, dirt and waste products, subject to decomposition or fermentation incident to the manufacture, preparation, packing, storing, selling, distributing and transporting of foods, are not removed daily; or if all trunks, trays, boxes, baskets, buckets or other receptacles, chutes, platforms, racks, troughs, shelves and all knives, saws, cleavers, and other utensils and machinery used in moving, handling, cutting, mixing, chopping, canning and all other processes are not thoroughly cleaned daily; or if proper toilet and lavatory facilities are not provided for employees, or not maintained and kept in a clean and sanitary condition, or if the clothing and persons of operatives, employees, clerks or other persons therein employed is [are] unclean. The placing of vinegar or other liquid, used as food or drink, in open vessels without covering the same, is unlawful. The use of second-hand bottles for vinegar or other liquids used as food or drink, is unlawful unless the same are first sterilized with live steam. (Ore. Laws 1920, § 8735, as amended L. 1923, c. 166, § 2.)

230. Sidewalk Display Prohibited.—The sidewalk display of food products is prohibited unless such products are inclosed in a showcase or similar device which will protect the same from flies, dust, or other contamination; provided, that food products other than fish, meat and meat products, that necessarily have to be peeled, pared, or cooked before they are fit for consumption, may be displayed on the sidewalk; provided, that in such display the bottom of the container be at least eighteen inches above the surface of the sidewalk. (Ore. Laws 1920, § 8736.)

231. Ceilings, Walls and Floor to be Made of Suitable Material.—The ceiling and sidewalls of every bakery, confectionery, hotel, and restaurant kitchen shall be plastered, tiled, wainscoted, or ceiled with metal or lumber and shall be oil painted or kept well lime washed, and all the interior woodwork in every bakery, confectionery, hotel, dining car or restaurant kitchen shall be kept well oiled or painted with oil paints, and shall be kept washed clean with soap and water; and every building, room, basement, or cellar occupied or used for the preparation, manufacture, packing, storing, sale, or distribution of food, shall have an impermeable floor made of cement, tile laid in cement, brick, wood, or other suitable non-absorbent material which can be flushed and washed clean with water; provided, however, that the use of other forms of construction shall be lawful in the case of wholesale manufacturing plants, whenever, in the opinion of the dairy and food commissioner, such construction will not result in unwholesome, unhealthful or unsanitary conditions. (Id. § 8737.)

232. Screen Doors and Windows During Fly Season.—The doors, windows and other openings of every establishment or place mentioned in section 8734, shall during the fly season be fitted with self-closing screen doors and wire window screens of not coarser than fourteen-mesh wire gauze. (Id. § 8738.)

233. Meat to be Covered While in Transit.—It chall be unlawful for any person to carry or transport through any street, alley, or thoroughfare the carcass or meat of any cattle, sheep, swine, fish, game, fowl or poultry intended for sale

or distribution as food, unless it be entirely covered with a clean cover so as to be thoroughly protected from dust, dirt and flies. (Id. § 8739.)

234. Living Rooms and Sleeping Rooms to be Separate.—No person or persons shall be allowed to maintain living or sleeping quarters, or to sleep, in any room of any bakeshop, kitchen, confectionery, ice cream factory, where food is prepared for sale, and each day that a violation of this section shall continue after the passage of this act shall be deemed and held to be a separate violation of this act. (Id. § 8740.)

235. Diseased Person Not Allowed to Handle Food.—No owner or employer shall require, permit or suffer any person to work, nor shall any person work, in a building, room, basement, cellar, or vehicle occupied or used for the production, preparation, manufacture, packing, storage, distribution or transportation of food, who is affected with any venereal disease, smallpox, diphtheria, scarlet fever, yellow fever, tuberculosis or consumption, bubonic plague, Asiatic cholera, eczema or other skin disease, leprosy, trachoma, typhoid fever, epidemic dysentery, measles, mumps, German measles, whooping cough, chicken-pox, or any other infectious or contagious disease. (Id. § 8741.)

236. Miscellaneous Slaughterhouse Regulations.—It shall be unlawful for any person to sell, offer or expose for sale any carcass or carcasses of any animal or animals killed after the three-fourths stage of the period of pregnancy or any carcass or carcasses of animals which have within ten (10) days given birth to young; provided, however, in the latter case, if they have no evidence of septic infection, said carcass or carcasses may be rendered into tallow, but otherwise the person owning or possessing such carcass or carcasses shall destroy same. Hogs shall not be fattened on uncooked offal or refuse of any slaughterhouse, and all animals kept or fed in the vicinity of any slaughter house, shall not be kept or fed nearer than one hundred and fifty feet from such slaughter house. All yards, fences, pens, chutes, alleys, and all appurtenances belonging to any slaughterhouse shall, whether they are used or not, be maintained in a sanitary condition. (Id. § 8742.)

237. Commissioner or Health, Peace or Police Officer, Given Authority to Inspect and Report Evidence of Violation to Prosecuting Attorney, Who Shall Prosecute.—The Dairy and Food Commissioner or his deputies or inspectors, or any State, county, city, or town, health, peace, or police official shall have full power at any time to enter and inspect any yard, pen, chute, building, room, basement, or cellar occupied or used, or suspected of being used for the production for sale, manufacture for sale, storage, sale, distribution or transportation of food and all utensils, fixtures, furniture and machinery therein used; and if upon such inspection of any food producing, storing, or distributing establishment or place, any owner, employer, employee, operative, clerk, driver or other person is found to be violating any of the provisions of this act, or if the production, cooking, preparation, manufacture, packing, storing, sale, distribution or transportation of food is being conducted in a manner detrimental to the character or quality of the food therein being produced, manufactured, packed, stored, sold, distributed or conveyed, the officer or inspector making the examination or inspection shall furnish evidence of said violation to the prosecuting attorney of the county in which the violation occurs, and it shall be the duty of all prosecuting attorneys to represent and prosecute on behalf of the people when called upon by the Dairy and Food Commissioner so to do, all such cases or offenses arising under the provisions of this act. (Id. § 8743.)

NOTE: For the penalty for violating the aforesaid provisions, see No. 28. See also No. 2; No. 22; the dairy law, No. 46 et seq.; the meat law, No. 180 et seq.

PART III.

Special Drug Laws.

Abortifacients and Contraceptives.

237a. Indecent or Obscene Articles, Pictures, Etc.—If any person shall import, design, copy, draw, photograph, prepare, publish, sell, lend, give away, distribute, show, or exhibit, or have in his possession, with intent to publish, sell, lend, give away, distribute, show, or exhibit, any article or instrument of indecent or immoral use, or any obscene or indecent book, paper, writing, printed matter, pic-

ture, drawing, photograph, or engraving; or if any person shall give or publish, or cause to be given or published, to any person any written or printed notice or advertisement of or concerning any such article or instrument, or obscene or indecent article or thing; or if any person shall hire, use, employ, or permit any person to sell, give away, or distribute any such article or instrument, or obscene or indecent article or thing; or if any person shall print, publish, advertise, sell, lend, give away, or show, or have in his possession, with intent to publish, advertise, sell, lend, give away, or show, any book, paper, or other publication that purports to relate or narrate the criminal exploits of any desperate or convicted felon, or any book, paper, or other publication that is principally devoted to, or contains, or is made up in part of, accounts or stories of crime or lust or deeds of bloodshed; or if any person shall present or exhibit in any public place, by way of show or drama or play, what purports to be the criminal exploits of any desperado or convicted felon, such person shall, upon conviction thereof be punished by imprisonment in the county jail not more than six months, or by a fine of not more than $500 or by both fine and imprisonment in the discretion of the court. (Ore. Laws 1920, § 2094.)

Dangerous Caustic or Corrosive Substances.

238. "Dangerous Caustic or Corrosive Substance" and "Misbranded Parcel," Etc., Defined.—In this act, unless the context or subject matter otherwise requires, the term "dangerous caustic or corrosive substance" means each and all of the acids, alkalis, and substances named below: (a) Hydrochloric acid and any preparation containing free or chemically unneutralized hydrochloric acid (HCL) in a concentration of ten per centum or more; (b) sulphuric acid and any preparation containing free or chemically unneutralized sulphuric acid (H_2SO_4) in a concentration of ten per centum or more; (c) nitric acid or any preparation containing free or chemically unneutralized nitric acid (HNO_3) in a concentration of five per centum or more; (d) carbolic acid (C_6H_5OH), otherwise known as phenol, and any preparation containing carbolic acid in a concentration of five per centum or more; (e) oxalic acid and any preparation containing free or chemically unneutralized oxalic acid ($H_2C_2O_4$) in a concentration of ten per centum or more; (f) any salt of oxalic acid and any preparation containing any such salt in a concentration of ten per centum or more; (g) acetic acid or any preparation containing free or chemically unneutralized acetic acid ($HC_2H_3O_2$) in a concentration of twenty per centum or more; (h) hypochlorous acid, either free or combined, and any preparation containing the same in a concentration so as to yield ten per centum or more by weight of available chlorine, excluding calx chlorinata, bleaching powder, and chloride of lime; (i) potassium hydroxide and any preparation containing free or chemically unneutralized potassium hydroxide (KOH), including caustic potash and Vienna paste, in a concentration of ten per centum or more; (j) sodium hydroxide and any preparation containing free or chemically unneutralized sodium hydroxide (NaOH), including caustic soda and lye, in a concentration of ten per centum or more; (k) silver nitrate, sometimes known as lunar caustic, and any preparation containing silver nitrate ($AgNO_3$) in a concentration of five per centum or more, and (l) ammonia water and any preparation yielding free or chemically uncombined ammonia (NH_3), including ammonium hydroxide and hartshorn, in a concentration of five per centum or more.

The term "misbranded parcel, package or container" means a retail parcel, package or container of any dangerous caustic or corrosive substance for household use not bearing a conspicuous easily legible label or sticker, containing (a) the name of the article; (b) the name and place of business of the manufacturer, packer, seller or distributor; (c) the word "POISON," running parallel with the main body of reading matter on said label or sticker, on a clear, plain background of a distinctly contrasting color, in uncondensed gothic capital letters, the letters to be not less than 24 point size, unless there is on said label or sticker no other type so large, in which event the type shall be not smaller than the largest type on the label or sticker, and (d) directions for treatment in case of accidental personal injury by the dangerous caustic or corrosive substance. (L. 1925, c. 238, § 1.)

239. Sale, Etc., in Misbranded Parcel or Other Container, Prohibited.—No person shall sell, barter or exchange, or receive, hold, pack, display or offer for sale, barter or exchange, in the State of Oregon, any dangerous caustic or corrosive substance in a misbranded parcel, package or container. (Id. § 2.)

240. Confiscation—Disposal—Condemnation—Proceedings.—Any dangerous caustic or corrosive substance in a misbranded parcel, package or container suitable for household use that is being sold, bartered or exchanged, or held, displayed or

offered for sale, barter or exchange, shall be liable to be proceeded against in any Circuit Court of the State within the jurisdiction of which the same is found and seized for confiscation by the sheriff of the county in which the same is found and if such substance is condemned as misbranded, by said court, it shall be disposed of by destruction or sale, as the court may direct; and if sold, the proceeds, less the actual costs and charges, shall be paid over to the State Board of Pharmacy, but such substance shall not be sold contrary to the laws of the State; provided, however, that upon the payment of the costs of such proceedings and the execution and delivery of a good and sufficient bond to the effect that such substance will not be unlawfully sold or otherwise disposed of, the court may by order direct that such substance be delivered to the owner thereof. Such condemnation proceedings shall conform as near as may be to proceedings provided for in chapter 29, General Laws of Oregon, 1923.* (Id. § 3.)

241. Penalty.—Any person violating the provisions of this act shall, upon conviction thereof, be punished by a fine of not more than $200, or by imprisonment for not more than ninety days, or by both such fine and imprisonment, in the discretion of the court. (Id. § 4.)

242. Enforcement of Act—Authority to Approve and Register Brands, Etc.—The State Board of Pharmacy shall enforce the provisions of this act, and he [it] is hereby authorized and empowered to approve and register such brands and labels intended for use under the provisions of this act as may be submitted to him [it] for that purpose and as may in his [its] judgment conform to the requirements of this statute; provided, however, that in any prosecution under this act the fact that any brand or label involved in said prosecution has not been submitted to said State Board of Pharmacy for approval, or if submitted, has not been approved by him [it], shall be immaterial. (Id. § 5.)

Ginseng.

242a. Labeling of Packages of Ginseng Seed.—No ginseng grower, or dealer in ginseng nursery stock, either seed or roots for planting purposes, shall send by mail or express or freight, or otherwise cause to be sent into the State of Oregon, or from one county, town or person, within the boundaries of the State, to another county, town or person, ginseng seed or root stock for planting purposes, except the package, box or bag containing same shall have securely affixed thereto a printed or typewritten label, stating in plain English language, the full name and post office address, county and State of the grower or dealer where the seed was grown, and must state that the ginseng seed and root stock contained herein is a pure American seed, or stock and not adulterated with Japanese or any other foreign ginseng seed or root stock and was grown in a ginseng garden that is known to be free from the alternaria disease or any other contagious ginseng disease. Said label shall contain the certificate of the county or State Fruit Inspector, personally signed, as a corroboration of said statement, with his post office address. (Ore. Laws 1920, § 8890.)

242b. Packages to be Submitted to State Fruit Inspector.—It shall be the duty of the person purchasing ginseng seed or root stock for planting purposes, either from parties residing within the State of Oregon, or from other States foreign to the State of Oregon, upon receipt of package, box or bag containing the same, and before opening, to submit the same to the county or State Fruit Inspector, or his deputy, whose duty it shall be to copy and compare the contents of the label thereon, and if it is found that the same does not conform to the provisions of this act, the package, box or bag containing the same shall either be returned to the seller and shipper, at the seller's expense, or confiscated and destroyed by said fruit inspector. (Id. § 8891.)

242c. Inspection of Ginseng Gardens.—It shall also be the duty of the said county or State Fruit Inspector or his deputy to become familiar with the various ginseng diseases and to inspect all ginseng gardens within his county three times during each season. The first inspection to be made between May 25th and June 15th; the second between July 25th and August 15th, and the third between September 10th and October 1st; and if at any time of inspection there is found to be any ginseng disease of a serious nature, to make a notice of same, and to report it at once to the Oregon Agricultural College Experiment Station, Department of Plant Pathology, at Corvallis, Oregon, whose duty it shall be to send a competent person to inspect the reported diseased ginseng garden, and if the same is found by

*Relates to seizure and confiscation of intoxicating liquors. Omitted herein.

him to be affected by the alternaria, or any other infectious disease, the garden shall at once be quarantined, by said fruit inspector, a sufficient time to enable the owner to take up the root stock in the fall to be for market; provided, none of said root stock or seed gathered therefrom shall be replanted or sold to others for planting purposes; provided, further, that if the owner of any diseased ginseng garden that is under quarantine, fails to remove and dry all of the roots that shall be contained in said affected garden, by January 1st of the following year, it shall be the duty of said fruit inspector to destroy said garden. (Id. § 8892.)

242d. Penalty Clause.—Any fruit inspector, ginseng grower or dealer in ginseng, or any other person violating any of the provisions of this act, shall be guilty of a misdemeanor, and shall upon conviction thereof, be punished by a fine of not less than twenty-five dollars nor more than five hundred dollars for each offense thereof. (Id. § 8893.)

Insecticides and Fungicides.

243. Definitions.—For the purpose of this act the following terms shall be construed respectively to mean:

(a) The singular and plural forms of any word or term in this act shall be interchangeable and equivalent within the meaning of the act.

(b) The word "person" shall include corporations, companies, societies, associations, partnerships or any individual or combination of individuals. When construing and enforcing the provisions of this act, the act, omission or failure of any officer, agent, servant or other individual, acting for or employed by any person as above defined, within the scope of his employment or office shall, in every case, be deemed to be the act, omission or failure of such persons, as well as that of the officer, agent, servant or other employee.

(c) The word "director" shall apply to the director of the Agricultural Experiment Station of the State of Oregon.

(d) The term "economic poison" shall include any substance or mixture of substances intended to be used for preventing, destroying, repelling or mitigating any and all insects, fungi, weeds, or other plant or animal pest, collectively or individually, which may infest or be detrimental to vegetation. (L. 1923, c. 179, § 1.)

244. Manufacture, Etc., of Adulterated or Misbranded Economic Poisons Unlawful.—It shall be unlawful for any person to manufacture, deliver, sell, expose or offer for sale in this State any adulterated or misbranded economic poison which is adulterated or misbranded within the meaning of this act. (Id. § 2.)

245. When Deemed Adulterated.—(a) For the purposes of this act an economic poison shall be deemed to be adulterated:

1. If its strength or purity shall fall below the standard or quality under which it is sold.

2. If any valuable constituent of the article has been wholly or in part abstracted or omitted in its manufacture, or other materials substituted for the same.

(b) For the purposes of this act an economic poison shall be deemed to be misbranded:

1. If the package or label thereon shall bear any statement, design or device regarding such article or the ingredients or substances contained therein which shall be false or misleading.

2. If such package or label is falsely branded as to name of manufacture and as to city, State or county in which the article is manufactured or produced.

3. If it is an imitation or offered for sale under the name of another article.

4. If when in package form and the contents are stated in terms of weight or measure, they are not plainly and correctly stated on the outside of the package.

5. If it does not state plainly upon the original package or label the correct name and percentage amounts of each and every active ingredient having insecticidal or fungicidal properties and the total percentage of inert ingredients present. (Id. § 3.)

246. Label, What to Contain.—Every original lot, parcel or package of economic poison sold, offered or exposed for sale within this State shall be accompanied by a plainly printed label stating the name, brand or trade-mark, if any there be, under which the economic poison is sold, the name and address of the manufacturer, importer or dealer, and the place of manufacture. (Id. § 4.)

247. Enforcement—Rules and Regulations.—The director, in person or by his agents, shall administer and enforce the provisions of this act and shall make rules and regulations for carrying out the provisions of this act, including the collection and analysis or examination of samples, the registration of manufacturers

and dealers, and other procedures not inconsistent with this act. No rule or regulation shall become effective until the expiration of thirty days after it shall have been first promulgated by a proclamation signed by the director and sent to each person registered in compliance with the provisions of this act. (Id. § 5.)

248. Samples—Analyses or Examinations.—The director, in person or by his agents, shall take samples of economic poisons, make analyses or examinations thereof and shall publish the results obtained and such additional information as to him may seem advisable. The director, in person or by his agents, is hereby authorized to take samples and shall have access to all buildings used for the manufacture or sale of any economic poison. (Id. § 6.)

249. Certificate of Registration—License Fees—Statement—Unregistered Economic Poisons, Sales, Etc., Unlawful.—Before any economic poison is sold, offered or exposed for sale in this State, the manufacturer, importer, agent of or dealer who causes the same to be sold, offered or exposed for sale shall obtain a certificate of registration from the director, authorizing the manufacture or sale of economic poisons in this State. Every manufacturer, importer, agent of or dealer in economic poisons, except county, State and Federal officials or employees, selling the same for cost, and further excepting dealers or agents of any economic poisons for which the manufacturer has filed certificate of registration and obtained license in accordance with the provisions of this act, shall pay to the director the sum of fifteen dollars ($15) for each and every brand of economic poison to be sold, offered or exposed for sale in the State during the calendar year and shall file a statement of the brands, trade-mark and kinds of economic poisons intended to be manufactured or offered for sale, together with a statement of the correct names and percentage amounts of each and every active ingredient and the total percentage of inert ingredients contained therein. The director may, in his rulings, specify a flat license fee of fifty dollars ($50) for any manufacturer who sells or offers for sale in the State four or more brands of economic poison. When any manufacturer, importer, agent of or dealer in economic poisons has fully complied with the provisions of this act and the rules and regulations as provided, and makes application for registration, the director shall cause to be registered and issue a license to the applicant authorizing the manufacture and sale of economic poisons in the State. It shall be unlawful for any person, firm or corporation to manufacture, sell, offer or expose for sale any economic poison not registered and described as provided for in this section. (Id. § 7.)

250. Director's Power to Cancel Registration, Etc.—The director shall have the power to cancel the registration of or refuse to register any economic poison which has been shown to have little or no value for the purpose for which it is intended to be used, or which has been shown to be generally detrimental or seriously injurious to vegetation when used. (Id. § 8.)

251. Seizure and Disposition of Condemned Economic Poisons.—Any economic poison that is condemned as being adulterated or misbranded within the meaning of this act, or detrimental to agriculture, shall be seized and disposed of in such manner as the court, after notice to all interested parties and hearings, may direct. (Id. § 9.)

252. Penalty.—Any person, firm or corporation who shall violate any of the provisions of this act shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than fifty dollars ($50) and cost of action for the first offense and not less than one hundred dollars ($100) and cost of action for each subsequent offense. (Id. § 10.)

Medicinal Stock Food.

252a. Medicinal Stock Food Defined.—The term "medicinal stock food" as used in this act shall be held to include all condimental, patented, proprietary or trade-marked stock or poultry foods or remedies in powdered form, claimed to possess medicinal properties or both medicinal and nutritive properties, whether sold under names such as food, tonic, regulator, powder, conditioner, remedy or under whatever name it may be sold. (Ore. Laws 1920, § 8747.)*

252b. Medicinal Stock Food, How Labeled.—Every lot, parcel or package of medicinal stock food, as defined in section 8748 [8747], sold, offered or exposed for sale or distribution within this State, shall have affixed thereto, a label in a conspicuous place on the outside thereof, containing a legible and plainly printed statement in black ink, in the English language, clearly and truly certifying:

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*For penalty for violating this law, see No. 28.

(a) The net weight of the package.
(b) The name, brand or trade-mark.
(c) The name and principal address of the manufacturer or person responsible for placing the commodity on the market.
(d) The specific name of each ingredient used in its manufacture. (Id. § 8748.)

252c. Manufacturers or Importers to Pay License.—Each and every manufacturer or importer manufacturing or selling any medicinal stock food as defined in section 8747, shall pay to the Dairy and Food Commissioner on or before the first day of October of each year a license fee of ten dollars ($10) for manufacturing or selling of medicinal stock food as defined in section 8748 [8747], bearing a distinguishing name or trade-mark, sold, offered or exposed for sale or distributed in this State. Whenever any manufacturer or importer of any medicinal stock food desires at any time to sell such material and has not paid the license fee therefor, he shall pay the license fee prescribed in this section before making any such sale; provided, however, that this section shall not take effect until January 1, 1916. (Id. § 8749.)

252d. Manufacturers or Importers in Medicinal Stock Food Shall File Certified Copy of Label With Dairy and Food Commissioner.—Before any manufacturer or importer shall sell, offer or expose for sale or distribution in this State any medicinal stock food, he or they shall, for each and every medicinal stock food bearing a distinguishing name or trade-mark, file with the Dairy and Food Commissioner a certified copy of a statement specified in section 8748; said certified copy to be accompanied, when the Dairy and Food Commissioner shall so request, by a sealed package containing at least one pound of the medicinal stock food to be sold, offered or exposed for sale or distribution in this State, and the company or person furnishing said sample shall thereupon make affidavit that the said sample corresponds to the medicinal stock food which it represents, together with the specific name of each ingredient used in its manufacture. (Id. § 8750.)

252e. Commissioner Shall Sample and Analyze All Feeds.—The Dairy and Food Commissioner is hereby authorized in person or by deputy, to enter any premises where feed stuffs or medicinal stock food are stored, and to take a sample, not to exceed two pounds in weight, from any lot or package of any concentrated commercial feed stuffs or medicinal stock food used for feeding any kind of farm live stock or poultry, as defined in sections 8746 [8745]* and 8748 [8747], or of suspected materials named in section 8747 [8746],* which may be in possession of any manufacturer, importer, agent or dealer. Any sample so taken shall be put in a suitable vessel and a label signed by the Dairy and Food Commissioner or his deputy placed on or within the vessel, stating the name or brand of the manufacturer, importer or dealer, the name of the person, firm or corporation from whose stock the sample was taken and the date and place of taking; provided, however, that whenever a request to that effect is made the sample shall be taken in duplicate and carefully sealed in the presence of the person or persons in interest of their representatives, in which case one of the said duplicate samples shall be signed by the Dairy and Food Commissioner and retained by the person or persons whose stock was sampled. The Dairy and Food Commissioner shall cause at least one analysis of each feed stuff collected as herein provided to be made annually. Said analysis shall include the determinations of crude protein, of crude fat, of crude fiber, and of such other ingredients as it is deemed advisable at any time to determine. The Dairy and Food Commissioner shall cause the results of the analysis of the sample to be furnished the Agricultural Experimental Station from time to time, to be published in annual bulletins or special circulars, together with such additional information concerning the character, composition and use thereof as circumstances may require. (Id. § 8751.)†

Pharmacy, Poisons and Narcotics.

253. Oregon Board of Pharmacy Established—Appointment and Qualification of Members—Bond of Secretary.—There shall be established in the State of Oregon a board to be known as the "Oregon Board of Pharmacy" to consist of five persons who shall be appointed for the term of five years by the Governor from the most competent registered pharmacists residing in different parts of this State, who are not teachers or instructors in any technical institution teaching pharmacy.

*Repealed.

†This section is repealed to the extent it relates to feed stuffs. (Laws 1921, c. 36, § 16.)

Each appointee must have been a registered pharmacist in the State of Oregon for at least five years previous to his appointment, and he must be actually engaged in the practice of pharmacy at the time of his appointment; provided, whereas, the Oregon Board of Pharmacy has heretofore been created in this State and is now instituted and organized, as provided in this act, the members of the Oregon Board of Pharmacy heretofore created shall constitute and be termed and taken to be the Oregon Board of Pharmacy established by this act, and the appointed members of said board heretofore created shall respectively continue to hold office as members and officers of the Oregon Board of Pharmacy established by this act, until the expiration of the terms for which they were originally appointed. The board shall organize by electing a president, secretary and treasurer. The secretary may or may not be a member of the board, as the board in its sound discretion shall determine; provided, however, the secretary so appointed shall be a duly and regularly registered pharmacist under the laws of the State of Oregon. The secretary and treasurer shall each give satisfactory bonds running to the Board of Pharmacy in a sum not less than $2,000 or such greater sum as the board may from time to time require, for the faithful discharge of their respective duties. (Ore. Laws 1920, § 8630.)

254. Duties of Secretary of Board—Salary.—It shall be the duty of the secretary to keep a book of registration in which shall be entered under the supervision of the board the names, titles, qualifications and places of business of all persons coming under the provisions of this act. The secretary shall give receipts for all moneys received by him and pay same to the treasurer of the board taking his receipt for the same. The treasurer shall disburse the same by order of the board for necessary expenses, taking proper vouchers therefor. All moneys received in excess of the expenses incurred by said Board of Pharmacy shall be held by said Board of Pharmacy as a special fund for meeting further and necessary expenses. It shall be the duty of the secretary of the Board of Pharmacy to erase from the register the name of any registered pharmacist or assistant pharmacist who has died, or who in the opinion of the Board of Pharmacy has forfeited his right under the law to do business in this State. Besides the duties required by this act, it shall be the duty of the secretary to perform such other reasonable duties appertaining to his office as may be required of him by the Board of Pharmacy. The secretary shall receive such compensation as may be fixed by the Board of Pharmacy; if he be a member of the board, then such compensation shall be in addition to his per diem as a member of said board. (Id. § 8631.)

255. Meetings of Board.—Three members of the board shall constitute a quorum. They shall hold a meeting at least once in every three months. (Id. § 8632.)

256. By-laws and Regulations.—The State Board of Pharmacy shall have power:

(a) To make such by-laws and regulations, not inconsistent with the laws of this State, as may be necessary for the protection of the public, appertaining to the practice of pharmacy and the lawful performance of its duties.

(b) To regulate the practice of pharmacy.

(c) To regulate the sale of poisons.

(d) To employ inspectors of pharmacy and to inspect during business hours all pharmacies, dispensaries, stores or places in which drugs, medicines or poisons are compounded, dispensed or retailed, and to cause the prosecution of all persons whenever there appears to the Board of Pharmacy to be reasonable ground for such action.

(e) To examine and register as pharmacists and assistant pharmacists all applicants whom it shall deem qualified to be such. All persons applying for registration under this act shall pay the following fees therefor to the Secretary of the Board of Pharmacy. Every applicant for registration shall pay a fee of twenty dollars ($20) on filing his or her application, which shall be compensation to the Board of Pharmacy for examination of the applicant. The said Board of Pharmacy shall require each and every registered assistant pharmacist to present himself or herself to the said State Board of Pharmacy for examination as a registered pharmacist within two years from the date of his or her first registration, as an assistant pharmacist; and the said Board of Pharmacy shall authorize and empower the secretary of said board to cancel the certificate of registration, of every registered assistant pharmacist who shall fail to present himself or herself for examination within the period hereinbefore specified.

(f) In the event any person having registered shall have lost his or her certificate of registration, or the same has been destroyed, or if he or she desires the renewal of the same, a new certificate may be issued by said Board of Pharmacy

upon the applicant paying therefor the sum of three dollars ($3); provided, further, that where the original certificate is not lost or destroyed, then the certificate shall be surrendered before a renewal of same shall be issued; and, provided, further, that the board shall have power to require satisfactory evidence from the applicant for the loss or destruction of the certificate; and, further provided, that where the applicant is delinquent for the annual dues required by this act then he or she shall be required to pay to said board sufficient fees to recover his delinquency in that behalf before he or she shall be entitled to re-issue of the certificate in this subdivision provided for.

(g) To provide by proper rules and regulations for the revocation by said board of licenses issued under the provisions of this act, whenever the holder of such license shall be guilty of habitual intemperance or addicted to the use of narcotic drugs, or shall have been convicted of a felony or shall have been convicted of two or more violations of any of the provisions of this act. (Id. § 8633, as amended L. 1927, c. 207.)

257. Salary of Members of Board.—The members of the board shall receive the sum of five dollars ($5) for each day actually engaged in its services and all legitimate expenses incurred in attending meetings of said board; said expenses shall be paid from the fees received by the board under the provisions of this act. The board shall render an annual report of the work it has accomplished to the Governor and render an accounting of all moneys received and disbursed by them pursuant to this act. (Id. § 8634.)

258. Annual Renewal of Certificate by Pharmacist and Assistant; Fee.—Every person holding a certificate from said Board of Pharmacy shall renew annually his registration with said board, and every registered pharmacist and every registered assistant pharmacist, who desires to retain his registration on the books of the Board of Pharmacy in this State, shall annually, after the expiration of the first year's registration, and on or before the twenty-first day of May of each year succeeding, pay to the Secretary of the Board of Pharmacy a renewal fee to be fixed by the board, which shall not exceed two dollars ($2) for registered pharmacists and two dollars ($2) for registered assistant pharmacists, in return for which fee a renewal certificate of registration shall be issued. A penalty of five dollars ($5) for registered pharmacists and two dollars and fifty cents ($2.50) for registered assistant pharmacists will be added to the renewal fee of every registered pharmacist and every registered assistant pharmacist who fails to comply with this provision within sixty days from and after the twenty-first day of May of each year, and if said renewal fee is not paid with all penalties due thereunder before the first regular quarterly meeting of the Board of Pharmacy thereafter, the certificates [certificate] of every registered pharmacist and every registered assistant pharmacist failing to comply with the provisions heretofore mentioned will be canceled, and the certificates so canceled can only be renewed thereafter by an examination before the Board of Pharmacy as required by all persons presenting themselves for registration as registered pharmacists or registered assistant pharmacists. Any registration so granted may be revoked by unanimous vote by the said board for gross incompetence, or for dishonest practice on the part of the holder thereof; but before any certificate of registration shall be revoked such holder thereof shall be entitled to at least twenty days' notice of the charge against him, and of the time and place of meeting of the board for the hearing and determination of such charge, and upon the cancellation of such registration. (Ore. Laws 1920, § 8635, as amended L. 1921, c. 126, § 1.)

259. Certificate to be Exposed—Change of Residence of Pharmacist and Assistant.—Every person upon receiving a certificate of registration under this act, or who has heretofore received a certificate of registration in this State, shall keep his certificate and last receipt for re-registration conspicuously exposed in his place of business. Every registered pharmacist and every registered assistant pharmacist shall within thirty days after the changing of his place of business as designated on the books of the Board of Pharmacy, notify the secretary of the board of his new place of business, and upon receipt of said notification the secretary shall make the necessary change in his register. (Ore. Laws 1920, § 8636.)

260. Sheriff and Police Officers to Furnish List of Drug Stores Doing Business and Names of Owners and Employees.—It shall be the duty of the Board of Pharmacy, by resolution, at least annually, by request of the chief of police, marshal, or constable of every city, town, or township in this State and the sheriff of every county in this State, to furnish a list of all drug stores, together with the names of the owners, managers and all employees in said stores, and a brief statement of the capacity in which said persons are employed in said stores, and also the firm name of all stores retailing drugs, medicines, or poisons. Upon such re-

quest in writing it shall be the duty of the chief of police, marshal, constable, or sheriff of said city, town or township or county, to require the patrolmen or deputies under their command to obtain such lists as are in this section specified, and to deliver same to the Board of Pharmacy. It shall be the duty of the owner or manager of any drug store or other store dealing or retailing drugs, medicines or poisons, when called upon by an officer as above set forth, or by a member of the Board of Pharmacy, or by a duly authorized inspector, to furnish said officer, member of the Board of Pharmacy, or duly authorized inspector with the information required by the provisions of this section. Any person refusing to furnish the information, or willfully furnishing information that is false or untrue, shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be be punished by a fine of not less than fifty dollars ($50) nor more than one hundred dollars ($100) or by imprisonment for not less than ten days and not more than thirty-five days, or by both such fine and imprisonment. (Id. § 8637.)

261. Admission of Pharmacist to Practice from Other State.—Any person who is a duly and regularly registered and licensed pharmacist under the laws of any State of the United States of America and is in good standing in the State in which he or she shall be registered, and who shall furnish evidence thereof to the Secretary of the State Board of Pharmacy, may make written application to the Secretary of the State Board of Pharmacy for a certificate to practice pharmacy in the State of Oregon. If the applicant is duly and regularly registered and licensed under the laws of any State of the United States of America and is in good standing in the State in which he or she shall be registered, the said secretary shall, upon the payment of a fee of twenty-five dollars ($25), issue to said applicant a certificate to practice pharmacy in the State of Oregon; provided, however, that the State in which said applicant is a duly registered pharmacist, admits to practice in its State registered pharmacists of this State upon the presentation of a certificate and other satisfactory proof of his or her good standing in the State of Oregon; provided, further, that the above provision shall not apply to registered assistant pharmacists who are duly and regularly registered and licensed under the laws of any State of the United States of America; provided further, however, that this act shall not be construed so as to prevent a pharmacist from registering without examination, provided that such pharmacist is registered in some other State whose standard of requirement[s] shall be fully equal to the standard of requirements of the State of Oregon, and provided that such other States will register pharmacists who are licensed by the Oregon State Board of Pharmacy on the same conditions. (Id. § 8638, as amended L. 1927, c. 207.)

262. Registered Pharmacist and Assistant—Regulations of Pharmacy Store, Etc.—Absence of Registered Pharmacist.—It shall be unlawful for any person, from and after the passage of this act, to manufacture, sell or dispense any drug, poison, medicine, or chemical, or to dispense or compound any prescription of a medical practitioner, unless such person be a registered pharmacist or a registered assistant pharmacist within the meaning of this act, except as hereinafter provided. Every store, dispensary, pharmacy, laboratory or office for the sale, dispensing or compounding of drugs, medicines, or chemicals, or for the dispensing of prescriptions of medical practitioners, shall be in charge of a registered pharmacist. A registered assistant pharmacist may be left in charge of a store, dispensary, laboratory, or office for the sale, dispensing or compounding of drugs, medicines, or chemicals or for the dispensing of prescriptions of medical practiioners only during the temporary absence of the registered pharmacist. Temporary absence within the meaning of this act shall be held to be only those unavoidable absences which may occur during a day's work, and when the registered pharmacist in charge shall be within immediate call, ready and able to assume the direct supervision of said pharmacy. No registered assistant shall conduct a pharmacy. Every store or shop where drugs, medicine or chemicals are dispensed or sold at retail, or where prescriptions are compounded, which has upon it or as a sign, the words "pharmacist," "pharmaceutical chemist," "apothecary," "druggist," "pharmacy," "drug store," "drugs," or any of these words, or the characteristic show bottles or globes, either colored or filled with colored liquids, shall be deemed a "pharmacy" within the meaning of this act. (Ore. Laws 1920, § 8639.)

263. Registered Pharmacist.—Any person in order to be a registered pharmacist must be a licentiate in pharmacy, or a practicing pharmacist. (Id. § 8640.)

264. Licentiates and Practicing Pharmacist Defined.—Licentiates in pharmacy are persons who have had four years' experience in stores where the prescriptions of medical practitioners are compounded and shall have passed an examination before the State Board of Pharmacy. Practicing pharmacists are persons who, at the passage of this act, are registered as such, and who shall have on or before the twenty-first day of May next succeeding the passage of this act, paid to the

Board of Pharmacy of this State all moneys due for renewal of registration as required by the acts of the legislature regulating the practice of pharmacy in the State of Oregon, approved February 21, 1891, and February 25, 1895. (Id. § 8641.)

265. **Registered Assistant Pharmacists Defined; Requirements; Requirements for Licentiate.**—A candidate for examination as a registered assistant pharmacist must be over eighteen years of age, and have had three years' experience in a pharmacy where the prescriptions of physicians are compounded and dispensed; provided, that the time actually spent in attendance at a college accredited by the Oregon Board of Pharmacy shall be considered equivalent to the same period of practical experience, but in no case shall more than two years be credited for college attendance. All candidates for examination as registered pharmacists must be graduates of a college of pharmacy accredited by the Oregon Board of Pharmacy; provided, further, that the Board of Pharmacy may issue a certificate of registration to any person residing in this State for at least ten years and who has had at least twenty (20) years' experience under the supervision of a registered pharmacist in a pharmacy where prescriptions of physicians are compounded and who shall satisfy said board of his or her competency, qualifications and skill as a pharmacist; provided, further, that candidates for registered pharmacists shall have had at least one year's experience in a pharmacy where the prescriptions of physicians are compounded and dispensed. (Id. § 8642, as amended L. 1927, c. 113.)

266. **Unlawful to Dispose of Certain Poisons.**—It shall be unlawful for any person from and after the passage of this act to vend, sell, give away or furnish, or cause to be vended, sold, given away or furnished, either directly or indirectly any of the following poisons, to wit: Arsenic and its preparations, white precipitate, biniodide of mercury, cyanide of potassium, hydrocyanic acid, strychnine, essential oil of bitter almonds, aconite, belladonna, nux vomica, oil of savin, oil of tansy, ergot, cotton root, cantharides, carbolic acid (phenol), corrosive sublimate, corrosive sublimate tablets, antiseptic tablets containing corrosive tablets [sublimate] and other deadly poisons in original packages or otherwise without labeling the box, vessel or bottle in which said poison is contained, with the name of the article, and the word "poison" and the name, and place of business of the seller; nor shall it be lawful for any person to deliver or sell said poison unless upon inquiry it be found that the purchaser is aware of its poisonous character.

Deadly poisons, within the meaning of this act, shall be any drug, chemical or preparation which, according to the standard works on medicine, toxicology or materia medica is liable to be destructive to adult human life.

It shall be unlawful for any person to give a fictitious name or make any false representations to the seller or dealer when buying any of the poisons aforesaid. It shall be unlawful to sell or deliver, or cause to be sold or delivered, any of the poisons aforesaid without making or causing to be made an entry in a book kept solely for that purpose, stating the date, the hour of the sale, the name and address and the signature of the purchaser, the kind and quantity of the poison sold, a statement by the purchaser of the purpose for which it is required, and the name of the dispenser, who must be a duly registered pharmacist or a duly registered assistant pharmacist.

Said book shall be in the following form:

Date and Hour.	Name of Purchaser.	Residence.	Kind and Quantity.	Purpose of Use.	Signature of Druggist.	Signature of Purchaser.

This book shall always be open for inspection by the proper authorities and shall be preserved for at least five years after the date of the last entry therein; provided further, that nothing herein contained shall apply to the dispensing of physicians' prescriptions of any of the poisons aforesaid, nor to the manufacture, making, or selling at wholesale any poisons; provided, each box, vessel or package in which said poison is contained (except physicians' prescriptions) shall be labeled as herein provided. Any person violating any of the provisions of this section shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine or [of] not less than fifty dollars ($50) nor more than two hundred dollars ($200) or by imprisonment for a period not exceeding one hundred days, or by both such fine and imprisonment. (Ore. Laws 1920. § 8643.)

267. **Board May Prohibit Sale of Poison or Alcoholic Mixture.**—When, in the opinion of the State Board of Pharmacy, it is in the interest of the public health and morals, they are hereby empowered to further restrict or prohibit the retail sale of any poison or alcoholic mixture by rules, not inconsistent with the provisions

of this act, by them to be adopted, and which rules must be applicable to all persons alike. It shall be the duty of the board, upon request, to furnish any dealer with a list of all articles, preparations and compounds, the sale of which is prohibited or regulated by this act. Any sale made by any person in violation of the rules or regulations fixed by the State Board of Pharmacy, as provided in this section, shall be unlawful, and any person upon conviction of a violation of this section shall be guilty of a misdemeanor and punished by a fine of not less than twenty-five dollars ($25) nor more than five hundred dollars ($500). (Id. § 8644.)

268. Sale of Cocaine, Opium, Morphine, Etc., Prohibited Without Prescription; Form of Prescription; Penalty.—It shall be unlawful for any person, firm or corporation to vend, sell, furnish or give away, or cause to be vended, sold, furnished or given away, or offer to sell, vend, furnish or give away, or cause to be offered to be vended, sold, furnished or given away, or to have in his or their possession any cocaine, opium, morphine, codeine, heroin, alpha eucaine, beta eucaine, cannabis indica, sometimes known as "Indian hemp," or chloral hydrate, or any of the salts, derivatives or compounds of the foregoing substances or any preparation or compound contained in or containing any of the foregoing substances or their salts, derivatives or compounds, excepting upon the written order or prescription of a physician or dentist, or veterinary surgeon licensed to practice in this State, which order or prescription shall be dated and shall contain the name of the person for whom prescribed written in by the person writing such prescription, or if ordered by a veterinary surgeon it shall state the kind of animal for which ordered and shall be signed by the person giving the prescription or order. Such order or prescription shall be permanently retained on file by the person, firm or corporation who shall compound or dispense the articles ordered or prescribed and it shall not be again compounded or dispensed. No copy or duplicate of such written order shall be made or delivered to any person, but the original shall be at all times open for inspection by the prescriber and properly authorized officers of the law and shall be preserved for at least three years from the date of the filing thereof; provided, that the within provisions shall not apply to sales at wholesale by jobbers, wholesalers and manufacturers to pharmacies; and further provided, that the within provisions shall not apply to preparations sold or dispensed without a physician's prescription containing less than two grains of opium, or one-fourth grain of morphine, or one-half grain of codeine, or one-sixth grain of heroin, or one-sixth grain of cocaine, or one-sixth grain of eucaine, or four grains of cannabis indica, or one-sixth grain of beta eucaine, or ten grains of chloral hydrate in one fluid ounce, or, if a solid preparation, in one avoirdupois ounce; and further provided, that the above provisions shall not apply to the sale or compounding of remedies used for veterinary purposes and liniments. Any person who shall be found guilty of vending, selling, furnishing, giving away, or causing to be vended, sold, furnished or given away, or of offering to sell, vend, furnish or give away, or of causing to be offered to be vended, sold, furnished or given away, any of the substances, preparations, or compounds above listed, shall be deemed guilty of a felony and shall be punished by a fine of not less than two hundred dollars ($200), nor more than one thousand dollars ($1,000), and by imprisonment in the State penitentiary for not less than one year nor more than ten years. Any person convicted of having unlawful possession of any of the substances, preparations, or compounds listed above shall, upon conviction, be punished by a fine of not less than one hundred dollars ($100) nor more than one thousand dollars ($1,000), and shall be imprisoned in the county jail for not less than thirty days nor more than one year, or by imprisonment in the State penitentiary for not less than one year nor more than seven years. (Id. § 8645, as amended L. 1923, c. 27, § 1.)

269. Habitual User of Drugs Deemed a Vagrant.—Any person who is an habitual user of any of the drugs or substances mentioned in section 8645, Oregon Laws, as amended by this act, except as authorized by said section, shall be deemed to be a vagrant, and upon conviction thereof, shall be punished as provided by law for the punishment of vagrancy. (L. 1923, c. 27, § 2.)

270. Penalty for Adulteration of Drugs, Etc.—Every proprietor or manager of a pharmacy or drug store shall be held responsible for the quality of all drugs, chemicals and medicines sold or dispensed by him, except those sold in the original package of the manufacturer, and also excepting those articles or preparations known as patent or proprietary medicines. Any person who shall knowingly, willfully or fraudulently falsify or adulterate, or cause to be falsified or adulterated, any drug or medical substance, or any preparation authorized or recognized by the pharmacopœia of the United States or used or intended to be used in medical practice, or shall mix or cause to be mixed, with any such drug or medical substance any foreign or inert substance whatever, for the purpose of destroying or weakening

its medicinal power or effect, or of lessening its cost and shall willfully, knowingly or fraudulently sell the same or cause the same to be sold for medicinal purposes, shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine or [of] not less than fifty dollars ($50) and not more than two hundred dollars ($200) or by imprisonment for a period of not exceeding two hundred (200) days, or by both such fine and imprisonment. Every registered pharmacist shall file or cause to be filed all physicians' prescriptions, or a copy thereof, compounded or dispensed in his pharmacy or store and all prescriptions so filed shall be preserved for at least five years from the date of the filing thereof. Any person who shall willfully fail so to do shall be liable to a fine not exceeding fifty dollars ($50) and for each subsequent offense shall be liable to a fine of not less than fifty dollars ($50) and not more than one hundred dollars ($100). (Ore. Laws 1920, § 8646.)

271. **Penalty for Securing False Registration, Etc.**—Any person who shall attempt to secure or secures registration for himself or herself or any other person under this act by making or causing to be made any false representations, or who shall fraudulently represent himself to be registered, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be liable to punishment by a fine not exceeding one hundred dollars ($100) or by imprisonment for a term not exceeding fifty days, or by both such fine and imprisonment. Any person who shall permit the compounding of prescriptions of medical practitioners, or the selling of drugs, medicines, chemicals or poisons in his or her store of [or] pharmacy, except by a registered pharmacist or registered assistant pharmacist or who violates any of the provisions of this section of this act, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be liable to punishment by a fine of not less than one hundred dollars ($100) and not more than two hundred dollars ($200), or by imprisonment of not exceeding fifty days, or by both such fine and imprisonment; provided, however, that nothing in this act shall apply to or interfere with any practitioner of medicine or dentistry who is duly registered as such by their [his] respective State board of examiners of this State, with supplying his own patients, as their physician or dentist and by them employed as such, with such remedies as he may desire, and who does not keep a pharmacy, open shop or drug store, advertised or otherwise, for the retailing of medicines or poisons; nor does this section of this act apply to the exclusively wholesale business of any dealer, nor to the manufacture or sale of proprietary medicines or patent medicines; [n]or to the sale of any household remedies and medicines, by shopkeepers not druggists, in the original packages, when properly labeled; nor does this act apply to the supplying by veterinary surgeons duly registered under the laws of the State of Oregon of remedies required in the practice of their profession; nor to the sale by grocers and dealers generally of the following named poisons, to wit: Fly paper, ant poison, squirrel poison, gopher poison, arsenical poison used for orchard spraying when sold in the original unbroken package, and bluestone when properly labeled with the name of the dealer and marked "poison." (Id. § 8647, as amended L. 1921, c. 126, § 3.)

272. **Penalty for Operating Drug Store Without Registered Pharmacist.**—Any proprietor of a pharmacy who shall fail or neglect to place in charge of such pharmacy a registered pharmacist, or any proprietor of a pharmacy who shall by himself or any other person permit the compounding of prescriptions or the vending of drugs, medicines or poisons, in his or her store or place of business, except by a registered pharmacist or a registered assistant pharmacist, or any person not being a registered pharmacist who shall take charge of, or act as manager of any pharmacy or store, or who, not being a registered pharmacist or registered assistant pharmacist, retails, compounds or dispenses drugs, medicines, or poisons, shall be guilty of a misdemeanor, and upon conviction thereof shall be liable to a fine of not less than one hundred dollars ($100) and not more than two hundred dollars ($200) or by imprisonment for a term of not exceeding fifty days, or by both such fine and imprisonment. (Ore. Laws 1920, § 8648.)

272a. **Circuit, District and Justices' Courts Have Concurrent Jurisdiction.**—Circuit and justice and District Courts shall have concurrent original jurisdiction for the violation of any misdemeanor contained in this act. (Id. § 8649.)

272b. **Application and Disposition of Fines Paid Magistrates.**—All moneys collected either as costs or fines under the provisions of this act shall be paid by the magistrate or other officer receiving the same to the treasurer of the county where the prosecution is conducted, and shall be applied, first, to the payment of the costs of such prosecution, and the remainder thereof shall be paid by the county treasurer to the State Treasurer and by him credited to the fund or appropriation for the use of the State Board of Pharmacy. (Id. § 8650.)

272c. Traveling Vender of Drug to Pay License—Penalty.—Any itinerant or traveling vendor or hawker of any drug, nostrum, face powder, face cream, face bleach, face lotion, cosmetic, tooth powder, tooth paste, dentifrice or other toilet preparation, or ointment or application of any kind for the treatment of any disease or injury or deformity, before offering for sale or selling any such drug, nostrum, face powder, face cream, face bleach, face lotion, cosmetic, tooth powder, tooth paste, dentifrice or other tiolet preparation, or ointment or application of any kind for the treatment of any disease or injury or deformity, shall pay to the treasurer of the Oregon Board of Pharmacy an annual fee of one hundred dollars ($100), upon the receipt of which the secretary of the board shall issue a license for one year from the date of said payment, to defray the expenses of the board. Itinerant vendors, under the meaning of this act, shall include all persons who carry on the business above described by passing from house to house, or by haranguing the people on the public streets or in public places, or use the various customary devices for attracting crowds and therewith recommending their wares and offering them for sale. Any violation of this section shall be a misdemeanor, and any person shall, upon conviction thereof, pay a fine of not less than one hundred dollars ($100), nor more than three hundred dollars ($300), and in default of such payment shall be imprisoned in the county jail for the period of one day for each two dollars ($2) of such fine. In case of prosecution under this section it need not be proven that the defendant has not a license, but the fact that he has a license may be a matter of defense; provided, however, that nothing in this act shall be construed to prevent the collection of any tax or license that may be imposed by any county or municipal authority. (Id. § 8652, as amended L. 1925, c. 385.)

273. Selling Poison Without Label.—If any person shall sell or deliver any arsenic, corrosive sublimate, prussic acid, or other active poison, without having the word "poison," and the true name thereof, in English, written or printed upon a label attached to the vial, box, or parcel containing the same, such person, upon conviction thereof, shall be punished by a fine of not less than $20 nor more than $100. (Ore. Laws 1920, § 2245.)

274. Opium, Disposing of, How Restricted.—It shall be unlawful to sell or give away opium, or any preparation of which opium is the principal medicinal agent, to any person except druggists and practicing physicians, except on the prescription of a practicing physician, written in the English or Latin language; and the druggist filling such prescription shall keep the same on file for one year, subject to be inspected by any public officer of the State. (Id. § 2155.)

275. Opium, Sale of, for Smoking on Premises Unlawful.—No person shall sell any opium, or preparation of which opium is the principal medicinal agent, to be smoked on or about the premises where sold. (Id. § 2156.)

276. Opium Den Defined.—Any building where opium is sold for the purpose of being smoked on or about the premises, where the same is smoked, shall be considered an opium den. (Id. § 2157.)

277. Frequenting Opium Den Unlawful.—It shall be unlawful for any person to frequent any opium den for the purpose of purchasing or smoking opium, or any preparation in which opium is the principal medicinal agent. (Id. § 2158.)

278. Penalty for Violating Preceding Provisions Relating to Opium and Opium Dens.—Any person violating any of the provisions of this act shall be punished by imprisonment in the penitentiary not less than six months nor more than two years, or by imprisonment in the county jail not less than one month nor more than six months, or by fine not less than $50 nor more than $500. (Id. § 2159.)

279, General Reputation as Evidence.—In the prosecution for any violation of the provisions of sections 2156, 2157, and 2158, general reputation shall be received in evidence to establish the character of any building as an opium den, and proof that any person frequents such den shall be prima facie evidence that such person frequents such den for the purpose of smoking opium, and such evidence shall not be rebutted by the evidence of the defendant unsupported by other evidence. (Id. § 2160.)

279a. Furnishing Liquor and Opiates to Convicts, Person Confined in Jail or Inmates of Public Institution Prohibited.—Should any person, other than a convict serving time in the Oregon State Penitentiary, barter, sell, trade, give or furnish, or aid in the barter, sale, trading, giving or furnishing of any intoxicating liquors or any cocaine, opium, morphine, codeine, heroin, alpha eucaine, beta eucaine, nova caine or chloral hydrates, or of any of the salts, derivatives or compounds of the foregoing substances to any convict or prisoner sentenced to serve or serving a term in the Oregon State Penitentiary or any county or municipal jail, or to any inmate of any State or county penal or eleemosynary institution, shall be guilty of a misdemeanor and shall be punished by a fine of not less than fifty dollars ($50) nor more than two hundred and fifty dollars ($250), or by imprisonment in the county

jail for a period of not less than 30 days nor more than six months, or by both fine and imprisonment. (Id. § 2160-1.)

279b. Convict, Person Confined in Jail, Furnishing Liquor or Opiates to Inmates to be Prosecuted.—Should any convict or prisoner sentenced to serve or serving a time in the Oregon State Penitentiary, or in any county or municipal jail, violate any of the provisions of the preceding section, he shall likewise be deemed guilty of a crime and shall be tried in the Circuit Courts of the State as other crimes against the State are tried. If he be sentenced to serve, or serving a time in the Oregon State Penitentiary and found guilty of violating the provisions hereof he shall not be entitled to parole until after he has served, counting from the time at which he was first incarcerated, double the minimum sentence prescribed by the law under which he was so incarcerated; if a convict or prisoner of the other classes mentioned above, upon conviction, he shall be subject to sentence under the provisions of section 1 hereof, said sentence, if it entails imprisonment, to take effect at the expiration of the sentence under which he is at the time confined. (Id. § 2160-2.)

279c. To Purchase and Prepare Poison Baits and Sell to County Residents at Cost.—The county court or board of county commissioners is hereby authorized to purchase poison and other supplies necessary for the extermination and eradication of any ground squirrels and other noxious rodents or predatory animals and to cause said poison to be mixed and poison baits to be prepared and to sell the same at cost to residents of said district for the purposes aforesaid, and the proceeds derived from any sale thereof shall be paid to and become a part of said revolving fund. (L. 1925, c. 5, § 4.)

279d. Who to Mix Poison and Prepare Baits—Compensation of Assistants.—It shall be the duty of the agricultural agent of every county in this State, or in counties not having such agricultural agent any person appointed by the court to carry out the provisions of this act shall be deemed to be the agricultural agent for the purposes hereof, to mix any poison and prepare poison baits and distribute the same, or other necessary supplies provided by said court or board of county commissioners, to the applicants for same and to collect all moneys and receipt therefor, and make monthly report to said court. Such agricultural agent shall receive no additional compensation for performing the duties herein, but shall be allowed such additional assistance as in the opinion of said court or board shall be necessary to effectively carry out the provisions hereof, and in counties not having an agricultural agent the court or board of county commissioners shall fix the compensation of the person so appointed, which shall not exceed $5 per day, and shall prescribe by order such additional assistance as may be necessary to carry out the provisions hereof. (Id. § 5.)

279e. Notice to Residents—Provisions of Appointments of Agent to Exterminate Rodents—Powers and Compensation of Agent—Lien on Property.—The agricultural agent shall give notice to all persons residing or owning any land within said district by the publication thereof, in a newspaper of general circulation within said county, for two weeks, or three issues of said paper, of the kind of poison or poison baits or method most expedient or effective to be used for the extermination or destruction of such rodents, and the time when the same is to be put out or used; said notice shall be deemed to be sufficient to all persons described in section 1* hereof, and unless any such person shall, within thirty days from the first publication of said notice, begin in good faith to exterminate, eradicate and destroy, as aforesaid, or by any other effective means, any ground squirrels or other noxious rodents or predatory animals that may be designated in the published notice aforesaid, it shall then be the duty of the county court to appoint a person or persons recommended by the agricultural agent to proceed with the extermination and eradication of such rodents upon the land or place, as aforesaid, and for that purpose the said person or persons appointed are hereby authorized to enter upon any land, place, building, structure, wharf, pier or dock for the purpose of this act, and any expense incurred in the extermination or eradication of such rodents, including a charge for services of not to exceed five dollars ($5) per diem; said person or persons shall set forth, fully itemized, in a statement with a description of the property upon which any sum of money shall have been expended, verified, and present such statement to the county court within sixty days from the time that said money shall have been expended, and the court shall examine into the items thereof and approve the same, and if the expense thereof is found to be unreasonable, shall correct said unreasonable items thereof and modify said statement; thereupon the court shall file such statement in the office of the county clerk and from

*Relates to duty of owners of land to exterminate rodents. Omitted herein.

the date of filing thereof said sum of money shall constitute a lien upon the property therein described. (Id. § 6.)

279f. Placing of Poison.—All poison baits prepared and distributed by the agricultural agent, as aforesaid, shall be placed in containers, plainly labeled, to show the contents thereof, and in order to secure the most effective and economical expenditures of funds for the extermination and destruction of the said ground squirrels and other noxious rodents or predatory animals, the county court or board of county commissioners shall co-operate, so far as practicable, with the State and Federal organizations engaged in similar work. (Id. § 8.)

NOTE: See also Nos. 319-320.

Serum, Etc.

280. Unlawful to Sell or Use Biological Products Forbidden by Proclamation of Board—Penalty.—It shall be the duty of the board* to obtain samples of vaccine, toxin, anti-toxin, serum, bacteria or any other biological product used, sold or offered for sale in this State for the purpose of curing, detecting or preventing any animal disease, and to submit such samples to the United States Bureau of Animal Industry for examination and experiment, to determine the safety and reliability of such product; and should the said bureau find such biological product dangerous or unreliable the State Live Stock Sanitary Board shall issue a proclamation forbidding the sale and use thereof; and no person, firm or corporation shall sell, use or offer for sale or dispose of within this State to another except to return to the manufacturer, any such biological product forbidden by any such proclamation of the board, and no person shall sell, use or inject into any animal in this State any anthrax vaccine without first having obtained permission to do so from the board, except officers of the United States Bureau of Animal Industry, and any person who personally or as agent or employee shall violate any of the provisions of this section shall be guilty of a misdemeanor, and upon conviction shall be fined not less than $50 nor more than $250. (Ore. Laws 1920, § 9118.)

281. Biological Products to be Furnished Board.—The experiment station of the Oregon Agricultural College may make, produce or furnish to the State Live Stock Sanitary Board certain bacteriological or biological products used for the curing, preventing or detecting of animal disease. Such experiment station shall produce and furnish such products at actual or approximate cost, which said cost shall be paid by the State Live Stock Sanitary Board out of the funds appropriated for the maintenance of the said board. All such moneys coming from the sale of such biological products shall be paid over to the director of the experiment station of the Oregon Agricultural College by warrants drawn upon the State Live Stock Sanitary Board and shall become a part of the experiment station maintenance fund. (Id. § 9120.)

282. Tuberculin and Mallein Not to be Injected Without Permission of Board—Regulations of Board—Persons Selling Same to Report Sales to Board—Indemnity Awarded by Board in Certain Cases.— . . . any person, persons, firm or corporation, their agents or employees, who shall sell, give away, or dispose of, to another, any tuberculin or mallein in this State, shall, within three days thereafter, make a written report to the State Veterinarian, showing the name and address of the person or persons to whom such tuberculin or mallein was delivered and the number of doses so disposed of; . . . any person, persons, firm or corporation, their agents or employees, who shall violate any of the provisions of this section shall be guilty of a misdemeanor, and upon conviction shall be fined not less than $50 nor more than $250. (Id. § 9136.)

Venereal Disease Drugs.

283. Advertising to Cure Sexual Diseases.—Any person who shall advertise or publish any advertisement intended to imply or to be understood that he will restore manly vigor, treat or cure lost manhood, lost power, stricture, gonorrhœa, chronic discharges, gleet, varicocele or syphilis, or any person who shall advertise any medicine, medicinal preparation, remedy or prescription for any of the ailments or diseases enumerated in this act shall be deemed guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not less

*State Live Stock Sanitary Board.

than $100 nor more than $1,000, or by imprisonment in the county jail for a period of not less than six months nor more than twelve months, or by both such fine or imprisonment. Any owner or managing officer of any newspaper in whose paper shall be printed or published any such advertisement as is described in this act shall be deemed guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not less than $100 nor more than $1,000, or by imprisonment in the county jail for a period of not less than six months or more than twelve months, or by both such fine and imprisonment. (Ore. Laws, 1920, § 2095.)

284. **Advertising to Cure Sexual Diseases, Etc., Forbidden.**—It shall be unlawful for any person or persons, firm, corporation or association, except boards of health, or agencies approved by the State Board of Health, to publish, deliver or distribute, or cause to be published, delivered or distributed in any manner whatever, or to permit placards or posters to be or remain on buildings or outhouses or premises controlled by him containing an advertisement concerning venereal disease, lost manhood, lost vitality, impotency, sexual weakness, seminal emissions, varicocele, self-abuse or excessive sexual indulgence and calling attention to a medicine, article or preparation that may be used therefor or to a person or persons from whom, or an office or place at which, information, treatment or advice may be obtained. (Id. § 8428.)

285. **No Drugs or Preparations to be Sold for Treatment for Any Venereal Disease Except Upon Prescription of Physician.**—It shall be unlawful for any druggist or other person to sell any drug, compound or specific preparation of any kind used for, or reasonably intended to be used for, the cure or treatment of any venereal disease, except upon the prescription of a regularly licensed physician. (Id. § 8429.)

Intoxicating Liquors.

286. **Act Deemed Exercise of Police Powers.**—This entire act shall be deemed an exercise of the police powers of the State for the protection of the public health, peace and morals, and all of its provisions shall be liberally construed for the attainment of that purpose. (Ore. Laws 1920, § 2224.)

287. **Intoxicating Liquor Defined.**—The words "intoxicating liquor," as used in this act, shall be construed to embrace all spirituous, malt, vinous, fermented or other intoxicating liquors; and all mixtures or preparations reasonably likely or intended to be used as a beverage, which shall contain in excess of one-half of one per centum of alcohol by volume, shall be deemed to be embraced within such term, independently of any other test of their intoxicating character, and all mixtures, compounds or preparations, whether liquid or not, which are intended, when mixed with water or otherwise, to produce, by fermentation or otherwise, an intoxicating liquor, shall also be deemed to be embraced within such term. (Id. § 2224-1.)

288. **Unlawful to Manufacture or Sell Intoxicating Liquor.**—Except as hereinafter provided in this amendatory act it shall be unlawful for any person to receive, import, possess, transport, deliver, manufacture, sell, give away or barter any intoxicating liquor within this State; and the place of delivery of any intoxicating liquor is hereby declared the place of sale; provided, that it shall not be unlawful for any person to have in his possession intoxicating liquor lawfully procured and in the possession of such person within this State at the time of the taking effect of this amendatory act, or lawfully obtained or received under the provision of this act. (Id. § 2224-4.)

289. **Sale of Vinegar, Cider or Fruit Juices Not Prohibited—Wine for Sacramental Purposes.**—The provisions of this act shall not be construed to prevent the making or selling of vinegar, alcohol manufactured for denaturation only and actually denaturized under the laws and regulations of the United States government, or nonintoxicating cider or fruit juices, or the making of wine for sacramental purposes. (Id. § 2224-5.)

290. **Wholesale Druggists May Sell Ethyl Alcohol.**—This law shall not be construed to prohibit the sale at wholesale only by druggists actually engaged in the wholesale drug business in this State of ethyl alcohol to persons to whom permits shall be issued by district attorneys within the requirement of this act. (Id. § 2224-6.)

291. **Registered Pharmacists May Sell Ethyl Alcohol for Certain Purposes —Before Selling Must File Bond with County Clerk.**—Registered pharmacists conducting or employed in retail drug stores may sell ethyl alcohol for medicinal, mechanical and scientific purposes, to persons to whom permits or prescriptions

may have been issued in compliance with the terms of this act, and not otherwise. No registered pharmacist shall sell ethyl alcohol until he or his druggist employer has filed with the county clerk of the county in which he resides a bond running to the State of Oregon, in the penal sum of $250, conditioned that neither said pharmacist nor his druggist employer will sell intoxicating liquor in violation of this act. The bond shall be signed by two freeholders of the county, each of whom shall qualify in the sum of $250 over and above his debts, liabilities and property exempt from execution, or by a surety company; and shall be approved jointly by the county judge and county clerk and filed in the office of the county clerk. Such bond shall be good for one year only. (Id. § 2224-7.)

292. **District Attorney to Issue Permits to Purchase Alcohol by Certain Persons.**—The district attorney of any district in this State shall on application issue to persons residing in the district for which he shall have been elected, permits to purchase or import into this State ethyl alcohol as follows: To wholesale druggists; to manufacturers other than retail druggists, such manufacturers being actually engaged in the business of manufacturing products other than intoxicating liquors, which products require the use of alcohol in their manufacture, and furnishing the bond hereinafter required; to reputable hospitals; to public infirmaries; to laboratories; to medical colleges; to licensed and practicing physicians; to licensed dentists for use only in their professional work; to retail druggists for making and compounding pharmaceutical preparations that can not be used as a beverage; to persons known to such district attorney to be engaged in any scientific pursuit or art or industry, aside from the making of intoxicating liquor, and requiring the use of alcohol; but in every such case such district attorney shall be satisfied before issuing any such permit, upon such reasonable showing as he may require, that such alcohol is in good faith intended for lawful use and will not be used or disposed of for any unlawful purpose. Every district attorney issuing any such permits shall number the same consecutively and shall keep in his office and deliver to his successor in office a record of such permits issued. Both the said permit and the said record thereof shall show the number, date of issuance, name and address of person to whom issued and the nature of the use to be made of such alcohol, with any other data which such officer may deem a material part of such record. Any peace officer of this State or any municipality therein having reason to believe that any person has made or is about to make unlawful use or disposition of alcohol within this State shall notify the district attorney of his county of the facts and may for reasons reported by such officer to the district attorney, protest against the issuance of a permit by such district attorney, to any person for the purchase or importation of alcohol, or may petition the district attorney to revoke any such permit which shall have been granted. An appeal shall lie to the Circuit Court of the county in which such district attorney resides, for any refusal to issue, or for the revocation of, the permit designated in this subdivision. Such Circuit Court shall hear such appeal in a summary manner, and if convinced that such permit is necessary for a lawful purpose within this act, may require such district attorney to issue or continue such permit; provided, such appellant shall also show on such appeal that no part of any previous purchase or importation of alcohol made by said appellant, after the taking effect of this act, has been used for beverage purposes or disposed of contrary to law. Any expense reasonably incurred by the district attorney in investigating the facts as to the propriety of issuing or revoking such permit shall be paid by the county court of such county upon the voucher of such district attorney. Every such permit for the importation or purchase of alcohol shall be signed by the district attorney or an authorized deputy. Every manufacturer referred to in this subdivision as entitled to permits for the purchase or importation of ethyl alcohol shall, before receiving any such permit, present to the district attorney of the county in which the place of business of such manufacturer is located a bond running to the State of Oregon in the penal sum of $2,500, executed by such manufacturer, and a sufficient surety or sureties, who shall qualify in the sum of not less than $2,500 over and above all debts, liabilities and property exempt from execution, or by a surety company. Said bond shall be subject to approval by the said district attorney and shall be conditioned that the principal in said bond will not use any alcohol purchased or imported by such manufacturer for the purpose of making any intoxicating beverage or dispose of any alcohol in any manner in violation of any provision of this act, and that the said manufacturer will in all respects faithfully observe and comply with all of the provisions of this act. Upon the approval of said bond by the said district attorney he shall file the same with the county clerk of the county in which the place of business of said manufacturer is located. Such bond shall be good for

one year only and upon the expiration of one year shall be renewed, and until renewed to the satisfaction of the district attorney no further permits for the purchase or importation of alcohol by such manufacturer shall be issued. (Id. § 2224-10, as amended L. 1921, c. 405, § 2.)

293. Prescription of Physician Required to Authorize Sale of Ethyl Alcohol—Purchaser to Make Affidavit—Prescription to be Signed by Physician and Show Purpose.—Ethyl alcohol may be sold by registered pharmacists only and for medicinal purposes only upon the signed prescription of a licensed physician in good standing actually engaged in the practice of his profession in this State, not of intemperate or immoral habits and not addicted to the use of narcotic drugs. Every physician issuing any such prescription for ethyl alcohol shall date the same as of the actual date of issuance and number the same consecutively during each calendar month, the number of each prescription to be plainly written upon the face thereof; and the person presenting any such prescription to any pharmacist shall, before being permitted to purchase the alcohol therein prescribed, comply with the provisions of this law hereinbefore set forth in relation to signing and swearing to an affidavit. Each such prescription shall state on its face in the English language the general nature of the ailment for which such alcohol is prescribed, the name and address of the patient for whom prescribed and of the physician issuing the same, and only one sale shall be made on any one prescription. No prescription for ethyl alcohol shall be written and no such prescription shall be filled unless the requirements herein set forth shall have been substantially and in good faith complied with. Any physician prescribing alcohol for medicinal purposes shall make a duplicate or carbon copy of each such prescription and on or before the tenth day of each calendar month shall file such duplicates or carbon copies of all such prescriptions issued by him during the preceding calendar month with the county clerk of the county in which said physician resides and practices, together with an affidavit to the effect that said duplicates or carbon copies contain a full and complete report of all alcohol prescribed by said physician during the preceding calendar month.

It shall be unlawful for any physician to issue a prescription for alcohol to be diluted or adulterated or combined with any other substance in such proportions that it shall be capable of being used as a beverage, and it shall be unlawful for any physician to issue any prescription for alcohol to any person except for necessary medicinal use in case of actual sickness or ailment. (Ore. Laws 1920, § 2224-11.)

294. Unlawful to Sell More Than One Quart Within Four Weeks—Hospitals, Physicians, Etc., Excepted.—It shall be unlawful for any pharmacist to sell more than one quart of alcohol to any one person within a period of four successive weeks, or if such person has purchased any alcohol from any other person, as shown by the affidavit of the purchaser, within four weeks of the date of sale, then such pharmacist may sell to such purchaser such quantity only as will make the total quantity purchased by such person within four successive weeks not to exceed one quart; except that such pharmacist may sell alcohol, when authorized by permit of the district attorney of his county so to do, in larger quantities, not exceeding in any case the quantity named in any such permit to any manufacturer permitted by this amendatory act to purchase alcohol; to reputable hospitals; to the managers of public infirmaries; to retail druggists for sale through registered pharmacists as permitted by this act; to laboratories; to medical colleges; to licensed and practicing physicians; to licensed dentists for use in their professional work only; to persons engaged in scientific pursuits or arts or industries requiring alcohol. Each such purchaser, and in case of any institution, the manager thereof, shall, before being permitted to purchase alcohol upon such permit, execute the affidavit required by this act. Every pharmacist making any sale of alcohol shall note in a legible manner on such affidavit the quantity of alcohol sold thereon. No pharmacist shall sell alcohol to any minor or to any person who is addicted to the use of any narcotic drug, or is of intemperate habits, or who shall be known to such pharmacist to have made any false statement in the affidavit upon which such alcohol sale is requested. (Id. § 2224-12.)

295. Pharmacists Must Keep Prescriptions and Affidavits on File; Officers May Inspect; Must File Affidavits and Prescriptions with County Clerk; and Affidavit That the Same Are a Record of Total Sales.—It shall be the duty of every pharmacist to keep all permits issued to him under this act on file. Such files shall be open for the inspection of any officer at any time during business hours. (Id. § 2224-13, as amended L. 1921, c. 405, § 3.)

296. Physician May Prescribe Alcohol to Patient.—The provisions of this act shall not be construed to prevent any regularly licensed physician in this State, in good standing in his profession and following the practice of medicine as a principal and usual calling, from administering or providing for the administering of alcohol to any patient when the same is actually necessary as a medicine in the treatment of any disease or malady; but nothing in this paragraph contained shall authorize the sale of such alcohol by such physician, and the giving away of such alcohol by such physician where not thus actually necessary as medicine or were the same is reasonably likely or intended to be used as a beverage shall be deemed an unlawful sale within the meaning of this act. In any prosecution of any physician for such giving away of alcohol the burden of proof shall be upon him to show that such giving away of such alcohol was for necessary medicinal use. (Ore. Laws 1920, § 2224-14.)

297. Pharmacists Must Keep Prescriptions and Affidavits on File—Officers May Inspect—Must File Affidavits and Prescriptions with County Clerk—And Affidavit That the Same Are a Record of Total Sales.—It shall be the duty of such pharmacist to keep all prescriptions and affidavits on file, and such files shall be open for the inspection of any officer at any time during business hours. On or before the tenth day of each month said pharmacist shall file with the county clerk all said prescriptions received or filled by him, together with all affidavits used by him during the preceding month and said pharmacist shall at the same time also file with the county clerk an affidavit stating that said books contain a record of all intoxicating liquors of any kind sold or given away by him during the previous calendar month. (Id. § 2224-16.)

298. Physician Not Prevented from Administering Intoxicating Liquors to Patient as Medicine—Unlawful for Physician to Give Intoxicating Liquors Where Intended as Beverage and Deemed Sale—Burden of Proof Rests Upon Physician.—The provisions of this act shall not be construed to prevent any regularly licensed physician in good standing in his profession and following the practice of medicine as a principal and usual calling from administering or providing for the administering of any intoxicating liquor to any patient, when the same is actually necessary as a medicine in the treatment of any disease or malady, but nothing in this paragraph contained shall authorize the sale of such intoxicating liquor by such physician; and the giving away of such liquor by such physician where not thus actually necessary as medicine or where the same is reasonably likely or intended to be used as a beverage, shall be deemed an unlawful sale within the meaning of this act, and in any prosecution of any physician for such giving away of liquor the burden of proof shall be upon such physician to show that any such giving away of such liquor was for necessary medicinal use. (Id. § 2224-17.)

299. Unlawful to Solicit or Take Orders for Intoxicating Liquor Except Where Sale is Permitted.—It shall be unlawful for any person to solicit, take or receive within this State any order for intoxicating liquor or make any contract for the sale of any intoxicating liquor, except in cases where the sale of such liquor within the State is permitted. (Id. § 2224-18.)

300. Advertisement of Sale of Intoxicating Liquors Prohibited—Penalty.—If any person shall advertise or give notice by signs, billboards, newspapers, periodicals or otherwise for himself or another of the sale or keeping for sale of liquors, or shall circulate or distribute any price lists, circulars or order blanks advertising liquors, or publish any newspaper, magazine, periodical or other written or printed papers, in which such advertisements or notices are given, or shall permit any such notices or any advertisement of liquors (including billboards) to be posted upon his premises, or premises under his control, or shall permit the same to so remain upon such premises, he shall be guilty of a misdemeanor and be fined not less than one hundred dollars nor more than five hundred dollars. (Id. § 2224-19.)

301. Unlawful Selling Defined.—The giving away or furnishing of intoxicating liquor for the purpose of evading the provisions of this act, or any other shift, device or subterfuge whatsoever to evade the provisions of this act shall be deemed an unlawful selling within the meaning of this act. (Id. § 2224-20.)

302. Unlawful for Any Person to Receive Intoxicating Liquor.—Except as hereinafter provided, it shall be unlawful for any person within this State to receive any intoxicating liquor from any common carrier or from any other person who has brought or carried or introduced the same into this State; and the possession of any intoxicating liquor thus unlawfully received after the taking effect of this amendatory act shall be deemed a violation of this act; but the provisions of this act shall not prevent the transportation into this State by or

receipt from any common carrier of ethyl alcohol by any person or institution holding from the district attorney a permit of the character hereinbefore mentioned, permitting such person or institution to import ethyl alcohol. (Id. § 2224-23, as amended L. 1921, c. 405, § 4.)

303. Lawful for Authorized Consignees to Receive Ethyl Alcohol.—It shall be lawful to receive from common carriers and for such common carriers to transport shipments of ethyl alcohol transported from points within this State and lawfully sold to any consignee within this State under the provisions of this act. But no person shall receive any intoxicating liquor from any such common carrier until he shall have subscribed to the affidavit hereinafter required, and it shall be unlawful for any person to receive intoxicating liquor, the transportation or delivery of which has been or is made a violation of any provision of this act. (Ore. Laws 1920, § 2224-25.)

304. Unlawful for Common Carrier to Deliver Intoxicating Liquors Except by Authorized Consignees; Affidavit of Consignee.—It shall be unlawful for any common carrier, or any officer, agent or employee of any common carrier, knowingly to deliver intoxicating liquor to any person in this State not entitled to receive the same from such common carrier under this act. (Id. § 2224-26, as amended L. 1921, c. 405, § 5.)

305. County Clerk to Keep Forms for Common Carrier.—It shall be the duty of the county clerk of each county of the State to prepare and keep on hand blank forms for such affidavits, which shall be bound detachably in books or blocks of one hundred each. Each such book or block shall bear a separate number, and each affidavit therein shall bear the number of the book in which it is contained. The affidavit in each book shall be numbered consecutively and shall be used in the order of their number. One or more of such books or blocks of affidavits shall be delivered upon request of the agent of the common carrier, and upon payment to the county clerk of seventy-five cents per book or block. The county clerk shall keep a register in which he shall record the date of delivery of such book or block to the agent of such carrier. Within ten days after the expiration of each calendar month each agent of such common carrier shall detach and deliver to the county clerk all such affidavits executed during such month, and all permits for importation of alcohol taken up during such month, and said affidavits and permits so delivered to such county clerk shall be preserved for two years thereafter; and such affidavits and permits while in the office of the common carrier shall at all reasonable times be open to the inspection of any county, State or municipal officer. (Ore. Laws 1920, § 2224-27.)

306. Failure of Common Carrier to Take Affidavit and Retain Permit a Violation of Act; Fee.—Any failure on the part of the agent of any common carrier to comply with any of the provisions herein contained relative to the delivery of intoxicating liquor to a consignee shall be deemed a violation of the provisions of this act. (Id. § 2224-28, as amended L. 1921, c. 405, § 6.)

307. Disposition of Liquor in Transit at Time of Taking Effect of Act.—It shall be lawful for any common carrier to deliver within this State, within five days after the taking effect of this act, and not later, such shipments of intoxicating liquor as it may have received for transportation prior to the taking effect of this act and which it could lawfully have delivered within this State prior to the taking effect of this act; and any common carrier which shall at the expiration of said period of five days have in its possession within this State any intoxicating liquor intended for delivery, which it cannot lawfully deliver under the provisions of this act, shall within thirty days after the taking effect of this act transport the same out of the State. (Ore. Laws 1920, § 2224-29.)

308. Alteration of Permit.—The material alteration by any person of any permit issued by any district attorney under the requirements of this act shall be deemed a violation of this act. (Id. § 2224-30.)

309. Unlawful for Any Person Other Than Common Carrier to Bring Into State Intoxicating Liquor.—It shall be unlawful for any person other than a common carrier, keeping such records and complying with the provisions hereinbefore set forth, to bring, introduce or deliver any intoxicating liquor into the State, and it shall be unlawful for any agent of any such common carrier or other person knowingly to deliver intoxicating liquor to any minor, or to any person known by the agent of such common carrier to be an habitual drunkard, or to any person in an intoxicated condition; and it shall be unlawful for any such common carrier or any officer, agent or employee of such common carrier knowingly to deliver intoxicating liquor to any other person than the original consignee whose name is marked on the package containing the same, as required by the provisions of chapter 250 of the General Laws of the State of Oregon enacted by the Legislative Assembly for

the year 1913;* and it shall be unlawful for any person to haul, transport or carry, or cause to be hauled, transported or carried on or through any street, road or other public highway within this State, for the purpose of delivery to any other person, any package containing intoxicating liquor, unless such package shall be marked as required by section 1 of said chapter 250† of the General Laws of the State of Oregon, enacted by the Legislative Assembly of the year 1913; and it shall be unlawful to haul, transport or carry any such package containing intoxicating liquor on or through any street, road or other public highway within this State unless such liquor shall be in the lawful possession within the State of Oregon at the time of the going into effect of this amendatory act, of the person thus, in person or by agent, hauling, transporting or carrying the same, or shall have been lawfully received within the provisions of this act, and in any prosecution for such hauling, transporting or carrying, or for receiving intoxicating liquor in violation of this act, the burden of proof shall be on any person having such liquor in his possession to show that it was thus in his possession within this State prior to the taking effect of this act as amended or has since been lawfully received. (Id. § 2224-31.)

310. Transfer of Bill of Lading for Intoxicating Liquor Prohibited—Carrier Not to Deliver to Transferee—Penalty.—It shall be unlawful for any person to transfer, within this State, to another person any bill of lading, shipping receipt, order, or other receipt calling for delivery of any intoxicating liquor; and no common carrier or officer, agent or employee of any common carrier shall deliver any intoxicating liquor to any person on such transfer of bill of lading, shipping receipt, order or other receipt, and any violation of this section of this act shall be deemed a misdemeanor and any person convicted thereof shall be punished by a fine of not more than five hundred dollars or by imprisonment in the county jail for not more than ninety days. (Id. § 2224-32.)

311. Banks Prohibited from Collecting Draft, Etc., Connected with Bill of Lading for Intoxicating Liquor—Penalty.—It shall be unlawful for any bank incorporated under the laws of this State, or any national bank or any individual, firm or association to present, collect, or in any way handle any draft, bill of exchange or order to pay money, to which draft, bill of exchange or order to pay money is attached a bill of lading, or order or receipt for intoxicating liquors, or which draft is inclosed with, connected with, or in any way related to, directly or indirectly, any bill of lading, order or receipt for intoxicating liquors; and any violation of this section of this act shall be deemed a misdemeanor and any person convicted thereof shall be punished by a fine of not less than twenty-five dollars nor more than five hundred dollars, or by imprisonment in the county jail for not more than ninety days. (Id. § 2224-33.)

312. Certain Places and Premises Are Declared Nuisance—Seagoing Vessels Excepted.—All premises, buildings, vehicles, boats, and all other places where intoxicating liquors are manufactured, sold, bartered or given away, in violation of law, or where persons are permitted to resort for the drinking of intoxicating liquor as a beverage, or where intoxicating liquors are kept for sale, barter or delivery, in violation of law, and all intoxicating liquors, bottles, glasses, kegs, pumps, bars and other property kept in and used in maintaining such premises, buildings, vehicles, boats or other places, are hereby declared to be common nuisances; provided, that nothing in this act shall be construed to interfere with the rights of seagoing vessels to keep liquor thereon, provided they comply with all the provisions of this act; and every person who maintains or assists in maintaining such common nuisance shall be held guilty of a misdemeanor, and upon conviction shall be punished for each offense as provided in section 2224-61 hereof for offenses under this act. (Id. § 2224-34.)

313. Penalties for Violation of Act—Penalties for Second Violation of Act—Penalties for Third Violation of Act—Court Not to Suspend Sentence on Third Violation of Act.—Any person or persons who shall violate any of the provisions of this act shall be deemed guilty of a misdemeanor, and upon conviction thereof, except in cases where the punishment is herein otherwise specifically provided, shall be punished by a fine of not less than $500 or by imprisonment in the county jail not more than six months, or by both such fine and imprisonment, in the discretion of the court. And for a second violation of any of the provisions of this act, not thus otherwise herein specifically provided for, such person shall, upon conviction, be punished by a fine of not less than $100 nor more than $500 and by imprisonment in the county jail for not less than thirty days nor

*See Nos. 316-318.

†See No. 316.

more than one year. And any person who, having twice been duly convicted of violating any of the laws of this State prohibiting the sale of intoxicating liquor, and who shall thereafter, directly or indirectly, violate any of the provisions of such law, shall be considered a persistent violator of such law, and upon conviction thereof shall be confined in the county jail at hard labor for a period of two years; provided, that sentence shall not be suspended by any court or judge upon a third or any subsequent conviction of any violation of this act. (Id. § 2224-61.)

314. **Penalties for Violation of Act by Physicians and Druggists—On Second Conviction License to Practice Medicine or Pharmacy Revoked for Six Months—Certified Copy of Conviction to be Sent Board of Pharmacy and Medical Examiners—On Third Conviction Board to Cancel License.**—If any person licensed to practice medicine or surgery or licensed or registered as a pharmacist under the laws of this State shall once have been convicted of violating any of the provisions of this act and shall thereafter be found guilty of further violating the provisions of this act, said second conviction shall also, in addition to the other punishment hereinbefore described, operate as a revocation of said license, for a period of six months from the date of said conviction of such person so convicted, to practice medicine, surgery or pharmacy, and the court or judge before whom said second conviction shall have been had shall forward a copy of said judgment to the Board of Medical Examiners or the said Board of Pharmacy, as the case may be, which shall have issued such license or such boards or officials as may have authority in the matter, and said board to which said copy of said judgment of conviction is forwarded shall revoke said license for said period of time, and in the event of a third or subsequent conviction in addition to the penalties hereinbefore provided, the said license of such person shall be revoked by the Board of Medical Examiners or the said Board of Pharmacy, and it shall be the duty of the court or judge before whom said third conviction shall have been had to forward a certified copy of the judgment of conviction of such person to such board, and the said court or judge thereof shall further specify upon said judgment of conviction the fact that the defendant in said cause has been convicted three times and immediately upon the receipt of said notice said board shall cancel and annul said license. (Id. § 2224-62.)

315. **In Prosecutions for Sale, Delivery Deemed Prima Facie Evidence of Sale—Evidence of Other Sales Admissible—Issuance of Internal Revenue Stamp Other Than to Druggist Prima Facie Evidence That Person is Engaged in Business of Selling—Certified Copy of Records of Internal Revenue Officer Prima Facie Evidence That Person Has Paid Special Liquor Tax.**—In all prosecutions for selling intoxicating liquor, if delivery of such liquor be proved, it shall not be necessary to prove a payment, but such delivery shall be prima facie evidence of such sale; and in any such prosecution evidence of other sales of intoxicating liquor at or about the same time by the same person or at the same place to other persons shall be admissible as tending to show the character of the business in which the defendant is engaged and the probability and credibility of such testimony as may be introduced of the particular sale or sales upon which the State shall rely for conviction; and in any such prosecution, the issue of any internal revenue stamp or receipt in this section above described, to any person other than a druggist, shall be prima facie evidence that such person is engaged in the business of selling intoxicating liquor at the place of business where such stamps or receipt is posted, if, at the time the stamp or receipt is in force and effect. A copy of such stamp or of the records of the United States internal revenue officer, deputy or assistant having charge of such records or stamps, certified to by any such officer, deputy or assistant, which shows that the United States special liquor tax has been paid by any person charged with the selling, bartering, giving away, furnishing or otherwise disposing of intoxicating liquor in violation of this act, shall be competent and prima facie evidence that the person, whose name appears on said records or stamp as shown by said certified copy, has paid a special liquor tax for the time stated therein. (Id. § 2224-65.)

316. **Certain Things Required to Permit Shipment of Intoxicating Liquor Into Places Where Sale is Prohibited.**—Each package of intoxicating liquor shipped or transferred or consigned for shipment into any territory in which the sale of intoxicating liquors for beverage purposes is prohibited by law shall contain the name of the consignee, the name of the consignor, the name and address of the person ordering such liquors, the kind and quality of the intoxicating liquors in such package and the place from and to which the liquor is shipped, each and all written or printed in the English language in large letters or type, attached to the package in a conspicuous place or position where it can be easily read. (Id. § 2225.)

317. Express Companies Doing Business in Territory Where Sale of Intoxicating Liquor is Prohibited to Keep Separate Book Where Certain Things Are to be Entered—Consignee Must Sign True Name—Book to be Open to Officers—Book to Constitute Prima Facie Evidence—Penalty for Violation of Act by Common Carrier.—All express companies, railroad companies, transportation companies and common carriers within this State or doing business within this State, are hereby required to keep a separate book in which shall be entered, immediately, upon receipt thereof, in territory within which the sale of intoxicating liquors for beverage purposes is prohibited by the laws of this State, truthful statements of the amount and kind of liquor received, the name of the person to whom the same is shipped, the date when received, the date when delivered, and by whom delivered and to whom delivered, after which record shall be a blank space in which the consignee shall be required to sign his true name before such liquors are delivered to such consignee, which book shall be open to the inspection of any regular or special officer of this State, whether such officer be a State officer, a county officer or municipal officer or a special officer or agent appointed and commissioned by the Governor of this State, at any time during the business hours of said company. Such books shall constitute prima facie evidence of the facts therein stated and be admissible as evidence in any court of this State having jurisdiction or in any manner empowered with the enforcement of the laws against the sale of intoxicating liquors in this State. Any express company, railway company, transportation company or common carrier or any employee or agent thereof that fails, neglects or refuses to comply with the provisions of this section or who makes or causes to be made false entries in any book shall be deemed guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not less than $200 nor more than $400. (Id. § 2225-1.)

318. Penalties on Conviction—Disposition of Fines.—Any person violating any of the provisions of this act* shall upon conviction thereof be fined not less than $200 nor more than $400. Money received from fines and forfeited bonds collected under the provisions of this act shall be paid into the treasury of the municipal corporation wherein such fine was imposed or bond forfeited and shall be applied to such funds as the council thereof may direct. When such law is enforced in the courts of the county the fines and forfeited bonds shall be paid into the county treasury to be applied to such funds as the county court shall direct. (Id. § 2225-4.)

319. Funds Available for Law Enforcement Relating to Liquor and Narcotic Drug Laws, Under Direction of Governor.—All special funds provided by law for the enforcement of the liquor laws of the State of Oregon shall be available, under the direction of the Governor of the State, for the enforcement of the laws of this State regulating or prohibiting the sale of narcotic drugs, and it shall be the duty of all officers, agents and inspectors authorized by the law to enforce the laws of this State regulating or prohibiting the sale of narcotic drugs. (L. 1923, c. 116, § 1.)

320. Application of This Act to Fines Collected for Violations of Liquor and Narcotic Drug Laws.—Any provision by law for setting apart for law enforcement funds fines collected for violation of the liquor laws of this State shall, unless otherwise provided therein, also apply in like manner and in like proportions to fines collected for violation of the laws of this State regulating or prohibiting the sale of narcotic drugs, but the maximum amount of such funds shall be as fixed in such laws providing for funds to enforce liquor laws. (Id. § 2.)

PART IV.

Miscellaneous Laws.

Convict-Made Goods.

320a. Convict-Made Goods to be Labeled.—All goods, wares and merchandise, made by convict labor in any penitentiary, prison, reformatory, or other establishment in which convict labor is employed shall, before being exposed for sale, be branded, labeled or marked as hereinafter provided, and shall not be exposed

*Nos. 316-318.

for sale in any place within the State without such brand, label or mark. (Ore. Laws 1920, § 2911.)

320b. Label Required.—The brand, label or mark hereby required shall contain at the head or top thereof the words "Convict-Made," followed by the year and name of the penitentiary, prison, reformatory, or other establishment in which it was made, in plain English lettering of the style and size known as "great primer Roman capitals." The brand or mark shall in all cases, where the nature of the article will permit, be placed upon the same, and only where such branding and marking is impossible shall it be placed upon the box or other covering of the same, or be attached to the article as a label. Said brand or mark shall be placed upon the most conspicuous part of the article or its covering, and said label, when used instead of a brand or mark, shall be attached in the most conspicuous place. (Id. § 2912.)

320c. Removing Label Unlawful.—It shall not be lawful for any person in this State dealing in any such convict-made goods, wares or merchandise, to have the same in his possession for the purpose of sale, or offer the same for sale, without the brand, mark or label required by this act, or to remove or to deface such mark, brand or label. (Id. § 2913.)

320d. Penalty for Violating Preceding Section.—Any person offending against the provisions of this act shall be guilty of a misdemeanor, and upon conviction thereof shall be sentenced to pay a fine not exceeding $1,000 or be imprisoned for a term not exceeding one year, or both such fine and imprisonment, in the discretion of the court. (Id. § 2914.)

False Advertising.

321. False and Deceptive Representation in Advertisement.—It shall be unlawful for any person, firm, corporation or association, with intent to sell or dispose of any real estate, merchandise, foods, drugs, medicinal preparations or other patent nostrums, securities, service or anything offered by such person, firm, corporation or association, directly or indirectly, to the public for sale or distribution, or with intent to increase the consumption thereof, or to induce the public in any manner to enter into any obligation relating thereto, or to acquire title thereto, or an interest therein, to make, publish, disseminate, circulate, or place before the public, or cause directly or indirectly, to be made, published, disseminated, circulated, or placed before the public within the State of Oregon, in a newspaper or other publication, or in the form of a book, notice, handbill, sign, poster, bill, circular, pamphlet, tag, label, letter or contrivance or in any other way or manner whatsoever, an advertisement of any sort regarding merchandise, securities, service, or anything so offered to the public, which advertisement contains any assertion, representation or statement of fact which is untrue, deceptive or misleading. (Ore. Laws 1920, § 2233.)

322. Penalty for Violating Preceding Section.—Any person, firm, corporation or association violating any of the provisions hereof shall upon conviction thereof be punished by a fine of not more than one hundred dollars ($100), or by imprisonment in the county jail not exceeding thirty (30) days. (Id. § 2233-1.)

323. Good Faith of Publisher a Defense.—This act shall not apply to publishers of newspapers, magazines or other publications who publish any such advertisement in good faith without knowledge of its false, deceptive or misleading character. (Id. § 2233-2.)

Flag Desecration.

324. United States Flag, Desecration of, Prohibited.—Any person who in any manner, for exhibition or display, shall place or cause to be placed any words, or figures, or numbers, or marks, or inscriptions, or picture, or design, or device, or symbol, or token, or notice, or drawing or any advertisement of any nature whatever upon any flag, standard, color, or ensign of the United States, or shall expose or cause to be exposed to public view, any such flag, standard, color, or ensign of the United States, upon which shall be printed, painted, or otherwise placed, or to which shall be attached, appended, affixed, or annexed, any words, or figures, or numbers, or marks, or inscriptions, or pictures, or design, or device or symbol, or token, or notice, or drawing, or any advertisement of any nature or kind whatever, or who shall expose to public view, or shall manufacture, or sell, or expose for sale, or have in possession for sale, or for use, any article, or thing, or substance, being an article for merchandise, or a receptacle of merchandise, upon which shall have

been printed, painted, or attached, or otherwise placed, a representation of any such flag, standard, color, or ensign of the United States, to advertise, or call attention to, or to decorate, or to ornament, or to mark, or to distinguish the article or thing, on which so placed, or shall publicly mutilate, trample upon, or publicly deface, or defy, or defile, or cast contempt, either by words or act, upon any such flag, standard, color, or ensign of the United States, shall be deemed guilty of a misdemeanor, and subject to a fine of not less than $20 nor more than $100. (Ore. Laws 1920, § 2203.)

325. Word "Flag," Etc., as Used in Act—What to Include.—The words flag, standard, color, or ensign of the United States, as used in this act, shall include any flag, any standard, any color, any ensign, or any representation of a flag, standard, color, or ensign, or a picture of a flag, standard, color, or ensign, made of any substance whatever, or represented on any substance whatever, and of any size whatever, evidently purporting to be, either of said flag, standard, color, or ensign of the United States, or a picture, or a representation of either thereof, upon which shall be shown the colors, the stars and the stripes, in any number of either thereof, or by which the person seeing the same, without deliberation, may believe the same to represent the flag, or the colors, or the standard, or the ensign of the United States of America. (Id. § 2204.)

326. What Acts Not Included Herein.—This act shall not apply to any act permitted by the statutes of the United States, or by the United States army and navy regulations, nor shall this act be construed to apply to the regular issue of a newspaper or other periodical on which shall be printed said flag disconnected from any advertisement. (Id. § 2205.)

Tobacco—Tobacco Products.

327. Unlawful to Furnish Minor Tobacco Without Guardian's Consent.—It shall be unlawful to sell, barter, trade, give or in any manner furnish to any minor under the age of eighteen years, any tobacco, cigars, or cigarettes in any form, or any compound in which tobacco forms a component part, without the written consent or order of such minor's parent or guardian; and when such minor has no parent or guardian, then in that case consent may be given by the county court, sitting for the transaction of county business, upon proper application in the county in which said minor may have his residence. Any person violating the provisions of this act shall, upon conviction, be fined in any sum not less than $5 nor more than $50. (Ore. Laws 1920, § 2148.)

328. Unlawful for Minor to Smoke in Public.—It shall be unlawful for any minor under the age of eighteen years to smoke or in any way use any cigar, cigarette, or tobacco in any form whatsoever in any public highway, street, place, square, or resort. Any minor violating the provisions of this act shall, upon conviction, be fined in any sum not less than $1 nor more than $10, or by imprisonment at the option of the court, two days for each offense. Justices of the peace shall have concurrent jurisdiction with the Circuit Court for all offenses arising under this act. (Id. § 2149.)

329. Selling Cigarettes to Minors Prohibited.—It shall be unlawful for any corporation or person, by himself or as the clerk, servant, employee or agent, or as the servant or agent of any other person, directly or indirectly, or by any pretense or by any device, to sell, offer for sale or keep for sale, exchange, barter, dispose of, or give away to any minor any cigarette or cigarettes in the State of Oregon. Having cigarettes in a place of business where minors may take them or help themselves, shall be held to be prima facie evidence of an intent to sell to minors. Anyone violating any of the provisions of this section shall be guilty of a misdemeanor, and upon conviction thereof shall be punished in the manner hereinafter provided. (Id. § 2149-1.)

330. Definition of Term "Cigarette."—Wherever the word "cigarette" or "cigarettes" are used in this act,* it shall be held to include cigarette, cigarettes, cigarette paper, cigarette wrapper, or any substitute therefor, or any paper or form prepared to be filled with smoking tobacco for cigarette use. (Id. § 2149-2.)

331. Act to be Construed as Exercise of Police Power.—This entire act shall be deemed an exercise of police power of the State, for the protection of the economic welfare, health, peace and morals of the people of the State, and all of its provisions shall be liberally construed for the accomplishment of that purpose. (Id. § 2149-3.)

*Nos. 329-339.

332. Penalty for Violating Act—Cumulative Penalties.—Any person violating any of the provisions of section 1 of this act [2149-1], shall be deemed guilty of a misdemeanor, and on conviction, shall be punished by a fine of not more than $100 for the first offense, and by a fine of not more than $500 nor less than $25 for the second offense, or by imprisonment in the county jail not exceeding thirty days, or both such fine and imprisonment. For the third or subsequent offense, upon conviction, a jail sentence of not to exceed thirty days, in addition to the fine hereinbefore provided, must be imposed. The provisions hereof shall not apply to the sales of jobbers doing an interstate business with customers outside of the State. (Id. § 2149-4.)

333. Misdemeanor for Minor to Use Cigarettes or Refuse to Inform Officer Where Purchased.—It shall be a misdemeanor for any minor to smoke, use, or be in possession, of any cigarette in this State. It shall be a misdemeanor for any proprietor, clerk, assistant or employee of any place of business to permit minors to frequent any said place of business while using or smoking any cigarette. The term "place of business" as used in this section of this act, shall apply to any and all places such as shops, stores, factories, offices, theaters, recreation and dance halls, pool rooms, cafes, restaurants, hotels, lodging houses, street car[s], interurban and passenger coaches, or waiting rooms. Any minor using or being in possession of any cigarette, and being asked by a parent, teacher or any mayor, sheriff, deputy sheriff, police officer, constable, village marshal, or any other officer, to tell where or from whom such cigarette was obtained, who shall refuse to furnish such information, shall be guilty of a misdemeanor. Anyone violating any of the provisions of this section, on conviction, shall be punished by a fine of not more than $5 for each offense. (Id. § 2149-5.)

334. Duty of Certain Officials and Officers When Minor Caught Smoking Cigarettes.—It shall be the duty of every mayor, sheriff, deputy sheriff, police officer, constable, village marshal, or any other officer, when he finds any minor smoking a cigarette or having a cigarette in his possession, to immediately inquire of such minor where and of whom he obtained such cigarette, and upon failure of any such person to give information when requested by such officer, such minor shall be deemed guilty of a misdemeanor, and such officer shall, without warrant, arrest said minor and take him before any court having jurisdiction of the offense committed by said minor, to be dealt with as provided for in this act. Upon information of such person to said officer of the violation of any of the provisions of this act, said officer shall immediately report such information to the district attorney of such county. Any officer referred to herein, failing to perform any of the duties required of him by this section, shall be guilty of a misdemeanor, and on conviction, shall be fined not more than $50 nor less than $10. (Id. § 2149-6.)

335. Unlawful for Person to Solicit from Minor Orders for Cigarettes.—It shall be unlawful for any person to solicit, take or receive from any minor person within this State, any order for any cigarette, or make any contract for the sale of any cigarette to any minor. Anyone violating any of the provisions of this section shall be guilty of a misdemeanor, and on conviction thereof shall be subject to a fine of not more than $100 nor less than $25. (Id. § 2149-7.)

336. Place of Delivery to be Deemed Place of Sale.—The place where delivery of any cigarette is made in the State of Oregon shall be construed and held to be the place of sale thereof, and any station or other place within the State to which any person shall ship or convey any cigarette for the purpose of delivery, or carrying the same to a purchaser, shall be considered to be the place of sale. (Id. § 2149-8.)

337. Jurisdiction of Courts—Juvenile Court Jurisdiction Not Affected.—Justices of the peace, district courts, county courts and other courts having jurisdiction as justices of the peace, shall have concurrent jurisdiction with the circuit courts, of all prosecutions for violations of the provisions of this act, except as herein otherwise provided. This act provides an additional remedy to that of the juvenile court, and shall not in any way deprive the juvenile court of the jurisdiction of offenders of juvenile age. (Id. § 2149-10.)

338. Penalty for Officers Neglecting to Prosecute.—It shall be the duty of the district attorneys in this State to enforce and to diligently prosecute any and all persons violating any of the provisions of this act in their respective counties. If any district attorney or any prosecuting officer shall fail, neglect or refuse faithfully to perform any duty imposed upon him by this act, he shall be deemed guilty of a misdemeanor, and on conviction thereof shall be fined not more than $500 nor less than $100, and such conviction shall be a forfeiture of his office; and the court before whom such conviction is had shall at once order such forfeiture of such officer, in addition to imposing the penalty hereinbefore set forth. Circuit courts shall have jurisdiction of the offenses defined in this section. (Id. § 2149-11.)

339. Prosecuting Attorney May Issue Subpoena—Refusal to Testify, Misdemeanor—Warrant of Arrest for Suspected Person.—If any prosecuting attorney or deputy prosecuting attorney shall be notified or have knowledge of, or reason to suspect any violation of any of the provisions of the laws of this State relating to cigarettes, it shall be his duty forthwith diligently to inquire into the facts of such violation. For such purpose, said officer may issue his subpœna for such person or persons as he has reason to believe may have information or knowledge of any violation of said law, to appear before him at a designate time and place, to be examined in relation thereto. Such subpœna may be served by the sheriff or any constable of the county, and shall be served and returned in the same manner that subpœnas are served and returned in criminal cases. Each witness shall be sworn true answer to make to each question propounded to him touching matters under investigation, and the testimony of such witness shall be reduced to writing and signed by the witness. For the purpose of this act, any prosecuting officer is authorized and empowered to administer oaths or affirmations to any such witness appearing before him. Any disobedience to the subpœnas herein mentioned, or any refusal of any witness to be sworn by signing the testimony given by him, or refusal to answer any questions touching matters under investigation propounded, by such officer, in such inqury before such officer, shall be a misdemeanor, and the person, on conviction thereof, shall be punished by a fine of not more than $25 nor less than $10, or by imprisonment in the county jail for not more than thirty days, or by both such fine and imprisonment.

If the testimony so taken discloses that there is reasonable ground to believe that an offense has been committed, the prosecuting officer shall at once prosecute the person or persons suspected of committing the offense, either by bringing such testimony to the attention of the grand jury, or by filing the same, together with his complaint or information against such person or persons suspected of commiting such offense, in some court of competent jurisdiction; and such testimony, together with information or complaint of the prosecuting officer, when sworn to by him upon information and belief, shall have the same effect as if such information or complaint had been verified positively, and thereupon a warrant shall issue for the arrest of such person or persons, as in criminal cases. (Id. § 2149-12.)

340. Regulation and Control of Sale of Cigarettes, Etc.—For the purpose of regulating and controlling and prohibiting the unlawful sale of cigarettes, cigarette paper, wrappers, tubes, smoking tobacco and/or snuff, and to preserve the public health, it shall be unlawful to sell cigarettes, cigarette papers, wrappers, tubes, smoking tobacco and/or snuff, in the State of Oregon at retail without having first obtained and posted the license and paid the excise taxes hereinafter provided for. (L. 1925, c. 342, § 1.)*

341. "Dealer" Defined.—The term "dealer," as used in this act, shall include every person, firm or corporation engaged in the business of selling cigarettes, cigarette papers, wrappers, tubes, smoking tobacco and/or snuff within the State of Oregon at retail, and it shall be unlawful for any person, firm or corporation, except a dealer, to sell cigarettes, cigarette papers, wrappers, tubes, smoking tobacco and/or snuff within the State of Oregon at retail; provided, that this act shall not apply to the sale of any such articles in original packages in interstate commerce. (Id. § 2.)

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*Chapter 342, pages 693-697, General Laws of Oregon, 1925, being

"An act to regulate and control the sale of cigarettes, cigarette paper, wrappers, tubes, smoking tobacco and/or snuff; providing for the licensing of dealers in said commodities, and for the levy, assessment, collection and payment of an excise tax on the sale of cigarettes, cigarette papers, wrappers, tubes, smoking tobacco and/or snuff at retail, and for the disposition of said license fees and excise taxes; prohibiting the altering, forging or counterfeiting of licenses or stamps provided for in this act, or having of same in possession, knowing them to be forged, counterfeited, spurious or altered, and providing penalties; appropriating money to carry out the provisions of this act"

was submitted to the legal electors of the State of Oregon, for their approval or rejection, upon referendum ordered by petition filed in the office of the Secretary of State of the State of Oregon, May 25, 1926, in accordance with the provisions of section 1 of Article IV of the Constitution of the State of Oregon, and rejected by a majority of the votes cast thereon at the regular general election held in the State of Oregon on the second day of November, 1926. There were 62,254 votes cast for said measure and 123,208 votes cast against the same. (L. 1927, p. 14.)

342. **Application for License—Fees.**—Within thirty days after the date on which this act becomes effective, and annually thereafter, every retail dealer engaged in the sale of cigarettes, cigarette papers, wrappers, tubes, smoking tobacco and/or snuff within the State of Oregon, shall apply to the county clerk of each county in which its [his] said business is conducted, for a license to engage in said business, and shall pay to said county clerk a fee of $2 for each of said licenses, $1 of which shall be paid into the county treasury and become a part of the general fund of the county, and the remainder of which shall be by the county clerk paid into the State treasury on or before the tenth day of each month and become a part of the general fund of the State of Oregon. Said application shall be in writing and shall state the name and address of the applicant, the names and addresses of the members of the firm, if a copartnership, and of the managing officers, if a corporation, the classification of the business of such applicant and the location of its [his] place of business in the county, and if there be more than one, a separate application shall be filed and a separate license obtained for each such place of business. (Id. § 3.)

343. **Issuance of License.**—Upon receipt of the application provided for in section 2 hereof, and the payment of a license fee of $2, the county clerk shall issue to said applicant a license to sell cigarettes, cigarette papers, wrappers, tubes, smoking tobacco and/or snuff at the place designated in said license until and including the thirty-first day of December of the year for which said license is issued, and like licenses shall be obtained for each succeeding year, beginning with the first day of January and ending with the thirty-first day of December. Said licenses shall be posted in a conspicuous place in the place of business of the licensee. (Id. § 4.)

344. **Sale of Cigarettes, Etc.; When Unlawful.**—It shall be unlawful to sell cigarettes, cigarette papers, wrappers and/or tubes, smoking tobacco and/or snuff at retail in the State of Oregon, unless same are in packages stamped as herein provided. (Id. § 5.)

345. **Excise Tax—Amounts Due on Various Packages.**—Every dealer in cigarettes, cigarette papers, wrappers and/or tubes, smoking tobacco and/or snuff in the State of Oregon shall pay an excise tax upon the sale of same to consumers, which excise tax shall be paid prior to or at the time of sale and delivery of said cigarettes, cigarette papers, wrappers and/or tubes, smoking tobacco and/or snuff and shall be in the following amounts, based on the retail sale price of the packages thereof:

1 cent to 10 cents, inclusive, an excise tax of 1 cent;
11 cents to 20 cents, inclusive, an excise tax of 2 cents;
21 cents to 30 cents, inclusive, an excise tax of 3 cents;
31 cents to 40 cents, inclusive, an excise tax of 4 cents;
41 cents to 50 cents, inclusive, an excise tax of 5 cents;
51 cents to 60 cents, inclusive, an excise tax of 6 cents;
61 cents to 70 cents, inclusive, an excise tax of 7 cents;
71 cents to 80 cents, inclusive, an excise tax of 8 cents;
81 cents to 90 cents, inclusive, an excise tax of 9 cents;
91 cents to $1, inclusive, an excise tax of 10 cents, and on all packages selling for more than $1 an additional excise tax shall be paid of 1 cent for each 10 cents or fraction thereof of any additional selling price. (Id. § 6.)

346. **Dealers to Obtain and Affix Suitable Stamps to Packages.**—Before delivering same to the consumers, every dealer shall obtain from the county clerk and securely affix to each package of cigarettes, and each package, book or set of papers, wrappers and/or tubes, smoking tobacco and/or snuff a suitable stamp denoting the excise tax thereon, and said stamp shall be properly canceled prior to such sale or removal for consumption, under such regulations as the State Treasurer shall prescribe. (Id. § 7.)

347. **Distribution and Record of Stamps—Duty of State Treasurer.**—The State Treasurer shall prepare and have for distribution for county clerks such stamps as will be required by this act, and shall keep an accurate record of all stamps leaving his hands. (Id. § 8.)

348. **Account of All Stamps Sold, to be Filed by County Clerks.**—The State Treasurer shall furnish stamps herein provided for to county clerks, who shall, on or before the tenth day of each month, file with the State Treasurer a written account of all stamps sold and remit to the State Treasurer the proceeds thereof, which funds shall become a part of the general fund of the State of Oregon. (Id. § 9.)

349. Unused Stamps Redeemable—Unlawful Sale of Same.—The county clerk shall redeem and make repayment for any unused stamps, on written request by retail dealers, and pay for same out of any funds derived from the provisions of this act. It shall be unlawful for a retail dealer to sell such stamps to another retail dealer or to any person whomsoever, except as herein provided. (Id. § 10.)

350. Penalties.—Any dealer or person, firm or corporation violating any of the foregoing provisions of this act shall be deemed guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not less than $25, nor more than $100, or by imprisonment in the county jail for not less than ten days nor more than sixty days, or by both such fine and imprisonment, and any dealer selling any of the articles licensed under the provisions of this act in violation of any law of the State of Oregon shall, in the discretion of the court, in addition to all other penalties, forfeit his license, which shall be canceled by the county clerk upon the filing of the necessary information. (Id. § 13.)

351. Unlawful to Forge, Licenses or Stamps or to Have Same in Possession.—It shall be unlawful for any person, firm or corporation, with intent to defraud the State, to make, alter, forge or counterfeit any license or stamp provided for in this act, or to have in possession any forged, counterfeited, spurious or altered license or stamp, knowing the same to be forged, counterfeited, spurious or altered, and whoever is found guilty of any violation of this provision shall be fined not more than one thousand dollars ($1,000), or be imprisoned in the State penitentiary for a term of not less than one nor more than three years, or by both such fine and imprisonment. (Id. § 14.)

Trade-Marks, Etc.

352. Use of Counterfeit Trade-Mark.—If any person shall willfully and knowingly use or cause to be used any private brand, label, stamp or trade-mark of another, either by counterfeiting the same or using any impression or copy thereof made or prepared by the proprietor thereof; or shall willfully and knowingly use or cause to be used any colorable imitation of such brand, label, stamp or trade-mark, with intent to deceive any one; or shall, with like intent, use or cause to be used any empty or second-hand package which has contained goods, wares, merchandise, article or articles of the same general character as those for which they were first used—upon conviction thereof, such person shall be punished by imprisonment in the county jail not less than one month nor more than six months, or be fined not less than $20 nor more than $300. (Ore. Laws 1920, § 2012.)

352a. Trade-Mark of Workingmen's Union—Counterfeiting of, Unlawful.—Whenever any person or any association or union of workingmen has heretofore adopted or used, or shall hereafter adopt or use, any label, trade-mark, term, design, device, or form of advertisement for the purpose of designating, making known or distinguishing any goods, wares, merchandise, or other product of labor as having been made, manufactured, produced, prepared, packed, or put on sale by such person or association or union of workingmen, or by a member or members of such association or union, it shall be unlawful to counterfeit or imitate such label, trade-mark, term, design, device, or form of advertisement, or to use, sell, offer for sale, or in any way utter or circulate any counterfeit or imitation of any such label, trade-mark, term, design, device, or form of advertisement. (Id. § 2013.)

352b. Penalty for Such Counterfeiting, Etc.—Whoever counterfeits or imitates any such label, trade-mark, term, design, device, or form of advertisement; or sells, offers for sale, or in any way utters or circulates any counterfeit or imitation of any such label, trade-mark, term, design, device, or form of advertisement; or keeps or has in his possession, with intent that the same shall be sold or disposed of, any goods, wares, merchandise, or other product of labor to which or on which any such counterfeit or imitation is printed, painted, stamped, or impressed; or knowingly sells or disposes of any goods, wares, merchandise, or other product of labor contained in any box, case, can, or package to which or on which any such counterfeit or imitation is attached, affixed, printed, painted, stamped, or impressed; or keeps or has in his possession, with intent that the same shall be sold or disposed of, any goods, wares, merchandise, or other product of labor, in any box, case, can, or package to which or on which any such counterfeit or imitation is attached, affixed, printed, painted, stamped, or impressed, shall be punished by a fine of not more than $500, or by imprisonment for not more than three months, or by both such fine and imprisonment. (Id. § 2014.)

352c. Unauthorized Use of Genuine Label or Trade-Mark.—Any person who shall use or display the genuine label, trade-mark, term, design, device, or form of advertisement of any such person, association, or union in any manner, not being authorized so to do by such person, union, or association, shall be deemed guilty of a misdemeanor, and shall be punished by imprisonment for not more than three months or by a fine of not more than $500. In all cases where such association or union is not incorporated, suits under this act may be commenced and prosecuted by an officer or member of such association or union on behalf of and for the use of such association or union. (Id. § 2015.)

352d. Unauthorized Use of Name or Seal in Sale of Goods.—Any person or persons who shall in any way use the name or seal of any such person, association, or union, or officer thereof, in and about the sale of goods, or otherwise, not being authorized so to use the same, shall be guilty of a misdemeanor, and shall be punishable by imprisonment for not more than three months, or by a fine of not more than $500. (Id. § 2016.)

352e. Unfair Competition and Substitution of Goods Under Trade Name or Registered Trade-Mark.—Any person who sells, attempts to sell, offers for sale, or assists in sale of any goods, product or output of any dealer, manufacturer or producer and who willfully and by the use of any trade name or otherwise represents such goods, product or output to be the goods, product or output of any other dealer, manufacturer or producer or any member of a firm or any officer of a corporation, who knowingly permits any employee of such firm or corporation to sell, offer for sale or assist in the sale of any goods, product or output of any dealer, manufacturer, or producer and by the use of any trade name or otherwise to represent such goods, product or output to be the goods, product or output of any other dealer, manufacturer or producer is guilty of a misdemeanor and punishable by a fine of not less than $50, or [nor] not more than $250, or by imprisonment in the county jail for not less than twenty or [nor] not more than ninety days or both. (Id. § 2180-4.)

352f. Filing and Recording Trade-Mark of Union.—Every such person, association, or union that has heretofore adopted or used, or shall hereafter adopt or use, a label, trade-mark, term, design, device, or form of advertisement, as provided in section 2013, may file the same for record in the office of the Secretary of State, by leaving two copies, counterparts or facsimiles thereof with said secretary, and by filing therewith a sworn application specifying the name or names of the person, association, or union on whose behalf such label, trade-mark, term, design, device, or form of advertisement shall be filed, the class of merchandise and a description of the goods to which it has been or is intended to be appropriated, stating that the party so filing or on whose behalf such label, trade-mark, term, design, device, or form of advertisement shall be filed, has the right to the use of the same; that no other person, firm, association, union, or corporation has the right to such use, either in the identical form or in any such near resemblance thereto as may be calculated to deceive, and that the facsimile or counterparts filed therewith are true and correct. There shall be paid for such filing and recording a fee of $1. Said secretary shall deliver to such person, association, or union so filing or causing to be filed any such label, trade-mark, term, design, device or form of advertisement so many duly attested certificates of the recording of the same as such person, association, or union may apply for, for each of which certificates said secretary shall receive a fee of $1. Any such certificate of record shall, in all suits and prosecutions under this act, be sufficient proof of the adoption of such label, trade-mark, term, design, device, or form of advertisement. Said Secretary of State shall not record for any person, union, or association any label, trade-mark, term, design, device, or form of advertisement that would probably be mistaken for any label, trade-mark, term, design, device, or form of advertisement theretofore filed by or on behalf of any other person, union, or association; but the said secretary shall file and record under this act any label, trade-mark, term, design, device, or form of advertisement which may have been previously filed by any person or any association or union of workingmen; provided, the person, association, or union seeking to file and record under this act is the same person, association, or union that previously filed or recorded the same label, trade-mark, term, design, device, or form of advertisement. (Id. § 6800.)

352g. Fraudulently Procuring Filing of Trade-Mark.—Any person who shall for himself, or on behalf of any other person, association, or union, procure the filing of any label, trade-mark, term, design, device, or form of advertisement in the office of the Secretary of State under the provisions of this act, by making any false or fraudulent representations or declaration, verbally or in writing, or by any fraudulent means, shall be liable to pay any damages sustained in consequence

of any such filing, to be recovered by or on behalf of the party injured thereby in any court having jurisdiction; and shall be punished by a fine not exceeding $500, or by imprisonment not exceeding three months, or by both such fine and imprisonment. (Id. § 6801.)

352h. Civil Remedies for Use of Counterfeit Trade-Mark.—Every such person, association, or union adopting or using a label, trade-mark, term, design, device, or form of advertisement, as aforesaid, may proceed by suit for damages to enjoin the manufacture, use, display, or sale of any counterfeits thereof; and all courts of competent jurisdiction shall grant injunctions to restrain such manufacture, use, display, or sale, and award the complainant in any such suit damages resulting from such manufacture, use, sale, or display as may be by the said court deemed just and reasonable, and shall require the defendants to pay to such person, association, or union all profits derived from such wrongful manufacture, use, display, or sale; and such court shall also order that all such counterfeits, or imitations in the possession or under the control of any defendant in such cause be delivered to an officer of the court, or to the complainant, to be destroyed. (Id. § 6802.)

352i. Reasonable Attorney's Fee in Actions for Infringement.—In case the plaintiff is successful in maintaining his action either for damages or for permanent relief by injunction, or for nominal damages only, he shall be entitled to recover a reasonable attorney's fee, to be taxed by the court as a part of the costs, and merged in the judgment. (Id. § 6803.)

353. "Trade-Mark" Defined.—A "trade-mark" is a mark used to indicate the maker, owner or seller of an article of merchandise and includes, among other things, any name of a person, partnership, firm or private corporation, or any letter, word, device, emblem, figure, seal, stamp, brand, wrapper, ticket, stopper, label or other mark, lawfully adopted by him and usually affixed to any article of merchandise to denote that the same was imported, manufactured, produced, sold, compounded, bottled, packed or otherwise prepared by him; and also a signature or mark, used or commonly placed by a painter, sculptor or other artist upon a painting, drawing, engraving, statue or other work of art to indicate that the same was designed or executed by him. (Id. § 8069.)

354. "Affixing" Defined.—A trade-mark is deemed to be affixed to an article of merchandise when it is placed in any manner in or upon: (1) the article itself, or (2) a box, bale, barrel, bottle, case, cask, platter or other vessel or package, or a cover, wrapper, stopper, brand, label or other thing in, by, or with which the goods are packed, enclosed or otherwise prepared for sale or disposition. (Id. § 8070.)

355. "Article of Merchandise" Defined.—The expression "article of merchandise" as used in this act signifies any goods, wares, works of art, commodity, compound, mixture or other preparation or thing, which may be lawfully kept or offered for sale. (Id. § 8071.)

356. "Imitation of Trade-Mark" Defined.—An "imitation of trade-mark" is that which so far resembles a genuine trade-mark as to be likely to induce the belief that it is genuine, whether by use of words or letter, similar in appearance or in sound, or by any sign, device or other means whatsoever. (Id. § 8072.)

357. Application for Trade-Mark.—Any person, partnership, firm, or private corporation desiring to secure within the State of Oregon the exclusive use of any trade-mark for any article of merchandise, shall make application to the Secretary of State upon a blank furnished for that purpose for the registration of such trade-mark, which application shall be accompanied by particular description or a facsimile of such trade-mark as he may desire to use, and the description of the article or articles of merchandise to which such trade-mark is to be applied: (Id. § 8073.)

358. Similar Trade-Marks Not Allowed.—If there be not already a claim or application filed with the Secretary of State for the same, or a similar trade-mark, or a trade-mark so closely resembling the one applied for as to cause confusion, he shall immediately file such application and record the same in a book, to be especially provided and kept by him for such purpose, which book shall be at all times subject to public inspection and examination. If there be already filed the same or any similar trade-mark, or a trade-mark so closely resembling same as to be likely to cause confusion or be misleading, the secretary shall so inform the applicant and shall not file or record the same; provided, that no trade-mark shall be granted for a word or generic term which, by general or common use, is descriptive of or characterizes a particular article to which it pertains rather than its origin or proprietorship. (Id. § 8074.)

359. Fee for Filing Trade-Mark.—Upon filing a trade-mark by the Secretary of State, the owner or person offering same for filing shall pay a fee of five

dollars for filing and recording same. And no trade-mark shall be filed until such fee be paid. (Id. § 8075.)

360. Notice of Filing Trade-Mark.—Upon the filing of a trade-mark by the Secretary of State, the owner thereof shall cause to be published in some newspaper published in the county in which the principal office or place of business of such owner is located, once a week for three successive weeks, a notice setting forth the description of such trade-mark, and article or articles of merchandise to which it is to be applied, together with the name of the person, partnership, firm or private corporation owning same; after such registration and publication of notice as hereinbefore provided, the person, partnership, firm or private corporation shall thereupon be deemed the proprietor of such trade-mark and exclusive owner thereof. (Id. § 8076.)

361. Corporation Name Cannot be Used as Trade-Mark.—No person, partnership, firm or private corporation can file or use as the trade-mark the name of any foreign or domestic corporation of record under the laws of the State of Oregon at the time of making such application for trade-mark, and the Secretary of State if in his opinion any trade-mark offered for filing and record shall so closely resemble the name of a foreign or domestic corporation of record under the laws of the State of Oregon as to be likely to cause confusion, shall so inform the applicant and shall not file same. (Id. § 8077.)

362. Infringement of Trade-Mark.—Any person, partnership, firm or private corporation that shall use or cause to be used any trade-mark owned by another, or use words or letters similar in appearance or in sound, or by any sign, device or other means whatsoever imitate such trade-mark without the owner's consent, or shall have in his possession a counterfeit trade-mark, knowing it to be a counterfeit, or die, plate, brand or anything for the purpose of falsely making or imitating a trade-mark without the owner's consent, or shall knowingly sell or expose for sale any article of merchandise to which such false or imitation trade-mark is attached, without the consent of the owner of such trade-mark, shall be guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not less than fifty dollars or more than one hundred dollars, or imprisonment in the county jail for not less than twenty days, nor more than fifty days, or both such fine and imprisonment. (Id. § 8078.)

363. Forfeiture of Property Bearing Infringement Trade-Mark.—Any person, partnership, firm or private corporation that shall use or cause to be used any name, brand, mark or description, whether by the use of words or letters similar in appearance or sound, or by any sign, device or other means whatsoever imitate a trade-mark filed and recorded, upon any article of merchandise for the purpose of deception or profit, shall forfeit to the use of the owner of the said trade-mark so taken or substituted the property or article upon which the same is placed or used, or the value thereof to be recovered by said owner in any court having jurisdiction of the subject-matter. (Id. § 8079.)

364. Provisions as to Certificate Filing Trade-Mark.—The Secretary of State shall upon filing trade-mark as hereinbefore provided, deliver to the person, partnership, firm or private corporation so filing the same a certificate, under the seal of the State, of the record of such trade-mark, and article or articles of merchandise to which it is applied. Such certificate granted by the Secretary of State under this act, and proof of publication as hereinbefore provided, shall be prima facie evidence of the ownership of any such trade-mark therein described by the person, partnership, firm or private corporation therein named in any prosecution or action under any of the statutes of this State, where proof of such ownership and use is necessary, and any action or proceeding brought for the purpose of recovering damages for the violation of said trade-mark, or of preventing infringement thereof. This statute, however, shall not be construed as preventing the proof of any such trade-mark, and the use thereof in any other lawful manner in use prior to the passage of this act. The Secretary of State shall not record, register or file any trade-mark so similar to any other trade-mark heretofore filed or registered as would be calculated to deceive, unless it should be proven to his satisfaction that the person, partnership, firm or private corporation last applying for the registration of such trade-mark shall be entitled thereto and the rightful owner thereof by prior adoption, in which case the date of the adoption shall determine the ownership and shall be proven by affidavits of persons conversant with such dates. In case the Secretary of State becomes satisfied after hearing the said affidavits that the person, partnership, firm or private corporation last applying for registry is entitled by priority of adoption to register such trade-mark, he shall revoke the first registry and reregister the same in the name of the person last applying therefor. Any court of competent jurisdiction may also in

an action brought for that purpose by any person aggrieved thereby against any person, partnership, firm or private corporation, who has already filed or registered any such trade-mark, direct the revocation of any such registration, where it shall determine that the person who has already registered the same is not the rightful owner of such trade-mark. (Id. § 8080.)

365. Trade-Marks Heretofore Filed.—Any person, partnership, firm, or private corporation that has heretofore filed under the provisions of law existing at the time of such filing shall not be required to again file and publish such description, to be entitled to the benefits of this act. (Id. § 8081.)

366. Right to Enjoin Infringement Continues.—Nothing in this act shall be construed so as to affect the power of courts of equity to perpetually restrain by injunction the improper use of any trade-mark, which may have been secured by the provisions of this act or other provisions of law. (Id. § 8082.)

366a. Counterfeiting Serial Number.—If any person shall counterfeit, obliterate, remove or change the serial number impressed upon or attached to any manufactured article with the intent to defraud the purchaser of any such article, shall knowingly sell or offer for sale any such article after the serial number thereon has been counterfeited, obliterated, removed or changed, without disclosing such counterfeit, obliteration, removal or change to the purchaser, such person, firm or corporation shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not less than $20 nor more than $100, or by imprisonment in the county jail not less than one month nor more than six months, or by both such fine and imprisonment, in the discretion of the court. (L. 1925, c. 140, § 1.)

NOTE: See also Nos. 65-66 and 91 et seq.

Weights and Measures.

367. State Market Agent.—The powers and duties invested by this act in the State Market Agent shall be as follows: . . .

7. He shall promote the standardization of packages and containers for such products. All duties required by law to be discharged by the State Treasurer in his capacity as the State Sealer of Weights and Measures, the Deputy State Sealer of Weights and Measures and their representatives and employees, shall, upon the expiration of the term of office of the present State Treasurer, be discharged by the State Market Agent, and all laws and regulations now or hereafter enacted relative to weights and measures, and to other standards of quantity shall apply to said State Market Agent in the same manner and to the same effect as they formerly applied to said State Sealer of Weights and Measures, Deputy State Sealer of Weights and Measures, their representatives and employees. . . . (L. 1923, c. 271, § 2.)

368. Same.—All unexpended funds, materials, equipment, and other property acquired by the Public Service Commission under the provisions of chapter 333 of the General Laws of Oregon of 1917,* including the sum of seven thousand five hundred dollars ($7,500) initially appropriated by said chapter 333 of the Laws of Oregon for 1917 for the purpose of inaugurating the work of grain inspection therein provided and including all sums heretofore appropriated for the said work by the emergency board, and all property and funds pertaining to the work performed by the office of the State Sealer of Weights and Measures, shall, upon the going into effect of this act, be transferred to the office of the State Market Agent; providing, that the property and funds pertaining to the work of the State Sealer of Weights and Measures shall be retained by the present office during the incumbency of the present State Treasurer. (Id. § 6.)

369. Same.—The State Market Agent shall be financed by the funds now at the disposal of the Public Service Commissioners under chapter 333 of the General Laws of Oregon of 1917, sections 6112 to 6159 of Oregon Laws; and the funds made available for the work of the State Sealer of Weights and Measures, the Deputy State Sealer of Weights and Measures, and their officers and employees; and such additional funds as may be available under this act or any amendments thereto; provided, that the property and funds pertaining to the work of the State Sealer of Weights and Measures shall be retained by the present office during the incumbency of the present State Treasurer. (Id. § 10.)

370. Treasurer of State to be Sealer.—The Treasurer of the State shall be the sealer of weights and measures, and he shall have and keep a seal, which shall be so formed as to impress the word "Oregon" upon the weights and measures,

*Oregon Laws 1920, sections 6112-6159. See No. 176v and note thereto.

scales and beams, to be sealed by him, with which he shall seal all such authorized public standards of weights and measures, and all the weights and measures, scales and beams, to be provided by the several counties when examined by said treasurer and found to be in conformity with the standard weights and measures, scales and beams, aforesaid. (Ore. Laws 1920, § 8083.)

371. Deputy State Sealer of Weights and Measures.—The State Treasurer shall appoint a Deputy State Sealer of Weights and Measures who shall have authority throughout the State to test such scales, weights, measures, or any device used to ascertain the quantity of any commodity, and to enter any place of business at all reasonable hours for such purpose of ascertaining whether the law is being complied with in relation to the use of weights and measures or the giving of full weight and measure in trade. (Id. § 8084.)

372. Duties.—It will be the duty of the Deputy State Sealer of Weights and Measures to exercise general supervisory control over the inspection of weights and measures in use throughout the State, and to investigate all trades and trade customs or practices of every description which have a tendency in his judgment towards dishonesty in the use of weights and measures or in the buying or selling of any commodity by weight or measure. (Id. § 8085.)

373. Further Duties.—It shall be the duty of the Deputy State Sealer of Weights and Measures whenever he has knowledge of the violation of any State law relating to the subject of weights and measures to institute or cause to be instituted criminal proceedings for the prosecution of any person, firm or corporation responsible for such violation of the law. (Id. § 8086.)

374. Prosecuting Attorney to Represent State.—It shall be the duty of the prosecuting attorney in each district to represent the State in any procedure for the violation of the State law brought under this act. (Id. § 8087.)

375. Deputy to Try, Prove and Seal Standards.—It shall be the duty of the Deputy State Sealer of Weights and Measures to try, prove and seal with the seal of the State all proper standards sent to him by the properly authorized sealer of any county, municipality or town within the State. (Id. § 8088.)

376. Purchase of Standards and Equipment.—The State Sealer of Weights and Measures is hereby authorized to procure at the expense of the State such standards and other equipment as may be necessary for the proper execution of the duties under this law, and to procure and use such standards only as have been passed upon as correct by the National Bureau of Standards of the United States, and such other standards that have heretofore been adopted or may hereafter be adopted by the State of Oregon. (Id. § 8089.)

377. State Standards.—The standards in possession of the State Sealer of Weights and Measures obtained through and passed upon by the National Bureau of Standards of the United States, shall be at least once in ten (10) years tested by the National Bureau of Standards, and such standards shall be known and recognized as the State standards of Oregon. (Id. § 8090.)

378. Clerks and Assistants.—The State Sealer of Weights and Measures is further authorized and empowered to appoint such assistant and clerical aid as may be necessary to place in practical operation the provisions of this act. (Id. § 8091.)

379. Biennial Report.—It shall be the duty of the State Sealer of Weights and Measures to embody in his biennial report the proceedings under this act, accompanied with a detail statement of expenses thereof, and such other information or recommendations as he may deem proper. (Id. § 8092.)

380. Weights and Measures Districts—District Sealer of Weights and Measures—Salary.—The State Treasurer, as State Sealer, is hereby authorized and directed to divide the State into not to exceed four weights and measures districts; said districts to be formed from counties contiguous to each other; he shall appoint a person residing in each of said districts as his deputy under the name and title of district sealer of weights and measures.

Said district sealer shall receive his actual traveling expenses and a salary of not to exceed $100 per month; said expenses and salary shall be paid pro rata by each of the counties comprising the district, upon certification of the State Treasurer, as to amount due; provided, however, that such expenses as may be incurred by the district sealer shall not exceed $850 in any one district in any one year.

Upon receipt of the certificate of the State Treasurer showing the amount due from his county for the services of said district sealer, the county clerk of that county shall draw a warrant for said amount upon the county treasurer in favor of said district sealer in the same manner that warrants are drawn for the payment of salaries of county officers. (Id. § 8093.)

381. Apportionment of Salary Between Counties.—The pro rata share of each county shall be apportioned by the State Treasurer, according to the population

of the several counties comprising the district, as shown by the last regular United States census; provided, that any city that may or does provide for local inspection shall not be included as a part of the population of that county within which it is located. (Id. § 8094.)

382. Redistricting.—The State Sealer may, at any time when in his best judgment he deems it advisable for the more efficient or economical administration of the law, change or re-arrange the counties comprising the districts; provided, that such change or re-arrangement will require not more than four districts, as heretofore mentioned. (Id. § 8095.)

383. Office of District Sealer.—The county court of that county within which the district sealer has his residence shall provide such district sealer with a suitable and convenient place for keeping such standards or equipment as may be necessary. (Id. § 8096.)

384. Removal of District Sealer.—The district sealer shall serve at the direction and under the supervision of the State Treasurer, as State Sealer and may be removed by him for incompetency, inefficiency or inattention to duty. All duties required by law to be discharged by county sealers in connection with the supervision of weights and measures, or authority delegated to them, shall, from and after the taking effect of this act, be discharged by the said district sealers. (Id. § 8097.)

385. General Duties of Deputy State Sealer.—Under the direction of the State Treasurer, as State Sealer, the Deputy State Sealer shall have and keep general supervisory control over inspection of weights and measures, and weighing and measuring devices, offered for sale, sold, or in use in the State. He, or district sealers at his direction, shall upon the written request of any citizen, firm, corporation or educational institution in the State, test or calibrate weights, measures, and weighing or measuring devices used as standards in the State. He, or district sealers at his direction, shall, at least once annually, test the scales, weights and measures used in checking the receipts or disbursements of supplies in every State institution for the maintenance of which moneys are appropriated by the Legislature, and he shall report in writing his findings to the State Board of Control, and to the executive officer of the institution concerned. He shall, at the request of such State Board of Control or executive officer of any State institution, appoint, in writing, an employee then in the actual service of such institution, who shall, without receiving additional compensation, act as special deputy, for the purpose of checking the receipts and disbursements of supplies. (Id. § 8098.)

386. Duties of District Sealer of Weights and Measures.—It shall be the duty of the county [district] sealer of weights and measures, within the county [district] for which he is appointed, to visit at least once in each year during his term of office every place of business where any scale, weight or measure, or any device for ascertaining the quantity of any commodity, is kept for the purpose of trade, and try, test and prove such scale, weight, or measure, or such device for ascertaining the quantity of any commodity, and where they are found to be accurate shall seal the same with the seal to be kept by him for that purpose, and when found to be inaccurate shall condemn the same and mark with a tag forbidding the further use thereof until made to comply with the county standards; provided, that where, in the judgment of the county [district] sealer of weights and measures, such scale, weight, or measure, or device for ascertaining the quantity of any commodity is needed for use as evidence in the trial of any case, he shall take the same into his possession there to await a decision of a competent court of justice, who shall, in addition to any other penalty provided by law, order the destruction thereof where it appears that the same was used with intent to defraud or is incapable of repair or correct adjustment. (Id. § 8099.)

387. Report of District Sealer.—It shall be the duty of the county [district] sealer of weights and measures to file with the county court and the State Sealer of Weights and Measures not later than the first day of September of each year a report covering the activities of his office for the preceding year, together with a statement of the expenses thereof, and such other information or recommendations as may be proper, or the State Sealer of Weights and Measures may require. (Id. § 8100.)

388. Prosecutions for Violations of Act.—It shall be the duty of the county [district] sealer of weights and measures, whenever he has knowledge of the violation of any State law relating to the subjects of weights and measures, to institute criminal proceedings for the prosecution of any person or persons, firm or corporation responsible for such violation; provided, however, that none of the provisions of this act shall be so construed as to give any county [district] sealer the right to exercise his authority within the corporate limits of any city located within the

bounds of the county for which such county [district] sealer shall have been appointed where such city has provided, or may hereafter provide, by ordinance, for the appointment of a city sealer of weights and measures. (Id. § 8101.)

389. Salary and Expenses.—The salary and expenses of the Deputy State Sealer of Weights and Measures required to enforce the provisions of this act, the salary of the Assistant Deputy State Sealer and stenographer, which assistant deputy and stenographer the State Sealer is hereby authorized to employ in his discretion, and all other expenses of every kind incurred in carrying out the provisions of this act shall be paid from the general fund of the State in the same manner as other State salaries and expenses are paid. (Id. § 8102.)

390. Right of Cities to Enact Ordinances.—None of the provisions of this act shall be construed as in any way limiting the rights of any city regularly incorporated, within the State, to enforce any ordinance, or ordinances, which it may have heretofore, or may hereafter enact, providing for the sealing of weights and measures, or regulating the method of sale of any commodity usually sold by weight or measure, unless such ordinance or ordinances are in conflict with the standards of weights and measures as adopted by this State. (Id. § 8103.)

391. Adoption of Tolerances and Specifications by Deputy State Sealer.—Unlawful to Use Different Weights or Measures.—The Deputy State Sealer shall prescribe such tolerances and specifications for weights or measures as he may, in his judgment, deem necessary for the proper protection of the public, and it shall be unlawful for any person to offer or expose for sale, sell or use such weights or measures for commercial purposes as are made contrary to such specifications or that do not come within the prescribed tolerance; provided, however, that such tolerances and specifications as he may prescribe shall conform to any statute of the State relating to same, or to such as have been recommended by the National Bureau of Standards. Such tolerances and specifications, when prescribed, shall be followed in making all inspections and tests throughout the State. A weight or measure defined as correct shall be understood and construed to mean only such one as conforms to the "standards" within the tolerance prescribed and which complies with such specifications as are applicable to it; all other weights or measures shall be understood and construed to be incorrect, and in violation of law. (Id. § 8104.)

392. Incorrect Weights or Measures to be Condemned for Repairs.—Such weights or measures as are incorrect and yet may be repaired shall be marked or tagged as "condemned for repairs," and the owners or users shall have the same repaired within such time as the deputy State sealer or the district sealer may require, and any weight or measure or weighing or measuring device that has not been repaired within the required time may be confiscated and such weight or measure as is, in their best judgment, not susceptible to satisfactory adjustment or repair may be taken into their possession, and shall be held for a period of thirty days next ensuing, at the expiration of which time if no action at law or suit in equity has been brought for the recovery of the same it may be destroyed. (Id. § 8105.)

393. Unlawful to Use Scales Out of Balance.—It shall be unlawful for any person to have in his possession, maintain for use or use any scale for commercial purposes, which is out of balance. (Id. § 8106.)

394. Sealing of Weights or Measures by District Sealer.—It shall be the duty of the district sealers to seal all such weights and measures and weighing and measuring devices as are found correct, after test, with an appropriate seal, the design for which shall be furnished by the deputy State sealer; provided, however, that weights used in connection with scales, graduates, milk bottles and similar glass measures need not be sealed. (Id. § 8107.)

395. District Attorney to Represent State.—It shall be the duty of the District Attorney in each district to represent the State in any procedure for the violation of the State law brought under this act. (Id. § 8108.)

396. Act Does Not Prevent Cities from Enforcing Ordinances Relating to Weights and Measures—Standards, Specifications, Etc., to be Same.—None of the provisions of this act shall be construed as in any way limiting the right of any city regularly incorporated within the State from enforcing any ordinance or ordinances which it may have heretofore or may hereafter enact relating to weights and measures; provided, however, that such ordinance shall not establish standards of weight or measure in relation to the sale of commodities other than such as will conform to those adopted by the State; and be it further provided, that such specifications, tolerances and regulations appertaining to the testing, sealing, condemning or confiscation of weights, measures or weighing or measuring

devices established or adopted by the State shall be followed by such city in making inspections and tests. (Id. § 8109.)

397. Authority of State Sealer and Deputy State Sealer in Cities.—The State Sealer and the Deputy State Sealer of Weights and Measures shall have such authority as is authorized and conferred upon them within the limits of such city, and the State Sealer is hereby authorized, at his discretion, to appoint as special sealers the person or persons who may, for the time being, hold the position of the city sealer or deputy city sealer, within such city, to enforce the provisions of this act, within the limits of such city, and such person or persons so appointed shall receive no additional compensation therefor. (Id. § 8110.)

398. District Sealer Not to Have Authority in Cities.—None of the provisions of this act shall be construed as in any way authorizing or empowering a district sealer to exercise any authority conferred upon him, within such city, so having provided for local inspection of weights and measures. (Id. § 8111.)

399. Standards of Weights and Measures.—The weights and measures, together with the scales and beams, and those made in conformity therewith, which are now or may hereafter be deposited in the treasury of this State, shall be preserved by the treasurer and be the public standards in this State. (Id. § 8112.)

400. Unlawful to Use Dry Capacity Measure—Dry Capacity Measure Defined.—From and after the passage and adoption of this act it shall be unlawful to use or employ any dry capacity measure as a means to determine the amounts or quantities of commodities offered or exposed for sale or sold.

All commodities heretofore commonly sold by dry measure shall, from and after the taking effect of this act, be sold upon the basis of net weight or by numerical count.

Dry capacity measures, within the meaning of this section, shall be construed to be the bushel, half-bushel, peck, half-peck, quarter-peck, quart, pint, half-pint and similar measures.

Boxes, baskets and similar containers, the capacities of which have been established by law, shall not be construed as being dry capacity measures.

Any and all existing contracts in which quantities are estimated or arrived at by dry capacity measure or from the bushel weights as at present established by law shall be in force until matured; provided, however, that all contracts made after the taking effect of this act shall establish the amounts or quantities of commodities contracted for therein by net weight or numerical count. (Id. § 8113.)

401. Unlawful to Sell Dry Commodity by Liquid Measure.—It shall be unlawful to offer or expose for sale or sell any dry commodity by liquid measure. (Id. § 8114.)

402. Firewood, Coal, Ice, How Sold.—Firewood shall be sold by the cord or fraction of a cord; coal shall be sold by the ton or fraction of a ton; ice shall be sold by weight, and in all sales of firewood, coal or ice a definite statement shall be made to the purchaser as to the amounts or quantities thereof. (Id. § 8115.)

403. Oysters to be Sold by Numerical Count.—It shall be unlawful to offer or expose for sale or sell any shelled oysters, uncooked, in any other manner than by numerical count, weight or standard liquid measure, and it shall be unlawful to include, as a part of the weight or the measure, any water or liquid in any greater amount than sixteen per cent of the weight or measure of the oysters offered or exposed for sale or sold; within the meaning of this section, to determine the amount of water or liquid included, the oysters shall be well drained. (Id. § 8118.)

404. Unlawful to Sell Less Than Quantity Represented, Etc.—It shall be unlawful for any person or persons to offer or expose for sale or sell less than the quantity represented, or who, as the buyer, furnished the weight or measure by means of which the amount of the commodity is determined, to take more than the quantity represented or to sell any commodity in a manner contrary to law. (Id. § 8119.)

405. False Certificate of Weights—Penalty.—It shall be unlawful for any person, firm or corporation, owning or operating any scale for hire or award, to give a false certificate of weights to any person, firm or corporation, and every person, firm or corporation owning or operating a scale for hire or award shall keep a record of all weighings made, and shall, on demand of the party interested, report the correct weight in writing of any article or articles to the owner or purchaser thereof. (Id. § 8120.)

406. False Statement of Weight.—It shall be unlawful for any person, firm or corporation using any scale, weight or measure, or any device for ascertaining the quantity of any commodity, to give any false certificate or make any false

statement as to the weight or measure of such commodity, to any person whereby such person, or other person, firm or corporation shall suffer loss or injury. (Id. § 8121.)

407. Including the Weight of Other Commodity—Penalty.—It shall be unlawful, in selling any commodity by weight or measure, to include the weight or measure of anything other than the weight or measure of such commodity so sold; provided, however, that this shall not be so construed as to interfere with the right of contract as between parties. It shall be unlawful for any person, firm or corporation to use any false weight or measure, or to sell any commodity at a greater weight or measure than its true weight or measure, or where the buyer is the weigher or measurer, to take any greater weight or measure than the true weight or measure. (Id. § 8122.)

408. Interference With Officer—Penalty.—It shall be unlawful for any person to interfere in any way with any officer charged with the enforcement of the provisions of this act while such officer is engaged in the performance of his duty, as herein provided, or to alter, erase, change or remove any tag or seal placed by such officer in the performance of his duty upon scale, weight or measure. (Id. § 8123.)

409. Standard Box for Strawberries, Blackberries, Etc.—The standard boxes or baskets used in the sale of strawberries, blackberries, loganberries, raspberries or similar berries shall be of the interior capacity of sixty-seven and two-tenths cubic inches (dry quart) or thirty-three and six-tenths cubic inches (dry pint) or sixteen and eight-tenths cubic inches (dry one-half pint). And it shall be unlawful to offer or expose for sale or sell strawberries, blackberries, loganberries, raspberries or similar berries, in boxes or baskets of other than standard size; provided, that nothing within this section shall be construed as in any way preventing the sale of strawberries, blackberries, loganberries, raspberries or similar berries, by weight or in boxes or baskets of greater capacity than sixty-seven and two-tenths cubic inches. (Id. § 8126.)

410. Quantity of Contents to be Marked on Packages.—It shall be unlawful to keep, for the purpose of sale, offer or expose for sale, or sell any commodity in package form, unless the net quantity of the contents be plainly and conspicuously marked on the outside of the package, in terms of weight, measure, or numerical count; provided, however, that reasonable variation or tolerance shall be permitted and that these reasonable variations or tolerances and regulations shall be made and enforced by the State Sealer of Weights and Measures; provided further, that this section shall not be construed to apply to those commodities in package form, the manner of sale of which is specifically regulated by the provisions of other sections of this act. (Id. § 8127.)

411. Possession of Altered Weight or Measure Prima Facie Evidence of Guilt.—In all prosecutions for the violation of any laws relating to weights and measures, the possession of a weight or measure, or weights or measures, which has been altered, changed, or in any manner tampered with so that the same shall give a false or wrong weight or measure in either buying or selling any commodity, shall be prima facie evidence of the guilt of the person having the same in possession. (Id. § 8128.)

412. Automatic Measuring Pump.—Every person who uses an automatic measuring pump or any pump which is used to measure the amount of any liquid sold shall keep a standard measure and test such pump as to its accuracy in measuring such liquid and keep the same in such condition as to accurately measure any liquid sold therefrom at all times and the delivery or sale of short measure from any such pump shall be prima facie evidence of the guilt of the person owning or operating the same. (Id. § 8129.)

413. Impersonating a Deputy or District Sealer of Weights and Measures.—It shall be unlawful for any person to impersonate any Deputy State Sealer or district sealer of weights and measures and any person so doing shall be guilty of a misdemeanor and upon conviction thereof shall be subject to the penalties as provided in section 8133, of which this section is a part. (Id. § 8130.)

414. Penalty for Violating Chapter 325, Laws of 1913.*—Any person or persons violating any of the provisions of chapter 325, Laws of 1913, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not less than $5 nor more than $500, or imprisonment in the county jail for not less than five days nor more than ninety days, or by both such fine and imprisonment. (Id. § 8131.)

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*Covers Oregon Laws 1920, sections 8084 to 8092, 8099 to 8103, 8120 to 8125, inclusive, and 8131.

415. Penalty for Violating Chapter 162, Laws of 1915.*—Any person who, by himself or by his servant or agent, or as the servant or agent of another person, violates any of the provisions of chapter 162, Laws of 1915, shall be deemed guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not less than $5 nor more than $500, or imprisonment in the county jail for not less than five days nor more than ninety days,. or by both such fine and imprisonment. (Id. § 8132.)

416. Punishment for Violating Chapter 161, Laws of 1915.†—Any person or persons who violate any of the provisions of chapter 161, Laws of 1915, shall be deemed guilty of a misdemeanor and upon conviction thereof, shall be punished by a fine of not less than five dollars ($5) nor more than five hundred dollars ($500) or imprisonment in the county jail for not less than five nor more than ninety days, or by both such fine and imprisonment. (Id. § 8133.)

417. Word "Person" Includes Corporation.—The word "person or persons" as used in this act, shall be construed to include the officers, directors, agent or agents of any corporation, company, society or association. The words "weight or measure and weights or measures" shall be construed to include weights, scales, beams, measures of any kind, instruments and mechanical devices for weighing or measuring, and any appliances or accessories connected with any and all such instruments. (Id. § 8134.)

418. Justice's Courts Have Concurrent Jurisdiction.—In all prosecutions arising under sections 8084, 8125‡ and 8131-8134, justices of the peace shall have concurrent jurisdiction with the Circuit Courts. (Id. § 8135.)

419. Dimensions for Standard Cranberry Barrel.—The standard barrel for cranberries shall be of the following dimensions, when measured without distension of its parts: Length of staves, twenty-eight and one-half inches; diameter of head, sixteen and one-fourth inches; distance between heads, twenty-five and one-fourth inches; circumference of bulge, fifty-eight and one-half inches, outside measurement; and the thickness of the staves not greater than four-tenths of an inch. (Id. § 8136.)

420. Standard Cranberry Barrel, to be Used in What Cases.—All cranberries offered for sale shall be packed in a standard cranberry barrel, or a legal subdivision thereof, such as half-barrel, a third-barrel, or box which shall have the cubical contents of a half-barrel, or third-barrel. (Id. § 8137.)

421. Sale by Dry Measure.—Cranberries, when offered for sale in quantities less than a third-barrel may be sold by dry measure; that is, by quart, pint, and similar measures. (Id. § 8138.)

422. Sale in Containers and Cartons.—Cranberries may be sold in containers or cartons, holding four quarts, two quarts, one quart, or one pint, and upon the containers or cartons shall be printed the cubical contents of such containers and cartons. (Id. § 8139.)

423. Penalty for Violating Preceding Sections.—Any person or persons who violate any of the provisions of this act¶ shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not less than five dollars ($5) nor more than fifty dollars ($50), or imprisonment in the county jail for not less than five nor more than thirty days, or both such fine and imprisonment. (Id. § 8140.)

424. Word "Person" Includes Whom.—The word "person" or "persons," as used in this act, shall be construed to include the officers, directors, agent or agents of any corporation, company, society or association. (Id. § 8141.)

425. Standard Weight of Barrel of Flour and Subdivisions.—There shall be a standard weight for a barrel of flour, or subdivision thereof, known as the half, quarter and eighth barrel, when sold in the sack. (Id. § 8142.)

426. Net Weight of Barrel of Flour.—The standard weight of a barrel of flour shall be one hundred and ninety pounds, net weight, avoirdupois. The standard weight of one-half barrel of flour shall be ninety-eight pounds, net weight avoirdupois. The standard weight of one-quarter barrel of flour shall be forty-nine pounds, net weight, avoirdupois. The standard weight of one-eighth barrel of flour shall be twenty-four and one-half pounds, net weight, avoirdupois. (Id. § 8143.)

427. Standard Weight for Bale of Flour.—There shall be a standard weight for a bale of flour, or sub-division thereof, when sold in the sack. (Id. § 8144.)

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*Covers Oregon Laws 1920, sections 8093 to 8098, inclusive, 8126, 8132 and 8158.

†Covers Oregon Laws 1920, sections 8104 to 8111, 8113 to 8119, 8127 to 8130, inclusive, 8133 and 8134.

‡Section 8125 relates to standard weight of ton of coal. Omitted herein.

¶Nos. 419-424.

428. Net Weight of Bale of Flour.—The standard weight of a bale of flour shall be ninety-eight pounds, net weight, avoirdupois, or ten sacks, weighing nine and eight-tenths pounds each, net weight, avoirdupois. (Id. § 8145.)

429. Unlawful to Sell Flour Other Than by Standard Weight.—It shall be unlawful to expose for sale or sell in the sack, flour, either white, whole wheat, graham, or rye flour, by the sack in other than the standard sack as herein provided. (Id. § 8146.)

430. Penalty Clause.—Any person, firm, or corporation violating any of the provisions of this act* shall be deemed guilty of a misdemeanor and upon conviction thereof, shall be punished by a fine of not less than ten dollars $10, nor more than one hundred dollars ($100). (Id. § 8147.)

431. Enforcement of Act.—It shall be the duty of the State Sealer of Weights and measures to enforce the provisions of this act. (Id. § 8148.)

432. Jurisdiction of Courts.—Justices of the peace and District Courts, shall have concurrent jurisdiction with the Circuit Courts for the enforcement of this act. (Id. § 8149.)

433. Standard Apple Box.—There is hereby created and established a standard size for apple boxes for the State of Oregon. (Id. § 8150.)

434. Standard Size.—The standard size of an apple box shall be eighteen inches long, eleven and one-half inches wide, ten and one-half inches deep, inside measurement. (Id. § 8151.)

435. Special Size.—The special size of apple boxes shall be twenty inches long, eleven inches wide, and ten inches deep, inside measurement. (Id. § 8152.)

436. Standard Weight for Sack of Potatoes.—There shall be a standard weight for a sack of potatoes in the State of Oregon. (Id. § 8153.)

437. Same—Standard.—In all cases where not otherwise specified by contract, one hundred pounds, inclusive of the weight of the containing bag or sack, shall be the standard weight of a sack of potatoes in the State of Oregon. (Id. § 8154.)

438. Mill Feed to be Sold by Weight.—All mill feed, including crushed and ground grains, bran and shorts, shall be sold by weight within the State of Oregon. (Id. § 8155.)

439. Penalty.—Any person violating the provisions of this act† shall be deemed guilty of a misdemeanor. (Id. § 8156.)

440. No Deductions for Weight of Sacks in Sale of Wheat, Rye, Oats, Etc.—Whenever wheat, rye, Indian corn, oats, barley, clover seed, buckwheat, alfalfa seed, timothy seed, field peas seed, dried apples, dried peaches, dried prunes, potatoes, pears, wool, mohair or any other farm or range product shall be sold by the bushel or pound or in sacks, and if no special agreement shall be made by the parties to the sale as to what tare or deduction shall be made for the weight of the sacks containing the above produce, no deduction shall be made therefor. (Id. § 8157.)

441. Hops, Quantity, How Ascertained.—The owner, lessee, manager or person in charge of any hop yard where hops are being picked by measure, shall cause said hops to be measured by standard measure or measures, and for picking purposes the "standard" hop measure, within this State, shall contain 19,440 cubic inches. It shall be unlawful for any owner, lessee, manager or person in charge of any hop yard where hops are being picked by measure to use or employ any other than a "standard" measure or measures in ascertaining the quantity picked. Nothing in this section shall be so construed as to prevent any owner, lessee, manager or person in charge of any hop yard from ascertaining, by weight, the quantity of hops picked. (Id. § 8158, as amended L. 1927, c. 315.)

442. Penalty.—Any person or persons who violate any of the provisions of this act‡ shall be deemed guilty of a misdemeanor and, on conviction thereof, shall be punished by a fine of not less than five dollars ($5) nor more than fifty dollars ($50), or imprisonment in the county jail for not less than five nor more than thirty days, or by both such fine and imprisonment. (L. 1925, c. 118, § 2.)

443. Tare on Hop Sales—Weight of Baling Cloth.—Hereafter in all sales and transfers of hops there shall be allowed and deducted as tare five pounds per bale and no more. Five yards of baling cloth is the maximum quantity to be used making the bale, and the standard weight of each yard of baling cloth is hereby fixed at twenty-four ounces. (Ore. Laws 1920, § 8159.)

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*Nos. 425-432.

†Nos. 438-439.

‡Nos. 441-442.

444. Weight of Sacking When Deducted as Tare.—Any vendor of hops using heavier sacking than that specified in this section, or using any extraneous matter in the baling thereof, shall have the same deducted as additional tare. (Id. § 8160.)

445. Inspection and Sealing of Railroad Track Scales.—All track scales used by railroads within this State for the purpose of weighing cars or freight offered for shipment in carload lots shall be under the jurisdiction of the Railroad Commission of Oregon, and subject to its inspection. It shall be the duty of said commission from time to time to test and inspect all such scales, and to cause such scales to be put in an accurate condition. Said commission shall approve a suitable sealing device, and cause all track scales, inspected under the provisions hereof to be officially sealed with such device, when such scales are found or made to be accurate. The said commission shall ascertain and declare the reasonable cost of making each inspection, and certify the same to the Secretary of State and the railroad operating the scale inspected, whereupon it shall be the duty of the corporation or person operating such track scale to pay the cost of said inspection as so declared into the State treasury, which sums shall be, by the State Treasurer, placed to the credit of a fund to be designated and known as the "Track Scales Inspection Fund," to be used by the Railroad Commission of Oregon in carrying out the provisions of this act, and disbursed as other public moneys are disbursed as provided by law. (Id. § 5956.)

446. Tampering With Scales a Misdemeanor.—Any person who shall break or tamper with or cause to be changed, broken or tampered with the sealing device or sealing thereof after the same has been installed or inspected by any commissioner or inspector of the Railroad Commission of Oregon shall be deemed guilty of a misdemeanor. (Id. § 5957.)

447. Purchase of Equipment to Test Scales.—The Railroad Commission of Oregon is hereby authorized and directed to procure by purchase, lease or otherwise, necessary apparatus to make the tests and inspections herein provided, and to employ the necessary experts and inspectors therefor and to fix their compensation. All such apparatus shall be transported free by every railroad in this State, when necessary for the purpose of making the tests and inspections herein provided. (Id. § 5958.)

NOTE: See also No. 25; the bread law, No. 38 et seq.; the dairy law, No. 46 et seq.; the egg law, No. 139 et seq.; the fish law, No. 159 et seq.; the horticultural products law, No. 176b et seq.

PART V.

Cases.

1. General Food and Drug Law.

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Misbranding—Section Defining it Not Indefinite: *Hoefler v. Mickle, 78 Ore. 399, 153 Pac. 417 (1915).

2. Special Food Laws.

Baking Powder—Addition of Egg Albumen—Not An Adulteration—Label Sufficient: Crescent Manufacturing Co. v. Mickle, 216 Fed. 246 (1914).

Beverages—Soft Drink Establishment—Closing Hours: *Churchill v. City of Albany, 65 Ore. 442, 133 Pac. 632, Ann. Cas. 1915 A, 1094 (1913).

Beverages—Soft Drinks—License: *Portland v. Traynor, *Same v. Kitchen, 94 Ore. 418, 183 Pac. 933, 186 Pac. 54, 6 A. L. R. 1410 (1919); *George et al. v. City of Portland et al., 114 Ore. 418, 235 Pac. 681, 39 A. L. R. 341 (1925).

Butter—Tub Butter to be so Sold: *State v. Goodhue, 63 Ore. 117, 126 Pac. 986 (1912).

Butter—Weight—Marking: State v. Sommer, 71 Ore. 206, 142 Pac. 759 (1914).

Creamery—Prohibition in Certain Districts: *Kroner & Michels v. City of Portland et al., 116 Ore. 141, 240 Pac. 536 (1925).

Dairy Products—Substitutes Therefor—Use of Misleading Names Prohibited: *Corvallis Creamery Co. v. Van Winkle et al., 274 Fed. 454 (1921), appeal dismissed in Same, 260 U. S. 758, 43 S. Ct. 247, 67 L. Ed. 499 (1923).

Eggs—"Imported Eggs Used Here"—Sign to be Posted: *State v. Jacobson, 80 Ore. 648, 157 Pac. 1108, L. R. A. 1916 E, 1180 (1916).

Fish—Salmon—License to Can: *State v. Hume, 52 Ore. 1, 95 Pac. 808 (1908).

Fish—Salmon—License to Catch: *Alsos v. Kendall et al., 111 Ore. 359, 227 Pac. 286 (1924); *Booth Fisheries Co. v. Kendall et al., 111 Ore. 377, 227 Pac. 291 (1924).

Fish—Salmon—Sale of Salmon Taken Beyond Three-Mile Line, Prohibited: *Union Fishermen's Co. v. Shoemaker, 98 Ore. 659, 193 Pac. 476, 194 Pac. 854 (1920).

Fish—Trout—Sale Prohibited: *State v. Schuman, 36 Ore. 16, 58 Pac. 661, 78 Am. St. Rep. 754, 47 L. R. A. 153 (1899).

Fruits, Popcorn, Etc.—Peddlers—License: *Rosa v. City of Portland, 86 Ore. 438, 168 Pac. 936, L. R. A. 1918 B, 851 (1917).

Meat—Inspection: *Sterett & Oberle Packing Co. v. Portland, 79 Ore. 260, 154 Pac. 410, 415 (1916).

Meat—Slaughterhouse: *City of Portland v. Meyer, 32 Ore. 368, 52 Pac. 21, 67 Am. St. Rep. 538 (1898); *Portland v. Cook, 48 Ore. 550, 87 Pac. 772, 9 L. R. A. (N. S.) 733 (1906); *Zimmerman v. Gritzmacher, 53 Ore. 206, 98 Pac. 875, 98 Pac. 1135, 21 L. R. A. (N. S.) 299 (1909). See also the preceding paragraph.

Oleomargarine: State v. Dunbar, 13 Ore. 591, 11 Pac. 298, 57 Am. Rep. 33 (1886).

Peddler—Defined—Tea, Coffee, Etc.—License: *Ideal Tea Co. v. Salem, 77 Ore. 182, 150 Pac. 852, Ann. Cas. 1917 D, 684 (1915).

Sanitation—Physical Examination: *Portland v. Traynor, *Same v. Kitchen, 94 Ore. 418, 183 Pac. 933, 186 Pac. 54, 6 A. L. R. 1410 (1919).

3. Special Drug Laws.

Itinerant Vendor of Drugs—License: *State v. Miller, 54 Ore. 381, 103 Pac. 519 (1909); *Anderson v. Farr, 97 Ore. 137, 191 Pac. 346 (1920); *State v. McFall, 112 Ore. 183, 229 Pac. 79 (1924).

Narcotics: State v. Jones, 18 Ore. 256, 22 Pac. 840 (1889); *Ex parte Mon Luck, *Mon Luck v. Sears, 29 Ore. 421, 44 Pac. 693, 54 Am. St. Rep. 804, 32 L. R. A. 738 (1896); State v. He Quan Chan, 113 Ore. 168, 232 Pac. 619 (1925). *Ex parte Yung Jon, 28 Fed. 308 (1886).

Narcotics—Opium Den—Frequenting of: State v. Ah Sam, 14 Ore. 347, 13 Pac. 303 (1887).

Narcotics—Opium Smoking: *Ex parte Ah Lit, 26 Fed. 512 (1886).

Pharmacy: *Anderson v. Farr, 97 Ore. 137, 191 Pac. 346 (1920). See also: Goodwin v. Rowe, 67 Ore. 1, 135 Pac. 171, Ann. Cas. 1915 C, 416 (1913); *Itinerant Vendor of Drugs—License,* ante.

Venereal Disease Drugs—Advertisement: *State v. Hollinshead, 77 Ore. 473, 151 Pac. 710 (1915).

4. Civil Action to Recover Damages for Injury Alleged to Have Been Caused by Consumption of Product.

Drugs: Goodwin v. Rowe, 67 Ore. 1, 135 Pac. 171, Ann. Cas. 1915 C, 416 (1913). See also: *Merrill v. Missouri Bridge Co., 69 Ore. 585, 140 Pac. 439 (1914).

Food: See Swank v. Battaglia, 84 Ore. 159, 164 Pac. 705, L. R. A. 1917 F, 469 (1917).

5. Miscellaneous.

False Advertising: Laubhein et al. v. Holsman, 111 Ore. 78, 225 Pac. 190 (1924).

Gift Enterprise: Quatsoe v. Eggleston, 42 Ore. 315, 71 Pac. 66 (1903); National Sales Co. v. Manciet, 83 Ore. 34, 162 Pac. 1055, L. R. A. 1917 D, 485 (1917).

Trade-Marks: Lichtenstein v. Mellis Bros., 8 Ore. 464, 34 Am. Rep. 592 (1880). See also: Duniway Publishing Co. v. Northwest Printing & Publishing Co., 11 Ore. 322, 8 Pac. 283 (1884); *Lorntsen v. Union Fisherman's Co., 71 Ore. 540, 143 Pac. 621 (1914); Columbia Engineering Works v. Mallory, 75 Ore. 542, 147 Pac. 542 (1915); Wood v. Wood, 78 Ore. 181, 151 Pac. 969, Ann. Cas. 1918 A, 226, L. R. A. 1916 C, 251 (1915); Danton v. Mohler Barber School, 88 Ore. 164, 170 Pac. 288 (1918); Union Fishermen's Co-Op. Packing Co. v. Point Adams Packing Co., 108 Ore. 535, 217 Pac. 642 (1923); Umpqua Broccoli Exchange v. Um-Qua Valley Broccoli Growers, 117 Ore. 678, 245 Pac. 324 (1926).

Trading Stamps: *Cottrell et al. v. Sperry & Hutchinson Co. et al., 227 Fed. 256 (1915).

Weights and Measures: State v. Sommer, 71 Ore. 206, 142 Pac. 759 (1914); *McLaughlin v. Helgerson et al., 116 Ore. 310, 241 Pac. 50 (1925).

PENNSYLVANIA.*

PART I.

General Food and Drug Law.

General Food Law.†

1. Manufacture or Sale of Adulterated or Misbranded Food Unlawful.—It shall be unlawful for any person, firm, copartnership, limited partnership, joint-stock company, or corporate body, by himself, herself, itself, or themselves, or by his, her, its, or their agents, servants, or employees, to manufacture, sell, offer for sale, expose for sale, or have in possession with intent to sell, any article of food which is adulterated or misbranded within the meaning of this act. (Pa. St. 1920, § 59.)

2. "Food" and "Person" Defined.—The term "food," as used in this act, shall include not only every article used for food by man, but also every article used for, or entering into the composition of, or intended for use as an ingredient in the preparation of, food for man.

The term "person," as used in this act, shall include individuals, firms, copartnerships, limited partnerships, joint-stock companies, and bodies corporate, as well as all officers, agents, servants, employees, or others acting for any of the same, and shall be taken as applying in the singular or plural as the case may require. (Id. § 60.)

3. Articles Deemed Adulterated.—For the purpose of this act an article of food shall be deemed to be adulterated:

First. If any substance has been mixed or packed with it, so as to reduce or lower or injuriously affect its quality, strength, or purity.

Second. If any substance has been substituted, wholly or in part, for the article.

Third. If any valuable constituent of the article has been, wholly or in part, abstracted.

Fourth. If it be mixed, colored or changed in color, coated, polished, powdered, stained, or bleached, whereby damage or inferiority is concealed, or so as to deceive or mislead the purchaser; or if by any means, it is made to appear better or of greater value than it is.

Fifth. If it contains any added sulphurous acid, sulphur dioxide, or sulphites, benzoate acid or benzoates, except as hereafter provided; or if it contains any added boric acid or borates, salicylic acid or salicylates, formaldehyde, hydrofluoric acid or fluorides, fluoborates, fluosilicates, or other fluorine compounds, dulcin, glucin, saccharin, alum, compounds of copper, betanapthol, hydronapthol, abrastol, asaprol, pyroleigneous acid, or other added ingredients deleterious to health; or if, in the case of confectionery, it contains any of the substances mentioned in this paragraph, or any mineral substances, or injurious color or flavor, alcoholic liquor, or any other ingredient, not herein mentioned, deleterious to health; Providing, that this act shall not be construed to prohibit the use of harmless colors of any kind, in confectionery, when used for coloring, and not for any fraudulent purpose: And provided, further, that nothing in this act shall be construed to prohibit the use of common salt, sugar, pure corn syrup, pure glucose, wine vinegar, cider vinegar, malt vinegar, sugar vinegar, glucose vinegar, distilled vinegar, spices or their essential oils, alcohol (except in confectionery), edible oils, edible fats, wood smoke applied directly as generated, or proper refrigeration: And provided, further, that in the manufacture of confectionery the use of alcohol shall be permitted as it may be found in customary alcoholic tinctures or extracts used for flavoring purposes only, and as a solvent for glazes, and that oil of sweet birch, or methyl-salicylic ester, may be used as a substitute for oil of wintergreen as a flavor: And provided, further, that in the preparation of dried fruits and molasses, sulphur dioxide, either free or in simple combination, may

*CITATIONS: "Pa. St. 1920" refers to the Pennsylvania Statutes, 1920, published by the West Publishing Company. "Pa. St. Supp. 1924" refers to the 1924 supplement thereto. "L." refers to the session laws of the year cited.

†The Department of Agriculture enforces the food laws; the office of Dairy and Food Commissioner has been abolished. See No. 30 et seq. This law is to be corrected accordingly.

be used in such quantities as will not render said dried fruits or molasses deleterious to health; and that sodium benzoates may be used in the preparation of those articles of food in which it has heretofore been generally used, in quantities not exceeding one-tenth (1-10) of one per centum, or benzoic acid equivalent thereto: And provided, further, that when any quantity of sodium benzoate is used in any article of food, or any quantity of sulphur dioxide is used in the preparation of dried fruits or molasses, the fact that sodium benzoates or sulphur dioxide has been used in the preparation thereof shall be plainly stated on each package of such food.

Sixth. If it consists of, or is manufactured in whole or in part from, a diseased, contaminated, filthy, or decomposed substance, either animal or vegetable; or an animal or vegetable substance produced, stored, transported, or kept in a way or manner that would render the article diseased, contaminated, or unwholesome; or if it is any part of the product of a diseased animal, or the product of an animal that has died otherwise than by slaughter. (Id. § 61; Pa. St. Supp. 1924, § 61.)

4. Articles Deemed Misbranded.—For the purpose of this act an article shall be deemed to be misbranded,—

First. If it be an imitation of, or offered for sale under, the name of another article.

Second. If it be labeled or branded so that it may deceive or mislead the purchaser; or purport to be a foreign product, when not so; or if the contents of the package as originally put up shall have been removed, in whole or in part, and other inferior contents shall have been placed in such package.

Third. If the package containing it, or its label, shall bear any statement, design, or device, regarding the substances or ingredients contained therein, which statement, design, or device shall be false or misleading in any particular.

Fourth. If it be a mixture or compound which may be known, or from time to time hereafter known, as an article of food, unless it be accompanied on the label or brand with a statement that it is a mixture or compound and a statement of the substance entering into said mixture or compound. All labeling of packages required by this act shall be on the main label of each package, and in type not less than eight point, brevier caps, in size,—unless the size of the package will not permit the use of eight-point cap type, in which case the size of the type may be reduced proportionately,—and in such position and terms as may be plainly seen and read by the purchaser: Provided, that nothing in this act shall be construed as requiring or compelling the proprietors, manufacturers, or sellers of proprietary foods to disclose their trade formulas, except in so far as may be necessary under the provisions of this act to avoid adulteration, imitation, or misbranding. (Pa. St. 1920, § 62.)

5. Prosecutions; Guaranty to Retail Dealer; Improper Storing, Etc.—When the Dairy and Food Commissioner, or his agent, shall obtain an article of food, or sample or portion thereof, from any person, for the purpose of determining whether the same is adulterated or misbranded within the meaning of this act, and it shall be found that the said article of food is adulterated or misbranded within the meaning of this act, then the Dairy and Food Commissioner shall proceed against the said person, from whose store, warehouse, or other place of business said article, sample, or portion thereof, shall have been obtained, for a violation of the provisions of this act.

But no prosecution shall be sustained, under the provisions of this act, against a retail dealer for the selling, offering for sale, exposing for sale, or having in possession with intent to sell, of any adulterated or misbranded article of food, as defined herein, if the retail dealer from whom the said article of food, sample, or portion thereof, was obtained by the Dairy and Food Commissioner or his agent, can establish a guaranty, signed by the manufacturer or wholesale dealer, or jobber or distributor, residing in the United States, from whom such article of food was purchased or procured, to the effect that the same is not adulterated or misbranded within the meaning of his act designating it.

Said guaranty to afford protection shall contain the name and address of the manufacturer or wholesale dealer, or jobber or distributor, making the sale of such articles of food to such retailer, and in such case the said manufacturer or wholesale dealer, or jobber or distributor, so as aforesaid giving such guaranty, shall be amenable to the prosecution, fines and other penalties which would attach, in due course, to the retailer holding such guaranty under the provisions of this act, for a violation hereof; and every manufacturer or wholesale dealer, or jobber or distributor, giving a guaranty under the provisions of this act shall be held responsible, and shall be proceeded against for the adulteration or misbranding of any article of food sold under said guaranty, and shall be subject to the penalties for the violation of the provisions of this act. No such guaranty shall operate as a defense to a prosecution for a violation of the provisions of this act, if the retailer holding such guaranty shall continue to sell the same article of food after written or printed notice from the

Dairy and Food Commissioner, or his agent, that such article is adulterated or misbranded within the meaning of this act.

But if said person shall violate the provisions of paragraph six, section three [61] of this act, by having stored or transported or kept said article, in said paragraph mentioned, in a way or manner to render it diseased, contaminated, or unwholesome, said person shall be proceeded against for a violation of the provisions of this act; and it shall not be necessary for conviction that any article, sample, or portion thereof, shall be obtained by the Dairy and Food Commissioner, or his agent, as a condition precedent to prosecution. (Id. § 63.)

6. What Deemed Same Article.—For the purpose of this act, an article shall be deemed to be the same article,—

First. When it shall be of the same brand, or have thereon the same label, and shall be adulterated or misbranded in the same way.

Second. When it is not labeled or branded, but is sold, offered for sale, or exposed for sale, under the same name, and adulterated or misbranded in the same way.

Third. When, although sold, offered for sale, or exposed for sale under another name, or labeled or branded in a different way, it shall be found to be the product of the same manufacturer, grower, or maker, and to be adulterated or misbranded in the same way: Provided, however, that an article shall be deemed to be adulterated in the same way if it shall contain the same adulterant substance or substances. (Id. § 64.)

7. Punishment.—Any person who shall violate any of the provisions of this act shall be guilty of a misdemeanor, and, upon conviction thereof, shall be sentenced to pay a fine of not less than sixty dollars nor more than one hundred dollars. (Id. § 65.)

8. Duties of Dairy and Food Commissioner.—The Dairy and Food Commissioner of the State shall be charged with enforcement of the provisions of this act and shall make rules and regulations for the proper enforcement thereof, and shall cause such rules and regulations to be published in the official bulletin in the issue immediately following the preparation of the same. (Id. § 66.)

9. Disposition of Fines and Penalties.—All fines and penalties imposed and recovered for the violation of any of the provisions of this act shall be paid to the Dairy and Food Commissioner or his agent, and by the Dairy and Food Commissioner be paid into the State treasury, for the use of the Commonwealth. (Id. § 67.)

General Drug Law.

10. Adulteration of Drugs Prohibited.—No person shall knowingly, willfully or fraudulently falsify or adulterate, or cause to be falsified or adulterated, any drug or medical substance, or any preparation authorized or recognized by the Pharmacopœia of the United States; or used or intended to be used in medicinal practice, nor mix or cause to be mixed with any such drug or medicinal substance any foreign or inert substance whatsoever for the purpose of destroying or weakening its medicinal power and effect, and willfully, knowingly or fraudulently sell or cause the same to be sold for medicinal purposes. Any person who shall violate this section shall be guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine not exceeding five hundred dollars, and shall forfeit to the Commonwealth all articles so adulterated. (Pa. St. 1920, § 9336.)

11. Adulterated or Misbranded Drugs; Sale, Manufacture or Possession.—It shall be unlawful for any person, partnership, or corporation to manufacture or sell, offer for sale, or have in possession with intent to sell, any drug which is adulterated or misbranded, within the meaning of this act. (Id. § 9337.)

12. The Term "Drug" Defined.—The term "drug," as used in this act, shall include all medicines and preparations recognized in the ninth revision of the Pharmacopœia of the United States, the fourth edition of the National Formulary, or the American Homeopathic Pharmacopœia, for the internal or external use, and any substance or mixture of substances, intended to be used for the cure, mitigation, or prevention of disease of either man or other animals. (Id. § 9338.)

13. When Drug Deemed Adulterated.—For the purpose of this act an article shall be deemed to be adulterated:

First. If a drug is sold under or by any name recognized by the tenth revision of the Pharmacopœia of the United States, the fifth edition of the National Formulary, or the American Homeopathic Pharmacopœia, it differs from the standard of strength, quality, or purity as determined by the test or formula laid down in the tenth revision of the Pharmacopœia of the United States, the fifth edition of the National Formulary, or the American Homeopathic Pharmacopœia: Provided, that no drug defined in the tenth revision of the Pharmacopœia of the United States, the

fifth edition of the National Formulary; (or the American Homeopathic Pharmacopœia, except official preparations of opium, iodine, peppermint, camphor, ginger, and ethyl nitrit, shall be deemed to be adulterated, under this provision, if the standard of strength, quality, or purity be plainly stated, in juxtaposition with the official standard of strength, quality, and purity, upon the bottle, box, or other container thereof, although the standard may differ from that determined by the test or formula laid down by the tenth revision of the Pharmacopœia of the United States, the fifth edition of the National Formulary, or the American Homeopathic Pharmacopœia.

Second. If the strength or purity fall below the professed standard or quality under which it is sold. (Id. § 9339, as amended L. 1927, Act No. 292.)

14. When Article Deemed Misbranded.—For the purpose of this act an article shall be deemed to be misbranded:

First. All drugs, the package or label of which shall bear any statement, design, or device regarding such article, or the ingredients or substance or substances contained therein, shall be false or misleading in any particular.

Second. If it be an imitation of, or offered for sale under the name of, another article.

Third. If the contents of the package as originally put up shall have been removed, in whole or in part thereof, and other contents shall have been placed in such package; or if the package fail to bear statement on the label of the presence of any alcohol, morphine, opium, heroin, cocaine, alpha or beta eucaine, chloroform, cannabis indica, chloral hydrate, acetanilide, phenacetine, antipyrine, or any derivative or any preparation of any such substances, contained therein: Provided, that nothing in this paragraph apply to the filling of written prescriptions, furnished by practicing physicians, dentists, and veterinarians, and kept on file by pharmacists; or as to such preparations as are specified and recognized by the tenth revision of the Pharmacopœia of the United States, the fifth edition of the National Formulary, and the American Homeopathic Pharmacopœia, which are made in accordance therewith and are sold under titles designated therein.

Fourth. If its package or label shall bear or contain any statement, design, or device regarding the curative or therapeutic effect of such article, or any of the ingredients or substances contained therein which is false or fraudulent. (Id. § 9340.)

15. Enforcement of Act; Compensation; Employment of Assistants; Purchase of Samples; Refusal to Sell.—The enforcement of this act shall be entrusted to the State Pharmaceutical Examining Board,* who shall receive as compensation for their services the same per diem and expenses that they receive as members of the State Pharmaceutical Examining Board, under the act of May twenty-fourth, one thousand eight hundred and eighty-seven. They shall make uniform rules and regulations for carrying out the provisions of this act, including the collection and examination of specimens of drugs manufactured or offered for sale in the State; and shall appoint an executive secretary, who shall work under the directions of said board; and they shall also have the power to employ such agents, chemists, attorneys, and assistants as may be necessary for this purpose; and they or their duly authorized agents shall have the right to enter any place where drugs are compounded, dispensed, or sold, for the purpose of purchasing samples; and shall have the right to purchase samples in order that tests may be made to determine whether such drugs conform to the standards of strength, quality, and purity as fixed by the laws of this Commonwealth. Any person who intentionally prevents, or knowingly refuses, to permit any authorized person to enter any place where drugs are compounded, dispensed, or sold, for the purpose of purchasing samples, or refuses to sell a sample or samples of drugs for the purpose of examination, shall, upon conviction, be sentenced to pay a fine of ten dollars ($10.00) and costs of prosecution: Provided, however, that this section shall not be construed as granting any right or privilege to said board, or the agents thereof, of inspecting any place where drugs are sold or manufactured, or any formula or process of manufacture of any drug. (Pa. St. 1920, § 9341.)

16. Office and Laboratory of Board; Supplies and Equipment.—The Pharmaceutical Examining Board shall have an office and laboratory in the State Capitol, in which to conduct the work provided for in this act. The Board of Commissioners of Public Grounds and Buildings shall, upon the requisition of the president and secretary of the Pharmaceutical Examining Board, furnish said examining board with all such books, printing and stationery supplies, chemicals, apparatus, furniture, and equipment as may be needed to conduct properly the affairs of said examining board. (Id. § 9342.)

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*Now State Board of Pharmacy. See Nos. 413 and 402 et seq. This law is to be corrected accordingly.

17. Examination of Drugs; Notice and Hearing; Institution of Prosecutions.—The examination of drugs, purchased or procured by said board, shall be made under the direction and supervision of said board, for the purpose of determining from such examination whether such articles are adulterated or misbranded within the meaning of this act; and if it shall appear from any such examination that any of such specimen is adulterated or misbranded, within the meaning of this act, the board shall cause notice thereof to be given to the party from whom the same was purchased or procured. Any party so notified shall be given an opportunity to be heard, under such rules and regulations as may be prescribed as aforesaid; and if it appears that any of the provisions of this act have been violated by such party, then the board shall at once direct their agent or representative to lay the facts before the district attorney of the proper county, together with a copy of the results of the analysis of such article, duly authenticated by the analyst or officer making the same; and shall direct their said agent or representative, under the direction of the said district attorney, to make information against the party so appearing to have violated the provisions of this act, and attend to the prosecution of such proceeding until the same is finally terminated. (Id. § 9343.)

18. Duty of District Attorney.—It shall be the duty of each district attorney to whom the board shall report any violation of this act, to cause appropriate proceedings to be commenced and prosecuted in the proper court, without delay, for the collection of the penalties in such case made and provided. (Id. § 9344.)

19. Punishment for Violation; Costs; Disposition of Fines.—Any person who shall violate any of the provisions of this act shall be guilty of a misdemeanor, and, for each offense, upon conviction thereof, be fined not to exceed fifty dollars; and upon conviction for any second or subsequent commission of the same offense, shall be fined not to exceed one hundred dollars; and upon each conviction the person so convicted shall, in addition to the fine herein mentioned, pay all the costs of prosecution, including the expense incurred in examining and analyzing the article found to have been adulterated or misbranded; and all fines paid and collected for violations of this act shall be paid to the treasurer of the State Pharmaceutical Examining Board, and by him shall be forthwith paid to the Treasurer of the State, for the use of the Commonwealth. (Id. § 9345.)

20. Proceedings Where Drugs were Guaranteed.—In case it shall be made to appear at any hearing before the said board, or under the rules and regulations prescribed thereby, that the dealer, from whom any adulterated or misbranded article shall have been purchased or procured, purchased the same from any manufacturer, wholesale dealer or jobber, who has given a guarantee thereof to the dealer, that the same is not misbranded or adulterated within the meaning of this act; and if it shall be made to appear that the said dealer has kept and preserved the article in question in precisely the same condition, as to quality and purity, as when it was so purchased by said dealer; then, and in that case, the said board shall direct proceedings to be commenced against the manufacturer, wholesale dealer, or jobber, in the proper county, for the collection of the penalty provided for violation of this act; and if the penalty shall thus be collected from said manufacturer, wholesale dealer, or jobber, no further proceedings shall be commenced or continued against the dealer from whom the article in question had been purchased or procured, provided the sale of said article be discontinued by said dealer. (Id. § 9346.)

21. Sale of Goods in Stock on Certain Date.—The provisions of the act relating to misbranding shall not apply to the distribution or sale, or to the possession with intent to distribute or sell, by any dealer, of such drugs as were in such dealers' stock, in this state, on October one, one thousand nine hundred and nine: Provided, that the package, or other container in which said drugs shall be contained, shall be plainly and conspicuously marked with the words and figures, "On hand, October one, one thousand nine hundred and nine." (Id. § 9347.)

Miscellaneous General Provisions.

22. Sale of Food Containing Formaline, Etc., Prohibited.—Any person, firm or corporate body who shall, by himself, herself or themselves, or by his, her or their agents or servants, manufacture, sell, ship, consign, offer for sale, expose for sale, or have in possession with intent to sell, any article of food which contains formaline, formaldehyde, sodium fluoride, or any of their compounds, shall be deemed guilty of a misdemeanor; and upon conviction thereof in the court of quarter sessions of the peace of the proper county, shall be sentenced to pay a fine of not less than fifty nor more than one hundred dollars, or to undergo an imprisonment not exceeding sixty days, or both, at the discretion of the court. (Pa. St. 1920, § 68.)

23. Sale of Food Containing Certain Kinds of Coloring Matter Prohibited.—Any person, firm or corporate body who shall, by himself, herself or themselves, or by his, her or their agents or servants, manufacture, sell, ship, consign, offer for sale, expose for sale, or have in possession with intent to sell, any article of vegetable food containing any coloring matter yielding on analysis more than one-fiftieth of one per centum of metallic copper, shall be deemed guilty of a misdemeanor; and upon conviction thereof in the court of quarter sessions of the proper county, shall be sentenced to pay a fine of not less than fifty dollars nor more than one hundred dollars, or be imprisoned in the jail of the county for not exceeding sixty days, or both, at the discretion of the court. (Id. § 69.)

24. Enforcement of Act.—It shall be the duty of the Dairy and Food Commissioner* to enforce the provisions of this act, for which purpose he shall have the same power which is given him to enforce the provisions of the act authorizing his appointment. (Id. § 70.)

25. Disposition of Fines and Penalties.—All penalties or fines which may be recovered in any proceeding to enforce the provisions of this act shall be paid to the Dairy and Food Commissioner* or his agent, and by him paid into the State treasury; and the money so paid shall constitute a special fund, for the use of the Department of Agriculture in enforcing this act, and may be drawn out upon warrants signed by the Secretary of Agriculture and approved by the Auditor General. (Id. § 71.)

26. Sale, Etc., of Food, Etc., Containing, for Internal or External Use.—It is unlawful for any person, partnership, association, or corporation, to sell or offer or expose for sale or have in his or its possession with intent to distribute or sell, any food, drug, preparation, or mixture of any kind whatsoever, intended for internal use, which contains methyl or wood alcohol; or to sell or offer or expose for sale or have in his or its possession with intent to sell, or distribute, or use upon or apply to the body of another, any drug, hair tonic, bay rum, or similar preparation, intended for external use, which contains methyl or wood alcohol. (Id. § 113.)

27. External Use on Animals.—Nothing in this act shall apply to veterinary remedies containing methyl or wood alcohol, when such remedies are plainly and distinctly labeled in such a manner as to indicate that they are intended solely for external use on animals; nor shall this act apply to medicated liniments used for external use. (Id. § 114.)

28. Punishment for Violations of Act.—Any person, partnership, association, or corporation violating any of the provisions of this act shall be guilty of a misdemeanor, and, upon conviction thereof, shall be sentenced to pay a penalty of five hundred dollars for each offense. (Id. § 115.)

29. Sale of Unwholesome Food or Liquor a Misdemeanor.—If any person shall sell or expose for sale the flesh of any diseased animal, or any other unwholesome flesh, knowing the same to be diseased or unwholesome, or sell or expose for sale unwholesome bread, drink or liquor, knowing the same to be unwholesome; or shall adulterate for the purpose of sale, or sell any flour meal or other article of food, any wine, beer, spirits of any kind or other liquor intended for drinking, knowing the same to be adulterated; or shall adulterate for sale, or shall sell, knowing them to be so adulterated, any drugs or medicines; such person so offending shall be guilty of a misdemeanor, and upon conviction be sentenced to pay a fine, not exceeding one hundred dollars, or undergo an imprisonment, not exceeding six months, or both or either, at the discretion of the court. (Id. §§ 7669 and 14544.)†

30. Certain Existing Departments, Boards, Commissions and Offices Abolished.—To accomplish the purposes of this act, all places and positions, except those specifically retained by this act in or under the executive and administrative bureaus, divisions, boards, commissions, offices and agencies of the State Government, and in or under the several executive and administrative departments, . . . are hereby abolished; and the following departments, bureaus, divisions, boards, commissions, offices and agencies of the State Government, as now established by law are hereby abolished, namely: . . . Deputy Secretary of Agriculture, Economic Zoologist, Dairy and Food Commissioner, State Veterinarian, Bureaus of Animal Industry, of Plant Industry, of Markets, of Foods, of Chemistry, and of Statistics, in the Department of Agriculture; State Live Stock Sanitary Board; . . . Bureau of Standards, . . . in the Department of Internal Affairs; . . . (Pa. St. Supp. 1924, Administrative Code, § 50a-2, as amended L. 1927, Act No. 164.)

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*Now Department of Agriculture. See No. 30 et seq.

†This section is repealed in so far as it refers to the flesh of any diseased animal or any unwholesome flesh by the act of 1915, May 28, P. L. 587, § 23, which also repealed absolutely the act of 1855, May 7, P. L. 463, making it unlawful to expose unwholesome meat or fish for sale. (Compiler's note.) See No. 300 et seq.

30a. Executive Officers, Administrative Departments and Independent Administrative Boards and Commissions.—The executive and administrative work of this Commonwealth shall be performed . . . by the following administrative departments which, except as in this act expressly otherwise provided, shall continue as now organized and existing: . . .

Department of the Secretary of the Commonwealth, the Attorney-General's Department, the Department of Public Instruction, the Department of Internal Affairs, the Adjutant-General's Department, the Department of Agriculture, the Department of Forestry, the Department of Labor and Industry, the Department of Health, the State Highway Department, the Department of Public Welfare, the Banking Department, the Insurance Department, and the Department of Mines which shall be reorganized as in this act provided, and shall hereafter be known respectively as: . . .

Department of Internal Affairs, . . .
Department of Agriculture, . . .
Department of Labor and Industry,
Department of Health; . . .

and by the Board of Game Commissioners, the Department of Fisheries, and the Public Service Commission of the Commonwealth of Pennsylvania, which shall be reorganized as provided in this act, and shall be known as independent administrative boards and commissions under the following names respectively:

Board of Game Commissioners,
Board of Fish Commissioners, . . . (Id. § 50a-201.)

30b. Department Heads.—Each administrative department shall have as its head an officer who shall either personally, by deputy, or by the duly authorized agent or employee of the department, and subject at all times to the provisions of this act, exercise the powers and perform the duties by law vested in and imposed upon the department.

(a) The following officers shall be the heads of the administrative departments following their respective titles: . . .

Secretary of Internal Affairs, of the Department of Internal Affairs. . . .
Secretary of Agriculture, of the Department of Agriculture. . . .
Commissioner of Labor and Industry, who shall hereafter be known as Secretary of Labor and Industry, of the Department of Labor and Industry. . . .
Commissioner of Health, who shall hereafter be known as Secretary of Health, of the Department of Health. . . . (Id. § 50a-205.)

30c. Secretary of Internal Affairs.—The Secretary of Internal Affairs shall exercise all the powers and perform all the duties vested in and imposed upon him by the Constitution of the Commonwealth of Pennsylvania and subject to any inconsistent provisions in this act contained, by law. (Pa. St. Supp. 1924, Administrative Code, § 50a-705.)

30d. Powers and Duties Retained.—Subject to any inconsistent provisions in this act contained, the Department of Internal Affairs shall continue to exercise the powers and perform the duties by law vested in and imposed upon the said department and the several bureaus and bureau chiefs thereof. (Id. § 50a-1201, as amended L. 1927, Act No. 164.)

31. Powers and Duties in General.—The Department of Agriculture shall, subject to any inconsistent provisions in this act contained, continue to exercise all the powers and perform all the duties by law vested in and imposed upon the Department of Agriculture, the several bureaus thereof, and the Secretary of Agriculture. (Pa. St. Supp. 1924, Administrative Code, § 50a-1501.)

31a. Animal Industry—The Department of Agriculture shall have the power, and its duty shall be:

(a) To promote the live stock industry, and to prevent, suppress, control, and eradicate any transmissible diseases of animals and poultry;

(b) To establish and maintain general or special quarantines, as may now or hereafter be provided by law;

(c) To prevent the spread of infectious and communicable diseases of animals and poultry, and, for this purpose, the officers, agents, or employees thereof, may at any time enter any premises where domestic animals or products thereof are kept, confined, or stored; to take such measures as may seem advisable concerning methods of preventing, controlling, and eradicating diseases of animals; to cause the disinfection of any premises, and, when deemed necessary to prevent the spread of disease, to cause the destruction of animals, poultry, and personal property; and to regulate and prohibit the movement or transportation of animals or poultry into this Commonwealth, or from one place to another within this Commonwealth;

(d) To purchase such supplies and materials as may be deemed necessary;

(e) To provide for the licensing of breeding animals kept for public service, and to prevent fraud and deception in the licensing of stallions kept for public service;

(f) To regulate the manufacture, use, and sale of biological products for use on domestic animals;

(g) To make such examinations and tests as may be deemed necessary to determine the healthfulness of the domestic animals and poultry of the Commonwealth;

(h) To organize and administer a service for the purpose of protecting the public against the use of unwholesome meat or meat food products. (Id. § 50a-1502.)

32. Plant Industry.—The Department of Agriculture shall have the power, and its duty shall be;

(a) To inspect any nursery, orchard, farm, garden, park, cemetery, or any private or public place which may become infested or infected with harmful insects or plant diseases; to establish and enforce quarantines; to issue and enforce orders and regulations, and make investigations for the control of said pests, wherever they may exist within the Commonwealth; and to perform such other duties relating to "plants" and "plant products" as may seem advisable and not contrary to law;

(b) To inspect apiaries for diseases inimical to bees and beekeeping and enforce the laws relating thereto. (Id. § 50a-1503.)

33. Markets.—The Department of Agriculture shall have the power, and its duty shall be:

(a) To investigate the subject of marketing farm products, including the costs of marketing, to publish the results of such investigations, and to furnish advice and assistance to the public with reference to the marketing of farm products within this Commonwealth and all matters relevant thereto;

(b) To gather and diffuse timely information concerning the supply, demand, prevailing prices, and commercial movement of farm products, including quantities in common and cold storage;

(c) To secure, in the performance of the duties herein prescribed, the co-operation and assistance of all other agencies;

(d) To assist and advise in the organization and conduct of public markets, of co-operative and other associations for improving marketing conditions and activities among producers, distributors, and consumers;

(e) To investigate delays, embargoes, conditions, practices, charges, and rates in the transportation and storage of all farm products which appear to be detrimental to a free, economical and efficient marketing of such products;

(f) To take such lawful steps as may be deemed advisable to prevent waste of perishable products;

(g) To establish standards for the grading and other classification of farm products, as provided in the act,* approved the ninth day of July, one thousand nine hundred and nineteen (Pamphlet Laws, eight hundred nine), entitled "An act prescribing the powers and duties of the Bureau of Markets in the Department of Agriculture; provided for co-operation with the Bureau of Standards of the Department of Internal Affairs to establish standard receptacles for farm products, and to promulgate regulations for enforcement thereof; and prescribing penalties for the violating of provisions of this act," and in all other respects to enforce the provisions of said act. (Id. § 50a-1504.)

34. Foods.—The Department of Agriculture shall have the power, and its duty shall be:

(a) To enforce all the laws of the Commonwealth relating to the production, manufacture, transportation, and sale of foods used for man, as well as every article entering into and intended for use as an ingredient in the preparation of foods for man;

(b) For the purpose of enforcing such laws, from time to time, to purchase from wholesale or retail dealers samples of any food or drink and have the same analyzed or examined, and prosecute the sale of adulterated, misbranded, or deleterious foods or drink;

(c) To examine all cold storage warehouses, within the meaning of the laws of this Commonwealth, to ascertain whether they are kept in a sanitary condition, the wholesomeness of the food therein, and the time within which foods shall have been so kept;

(d) To make such rules and regulations as shall be necessary for the enforcement of the laws of this Commonwealth relating to oleomargarine, food, drink, and cold storage warehouses. (Id. § 50a-1505.)

35. Chemistry.—The Department of Agriculture shall have the power, and its duty shall be:

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*Included in Nos. 284-295.

(a) To purchase from wholesale or retail dealers, for the purpose of making chemical analyses, any fertilizers, lime and lime products, feeds, feeding stuffs, insecticides, fungicides, paints, oils, turpentine, putties, or materials or ingredients used in the manufacture or compound of any such fertilizers, lime and lime products, feeds, feeding stuffs, insecticides, fungicides, paints, oils, turpentine, or putties, and to make examinations and analyses thereof whenever the Secretary of Agriculture shall deem advisable;

(b) To keep correct records of all analyses made of each of the commodities received. (Id. § 50a-1506.)

36. Statistics.—The Department of Agriculture shall have the power, and its duty shall be, to collect, tabulate, and publish monthly crop and live stock reports, and such other information, from time to time, pertaining to the agricultural industries and interests of the State, and such bulletins and reports as may be deemed advisable. (Id. § 50a-1507.)

37. Quarantines.—The Department of Agriculture shall have the power to establish general quarantines relating to diseases of animals or plants and their products, and to make all needful rules and regulations for the enforcement of the laws relating to animals and plants or the products thereof.

When a general quarantine relating to plants or their products has been declared, or rules and regulations for the enforcement of laws relating to animals or plants or their products have been adopted, such quarantine or rules and regulations shall be enforced by the officers or agents of the department; and, for the purpose of enforcing such quarantines, rules, and regulations, such officers and agents shall have and possess all the powers of the department, including the powers formerly by law vested in the State Live Stock Sanitary Board and the Economic Zoologist. (Id. § 50a-1508.)

NOTE: See also Nos. 579, 582 and 642.

PART II.

Special Food Laws.

Apples.

38. Packages to be Marked with Grower's Name, Etc.—Every closed package containing apples grown in the State of Pennsylvania, which is sold, offered, or consigned for sale, packed for sale, or shipped for sale, shall bear upon the outside of one end, in plain letters or figures, or both, the name and address of the person by whose authority the apples were packed, the true name of the variety therein contained, and the minimum size or numerical count of the fruit in the package: Provided, that packages which cannot readily be marked on an exposed end shall be similarly marked in a conspicuous place. If the true name of the variety is not known to the packer or the person by whose authority the apples are packed or branded, then such variety shall be designated as "unknown." Every package of apples which is repacked shall bear the name and address of the person by whose authority it is repacked, and shall be marked as prescribed by this act. The letters and figures used in marking closed packages of apples under the provisions of this act shall be of a size not less than thirty-six point Gothic. (Pa. St. 1920, § 21576.)

39. Additional Marks; Effect of Compliance with Federal Law.—The marks prescribed by this act may be accompanied by any additional marks which are in accordance with the facts, and which are not inconsistent with or do not in any way obscure the marks required by this act. Apples packed and branded in accordance with the United States Apple-Grading Law, approved August third, one thousand nine hundred and twelve, shall be exempt from the provisions of this act. (Id. § 21577.)

40. Exposed Surface to Represent Average.—All apples packed within the meaning of this act shall be so packed that the face or exposed surface shall fairly represent the average of the apples in the package. And it shall be considered a fair representation if the face or exposed surface does not excel the average of the apples in the package by more than fifteen per centum in the matter of size and freedom from defects. (Id. § 21578.)

41. Sizes and Grades; Abbreviations; Tolerances.—The minimum size of the fruit in all grades shall be determined by taking the transverse diameter of the

smallest fruit in the package. Minimum sizes shall be stated in variations of one-quarter of an inch; as, two inches, two and one-quarter inches, two and three-quarter inches, three inches, three and one-quarter inches, and so on, in accordance with the facts. Minimum sizes may be designated by either figures or words, and the word "minimum" may be designated by the use of the abbreviation "min." A tolerance of five per centum in the matter of size shall be allowed. (Id. § 21579.)

42. Unlawful Sales, Etc.—It shall be unlawful for any person to pack for sale, ship for sale, offer or consign for sale, have in possession intended for sale, or sell in closed packages any apples grown in this State: (a) Which are not packed and marked in accordance with the provisions of this act and the regulations made hereunder; (b) or which bear any false statement, design, or device regarding such apples, within the meaning of this act. (Id. § 21580.)

43. Penalty for Violations; Defenses; Disposition of Penalties, Etc.—Any person who violates any of the provisions of this act shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be punished by a fine of not more than fifty dollars for the first offense, and not more than one hundred dollars for each subsequent offense. No person shall be prosecuted under this act who can establish by satisfactory evidence that no part of the packing or branding of the apples concerned was done by him, or under his authority, and that he had no knowledge that they were not packed in accordance with said provisions. All penalties, costs, and fines collected under this act shall be paid to the Secretary of Agriculture, or his agent, and by him shall be paid into the State treasury, for the use of the Commonwealth. (Id. § 21581.)

44. When Applicable to Closed Packages.—The provisions of this act shall not apply to apples in closed packages which are held, stored, or shipped to storage within the State, until same are packed for sale, offered or consigned for sale, or shipped for sale. (Id. § 21582.)

45. Definitions; Liability for Acts, Etc., of Officials and Employees.—The word "person" as used herein shall be construed to include individuals, corporations, partnerships, and associations. The act, omission, or failure of any official or employee of any person, when such official or employee is acting within the scope of his employment or office, shall in every case be deemed also the act, omission, or failure of the person as well as of the official or employee. The words "closed package" shall mean a box, barrel, or other package, the contents of which cannot be easily inspected when such package is closed. (Id. § 21583.)

46. Enforcement of Act.—The enforcement of this act shall be vested in the State Department of Agriculture; and its officers, employees, and agents are authorized to enter upon the premises of any person within this State for the purpose of purchasing packages of apples and securing evidence of violation of this act; and the said Department of Agriculture is hereby authorized to make such rules and regulations as may be necessary for enforcing its provisions. (Id. § 21584.)

NOTE: See also No. 359 et seq.

Bakeries.

46a. Bake-houses to be of Brick, Etc.—No person, after the time aforesaid, within the said city, shall occupy the trade of a biscuit or soft bread baker, but in a bake-house built of brick or stone, and arched over with brick, if the place will admit thereof, or otherwise to be well ceiled with plastering; the floor of the said bake-house paved with brick or stone; the crown of the oven to be secured by carrying up the foundation walls square, and filling the same with gravel or sand at least six inches higher than the top of the oven; and the chimney to be arched in the said bake-house, without any timber in or near adjoining to the same. (Pa. St. 1920, §13629.)

46b. Limitation of Hours of Work.—No employe shall be required, permitted or suffered to work in a biscuit, bread or cake bakery, confectionery establishment more than six (6) days in any one week, said week to commence on Sunday not before six o'clock post-meridian, and to terminate at the corresponding time on Saturday of the same week. (Id. § 13630.)

46c. Hours of Labor of Minors in Bakeries, Etc.—No minor, male or female, [or] adult woman, shall be employed at labor or detained in any biscuit, bread, pie or cake bakery, pretzel or macaroni establishment, for a longer period than twelve hours in any one day, nor for a longer period than sixty hours in any one week. (Id. § 13630a.)

46d. Definitions.—A. The word "bakery," as used in this act, shall mean and include all buildings or parts of buildings, cellars, and basements, wherein labor is employed and which are used for the mixing and other preparation of all ingredients

entering into the manufacture, as well as the manufacture and handling, of all bakery products intended for sale.

B. The word "products," as used in this act, shall mean and include macaroni, bread, cakes, crackers, biscuits, pies, crullers, rolls, pretzels, and all other things usually manufactured in a bakery and intended for human consumption, as well as all ingredients entering into their manufacture.

C. The word "person," as used in this act, shall mean and include all persons, firms, partnerships, associations, and corporations. It shall also include the masculine, feminine, and neuter gender, as well as the singular and plural.

D. The word "department," as used in this act, shall mean the Department of Labor and Industry of the Commonwealth of Pennsylvania. (Id. § 13631.)

46e. Drainage and Plumbing.—All bakeries shall be drained and plumbed in the manner as is now or may hereafter be prescribed by law and the rules and regulations promulgated by the proper authority in pursuance of law. (Id. § 13632.)

46f. Application of Rules and Regulations Governing Houses.—All buildings or rooms occupied as a biscuit, bread, pretzel, pie or cake bakery, or macaroni establishment, shall be drained and plumbed in the manner directed by the rules and regulations governing the house drainage and plumbing, as prescribed by law, and all rooms used for the purpose aforesaid shall be ventilated by means of airshafts, windows or ventilating pipes, so as to insure a free circulation of fresh air. (Id. § 13633.)

46g. Lighting and Ventilation.—All bakeries shall be well lighted, and shall be so constructed that at least two hundred cubic feet of fresh air per minute will be admitted to that part of the bakery where one and not more than three persons are employed in the manufacture of such products. If more than three persons are so employed therein, then for each such person over three, spending three hours or more at a time therein, the quantity of air admitted shall be increased by at least sixty-six cubic feet. If, to produce the ventilation herein required it becomes necessary, in any particular instance, to install mechanical means for that purpose, such means shall be of a permanent, practical and substantial nature, capable of producing the ventilation herein required and shall be approved by the department: Provided, however, that where, in bakeries, established at the time of the passage of this act, compliance with the provisions of this section requires alterations or additions, or where such mechanical means become necessary, their completion or installation shall not be required prior to the first day of July, one thousand nine hundred and twenty, or within such additional period of time as the department may specify. (Id. § 13634.)

46h. Floors and Walls.—All bakeries shall have tight floors, constructed of cement, wood, or tiles laid in cement, free from crevices or open joints. The inside walls, except partitions, shall be plastered or otherwise hard and smooth surfaced. All inside walls, including partitions and overhead space, shall be kept free from crevices and open joints. and shall be painted or lime washed. (Id. § 13635.)

46i. Equipment.—The furniture, utensils, containers, troughs, machinery, implements, tools, and all other equipment shall be kept clean and sanitary, and shall be so constructed or kept as to permit of the entire surface of the floor and all shelves and other structures to be readily flushed or otherwise cleaned at least once each week. (Id. § 13636.)

46j. Shelves, Hangers and Brackets.—No shelves, hangers, brackets, or other thing or things, consuming room on the floor, walls, or the overhead space, and not actually used in the manufacture of such products, shall be permitted in such bakery. (Id. § 13637.)

46k. Receptacles, Etc., to be Covered.—All receptacles, containers, tools, utensils, implements, and materials of all kinds shall, where practicable, be kept suitably covered when not actually in use. (Id. § 13638.)

46l. Doors and Windows.—All doors, windows, and other openings, leading into or out of bakeries, shall be screened, and shall be so constructed and maintained as to admit the most light and air reasonably possible under the circumstances. (Id. § 13639.)

46m. Who May Prepare Products; Animals Excluded.—The preparation or manufacture of such products in such bakery for any purpose by persons other than those regularly engaged or employed therein is hereby prohibited. No domestic pet or other animals shall be permitted in any bakery. (Id. § 13640.)

46n. Toilet Facilities; Living and Sleeping Rooms.—Reasonably adequate toilet and washing facilities shall be provided in the building wherein a bakery is located. The use of washing facilities shall be strictly observed by all persons employed or permitted to work in bakeries, before beginning and during work, as well as after every use of the toilet. Such facilities, and all rooms used for living or sleeping purposes by persons employed therein, shall be kept in a clean and

sanitary condition, and all living and sleeping rooms shall be separate from the portion of the building used as a bakery. (Id. § 13641.)

46o. Sanitary Regulations.—All persons, firms and corporations engaged in the manufacture or baking of bread, cakes, crackers, pastry, pretzels or macaroni, for public sale, shall keep their room or rooms for baking, mixing, storing, or sale of flour or other grain products separate and apart from any sleeping-room, Water-closet, urinal, defective drain or sewer pipe, and shall not permit the harboring of any domestic animal therein. The floors of all baking, mixing, storing and sales-rooms, shall be kept clean and tightly joined and free from crevices, and the walls and ceilings shall be painted, kalsomined or whitewashed as often as twice in each year, and oftener if, in the opinion of the Chief Factory Inspector or his deputy, the safety of the employees or the public shall require. (Id. § 13642.)

46p. Bakery Permit.—When the foregoing provisions of section 17 [13642] are complied with, the Chief Factory Inspector or his deputy shall issue to the owner or person in charge of such bake shop a permit, stating that the same is in a clean and sanitary condition; which permit shall be posted and kept posted in the office or salesroom of the bake shop, aforesaid; but when any of the foregoing provisions of section 17 [13642] are not being complied with in any bake shop, the Chief Factory Inspector or his deputy shall issue to the person in charge, or his representative, a written order to comply with the law aforesaid, within ten days; or he may order the closing of any such bake shop until the order shall have been complied with, should the safety of the employees or the public, in his opinion, so require. (Id. § 13643.)

46q. Closets, Ash Pits, Etc.—Every such bakery shall be provided with a wash-room and water-closet, or closets, apart from the bakeroom or rooms, where the manufacture of such food products is conducted, and no water-closet, earth-closet, privy, or ashpit, shall be within or communicate directly with the bakeroom of any bakery. (Id. § 13644.)

46r. Clothing of Employees.—Every person while engaged in the course of the manufacture of such products shall wear special suitable outer clothing of a readily washable and closely woven material, which shall be thoroughly boiled and cleansed at least once each week. No clothes or other personal apparel shall be kept in such bakery. Every employer shall provide suitable clothes closets in the premises, separate from that portion used as a bakery. (Id. § 13645.)

46s. Impure Water.—All water used in the manufacture of such products and for cleaning purposes shall be pure and wholesome, and no water not pure and wholesome shall be used. (Id. § 13646.)

46t. Transportation, Storage and Handling.—The wagons and other means of conveyance, the boxes, baskets and other receptacles in which such products are contained, transported, received, or stored, shall at all times be kept clean and wholesome. They shall be well covered, ventilated, screened, or otherwise protected from flies, vermin, and other means of contamination. No person, offering such products for sale, shall permit the same to be handled or touched by persons seeking to purchase, except to deliver same to such purchaser. Bakery products shall not at any time be wrapped in anything but clean unused paper. (Id. § 13647.)

46u. Care of Manufactured Meal Products.—The manufactured flour and meal food products shall be kept in perfectly dry and airy rooms, so arranged that the flour shelves, and all other places for storing the same, can be easily and perfectly cleaned. (Id. § 13648.)

46v. Use of Cellars and Basements.—Hereafter no certificate shall be issued to permit the use of a cellar or basement for the manufacture of such products which had not been used as such prior to the passage of this act, or wherein the operation of a bakery has been discontinued for the six months or more next preceding the passage of this act, or wherein hereafter the operation af a bakery shall have been discontinued for a period of six consecutive months or more, unless, in either case, the same shall be at least nine (9) feet in height, and in all other respects comply with the provisions of this act. Where the operation of a bakery in a cellar or a basement shall have been undertaken or resumed prior to the passage of this act, and without the approval of the department, either as a new bakery or after having been discontinued as a bakery for a period of six months or more, such bakery shall nevertheless come within the prohibition of this section. (Id. § 13649.)

46w. Diseased Employees; Health Certificate.—No person who is afflicted with any communicable disease or skin affection shall be employed or permitted to work in such bakery anywhere in the process of the manufacture of such products. Every person so employed or permitted to work shall obtain a certificate from a duly licensed physician, certifying that such person is free from any communicable disease or skin affection, and no person shall be employed or permitted to work as aforesaid in such bakery without having first obtained such a certificate. Said

certificate shall be kept on file in the premises at all times while the person to whom the certificate refers is employed or permitted to work therein. The certificate shall be valid for a period of six months, and may be revoked at any time prior thereto if the condition of such person warrants it. (Id. § 13650.)

46x. Cleanliness Required; Duty of Board of Health.—No employer shall, knowingly, require, permit or suffer any person to work in his bake shop who is affected with consumption of the lungs, or with scrofulous diseases, or with any venereal diseases, or with any communicable skin affection; and every employer is hereby required to maintain himself and his employees in a clean condition while engaged in the manufacture, handling or sale of such food products, and it is hereby made the duty of the board of health to enforce the provisions of this section. (Id. § 13651.)

46y. Enforcement of Act.—The Department of Labor and Industry, acting through its duly constituted agency and proper agents, shall be charged with the enforcement of the provisions of this act. It shall have exclusive power to institute proceedings to punish violations hereof, except as to sections one [13632], eleven [13646], and fourteen [13650] of this act, the provisions of which may be enforced and proceedings for the violation of which may be instituted by the proper State or local authorities. All orders of the department must be complied with within ten days after receipt of written notice thereof or within such additional period of time as the department may specify. (Id. § 13652.)

46z. Rules and Regulations; Notice to Bakeries.—The department shall, from time to time as may become necessary, formulate reasonable rules and regulations for compliance with, and for the enforcement of, the provisions of this act, and shall notify the proprietor of every known bakery in the State of Pennsylvania by mailing a copy thereof to the address where such bakery is located. (Id. § 13653.)

46aa. Certificate of Permission to Operate Bakery.—The department shall issue appropriate certificates permitting the operation of such bakeries as shall comply with the provisions of this act, and it shall be lawful to operate such bakery accordingly until such certificate is duly suspended or revoked: Provided, however, that in bakeries coming within the provisions of section two [13634] hereof, of, failure to comply with the provisions of said section two [13634] during the period or periods therein provided for shall not prevent the issuance of such certificate nor cause the same to be suspended or revoked. No bakery not now established shall be operated without such certificate having been first obtained, and every bakery established at the time of the passage of this act shall obtain such certificate within thirty days after the passage of this act or within such additional period of time as the department may specify. No bakery shall be operated while the certificate issued for the same is suspended or after it shall have been revoked as hereinafter provided. Such certificate shall be effective only in the premises to which it refers, and shall be conspicuously displayed therein. Whenever a bakery or the business of baking conducted therein changes ownership, the new owner shall within ten days thereafter notify the department of that fact, giving his correct name or title. (Id. § 13654.)

46bb. Right of Entry for Inspection.—The agents appointed by the department to supervise the operations of bakeries for the purposes of this act shall, at all reasonable times, have free access to all those parts of every building used for baking purposes, including sleeping and other accommodations supplied for the use of the persons employed therein, and shall not be hindered or interfered with in the reasonable performance of their duties. (Id. § 13655.)

46cc. Duty of Owner, Agent or Lessee; Notice.—The owner, agent or lessee of any property affected by the provisions of section three [13635, 13636, 13640] and five [13644] of this act, shall make the alterations or additions necessary, within such time as said alterations can be made with proper diligence upon the part of such proprietors, and notice to the last known address of such owner, agent or lessee, shall be deemed sufficient for the purpose of this act. (Id. § 13656.)

46dd. Copy of Act to be Posted.—A copy of this act shall be conspicuously posted and kept posted in each workroom of every bread, cake, or pie bakery, or confectionery establishment, in this State. (Id. § 13657.)

46ee. Penalties; Refusal, Suspension or Revocations of Certificate.—Any person violating any of the provisions of this act shall be guilty of a misdemeanor, and, upon conviction, shall for the first offense be fined ten dollars and costs. Upon conviction for a second like offense, such person shall be fined twenty-five dollars and costs. In addition the department may suspend the certificate from the bakery where the violation occurred for such period as the department may decide, not to exceed thirty days. Upon conviction for a third like offense, such person shall be fined fifty dollars. In addition the department may suspend the certificate for the bakery where the violation occurred for such period as it may decide or may revoke it. Before any application for a certificate may be refused, or before any certificate

hereinbefore provided for may be suspended or revoked by the department, the applicant, accused, or person affected shall be given a hearing conducted by the commissioner of the department or his deputy, to be held, upon not less than ten days written notice, at a place to be designated by the department, within the county wherein the place of business applied for of the accused or the place of employment of the person affected is located. The notice shall state the reasons for the contemplated refusal, or the nature, time, and place of the offense charged, or the nature of the disqualification alleged, as well as the time and place of the hearing. The hearing shall be conducted in accordance with such rules and regulations as the department may, from time to time, prescribe, and a copy of which shall accompany such notice. (Id. § 13659.)

46ff. Violation of Act a Misdemeanor; Penalty.—Any person who violates any of the provisions of this act, or refuses to comply with any requirements, as provided herein, of the factory inspector or his deputy, who are hereby charged with the enforcement of this act, excepting section seven [13651], shall be guilty of a misdemeanor, and on conviction before any justice of the peace, magistrate, alderman, mayor or burgess, shall be punished by a fine of not less than twenty nor more than fifty ($50) dollars, for the first offense; and not less than fifty ($50) nor more than one hundred ($100) dollars, for a second offense, or imprisonment for not more than ten (10) days; and for a third offense, by a fine of not less than two hundred and fifty ($250) dollars and [not] more than thirty (30) days' imprisonment. (Id. § 13660.)

NOTE: See also Nos. 29 and 646.

Beverages.

47. Sale, Etc., of Adulterated Drinks.—It shall be unlawful for any person, firm, or corporate body, by himself, herself, itself or themselves, or by his, her, its or their agents, servants, or employees, to manufacture, sell, offer for sale, expose for sale, or have in possession with intent to sell, any article of non-alcoholic drink which is adulterated or misbranded, within the meaning of this act. (Pa. St. 1920, § 106.)

48. "Non-alcoholic Drink" Defined.—The term "non-alcoholic drink," as used herein, shall include carbonated beverages of all flavors, sarsaparilla, ginger ale, soda water of all flavors, lemonade, orangeade, root beer, grape juice, and all other non-intoxicating drinks. (Id. § 107.)

49. What Deemed Adulterations.—A non-alcoholic drink shall be deemed to be adulterated, within the meaning of this act, if it contains any added boric acid or borates, salicylic acid or salicylates, formaldehyde, sulphurous acid or sulphites, hydrofluoric acid or flourides, fluoborates, fluosilicates, or other fluorine compounds, dulcin, glucin, saccharin, betanapthol, hydronapthol, abrastol, asaprol, oxides of nitrogen, nitrous acid or nitrates, compounds of copper, pyroligenous acid or other added substance deleterious to health. (Id. § 108.)

50. What Deemed Misbranding.—For the purpose of this act a non-alcoholic drink shall be deemed to be misbranded:

First. If it be an imitation of, or offered for sale under the distinctive name of, another article, or if it is colored or flavored in imitation of the genuine color or flavor of another substance.

Second. If it be labeled or capped or branded or tagged so as to deceive or mislead the purchaser.

Third. If the bottle or receptacle containing it, or its label or cap, shall bear any statement, design, or device, regarding the ingredients or the substances contained therein, which statement, design, or device shall be false or misleading in any particular; Provided that any non-alcoholic drink which does not contain any added poisonous or deleterious ingredients shall not be deemed to be adulterated or misbranded under the following conditions:

A. In the case of mixtures or compounds which may be now, or from time to time hereafter, known as non-alcoholic beverages under their own distinctive names, and not an imitation of, or offered for sale under the name of, another article.

B. In the case of non-alcoholic beverages which are labeled, capped, branded, or tagged so as to plainly indicate that they are compounds, imitations, artificial, or blends, and the word "compound," "imitation," "artificial," or "blend," as the case may be, is plainly stated on the container in which it is offered for sale: Provided, that the term "blend," as used herein, shall be construed to mean a mixture of like substances, not excluding harmless coloring or flavoring ingredients not prohibited by this act and used for the purpose of coloring or flavoring only. (Id. § 109.)

51. Punishment for Violations of Act; Proof of Conviction; Partial Invalidity of Act.—(a) Any person who shall violate any of the provisions of the act to which this act is an amendment or any amendment of said shall be guilty of a misdemeanor, and, upon conviction thereof, shall be sentenced to pay a fine of not less than fifty dollars ($50) nor more than one hundred dollars ($100). Upon conviction for any subsequent violation of this act, such person shall be punished by a fine of not less than one hundred dollars ($100) nor more than two hundred dollars ($200), and by imprisonment in the county jail of not less than ninety days nor more than six months.

(b) For the purpose of this act, any person against whom a charge is made under this act, who admits his guilt by the payment of a fine before the committing magistrate or in court without indictment, shall be deemed to have been convicted; and such conviction, and any other prior convictions in any court under an indictment, may be shown by testimony in the case or before court when sentence is to be imposed, without a second or other subsequent conviction having been pleaded in the information or the indictment.

(c) The provisions of this act are severable, and in the event of any provision hereof being declared unconstitutional, it is hereby declared as the legislative intent that such unconstitutional provision shall not affect the other provisions of this act. (Pa. St. Supp. 1924, § 110.)

52. Enforcement of Act.—The Dairy and Food Commissioner* shall be charged with the enforcement of the provisions of this act. (Pa. St. 1920, § 111.)

53. Disposition of Fines.—All fines and penalties imposed and recovered for any violation of any of the provisions of this act shall be paid to the Dairy and Food Commissioner* or his agent, and, when so collected and paid, shall thereafter be, by the Dairy and Food Commissioner, paid into the State treasury, for the use of the Commonwealth. (Id. § 112.)

54. Unlawful Manufacture of—It shall be unlawful for any person to manufacture non-alcoholic drinks in an unclean, unsanitary establishment or under unclean, unsanitary conditions, or to use unsanitary ingredients, bottles, receptacles or utensils. (Pa. St. Supp. 1924, § 16198a-1.)

55. Bottling Establishments; Sanitary Requirements.—Every bottling establishment bottling non-alcoholic drinks, subject to the provisions of this act, shall be maintained and operated with strict regard for the purity and wholesomeness of the non-alcoholic drinks therein produced or distributed and necessary in the public interest and consistent with the character of the establishment bottling non-alcoholic drinks, pursuant to the following general requirements, namely:

(a) The entire establishment bottling non-alcoholic drinks, and its immediate appertaining premises, including the fixtures and furnishings, the machinery, apparatus, implements, utensils, and receptacles, used in the production, keeping, storing, handling, or distributing of the non-alcoholic drinks, or of the materials used in the non-alcoholic drinks, shall be maintained and operated in a clean, sanitary manner.

(b) The non-alcoholic drinks and the materials used in non-alcoholic drinks shall be clean, wholesome, and protected from any foreign and injurious contamination which may render said non-alcoholic drink unfit for human consumption.

(c) The clothing, habits, and conduct of the employees shall be conducive to and promote cleanliness and sanitation.

(d) There shall be proper, suitable, and adequate toilets and lavatories, constructed, maintained, and operated in a clean and sanitary manner. (Id. § 16198a-2.)

56. Enforcement of Act.—The Director of the Bureau of Foods† shall be charged with the duty of enforcing the provisions of this act. (Id. § 16198a-3.)

57. Inspection of Establishments.—The Director of the Bureau of Foods, through his duly authorized officers, inspectors, agents, or other assistants, shall be permitted, at all reasonable times, to inspect any establishment, or part thereof, subject to the provisions of this act, together with its operation. Any person refusing or interfering with such inspection shall, upon conviction, be punished as provided in section eight [16198a-8]. (Id. § 16198a-4.)

58. Abatement of Violations of Act.—If, as a result of an inspection provided for, it shall appear that any establishment is being maintained or operated in violation of any of the provisions of this act, the Director of the Bureau of Foods shall cause written notice thereof to be served upon the person violating said provisions, together with an order commanding an abatement of such violation and a compliance with this act within a reasonable period of time stated in the order. If the instructions set out in the notice are not complied with within the time herein stated,

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*Now Department of Agriculture. See No. 30 et seq. This law is to be corrected accordingly.

†See No. 30 et seq.

then the director of the Bureau of Foods shall at once cause proceedings to be instituted. (Id. § 16198a-5.)

59. Rules and Regulations for Enforcement of Act.—The Director of the Bureau of Foods shall make uniform and necessary rules and regulations for carrying out the provisions of this act. (Id. § 16198a-6.)

60. Definitions.—The term "non-alcoholic drinks," as used in this act, shall include all non-alcoholic drinks, whether simple, mixed, or compound, and all substances and ingredients used in the preparation thereof. The term "establishment," as used herein, shall include all buildings, rooms, basements, cellars, lofts, or other premises, or parts thereof, used, occupied, or maintained for the purpose of manufacturing, preparing, bottling, keeping, storing, handling, or distributing, in any manner, bottled non-alcoholic drinks for sale. The term "person," as used herein, shall include a partnership, association, company, or corporation, as well as a natural person. (Id. § 16198a-7.)

61. Violations of Act; Penalty.—Any person who shall violate any of the provisions of this act shall be guilty of a misdemeanor, and, upon conviction thereof, shall be sentenced to pay a fine of not less than twenty-five ($25) dollars nor more than one hundred ($100) dollars, or to undergo an imprisonment of not less than thirty (30) days nor more than sixty (60) days, or both or either, at the discretion of the court. (Id. § 16198a-8.)

62. Disposition of Fines and Penalties.—All fines and penalties imposed and recovered for the violation of any of the provisions of this act shall be paid to the Director of the Bureau of Foods or his agent, and, when so collected and paid, shall thereafter be, by the Director of the Bureau of Foods, paid into the State treasury for the use of the Commonwealth. (Id. § 16198a-9.)

63. Definitions.—The term "carbonated beverages" or "still drinks," used in this act, shall include all carbonated beverages or still drinks, fruit juices, and mineral waters when ready for use as a beverage, whether still or carbonated, and whether simple, mixed, or compounded. The term shall not include natural apple cider, unfermented grape juice, cereal beverages, or carbonated beverages or still drinks made in imitation of beer, bitter drinks, or other similar beverages.

The word "person" shall include individuals, associations, copartnerships, and corporations.

The singular shall include the plural; the masculine shall include the feminine and neuter. (L. 1925, Act No. 399, § 1, as amended L. 1927, Act No. 430, § 1.)

64. Unlawful to Sell or Give Away Unless Registered.—It is unlawful for any person to sell, offer, or expose for sale or exchange or give away any carbonated beverage or still drink, except such as is manufactured, prepared, mixed, or compounded by himself, unless the same has been registered with the Department of Agriculture. (L. 1925, Act No. 399, § 2.)

65. Registration—Application—Contents of Application—Fee—Certificate of Registration—Term and Renewal—May be Revoked.—Any person, whether a resident or non-resident of this Commonwealth, manufacturing or bottling any carbonated beverages or still drinks shall register such beverages with the Department of Agriculture by filing an application for such purpose on a form to be prescribed by the Department of Agriculture. Such application shall state (a) the name and address of the applicant, (b) the location of his manufacturing or bottling plant, (c) the name of each beverage to be registered, and (d) such other information as may be required by the Department of Agriculture. The application shall be accompanied by a fee of fifty dollars. The Department of Agriculture shall issue to each applicant a certificate of registration for all carbonated beverages or still drinks manufactured or bottled by him. Such registration shall expire one year from the issuance thereof, unless renewed annually by the payment of a fee of fifty dollars.

The Department of Agriculture may revoke any registration whenever it is determined by it that any of the provisions of this act or of any other act relating to carbonated beverages or still drinks have been violated. (Id. § 3.)

66. Unlawful Marking—Unlawful Use of Containers, Labels or Caps—Penalty.—It is unlawful for any person to label, mark, or cap any carbonated beverage or still drink which has not been registered under this act, so as in any way to indicate that such beverage has been so registered.

It is unlawful for any person other than a person holding a certificate of registration to use for the purpose of holding any carbonated beverages or still drinks any container, label, or cap bearing any registration mark. Any person violating any of the provisions of this section shall be guilty of a misdemeanor, and upon conviction shall be sentenced to pay a fine not exceeding one thousand dollars. (Id. § 4.)

67. Composition.—No carbonated beverages or still drinks shall be made except from syrup containing pure cane or beet sugar and pure flavoring materials with or without added fruit acids and with or without added color. Such carbonated

beverages or still drinks shall contain not less than eight per centum sugar by weight. The provisions of this section with respect to the amount of sugar required shall not apply to ginger ale or to non-alcoholic fruit juices. This section does not prohibit the use of caramel colors or any other harmless ingredient, and nothing but harmless, certified, approved, artificial, coal tar dye products and colors shall be used.

All carbonated beverages or still drinks shall be deemed to be adulterated which are not in compliance with the provisions of this section, or which contain any of the ingredients prohibited by section three of the act,* approved the eleventh day of March, one thousand nine hundred and nine (Pamphlet Laws, fifteen), entitled "An act relating to non-alcoholic drinks; defining the same, and prohibiting the manufacture, sale, offering for sale, exposing for sale, or having in possession with intent to sell, of any adulterated or misbranded non-alcoholic drinks; and providing penalties for the violation thereof; and providing for the enforcement thereof;" or which contain hydrogen peroxide, or peroxides, or perborates, or benzoate of soda, or benzoates, or any other substance deleterious to health: Provided, that carbonated beverages and still drinks may contain not in excess of one-tenth (1-10) of one per centum of benzoate of soda or benzoates, provided the bottles or other containers are labeled, or, in the case of bulk drinks, suitable display cards are printed to show that the said drinks contain not in excess of one-tenth (1-10) of one per centum of benzoate of soda or benzoates.

The Secretary of Agriculture is hereby authorized to adopt and issue rules and regulations for the proper enforcement of this act and for the protection of the public health. (Id. § 5, as amended L. 1927, Act No. 430, § 2.)

68. Marking When Sold from Bulk.—Whenever artificial colors or flavors are used in the manufacture of carbonated beverages or still drinks the bottle or other container shall be distinctly marked, labeled, or capped "artificially colored," "artificially flavored," or "artificially colored and flavored," as the case may be. All cider, fruit-ades, fruit juices, or other similar beverages made in imitation of the natural product, shall be distinctly marked, labeled, or capped with the word "imitation," followed by the name of the natural product imitated.

All carbonated beverages or still drinks containing artificial flavor or artificial color of any character and sold from bulk shall be so labeled or marked on the container from which it is sold. (L. 1925, Act No. 399, § 6.)

69. Display Cards.—Display cards printed and marked with the information required by section six of this act shall be prominently displayed on all stands, booths, or other places where any carbonated beverages or still drinks are sold from bulk. Such display cards shall be printed in letters not less than two inches long and three-fourths of an inch in width and shall bear the inscription: "artificially colored," "artificially flavored," "artificially colored and flavored," or "imitation," as the case may be. (Id. § 7, as amended L. 1927, Act No. 430, § 3.)

70. Bottle to Show True Name.—Every bottle filled with carbonated beverages or still drinks shall be distinctly marked, labeled, or capped so as to show the true name of the carbonated beverages or still drinks contained therein. (L. 1925, Act No. 399, § 8.)

71. Cleansing of Bottles.—All bottles used for bottling carbonated beverages or still drinks, before being filled, shall be cleansed by soaking in a hot caustic solution of not less than one hundred and ten degrees Fahrenheit and that shall contain not less than three per centum caustic or alkali, expressed in terms of sodium hydrate, for a period of not less than five minutes, then thoroughly rinsed in pure water. The cleansing solution shall be changed frequently, so as to prevent its becoming foul and unsanitary. (Id. § 9.)

72. Certain Bottles Not to be Used.—No bottles shall be used in the manufacturing or bottling of carbonated beverages or still drinks in which the metal or rubber parts of the stopper come in contact with the beverage or drink. The provisions of this section shall not apply to carbonated water put in syphons. (Id. § 10.)

73. Containers Not to be Used for Any Other Purpose.—It is unlawful for any person to use any containers used in the manufacture, bottling, or distribution of carbonated beverages or still drinks for any other purpose. (Id. § 11.)

74. Served from Closed Containers or in Individual Bottles.—All carbonated beverages or still drinks shall be drawn from closed containers or served from individual bottles. (Id. § 12.)

75. Carbonated Beverages and Still Drinks Sold at Fairs, Etc.—All carbonated beverages or still drinks manufactured, sold, or offered for sale at or tributary to fair grounds, carnivals, circus grounds, parks, resorts, and all other places within the State, shall be made from pure cane or beet sugar and in compliance with the provisions of the non-alcoholic drink laws of Pennsylvania. (Id. § 13.)

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*See No. 49.

76. Coolers and Containers to Have Display Cards.—All coolers and other containers of any description whatsoever from which carbonated beverages or still drinks are sold or dispensed at or adjacent to fair grounds, carnivals, circus grounds, parks, resorts, and all other places within the State, shall have proper display cards, as provided by section seven of this act. (Id. § 14.)

77. Improper Cooling.—No carbonated beverage or still drink shall be sold or offered for sale from bulk which has been kept cool by the addition of ice. (Id. § 15.)

78. Display of Press.—It is unlawful for any person to display any press at any place where carbonated beverages or still drinks are being sold or dispensed unless such press is actually used in the production of the carbonated beverages or still drinks being sold or dispensed from bulk at such place and time. (Id. § 16.)

79. Vessels for Mixing or Compounding.—No carbonated beverages or still drinks shall be mixed or compounded in tin, galvanized iron, or wood pails, tubs, or barrels. (Id. § 17.)

80. Enforcement—Appointment of Agents.—The Department of Agriculture shall have charge of the enforcement of this act. The Secretary of Agriculture shall appoint four special agents with experience to enforce the provisions of this act and such additional agents as may be necessary to keep supervision over the non-alcoholic drinks industry, as provided for by this act, and shall fix the compensation of such special agents and shall allow them necessary traveling expenses. (Id. § 18.)

81. Disposition of Fines and Fees.—All licenses, all registration fees, and fines paid or recovered under the provisions of this act shall be paid by the justice of the peace or court official to the Secretary of Agriculture, and shall be paid by him into the State treasury. Such moneys shall constitute a special fund and are hereby permanently appropriated to the Department of Agriculture for the purpose of enforcing the provisions of this act, and may be drawn out upon warrants signed by the Secretary of Agriculture, approved by the Auditor-General.

All moneys remaining in such fund on the first day of June of each year shall be paid over into the general fund of the State treasury. (Id. § 19.)

82. Violations—Penalty.—Any person violating any of the provisions of this act, excepting section four thereof, or interfering with, or refusing to give access to, the Secretary of Agriculture or any of his agents or assistants, shall be guilty of a misdemeanor and upon conviction thereof shall be sentenced to pay a fine of not less than fifty ($50) dollars nor more than one hundred ($100) dollars, or to undergo an imprisonment of not less than thirty (30) days nor more than ninety (90) days, or both. (Id. § 20.)

83. Application of Act.—The provisions of this act with respect to registration shall not apply to drinks sold or dispensed from soda fountains nor to social, fraternal, charitable, educational, religious, or beneficial organizations. This act shall take effect sixty (60) days after its approval. (Id. § 21, as amended L. 1927, Act No. 430, § 4.)

84. Use of Deleterious Drugs in Manufacture of Liquors, a Misdemeaner.—It shall be unlawful for any person or persons to make use of any active poison, or other deleterious drugs, in any quantity or quantities, in the manufacture or preparation, by process of rectifying or otherwise, of any intoxicating, malt or alcoholic liquors, or for any person or persons to knowingly sell such poisoned or drugged liquors in any quantity or quantities; and any person or persons so offending shall be deemed guilty of a misdemeanor. (Pa. St. 1920, § 14017.)

84a. Barrels to be Branded.—It shall be the duty of any person or persons engaged in the manufacture and sale of intoxicating, malt or alcoholic liquors, or in rectifying, or preparing the same in any way, to brand on each barrel, cask or other vessel containing the same, the name or names of the person or persons manufacturing, rectifying or preparing the same, and also these words, "containing no deleterious drugs or added poison;" and shall also certify the same fact or facts to the purchaser, over his, her or their own proper signature. (Id. § 14018.)

84b. Possession of Drugged Liquors Prima Facie Evidence of Violation of Act.—If any barrel, cask, or other vessel, containing any such drugged or poisoned liquor, shall be found in possession of any person or persons, designated in sections one and two [14017, 14018], it shall be deemed prima facie evidence of a violation of the provisions of this act. (Id. § 14019.)

84c. Articles Suspected May be Analyzed by Direction of Court.—Any suspected article or specimen of intoxicating, malt or alcoholic liquor, shall be subjected to analysis, by some competent person to perform the same, under the direction of the court, before which the case is tried; and such analysis, duly certified under oath, shall be deemed legal evidence in any court in this State: Provided, that upon any preliminary examination before any justice of the peace, mayor or other magistrate, or

competent authority, for the purpose of binding over, such officer may order the inspection, aforesaid, to be made, and make such order as may be necessary to preserve the evidence of the offense until the trial of the offender. (Id. § 14020.)

84d. Penalty for Violation of Act.—Any person, offending against any of the provisions of this act, shall be deemed guilty of a misdemeanor and, on conviction thereof, shall be sentenced to pay a fine, not exceeding five hundred dollars, and to undergo an imprisonment, not exceeding twelve months, or both or either, in the discretion of the court. (Id. § 14021.)

84e. Injurious and Impure Materials Prohibited in Manufacture of Liquors; Punishment.—The use of any such poisonous or deleterious drugs or chemicals, or impure or injurious materials, or of those prejudicial to health, as are prohibited by this act, is hereby declared to be a misdemeanor, and any person convicted of so using the same shall be punished by a fine of one thousand dollars, and by an imprisonment of not more than one year. (Id. § 14022.)

84f. Sale of Ale and Beer by Measure.—From and after the publication of this act, all persons which now are, or which at any time or times hereafter shall be licensed to keep any tavern, inn, ale house or victualling house, within this province, shall sell beer and ale by wine measure to all persons as drink it in their houses, and by beer measure to all such persons as carry the same out of their houses, under the penalty of ten shillings to the use of the poor for every county where the offense is committed, any law, custom or usage to the contrary in any wise notwithstanding. (Id. § 11914.)

NOTE: See also Nos. 29, 34, 278 et seq., 371 et seq., 500 et seq., 559 et seq., 565 et seq., 573 et seq., 583-584, 584a et seq., 586a, 617 and 637.

Bread.

See Nos. 29, 46a et seq., and 646.

Chicory.

See No. 85 et seq.

Cider.

See Nos. 359 et seq., 505 and 513.

Coffee.

85. Sale of Chicory Mixed With Coffee; Marking Packages; Placards.—It is lawful to sell chicory mixed with coffee if it conforms to the following conditions:

1. The amount of chicory shall not exceed fifteen per centum of the mixture of coffee and chicory.

2. The package containing the mixture shall bear the words in letters of the same style and size, but not less than one-half (½) inch high, "coffee and chicory," and may contain also the name and address of the manufacturer and distributor, a non-descriptive brand-name, and a statement of the net weight of the package contents, but no other printed matter.

3. The mixture shall contain no cereal in any form.

4. If sold in the form of a beverage in hotels or restaurants, there shall be displayed in a prominent place, in characters easily legible to the patrons, a placard bearing the words, "the coffee sold here is mixed with chicory." (Pa. St. 1920, § 80.)

86. Punishment for Violations of Act.—Any person, firm, or corporate body who shall violate any of the provisions of this act shall be guilty of a misdemeanor, and, upon conviction thereof, shall be sentenced to pay a fine of not more than one hundred ($100) dollars. (Id. § 81.)

87. Enforcement of Act.—The Dairy and Food Commisssioner* shall be charged with the enforcement of the provisions of this act. (Id. § 82.)

88. Disposition of Fines.—All fines and penalties imposed and recovered for the violation of any of the provisions of this act shall be paid to the Dairy and Food Commissioner,* or his agent, and when so collected and paid shall thereafter be, by the Dairy and Food Commissioner, paid into the State treasury, for the use of the Commonwealth. (Id. § 83.)

*Now Department of Agriculture. See No. 30 et seq.

Cold Storage.

89. Definitions.—For the purpose of this act, "cold storage" shall mean the storage or keeping of articles of food at or below a temperature of forty degrees Fahrenheit in a cold storage warehouse.

"Cold-storage warehouse" shall mean any place artificially or mechanically cooled to or below a temperature of forty degrees Fahrenheit in which articles of food are placed and held for thirty days or more.

"Articles of food" shall mean fresh meat, and fresh meat products, and all fresh fish, game, poultry, eggs and butter. (Pa. St. 1920, § 10976.)

90. Warehouse License; Application; Investigation; Fee.—No person, firm, or corporation shall maintain or operate a cold-storage warehouse without a license so to do issued by the Director of the Bureau of Foods.* Any person, firm, or corporation, desiring such a license, shall make written application to the Director of the Bureau of Foods for that purpose, stating the location of the warehouse.

The Director of the Bureau of Foods thereupon shall cause an examination to be made of said warehouse, and, if it be found by him to be in a proper sanitary condition and otherwise properly equipped for its intended use, he shall issue a license authorizing the applicant to operate the same as a cold-storage warehouse during one year; the license shall be issued upon payment by the applicant of a license fee of fifty dollars ($50) to the Director of the Bureau of Foods, and shall thereafter be by the Director of the Bureau of Foods paid into the State treasury for the use of the Commonwealth. (Id. § 10977.)

91. Unsanitary Condition of Warehouse; Notice; Revocation of License.—In case any cold-storage warehouse, or any part thereof, shall at any time be deemed by the Director of the Bureau of Foods to be in an unsanitary condition, or not properly equipped for its intended use, he shall notify the licensee of such condition, and, upon the failure of the licensee to put such cold-storage warehouse in a sanitary condition or to properly equip the same for its intended use, within a time to be designated by the Director of the Bureau of Foods, he shall revoke such license. (Id. § 10978.)

92. Records and Reports by Licensees.—Every such licensee shall keep accurate records of the articles of food received in, and of the articles of food withdrawn from, his cold-storage warehouse, and the Director of the Bureau of Foods shall have free access to such records at any time.

It shall be the duty of such person, firm, or corporation, licensed to operate a cold-storage warehouse, to file in the office of the Director of the Bureau of Foods on or before the sixth day of January, April, July, and October, of each year, a report setting forth in itemized particulars the kinds and quantities of food products held in cold storage in such warehouse.

The report shall be made on printed forms prepared and supplied by the Director of the Bureau of Foods. (Id. § 10979.)

93. Inspection of Warehouses.—The Director of the Bureau of Foods shall inspect and supervise all cold-storage warehouses, and make such inspection of articles of food therein, as he may deem necessary to secure the proper enforcement of this act, and he shall have access to all cold-storage warehouses at all reasonable times.

The Director of the Bureau of Foods may appoint such persons as he deems qualified to make such inspections under this act. (Id. § 10980.)

94. Unwholesome or Diseased Food.—It shall be unlawful for any person, firm, or corporation to place in any cold-storage warehouse, to keep therein, or to sell, offer, or expose for sale, any diseased, tainted, or otherwise unwholesome food. (Id. § 10981.)

95. Marking Food with Date of Storage.—No person, firm, or corporation shall place, receive, or keep, in any cold storage warehouse in this State, articles of food, unless the same shall be plainly marked, stamped, or tagged, either upon the container in which they are packed or upon the article of food itself, with the month and year when placed therein; or, in the case of articles of food being stored in bulk, the month and year of original storage shall be marked upon the doors or walls of the rooms in which the same are stored; and when such articles are removed, such month and year shall be marked upon the container in which the same shall be removed; and no person, firm, or corporation shall remove or allow to be removed such articles of food from any cold-storage warehouse unless the same shall be plainly marked, stamped, or tagged, on the container in which it is enclosed or upon the articles of food itself, with the month and year of such removal; and such

*See No. 30 et seq.

marks, stamps, and tags shall be prima facie evidence of such receipt and removal of the dates thereof.

All articles of food in any cold-storage warehouse at the time this act goes into effect shall, before being removed therefrom, be plainly marked, stamped, or tagged with the month and year when this act goes into effect. (Id. § 10982.)

96. Period of Storage Permitted.—No person, firm, or corporation shall sell, offer, or expose for sale, any of the herein named foods which shall have been held for a longer period of time than herein specified in a cold-storage warehouse or warehouses, to-wit: Whole carcasses of beef, or any part thereof, twelve (12) months; whole carcasses of pork, or any parts thereof, twelve (12) months; whole carcasses of sheep, or any parts thereof, twelve (12) months; whole carcasses of lamb, or any parts thereof, twelve (12) months; whole carcasses of veal, or any parts thereof, twelve (12) months; poultry, twelve (12) months; game, twelve (12) months; eggs, twelve (12) months; butter, twelve (12) months; and fish, twelve (12) months. (Id. § 10983.)

97. Regulation of Sale of Cold Storage Goods.—It shall be unlawful to sell, or to offer for sale, any article of food which has been held for a period of thirty days or over in cold storage, either within or without the State, without notifying persons purchasing or intending to purchase the same that it has been so held, by the display of a placard plainly and conspicuously marked "Cold-Storage Goods" on the bulk, mass, or articles of food; and it shall be unlawful to represent or advertise as fresh any article of food which has been held in cold storage for a period of thirty days or over.

There shall also be displayed upon every open container containing such food, in a conspicuous position, a placard with the words "Cold-Storage Goods" printed thereon; and, when such food is sold from such container or otherwise at retail, before being delivered to the purchaser it shall be wrapped in wrappers plainly stamped on the outside thereof with the words "Cold-Storage Goods" printed or stamped thereon in letters one-fourth (¼) inch square. (Id. § 10984.)

98. Replacing Articles Withdrawn; Transfer to Another Warehouse.—It shall be unlawful to return to any cold-storage warehouse any article of food which has been once released from storage for the purpose of placing it on the market for sale, but nothing in this section shall be construed to prevent the transfer of goods from one cold-storage warehouse to another; Provided, that all prior markings, stampings, and taggings upon such articles shall remain thereon: And provided further, that such transfer is not made for the purpose of evading any provision of this act. (Id. § 10985.)

99. Rules and Regulations.—The Director of the Bureau of Foods may make the necessary rules and regulations to carry this act into effect.

Such rules and regulations shall be filed in the director's office, and shall not take effect until thirty days after such filing. (Id. § 10986.)

100. Punishment for Violations.—Any person, firm or corporation violating any provision of this act, shall be guilty of a misdemeanor, and shall, upon conviction, be punished for the first offense by a fine not exceeding two hundred dollars ($200); and for the second or any subsequent offense by a fine not exceeding three hundred dollars ($300), or by an imprisonment of not more than one year, or by both such fine and imprisonment, at the discretion of the court. (Id. § 10987.)

NOTE: See also Nos. 33, 34, 290 and 291.

Confectionery.

101. Adulteration of Candy and Confectionery.—If any person shall manufacture for sale, or sell or offer to sell any candy or confectionery, adulterated by the mixture of terra alba, barytes, talc, or other mineral substance, or by poisonous colors, or flavors, or other ingredients, deleterious or detrimental to health, knowing the same to be so adulterated, such person so offending shall be guilty of a misdemeanor, and upon conviction be sentenced to pay a fine not exceeding one hundred dollars nor less than fifty dollars, and the candy or confectionery, so adulterated, shall be forfeited and destroyed by the order of the court. (Pa. St. 1920, § 2549.)

102. Possession Prima Facie Evidence of Offer to Sell.—If any candy or confectionery, adulterated in violation of the first section [2549] of this act, shall be found in the possession of any manufacturer, merchant or dealer, it shall be deemed prima facie evidence that the same is offered for sale, and that the person having it in possession knew that the same was so adulterated. (Id. § 2550.)

103. No Action or Recovery for Adulterated Candy.—No action shall be maintained, or recovery had in any case, for the value of any candy or confectionery which may have been adulterated as specified in the first section [2549] of this act,

and it shall be competent for the defendant in every such case to prove that the candy or confectionery was so adulterated and proof thereof being so made shall amount to a good and legal defense to the whole of the plaintiff's claim therefor. (Id. § 2551.)

NOTE: See also Nos. 3, 46b and 387-388.

Dairy Products—Substitutes for Dairy Products.*

104. Powers of Commissioner and Assistants.—The said agent (Dairy and Food Commissioner*) of the State Board of Agriculture and such assistants, agents, experts chemists, detectives and counsel, as he shall duly authorize for the purpose, shall have full access, egress and ingress, to all places of business, factories, farms, buildings, carriages, cars, vessels and cans, used in the manufacture, transportation and sale of any dairy products, or of any adulteration or imitation thereof. They shall also have power and authority to open any package, can or vessel containing dairy products, or any adulteration or imitation thereof, which may be manufactured, sold or exposed for sale, in violation of any of the provisions of any act, now enacted or which may be hereafter enacted in relation to dairy products, or the adulteration or imitation thereof, and they shall also have power to take from such package, can or vessel, samples for analysis. (Pa. St. 1920, § 232.)

105. Appropriation of Penalties and Costs.—All penalties and costs received by the said State Board of Agriculture for violations of the said act of May 21, 1885, and of other acts now enacted or hereafter to be enacted, prohibiting or regulating the adulteration or imitation of butter, cheese or other dairy products, shall be appropriated by the said board to the payment only of the necessary expenses incurred by the said Dairy and Food Commissioner and his assistants and agents in the investigation, discovery and prosecution of violations of the said act. (Id. § 233.)

106. Payment of Expenses, Etc.—All charges, accounts and expenses of the said commissioner, and of all the assistants, agents, experts, chemists, detectives and counsel employed by him, shall be paid by the Treasurer of the State in the same manner as other accounts and expenses of the said State Board of Agriculture are now paid as provided by law. (Id. § 234.)

107. Annual Report of Commissioner.—The said commissioner shall make annual reports of his work and proceedings, and shall report in detail the number and names of the assistants, agents, experts, chemists, detectives and counsel employed by him, with their expenses and disbursements, the number of prosecutions, the number of convictions and the penalties recovered in each case, which report shall be presented to the said State Board of Agriculture at its annual meeting. (Id. § 235.)

108. Renovated Butter.—For the purposes of this act certain food products usually known as "boiled" or "process" butter, produced by taking original packing stock and other butter and melting the same so that the butter oil can be drawn off, mixed with milk or skimmed milk or other material, and by emulsion or other process, produce butter, and butter produced by any similar process, and commonly known as "boiled" or "process" butter; and which "boiled" or "process" butter for the purpose of this act shall be known and designated as "renovated butter." (Id. § 2514.)

109. Wholesale and Retail Dealers.—Wholesale dealers, within the meaning of this act, shall be all persons, firms or corporations who shall sell to dealers, and persons who shall buy to sell again, and all persons, firms and corporations who make sales in quantities of ten pounds and over at any time. An agent of a manufacturer located outside of the State, and taking orders within this State for such "renovated butter," to be delivered from the factory or from a storage house, or from one place of business to another within this State, shall be, within the meaning of this act, a wholesale dealer. And retail dealers shall be all persons, firms or corporations who sell in quantities of less than ten pounds. Every restaurant keeper or dining room proprietor or hotel proprietor or boarding house keeper, who furnishes "renovated butter" as part of the meal to customers or guests shall be regarded as a dealer in "renovated butter." (Id. § 2515.)

110. Makers and Sellers of Renovated Butter; Application; Fees; Disposition of Fees.—Every person, firm or corporation, and every agent of such person, firm or corporation, who shall desire to engage in the business of manufacturing

*The food laws are enforced by the Department of Agriculture. See No. 30 et seq. This law is to be corrected accordingly.

or selling "renovated butter," shall first make application to the Department of Agriculture for a license, authorizing him, her or them to engage in the manufacture or sale of "renovated butter," and such application for license shall be in such form as shall be prescribed by the Department of Agriculture through its agent, the Dairy and Food Commissioner; which application, in addition to other matters which may be required to be stated therein by the said Dairy and Food Commissioner, shall contain an accurate description of the place where the proposed business is intended to be carried on, and the name and style under which it is proposed to conduct the said business, which name and style shall not, in the judgment of the Dairy and Food Commissioner, be calculated to deceive or mislead the public as to the real nature of the business so proposed to be carried on; and if the said application is satisfactory to the said Dairy and Food Commissioner, he shall issue to the applicant or applicants a license, authorizing him, her or them to engage in the manufacture or sale of "renovated butter," for which said license the applicant or applicants shall first pay, annually, the following sum: if a manufacturer, the annual sum of one thousand ($1,000) dollars; if a wholesale dealer, the annual sum of five hundred ($500) dollars; if a retailer, the annual sum of one hundred ($100) dollars; if a restaurant keeper or dining room proprietor or a hotel proprietor, the annual sum of fifty ($50) dollars; if a boarding house keeper, the annual sum of ten ($10) dollars; and the said license fees, when received by the said Dairy and Food Commissioner or his agent, shall be by him immediately paid into the State treasury. (Id. § 2516.)

111. Expiration of Licenses; Fractional Licenses.—All licenses under this act shall expire the thirty-first day of December of each year, but licenses may be granted to begin on the first of any month, for the remainder of a year, upon the payment of a proportionate part of the annual license fee. (Id. § 2517.)

112. Transfer of License.—Such license may be transferred by the Dairy and Food Commissioner, upon the application in writing of the person, firm or corporation to which the same has been granted, provided the transferee shall comply with the provisions of this act and with the regulations made by the said Dairy and Food Commissioner in regard to the said transfer. (Id. § 2518.)

113. Authority Conferred by License; Display.—Such license shall not authorize the manufacture or sale, exposing for sale or having in possession with intent to sell, "renovated butter" at any place other than that designated in the application and license. The license, procured as aforesaid, shall be hung up in a conspicuous place, in the place of business, room or store where such "renovated butter" is authorized to be sold. (Id. § 2519.)

114. Peddling Renovated Butter.—No person, firm or corporation shall sell or offer or expose for sale, or have in his, her or their possession with intent to sell, any "renovated butter" from a wagon or other vehicle, or upon the public streets or roads, or from house to house. (Id. § 2520.)

115. Signs; Placards.—Every person, firm or corporation who shall obtain a license for the manufacture or sale of "renovated butter" shall also be required, before engaging in such manufacturing or sale, to procure from the Dairy and Food Commissioner a sign or signs, of such form, size and lettering as the Dairy and Food Commissioner shall determine, and which shall be uniform throughout the Commonwealth; which said sign or signs shall clearly set forth that he, she or they are engaged in the manufacture or sale of "renovated butter," and which sign or signs when procured shall be hung up in a conspicuous place or places on the walls of each room or store or place of business in which "renovated butter" is manufactured or sold, and in addition to such sign or signs, so hung up as aforesaid, every restaurant keeper or dining-room proprietor, or hotel proprietor or boarding house keeper, shall also have conspicuously placed upon every counter or table, at which food, meals or refreshments are served to customers, a placard, plainly printed in letters not less than one-half inch in length, stating that "renovated butter" is used and served to customers. (Id. § 2521.)

116. Stencil; Branding Packages; Forfeiture.—Every person, firm or corporation who shall obtain a license as a manufacturer or wholesale dealer, for the manufacture or sale of renovated butter, shall also be required, before engaging in such manufacture or sale, to procure from the Dairy and Food Commissioner a stencil, of such form, size and lettering as the Dairy and Food Commissioner shall determine, and which shall be uniform throughout the Commonwealth; which said stencil shall designate the number of the said license and the name and address of the holder thereof; which said stencil shall be used by the manufacturer or wholesale dealer, and said stencil brand shall be placed on each and every package, before being sold by the manufacturer or wholesale dealer to the retailer. If any package of renovated butter shall be found in the possession of any manufacturer or wholesale

dealer or retail dealer without the said stencil brand being found thereon, such package shall be seized by the Dairy and Food Commissioner or by any of his agents, and said package shall be forfeited, and shall be sold by the Dairy and Food Commissioner or his agents, and the proceeds thereof paid to the State Treasurer, for the use of the Department of Agriculture. (Id. § 2522.)

117. Marking Tubs, Packages, Etc.; Placards; Wrappers.—It shall be unlawful for any person, firm or corporation, or any agent thereof, to sell, or offer or expose for sale, or have in his, her or their possession with intent to sell, any "renovated butter," not marked and distinguished on the outside of each tub, package or parcel thereof, in a conspicuous place, by a placard with the words "renovated butter"; and such placard shall be printed in plain, uncondensed gothic letters, not less than one-half inch long, and such placards shall not contain any other words, printing or device thereon; and also, upon every open tub, package or parcel, containing such "renovated butter," there shall be displayed in the same manner, in a conspicuous place, a placard with the words "renovated butter" printed thereon, in the same form as above described in this section; and when "renovated butter" is sold from such package, or otherwise, at retail, in print, or roll or other form, before being delivered to the purchaser it shall be wrapped in wrappers, plainly stamped on the outside thereof with the words "renovated butter," printed or stamped thereon in letters one-quarter of an inch square, and such wrapper shall contain no other words or printing thereon; and the said words "renovated butter," so stamped or printed on the said wrapper, shall not be in any manner concealed, but shall be in plain view of the purchaser at time of purchase. (Id. § 2523.)

118. Books of Sales to be Kept by Manufacturers and Wholesalers.—Every person, firm or corporation who shall have obtained a license, and be engaged in the business of manufacturer or wholesale dealer in "renovated butter," shall keep a book, in which shall be entered accurately every sale and shipment, the quantity and person to whom sold and shipped, and place to which shipped, and the name of the transportation line by which shipped; which said book shall be always open to the inspection of the Dairy and Food Commissioner, or his agents, attorneys and representatives. (Id. § 2524.)

119. Book of Purchases to be Kept by Retailers.—Every retail dealer in "renovated butter" shall keep an accurate account, in a book open to the examination of the Dairy and Food Commissioner, his agents, attorneys and representatives, in which said book shall be entered the date of the receipt of all purchases of "renovated butter" made by such retail dealer, stating therein where and from whom purchased, and the quantity so purchased. (Id. § 2525.)

120. Penalty for Violations of Act; Recovery; Appeal.—Every person, firm or corporation, and every agent of such person, firm or corporation, who shall manufacture, sell or offer, or expose for sale, or have in his, her or their possession with intent to sell, "renovated butter," in violation of any of the provisions of this act, or who shall in any other respects violate any of the provisions of this act, shall for every offense forfeit and pay the sum of one hundred ($100) dollars, which shall be recoverable with the costs, including the expense of the inspection and analysis, by any person suing in the name of the Commonwealth, as debts of like amount are by law recoverable; and justices of the peace and aldermen, throughout this Commonwealth, shall have jurisdiction to hear and determine all actions for recovery of penalties for violation of the provisions of this act, with the right of appeal in either party to the court of common pleas, as provided in existing laws in suits for penalties. (Id. § 2526.)

121. Violations of Act; Additional Penalty.—In addition to the above penalty, every person, firm or corporation, and every agent of such person, firm or corporation, who violates any of the provisions of this act, shall be deemed guilty of a misdemeanor, and, upon conviction, shall be punished for the first offense by a fine of not less than one hundred ($100) dollars, nor more than three hundred ($300) dollars, or by imprisonment in the county jail for not more than thirty (30) days, or both, at the discretion of the court; and for the second offense, by a fine of not less than three hundred ($300) dollars and not exceeding five hundred ($500) dollars, and imprisonment not exceeding two (2) years. (Id. § 2527.)

122. Forfeiture and Spoliation.—All butter sold or offered or exposed for sale, or held in the possession of any one with intent to sell the same, in violation of the provisions of this act, shall be subject to forfeiture and spoliation. (Id. § 2528.)

123. Fines Paid Into State Treasury.—And all penalties and costs, imposed and recovered under the provisions of this act, shall be paid to the Dairy and Food Commissioner or his agents, and by him immediately covered into the State treasury, to be paid out and used as hereinafter provided. (Id. § 2529.)

124. One-half Fine for Private Prosecutor; Witness Fees and Costs.—The Dairy and Food Commissioner shall be charged with the enforcement of all the provisions of this act; but any citizen of the Commonwealth, having knowledge or information of the violation of any of the provisions of this act, may, in the name of the Commonwealth, begin a suit for penalty or prosecution for misdemeanor, in accordance with the provisions of this act, and may prosecute to final judgment any suit or prosecution, giving notice in writing, however, to the Dairy and Food Commissioner of the commencement of such suit or prosecution immediately upon the commencement of the same, stating the nature of the proceeding and the magistrate before whom commenced, and shall in like manner report to the Dairy and Food Commissioner each successive step taken in such suit or prosecution; and such citizen shall, upon complying with the provisions of this section, be entitled to receive one-half of any penalty or fine which may be recovered in such proceeding and paid to the Dairy and Food Commissioner; and immediately upon the receipt and covering into the treasury of any such penalty or fine, recovered and paid in any proceeding commenced by a citizen, as aforesaid, the Dairy and Food Commissioner shall pay the one-half thereof to the said citizen, so commencing said proceeding and complying with the provisions of this section. Such citizen shall also be entitled to recover from the defendant his witness fees and other legal costs, as fixed by law, in said proceeding. (Id. § 2530.)

125. Application of Fines Recovered.—The money paid into the treasury under the provisions of this act shall constitute a special fund, for the use of the Department of Agriculture in enforcing this law, and may be drawn out upon warrants signed by the Secretary of Agriculture and approved by the Auditor-General; subject, however, to the payment to any citizen commencing and successfully prosecuting a proceeding for any violation of this act, under the last preceding section, of one-half of the penalty or fine so recovered in such proceeding and paid into the State treasury. (Id. § 2531.)

126. Payment of Expenses.—And all charges, accounts and expenses of the department for the enforcement of this act, through the said commissioner and his deputies, agents, assistants, chemists and counsel employed by him in carrying out the provisions of this act, shall be paid by the Treasurer of the State in the same manner as other accounts and expenses of the said department are paid. (Id. § 2532.)

127. Evidence of License.—In any proceeding under this act, either for the collection of a penalty or prosecution for a misdemeanor, the certificate of the Dairy and Food Commissioner and the Secretary of Agriculture, under the seal of the Department of Agriculture, shall be accepted by justices of the peace, aldermen and courts of record as evidence of the granting of a license to manufacture or sell "renovated butter," or of the fact that no such license has been granted to any particular person, firm or corporation. (Id. § 2533.)

128. Restraining Orders.—Whenever a suit for the collection of a penalty, under the provisions of this act, shall be appealed to any court of record, or whenever any prosecution for a misdemeanor, on account of any violation of the provisions of this act, has been returned to any Court of Quarter Sessions, it shall be lawful for the Dairy and Food Commissioner, his agents or attorneys, in case the person or persons who have been sued for such penalty or prosecuted for such misdemeanor have, since the commencement of such suit or prosecution, again violated any of the provisions of this act, to apply to the court having jurisdiction of such appeal or of such prosecution, or to any law judge thereof, by petition setting forth the facts, and asking the said court to make an order commanding and restraining the person or persons, so sued or prosecuted as aforesaid, from further violating any of the provisions of this act until such time as the said suit for penalty or the said prosecution shall have been finally decided and determined; and thereupon the said court, or any law judge thereof, after such notice to such person or persons, so sued or prosecuted as aforesaid, as to the said court or judge may appear proper and after inquiring into the facts alleged in said petition shall, if satisfied that any violation of the provisions of this act has been committed by such person or persons since the commencement of said suit or prosecution, make an order, commanding and restraining the said person or persons from any further violations of the provisions of this act, until such time as the said suit or prosecution shall have [been] finally decided and determined; and in case, upon the final determination of said suit or prosecution, it shall appear that the said person or persons had incurred the liability to payment of the penalty for which said suit had been so brought, or has been duly convicted of a misdemeanor in the prosecution so commenced as aforesaid, the said court or law judge thereof shall make the aforesaid order, restraining the said person or persons from the further violation of the provisions of this act, continuing and permanent. (Id. § 2534.)

129. Contempt; Punishment.—Any violation by any person or persons of any restraining order of such court or judge, whether the restraining order shall be made during the pendency of a suit for penalty, or a prosecution as above stated, or after the final determination of such suit or prosecution in the manner aforesaid, shall be punishable as a contempt of the court so making the said order. And the said court is hereby authorized to take such steps for the punishment of such contempt as may by law be now taken for disregarding any injunction or other order of the Courts of Common Pleas of this Commonwealth sitting in equity and exercising equity jurisdiction. No security shall be required on the part of the petitioner for such restraining order, and the costs of the application and subsequent proceedings thereon shall be in the discretion of the court. (Id. § 2535.)

130. Constable's Returns; Proceedings Against Offenders.—It shall be the duty of every constable in any city, borough, ward or township of this Commonwealth, having knowledge of any violation of this act, or whenever requested so to do by the Dairy and Food Commissioner, his agent or attorney, or by any citizen of this Commonwealth, to make report to the Court of Quarter Sessions of the proper county, as part of his quarterly report and return to said court, of the name of every person, firm or corporation known by him to have violated any of the provisions of this act, or alleged by the person, so giving notice as aforesaid to said constable, to have violated any of the provisions of this act, and of the names of all witnesses, furnished to said constable, whose testimony it is alleged will sustain and prove the fact of such violation. And it shall be the duty of the judge of the said court to make inquiry of all constables, at the time of the making of their quarterly returns to the Court of Quarter Sessions, as to whether they have knowledge, and whether notice has been given to them, respectively, of any violation of this act, in accordance with the terms of this section; and whenever such quarterly report shall contain the name of any person alleged to have violated the provisions of this act, together with the names of witnesses to prove such violations as also the name of the person giving notice to the constable, as aforesaid, the said court shall direct the district attorney to prepare an indictment against every person so named, and call and send the witnesses, whose names have been so returned, before the grand jury then sitting, in support of the said indictment; and if a true bill shall be returned by the grand jury, thereupon to issue summary process to bring in the person so charged, to answer the matters alleged in such indictment, and thereupon procede to trial as speedily as possible, according to the course of practice in the said Court of Quarter Sessions. (Id. § 2536.)

131. Powers of State Officers; Investigations; Samples.—The Dairy and Food Commissioner, his assistants, agents, experts, chemists, detectives and counsel, duly appointed by him for the purpose, shall have full access, egress and ingress to all places of business, factories and farm buildings, carriages, cars, vessels and cans, used in the manufacture, transportation and sale of any dairy products, or of any adulteration or imitation thereof; and shall also have power and authority to open any package, can or vessel containing, or which may be supposed to contain, renovated butter, which may be manufactured, sold or exposed for sale in violation of any of the provisions of this act; and they shall also have power to take from such package, can or vessel samples for analysis, upon payment or tendering the value of such samples. (Id. § 2537.)

132. Commissioner to Publish.—The Dairy and Food Commissioner shall publish a semi-annual bulletin, and distribute the same in the same manner as other bulletins of the Department of Agriculture are published and distributed; which semi-annual bulletin shall contain the name and address of every person, firm or corporation to whom a license has been issued for the manufacture or sale of renovated butter, and also a tabulated statement of all actions, civil or criminal, which have been brought for the violations of this act; giving the name and address of the defendant; and the disposition of every case. (Id. § 2538.)

133. Adulterated Butter; Manufacture or Sale Prohibited.—It shall be unlawful for any person, firm, or corporate body, by himself, herself, itself, or themselves, or by his, her, its, or their agents, servants, or employees, to manufacture, sell, offer for sale, expose for sale, or have in possession with intent to sell, butter which is adulterated within the meaning of this act. (Pa. St. Supp. 1924, § 2538a-1.)

134. Butter Defined.—Butter, for the purposes of this act, shall be deemed to be the fatty product obtained from milk or cream by the usual processes of churning and working, with or without the addition of salt. (Id. § 2538a-2.)

135. Adulterated Butter Defined.—Butter shall be deemed to be adulterated within the meaning of this act:

First. If it contains more than sixteen (16) per centum by weight of water or less than eighty (80) per centum by weight of butter fat.

Second. If it contains any foreign fat, starchy matter, or other substance which injuriously affects its quality or purity. (Id. § 2538a3.)

136. Penalty.—Any persons who shall violate any of the provisions of this act shall be guilty of a misdemeanor, and, upon conviction thereof, shall be sentenced to pay a fine of not less than one hundred ($100) dollars nor more than two hundred ($200) dollars, or to undergo an imprisonment of not less than thirty (30) days nor more than sixty (60) days, or both or either, at the discretion of the court. (Id. § 2538a-4.)

137. Enforcement of Act.—The Director of the Bureau of Foods shall be charged with the enforcement of the provisions of this act. (Id. § 2538a-5.)

138. Disposition of Fines and Penalties.—All fines and penalties imposed and recovered for the violation of any of the provisions of this act shall be paid to the Director of the Bureau of Foods or his agent, and, when so collected and paid, shall thereafter be, by the Director of the Bureau of Foods, paid into the State treasury for the use of the Commonwealth. (Id. § 2538a-6.)

139. Manufacture, Sale, Etc., of Imitation Butter Regulated.—No person, firm or corporation shall, by himself, herself, or themselves, or by his, her, or their agent or servant, nor shall any officer, agent, servant, or employee of any person, firm, or corporation, manufacture, sell, ship, consign, offer for sale, expose for sale, or have in possession with intent to sell, oleomargarine, butterine, or any similar substance, article, product, or compound made wholly or partly out of any fats, oils, or oleaginous substances, or compound thereof, not produced from pure, unadulterated milk, or cream from the same, without the admixture or addition of any fat foreign to the said milk or cream, and which shall be in imitation of yellow butter, produced from pure, unadulterated milk, or cream of the same, with or without coloring matter, unless such person, firm, or corporation shall have first obtained a license and paid a license fee as hereinafter provided; nor unless the said article, product, or compound, so manufactured, shipped, consigned, offered for sale, exposed for sale, or had in possession with intent to sell, shall be made and kept free from all coloration or ingredients causing it to look like butter of any shade of yellow, as hereinafter described; nor unless the same shall be kept and presented in a separate and distinct form, and in such manner as will advise the purchaser and consumer of its real character; nor unless such person, firm, or corporation shall, in all other respects, comply with and observe the provisions of this act. For the purposes of this act, oleomargarine, butterine, or similar substance, shall be deemed to look like, be in resemblance of, or in imitation of butter of a shade of yellow, when it has a tint or shade containing more than one and six-tenths degrees of yellow, or of yellow and red collectively, but with an excess of yellow over red, as measured in the terms of the Lovibond tintometer scale, or its equivalent. (Pa. St. 1920, § 16275.)

140. Application for License.—Every person, firm, or corporation, and every agent of such person, firm, or corporation, desiring to manufacture, sell, or offer or expose for sale, or have in possession with intent to sell, oleomargarine, butterine, or any similar substance, not made or colored so as to look like yellow butter, shall make application for a license so to do, in such form as shall be prescribed by the Department of Agriculture, through its agent, the Dairy and Food Commissioner, which application, in addition to other matters which may be required to be stated therein by said Dairy and Food Commissioner, shall contain an accurate description of the place where the proposed business is intended to be carried on, and the name and style under which it is proposed to conduct the said business. (Id. § 16276.)

141. Issue of License; Fees.—If the said application is satisfactory to the said Dairy and Food Commissioner, and said name and style shall not, in the judgment of the Dairy and Food Commissioner, be calculated to deceive or mislead the public as to the real nature of the business so proposed to be carried on, he shall issue to the applicant or applicants a license, authorizing him, her, or them to engage in the manufacture or sale of oleomargarine or butterine, or any similar substance, which shall not contain any coloration or ingredient that causes it to resemble yellow butter; for which said license the applicant or applicants shall first pay: If a manufacturer, the annual sum of one thousand dollars; if a wholesaler, the annual sum of five hundred dollars, and if a retailer, the annual sum of one hundred dollars; if a proprietor of a hotel, restaurant, or dining-room, the annual sum of fifty dollars; and if the proprietor of a boarding house, the annual sum of ten dollars; and the said license fee, when received by the Dairy and Food Commissioner, or his agent, shall be by him immediately covered into the State treasury. (Id. § 16277.)

142. Authority Conferred by License.—Such licenses shall not authorize the manufacture or sale, exposing for sale, or having in possession with intent to sell, oleomargarine, butterine, or any similar substance, at any other place than that designated in the application and license; and the said license shall not authorize

the manufacture, sale, exposing for sale, or having in possession with intent to sell, any oleomargarine, butterine or any similar substance, made or colored so as to look like yellow butter, as herein provided. (Id. § 16278.)

143. Term of License; Transfer.—All licenses under this act shall expire on the thirty-first day of December of each year; but licenses may be granted to commence on the first day of any month for the remainder of the year, upon the payment of a proportionate part of the annual license fee, such licenses may be transferred by the Dairy and Food Commissioner, upon the application in writing of the person, firm, or corporation to which the same has been granted: Provided, the transferee shall comply with the regulations made by the said Dairy and Food Commissioner in regard to the said transfer, and shall thereafter comply with the provisions of this act. (Id. § 16279.)

144. Wholesale and Retail Dealers; Who Are.—Wholesale dealers, within the meaning of this act, shall be all persons, firms, and corporations who shall sell to dealers, and persons who shall buy to sell again, and all persons, firms, and corporations who make sales in quantities of ten pounds and over at any time; and retail dealers shall be all persons, firms, and corporations who shall sell in quantities less than ten pounds. (Id. § 16280.)

145. Display of License and Signs.—After obtaining the license required by this act, the person, firm, or corporation obtaining the same shall, before beginning any business under the said license, hang up and display, in a conspicuous place, on the walls of the room or store in which the oleomargarine, butterine or other similar substance is manufactured, sold or exposed for sale, the license so obtained as aforesaid; and shall also procure from the Department of Agriculture, through the Dairy and Food Commissioner, a sign or signs, which in number, size and lettering shall be as the Dairy and Food Commissioner shall direct, and which shall be uniform throughout the Commonwealth, clearly setting forth that he, she or they are engaged in the manufacture or sale of oleomargarine; which said sign or signs, when procured, shall be hung up in a conspicuous place or places on the walls of every room or store in which the oleomargarine, butterine or other similar substance is manufactured or sold. (Id. § 16281.)

146. Placards on Counters and Tables.—And in addition to such sign or signs, so hung up as aforesaid, every proprietor of a hotel, restaurant, dining-room or boarding house, shall also have conspicuously placed, upon every counter or table at which food, meals or refreshments are served to customers, a placard plainly printed, in letters not less than one-half inch in length, stating that oleomargarine is used and served to customers. (Id. § 16282.)

147. Marking of Tubs, Packages and Parcels; Placards; Wrappers.—It shall be unlawful for any person, firm or corporation, or any agent thereof to sell, or offer or expose for sale, or have in possession with intent to sell, any oleomargarine, butterine or similar substance, not in imitation of yellow butter, which is not marked and distinguished, on the outside of each tub, package or parcel thereof, in a conspicuous place, by a placard with the word "Oleomargarine" printed thereon; such placard to be placed in a conspicuous position, in full view of the purchaser, and the said word "Oleomargarine" on such placard shall be printed in plain, uncondensed, Gothic letters, not less than one inch long, and such placard shall not contain any other words thereon. And there shall also be displayed upon every open tub, package or parcel containing such oleomargarine, butterine or similar substance, not in imitation of yellow butter, in the same manner, in a conspicuous position, a placard with the word "Oleomargarine" printed thereon, in the same form as above described in this section; and when oleomargarine, butterine or other similar substance, not in imitation of yellow butter, is sold from such tub or package, or otherwise, at retail, in print, roll or other form, before being delivered to the purchaser it shall be wrapped in wrappers, plainly stamped on the outside thereof with the word "Oleomargarine," printed or stamped thereon in letters one-fourth inch square; and said wrapper shall also contain the name and address of the seller and the quantity sold, and no other words thereon, and the said word "Oleomargarine," so stamped or printed on the said wrapper, shall not be in any manner concealed, but shall be in plain view of the purchaser at the time of purchase. (Id. § 16283.)

148. Book of Sales to be Kept by Manufacturers and Wholesalers.—Every licensed manufacturer of oleomargarine, butterine or other similar product, not in imitation of yellow butter, and every licensed wholesale dealer therein, shall keep a book in which shall be entered accurately every sale and shipment of oleomargarine, butterine or other similar substance, not in imitation of yellow butter; giving the date of sale and shipment, the quantity, the person to whom sold and shipped, the place to which shipped, and the name of the transportation line by which shipped; which book shall always be open to the examination of the Dairy and Food Commissioner, his agents, attorneys and representatives. (Id. § 16284.)

149. Book of Purchases to be Kept by Retailers.—Every licensed retail dealer in oleomargarine, butterine or similar substance, not in imitation of yellow butter, shall keep an accurate account, in a book open to the examination of the Dairy and Food Commissioner, his agents, attorneys and representatives, in which shall be entered the date of the receipt of all purchases of oleomargarine, butterine or any similar substance, made by such retail dealer; stating therein where, when and from whom purchased, and the quantity; and the said books, so to be kept by manufacturers, wholesale and retail dealers, shall be in such form as the Dairy and Food Commissioner shall direct. (Id. § 16285.)

150. Penalty for Violation of Act; Recovery; Appeal.—Every person, firm or corporation, and every officer, agent, servant and employee of such person, firm or corporation, who shall manufacture, sell or offer or expose for sale, or have in possession with intent to sell, oleomargarine, butterine, or any similar substance, in violation of any of the provisions of this act; or who shall sell oleomargarine, butterine, or any similar substance, as or for butter; or who shall fail to keep a book, in accordance with the last preceding section; or who shall, in any other respect violate any of the provisions of this act, shall for every such offense forfeit and pay the sum of one hundred dollars, which shall be recoverable, with the costs, including the expense of analysis, by any person suing in the name of the Commonwealth, as debts of like amount are by law recoverable; and justices of the peace and aldermen throughout this Commonwealth shall have jurisdiction to hear and determine all actions for recovery of said penalties, with the right to either party to appeal to the Court of Common Pleas, as provided in existing laws in suits for penalties. (Id. § 16286.)

151. Disposition of Fines.—And all penalties and costs imposed and recovered under the provisions of this act shall be paid to the Dairy and Food Commissioner, or his agent, and by him immediately covered into the State treasury, to be paid out and used as hereinafter provided. (Id. § 16287.)

152. Violations of Act; Penalty.—In addition to the above penalty, every person, firm or corporation, and every officer, agent, servant or employee of such person, firm or corporation, who violates any of the provisions of this act shall also be guilty of a misdemeanor; and upon conviction thereof shall be punished for the first offense by a fine of not less than one hundred dollars, nor more than five hundred dollars, or by imprisonment in the county jail for not more than three months, or both, at the discretion of the court; and upon conviction of any subsequent offense, shall be punished by a fine of not less than five hundred dollars, nor more than one thousand dollars, and by imprisonment in the county jail for not less than six months nor more than twelve months. (Id. § 16288.)

153. Evidence of License.—In any proceeding under this act, either for the collection of a penalty or a prosecution for a misdemeanor, the certificate of the Dairy and Food Commissioner and the Secretary of Agriculture, under the seal of the Department of Agriculture, shall be accepted by justice of the peace, aldermen, and courts of record, as evidence of the granting of licenses to manufacture or sell oleomargarine or butterine, or of the fact that no such license has been granted to any particular person, firm or corporation. (Id. § 16289.)

154. Restraining Orders; Contempt; Punishment.—Whenever a suit for the collection of a penalty, under the provisions of this act, shall be appeal to any court of record, or whenever any prosecution for a misdemeanor on account of any violation of the provisions of this act has been returned to any Court of Quarter Sessions, it shall be lawful for the Dairy and Food Commissioner, his agents or attorneys, in case the person or persons who have been sued for such penalty, or prosecuted for such misdemeanor, have since the commencement of such suit or prosecution again violated any of the provisions of this act, to apply to the court, having jurisdiction of such appeal or of such prosecution, or to any law judge thereof, by petition, setting forth the facts, and asking the said court to make an order commanding and restraining the person or persons, so sued or prosecuted as aforesaid, from further violating any of the provisions of this act until such time as the said suit for penalty or the said prosecution shall have been finally decided and determined; and thereupon the said court or any law judge thereof, after such notice to such person or persons, so sued or prosecuted as aforesaid, as to the said court or judge may appear proper, and after inquiring into the facts alleged in said petition, shall, if satisfied that any violation of the provisions of this act has been committed by such person or persons since the commencement of said suit or prosecution make an order commanding and restraining the said person or persons from any further violation of the provisions of this act until such time as the said suit or prosecution shall have been finally decided and determined; and in case, upon the final determination of said suit or prosecution, it shall appear that the said person or persons had incurred the liability to payment of the penalty for which suit had been so brought, or has been duly convicted of a

misdemeanor in the prosecution so commenced as aforesaid, the said court or law judge thereof shall make the aforesaid order, restraining the said person or persons from the further violation of the provisions of this act, continuing and permanent; and any violation by any person or persons of any such restraining order of such court or judge, whether the said restraining order shall be made during the pendency of a suit for penalty or of a prosecution as above stated, or after the final determination of such suit or prosecution in the manner aforesaid, shall be punishable as a contempt of the court so making the said order; and the said court is hereby authorized to take such steps for the punishment of such contempt as may by law be now taken for disregarding any injunction or other order of the Courts of Common Pleas of this Commonwealth, sitting in equity and exercising equity jurisdiction. No security shall be required on the part of the petitioner for such restraining order, and the costs of the application and subsequent proceedings thereon shall be in the discretion of the court. (Id. § 16290.)

155. Constable's Returns; Proceedings Against Offenders.—It shall be the duty of every constable in any city, borough, ward or township of this Commonwealth, having knowledge of any violation of this act, or whenever requested so to do by the Dairy and Food Commissioner, his agent, or attorney, or by any citizen of this Commonwealth, to make report to the Court of Quarter Sessions of the proper county, as part of his quarterly report and return to said court, of the name of every person, firm or corporation known by him to have violated any of the provisions of this act, or alleged by the person so giving notice as aforesaid to said constable to have violated any of the provisions of this act, and of the names of all witnesses furnished to said constable, whose testimony it is alleged will sustain or prove the fact of such violation; and it shall be the duty of the judge of the said courts to make inquiry of all constables, at the time of the making of their quarterly returns to the Court of Quarter Sessions, as to whether they have knowledge, and whether notice has been given to them, respectively, of any violation of this act, in accordance with the terms of this section; and whenever such quarterly reports shall contain the name of any person alleged to have violated the provisions of this act, together with the names of witnesses to prove such violations, as also the name of the person giving notice to the constable as aforesaid, the said court shall direct the district attorney to prepare an indictment against every person so named, and call and send the witnesses, whose names have been so returned, before the grand jury then sitting, in support of the said indictment; and if a true bill shall be returned by the grand jury, thereupon to issue summary process to bring in the person so charged to answer the matters alleged in such prosecution, and thereupon proceed to trial as speedily as possible, according to the course of practice in the said Court of Quarter Sessions. (Id. § 16291.)

156. Enforcement of Act; Private Prosecutor to Receive One-half of Fine; Witness Fees and Costs.—The Dairy and Food Commissioner shall be charged with the enforcement of all the provisions of this act; but any citizen of the Commonwealth, having knowledge or information of the violation of any of the provisions of this act, may, in the name of the Commonwealth, begin a suit for penalty or prosecution for misdemeanor, in accordance with the provisions of this act, and may prosecute to final judgment any such suit or prosecution, giving notice in writing, however, to the Dairy and Food Commissioner of the commencement of such suit or prosecution, immediately upon the commencement of the same, stating the nature of the proceeding and the magistrate before whom commenced; and shall, in like manner, report to the Dairy and Food Commissioner each successive step taken in such suit or prosecution; and such citizen shall, upon complying with the provisions of this section, be entitled to receive one-half of any penalty or fine which may be recovered in such proceeding and paid to the Dairy and Food Commissioner; and immediately upon the receipt and covering into the treasury of any such penalty or fine, recovered and paid in any proceeding commenced by a citizen as aforesaid, the Dairy and Food Commissioner shall pay the one-half thereof to the said citizen, so commencing said proceeding and complying with the provisions of this section. Such citizen shall also be entitled to recover from the defendant his witness fees and other legal costs as fixed by law, in said proceeding. (Id. § 16292.)

157. Application of Fines Recovered.—The money paid into the treasury under the provisions of this act shall constitute a special fund, for the use of the Department of Agriculture in enforcing this law; and may be drawn out upon warrants signed by the Secretary of Agriculture and approved by the Auditor-General, subject, however, to the payment to any citizen commencing and successfully prosecuting a proceeding for any violation of this act, under the last preceding section, of one-half of the penalty or fine so recovered in such proceeding and paid into the State treasury. (Id. § 16293.)

158. Powers of State Officers; Investigations; Samples.—The Dairy and Food Commissioner, his assistants, agents, experts, chemists, detectives and counsel, duly appointed by him for the purpose, shall have full access, egress and ingress to all places of business, factories, farms, buildings, carriages, cars, vessels and cans, used in the manufacture, transportation and sale of any dairy products, or of any adulteration or imitation thereof; and shall also have power and authority to open any package, can or vessel containing, or which may be supposed to contain, oleomargarine, butterine, or other similar substance, or any adulteration or imitation of butter, which may be manufactured, sold or exposed for sale in violation of any of the provisions of this act, or of any act which may be hereafter enacted in relation to butter or the adulteration or imitation thereof; and they shall also have power to take from such package, can or vessel samples for analysis, upon paying or tendering the value of such samples. (Id. § 16294.)

159. Oleomargarine Bulletins.—The Dairy and Food Commissioner shall publish a semi-annual bulletin, and distribute the same in the same manner as other bulletins of the Department of Agriculture are published and distributed; which semi-annual bulletin shall contain the name and address of every person, firm, or corporation to whom a license has been issued for the manufacture or sale of oleomargarine, butterine or other similar substance; and, also, a tabulated statement of all the actions, civil or criminal, which have been brought for the violations of this act, giving the name and address of the defendant, and the disposition of every such case. (Id. § 16295.)

160. Unlawful Advertising of Oleomargarine or Butterine.—It shall be unlawful for a person, copartnership, association, or corporation, or for any agent, servant, or employee of such person, or for any member, agent, servant, or employee of any such copartnership or association, or for any officer, director, agent, servant, or employee of any such corporation to advertise, for any purpose whatsoever, in any newspaper, periodical, or magazine, or upon any handbill, or sign, or upon any billboard or by signs or otherwise in or upon or in connection with any premises, or to advertise or designate upon any package, carton, tub, or other container, any substance, article, product, or compound, made wholly or partly out of any fats, oils, or oleaginous substances, or compound thereof, designated under the laws of the Commonwealth as oleomargarine or butterine, unless such advertisement or designation shall distinctly and clearly set forth the character of such substance, article, product, or compound by the use of the word oleomargarine or the word butterine; and it shall be unlawful to use, in any such advertisement or designation on or in connection therewith, the word "butter" or any word such as "Holstein," "Jersey," or "Guernsey," or any other word which is commonly used as designating a known breed of cows. (Pa. St. Supp. 1924, § 16295a-1.)

161. Penalty for Unlawful Advertising.—Every person, copartnership, association, or corporation, and every officer, member, agent, and employee of such person, copartnership, association, or corporation, violating any of the provisions of this act, shall, for every such offense, be subject to the penalties provided for in the act to which this is a supplement. (Id. § 16295a-2.)

162. Imitations of Butter and Cheese to be so Marked.—Every person who shall manufacture for sale, or who shall offer or expose for sale, or who shall export to a foreign country, by the tub, firkin, box or package, or any greater quantity, any article or substance in semblance of butter or cheese, not the legitimate product of the dairy, and not made exclusively of milk or cream but into which any oil, lard or fat not produced from milk or cream enters as a component part, or into which melted butter or any oil thereof has been introduced to take the place of cream, shall distinctly and durably stamp, brand or mark upon the side of every cheese, and also upon the top and side of every such tub, firkin, box or package of such article or substance, the words "oleomargarine butter," or if containing cheese the words "imitation cheese" only, where it can be plainly seen in Roman letters, which shall be burned in or painted thereon with permanent black paint in a straight line, and shall not be less than one-half inch in length, and if for export shall also invoice the same and clear the same through the customhouse as "oleomargarine butter," or if cheese, as "imitation cheese," and in case of retail sales of such articles or substances in parcels, the seller shall, in all cases, sell or offer or expose the same for sale from a tub, firkin, box or package stamped, branded or marked, as herein stated, and shall also deliver therewith to the purchaser printed label bearing the plainly printed words "oleomargarine butter," or if cheese, the words "imitation cheese" only, in Roman letters not less than one-half inch in length, which shall be printed in a straight line, and every sale of such article or substance, or export of the same, by the tub, firkin, box or package, or in any greater quantity, not so stamped, branded or marked, and, if exported, not invoiced and cleared through

the customhouse as "oleomargarine butter," or if cheese as "imitation cheese," and every sale of such article or substance at retail, in parcels that shall not be sold from a tub, firkin, box or package so stamped, branded or marked, or without delivery of a label therewith as above stated, is declared to be unlawful and void, and no action upon any contract shall be maintained in any of the courts of this State to recover upon any contract for the sale of any such article, or semblance, not so stamped, branded, marked, labeled or sold. (Pa. St. 1920, § 16296.)

163. Penalty for Violation of Act.—Every person who shall sell, or offer or expose for sale, or export to a foreign country, or have in his or her possession with intent to sell, by the tub, firkin, box or package, or in any greater quantity, any of the said article or substance required by the first section [16296] of this act to be stamped, branded, marked, and, if exported, invoiced and cleared through the customhouse as "oleomargarine butter," or "imitation cheese," as therein stated that shall not be so stamped, branded, marked and, if exported, invoiced according to the provisions of this act, or in case of retail sales in parcels, every person who shall sell or offer or expose for sale any of said article or substance without selling, offering or exposing for sale the same from a tub, firkin, box or package, stamped, branded or marked as in said first section [16296] stated, or without delivery of a label as required by section one of this act, shall for every such offense forfeit and pay a fine of one hundred dollars, to be recovered, with costs, in any of the courts of this State having cognizance thereof in an action to be prosecuted by any district attorney in the name of the Commonwealth, and shall be paid into the county treasury. (Id. § 16297.)

164. Violation of Act a Misdemeanor; Evidence of Guilty Knowledge.—Every person who shall sell or offer or expose for sale, or export to a foreign country, or who shall cause to procure to be sold, offered or exposed for sale, by the tub, firkin, box or package, or in any greater quantity, any article or substance required by the first section [16296] of this act to be stamped, branded, marked, and, if exported, invoiced and cleared as therein stated, not so stamped, branded, marked, and, if exported, invoiced and cleared, or, in case of retail sales in parcels every person who shall sell, or offer or expose for sale, or who shall cause or procure to be sold, offered or exposed for sale any article or substance required by the first section [16296] of this act to be sold, offered or exposed for such sale, from a tub, firkin, box or package, stamped, branded or marked, and labeled as therein stated contrary to the provisions of said section, shall be guilty of a misdemeanor, and upon conviction shall be punished by a fine of not less than fifty dollars, nor more than two hundred dollars, or by imprisonment in the county jail, for not less than ten nor more than thirty days, or by both such fine and imprisonment for each and every offense. (Id. § 16298.)

165. Manufacture of Oleomargarine Prohibited.—No person, firm or corporate body shall manufacture out of any oleaginous substance or any compound of the same, other than that produced from unadulterated milk or of cream from the same, any article designed to take the place of butter or cheese produced from pure unadulterated milk, or cream from the same, or of any imitation or adulterated butter or cheese, nor shall sell or offer for sale, or have in his, her or their possession with intent to sell the same as an article of food. (Id. § 16299.)

166. Contract of Sale Void.—Every sale of such article or substance, which is prohibited by the first section [16299] of this act, made after this act shall take effect, is hereby declared to be unlawful and void, and no action shall be maintained in any of the courts of this State to recover upon any contract for the sale of any such article or substance. (Id. § 16300.)

167. Penalty for Manufacture or Sale.—Every person, firm, or corporate body who shall manufacture, sell or offer or expose for sale, or have in his, her or their possession, with intent to sell, any substance, the manufacture and sale of which is prohibited by the first section [16299] of this act, shall, for every such offense, forfeit and pay the sum of one hundred dollars, which shall be recoverable, with costs, by any person suing in the name of the Commonwealth, as debts of like amount are by law recoverable, one-half of which sum when so recovered shall be paid to the proper county treasurer for the use of the county in which the suit is brought, and the other half shall be paid to the Dairy and Food Commissioner or his agent, and by him covered into the State treasury, to be kept as a fund, separate and apart, for the use of the Department of Agriculture for the enforcement of this act, and to be drawn out upon warrants approved and signed by the Secretary of Agriculture and the Auditor-General. (Id. § 16301.)

168. Violation of Act a Misdemeanor.—Every person who violates the provisions of the first section [16299] of this act, shall be deemed guilty of a misdemeanor and, upon conviction, shall be punished by a fine of not less than one hundred dollars, nor more than three hundred, or by imprisonment in the county jail

for not less than ten nor more than thirty days, or both such fine and imprisonment for the first offense, and imprisonment for one year for every subsequent offense. (Id. § 16302.)

169. Constables to Report Violation of Act to Quarter Sessions.—It shall be the duty of constables of the several cities, boroughs, wards and townships of this Commonwealth, to make quarterly reports under oath to the Courts of Quarter Sessions of all violations of any of the provisions of this act which may come or be brought to their notice, and it shall be the duty of the judges of the said courts to see that the said returns are made regularly and faithfully. (Id. § 16303.)

170. Enforcement of Act Forbidding Adulteration of Dairy Products.—The State Board of Agriculture be and is hereby empowered and charged with the enforcement of the provisions of the act, entitled "An act for the protection of the public health, and to prevent the adulteration of dairy products and fraud in the sale thereof," approved May 21, 1885,* and with the enforcement of the various provisions of all other laws now enacted, or hereafter to be enacted, prohibiting or regulating the adulteration or imitation of butter, cheese or other dairy products. (Id. § 229.)

171. Charitable and Penal Institutions Not to Use Imitations of Dairy Products.—It shall not be lawful for any charitable or penal institution in the State of Pennsylvania to use, or furnish to its inmates, any substance, the manufacture or sale of which is prohibited by section one [16299] of the act entitled "An act for the protection of the public health and to prevent the adulteration of dairy products and fraud in the sale thereof," approved May 21, 1885. (Id. § 16304.)

172. Purchase of Any Such Substances a Misdemeanor.—Any officer, agent, steward or other official of any such charitable or penal institution, who shall knowingly buy any substance the manufacture or sale of which is prohibited by section one [16299] of the said act of May 21, 1885, for use in such charitable or penal institution, or who shall knowingly cause such substance to be used by the inmates of such charitable or penal institution, shall be deemed guilty of a misdemeanor, and upon conviction shall be punished by a fine not exceeding one thousand dollars, or imprisonment not exceeding two years for each offense, or either or both at the discretion of the court. (Id. § 16305.)

173. Selling or Offering Such Substances to Institution a Misdemeanor.—Every person who shall knowingly sell or offer for sale, to any officer, agent, steward or other official of any charitable or penal institution, any substance, the manufacture or sale of which is prohibited by section one [16299] of the said act of May 21, 1885, for use in such charitable or penal institution, shall be deemed guilty of a misdemeanor, and upon conviction shall be punished by a fine not exceeding one thousand dollars, or by imprisonment not exceeding two years, or either or both at the discretion of the court. (Id. § 16306.)

174. Regulation of Manufacture of Cheese.—No person, firm or corporate body shall manufacture, sell, offer for sale or have in his or their possession with intent to sell, any cheese not the legitimate product of pure, unadulterated milk or cream, or any cheese into which any foreign fats or substances have been introduced as may appear upon proper test. (Id. § 2658.)

175. Grades of Cheese; Branding.—All cheese manufactured or sold within this Commonwealth shall be divided into five grades, and shall be branded or stenciled in ordinary bold-faced capital letters, not less than one-half inch in height, on one side of each cheese, and upon one side of the box or case containing the cheese, the manufacturer's name and post office address, and the words "FULL CREAM," "THREE-FOURTHS CREAM," "ONE-HALF CREAM," "ONE-FOURTH CREAM," and "SKIMMED CHEESE." All cheese branded "FULL CREAM," shall contain not less than thirty-two per centum of butter fat, as may appear upon proper test. All cheese branded "THREE-FOURTHS CREAM" shall contain not less than twenty-four per centum of butter fat, as may appear upon proper test. All cheese branded "ONE-HALF CREAM" shall contain not less than sixteen per centum of butter fat, as may appear upon proper test. All cheese branded "ONE-FOURTH CREAM" shall contain not less than eight per centum of butter fat, as may appear upon proper test. All cheese containing less than eight per centum of butter fat, as may appear upon proper test, shall be branded "SKIMMED CHEESE:" Provided, however, that all full cream cheese sold, shipped or consigned to dealers outside of the Commonwealth of Pennsylvania may be branded, or stenciled, or not, as required by this act, at the option of the manufacturer. (Id. § 2659.)

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*See Nos. 165-169.

176. Act Not to Apply to Certain Kinds of Cheese.—The provisions of this act shall not be construed to apply to such cheese as is known as "fancy" cheese and is under five pounds in weight each; or to what is known as cottage cheese or pot cheese, and do not contain anything injurious to health. (Id. § 2660.)

177. Penalty for Violation of Act; Jurisdiction of Magistrates; Forfeiture of Cheese.—Every person, firm or corporation who shall violate any of the provisions of this act shall, for every such offense, forfeit and pay the sum of not less than fifty dollars, nor more than one hundred dollars, together with all charges and expenses for inspection and analysis connected therewith, by any person suing therefor in the name of the Commonwealth, as debts of like amount are by law recoverable; and justices of the peace and aldermen throughout this Commonwealth shall have jurisdiction to hear and determine all actions arising under the provisions of this act, and all cheese not in accordance with this act shall be subject to forfeiture and spoliation. (Id. § 2661.)

178. Enforcement of Act; Powers of Dairy and Food Commissioner; Disposition of Penalties.—The Department of Agriculture, through its officer known as the Dairy and Food Commissioner, together with his deputies, agents and assistants, shall be charged with the enforcement of the provisions of this act, and shall have authority to enter any building or factory where the same is sold or manufactured or exposed for sale, and shall have the right to take samples sufficient for analysis, upon tendering the value thereof. All fines and penalties, including also all charges for inspection and analysis, shall be paid to the Dairy and Food Commissioner, his deputies, agents or assistants, and by him immediately covered into the State treasury, and so much of said fund as may be necessary for the enforcement of this act shall be drawn out upon warrants signed by the Secretary of Agriculture and Auditor-General. (Id. § 2662.)

179. Milk from Diseased Animals; Pasteurizing.—Milk produced by a cow which has reacted to a tuberculin test, or is affected with a dangerous transmissible disease, shall not be used as food for animals, unless it has been previously heated to at least one hundred and seventy-eight degrees Fahrenheit, except a special examination has been made under the direction of the State Veterinarian and written permission to use such milk has been given by him. (Id. § 15016.)

180. Skim Milk or Separator Slop; Pasteurizing.—Every owner, operator, or manager of a creamery, cheese factory, receiving station, or skimming station, shall, before returning to or delivering to any person or persons any skimmed milk or separator slop, to be used for food or feeding purposes for calves or swine, cause such skimmed milk to be thoroughly pasteurized by heating it to at least one hundred and seventy-eight degrees Fahrenheit. (Id. § 15017.)

181. Sale, Etc., of Diluted Milk or Milk Increased or Reduced in Consistency; Skim Milk.—It shall be unlawful for any person, firm or corporate body, by himself, herself, itself or themselves, or by his, her, its or their agents, servants or employees to sell, offer for sale, expose for sale, or have in possession with intent to sell milk which contains any added water, or milk which has had the butter fat or any portion thereof removed therefrom, or milk to which has been added any substance for the purpose of increasing its consistency or thickness, or milk which contains less than three and one-quarter (3¼) per centum of butter fat and less than twelve (12) per centum of milk solids: Provided, however, that skimmed milk when clean and wholesome, may be sold, if sold as skimmed milk. (Id. § 15031.)

182. Sale, Etc., of Cream Increased or Reduced in Consistency; Labeling Containers.—It shall be unlawful for any person, firm or corporate body, by himself, herself, itself or themselves, or by his, her, its or their agents, servants or employees to sell, offer for sale, expose for sale, or have in possession with intent to sell, cream, which contains or is mixed with any added condensed or evaporated milk or cream, or cream to which has been added any substance for the purpose of increasing its consistency or thickness, or cream which contains less than eighteen (18) per centum of butter fat: Provided, that cream, when it contains or is mixed with any added condensed or evaporated milk or cream, may be sold, if the vessel or container in which such cream is sold is plainly labeled, stating the fact that such cream contains or is mixed with added condensed or evaporated milk or cream, and the amount thereof. (Id. § 15032.)

183. Punishment for Violations of Act; Affidavits as to Purity, Etc.—Any person who shall violate any of the provisions of this act shall be guilty of a misdemeanor, and upon conviction thereof shall be sentenced to pay a fine of not less than twenty-five (25) dollars, nor more than fifty (50) dollars, or imprisonment for not less than thirty (30) days, nor more than ninety (90) days, or either or both, at the discretion of the court.

If a person accused of violating section one [15031] of this act shall furnish satisfactory affidavit that nothing has been added to or taken from the milk in question, which is otherwise pure and wholesome, and is not below three (3) per centum of butter fat, the Dairy and Food Commissioner shall file said affidavit with the record; and no prosecution shall be instituted against said person. This provision shall not apply to, or in any way affect, samples of milk purchased or obtained prior to the approval of this act. (Id. § 15033.)

184. Enforcement of Act.—The Dairy and Food Commissioner shall be charged with the enforcement of the provisions of this act. (Id. § 15034.)

185. Disposition of Fines.—All fines and penalties imposed and recovered for the violation of any of the provisions of this act shall be paid to the Dairy and Food Commissioner, or his agent, and when so collected and paid shall thereafter be, by the Dairy and Food Commissioner, paid into the State treasury, for the use of the Commonwealth. (Id. § 15035).

186. Application of Act.—This act shall not aply to nor in any way affect the act [15038-15040] entitled "An act to prohibit the adulteration or coloring of milk and cream by the addition of so-called preservatives or coloring matter, and to provide for the enforcement of the same," approved the tenth day of June, Anno Domini one thousand eight hundred and ninety-seven, and the amendment thereto, approved the nineteenth day of April, Anno Domini one thousand nine hundred and one, entitled "An act to amend the first section of an act entitled 'An act to prohibit the adulteration or coloring of milk and cream by the addition of so-called preservatives or coloring matter, and to provide for the enforcement of the same,' approved the tenth day of June, Anno Domini one thousand eight hundred and ninety-seven," —which act shall remain in full force; but all other acts or parts of acts inconsistent with the provisions of this act be and the same are hereby repealed. (Id. § 15036.)

187. Furnishing Impure Milk to Butter Factories Prohibited.—If any person or persons shall, with intent to defraud, sell, supply or bring to be manufactured, to any butter or cheese manufactory in this State, any milk, diluted with water, or in any way adulterated, uncleanly or impure, or milk from which cream has been taken, or milk commonly known as skimmed milk, or if any person or persons so furnishing milk as aforesaid who shall keep back any part of the milk known as "strippings," or shall knowingly bring or supply milk to any butter or cheese manufactory that is tainted or partially sour, or shall knowingly bring or supply to any butter or cheese manufactory milk drawn from cows within fifteen days before parturition, or within five days after parturition, shall for each offense forfeit and pay a sum not less than ten dollars nor more than one hundred dollars, with costs of suit, to be sued for in any court of competent jurisdiction for the benefit of the person or persons, firm or association or corporation upon whom such fraud or neglect shall be committed. (Id. § 15037.)

188. Adding Preservatives or Coloring Matter to Milk; Punishment.—If any person, firm or corporate body, by himself, herself or themselves, or by his, her or their agents or servants, shall offer for sale, expose for sale, sell or have in possession with intent to sell, for human consumption, milk or cream to which has been added boracic acid salt, boracic acid, salicylic acid, salicylate of soda, formaline, formaldehyde, sodium fluoride, sodium benzoate, or any other compound or substance for the purpose of preserving or coloring the same, shall be deemed guilty of a misdemeanor, and upon conviction thereof in the Court of Quarter Sessions of the proper county shall be sentenced to pay a fine of not less than fifty nor more than one hundred dollars, or to undergo an imprisonment not exceeding sixty days, or both, at the discretion of the court. (Id. § 15038.)

189. Enforcement of Act.—The agent of the Department of Agriculture, known as the Dairy and Food Commissioner, shall be charged with the enforcement of all the provisions of this act, and shall have all the power to enforce this act that is given him to enforce the provisions of the act by which he receives his appointment. (Id. § 15039.)

190. Disposition of Penalties and Costs.—All penalties and costs for the violation of the provisions of this act shall be paid to the Dairy and Food Commissioner or his agent, and by him paid into the State treasury, to be kept as a fund, separate and apart, for the use of the Department of Agriculture for the enforcement of this act, and to be drawn out upon warrant signed by the Secretary of Agriculture and the Auditor-General. (Id. § 15040.)

191. Definitions; Tolerances; Minimum Standard.—For the purpose of this act the definitions of condensed milk, evaporated milk, concentrated milk, is the product resulting from the evaporation of a considerable portion of the water from milk, or from milk, with adjustment, if necessary, of the ratio of fat to non-fat solids by the addition or by the abstraction of cream it contains, all tolerances being allowed

for not less than seven and eight-tenths per cent of milk fat, nor less than twenty-five and five-tenths per cent of total milk solids: Provided, however, that the sum of the percentages of milk fat and total milk solids be not less than thirty-three and seven-tenths per cent. (Pa. St. Supp. 1924, § 15040a-1.)

192. **Sale, Etc., of Condensed, Evaporated, or Concentrated Milk Not Conforming to Minimum Standard; Labels on Sealed Cans.**—It shall be unlawful for any person, firm, or body corporate, by himself, herself, itself, or themselves, or by his, her, its, or their agents, servants, or employees, to manufacture, sell, or exchange, or have in possession with intent to sell or exchange, any condensed, evaporated, or concentrated milk which shall not conform at least to the minimum standards set forth respectfully in section one [15040a-1] hereof, and, when contained in hermetically sealed cans, does not bear stamped or labeled thereon the name and address of the manufacturers or distributors thereof. (Id. § 15040a-2.)

193. **Sale, Etc., of Milk, Cream, or Skimmed Milk Blended or Compounded with Other than Milk Fats or Oils; Chocolate Flavoring.**—It shall be unlawful for any person, firm, or body corporate, by itself, herself, itself, or themselves, or by his, her, its, or their agents, servants, or employees, to manufacture, sell, or exchange, or have in possession with intent to sell or exchange, any milk, cream, or skimmed milk, whether or not condensed, evaporated, concentrated, powdered, dried, or desiccated, to or with which has been added, blended, or compounded any fats or oils, other than milk fats, either under the name of said products or articles or the derivatives thereof, or if labeled under any fictitious coined or trade names whatsoever:

Provided, however, that nothing in this act shall be construed as prohibiting the use of chocolate as a flavor. (Id. § 15040a-3.)

194. **Violations of Act; Penalty.**—Any violation of the provisions of this act is hereby declared to be a misdemeanor, and any person, whether individually or as a member of a partnership or as a responsible agent or officer of an incorporate body, who shall be convicted of such violation, either on his own behalf or in the interest of a corporate body, shall be sentenced to undergo an imprisonment of not less than thirty (30) days nor more than sixty (60) days, or to pay a fine of not less than fifty ($50) dollars nor more than one hundred dollars ($100), or both. (Id. § 15040a-4.)

195. **Enforcement of Act.**—The Director of the Bureau of Foods shall be charged with the enforcement of the provisions of this act. (Id. § 15040a-5.)

196. **Dispositions of Fines and Penalties.**—All fines and penalties imposed and recovered for the violation of any of the provisions of this act shall be paid to the Director of the Bureau of Foods or his agent, and when so collected and paid, shall thereafter be, by the Director of the Bureau of Foods, paid into the State treasury for the use of the Commonwealth. (Id. § 15040a-6.)

197. **Original Packages from Foreign States.**—Nothing in this act shall be construed to prohibit the shipment into this Commonwealth from a foreign State and the first sale thereof in this Commonwealth in the original package, intact and unbroken, of any of the products or articles the manufacture, sale, or exchange of which, or possession of which with intent to sell or exchange, is prohibited hereby. (Id. § 15040a-7.)

198. **Definition of Condensed, Etc., Milk.**—For the purposes of this act, condensed, concentrated, and evaporated skimmed milk is defined as the product resulting from the evaporation of a considerable portion of the water from skimmed milk, and shall contain, all tolerances allowed, at least twenty per centum (20%) of total milk solids, or, if sugar has been added, at least twenty-eight per centum (28%) of total milk solids, and shall include compounds of any kind containing skimmed milk. (Id. § 15040b-1.)

199. **Regulations for Manufacture, Sale, Etc., of Condensed, Etc., Milk in Sealed Cans or Receptacles.**—It is unlawful for any person, firm, or corporation to manufacture, sell, or exchange, or have in possession with intent to sell or exchange, any condensed, concentrated, or evaporated skimmed milk, or any compound of any kind containing skimmed milk, whether with or without the addition of sugar, in hermetically sealed cans or receptacles, unless such can or receptacle shall contain at least five pounds net weight, and shall have plainly marked, printed, or indicated thereon the words, "Concentrated Skimmed Milk, Unsweetened," or "Concentrated Skimmed Milk, Sweetened," as the case may be, and immediately thereunder the words "Unfit for Infants," which required words shall be printed in dark block type at least one-half inch in height and one-half inch in width upon a light colored background, which required words shall be within a surrounding line at least one-sixteenth inch in width, and no other matter whatsoever shall be printed or appear within such surrounding line, and, where the size of the can or receptacle will permit, the foregoing words within the designated surrounding line are to be shown on the label twice on opposite sides at equidistant points. The name and

address of the manufacturer or distributor thereof shall also appear, but not within the surrounding line.

It is unlawful for any person, firm, or corporation to manufacture, or sell or exchange, or have in possession with intent to sell or exchange, any condensed, concentrated, or evaporated skimmed milk labeled under any fictitious or coined or trade name whatsoever.

It is unlawful for any person, firm, or corporation to manufacture, or sell or exchange, or have in possession with intent to sell or exchange, any condensed, concentrated, or evaporated skimmed milk, unless the same conforms in all respects with condensed, concentrated, or evaporated skimmed milk as hereinbefore defined. (Id. § 15040b-2.)

200. Violations of Act; Penalty.—Any violation of the provisions of this act is hereby declared to be a misdemeanor, and any firm or corporation or person, whether individually or as a member of a firm, or a responsible agent or officer of a corporation, which or who shall be convicted of such violation, shall, for every such offense, be subject to the penalties provided for in the act to which this is a supplement. (Id. § 15040b-3.)

201. Permits Required of Creameries, Shipping Stations, Etc.—Every creamery, shipping station, milk factory, cheese factory, ice cream factory, or milk condensary, or person, receiving, buying, paying for, and selling milk or cream, on the basis of, or with reference to, the amount of butter fat contained therein, shall be required to hold a permit. The permit shall be issued to such creamery, shipping station, milk factory, cheese factory, ice cream factory, condensary, or person, by the Secretary of Agriculture. The permit shall be valid for a term of one calendar year, and shall be revoked by the Secretary of Agriculture for violation of the provisions of this act. This provision shall not apply to individuals buying milk or cream for private use, or to hotels, restaurants, boarding houses, railroad dining cars, or drug stores. (Pa. St. 1920, § 15041.)*

202. Periodic Statements by Purchasers of Milk or Cream from Producer for Manufacturing or Resale.—Every purchaser or receiver of milk or cream from the producer thereof, for manufacturing purposes or for reselling the same, shall, at each periodical time of payment to such producer for such milk or cream, or, where the producer of such milk or cream is selling the same to such purchaser or receiver by or through co-operative association or other agency and the payment therefor is being made by such purchaser or receiver to such co-operative association or other agency, shall, at the time such purchaser or receiver makes each periodical payment to such co-operative association or other agency, give each such producer so delivering milk a statement showing the amount delivered daily during the periodical time for which payment is made and the average per centum butter fat test of same, provided payment is made on the basis of butter fat content; such statement to contain the name or number of the producer or seller of such milk or cream, the date of delivery thereof and the amount so delivered; such statement to be given in the terms of the unit used as a basis for determining the value thereof: Provided, however, that such purchaser or receiver may, in lieu of said monthly statement, give, daily, to such producer or to his agent, at the time of delivery of such milk or cream to such purchaser or receiver, a written statement of the amount of milk or cream so received or purchased. (Pa. St. Supp. 1924, § 15041a-1.)

203. Enforcement of Act.—The Secretary of Agriculture shall be charged with the enforcement of the provisions of this act. Nothing contained in this section shall be construed to prevent any individual from prosecuting any one violating any of the provisions of this act. (Id. § 15041a-2.)

204. Violations of Act; Penalty.—Any person violating any of the provisions of this act shall be guilty of a misdemeanor, and, upon conviction thereof, shall be sentenced to pay a fine of not more than one hundred dollars ($100), or imprisonment in the county jail for not more than thirty days, or both, in the discretion of the court. (Id. § 15041a-3.)

205. Disposition of Fines and Penalties.—All fines and penalties imposed and received for the violation of any of the provisions of this act shall be paid to the Secretary of Agriculture or his agent, and shall thereafter be paid into the State treasury for the use of the Commonwealth. (Id. § 15041a-4.)

206. Butter fat; Use of Babcock Test.—It shall be unlawful for any person, association, copartnership, or corporation, their agents or servants, engaged in the business of buying milk or cream on the basis of, or in any manner with reference to, the amount or percentage of butter fat contained therein, to underread, overread, or otherwise fraudulently manipulate the test, commonly known as the "Babcock test," used for determining the percentage of such fat in said milk or cream or

*For penalty, see No. 214.

to falsify the record thereof, or to make the "Babcock" reading except when the fat has a temperature of one hundred thirty degrees to one hundred forty-five degrees Fahrenheit, or to use for such test quantities other than seventeen and six-tenths (17.6) cubic centimeters in the case of milk, and nine (9) grams or eighteen (18) grams in the case of cream. In all tests of cream, the cream shall be weighed and not measured into the test bottle. (Pa. St. 1920, § 15042.)

207. Testing Utensils.—No person, association, copartnership, or corporation, purchasing milk or cream, and paying for the same, on the basis of the percentage of butter fat contained therein, shall, if the percentage of butter fat is ascertained by the said "Babcock test," use any test glassware except standard Babcock test glassware which has been previously inspected and approved by the Bureau of Standards. If the proportion of butter fat is determined by any method other than the "Babcock test," no utensil or instrument shall be used in such determination until the same has been inspected and approved by the Secretary of Agriculture. (Id. § 15043.)

208. Certified Testers; Tests to be Made by; Fees for.—Every Person, association, copartnership, corporation, or agent or servant thereof, engaged in the business of receiving or buying milk or cream on the basis of, or in any way with reference to, the amount of butter fat contained therein, as determined by the "Babcock test," shall have the samples taken, and said test or tests made, only by a certified tester, who shall supervise and be responsible for the same. For the purpose of this act, a "certified tester" is any person who, having furnished satisfactory evidence of good character, and having passed a satisfactory examination in milk and cream testing conducted by the Dairy Husbandry Department of the Pennsylvania State College, shall have received a certificate of proficiency from the said department. Each applicant for such certificate shall pay a fee of three dollars ($3.00) to said department, in such manner as its regulations may prescribe, to defray the cost of the required examination and of the certificate. The said department shall make an annual report to the State Treasurer of all moneys received and expended, and any unexpended balance shall be, by the said department, paid into the State treasury for the use of the Commonwealth. The said department shall issue such certificate of proficiency in the name of the approved applicant and under serial number, and shall maintain a correspondingly numbered register of all such certificates issued under this act. This certificate shall be forwarded by the said department to the Secretary of Agriculture, who shall issue a license to said applicant, good for one calendar year, on the payment of a fee of two dollars ($2.00) to the Secretary of Agriculture. This license shall be renewed annually, without further examination, at the discretion of the Secretary of Agriculture, upon the payment of two dollars. All moneys so collected shall be used to meet the expenses of the Department of Agriculture. Each certified tester shall post his license in plain view in the testing room in which he is employed. The Secretary of Agriculture shall revoke said license for failure to post it as above required or for any other just cause. (Id. § 15044.)

209. Time for Making Tests; Tests of Composite Samples; Check Tests.—Any person, association, copartnership, or corporation, engaged in the business of buying milk or cream on the basis of, or in any way with reference to, the amount or percentage of butter fat contained therein, as determined by the "Babcock test," shall make such test of milk or cream bought from each person at least once every sixteen days. The milk or cream purchased from each person shall be represented by a composite sample, taken from each of the several lots of milk or cream bought from said person, and shall cover a period of not more than sixteen days. The composite samples, to which a suitable preservative has been added, shall be made up of aliquot parts taken from each of the several lots of milk or cream bought from each person concerned, and composite samples of all persons concerned shall cover the same period of time. Each composite sample shall be plainly labeled with the name of the person whose milk or cream the composite sample represents, and with the date of the first and last day of the period of time covered by the said composite sample. After such samples have been tested, their residues shall be kept intact on the premises for a further period of not less than ten days, in order to make possible a check test. The Secretary of Agriculture is hereby authorized to make check tests whenever in his judgment such tests are for the public welfare. (Id. § 15045.)

210. Treated Samples; Time for Making Tests of Composite Samples.—No percentage of fat ascertained from a sample, containing milk or cream, that has been so treated as to cause it to test lower or higher than the test of the milk or cream from which it was taken, shall be used as a basis of payment for milk or cream purchased or sold. No composite sample shall be tested for use as a basis

for payment of milk, which has been kept more than fifteen days after such composite sample has been completely taken. (Id. § 15046.)

211. Fraudulent Weighing.—No person, association, copartnership, or corporation, purchasing or selling milk or cream, or both, by weight, and no agent or servant of any such person, association, copartnership, or corporation, shall fraudulently use, as the basis of payment for such purchase, any weight other than the true weight of the milk or cream so purchased or sold. (Id. § 15047.)

212. Entry of Premises, Etc., by Secretary of Agriculture.—The Secretary of Agriculture and his agents are hereby authorized to enter the premises, and to examine the books and records and testing apparatus, of any person, association, copartnership, or corporation, for the purpose of carrying out the provisions of this act. (Id. § 15048.)

213. Enforcement of Act.—The Secretary of Agriculture shall be charged with the enforcement of the provisions of this act. Nothing contained in this section shall be construed to prevent any individual from prosecuting any one violating any of the provisions of this act. (Id. § 15049.)

214. Violations of Act; Punishment.—Any person violating any of the provisions of this act shall be guilty of a misdemeanor, and, upon conviction thereof, shall be sentenced to pay a fine of not more than one hundred dollars ($100.00), or imprisonment in the county jail for not more than thirty days, or both, in the discretion of the court. (Id. § 15050.)

215. Disposition of Fines and Penalties.—All fines and penalties imposed and received for the violation of any of the provisions of this act, shall be paid to the Secretary of Agriculture or his agent, and shall thereafter be paid into the State treasury for the use of the Commonwealth. (Id. § 15051.)

216. Standard Babcock Testing Apparatus to be Used; Marking Apparatus.—Every person, firm, company, association, corporation, or agent thereof, engaged in the business of buying milk or cream on the basis of, or in any manner with reference to, the amount or percentage of butter fat contained therein, as determined by the "Babcock test," shall use Standard "Babcock" bottles, pipettes, and weights, as defined in section two [21651] of this act. All such Babcock test bottles, pipettes, and weights, so used, shall have been inspected for accuracy by the Bureau of Standards of Pennsylvania or its proper officer or agent, and shall be legibly and indelibly marked, by the said Bureau of Standards or its inspectors of weights and measures, with the letters "S. G. P." (Standard Glassware Pennsylvania), and no Babcock bottle, pipette, or weight shall be used for such test unless so examined and marked by the said inspectors of weights and measures. It shall be unlawful for any person, persons, firm or company, association, corporation, or any agents, to use any other than standard test bottles, pipettes, and weights, which have been examined and marked as provided in this section, to determine the amount of fat in milk or cream bought on the butter fat basis as determined by the Babcock test. (Id. §§ 15053 and 21650.)

217. "Standard Babcock Testing Glassware" Defined.—The term "Standard Babcock Testing Glassware" shall apply to glassware and weights complying with the following specifications:

(a) Standard Milk Test Bottles.

Graduation. The total per centum graduation shall be eight. The graduated portion of the neck shall have a length of not less than sixty-three and five-tenths millimeters (two and one-half inches). The graduations shall represent whole per centum, five-tenths per centum, and tenths per centum. The tenths per centum graduation shall not be less than three millimeters in length; the five-tenths per centum graduations shall be one millimeter longer than the tenths per centum graduations projecting one millimeter to the left; the whole per centum graduations shall extend at least one-half way around the neck to the right and projecting two millimeters to the left of the tenths per centum graduations. Each per centum graduation shall be numbered, the number being placed on the left of the scale. The error at any point of the scale shall not exceed one-tenth per centum.

Neck. The neck shall be cylindrical, and the cylindrical shape shall extend for at least five millimeters below the lowest and above the highest graduation mark. The top of the neck shall be flared to a diameter of not less than ten millimeters.

Bulb. The capacity of the bulb up to the junction of the neck shall not be less than forty-five cubic centimeters. The shape of the bulb may be either cylindrical, or conical with the smallest diameter at the bottom. If cylindrical, the outside diameter shall be between thirty-four and thirty-six millimeters; if conical, the outside diameter of the base shall be between thirty-one and thirty-three millimeters, and the maximum diameter between thirty-five and thirty-seven millimeters.

The charge of the bottle shall be eighteen grams.

The total height of the bottle shall be between one hundred and fifty and one hundred and sixty-five millimeters (five and seven-eighths and six and one-half inches).

(b) Standard Cream Test Bottles.

Three types of bottles shall be accepted as standard cream test bottles: a fifty per centum, nine gram, short-neck bottle; a fifty per centum, nine gram, long-neck bottle; and fifty per centum, eighteen gram, long-neck bottle.

Fifty per centum, nine gram, short-neck bottles:

Graduation. The total per centum graduation shall be fifty. The graduated portion of the neck shall have a length of not less than sixty-three and five-tenths millimeters (two and one-half inches). The graduation shall represent five per centum, one per centum, and five-tenths per centum. The five per centum graduations shall extend at least half way around the neck to the right. The five-tenths per centum graduation shall be at least three millimeters in length, and the one per centum graduations shall have a length intermediate between the five per centum and the five-tenths per centum graduations. Each five per centum graduation shall be numbered, the number being placed on the left of the scale. The error at any point of the scale shall not exceed five-tenths per centum.

Neck. The neck shall be cylindrical, and the cylindrical shape shall extend at least five millimeters below the lowest, and five millimeters above the highest graduation mark. The top of the neck shall be flared to a diameter of not less than ten millimeters.

Bulb. The capacity of the bulb up to the junction of the neck shall not be less than forty-five cubic centimeters. The shape of the bulb may be either cylindrical, or conical with the smallest diameter at the bottom. If cylindrical, the outside diameter shall be between thirty-four and thirty-six millimeters; if conical, the outside diameter of the base shall be between thirty-one and thirty-three millimeters and the maximum diameter between thirty-five and thirty-seven millimeters.

The charge of the bottle shall be nine grams. All bottles shall bear on top of the neck, above the graduations, in plainly legible characters, a mark defining the weight of the charge to be used (nine grams).

The total height of the bottle shall be between one hundred and fifty and one hundred and sixty-five millimeters (five and seven-eighths and six and one-half inches), same as standard milk test bottles.

Fifty per centum, nine gram, long-neck bottles:

The same specifications in every detail as specified for the fifty per centum, nine gram, short-neck bottle, shall apply for the long-neck bottle, with the exception, however, the total height of this bottle shall be between two hundred and ten and two hundred and thirty-five millimeters (eight and one-fourth and eight and seven-eighths inches), and that the total length of the graduation shall not be less than one hundred and twenty millimeters.

Fifty per centum, nine gram, long-neck bottles:

The same specification in every detail as specified for the fifty per centum, nine gram, long-neck bottles, except that the charge of the bottle shall be eighteen grams. All bottles shall bear, on the top of the neck, above the graduation, in plainly legible characters, a mark defining the weight of the charge to be used (eighteen grams).

(c) The Standard Babcock Pipette.

Total length of pipette, not more than three hundred and thirty millimeters (thirteen and one-fourth inches). Outside diameter of suction tube, six to eight millimeters. Length of suction tube, one hundred and thirty millimeters. Outside diameter of delivery tube, four and five-tenths to five and five-tenths millimeters. Length of delivery tube, one hundred to one hundred and twenty millimeters. Distance of graduation mark above bulb, fifteen to forty-five millimeters. Nozzle, straight. Delivery, seventeen and six-tenths cubic centimeters of water at twenty degrees Centigrade in five to eight seconds. Maximum error shall not exceed five-hundredths of a cubic centimeter.

(d) Standard Weights.

The standard weights shall be of nine (9) grams and eighteen (18) grams denominations. (Pa. St. Supp. 1924, §§ 15054 and 21651.)

218. Violations of Act; Punishment.—Any person violating any of the provisions of this act shall be guilty of a misdemeanor, and shall be subject to the same penalties as provided in the act to which this is a supplement. (Pa. St. 1920, §§ 15055 and 21652.)

219. Enforcement of Act.—The Bureau of Standards of the State of Pennsylvania, through its inspectors of weights and measures, shall be charged with the enforcement of the provisions of this act. (Id. §§ 15056 and 21653.)

220. Time of Taking Effect of Act.—The provisions of this act shall take effect January first, one thousand nine hundred and twenty, with the exception that the provisions of section two [21651], as respects the denominations of the glassware

therein specified, shall not be held to require the abandonment of the use of glassware of other denominations in use at the time of the passage of this act, provided that the said glassware of other than standard denominations shall have been certified, after examination by the proper officer of the Pennsylvania Bureau of Standards to be correct to their graduations. (Id. §§ 15057 and 21654.)

221. **Milk, Skim Milk and Cream; Sale by Liquid Measure; or by Weight or Percentage of Butter Fat.**—On and after the first day of July, one thousand nine hundred and seven, it shall be unlawful for any person, firm, or corporation to sell or offer for sale, or demand from any person offering for sale, either wholesale or retail, within the State of Pennsylvania, any milk, skim milk, and cream according to any other standard of measurement than that known as the liquid, or wine measure, containing two hundred and thirty-one cubic inches to the gallon: Provided, that nothing in this act will prevent the sale of milk, skim milk, and cream by weight or percentage of butter fat. (Id. § 15058.)

222. **Violation of Act; Penalty.**—Every person, firm, or corporation, and every officer, agent, servant, or employee of such person, firm, or corporation, who shall violate any of the provisions of this act; or any person, firm or corporation, and every officer, agent, servant, or employee of such person, firm, or corporation, demanding, offering, and receiving a greater measure than that specified in the first section [15058] of this act, shall be deemed guilty of a misdemeanor, and, upon the conviction thereof in the Court of Quarter Sessions of the proper county, shall be sentenced to pay a fine of not less than twenty-five dollars and not more than one hundred dollars, with costs of prosecution, or undergo imprisonment not exceeding thirty days, or both, at the discretion of the court. (Id. § 15059.)

223. **Milk Cans to be Cleaned Before Shipment.**—All cans or other vessels used in the shipment of milk or cream on railroads, shall be thoroughly cleansed of the refuse of milk or cream, and other foreign matter, in, or adhering to the inside of, such can or other vessel, before shipment, and reshipment of same back to the original shipper thereof. (Id. § 15060.)

224. **Neglect to Cleanse Cans; Fine.**—Any person or persons who shall fail or neglect to cleanse the cans or other vessels as provided for in section one [15060] of this act, shall be liable to a penalty, not exceeding fifty dollars, for each and every violation of this act, to be recovered in the name of the Commonwealth, as debts of equal amount, are by law recoverable, by any person or persons who may sue for the same. All moieties or fines shall be paid into the county treasury of the respective county of the Commonwealth where suit is brought; be paid to the treasurer of the county where such suit shall have been brought. (Id. § 15061.)

225. **Failure to Pay Fine; Punishment.**—In default of the payment of the penalty, recovered as provided for in section two [15061] of this act, the person or persons against whom such penalty is recovered shall be committed to the jail of the proper county, for as many days as the penalty recovered is in dollars. (Id. § 15062.)

226. **Protection of Milk Supply; Co-operation of Local Boards of Health.**—The State Live Stock Sanitary Board* may co-operate with any local board of health, in accordance with rules and regulations, and upon such terms of co-operation as may mutually be agreed upon, for the purpose of ascertaining the condition of dairy herds and milk supplies and for the purpose of protecting such milk supplies from contamination; and the State Live Stock Sanitary Board may undertake, so far as possible to bear one-half of the cost of such examinations as are made, beyond the limits of the jurisdiction of the said local board of health, for the purpose of protecting from contamination milk produced to be sold within the field of jurisdiction of said local boards of health. (Id. § 360.)

227. **Violations of Act; Punishment; Disposition of Fines, Etc.**—Any person violating any of the provisions of this act shall be deemed guilty of a misdemeanor, and, upon conviction before any alderman, magistrate, or justice of the peace, shall be sentenced to pay a fine of not less than ten dollars and not more than one hundred dollars for each and every offense, together with all the costs of the prosecution; and in default of the payment of said fine and costs, shall stand committed until the same are paid. All penalties and costs recovered for the violation of any of the provisions of this act shall be paid to the Secretary of the State Live Stock Sanitary Board, or to an authorized agent of said board, and by him be immediately covered into the State treasury. (Id. § 361.)

228. **Public Health—Serving of Milk Must be in Original Container—Not to be Served from Bulk—Milk Served Must Comply with Standard.**—It shall be unlawful for the owner or lessee of any hotel, restaurant, lunch room, fountain, or dining car, or his, her, or its agents, servants, or employees to sell or serve milk for drinking purposes to his, her, or its patrons unless such milk is served and sold in

*See No. 30 et seq.

the original bottle or similar original container in which milk is supplied to the said hotel, restaurant, lunch room, fountain, or dining car.

It shall be unlawful hereafter to serve milk to the patrons of any hotel, restaurant, lunch room, fountain, or dining car by the glass from bulk.

It shall be unlawful for the owner or lessee of any hotel, restaurant, lunch room, fountain, or dining car, or his, her, or its agents, servants, or employees to serve milk for drinking purposes to his, her, or its patrons unless said milk complies with the standards for milk fixed by the laws of the Commonwealth. (L. 1925, Act No. 52, § 1.)

229. Violation of Act a Misdemeanor.—Any person who shall violate any of the provisions of this act shall be guilty of a misdemeanor, and upon conviction thereof shall be sentenced to pay a fine of not less than twenty-five ($25) dollars nor more than fifty ($50) dollars, or imprisonment for not less than thirty (30) days nor more than ninety (90) days, or either, or both, at the discretion of the court. (Id. § 2.)

230. May Purchase Milk in Bulk for Other Purposes.—Nothing contained in this act shall be construed to prevent or prohibit the owner or lessee of any hotel, restaurant, lunch room, fountain, or dining car, or other person from purchasing milk in bulk for uses other than for serving patrons with milk for drinking purposes, nor to prevent the sale and serving of cream, skimmed milk, or buttermilk from bulk if the same is pure and wholesome and is sold and served as cream, skimmed milk, or butter milk, nor shall it prevent or prohibit the sale of mixed drinks at soda fountains. (Id. § 3.)

231. Department of Agriculture to Enforce.—The Department of Agriculture shall be charged with the enforcement of this act. (Id. § 4.)

232. Collection and Disposition of Fines.—All fines imposed and recovered for violation of any of the provisions of this act shall be paid to the Department of Agriculture or its agent, and when so collected and paid shall thereafter be, by the Department of Agriculture, paid into the State treasury for the use of the Commonwealth. (Id. § 5.)

233. Permits; Fees, Etc.—Every creamery, shipping station, milk factory, cheese factory, ice cream factory, or milk condensary, or person receiving, buying and paying for milk or cream, regardless of the method of settlement, shall be required to hold a permit for each and every place where milk or cream is received by weight or measure; Provided, however, that nothing in this act shall apply to individuals buying milk or cream for private use, or to producers buying milk in emergencies to make up their regular supply, or to hotels, restaurants, boarding houses, railroad dining cars, retail stores or drug stores. The permit shall be issued by the Secretary of Agriculture to such creamery, shipping station, milk factory, cheese factory, ice cream factory, or milk condensary, or person, upon the payment of a fee of five dollars ($5.00) and after filing of such information as may be required by the secretary of Agriculture. All moneys so collected shall be used to meet the expenses of the Department of Agriculture in the enforcement of this act. The permit shall be valid for a term of one calendar year and may be revoked by the Secretary of Agriculture for any violation of the provisions of this act. This permit issued hereunder shall be posted in plain view in the station for which it is issued. (L. 1925, Act No. 290, § 1 as amended L. 1927, Act No. 126, § 1.)

234. Unlawful to Manipulate Test for Butter Fat.—It shall be unlawful for any person, association, copartnership, or corporation, their agents or servants engaged in the business of buying milk or cream on the basis of or in any manner with reference to the amount or percentage of butter fat contained therein, to underread, overread, or otherwise fraudulently manipulate the test commonly known as the "Babcock test" used for determining the percentage of such fat in said milk or cream, or to falsify the record thereof or to make the "Babcock" reading except when the fat has a temperature of one hundred thirty degrees to one hundred forty-five degrees Fahrenheit, or to use for such test quantities other than seventeen and six-tenths (17.6) cubic centimeters in the case of milk and nine (9) grams or eighteen (18) grams in the case of cream. In all tests of cream the cream shall be weighed and not measured into the test bottle. (L. 1925, Act No. 290, § 2.)

235. Tests to be Made with Standard Approved Test Glassware.—No person, association, copartnership, or corporation purchasing milk or cream and paying for the same on the basis of the percentage of butter fat contained therein shall, if the percentage of butter fat is ascertained by the said "Babcock test," use any test glassware except standard Babcock test glassware which has been previously inspected and approved by the Bureau of Standards of the Department of Internal Affairs. If the proportion of butter fat is determined by any method other than the "Babcock test" no utensil or instrument shall be used in such determination until the same has been inspected and approved by the Secretary of Agriculture or his agents. (Id. § 3.)

236. Tests; Licenses; Fees.—Every person, association, copartnership, corporation, or agent or servant thereof, engaged in the business of receiving or buying milk or cream on the basis of, or in any way with reference to the amount of butter fat contained therein, as determined by the "Babcock test," shall have the test or tests made only by a licensed tester, who shall be responsible for the same. For the purpose of this act a licensed tester is any person who, having furnished satisfactory evidence of good character and having passed a satisfactory examination in milk and cream testing conducted by the Pennsylvania Department of Agriculture, shall have received a certificate of proficiency from the said department. Each applicant for such certificate shall pay a fee of three dollars ($3.00) to the Secretary of Agriculture or his agents. The said department shall issue such certificate of proficiency in the name of the approved applicant and under serial number.

The Secretary of Agriculture upon receipt of this certificate of proficiency, together with the payment of a fee of three dollars ($3.00), shall issue a license to said applicant, good for one calendar year. This license shall be renewed annually without further examination, at the discretion of the Secretary of Agriculture, upon the payment of a fee of three dollars ($3.00). All moneys so collected shall be used to meet the expenses of the Department of Agriculture for the enforcement of this act. Each certified tester shall post his license in plain view in the testing room in which he is employed. The Secretary of Agriculture shall revoke said license for failure to post it as above required, or for any other just cause. (Id. § 4, as amended L. 1927, Act No. 126, § 2.)

237. Samples; Certified Weighers, Etc.—Every person, association, copartnership, or corporation engaged in the business of buying milk or cream on the basis of or in any way with reference to the amount of butter fat contained therein shall have the samples taken for testing purposes either by a licensed tester or by a person licensed or certified to weigh and sample milk and cream. For the purpose of this act a person certified to weigh and sample milk or cream is any person who, having furnished satisfactory evidence of good character and having passed a satisfactory examination in weighing and sampling milk and cream conducted by the Department of Agriculture, shall have received a certificate of proficiency from said department. Each applicant for such certificate shall pay a fee of one dollar and fifty cents ($1.50) to said department. The said department shall issue such certificate of proficiency in the name of the approved applicant and under serial number. The Secretary of Agriculture, upon receipt of this certificate of proficiency, together with the payment of a fee of three dollars ($3.00), shall issue a license to said applicant, good for one calendar year. This license shall be renewed annually without further examination, at the discretion of the Secretary of Agriculture, upon the payment of three dollars ($3.00). All moneys so collected shall be used to meet the expenses of the Department of Agriculture in the enforcement of this act. Each licensed weigher and sampler shall post his or her license in plain view in the plant in which he or she is employed. The Secretary of Agriculture may revoke said license for failure to post it, as above mentioned, or for any other just cause. (L. 1925, Act No. 290, § 5, as amended L. 1927, Act No. 126, § 3.)

238. Test to be Taken Once Every Sixteen Days—Composite Samples—Residues to be Held Intact—Check Test—Notice of Result of Test—Where Daily Test Made.—Any person, association, co-partnership, corporation, or agents or servants thereof engaged in the business of buying milk or cream on the basis of or in any way with reference to the amount or percentage of butter fat contained therein, as determined by the "Babcock test," shall make such test at least once every sixteen days. The milk or cream purchased from each person shall be represented by a composite sample taken from the entire delivery of each of the several lots of milk or cream bought from said person and shall cover a period of not more than sixteen days. The composite sample to which a suitable preservative has been added shall be made up of aliquot parts taken from each of the several lots of milk or cream bought from each person concerned, and composite samples of all persons concerned shall cover the same period of time. Each composite sample shall be held in an air-tight bottle—such bottle being plainly labeled showing the name or number of the person whose milk or cream the composite sample represents—and the rack or container where the samples are held shall be plainly labeled showing the date of the first and last day of the period covered by the said composite samples. The Secretary of Agriculture may require that the composite samples be tested on the premises where they are taken whenever in his judgment such action is for the public welfare. After such samples have been tested their residues shall be held intact and in condition suitable to test on the premises where they are tested for further period of not less than ten days in order to make possible a check test. The Secretary of Agriculture, or his agents, is hereby authorized to make such tests whenever in his judgment such tests are advisable for the public welfare. Every

person, firm, or corporation affected by the provisions of this act shall, within two days after the day on which the test herein provided for has been made, notify the seller of such milk or cream or his agent of the result of such test, stating the period of time during which said composite samples were taken. Notice under this section may be given by posting of the results of said tests continuously for ten days in a conspicuous place in receiving stations or in writing. Where a daily test is made on milk or cream and the average of these several tests used as a basis of settlement there shall also be a composite sample taken covering a period of first and last half of month and shall be held intact on the premises for a period of not less than ten days, in order that the Secretary of Agriculture, or his agents, may make check tests whenever in his judgment such tests are advisable for the public welfare. (L. 1925, Act No. 290, § 6.)

239. Treated Samples Not to be Used as Basis of Payment.—No percentage of fat ascertained from a sample containing milk or cream that has been so treated as to cause it to test lower or higher than the test of the milk or cream from which it was taken shall be used as a basis of payment for milk or cream purchased or sold. (Id. § 7.)

240. Fraudulent Use of Other Weights or Measures.—No person, association, copartnership, or corporation purchasing or selling milk or cream or both by weight or measure, and no agent or servant of any such person, association, copartnership, or corporation shall fraudulently use as a basis of payment for such purchase any weight or measure other than the true weight or measure of the milk or cream purchased or sold. (Id. § 8.)

241. Purchaser or Receiver from Producer to Give Producer a Statement—Contents of Statement—Proviso—May Give Daily Statement.—Every person, association, copartnership, corporation, or agent or servant purchasing or receiving milk or cream from the producer thereof for manufacturing purposes or for re-selling the same shall, at each time of payment to such producer for such milk or cream or where the producer of such milk or cream is selling the same to such purchaser or receiver by or through co-operative association or other agency and the payment thereof is being made by such purchaser or receiver to such co-operative or other agency shall, at the time such purchaser or receiver makes each payment to such co-operative association or other agency, give each such producer so delivering milk a statement showing the amount delivered daily during the time for which payment is made and the average per centum butter fat test of same, provided payment is made on the basis of the butter fat content—such statement to contain the name or number of the producer or seller of such milk or cream, the date of delivery thereof, and the amount so delivered; such statement to be given in the terms of the unit used as a basis for determining the value thereof: Provided, however, that such purchaser or receiver may in lieu of said monthly statement give daily to such producer or to his agent at the time of delivery of such milk or cream to such purchaser or receiver a written statement of the amount of milk or cream so received or purchased. (Id. § 9.)

242. Power to Enter Premises and to Examine Books and Apparatus.—The Secretary of Agriculture and his agents are hereby authorized to enter the premises and to examine the books, the records, and testing apparatus of any person, association, copartnership, or corporation, for the purpose of carrying out the provisions of this act. (Id. § 10.)

243. Enforcement of Act.—The Secretary of Agriculture or his agents shall be charged with the enforcement of the provisions of this act. (Id. § 11.)

244. Violations.—For violation of any of the provisions of this act proceedings may be instituted against the owner or manager who is responsible for the business transacted, together with the certified tester or the person weighing and sampling either or all. (Id. § 12.)

245. Misdemeanor—Penalties—Violation of Section 2 a Misdemeanor—Penalty.—Any person or persons violating any of the provisions of this act except section two shall be guilty of a misdemeanor and upon conviction thereof shall be sentenced to pay a fine of not less than ten dollars ($10.00) or more than fifty dollars ($50.00), or imprisonment in the county jail for not less than ten days or more than thirty days, or both, at the discretion of the court. Any person or persons found guilty of violation of section two of this act shall be guilty of a misdemeanor and upon conviction thereof shall be sentenced to pay a fine of not less than one hundred dollars ($100.00) or more than one thousand dollars ($1,000.00), or imprisonment in the county jail for not more than nine months. (Id. § 13.)

246. Disposition of Fines and Penalties.—All fines and penalties imposed and received for the violation of any of the provisions of this act shall be paid to the Secretary of Agriculture or his agents and shall thereafter be paid into the State treasury for the use of the Commonwealth. (Id. § 14.)

247. Sale, Etc., of Adulterated Ice Cream.—It is unlawful for any person, association, partnership, or corporation, by himself, herself, itself or themselves, or by his, her or their agents, servants, or employees, to sell, offer for sale, expose for sale, or have in possession with intent to sell ice cream, including coated ice cream and the coating thereof, which is adulterated within the meaning of this act. (Pa. St. Supp. 1924, § 79a-1.)

248. Adulterated Ice Cream Defined.—Ice cream, including coated ice cream and the coating thereof, shall be deemed to be adulterated within the meaning of this act:

First. If it contains boric acid, formaldehyde, saccharin, or any other added substance or compound that is deleterious to health.

Second. If it contains salts of copper, iron oxide ochres, or any coloring substance deleterious to health; Provided, that this paragraph shall not be construed to prohibit the use of harmless coloring matter in ice cream, when not used for fraudulent purposes.

Third. If it contains any deleterious flavoring matter, or flavoring matter not true to name.

Fourth. If it contains any fats, oils, or paraffin, other than milk fats, added to, or blended, or compounded, with it; Provided, however, that chocolate ice cream and the coating of coated ice cream may contain cocoa butter.

Fifth. If a product is manufactured, which is an imitation or substitute for ice cream, and is offered for sale under any coined or trade name.

Sixth. If it is offered for sale from any container, compartment, or cabinet, which contains any article other than ice cream.

Seventh. If it contains less than eight (8) per centum butter fat, except when fruit or nuts are used for the purpose of flavoring, then it shall not contain less than six (6) per centum butter fat. (Id. § 79a-2.)

249. Falsely Labeled Containers; Misrepresentation.—It is unlawful for any person, association, partnership, or corporation, to sell, offer for sale, expose for sale, or have in possession with intent to sell, any ice cream, including coated ice cream and the coating thereof, in any container which is falsely labeled or branded as to the name of the manufacturer thereof; or to misrepresent, in any way, the place of manufacture of ice cream, including coated ice cream and the coating thereof, or the manufacture thereof. (Id. § 79a-3.)

250. Punishment for Violation of Act.—Any person, association, partnership, or corporation violating any of the provisions of this act shall be guilty of a misdemeanor, and, upon conviction thereof, shall be sentenced to pay a fine of not less than twenty-five ($25) dollars, nor more than one hundred ($100) dollars; or in the case of an individual, or the officers and members of an association, partnership, or corporation to undergo an imprisonment of not less than thirty (30) days, nor more than sixty (60) days, or both. (Id. § 79a-4.)

251. Enforcement of Act.—The Director of the Bureau of Foods of the Department of Agriculture shall be charged with the enforcement of the provisions of this act. (Id. § 79a-5.)

252. Disposition of Fines and Penalties.—All fines and penalties, imposed and recovered for the violation of any of the provisions of this act shall be paid to the Director of Bureau of Foods, or his agent, and, when so collected and paid, shall thereafter be by the Director of Foods paid into the State treasury for the use of the Commonwealth. (Id. § 79a-6:)

253. Conditional Sales of Ice Cream Cabinets and Containers Regulated.—Hereafter all ice cream cabinets, ice cream containers, and the appurtenances, thereto, loaned to, or leased or hired by, any person or persons residing within this Commonwealth, or any corporation or corporations doing business therein, or conditionally sold to any such person, persons, corporation or corporations, under a contract of sale reserving title in the vendor until paid for, shall be exempt from levy and sale on execution or distress for rent, so long as the title thereto remains in the owner, lessor, or conditional vendor: Provided, that the name and address of the owner, lessor, or conditional vendor of such ice cream cabinets or ice cream containers be marked on, or be attached to, said ice cream cabinets or ice cream containers, on a conspicuous part thereof, or that the owner, lessor, or conditional vendor of such ice cream cabinets or ice cream containers and appurtenances, or his, its, or their agent, shall have given written notice to the landlord, or his or its agent, at the time of loaning, leasing, hiring, or conditionally selling, or within ten days after the same is placed in the premises, that the same are loaned, leased, hired, or sold under reservation of title. (L. 1927, Act No. 216, § 1.)

NOTE: See also Nos. 30 et seq., 34, 89 et seq., 371 et seq., 557-558, 559 et seq., 565 et seq., 568 et seq., 583-584, and 639.

Dried Fruits.

See No. 3.

Eggs.

254. Sale, Etc., of Eggs Not Fresh.—It shall be unlawful for any person, firm, or corporate body, by himself, herself, or themselves, or by his, her, or their agents or servants, to sell, expose for sale, or have in his, her, or their possession with intent to sell, any eggs, for and as fresh eggs, that are not fresh eggs, as may appear upon proper test. (Pa. St. 1920, § 92.)

255. Misrepresentation.—Eggs shall be deemed to be misbranded under this act, if they are in any way branded, labeled, marked, stamped, as being fresh eggs, when they are in fact not fresh eggs, as may appear upon proper test. (Id. § 93.)

256. Punishment.—Any person violating any of the provisions of this act, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be sentenced to pay a fine of not less than ten ($10) dollars nor more than fifty ($50) dollars, or upon default of payment of such fine, to be imprisoned in the county jail for not more than ten days. (Id. § 94.)

257. Enforcement of Act.—The Dairy and Food Commissioner* shall be charged with the enforcement of the provisions of this act. (Id. § 95.)

258. Disposition of fines.—All fines and penalties inclosed and received for the violation of any of the provisions of this act shall be paid to the Dairy and Food Commissioner or his agent, and, when so collected and paid, shall thereafter be, by the Dairy and Food Commissioner, paid to the State treasury for the use of the Commonwealth. (Id. § 96.)

259. License to Separate Eggs; Application; Investigations; Fee.—It shall be unlawful for any person, copartnership, association, or corporation, to conduct, at any given place, any business of opening eggs and separating the egg content from the shell and using or disposing of the content thereof for any purpose, unless he, she, it, or they have first applied for and secured a license so to do from the Dairy and Food Commissioner. The form of such license shall be prescribed by the Dairy and Food Commissioner. The application for a license, in addition to other matters which may be required to be stated thereon by said Dairy and Food Commissioner, shall contain an accurate description of the place where the proposed separation of eggs is intended to be carried on, and the name and style under which said business is proposed to be conducted. If the said application is satisfactory to the Dairy and Food Commissioner, and said name and style shall not, in the judgment of the Dairy and Food Commissioner, be calculated to deceive or mislead the public as to the real nature of the business so proposed to be carried on, the Dairy and Food Commissioner shall issue to the applicant a license, authorizing him, her, it, or them to engage in the business of opening the eggs and separating the egg content from the shell; for which said license the applicant shall first pay the annual sum of fifty dollars. The said license fee, when received by the Dairy and Food Commissioner, shall be by him immediately covered into the State treasury for the use of the Commonwealth. Such license shall not authorize the holder thereof to carry on the business of opening the eggs and separating the egg content from the shell at any place other than that designated in the application and license. All licenses shall be taken out for a full year. (Id. § 10988.)

260. Place of Carrying on Business; Containers for Unwholesome Eggs.—The opening of eggs unfit for food purposes and their denaturing by kerosene shall not be permitted in any building or premises where the opening of eggs for food purposes is carried on, and such eggs as are found to be unfit for food purposes must be placed in containers, painted of a bright red color, and such red colored containers must not be used for wholesome eggs, nor be found in establishments where food products are prepared; and violations of either of these provisions shall be a misdemeanor and subject to the same penalties as the act of which this is a supplement. (Id. § 10989.)

261. Unwholesome Eggs to be Denatured.—It shall be unlawful for any person, copartnership, association, or corporation, by himself, herself, itself, or themselves, or by his, her, its, or their agents, servants, or employees, to sell, offer for sale, expose for sale, or have in possession, eggs that are unfit for food, within the meaning of an act, [10992-10996] entitled "An act for the protection of the public health, by prohibiting the sale, offering for sale, exposing for sale or having in pos-

*Now Department of Agriculture. See No. 30 et seq. This law is to be corrected accordingly.

session with intent to sell, of eggs unfit for food, as therein defined, and prohibiting the use of such eggs in the preparation of food products; providing penalties for the violation thereof, and providing for the enforcement thereof," approved the eleventh day of March, anno Domini one thousand nine hundred and nine, for any purpose, use, cause, or reason whatsoever, unless the same shall have first been denatured with a sufficient quantity of kerosene to render all of the same unfit for use in the preparation of food and food products; and further providing, that the shells of all such eggs that may be unfit for food, as hereinbefore mentioned, shall first be removed or broken, by smashing or otherwise, so as to permit a free impregnation of the whole of the egg substance by the denaturing fluid. (Id. § 10990.)

262. **Access to Places of Business, Etc., Penalties.**—For the purpose of enforcing the provisions of this act, the Department of Agriculture, through its officers, the Dairy and Food Commissioner and his agents and assistants, shall have full access to all places of business, factories, mills, buildings, cars, vessels, barrel, tanks, containers, and packages of whatever kind, used in keeping, storing, shipping, and handling eggs, and shall have power to take sufficient quantity of eggs therefrom, upon or offering payment for the same, for the purpose of making an analysis thereof.

All persons, copartnerships, associations, or corporations, violating any of the provisions of this act, or interfering with or refusing to give access to the Dairy and Food Commissioner or any of his agents or assistants when securing quantities of eggs for the purpose of analysis, shall be guilty of a misdemeanor, and subject to the same penalties as provided in the act* to which this is a supplement. (Id. § 10991.)

263. **Eggs and Mixtures to which Applicable.**—This act shall apply to eggs that, either before or after removal from the shell, are wholly or partly decayed or decomposed, and to eggs in the fluid state, any portion of which are wholly or partly decayed or decomposed, or that are mixed with parts of eggs that are derived from eggs that are wholly or partly decayed or decomposed. This act shall also apply to frozen masses or broken eggs, if the mass contains eggs that are wholly or partly decayed or decomposed, or that are mixed with parts of eggs that have been taken from eggs that were wholly or partly decayed or decomposed. (Id. § 10992.)

264. **Use in Food; Delivery, Etc., at Places Where Food Prepared.**—It shall be unlawful for any person, firm, or corporate body, by himself, herself, itself or themselves, or by his, her, its or their agents, servants, or employees, to use eggs that are either wholly or partly decayed or decomposed, in the preparation of food products: And providing, further, that there shall be no delivery, sale, purchase, or acceptance of wholly or partly decayed or decomposed eggs in or at any establishment where food products are prepared or manufactured. (Id. § 10993.)

265. **Punishment for Violations.**—Any person who shall violate any of the provisions of this act shall be guilty of a misdemeanor, and, upon conviction thereof, shall be sentenced to pay a fine of not less than two hundred ($200) dollars, nor more than one thousand ($1,000) dollars, or to undergo an imprisonment of not less than three (3) months, nor more than nine (9) months, or both or either, at the discretion of the court. (Id. § 10994.)

266. **Enforcement of Act.**—The Dairy and Food Commissioner shall be charged with the enforcement of the provisions of this act. (Id. § 10995.)

267. **Disposition of Fines and Penalties.**—All fines and penalties imposed and recovered for the violation of any of the provisions of this act shall be paid to the Dairy and Food Commissioner, or his agent, and, when so collected and paid, shall thereafter be, by the Dairy and Food Commissioner, paid to the State treasury, for the use of the Commonwealth. (Id. § 10996.)

NOTE: See also No. 89 et seq.

Feeding Stuffs.

268. **Statement of Contents Affixed to Packages; Sales in Bulk or at Retail; Samples; Analysis; Fee.**—Every barrel, bag, pail, parcel, or other package of concentrated commercial feeding stuffs, as defined in section two [404] of this act, used for feeding domestic animals, also condimental stock and poultry food, and patented, proprietary, or trade-marked stock and poultry food, possessing nutritive value combined with medicinal properties, sold, offered or exposed for sale, within this State, shall have affixed thereto, in a conspicuous place on the outside thereof, a legible and plainly printed statement in the English language clearly and truly certifying, the number of net pounds of feeding stuff contained therein, the name, brand, or trade-mark under which the article is sold; the name and address of the manufacturer or importer, and a statement of the percentage of crude protein, the percentage

*See No. 263 et seq.

of crude fat, and the maximum percentage of crude fibre which it contains; these constituents to be determined by the latest methods adopted by the Association of Official Agricultural Chemists of North America. Every concentrated commercial feeding stuff, as defined in section two [404] of this act, intended for domestic animals, that it is compounded from two or more substances, in addition to the above requirements shall have affixed thereto, in a conspicuous place on the outside thereof, a statement in the English language giving the true and correct names of all of the ingredients of which it is composed. Whenever any concentrated commercial feeding stuff is kept for sale, stored in bins, the dealer or dealers keeping the same for sale in bulk, or if it is put up in packages belonging to the purchaser, the dealer or dealers shall, upon request of the purchaser, furnish him with a card upon which is written or printed the brand, name, guaranteed percentage of crude protein, crude fat and crude fibre, and a statement showing the true and correct names of all of the ingredients of which it is composed, and also the name and address of the manufacturer or importer, whenever possible: Provided, that when any manufacturer or purchaser, located within the State of Pennsylvania, of any concentrated commercial feeding stuff, as defined in section two [404] of this act, shall send samples of the same to the Secretary of Agriculture* for analysis, the chief chemist of the Department of Agriculture shall furnish such analysis, showing the percentage of crude protein, the percentage of crude fat, and the percentage of crude fibre which it contains, and shall charge a fee of one dollar for each such analysis, which analysis shall be made within fifteen days after the same is received by the chief chemist, and all moneys so received shall, from time to time, be covered into the State treasury by the Secretary of Agriculture. (Pa. St. 1920, § 403.)

269. **Concentrated Commercial Feeding Stuff Defined; Samples; Analysis.**—The term "concentrated commercial feeding stuffs," as used in this act, shall include cottonseed meals, cottonseed feeds, linseed meals, linseed oil meals, cocoanut oil meals, peanut meals, corn oil meals, corn gluten feeds, corn gluten meals, corn bran, maize feeds, starch feeds, barley middlings, barley feeds, pea meals, bean meals, sugar feeds, dried distillers' grains, dried brewers' grains, malt sprouts, dried malt grains, dried vinegar grains, wheat bran, wheat middlings, wheat mixed feeds, rye bran, rye middlings, rye mixed feeds, buckwheat bran, buckwheat middlings, buckwheat feeds, hominy feeds, cerealine feeds, maizeline feeds, rice meals, dried beet pulp, dried molasses beet pulp, feed molasses, molasses grains, molasses feeds, clover meal, alfalfa meal and feeds, semi-solid or dried buttermilk, ground beef scraps, ground fish scrap, oil meals or residues from extracted seeds and grains, mixtures of whole grains, and all other mixtures bearing distinctive brand or trade names, and all mixtures of similar nature used for feeding domestic animals, including poultry; condimental stock and poultry foods, and patented proprietary or trade-mark stock and poultry foods, possessing nutritive value combined with medicinal properties, and all mixed feeds other than pure grains which are not sold as mixtures bearing distinctive names, but which are sold as pure grains. It shall not include hays, straws and corn stover, ensilage, whole grains, nor the unmixed meals made directly from the entire grains of wheat, rye, barley, oats, Indian corn, ear corn, Kaffir corn, broom corn, sugar cane, sorghum, rice, buckwheat, and flaxseed, not mixed with other substances, but sold separately as distinct articles of commerce; nor pure grains mixed together, not being mixed with any other substance, nor having distinctive brand or trade names, but sold as mixtures of pure whole grains. The Secretary of Agriculture,* by himself or his agents, is fully empowered to take samples of these articles when found, and, if upon analysis, they prove to be adulterated or misbranded, the vender shall be in all respects subject to the penalties hereinafter set forth for the adulteration or misbranding of concentrated commercial feeding stuffs. (Pa. St. Supp. 1924, § 404.)

270. **Addition of Injurious Substances; Metal Fasteners; Statements on Containers.**—No foreign mineral substance or substances injurious to the health of domestic animals, nor oat hulls, oat feed, oatmeal, mill by-products, clipped oat by-product, ground corn cobs, flax plant refuse, elevator, chaff, cottonseed hulls, ground corn stalks, cocoa shells, cocoanut shells, weed seeds, humus, peat, sand, sawdust, coffee hulls, or other similar adulterants shall be mixed with any feeding stuff sold, offered, or exposed for sale in this State; Provided, that nothing in this section shall be construed as prohibiting the use of mineral substances known to possess medicinal properties and that are not injurious to the health of domestic animals in compounding stock and poultry food and patented, proprietary or trade-marked stock and poultry foods; and provided further, that any feeding stuff the crude fibre content of which does not exceed eleven per centum, that may be found,

*See No. 30 et seq.

upon analysis, to contain either oat hulls, oat feed, oatmeal, mill by-product, clipped oat by-product, flax plant refuse, elevator chaff, cottonseed hulls, ground cornstalks, cocoa shells, cocoanut shells, or all of these ingredients, shall not be considered adulterated with oat hulls, oat feed, oatmeal, mill by-product, clipped oat by-product, flax plant refuse, elevator chaff, cottonseed hulls, ground cornstalks, cocoa shells, or cocoanut shells, within the meaning of this act; and provided further, that nothing contained in this act shall prohibit the mixing of whole corn without being shelled with other whole grains or the admixture of ground corn cobs with exclusively corn feeds, in such proportion as to keep the crude fibre content from exceeding eleven per centum.

The use of any or all metal fasteners in fastening or attaching tags or cards to packages of feeding stuffs is hereby prohibited.

In addition to the requirements to section one [403] of this act a statement shall be affixed to all packages or other containers of feeding stuffs, showing, to the case of feed molasses, the minimum percentage of total sugars which it contains, and, in the case of semi-solid buttermilk, the minimum percentage of total solids which it contains. (Id. § 405.)

271. Filing Certified Statements; License Fee.—Each and every manufacturer, importer, agent, person, corporation, or firm, on or before the first day of January of each year, or before selling, offering, or exposing for sale, in this Commonwealth, any concentrated commercial feeding stuffs, as defined in section two [404] of this act, shall register and file annually with the Secretary of Agriculture* a certified statement of the names and number of each kind of brand of such concentrated commercial feeding stuffs that he shall offer for sale during the next ensuing year, and a copy of the analysis of each one of such brands as required by section one [403] of this act; and he or they shall pay to the Secretary of Agriculture the sum of twenty-five dollars for each and every brand of such concentrated commercial feeding stuffs to be sold or offered for sale within the Commonwealth, except brands of (a) pure wheat bran, (b) pure wheat middlings, (c) pure wheat mixed feed, (d) pure rye bran, (e) pure rye middlings, (f) pure rye mixed feed, (g) pure buckwheat bran, (h) pure buckwheat middlings, (i) pure buckwheat feed, being by-products resulting from the milling of pure wheat, rye, and buckwheat in the manufacture of wheat, rye, and buckwheat flour; and (j) pure corn meal made by grinding and bolting corn; and (k) pure corn and oats chop made by grinding together, or by grinding separately and mixing together, pure corn and oats; standards for which brands shall be fixed by the Secretary of Agriculture; in which cases he shall pay to the Secretary of Agriculture the sum of six dollars instead of twenty-five dollars for each and every such brand to be sold or offered for sale within the Commonwealth. All moneys so received shall be immediately paid by the Secretary of Agriculture to the State treasury for the use of the Commonwealth. (Id. § 406.)

272. Unlawful Sale, Etc.; False Statements; Fine; Enforcement of Act; Samples; Labeling; Analysis; Guaranty.—Each and every manufacturer, importer, agent, person, corporation or firm, selling, offering, or exposing for sale, in this State, any concentrated commercial feeding stuffs, as defined in section two [404] of this act, without the statement or statements required by section one [403] of this act, or to which is affixed a statement or guarantee which is false in any particular, or in relation to which the provisions of all of the foregoing sections have not been fully complied with, shall, for every such offense, forfeit and pay the sum of fifty dollars, which shall be recoverable, with costs, including the cost of analysis, by any person suing in the name of the Commonwealth, as debts of like amount are by law recoverable; Provided, that the Secretary of Agriculture* shall, together with his deputies, agents, and assistants, be charged with the enforcement of this act, and shall have free access to all places of business, mills, buildings, carriages, cars, vessels, and packages of whatsoever kind, used in the manufacture, importation or sale of any concentrated commercial feeding stuffs; and shall also have power and authority to open any package containing or supposed to contain any concentrated commercial feeding stuff, and take therefrom samples for analysis, upon tendering the value of said samples; and the party or parties interested, or their representative, shall be given an opportunity to be present when said samples are taken. Said samples shall be thoroughly mixed and then divided into two samples, and put in glass vessels, and carefully sealed, and a label placed upon each vessel, stating the name or brand of the feeding stuff or material sampled, the name of the manufacturer when possible, the name of the party from whose stock the sample was taken, the time and the place of taking, the guaranteed analysis, and other information relevant thereto; said labels to be signed by the Secretary

*See No. 30 et seq.

of Agriculture or his agent, and by the party or parties interested, or their representative if present at the taking of the samples. One of said duplicate samples shall be retained by the Secretary of Agriculture or his agent, and the other shall be left with the party whose stock was sampled. The Secretary of Agriculture shall cause such samples as are secured by him under the provisions of this act, as may seem to him proper, to be analyzed within sixty days after said samples are received by the chief chemist; and the results of the analysis of such samples together with such additional information as circumstances advise, shall, by his authority, be published in reports or bulletins from time to time; Provided, that when the materials sampled are in packages, the samples shall be taken from four separate packages; and provided further, that if the analysis of any sample does not differ from the guarantee more than ten per centum of the protein fat or fibre guaranteed, the manufacturer shall be considered as having complied with the requirements of this act; except when the percentage of either protein or fibre shall exceed twenty per centum, and shall not be present in excess of thirty per centum, in which case the variation allowed shall not exceed seven per centum of the guaranteed amount; and also except when the percentage of either protein or fibre shall exceed thirty per centum, in which case the variation allowed shall not exceed five per centum of the guaranteed amount. (Pa. St. 1920, § 407.)

273. **Violations of Act; Penalty; Disposition of Fines, Etc.**—In addition to the above penalty, every person, corporation, or firm, and every officer, agent, servant, or employee of such person, corporation, or firm violating any of the provisions of this act, shall also be guilty of a misdemeanor, and, upon conviction thereof, shall be punished by a fine of not less than fifty dollars, nor more than one hundred dollars, for the first offense, and a fine of not less than one hundred dollars, nor more than two hundred dollars, for every subsequent offense: Provided, that all penalties, fines, and costs, including the cost of analysis, imposed and recovered under the provisions of this act, shall be paid to the Secretary of Agriculture,* or his agents, and by him immediately covered into the State treasury: And provided, also, that all necessary expenses under the provisions of this act shall, after approval in writing by the Governor and the Secretary of Agriculture, be paid by the State Treasurer, upon the warrant of the Auditor General, in the manner now provided by law. (Id. § 408.)

NOTE: See also Nos. 35 and 295.

Fish.

274. **Sale of Certain Fish Prohibited.**—No person and no proprietor, manager, clerk, or agent of any market, hotel, boarding house, eating house, restaurant, or saloon shall purchase, sell or expose for sale any brook trout or any species of trout except lake trout, any small mouth bass or large mouth bass caught in waters wholly within this Commonwealth. No person and no proprietor, manager, clerk, or agent of any market, hotel, boarding house, eating house, restaurant or saloon shall contract with or employ any person to catch and keep such fish for him, by the day or otherwise. (L. 1925, Act No. 263, c. 9, § 210.)

275. **Reports of Sales of Fish.**—A person engaged in catching fish for market or who may be engaged in the sale of fish shall, on demand of the Commissioner,† furnish at the close of each calendar year a duplicate statement of their sales of fish and the gross amount of money realized. The contents of such reports shall be used by the board entirely for statistical purposes. The contents of such reports so received by the board shall not be made public without the written consent of the owner. (Id. § 211.)

276. **Penalty.**—Any person violating the provisions of this article shall on conviction, as provided in chapter fourteen of this act, be sentenced to pay a fine of ten dollars for each and every fish had in possession. (Id. § 212.)

277. **Exceptions to Penalty.**—This article does not prohibit any person from employing a guide to accompany him when fishing, nor does it apply to fish artificially propagated and sold under the authority of this act. (Id. § 213.)

NOTE: See also Nos. 89 et seq., 295, 322 and 337 et seq.

Flavoring Extracts and Syrups.

See Nos. 278 et seq., and 513.

*See No. 30 et seq.

†Commissioner of Fisheries.

Fruit Juices.

See Nos. 63 et seq., 505 and 513.

Fruit Syrups.

278. Adulteration—Fruit—Syrups.—It shall be unlawful for any person, firm, or corporate body, by himself, herself, itself, or themselves, or by his, her, its, or their agents, servants or employees, to manufacture, sell, offer for sale, expose for sale, or have in possession with intent to sell, any fruit syrup which is adulterated or misbranded within the meaning of this act. (L. 1925, Act No. 8, § 1.)

279. Adulterants Defined.—A fruit syrup shall be deemed to be adulterated within the meaning of this act if it contains any added boric acid, or borates, salicylic acid, or salicylates, formaldehyde, sulphurous acid, or sulphites, hydrofluoric acid, or fluorides, fluoborates, fluosilicates, or other fluorine compounds, dulcin, glucin, saccharin, betanapthol, hydronapthol, abrastol, or compounds of copper, zinc, or other poisonous metals, or other added substance deleterious to health. (Id. § 2.)

280. Misbranded Fruit Syrups—Imitation of Another Article—Labeled to Deceive—False Statement on Receptacle.—For the purpose of this act a fruit syrup shall be deemed to be misbranded:

First. If it be an imitation of, or offered for sale under the name of, another article.

Second. If it be labeled or branded or tagged so as to deceive or mislead the purchaser.

Third. If the bottle or receptacle containing it or its label shall bear any statement, design or device, regarding the ingredients or the substances contained therein, which statement, design or device, shall be false or misleading in any particular. (Id. § 3.)

281. Misdemeanor—Penalty.—Any person who shall violate any of the provisions of this act shall be guilty of a misdemeanor, and, upon conviction thereof, shall be sentenced to pay a fine of not less than fifty ($50) dollars, nor more than one hundred ($100) dollars, or to undergo an imprisonment of not less than thirty (30) days, nor more than sixty (60) days, or both, or either, at the discretion of the court. (Id. § 4.)

282. Enforcement of Act.—The Department of Agriculture shall be charged with the enforcement of the provisions of this act. (Id. § 5.)

283. Disposition of Fines.—All fines and penalties imposed and recovered for any violations of any of the provisions of this act, shall be paid to the Department of Agriculture, or its agents, and when so collected and paid, shall thereafter be, by the Department of Agriculture, paid into the State treasury for the use of the Commonwealth. (Id. § 6.)

Fruits, Vegetables, Etc.

284. Standards for Grade and Classification of Farm Products and Receptacles Therefor.—After investigation and public hearing, and with the approval of the Secretary of Agriculture, the Bureau [of Markets]* may, from time to time, as far as practicable, establish and promulgate standards for the grade and other classification of farm products; and, in co-operation with the Bureau of Standards* of the Department of Internal Affairs, the bureau may establish and promulgate standards for receptacles for farm products, by which their quality, value, or quantity may be determined, and may make regulations governing the marks, brands, and labels, which may be required upon receptacles for farm products for the purpose of showing the name and address of the producer or packer or distributor, the quantity, nature, and quality of the product, or any of them, and for the purpose of preventing deception with reference thereto. The provisions of this paragraph shall not apply to canned farm products.

Any standard for any farm product, or any standard for any receptacle for farm products, or any requirement for marking receptacles for farm products, now or hereafter made mandatory under authority of the Congress of the United States, shall forthwith, as far as applicable, be established or prescribed and promulgated by the bureau as the official standard or requirement in this State.

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*See No. 30 et seq. This law is to be corrected accordingly.

No standard established or requirement for marking prescribed under this section shall become effective until the expiration of not less than three months after it shall have been promulgated. (Pa. St. Supp. 1924, § 193, as amended L. 1927, Act No. 372, § 1.)

285. **Sale, Etc., of Farm Products not Conforming to Standard or in Improper Receptacles; Investigations; Samples.**—Whenever any standard for the grade or other classification of any farm product becomes effective under this act, no person thereafter shall pack for sale, offer for sale, consign for sale, or sell, any such farm product within this State, to which such standard is applicable, unless it conform to such standard, subject to such variations therefrom as may be allowed in the rules and regulations made under this act, except that any such farm product may be packed, offered or consigned for sale, or sold, without conforming to the standard for the grade or other classification applicable thereto, if the product or the package containing it is not described, marked, or labeled in such a way as to indicate, or to appear upon ordinary observation, that the product conforms to the standard.

The director is authorized to make such rules and regulations under this act as may be deemed necessary to prevent deception with reference to any standards made effective under the act, except as it applies to standard receptacles for farm products.

Whenever any standard for a receptacle for farm products becomes effective under this act, no person thereafter shall manufacture for sale or shipment, sell, offer for sale, consign for sale, or ship any receptacle, either filled or unfilled, to which the standard is applicable, unless the receptacle conform to the standard, subject to such variations therefrom as may be allowed in the regulations made under this act. The Bureau of Markets and the Bureau of Standards of the Department of Internal Affairs, by their joint action, are authorized to make such rules and regulations under this act as may be deemed necessary to enforce the provisions of this section relating to standard receptacles for farm products.

Whenever any requirements for the marking, branding, or labeling of a receptacle for farm products becomes effective under this act, no person thereafter shall pack for sale, offer for sale, consign for sale, or sell and deliver farm products in a receptacle to which such requirement is applicable unless the receptacle be marked, branded, or labeled according to such requirement, or unless such product be brought from outside the State, and offered for sale, consign for sale, or sold in the original package.

The director is authorized, at any time, to cause such investigations, classifications, and tests to be made, and such certificates to be issued, and, upon payment or tender of payment of the market value thereof, to cause such samples to be taken as he may deem necessary to enforce the provisions of this act. (Pa. St. Supp. 1924, § 194, as amended L. 1927, Act No. 372, § 2.)

286. **Employees and Agents; Licensed Investigators; Fees.**—The director may designate any competent employee or agent of the Bureau of Markets, and, upon satisfactory evidence of competency, may license any other person to make, upon request, investigations and classifications of farm products. When any such investigation and classification is made, the employee or agent shall issue a certificate of the grade or other classification of the farm product involved.

The director is authorized to fix, assess, and collect or cause to be collected, fees for such services, when they are performed by employees or agents of the Bureau of Markets. Licensed agents may charge and collect as compensation for such services only such fees as may be approved by the director.

The director may suspend or revoke any license whenever, after opportunity for a hearing has been afforded to the licensee, the director shall determine that such licensee is incompetent, or has knowingly or carelessly failed to classify any farm product correctly, or has violated any provision of this act or of the regulations made hereunder. Pending investigation the director may suspend a license temporarily without a hearing. (Pa. St. Supp. 1924, § 195.)

287. **Appeals to Director; Fee.**—Any interested party, within a reasonable time to be prescribed in the regulations made under this act, may appeal to the director from the classification of any farm product authorized under this act, and the director shall thereupon cause such investigation to be made and such tests to be applied as he may deem necessary to determine the true classification, and shall issue a finding of the grade or other classification thereof. Whenever an appeal shall be taken to the director under this act, he shall charge and assess and collect, or cause to be collected, a reasonable fee, to be fixed by him, which shall be refunded, if the appeal is sustained. (Pa. St. 1920, § 196.)

288. **Certificate as Evidence.**—A certificate, when not superseded by a finding or a finding of the grade or other classification of any farm product issued under this act, shall be accepted in any court of this State as prima facie evidence of the

true grade or other classification of such farm product at the time of its classification. (Id. § 197.)

289. Disposition of Fees, Etc.—All fees and other moneys collected under this act by the director and by his employees or agents in their official capacities, under the direction of the Secretary of Agriculture, shall be covered into the State treasury, and shall be set apart as a separate fund, to be known as the "Bureau of Markets Fund." All moneys in said fund from time to time hereby are appropriated specifically to the Department of Agriculture, for the use of the Bureau of Markets, for the purpose of assisting with the expense and maintenance of said bureau in carrying out the provisions of this act. All moneys shall be paid from aforesaid fund upon requisition of the Secretary of Agriculture and warrant of the Auditor-General on the State Treasurer, after the filing of itemized vouchers. (Pa. St. Supp. 1924, § 198.)

290. Cold Storage Reports.—Any person in this State engaged in marketing farm products shall furnish the bureau, upon request, on such date or dates and in such form as may be prescribed, reports orally or in writing, concerning the demand for and the supply, consumption, cost, value, price, sale, payment, grade, condition, period of the holding of any farm product in storage and any other information regarding the marketing of farm products.

The director is authorized to verify the accuracy of the reports provided for in this section, and to make the results of such investigations public, subject to the approval of the Secretary of Agriculture. (Pa. St. 1920, § 199, as amended L. 1927, Act No. 372, § 3.)

291. Entry into Buildings, Etc.—In carrying out the provisions of this act, the director, his employees or agents, are authorized to enter, on any business day during the usual hours of business, any storehouse, warehouse, cold storage plant, packing house, stockyard, railroad yard, railroad car, or any other building or place where farm products are marketed. (Pa. St. 1920, § 200, as amended L. 1927, Act No. 372, § 4.)

292. Attendance of Witnesses; Books and Papers.—In carrying out the provisions of this act, the director, or his employees designated by him for the purpose, may require the attendance before him or any of them of any person from whom reports have been requested or of any employee of such person, may administer oaths to and take testimony of any such person or his employe, and may require the production by such persons or their employees of any books, records, and other documentary evidence relating to the farm product about which reports have been requested. (Pa. St. 1920, § 201.)

293. Regulations.—Subject to the approval of the Secretary of Agriculture, the director is authorized to make and promulgate such regulations as may be necessary to carry out the provisions of this act. (Id. § 203.)

294. Penalties; Prosecutions.—Any person violating, or failing or refusing to comply with, and of the provisions of this act, or, with intent to deceive, answers or reports falsely in response to any of the requirements of this act, or who willfully interferes with the director, his employees or agents, in the execution, or on account of the execution, of his or their duties prescribed in this act, shall be prosecuted in a summary proceeding before any alderman, magistrate, or justice of the peace of the proper city or county, and upon being convicted thereof, shall be punished for the first offense by a fine of not more than twenty-five dollars, and upon conviction of the second offense by a fine of not less than twenty-five dollars nor more than one hundred dollars, and upon conviction of the third and each subsequent offense by a fine of not less than one hundred dollars nor more than five hundred dollars. In default of the payment of any fine, as aforesaid, any person convicted shall be sentenced to serve one day in the jail of the proper county for each dollar of the fine and costs.

Any violations of the provisions of this act relating to standard receptacles for farm products, which may be established as herein provided for, shall be prosecuted in a summary proceeding before any alderman, magistrate or justice of the peace of the proper city or county by the inspectors of weights and measures of the respective cities and counties and the Chief of the Bureau of Standards* of the Department of Internal Affairs and his deputies. (Pa. St. Supp. 1924, § 204.)

295. Definitions.—The term "person," as used in this act, includes individuals, partnerships, associations, and corporations.

"Farm product" means any agricultural or horticultural product, any fresh or salt water food product, or any product designed for food or feed purposes manufactured or prepared principally from any agricultural or horticultural product or products.

"Marketing" includes preparing for market, transporting, storing, consigning, buying for purposes of manufacture or sale, offering for sale, selling, soliciting consignments or receiving on consignment.

"Director" means Director of the Bureau of Markets. (Pa. St. 1920, § 205.)

296. Clerks to Make Oath or Affirmation.—The clerks of the several markets within this province, now in office, and all such clerks as shall hereafter be appointed, before they enter upon the execution of their office, shall take the following oath or affirmation, before some magistrate or justice of the city, borough or county wherein they shall reside, viz: "That he will well and truly, to the best of his skill and judgment, do and perform all things enjoined and required of him as clerk of the market, by the laws of this province." (Id. § 14540.)

297. Sale of Provisions, Etc., in City Markets.—It shall and may be lawful for any person or persons to sell or expose to sale provisions, vegetables or fruit, in the markets of any city, borough, or corporate town within this Commonwealth; Provided always, that such provisions, vegetables or fruit shall not have been previously purchased within the limits of such city, borough or corporate town; any law to the contrary notwithstanding. (Id. § 14541.)

298. Privileges of Farmers and Occupiers of Stalls in Philadelphia.—Any farmer, or person whose principal occupation is that of a farmer, being the lessee or occupant of a stall in any of the public market houses of the city of Philadelphia, or the occupant of a stand in any of the public streets of the said city, which may now or hereafter be made stands for market wagons, may lawfully sell at such stall or stand, in any quantity, any meat of a marketable quality slaughtered on his farm, without regard to whether the same be produced or fattened on his farm or elsewhere; and any such farmer who may now be, or hereafter become the lessee of any stall or stand, in any of the public market houses of the said city, shall be entitled to become the lessee of such stall or stand from year to year, and to continue to occupy the same in preference to any other person, so long as he may pay, within the proper time, the legal rent therefor, and comply with all proper rules and regulations for the government of said market houses; any act of assembly, ordinance of the city councils, or requirement of the market department of the said city, to the contrary notwithstanding. (Id. § 14542.)

299. Renters of Stalls in Markets May Authorize Others to Occupy Them.—It shall be unlawful for any farmer, who is or may be a renter of a stall in any market in the city of Philadelphia, which is or may be appointed to the use of farmers to authorize any other person (being a farmer) to occupy such stall for the sale of farmers' produce, as fully as he, the said lessee, is authorized to do; Provided, such lessee shall, when required, make return to the city clerk of all persons who may be renters under him. (Id. § 14543.)

NOTE: See also Nos. 23, 32-33, 37, 38 et seq., 278 et seq., 359 et seq., 641 and 647 et seq.

Grain.

See Nos. 649 and 659.

Jellies.

See No. 359 et seq.

Ketchup.

See No. 559 et seq.

Meat—Meat Products.

299a. General Powers and Duties of Board; Quarantine; Investigations. It shall be the duty of the State Live Stock Sanitary Board* to improve the quality of the domestic animals and poultry of this Commonwealth to prevent, suppress, control, and eradicate any transmissible diseases of such animals or poultry, to issue circulars or bulletins for public distribution, giving information on the prevalence and control of diseases and their treatment, and such other information as would be of value to the stock industry of the State; and to enforce the laws of the Commonwealth, relating to diseases of animals and poultry, and the manufacture, preparation, storage, sale, and offering for sale, of the food and food products derived from diseased animals and poultry. Whenever and wherever deemed necessary to prevent the spread of diseases, the board may regulate and prohibit the importation into this Commonwealth of animals or poultry; may cause general or

*See No. 30 et seq. This law is to be corrected accordingly.

special quarantine of premises and animals and poultry to be established and maintained; may cause the disinfection of any premises; may cause the destruction of animals and poultry and personal property, and may regulate and prohibit the moving or transportation of animals and poultry from one place to another in this Commonwealth. The State Live Stock Sanitary Board may also cause such investigations to be conducted as may seem advisable regarding methods of improving the quality of domestic animals and poultry; and regarding the causes, and the methods of preventing, controlling, and eradicating diseases thereof. (Pa. St. 1920, § 321.)

300. "Meat" and "Meat-food Products" Defined.—The terms "meat" and "meat-food products," wherever used in the act, shall include the carcasses or parts of carcasses of cattle, sheep, goats, other ruminants, swine, horses, mules, and the meat of such animals, and the meat-food products of such animals. (Id. § 367.)

301. "Unwholesome" Defined.—The term "unwholesome," as used in this act, shall be understood to include all meats or meat-food products which are so affected with disease that it would be dangerous to use the meat or other parts for human food; also all meats or meat-food products which are contaminated, putrid, unsound, unhealthful, or otherwise unfit for food, or which have been derived from any animal which has died as a result of disease or accident, or which was in a dying condition at the time of slaughter. (Id. § 368.)

302. "Establishment" Defined.—The word "establishment" as used in this act shall include (1) any building or structure in which slaughtering, butchering, meat canning, meat packing, meat manufacturing or rendering, is carried on; and (2) the ground upon which such building or structure is erected, and so much ground adjacent thereto as is used in carrying on the business of such establishment; and (3) any place or any vehicle where meat or meat-food products are prepared, manufactured, stored, sold, offered for sale, exposed for sale, or transported by land or by water. (Id. § 369.)

303. "Equipment" Defined.—The word "equipment," as used in this act, shall include all machinery, fixtures, containers, vessels, tools, implements, and apparatus used in and about an establishment. (Id. § 370.)

304. "Person" and "Board" Defined.—The word "person shall include individuals, partnerships, corporations, and associations. Masculine words shall include the feminine or neuter. The singular shall include the plural.

The word "board" shall mean the "State Live Stock Sanitary Board.* (Id. § 371.)

305. Sanitary Condition of Establishments.—Every establishment, including all equipment therein or thereon, shall be kept in a clean and sanitary condition. (Id. § 372.)

306. Feeding Offal, Etc., to Swines.—It is unlawful to feed offal, blood or slaughterhouse refuse to swine within two hundred feet of an establishment other than a vehicle. (Id. § 373.)

307. Sale, Etc., of Unwholesome Meat or Meat-food Products.—It is unlawful to manufacture for food, prepare for food, sell, offer for sale, expose for sale, or have in one's possession for the purpose of sale, any unwholesome meat or unwholesome meat-food product. (Id. § 374.)

308. Handling and Exposure of Meat.—It is unlawful in an establishment to expose any meat or meat-food product in such manner or place that it may be touched or handled by any person other than the owner, lessee, or manager of an establishment, or other than the agent or employee of such owner, lessee or manager, or to expose for any meat or meat-food product to insects, animals, or fowls. (Id. § 375.)

309. Sale of Flesh of Carrion Fed Swine.—It is unlawful to sell, offer for sale, or to expose for sale, any meat or meat-food product from swine to which have been fed any carrion. (Id. § 376.)

310. Agents for Enforcement of Act; Qualifications; Powers and Duties.—The board, in enforcing the provisions of this act, may appoint employees of the United States Department of Agriculture, engaged in the examination of animals, meats, or meat-food products, as agents under the provisions of this section, who shall receive no compensation as such agents.

In addition to the agents provided for above, in this section, the board may, in enforcing this act, assign any employee of the board to perform duties as agent under this act.

Each employee assigned to serve as agent under this act shall have knowledge of the diseases of meat-producing animals, and shall be versed in the conditions that

*See No. 30 et seq. This law is to be corrected accordingly.

affect the wholesomeness of animal food products. An appropriate standard of fitness for such agents shall be maintained by the board.

The appointment, qualifications, powers, and duties of each such agent shall be governed by the provisions of this act, and by such rules and regulations for the enforcement of this act as may be adopted and promulgated by the board. Each such agent may be dismissed at any time by the board. (Id. § 377.)

311. Entry Upon Premises.—Any duly authorized agent or employee of the board may at any time enter any establishment and examine the same, to ascertain whether the provisions of this act are being observed. (Id. § 378.)

312. Interfering with Agent.—It is unlawful to hinder, impede, or prevent any duly authorized agent or employee of the board from entering any establishment in the performance of his duty, or from making any examination duly ordered in enforcing this act. (Id. § 379.)

313. Marking, Etc., of Wholesome Meat.—Any agent authorized under this act to examine, may, under the rules and regulations prescribed by the board, mark, stamp, or otherwise designate, any animal or meat or meat-food product found on examination to be wholesome and fit for food. (Id. § 380.)

314. Condemnation of Unwholesome Meat.—If, upon examination of any establishment, any diseased animal, or any unwholesome meat, or any unwholesome meat-food product is found, such animal or meat or product shall be condemned, properly marked or designated, and treated in such a way that it cannot thereafter be used for food. (Id. § 381.)

315. Examinations of Establishments; Report of; Notice to Owners; Closing Unclean or Insanitary Establishments.—If, upon examination, it is found that any establishment, or any part of an establishment, or any equipment, is in an unclean or insanitary condition, or is being conducted or used in such a manner as to make it probable that the meat or meat-food products therein or produced therein may be rendered unwholesome, or is being conducted or used in violation of this act, the agent making such examination shall report the unlawful condition to the board, and shall at the same time notify, in writing, the owner, lessee, or manager of the establishment.

Upon receipt of such report, the board, by its executive officer, or otherwise as it may direct, shall notify the proper owner, lessee, or manager of the result of the examination, and direct that the unlawful condition be remedied within the time specified in the notice: Provided, that the time so specified shall be not less than twenty-four hours, unless the unlawful condition mentioned in said notice is of such character and nature as, in the opinion of the board, its executive officer, or its agent, can be removed immediately.

If, upon the expiration of the time specified in the notice, the condition so reported to exist shall not have been remedied, the board, by its executive officer, may order the establishment closed. It is unlawful to operate an establishment, or any part thereof, which has been closed by order of the executive officer of the board, until the unlawful condition reported to exist has been remedied to the satisfaction of said officer of the board.

The closing of an establishment, or any part thereof, shall not preclude prosecution for violation of this act. (Id. § 382.)

316. Unlawful Acts by Agents.—It is unlawful for any agent of the board, or any special meat hygiene agent,—

1. To approve or pass any diseased animal intended to be slaughtered for food, or any unwholesome meat, or any unwholesome meat-food product;

2. To fail to condemn and mark, and cause to be rendered unfit for food, any diseased animal, unwholesome meat, or unwholesome meat-food product, found on examination of an establishment to be unfit for food;

3. To fail to report as required any violation of this act;

4. Directly or indirectly to accept or agree to accept any thing of value, monetary or otherwise, given or offered to such agent to influence him in the discharge of his duties. (Id. § 383.)

317. Bribery.—It is unlawful to give or offer to give, directly or indirectly to an agent or employee of the board, or to a special meat hygiene agent, anything of value, monetary or otherwise, with intent to influence such agent or employee in the discharge of his duties under the provisions of this act. (Id. § 384.)

318. Imitation, Etc., of Stamps, Tags, Etc.; Unlawful Use of Stamps, Etc.—It is unlawful to make, imitate, duplicate, reproduce, or counterfeit any stamp, mark, tag, certificate, or emblem, used, or authorized, by the board to be used, for marking or designating animals or meat or meat food products that have been either approved or condemned under the provisions of this act.

It is unlawful, without specific authority in writing from the board, to use for any purpose any such stamp, mark, tag, certificate or emblem. (Id. § 385.)

319. Enforcement of Act; Rules and Regulations.—This act shall be enforced by the board. To that end it may adopt and promulgate such rules and regulations as it may deem necessary. So far as practicable the regulations of the meat hygiene service of the United States Department of Agriculture shall be included in the rules and regulations of the board. (Id. § 386.)

320. Violations of Act; Penalty; Disposition of Fines.—Any person who shall violate any of the provisions of this act shall be guilty of a misdemeanor, and, upon conviction thereof, shall be sentenced to pay a fine not exceeding five hundred dollars, or to undergo an imprisonment not exceeding one year, or both. If the violation shall be by a corporation, partnership, or association, the directors of such corporation or the members of such partnership or association, its agents or employees, with guilty knowledge of the fact, shall also be guilty of a misdemeanor, and on conviction thereof shall be punished as aforesaid.

The fines imposed as aforesaid shall be for the use of the Commonwealth, shall be paid to a duly authorized agent of the board, and shall be by the board paid into the State treasury. (Id. § 387.)

321. Powers and Duties, How Exercised.—Any duty imposed upon, or power given to, the board by this act, may be done or exercised as the board may, by standing or special order, direct. (Id. § 388.)

322. Sale or Possession of Meat, Poultry, Game or Fish Containing Preservatives or Dyes; Punishments; Subsequent Offense.—If any person, firm or corporate body shall, by himself herself or themselves, or by his, her, or their or its, agents, or servants, sell, ship, consign, offer for sale, expose for sale, or have in possession with intent to sell as fresh, any meat, poultry, game, or shellfish which contains any substance, article or ingredient possessing a preservative character or action, or which contains any coal tar dye, or any other substance or ingredient possession a coloring character or action, shall be deemed guilty of a misdemeanor; and, upon conviction thereof in the court of quarter sessions of the peace of the proper county, shall be sentenced to pay a fine of not less than one hundred dollars nor more than two hundred dollars, and all costs, or to undergo an imprisonment in the county jail not less than sixty days nor more than ninety days, or both, at the discretion of the court; and, upon conviction of any subsequent offense, shall be punished by a fine of not less than two hundred dollars nor more than five hundred dollars, or be imprisoned not less than sixty days nore more than four months, or both or either, at the discretion of the court; Provided, that nothing in this section shall prohibit the use of ice as a preservative, or proper refrigeration. (Id. § 84.)

323. Duties of Dairy and Food Commissioner.*—The Dairy and Food Commissioner shall be charged with the enforcement of all provisions of this act; and all penalties which may be recoverable, and all fines which may be paid, in any proceeding or proceedings to enforce the provisions of this act, shall be paid to the Dairy and Food Commissioner, or his agent, and by him paid into the State treasury; and the money so paid shall constitute a special fund, for the use of the Dairy and Food Commissioner in enforcing this act, and may be drawn out upon warrants signed by the Dairy and Food Commissioner or Secretary of Agriculture, and approved by the Auditor-General. (Id. § 85.)

324. Sale, Etc., of Adulterated Sausage.—It shall be unlawful for any person or persons, by himself, herself or themselves, or by his, her or their agents, servants or employees, to sell, offer for sale, expose for sale, or have in possession with intent to sell, sausage that is adulterated within the meaning of this act. (Id. § 86).

325. "Sausage" Defined.—For the purpose of the act, sausage or sausage-meat shall be held to be comminuted meat from neat cattle or swine, or a mixture of such meats, either fresh, salted, pickled or smoked, with salt and spices, and with or without the addition of edible animal fats, blood and sugar, or subsequent smoking. It shall contain no larger amount of water than the meats from which it is prepared contain when in their fresh condition. (Id. § 87.)

326. What Deemed Adulterations.—For the purpose of this act, sausage shall be deemed to be adulterated:

First. If it contains added water or ice in excess of the quantity required to bring the amount up to that which the meats from which it is prepared contain immediately after slaughter, excepting such water and ice as may be added for the purpose of facilitating grinding, chopping, and mixing, and which shall in no case exceed five per centum.

Second. If it contains any cereal or vegetable flour.

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*Now Department of Agriculture. See No. 30 et seq. This law is to be corrected accordingly.

Third. If it contains any coal-tar dye, boric acid, or borates, sulphites, sulphur dioxide, sulphurous acid, or any other substance injurious or deleterious to health.

Fourth. If it contains any diseased, contaminated, filthy, or decomposed substance; or is manufactured, in whole or in part, from a diseased, contaminated, filthy, or decomposed substance, or a substance produced, stored, transported, or kept, in a way or manner that would render the article diseased, contaminated, or unwholesome; or if it is any product of a diseased animal or the product of any animal which has died otherwise than by slaughter. (Id. § 88.)

327. Punishment for Violation of Act.—Any persons who shall violate any of the provisions of this act shall be guilty of a misdemeanor, and upon conviction thereof shall be sentenced to pay a fine of not less than one hundred ($100) dollars, nor more than two hundred ($200) dollars, or to undergo an imprisonment of not less than thirty (30) days, nor more than sixty (60) days, or both or either, at the discretion of the court. (Id. § 89.)

328. Enforcement of Act.—The Dairy and Food Commissioner* shall be charged with the enforcement of the provisions of this act. (Id. § 90.)

329. Disposition of Fines.—All fines and penalties imposed and recovered for the violation of any of the provisions of this act shall be paid to the Dairy and Food Commissioner, or his agent, and when so collected and paid shall thereafter be by the Dairy and Food Commissioner paid into the State treasury, for the use of the Commonwealth. (Id. § 91.)

330. Sale Only of Pure Lard.—No person, firm, or corporate body, by himself, itself or themselves, or by his, her, its or their agents, servants or employees, shall, within the State, manufacture, sell, offer for sale, expose for sale, or have in possession with intent to sell, lard which contains any ingredients other than the pure fat of swine, except as hereinafter provided. (Id. § 97.)-

331. Imitation Lard; Substitutes; Compounds; Labels or Marks.—Imitation lard and lard substitutes, not containing any lard, may be made and sold, when offered for sale and sold under the distinctive trade name thereof: Provided, however, that if said imitation lard or lard substitute is offered for sale or sold from a broken package, then the vessel, receptacle, or wrapper receiving the same, at the time of every sale, shall be plainly labeled or marked on the outside thereof, in letters at least one-half inch in length and plainly exposed to view, with the word "imitation lard" or "lard substitute," or the distinctive trade name of the said article or substance: And provided, further, that the said imitation lard or lard substitute shall not be composed of, or contain, any article, substance, or ingredient deleterious to health.

Compounds composed of not less than fifty (50) per centum of pure lard, and other substance or substances not deleterious to health, may be made and sold, if the vessel, receptacle, or other wrapper receiving the same, at the time of every sale thereof, is plainly marked or labeled on the outside thereof, in letters at least one-half inch in length and plainly exposed to view, with the words "compound lard." (Id. § 98.)

332. Punishment for Violations of Act.—Any person, firm, or corporate body who shall violate any of the provisions of this act shall be guilty of a misdemeanor, and, upon conviction thereof, shall be sentenced to pay a fine of not less than fifty ($50) dollars, nor more than one hundred ($100) dollars. (Id. § 99.)

333. Enforcement of Act.—The Dairy and Food Commissioner* shall be charged with the enforcement of the provisions of this act. (Id. § 100)

334. Disposition of Fines.—All fines and penalties imposed and recovered for the violation of any of the provisions of this act shall be paid to the Dairy and Food Commissioner, or his agent, and, when so collected and paid, shall thereafter be by the Dairy and Food Commissioner, paid into the State treasury, for the use of the Commonwealth. (Id. § 101.)

335. False Representations that Meat, Etc., is Kosher.—Any person or persons who, with intent to defraud, sells or exposes for sale any meat or meat preparations or any fowl or preparations from fowl, and falsely represents the same to be "kosher" or as having been prepared under, and of a product or products sanctioned by, the orthodox Hebrew religious requirements, or falsely represents any food products or the contents of any package or container to be so constituted and prepared by having or permitting to be inscribed thereon the word "kosher" in any language or have the word "kosher" inscribed on the front of their business establishment in any language, is guilty of a misdemeanor, punishable by fine of not less than twenty-five dollars or more than five hundred dollars, or by imprisonment of not less than thirty days or more than one year, or both, at the discretion of the court. (Id. § 10997.)

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*Now Department of Agriculture. See No. 30 et seq. This law is to be corrected accordingly.

336. Shipping or Sale of Live Pigeons Less than Six Weeks of Age for Market Unlawful; Penalty.—It shall be unlawful for any person, copartnership, or corporation, being the owner, or any of his or its agents or employees, to ship, transport, or convey, or to sell for shipment, transportation, or conveyance, any live pigeon for market, less than six weeks of age. Any person, copartnership, or corporation violating the provisions of this act, shall, upon conviction thereof in a summary proceeding before a magistrate, alderman, or justice of the peace, be sentenced to pay a fine of ten dollars, and, in default of the payment of such fine and costs, shall be imprisoned one day for each dollar of fine and costs unpaid. (L. 1927, Act No. 371.)

NOTE: See also Nos. 3, 29, 30 et seq., 89 et seq., 284 et seq and 490.

Mineral Waters.

See Nos. 63 et seq., 559 et seq. and 583-584.

Molasses.

See No. 3.

Oysters, Etc.

337. Councils in Philadelphia to Regulate the Sale and Keeping of Oysters.—It shall and may be lawful for the select and common councils of the city of Philadelphia, the commissioners of the Northern Liberties, the Commissioners of Spring Garden, the commissioners of Kensington district, the commissioners of the district of Southwark and the commissioners of the township of Moyamensing, to pass such laws and ordinance as they may, from time to time, deem necessary for the good government and control of all persons who may keep oyster cellars or sell oysters within the city, district, or townships, over which said councils or commissioners may or have been elected to superintend; Provided, that such laws or ordinances shall not be contrary to the Constitution or laws of the United States or of this State. (Pa. St. 1920, § 16469.)

338. Sale of Oysters by Unlicensed Nonresident Vendors a Misdemeanor.—If any person or persons, not residents in this Commonwealth, not having a store or warehouse, or other place of business, within the same, and not having a license, as provided in the second* and third* sections of this act, shall bring into the State, for the purpose of sale, or shall vend or sell, or expose for sale, within this Commonwealth, any clams or oysters, such person or persons so offending shall be guilty of a misdemeanor, and on conviction thereof shall be sentenced to pay a fine of not less than fifty nor exceeding three hundred dollars, or undergo an imprisonment not exceeding six months, or both, at the discretion of the court. (Id. § 16470.)

339. Unlawful to Sell Oysters Except by Count.—It shall be unlawful for any person, copartnership, association, or corporation, or his, her, or its servants, agents, or employees, to sell oysters at retail, in any manner whatsoever, except by numerical count: Provided, however, that this act shall not apply to oysters sold at retail when in unopened, sealed, original containers in which they are shipped in interstate commerce. (L. 1925, Act No. 20, § 1.)

340. Violation of Act a Misdemeanor—Penalty.—Any person, copartnership, association, or corporation violating any of the provisions of this act shall be guilty of a misdemeanor, and upon conviction thereof shall be sentenced to pay a

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*Sections two and three referred to in this section are as follows:

"Section 2. It shall be unlawful for any person or persons, not residents of this Commonwealth, to bring into this State, for purposes of sale, or to vend or sell, or expose for sale, within this Commonwealth, any clams or oysters, without first having obtained a license therefor, except such person or persons as have a store, warehouse, or other principal place of business within the State, for which they have paid a tax or license to this Commonwealth, under existing laws.

"Section 3. The license provided for in the second section of this act shall be granted by the treasurer of the city or county in which such clams or oysters are to be sold or exposed for sale, and shall be and continue for one year from the date on which it may be issued; and for such license the applicant shall pay, to the said city or county treasurer, the sum of five hundred dollars, for the use of the Commonwealth."

fine of not less than twenty-five ($25) dollars, nor more than one hundred ($100) dollars, or, in the case of individuals, to undergo an imprisonment of not less than (30) days, nor more than sixty (60) days, or both. (Id. § 2.)

341. **Enforcement of Act.**—The Department of Agriculture shall be charged with the enforcement of this act. (Id. § 3.)

342. **Fines, Disposition of.**—All fines imposed and recovered for the violation of any of the provisions of this act shall be paid to the Department of Agriculture or its agent, and when so collected and paid shall thereafter be, by the Department of Agriculture, paid into the State treasury for the use of the Commonwealth. (Id. § 4.)

NOTE: See also Nos. 284 et seq. and 322.

Salt.

See Nos. 641, 647 et seq., and 655 et seq.

Vinegar.

343. **Cider Vinegar to be Pure Apple Juice.**—No person shall manufacture for sale, or offer or expose for sale, as cider, apple or orchard vinegar, any vinegar not the legitimate product of pure apple juice known as apple cider, or vinegar not made exclusively of said apple cider, or vinegar into which foreign substances, drugs or acids have [been] introduced as may appear by proper test. (Pa. St. 1920, § 21458.)

344. **Ingredients Injurious to Health Prohibited.**—No person shall manufacture for sale or knowingly offer for sale, or have in his possession with intent to sell, any vinegar found, upon proper test, to contain any preparation of lead, copper, sulphuric acid or other ingredient injurious to health. (Id. § 21459.)

345. **Artificial Coloring Matter Prohibited.**—All cider vinegar shall be without artificial coloring matter, and shall contain not less than two per centum, by weight, of cider vinegar solids upon full evaporation over boiling water, and shall also contain an acidity of not less than four per centum. (Id. § 21460.)

346. **Manufacturers Must Brand Vessels, Before Shipment.**—Every person making or manufacturing cider vinegar for sale shall, before shipment, brand on each head of the cask, barrel or keg containing such vinegar, the name and residence of the manufacturer, the date when same was manufactured, and the words "cider vinegar"; and no vinegar shall be branded "fruit vinegar," unless the same be made wholly from apples, grapes or other fruits. (Id. § 21461.)

347. **Penalty for Violation of Act.**—Whoever violates any of the provisions of this act shall, upon conviction, be fined not less than fifty dollars nor more than one hundred dollars, or imprisonment not less than thirty days nor more than one hundred days, or both, and shall be adjudged to pay, in addition, all necessary costs and expenses incurred in inspecting and analyzing such vinegar, and all vinegar not in accordance with this act shall be subject to forfeiture and spoliation. (Id. § 21462.)

348. **Sale of Vinegar Regulated; Composition of.**—From and after the passage of this act no person, firm or corporate body shall manufacture for sale, offer for sale or expose for sale, sell or deliver, or have in his, her or their possession with intent to sell or deliver, any vinegar not in compliance with the provisions of this act. No vinegar shall be sold or exposed for sale as apple or cider vinegar which is not the legitimate product of pure apple juice, or vinegar not made exclusively of said apple cider, or vinegar in which foreign substances, drugs or acids shall have been introduced, as may appear upon proper test; no vinegar shall be branded fruit vinegar unless the same be made wholly from grapes, apples or other fruits; Provided, that apple or cider vinegar may be sold which has been reduced to a strength of not less than four per centum, by weight, of acetic acid by the addition of pure water, if the cask, barrel, keg, or package containing such vinegar shall be plainly and distinctly marked or branded to conform to the actual contents thereof. (Id. § 21463.)

349. **Branding Vinegar; Proportion of Acetic Acid.**—All vinegar made by fermentation and oxidation, without the intervention of distillation, shall be branded "fermented vinegar," with the name of the fruit or substance from which the same is made. And all vinegar made wholly or in part from distilled liquor shall be branded as "distilled vinegar," and all such distilled vinegar shall be free from coloring matter, added before, during or after distillation, and from color other

than that imparted to it by the process of distillation, and shall contain not less than four per centum, by weight, of absolute acetic acid. (Id. § 21464.)

350. Purity of Vinegar.—And all vinegar shall be made wholly from the fruit or grain from which it is represented to be made, and shall contain no foreign substance; Provided, that this shall not be construed to prohibit the use of such an amount of spices as are necessary for flavoring, provided such spices do not color the vinegar. (Id. § 21465.)

351. Manufacture and Sale of Adulterated Vinegar Prohibited.—No person, firm or corporate body shall manufacture for sale, offer for sale, or have in his, her or their possession with intent to sell or expose for sale any vinegar found upon proper test to contain any preparation of lead, copper, sulphuric or other mineral acid, or other ingredients injurious to health. (Id. § 21466.)

352. Marks on Packages Containing Vinegar.—And all packages containing vinegar shall be plainly and distinctly marked on each head of the cask, barrel or keg containing such vinegar, or if sold in other packages, each package shall be plainly and distinctly marked with the name and residence of the manufacturer, together with the brand required in section two [21464] thereof. (Id. § 21467.)

353. Penalty for Violation of Act.—Every person, firm or corporate body who shall violate any of the provisions of this act shall, for every such offense, forfeit and pay not less than fifty dollars nor more than one hundred dollars, which shall be recoverable, with costs, including expense of inspection and analysis, by person suing in the name of the Commonwealth, as debts of like amount [are] by law recoverable. (Id. § 21468.)

354. Enforcement of Act.—The Department of Agriculture, through its officer known as the Dairy and Food Commissioner,* together with the deputies, agents, and assistants, shall be charged with the enforcement of this act, and shall have full access to all places of business, factories, mills, buildings, carriages, cars, vessels, barrels, tanks and packages of whatever kind used in the manufacture and transportation and sale of any vinegar, or of any adulteration or imitation thereof, or any package in which vinegar is mixed with articles of food. They shall also have power and authority to open any package, barrel or vessel containing any vinegar, or any adulteration or imitation thereof, which may be manufactured, sold or exposed for sale, and they shall also have full power and authority to take the samples therefrom for analysis upon tendering the value of said samples. (Id. § 21469.)

355. Payment of Expenses.—All charges, accounts and expenses of the department for the enforcement of this act, through the said commissioner and his deputies, agents, assistants, chemist, and counsel employed by him, in carrying out the provisions of this act, shall be paid by the Treasurer of the State in the same manner as other accounts and expenses of said department are paid. (Id. § 21470.)

356. Disposition of Penalties.—And all penalties and costs for the violation of the provisions of this act shall be paid to the said Dairy and Food Commissioner, or his agents, and by him immediately covered into the State treasury, to be kept as a fund for the use of the department, and to be drawn out upon warrant signed by the Secretary of Agriculture and the Auditor-General. (Id. § 21471.)

357. Penalty for Violation of Act.—Every person who violates any of the provisions of this act shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not less than fifty dollars nor more than one hundred dollars, or by imprisonment in the county jail for not less than ten nor more than thirty days, or both fine and imprisonment for the first offense, and a fine of one hundred dollars and imprisonment for thirty days for every subsequent offense; Provided, that all fines and costs, including the expense of inspection and analysis imposed under this section, shall be covered into the State treasury as provided by section four [21471] of this act and all vinegar sold or offered for sale in violation of the provisions of this act shall be subjected to forfeiture and spoliation. (Id. § 21472.)

358. Jurisdiction of Magistrates and Justices.—Magistrates and justices of the peace throughout this Commonwealth shall have jurisdiction to hear and determine actions arising for violations of the provisions of this act, and to hold for court, or impose the penalties provided therein, subject to appeal as the law shall direct. (Id. § 21473.)

359. Enforcement of Laws Against Adulteration of Vinegar, Etc.—The State Dairy and Food Commissioner† shall be charged with the enforcement of all laws against fraud and adulteration or impurities in vinegar, jellies, cider, evaporated

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*See No. 30 et seq. This law is to be corrected accordingly.

†Now Department of Agriculture. See No. 30 et seq. This law is to be corrected accordingly.

apples and all apple products, and the unlawful labeling of the same, in the State of Pennsylvania. (Id. § 236.)

360. **Inspection of Vinegar, Jellies, Etc.; Prosecution of Violations of Act.**—It shall be the duty of said Dairy and Food Commissioner to inspect any articles of vinegar, jellies, cider, evaporated apples or other apple products made or offered for sale in the State of Pennsylvania as an article of food or drink, and to prosecute or cause to be prosecuted any person or persons, firm or firms, corporation or corporations engaged in the manufacture or sale of any adulterated article of food or drink, or adulterated in violation of or contrary to any laws of the State of Pennsylvania now in force or hereafter to be passed. (Id. § 237.)

361. **Powers of Commissioner and Assistants.**—The said food commissioner and such assistants, agents, experts, chemists, detectives and counsel as he shall duly authorize for the purpose shall have full access, egress, ingress, to all places of business, factories, mills, buildings, carriages, cars, vessels and barrels, tanks and packages of whatever kind used in the manufacture and transportation and sale of any apple products, or of any adulteration or imitation thereof. They shall also have power and authority to open any package, barrel or vessel containing apple products, or any adulteration or imitation thereof, which may be manufactured, sold or exposed for sale in violation of any of the provisions of any act now enacted or which may be hereafter enacted in relation to apple products, or the adulteration or imitation or unlawful labeling thereof, and they shall also have power to take from such packages, barrel or vessel samples for an analysis, after tending compensation for said samples thus taken. (Id. § 238.)

362. **Disposition of Penalties.**—All penalties and costs shall be received by the State Board of Agriculture for the violation of this act and of other acts now enacted or hereafter to be enacted prohibiting or regulating the adulteration or imitation of any apple product, and shall be appropriated by the said board to the payment only of the necessary expenses incurred by the said Dairy and Food Commissioner and his assistants and agents in the investigation, discovery and prosecution of of violation of this act. (Id. § 239.)

363. **Payment of Expenses.**—All charges, accounts and expenses of the said commissioner, and all of the assistants, agents, experts, chemists, detectives and counsel employed by him in carrying out the provisions of this act, shall be paid by the treasurer of the State in the same manner as other accounts and expenses of the said Board of Agriculture are now paid, as provided by law. (Id. § 240.)

364. **Annual Report.**—The said commissioner shall make an annual report of his work and proceedings, and shall report in detail the number of names of his assistants, agents, experts, chemists, detectives and counsel employed by him in carrying out the provisions of this act, together with their expenses and disbursements, and be a part of his general report, not a separate one, to the said State Board of Agriculture at its annual meeting. (Id. § 241.)

NOTE: See also No. 513.

Sanitation.

365. **Employing Persons with Certain Diseases Forbidden.**—No person or persons, firm, corporation, or common carrier, operating or conducting any hotel, restaurant, dining car, or other public eating or drinking place in this Commonwealth, shall hereafter employ or keep in their employ, in the capacity of cook, waiter, chamber maid, kitchen help, or other house servant, any person or persons who is or are suffering from trachoma, active tuberculosis of the lungs, open skin tuberculosis, syphilis, gonorrhea, open external cancer, or barber's itch; and all persons so employed, who, at the time of the passage of this act, are suffering from any of the said diseases, shall at once be excluded from such employment in such hotel, restaurant, dining car, or other public eating place.

Every person so employed or permitted to work for any person or persons, firm, corporation, or common carrier, operating or conducting any hotel, restaurant, dining car, or other public eating or drinking place in this Commonwealth, shall obtain a certificate from a reputable registered doctor of medicine, certifying that such person is free from any of the diseases mentioned in section one of this act; and no person shall be employed or permitted to work as aforesaid in such hotel, restaurant, dining car, or other public eating or drinking place in this Commonwealth, without having first obtained such a certificate. Said certificate or certificates shall be filed with the local health authorities within five days from date of said medical examination. The said certificate or certificates shall be valid for a period of six months, and may be revoked at any time prior thereto if the condition of such person warrants it. (Pa. St. Supp. 1924, § 11958.)*

*But see the subsequent law in No. 371 et seq.

366. Employment of Persons Carrying Typhoid Fever.—No person or persons, firm, or corporation, operating or conducting any hotel, restaurant, dining car, or public eating or drinking place in this Commonwealth, shall keep in their employ, in any of the several capacities mentioned in section one [11958] of this act, any person who is a carrier of typhoid fever, after notice that any person so employed by them is a carrier of typhoid fever has been served in writing upon the owner, operator, or manager of any such hotel, restaurant, dining car, or other public eating or drinking place by a physician or the health authorities. (Id. § 11960.)

367. Use of Unclean Dishes.—No person or persons, firm or corporation, operating or conducting any hotel, restaurant, dining car, or other public eating or drinking place in this Commonwealth, shall furnish to their patrons or customers any dish, or other receptacle or utensil, used in eating or drinking, which has not been thoroughly cleansed since it was used by another individual, and kept in a clean and sanitary condition subsequent to said cleansing. (Id. § 11961.)

368. Use of Towels; Washrooms.—No person or persons, firm, or corporation, operating or conducting any hotel, restaurant, dining car, or other public eating or drinking place, and having and maintaining in connection therewith any wash-room for public use, or for the use of their patrons or customers, shall furnish in such wash-room any towel, unless such towel be laundered or discarded after each individual use. All wash-rooms as above mentioned shall be kept in a clean and sanitary condition. (Id. § 11962.)

369. Common Drinking Vessels Prohibited.—No person or persons, firm, or corporation, operating or conducting any hotel, restaurant, dining car, or other public eating or drinking place, shall furnish or keep in or about such establishment, at any drinking fountain or public drinking place to which the public or their customers or patrons have access, any common drinking vessel for common use: Provided, that this section shall not preclude the use of vessels which are cleansed by washing with hot water and soap or are disinfected or destroyed after each individual use. (Id. § 11963.)

370. Punishment for Violations.—Any person or persons, firm, or corporation who shall violate any of the provisions of this act, shall, upon conviction thereof, in a summary proceeding before any justice of the peace or alderman in the county in which the offense was committed, be sentenced to pay a fine of not less than five ($5) or more than hundred ($100) dollars, to be paid to said county, and the costs of prosecution, or to be imprisoned in the county jail for a period of not more than thirty (30) days, or both, at the discretion of the court. (Pa. St. 1920, § 11964.)

371. Definitions.—The words "public eating or drinking place" shall mean any place within this Commonwealth where food or drink is served to, or provided for, the public, with or without charge, including, among others, hotels, restaurants, cafes, cafeterias, boarding houses, ice cream saloons, soda water or soft drinks fountains, and bars or taverns.

The word "proprietor" shall mean any person, firm, or corporation conducting or operating, within this Commonwealth, a public eating or drinking place.

The word "employee" shall include any cook, waiter, kitchen help, chambermaid, house servant, or other employee of any kind, of or in a public eating or drinking place, who, in any manner whatever, handles or comes in contact with, any food or drink served to or provided for the public, and any member of the proprietor's family who handles said food or drink.

The masculine pronoun shall be interpreted to include the feminine and neuter pronouns. (L. 1927, Act No. 283, § 1.)

372. Employment of Persons Affected with Certain Diseases Prohibited.—No proprietor shall hereafter employ, or keep in his employ, any employee who is suffering from trachoma, active tuberculosis of the lungs, open skin tuberculosis, syphilis, gonorrhea, open external cancer, or barber's itch; and any such employee, who at the time of the passage of this act, is suffering from any of the above named diseases, shall at once be excluded from such employment in such public eating or drinking place. (Id. § 2.)

373. Employees to Procure Certificate Before Employment.—Every employee of any public eating or drinking place in this Commonwealth shall obtain a certificate from a registered doctor of medicine, certifying such employee is free from the diseases mentioned in section 2 of this act; and no employee shall be employed, or permitted to work, in such public eating or drinking place in this Commonwealth, without having first obtained such certificate. Said certificate or certificates shall be in the form prescribed by the Secretary of Health, and shall be filed with the local health authorities, within five days from date of said medical examination, except that, in townships of the second class, such certificate or certificates shall be filed with the Secretary of Health. All such certificates shall be valid for a period of six months from date of issue, and may be revoked at any

time prior thereto if the employee named therein shall, within said period, contract any of the diseases mentioned in section 2 of this act. (Id. § 3.)

374. Carriers of Typhoid Fever Not to be Employed.—No proprietor shall permit any employee to work in the public eating or drinking place conducted or operated by him, if such employee is a carrier of typhoid fever, after a notice that such employee is such carrier has been served, in writing, upon him by a physician, or the public health authorities. (Id. § 4.)

375. Use of Towels, Napkins, Etc., Regulated.—No proprietor shall furnish any towel or napkin to any patron of a public eating or drinking place, unless such towel or napkin be laundered or discarded after each individual use thereof, nor shall there be furnished to the patrons of such eating or drinking places, any dish, glass, or other receptacle, or utensil used in eating or drinking, which has not been thoroughly cleansed with hot water and soap since it was used by another individual, or destroyed or discarded after each individual use. (Id. § 5.)

376. General Sanitary Provisions.—In every public eating or drinking place, the kitchen, dining-room, cellar, ice box, refrigerator, and all places where foods are prepared, kept, or stored, shall be kept clean and in a sanitary condition. All garbage, tin cans, and kitchen refuse shall be kept in a tight metal container, securely covered, and the contents thereof shall be removed at least once during each day. The dining-rooms, kitchens, and pantries, where food is served, prepared, kept, or stored, shall be thoroughly screened from flies and insects. All serving trays, tables, trucks, boxes, buckets, knives, saws, cleavers, choppers, pots, pans, dishes, and other utensils and machinery, used in moving, handling, cutting, chopping, mixing, preparing, or serving foods, shall be thoroughly sterilized daily, by hot water or steam, and shall at all times be kept clean. The clothing and hands of employees shall at all times be clean and sanitary. All foods, on display and for distribution or sale, shall have full protection from dust, dirt, flies, and vermin, by being kept under glass or cover. No domestic pets or other animals shall be permitted where food or drink is prepared, handled, or stored. (Id. § 6.)

377. Same.—All toilets and water-closets, lavatories, tubs, sinks, and drains, used in, or in connection with, any public eating or drinking place shall at all times be kept in a clean and sanitary condition. (Id. § 7.)

378. Penalties.—Any person, association, partnership, or corporation, who shall violate any of the provisions of this act, shall, upon conviction thereof in a summary proceeding before any justice of the peace, alderman, or magistrate, in the county in which the offense was committed, be sentenced to pay a fine of not less than ten ($10.00) dollars, nor more than fifty ($50.00) dollars, to be paid to said county, and the costs of prosecution. Upon conviction for a second like offense, such person or persons, association or associations, copartnership, corporation, or common carrier, shall be fined not less than twenty-five ($25.00) dollars, nor more than one hundred ($100.00) dollars, and costs of prosecution. In default of payment of such fine and costs all offenders shall be sentenced to be confined in the proper county jail for a period of not more than thirty days. (Id. § 8.)

NOTE: See also Nos. 31a, 32, 34, 46a et seq., 54 et seq., 71 et seq., 89 et seq., 104 et seq., 299a et seq., and 583-584.

PART III.

Special Drug Laws.

Abortifacients and Contraceptives.

379. Advertisement or Sale of Medicines to Procure Abortion or Prevent Conception.—If any person shall print or publish, or cause to be printed or published, in any newspaper in this State, any advertisement of any secret drug or nostrum purporting to be for the use of females; or if any druggist or other person shall sell or keep for sale, or shall give away any such secret drug or nostrum purporting to be for the use of females, or if any person shall, by printing or writing, or in any other way, publish an account or description of any drug, medicine, instrument or apparatus for the purpose of preventing conception, or of procuring abortion or miscarriage, or shall, by writing or printing, or any circular, newspaper, pamphlet or book, or in any other way publish or circulate any obscene notice, or shall, within this State, keep for sale or gratuitous distribution any secret drug, nostrum

or medicine for the purpose of preventing conception, procuring abortion or miscarriage, such person or persons, so violating any of the provisions of this act, shall be deemed guilty of a misdemeanor, and shall, upon conviction thereof, be fined in any sum not exceeding one thousand dollars, or be imprisoned in the county jail not exceeding six months, or both, at the discretion of the court: Provided, that nothing in this act contained shall be construed to affect teaching in regular chartered medical colleges, or the publication of standard medical books. (Pa. St. 1920, § 7663.)

380. Penalty for Selling or Advertising Medicines, Etc., to Produce Abortion.—A person who sells, lends, gives away or in any manner exhibits or offers to sell, lend or give away, or has in his possession with intent to sell, lend or give away or advertises or offers for sale, loan or distribution, any instrument or article, or any recipe, drug or medicine for the prevention of conception, or for causing unlawful abortion, or advertises or holds out representations that it can be so used or applied, or any such description as will be calculated to lead another to so use or apply any such article, recipe, drug, medicine or instrument, or who writes or prints, or causes to be written or printed, a card, circular, pamphlet, advertisement or notice of any kind, or gives information orally stating when, where, how, of whom or by what means such an instrument, article, recipe, drug or medicine can be purchased or obtained, or who manufactures any such instrument, article, recipe, drug or medicine, is guilty of a misdemeanor, and shall be liable to the same penalties as provided in section one* of this act. (Id. § 7664.)

381. Making and Publishing Obscene Literature.—If any person shall bring or cause to be brought into this State for sale or exhibition, or shall sell, lend, give away, or offer to give away, or show, or have in his or her possession, with intent to sell, or give away, or to exhibit, show, advertise, or otherwise offer, for loan, gift, sale, or distribution, any obscene or indecent book, magazine, pamphlet, newspaper, story paper, writing, paper, picture, card, drawing, or photograph, or any article or instrument of indecent or immoral use, or shall design, copy, draw, photograph, print, utter, publish, or otherwise prepare such book, picture, card, drawing, paper or other article, or shall write, or print, or cause to be written, or printed, a circular, advertisement or notice of any kind, or give information orally, stating when, where, how, or of whom, or by what means, such an indecent or obscene article, or thing, can be purchased, seen or obtained, shall in every such case, be guilty of a misdemeanor, and, upon conviction thereof, shall be sentenced to pay a fine not exceeding five hundred dollars, and undergo an imprisonment not exceeding one year: Provided, that this section shall not apply to any person giving information orally for the purpose of procuring or furnishing evidence to convict under this act. (Id. § 7987.)

382. Giving, Selling or Advertising Obscene Books, Etc.—A person who sells, lends, gives away or shows, or offers to sell, lend or give away or show, or has in his possession with intent to sell, lend or give away or to show, or advertises in any manner, or who otherwise offers for loan, gift, sale or distribution, any obscene, lewd, lascivious, filthy, indecent or disgusting book, magazine, pamphlet, newspaper, story-paper, paper, writing, drawing, photograph, figure or image, or any written or printed matter of an indecent character, or any article or instrument of indecent or immoral use or purporting to be for indecent or immoral use or purpose, or who designs, copies, draws, photographs, prints, utters, publishes, or in any manner manufactures or prepares any such book, picture, drawing, magazine, pamphlet, newspaper, story-paper, paper, writing, figure, image, matter, article or thing, or who writes, prints, publishes or utters, or causes to be printed, published or uttered, any advertisement or notice of any kind giving information directly or indirectly, stating or purporting to do so, where, how, of whom, or by what means any, or what purports to be any obscene, lewd, lascivious, filthy, disgusting or indecent book, picture, writing, paper, figure, image, matter, article or thing named in this section can be purchased, obtained or had, or who prints, utters, publishes, sells, lends, gives away, or shows or has in his possession with intent to sell, lend, give away, or show or otherwise offers for sale, loan or gift, or distribution any pamphlet, magazine, newspaper or other printed paper devoted to the publication and principally made up of criminal news, police reports or accounts of criminal deeds, or pictures or stories of deeds of bloodshed, lust or crime, or who in any manner hires, employes, uses or permits any minor or child to do or assist in doing any act or thing mentioned in this section, or any of them, is guilty of a misdemeanor, and upon conviction, shall be sentenced to not more than one year imprisonment, or be fined not more than one thousand dollars, or both, for each offense. (Id. § 7988.)

383. Proceedings on Complaint of Offense Against Act.—A magistrate having jurisdiction to issue warrants in criminal cases, upon complaint that any person within his jurisdiction is offending against the provisions of this act, supported

*Reference is to Pa. St. 1920, § 7988. See No. 382.

by oath or affirmation, must issue a warrant directed to the sheriff, or to any constable, marshal or police officer within the county directing him to search for, seize and take possession of any of the articles specified in this chapter in the possession of the person against whom complaint is made. The magistrate must immediately transmit every article seized by virtue of the warrant to the district attorney of the county, who must, upon conviction of the person from whose possession the same was taken, cause it to be destroyed, and the fact of such destruction to be entered upon the records of the court in which the conviction is had. (Id. § 7989.)

Caustic Acids or Alkalies.

384. Regulation of Sale; Labels.—On and after the first day of January, one thousand nine hundred and twenty-four, it is unlawful for any person or copartnership or corporation to sell, at wholesale or retail, within this Commonwealth, any caustic acids or caustic alkalies, or preparations containing such acids or alkalies, intended for household use, or mineral or chemical salts for agricultural purposes, without affixing to the bottle, box, vessel, sack, or package containing the same, a label printed or plainly written, containing the name of the article, the name and place of business of the manufacturer, seller, or distributor of such household acids, alkalies, or preparations thereof, and in addition the word "poison," which shall conspicuously appear thereon in capital letters, not less than twenty-four point size, or which shall be affixed thereto as a sticker conspicuously placed; Provided, that in the case of mineral or chemical salts, including nitrate of soda, sulphate of ammonia, muriate of potash, sulphate of potash, intended or sold for agricultural purposes, the sacks, packages, or other containers, or attached cards or labels, shall have printed thereon, as hereinbefore provided, the words "poisonous to live stock." (Pa. St. Supp. 1924, § 2551a-1.)

385. "Caustic" Defined.—The word "caustic" shall, within the intent and purpose of this act, be construed to mean any acids or alkalies in liquid or powdered form, or preparations thereof or containing free or chemically unneutralized hydrochloric acid in a concentration of ten (10) per centum, or sulphuric acid in a concentration of ten (10) per centum, or nitric acid in a concentration of five (5) per centum, or carbolic acid (phenol) in a concentration of five (5) per centum, or oxalic acid in a concentration of ten (10) per centum, or acetic acid in a concentration of twenty (20) per centum, or hypochlorous acid (calx, chlorinata, bleaching powder, or chloride of lime) in a concentration of one hundred (100) per centum, or potassium hydrate (caustic potash, Vienna paste, pearlash, potassa carbonas) in a concentration of ten (10) per centum, or sodium hydrate (caustic soda, concentrated lye) in a concentration of twenty (20) per centum, or silver nitrate (lunar caustic) in a concentration of five (5) per centum. (Id. § 2551a-2.)

386. Penalty.—Any person or copartnership or corporation violating section one [2551a-1] of this act of assembly is guilty of a misdemeanor, and, upon conviction, shall be sentenced to pay a fine of not more than one hundred dollars and the costs of prosecution. (Id. § 2551a-3.)

Distribution of Samples.

387. Distribution of Samples of Candies and Medicines.—On and after the passage of this act, it shall not be lawful for any person to deposit, cast, throw, or place any package, parcel, or sample of any medicine or candy in or upon any house, building, porch, veranda, portico, or any other part of any house or building, or in or upon any lawn, yard, land, street, or public highway, within this Commonwealth. (Pa. St. 1920, § 7981.)

388. Punishment.—Any person violating any of the provisions of this act shall be guilty of a misdemeanor, and, upon conviction, shall be sentenced to pay a fine not exceeding one hundred dollars, and undergo imprisonment not exceeding one year, or both, or either, at the discretion of the court. (Id. § 7982.)

389. Distribution of Trial Samples of Medicines, Dyes, Etc., to Children, Prohibited.—It is hereby made unlawful for any person or persons to distribute any free or trial samples of any medicines, dyeing, ink, coloring or polishing compounds, or any of them, in any form or preparation, upon the ground, sidewalks, porches, into yards, or into or under doors or windows, or in any way or manner, that children may get possession of or secure the same. (Id. § 13323.)

390. Violation of Act a Misdemeanor; Penalty.—Any person or persons found guilty of a violation of any of the provisions of section one [13323] of this act shall be deemed guilty of a misdemeanor, and shall upon conviction thereof be-

fore any alderman or justice of the peace be fined in a sum not exceeding twenty dollars—said fine for the use of the county in which the conviction is had—or not more than twenty days' imprisonment in the county jail, at the discretion of the officer before whom such person or persons may be convicted. (Id. § 13324.)

391. Act Not to Apply to Distribution to Adults.—Any person or persons who shall distribute any such free or trial samples, as named in section one [13323] of this act, to adult persons only, shall not come within the provisions of this act. **(Id. § 13325.)**

Insecticides and Fungicides.

392. Sale, Etc., of Adulterated Insecticides or Fungicides.—It shall be unlawful for any person to manufacture, sell, or offer for sale, within the Commonwealth, any insecticide or fungicide which is adulterated or misbranded, within the meaning of this act. (Pa. St. 1920, § 126.)

393. Misrepresentation of Value.—It shall be unlawful for any person to defraud any other person by misrepresenting the value of any treatment applied to trees, shrubs, vines, or other plant material, or to any animal, for preventing, destroying, repelling, or mitigating any insect, fungus, or bacterial disease, or for accelerating its growth or productive power. (Id. § 127.)

394. Enforcement of this Act.—The Secretary of Agriculture shall promulgate uniform rules and regulations for enforcing this act, including the collection and examination, by existing bureaus, of insecticides and fungicides, manufactured or offered for sale in the Commonwealth, for the purpose of determining whether such articles are adulterated or misbranded within the meaning of this act. (Id. § 128, as amended L. 1925, Act No. 98, § 1.)

395. Person Defined.—For the purposes of this act, the word "person" shall include corporations, companies, societies, associations, partnerships, or any individual or combination of individuals. (Pa. St. 1920, § 129.)

396. Other Definitions.—The term "insecticide," as used in this act, shall include any substance, or mixture of substances, intended to be used for preventing, destroying, repelling, or mitigating any insects which may infest vegetation, man, or animals, or households, or be present in any environment whatsoever. The term "Paris green," as used in this act, shall include the product sold in commerce as Paris green, and chemically known as the acete-arsenite of copper. The term "lead arsenate," as used in this act, shall include the product or products sold in commerce as lead arsenate, and consisting chemically of products derived from arsenic oxide (H_3AsO_4), by replacing one or more hydrogen atoms by lead. That the term "fungicide," as used in this act, shall include any substance, or mixture of substances, intended to be used for preventing, destroying, repelling, or mitigating any and all fungi that may infest vegetation, or be present in any environment whatsoever. (Id. § 130.)

397. Person Manufacturing or Importing Insecticides or Fungicides to Register Each Kind or Brand—Contents of Statement to be Filed—Fees—Proviso—Selling Agents and Retailers do not Require Additional Registration—Registration May be Refused or Revoked—Unlawful to Sell Brand not Registered.—(a) Every person manufacturing insecticides or fungicides in this Commonwealth, and every person importing inserticides or fungicides into this State for the purpose of reselling the same on or before the first day of January of each year, or before selling, offering, or exposing for sale such insecticides or fungicides, shall register and file with the Secretary of Agriculture a certified statement of the names and number of each kind or brand of such insecticides or fungicides that he or they shall manufacture, import, or offer for sale during the next ensuing year, and such additional information concerning the same as the Secretary of Agriculture may require; and he or they shall pay to the Secretary of Agriculture the sum of five dollars ($5.00) for each kind or brand of such insecticide or fungicide so registered; Provided, that every person registering five kinds or brands of insecticides or fungicides, and paying to the Secretary of Agriculture the sum of five dollars ($5.00) for each, may register additional kinds or brands for the sum of one dollar ($1.00) for each insecticide or fungicide; Provided further, that selling agents and retailers, when selling insecticides or fungicides registered by manufacturers or importers, shall not be required to effect additional registration for such brands. All moneys so received shall be immediately paid by the Secretary of Agriculture into the general fund of the State treasury.

The Secretary of Agriculture may refuse to register any kind or brand of insecticide or fungicide, and he may revoke any registration which shall have been accepted when such kind or brand has been found to be adulterated, misbranded, or to have little or no value for the purpose for which it is intended to be used.

It shall be unlawful for any person to sell, offer, or expose for sale any insecticide or fungicide that is not properly registered under the provisions of this section. ([Id. § 130a]; added L. 1925, Act No. 98, § 2.)

398. What Deemed Adulteration.—For the purpose of this act, an article shall be deemed to be adulterated:

In the case of Paris green,—first, if it does not contain at least fifty per centum of arsenious oxide; second, if it contains arsenic in water-soluble forms equivalent to more than three and one-half per centum of arsenious oxide; third, if any substance has been mixed and packed with it so as to reduce or lower or injuriously affect its quality or strength;

In the case of lead arsenate,—first, if it contains more than fifty per centum of water; second, if it contains total arsenic equivalent to less than twelve and one-half per centum of arsenic oxide (As_2O_5); third, if it contains arsenic in water-soluble forms equivalent to more than seventy-five one-hundredths per centum of arsenic oxide (As_2O_5); fourth, if any substances have been mixed and packed with it so as to reduce, lower, or injuriously affect its quality or strength: Provided, however, that extra water may be added to lead arsenate (as described in this paragraph) if the resulting mixture is labeled lead arsenate and water, the percentage of extra water being plainly and correctly stated on the label;

In the case of insecticides or fungicides other than Paris green and lead arsenate,—first, if its strength or purity fall below the professed standard or quality under which it is sold; second, if any substance has been substituted wholly or in part for the article; third, if any valuable constituent of the article has been wholly or in part abstracted; fourth, if it is intended for use on vegetation, and shall contain any substance or substances which, although preventing, destroying, repelling, or mitigating insects or fungi, shall be injurious to such vegetation when used. (Pa. St. 1920, § 131.)

399. Misbranding; What Constitutes.—The term "misbranded," as used herein, shall apply to all insecticides, Paris green, lead arsenates, or fungicides, or articles which enter into the composition of insecticides or fungicides, the package, label, or accompanying descriptive circulars of which shall bear any statement, design, or device regarding such article, or the ingredients or substances contained therein, which shall be false or misleading in any particular; and to all insecticides, Paris greens, lead arsenates, or fungicides, which are falsely branded as to the State, Territory, or country in which they are manufactured or produced.

For the purpose of this act, an article shall be deemed to be misbranded:

In the case of insecticides, Paris green, lead arsenates, and fungicides,—first, if it be an imitation, or offered for sale under the name of another article; second, if it be labeled or branded so as to deceive or mislead the purchaser, or if the contents of the package as originally put up shall have been removed, in whole or in part, and other contents shall have been placed in such package; third, if the quantity of the contents be not plainly and correctly marked on the outside of the package, in terms of weight, measure, or numerical count.

In the case of insecticides (other than Paris greens, and lead arsenates) and fungicides,—first, if it contains arsenic in any of its combinations or in the elemental form, and the total amount of arsenic present (expressed as per centum of metallic arsenic) is not stated on the label; second, if it contains arsenic in any of its combinations or in the elemental form, and the amount of arsenic in water-soluble forms (expressed as per centum of metallic arsenic) is not stated on the label; third, if it consists, partially or completely, of an inert substance, or substances, which do not effectively prevent, destroy, or repel insects or fungi, and does not have the names and percentage amounts of each and every one of such inert ingredients, and the fact that they are inert, plainly and correctly stated on the label: Provided, however, that, in lieu of naming and stating the percentage amount of each and every inert ingredient, the producer may, at his discretion, state plainly upon the label the correct names and percentage amounts of each and every ingredient of the insecticide or fungicide having insecticidal or fungicidal properties, and make no mention of the inert ingredients, except in so far as to state the total percentage of inert ingredients present.—(Id. § 132.)

400. Confiscation.—Any insecticide or fungicide that is condemned as being adulterated or misbranded within the meaning of this act, shall be confiscated and disposed of by destruction, or in such other manner as the court may direct. (Id. § 133.)

401. Violation of Act a Misdemeanor—Penalty.—Any person who shall violate any of the provisions of this act, or any rule or regulation of the Secretary of Agriculture promulgated under this act, shall be guilty of a misdemeanor, and shall, upon conviction thereof, be fined not less than twenty-five nor more than two hundred dollars, for the first offense; and, upon conviction for each subsequent offense, be

fined not to exceed three hundred dollars, or sentenced to imprisonment for not to exceed one year, or both such fine and imprisonment, in the discretion of the court. (Id. § 134, as amended L. 1925, Act No. 98, § 3.)

NOTE: See also No. 35.

Pharmacy, Poisons and Narcotics.

402. **Departmental Administrative Bodies, Boards, Commissions and Offices.**—The following departments, boards, commissions and offices, are hereby placed and made departmental administrative bodies, boards, commissions, or offices, as the case may be, in the respective administrative departments mentioned in the preceding section, as follows: . . .

In the Department of Public Instruction—. . .

The Pennsylvania Board of Pharmacy, hereafter to be known as State Board of Pharmacy. . . . (Pa. St. Supp. 1924, Administrative Code, § 50a-202, as amended L. 1927, Act No. 164.)*

402a. **State Board of Pharmacy.**—The State Board of Pharmacy shall consist of the Superintendent of Public Instruction ex-officio and five persons, who shall be appointed for terms of six years from among the most skillful pharmacists in Pennsylvania, who are not teachers or instructors in any educational institution teaching pharmacy. Each appointee must have been registered as a pharmacist in Pennsylvania at least ten years previous to his appointment, and he must be actually engaged in conducting a pharmacy.

Three members of the board shall constitute a quorum. The board shall select from their number a chairman, and shall elect a secretary who need not be a member of the board.

The members of the board, other than the Superintendent of Public Instruction, shall be paid fifteen dollars per diem when actually engaged in the performance of their official duties, and the secretary shall receive such reasonable compensation as the board shall deetrmine, with the approval of the Superintendent of Public Instruction. (Pa. St. Supp. 1924, Administrative Code, § 50a-411.)

403. **Professional Education and Licensure.**—The Department of Public Instructions shall have the power, and its duty shall be:

(a) To determine, value, standardize, and regulate the preliminary education, both secondary and collegiate, of those to be hereafter admitted to the practice of medicine, dentistry, and pharmacy in this Commonwealth;

(b) To prepare and distribute circulars of information;

(c) To prepare uniform blank forms:

(d) To hold examinations, at suitable times and places to be designated by the Superintendent of Public Instruction, for the determination of the fitness of applicants unable to present satisfactory certificates, and to issue certificates to those found proficient;

(e) To establish reciprocity with other States as regards preliminary education and professional licenses;

(f) To determine and publish a standard high school course, and compile a list of high schools and other secondary schools in this State conforming to the standards of the department, and take such steps as may be appropriate to raise the standard of secondary education: Provided, that nothing in this section shall be construed to conflict with the provisions of the statutes of this Commonwealth regulating the practice of medicine, dentistry, or pharmacy, respectively;

(h) To keep the records of all of the professional examining boards established in the department;

(i) To issue all certificates and other official documents of the various professional examining boards in the department: Provided, however, that the officers and members, or any of them, of any such examining board may also sign such certificates and other documents, if such board shall have taken action authorizing such signatures;

(j) To assist any professional examining board within the department if, as, and when, requested by such board;

(k) To co-operate with the several professions, whose examining bodies are within the department, in the determination and establishment of standards of professional education. (Id. § 50a-1304.)

404. **Professional Examining Boards.**—The professional examining boards within the Department of Public Instruction shall, respectively, exercise the rights

*The pharmacy law is to be corrected accordingly.

and powers and perform the duties by law vested in and imposed upon them, subject, however, to the following provisions:

(a) The Department of Public Instruction shall appoint and fix the compensation of all clerical, stenographic, and other assistance required for the proper conduct of the work of any such examining board;

(b) All certificates and official documents shall be issued by the Department of Public Instruction, but may be signed by the members of the appropriate examining board or any of them as determined by such board;

(c) All warrants or requisitions, drawn by any such board as authorized by law, shall not be valid without the signature of the Superintendent of Public Instruction;

Subject to the preceding provisions of this section and to any other inconsistent provisions in this act contained, the State Board of Medical Examination and Licensure shall continue to exercise the powers and perform the duties by law vested in the Bureau of Medical Examination and Licensure in the Department of Public Instruction;

The State Board of Pharmacy shall continue to exercise the powers and perform the duties by law vested in and imposed upon the said board; . . . (Id. § 50a-1310, as amended L. 1927, Act No. 164.)

405. Definitions; "Pharmacy"; "Drugs"; "Pharmacist"; "Assistant Pharmacist."—(a) The term "pharmacy," when not otherwise limited, shall, for all the purposes of this act, be taken to mean a retail drug store, or any place where drugs, medicine, or poisons are compounded, dispensed, prepared, or sold at retail; (b) the term "drug," as used in this act, shall include all medicine and preparations recognized in the United States Pharmacopœia, the National Formulary, or the American Homeopathic Pharmacopœia, for internal or external use, and any other substance, or mixture of substances, intended to be used for the cure, mitigation, or prevention of disease of either man or other animals; (c) the term "pharmacist" shall, for all purposes of this act, be deemed to mean a person who is properly registered, in accordance with this act of assembly, as a pharmacist; (d) the term "assistant pharmacist" shall, for all the purposes of this act, be deemed to mean a person who is properly registered, in accordance with this act of assembly, as an assistant pharmacist: Provided, however, that all persons registered as pharmacists or assistant pharmacists by the State Pharmaceutical Examining Board of Pennsylvania, under the act of May twenty-fourth, one thousand eight hundred and eighty-seven, and various supplements and amendments, entitled "An act to regulate the practice of pharmacy and sale of poisons, and to prevent adulterations in drugs and medicinal preparations, in the State of Pennsylvania," shall be deemed to be pharmacists or assistant pharmacists, respectively, registered under this act. (Pa. St. 1920, § 9301.)

406. Term and Compensation of Members.—The appointed members of said board heretofore created shall, respectively, continue to hold office as members of the board established by this act of Assembly until the expiration of the term for which each was originally appointed. The members of said board shall be paid ten dollars per diem and their necessary expenses when actually engaged in the performance of the duties of the board. (Id. § 9303.)

407. Officers; Oath of Office.—The officers of said board shall be a president, vice-president, secretary, and treasurer, all of whom shall be elected annually from among their number. The salary of the said secretary shall be a reasonable amount, to be determined by the Pennsylvania Board of Pharmacy. The members of said board shall, within ten days of their appointment, take and subscribe an oath or affirmation, before a properly qualified officer of the county in which they reside, that they will faithfully and impartially perform the duties of their office, which oath or affirmation shall be filed with the Secretary of the Commonwealth. (Id. § 9304.)

408. Employment of Assistants; Vacancies in Board.—And the said board shall have the right to employ chemists, assistant chemists, agents, and clerks for the purpose of carrying out the terms and conditions prescribed by this act of Assembly. Any vacancy occurring in the said board shall be filled by the Governor, from among such only as are eligible for appointment under this act of Assembly: Provided, however, if the office of a member shall become vacant before the expiration of the term for which said member was appointed the vacancy shall be filled by an appointment by the Governor for the unexpired term only. (Id. § 9305.)

409. Rules, Regulations and Forms of Application.—The Pennsylvania Board of Pharmacy shall make uniform rules and regulations for the enforcement of this act, including the forms of application for registration in accordance therewith. (Id. § 9306.)

410. Enforcement of Act by Board; Disposition of Fines.—The Pennsylvania Board of Pharmacy shall enforce the provisions of this act of Assembly, investigate all complaints and charges of noncompliance, and prosecute all persons so offend-

ing whenever reasonable ground shall appear for such action. All fines imposed through a violation of this act shall be paid to the Secretary of the Pennsylvania Board of Pharmacy, and by him paid into the State treasury, for use in the enforcement of this act of Assembly. (Id. § 9307.)

411. **Application of Fees; Annual Report.**—The amount derived from this source [fees] shall be held by said board and be applied to the expenses and salaries herein provided, and such as may arise under the provisions of this act; and they, the said board, shall report annually to the Governor of the State of Pennsylvania all moneys received and disbursed under the provisions of this act, together with the number of pharmacists registered under this act. (Id. § 9308.)

412. **Meeting with Other Boards; Interstate Association; Subscription to Association.**—The Pennsylvania Board of Pharmacy, in order to be informed and to determine the status of boards of pharmacy of other States desiring to effect agreements for reciprocal registration of pharmacists, and in order also to be advised regarding the progress of pharmacy throughout the country, shall annually select one of its members to meet with like representatives from other State Boards of Pharmacy. At such meetings when arranged, there shall be discussed the degree of fitness for registration which is required by the several State Boards of Pharmacy. The Pennsylvania Board of Pharmacy, through its representatives, may, with like representatives from other State Boards of Pharmacy, join in creating and maintaining an association of representatives of the several State Boards of Pharmacy to be engaged in the general advancement of pharmacy and the keeping of records pertaining to reciprocal registration of pharmacists, and, in its discretion, may give to such association information which it possesses relating to such aims and objects. The Pennsylvania Board of Pharmacy, at an expense not to exceed twenty-five ($25) dollars per annum, may subscribe for and secure the service of an association engaged in the compilation of pharmaceutical information, knowledge, and progress, specially adopted to secure efficiency in the work of the board. (Pa. St. Supp. 1924, § 9310.)

413. **Board to Have Duties and Powers of State Pharmaceutical Examining Board.**—. . . The duties and powers of the State Pharmaceutical Examining Board under any act of the General Assembly, in force and effect on and after July 1st, one thousand nine hundred and seventeen, shall be taken to be the duties and powers of the Pennsylvania Board of Pharmacy* created by this act of Assembly. This act shall be in force and effect on and after July 1st, one thousand nine hundred and seventeen. (Pa. St. 1920, § 9311.)

414. **Board to Keep Book for Registration of Druggists and Assistants.**—The said pharmaceutical examining board shall keep a book of registration open at some convenient place, of which due notice shall be given by advertisement in at least four newspapers of the State and so divided as to reach as nearly as practicable all parts thereof, in which book shall be registered the name and address of each and every person duly qualified under this act to conduct and carry on the retail drug and apothecary business, or to hold the position of qualified assistant therein. (Id. § 9312.)

415. **Druggists Must Register Within Ninety Days.**—It shall be the duty of all persons now conducting or who shall hereafter conduct the business of retail apothecaries, or those acting in the capacity of qualified assistants therein, in said State, to apply to said board and be registered as such within ninety days after such notice and thereafter every three years; application for registration only may be sent by mail to the secretary of the examining board, after being properly attested before a notary public or any other person authorized to administer an oath or affirmation in the county in which the applicant resides.

The form of application shall be subject to such regulations as the board may see proper to adopt, but in no case shall the applicant be put to any unnecessary expenses in order to secure registration (Id. § 9313.)

416. **Registration of Persons Failing to Register Previously.**—Any person who was more than twenty-one years old, and entitled to registration as a pharmacist, as provided in section three [9312-9313] of the act, entitled "An act to regulate the practice of pharmacy and sale of poisons, and to prevent adulterations in drugs and medicinal preparations, in the State of Pennsylvania, approved May twenty-fourth, anno Domini one thousand eight hundred and eighty-seven, and who failed to apply for registration within the ninety days, as provided in said act, may make such application at any time within thirty days after the passage of this act, with the same force and effect as if such application had been made within the ninety days provided in the act of May twenty-fourth, anno Domini one thousand eight hundred and eighty-seven; Provided, that the applicant has been continuously employed in the drug business since the approval of the aforesaid act, and pays to the

*Now State Board of Pharmacy. See No. 402.

State Pharmaceutical Board the application, certificate, and renewal fees which would be due and owing the said board had the applicant become registered as provided in section three [9312-9313] of the act hereinbefore mentioned. (Id. § 9314.)

417. No Person to Engage as Manager Without Certificate.—No person shall hereafter engage as manager in the business of an apothecary, or pharmacist, or of retailing drugs, chemicals and poisons, or of compounding and dispensing the prescriptions of physicians, either directly or indirectly, without having obtained such certificate as aforesaid. But nothing contained in this act shall in any manner whatever interfere with the business of any practitioner of medicine, nor prevent him from administering or supplying to his patients such articles as to him may seem fit and proper; nor shall it interfere with the making and dealing in proprietary remedies, popularly called patent medicines, nor prevent storekeepers from dealing in and selling the commonly used medicines and poisons, if such medicines and poisons conform in all respects to the requirements of section nine [9336]; Provided, the provisions of section ten [9375] of this act be fully complied with.

Any person, who shall violate or fail to comply with the provisions of this section, shall be guilty of a misdemeanor, and on conviction before any court shall be punished by a fine not exceeding one hundred dollars, or be imprisoned in the county jail of the proper county for a term not exceeding one year, or either, or both, at the discretion of the court. (Id. § 9315.)

418. Application to Persons Now Engaged in Business.—The foregoing provisions of this act shall not apply to or affect any person who shall be engaged in the retail drug and apothecary business as proprietor of the same, or as qualified assistant therein, at the passage of this act, except only in so far as relates to registration and fees provided in sections three and four [9312, 9313 and 9308] of this act.

A qualified assistant engaged in the business at the passage of this act is one who has had not less than two years' practical experience in the retail drug and apothecary business. All other assistants actually engaged in the business at the passage of this act shall, upon the completion of a like term of two years' experience, be entitled to registration as qualified assistants without examination. (Id. § 9316.)

419. Persons Without Certificate Not to Compound Prescriptions.—No person shall be allowed, by the proprietor or manager of any store or place where prescriptions are compounded, to compound or dispense the prescriptions of physicians, except under the immediate supervision of said proprietor or his qualified assistant, unless holding a properly certified certificate of registration or competency from the State Pharmaceutical Examining Board, as herein provided; and any person violating the provisions of this section shall be deemed guilty of a misdemeanor, and on conviction thereof shall be punished by a fine not exceeding one hundred dollars. (Id. § 9317.)

420. Examination of Applicant; Certificates.—The Pennsylvania Board of Pharmacy shall meet at least four times a year in the city of Harrisburg, or such other place in Pennsylvania as they may deem expedient, and examine all persons in the science of pharmacy and its allied branches who shall make application for registration as pharmacists or assistant pharmacists; and that the said Pennsylvania Board of Pharmacy, or a majority of them, shall grant to such persons as may be qualified registration and certificates of competency and qualification, which shall entitle the holders thereof to all the privileges of a pharmacist or assistant pharmacist under the provisions of this act, as may be specified therein. (Id. § 9318.)

421. Qualifications of Applicants—Qualifications of Applicant for Registration as Assistant Pharmacist.—Every person applying to the Pennsylvania Board of Pharmacy for examination and registration as a pharmacist shall be not less than twenty-one years of age and of good moral character; and must produce satisfactory evidence of having had subsequent to his or her sixteenth birthday not less than three years' practical experience in a pharmacy, under the personal supervision of a pharmacist, at least one year of which experience must have been acquired within the United States, in the business of retailing, compounding, or dispensing of drugs, chemicals, and poisons, and of compounding of physicians' prescriptions; or, in the case of an applicant having acquired experience in the drug dispensary of a regular public hospital, which dispensary was conducted under the constant supervision of a registered pharmacist, two years of such experience shall be allowed in lieu of two years required in a pharmacy; and of being a graduate of some reputable and properly chartered college of pharmacy, so recognized by the Pennsylvania Board of Pharmacy. And every person applying for registration as assistant pharmacist shall be not less than eighteen years of age, and of good moral character, and must produce satisfactory evidence of having had subsequent to his or her sixteenth birthlay not less than two years' practical experience in a pharmacy; except that in the case of an applicant having acquired experience in the drug dispensary of a regular public

hospital, which dispensary was conducted under the constant supervision of a registered pharmacist, one year of such experience shall be allowed in lieu of one year required in a pharmacy. (Id. § 9319, as amended L. 1925, Act No. 163, § 1.)

422. **Pharmacist, Examination Fee—Registration and Certificate—Assistant Pharmacist—Examination Fee—Registration and Certificate—Proviso.**—Each applicant for examination and registration as a pharmacist shall pay to the Pennsylvania Board of Pharmacy an examination fee of five dollars ($5.00). If the said applicant passes a satisfactory examination and complies with the rules and regulations, and with the terms and conditions of this act of Assembly, then the said board shall grant the applicant registration, and a certificate of competency and qualification as a pharmacist, upon the payment of a fee of twenty dollars ($20.00), or such other sum as shall be fixed by the Department of Public Instruction under authority of law; provided said fee shall be paid to the said board within thirty days of the time that the said applicant is notified that a satisfactory examination has been passed.

Each applicant for examination and registration as assistant pharmacist must pay a fee of five dollars ($5.00), or such other sum as shall be fixed by the Department of Public Instruction under authority of law, to the Pennsylvania Board of Pharmacy; and if the said applicant passes a satisfactory examination, and complies with the rules and regulations of the Pennsylvania Board of Pharmacy for the enforcement of this act of Assembly, and with the terms and conditions of this act of Assembly, the said board shall grant the said applicant registration and a certificate of competency and qualification as an assistant pharmacist, upon payment of a fee of ten dollars ($10.00), or such other sum as shall be fixed by the Department of Public Instruction under authority of law; provided that said fee shall be paid to the said board within thirty (30) days of the time when the said applicant is notified that a satisfactory examination has been passed. (Pa. St. 1920, § 9320, as amended L. 1925, Act No. 163, § 2.)

423. **Revocation or Suspension of Registration.**—The registration of any pharmacist or assistant pharmacist, under this act of Assembly, may be revoked, by the Pennsylvania Board of Pharmacy, when the registration is proved to have been obtained by fraudulent means, or suspended or revoked upon being convicted for a second violation, in connection with the practice of pharmacy, of any law of this Commonwealth or of the United States.

Before any registration is suspended or revoked, the holder of such registration certificate shall be given a hearing before the Board of Pharmacy, after notice of the time and place of such hearing and of the charges made against him. At such hearing the accused may be represented by counsel, and shall be entitled to compulsory attendance of witnesses. (Pa. St. Supp. 1924, § 9321.)

424. **False Personation of Applicant.**—It shall be unlawful for any person to impersonate an applicant before the Pennsylvania Board of Pharmacy, who shall be applying for registration under the provisions of this act of Assembly. Any person violating this section of this act of Assembly shall be guilty of a misdemeanor, and upon conviction shall be sentenced to pay a fine of one hundred dollars ($100.00), or to undergo an imprisonment of six months in the county prison, or either or both, in the discretion of the court. (Pa. St. 1920, § 9322.)

425. **Selling or Practicing Without Registration Unlawful; Exceptions.**—Hereafter it shall be unlawful to sell drugs, medicines, or poisons at retail, or to compound physicians' prescriptions, or to conduct a pharmacy, or to practice as a pharmacist or assistant pharmacist, except in compliance with the provisions of this act of Assembly: Provided, however that nothing in this act of Assembly shall be so construed as to interfere with students of pharmacy, or other employees in a pharmacy, from performing such duties as may be assigned to them by and under the supervision of a pharmacist or assistant pharmacist: And provided, further, that the compounding of physicians' prescriptions, or the dispensing and selling of poisons at retail, shall not be permitted except under the strict supervision and in the presence of a pharmacist or assistant pharmacist.

Nothing in this act of Assembly shall be construed so as to prevent an authorized practitioner of medicine from administering or dispensing such drugs to bona fide patients as he or she shall deem necessary: Provided, however, that such drugs so administered or dispensed shall conform to the standards of strength, quality, and purity as fixed by the laws of this Commonwealth: nor prevent the sale or manufacture of proprietary medicines; nor prevent storekeepers from dealing in and selling commonly used household drugs when the same are offered for sale or sold in packages which have been put up ready for sale to consumers by pharmacists, manufacturing pharmacists, wholesale grocers, or wholesale druggists. Any person violating the provisions of this section shall be guilty of a misdemeanor, and upon conviction shall be sentenced to pay a fine of not less than fifty dollars ($50.00) nor

more than five hundred dollars ($500.00), or imprisonment for not more than one year, or either or both, in the discretion of the court. (Id. § 9323.)

426. **Authorized Acts of Registrants.**—It shall be lawful for a pharmacist to take, use, and exhibit the titles: "pharmacist," "pharmacy," "druggist," "apothecary," "drug store;" and to have charge of, engage in, conduct, or carry on, for himself or for another, the dispensing, compounding, or sale of drugs, chemicals, medicines, prescriptions, or poisons, anywhere within the State; but he shall have personal supervision of not more than one pharmacy at the same time.

It shall be lawful for an assistant pharmacist to take, use, or exhibit the title, "assistant pharmacist," and to assist in the dispensing, compounding, or retailing of drugs, chemicals, medicines, prescriptions, or poisons, in a pharmacy which is under the management and personal supervision of a pharmacist registered under the provisions of this act. He may also perform such duties during the temporary absence of the pharmacist regularly in charge. (Id. § 9324.)

427. **Unlawful Use of Title—Proviso—Misdemeanor—Penalty.**—It shall be unlawful for any person, firm, or corporation to use the title: "pharmacist," "assistant pharmacist," "druggist," or "apothecary," except as authorized by this act of Assembly, or hereafter to conduct or transact business under a name which contains as part thereof, with or without qualifying words, syllables, prefixes, or suffixes, the words: "drug store," "pharmacy," "medicine store," "medicine shop," or "drug shop," or any term having a similar meaning, or in any manner by advertisement, circular, poster, sign, symbol, insignia, or otherwise, describe or refer to the place of business conducted or carried on by such person, firm, or corporation, by the terms "drug store," "pharmacy," or any other term having a similar meaning unless the place of business is a drug store or pharmacy duly registered and authorized by the State Board of Pharmacy. Any person, firm, or corporation violating this section of this act of Assembly shall be guilty of a misdemeanor, and upon conviction shall be sentenced to pay a fine of not less than fifty dollars ($50.00) and the costs of prosecution. (Id. § 9325, as amended L. 1925, Act No. 163, § 4.)

428. **False Oaths and Statements by Applicants for Registration.**—It shall be unlawful for any person to falsely make oath or affirmation to any statement in any application made to this board, for registration as a pharmacist or assistant pharmacist, or to any statement in support of the experience claimed in any application by any applicant for registration under this act. Any person so doing shall, upon conviction, be sentenced to pay a fine of not more than one hundred dollars ($100.00) and costs of prosecution. (Pa. St. 1920, § 9326.)

429. **Conduct of Pharmacy by Unregistered Person.**—It shall be unlawful for any unregistered person to have charge of a pharmacy; and anyone who permits any person, who is not registered or deemed to be a pharmacist or assistant pharmacist under this act, to take charge of a pharmacy, shall be guilty of a misdemeanor and either or both shall, upon conviction, be sentenced to pay a fine of not more than one hundred dollars ($100.00) and costs of prosecution. (Id. § 9327.)

430. **Registration of Foreign Registrants; Fees.**—The Pennsylvania Board of Pharmacy may, in its discretion, register as a pharmacist, without examination, any person who is duly so registered by examination in some other State; Provided, that the said person shall produce satisfactory evidence of having had the required secondary and professional education, and is possessed of good character and morals, demanded of applicants for registration as pharmacist under the provisions of the Pharmacy act of Pennsylvania, excepting that persons of good moral character, who have become registered as pharmacists by examination in other States prior to May seventeenth, one thousand nine hundred and seventeen, shall be required to meet only the requirements which existed in Pennsylvania, at the time when they became registered in such other State; and provided also, that the State in which such person is registered shall grant registration as a pharmacist, without examination, to pharmacists duly registered by examination in the State of Pennsylvania. Applicants for such registration in Pennsylvania shall pay a fee of fifteen ($15) dollars for the application and expense of making an investigation of their character, general reputation, and pharmaceutical standing, in the State, where they have resided, by the Pennsylvania Board of Pharmacy. A fee of twenty-five ($25) dollars shall be paid for the registration and certificate thereof. (Pa. St. Supp. 1924, § 9328.)

431. **Registration and Permit Required; Exceptions.**—No pharmacy, as defined by the act to which this is a supplement, shall be kept open for the transaction of business until it has been registered with and a permit therefor has been issued by the Pennsylvania Board of Pharmacy; Provided, however, that this section shall not be construed to apply to any store or stores opened for the sale of proprietary or so-called patent medicines. (Id. § 9329a-1.)

432. Fee for and Display of Permit.—Upon application, on a form to be prescribed and furnished it, and the payment of a fee of two dollars ($2.00) the Pennsylvania Board of Pharmacy shall issue a permit to conduct a pharmacy to such persons, associations, copartnerships, or corporations, as the board deems qualified to conduct such business. All permits issued under the provisions of this act shall be exposed in a conspicuous place in the pharmacy for which it was issued, and shall expire on the first day of July following the date of issue. No permit shall be issued unless it appears to the satisfaction of the board that the management of the pharmacy is in the charge of a pharmacist registered under the provisions of the act to which this is a supplement. All permit fees collected under the provisions of this act shall be paid into the State treasury. (Id. § 9329a-2.)

433. Revocation of Permit.—The Board of Pharmacy may suspend or revoke any permit obtained by false representations made in the application therefor, or when the pharmacy for which a permit shall have been issued is kept open for the transaction of business without a registered pharmacist in charge thereof, and upon conviction for a second or any subsequent violation of any law of this Commonwealth or of the United States pertaining to the drug business or the sale of intoxicating liquors, or for aiding or abetting in the violation of any such law. Before any permit is suspended or revoked, the holder thereof shall be given a hearing before the Board of Pharmacy, after notice of the time and place of such hearing and of the charges made against such holder. At such hearing the accused may be represented by council, and shall be entitled to compulsory attendance of witnesses.

Three members of the board shall be a quorum for any such hearing. No permit shall be suspended or revoked except by the vote of three or more members of the board. (Id. § 9329a-3.)

434. Violations of Act; Penalty.—Any person, association, copartnership, or corporation violating any of the provisions of this act is guilty of a misdemeanor, and, on conviction, shall be sentenced to pay a fine of not less than fifty dollars ($50) nor more than two hundred dollars ($200), or, in the case of an individual or the members of an association or copartnership or of the officers or directors of a corporation, to undergo an imprisonment for not more than six months, or both. (Id. § 9329a-4.)

435. Certificate to be Exhibited—Violation—Penalty.—All certificates as pharmacist or assistant pharmacist, and permits to conduct a pharmacy, issued under the authority of the Commonwealth of Pennsylvania, shall at all times be conspicuously exhibited in the place of business where the pharmacist or assistant pharmacist is employed. Any person violating this section of this act of Assembly, as to the display of his permit or his own or his employees' certificates, shall, upon conviction, be sentenced to pay a fine of ten dollars ($10.00) and the costs of prosecution. (Pa. St. 1920, § 9330, as amended L. 1925, Act No. 163, § 3.)

436. Certificate of Registration to be Kept in Conspicuous Place.—Every proprietor, manager and qualified assistant holding a certificate of registration or renewal certificate under the provisions of an act, entitled "An act to regulate the practice of pharmacy and sale of poisons, and to prevent adulterations in drugs and medicinal preparations, in the State of Pennsylvania," approved the twenty-fourth day of May, anno Domini one thousand eight hundred and eighty-seven, shall keep his or her certificate of registration and renewal certificate in some conspicuous place in his or her retail drug store or pharmacy, or in the retail drug store or pharmacy where [he] or she may be at the time employed. (Pa. St. 1920, § 9331.)*

437. Penalty for Violation of Act.—Every person who shall violate or fail to comply with the provisions of this section shall, for every such offense, forfeit and pay the sum of ten dollars ($10.00), which shall be recoverable with costs by any person suing in the name of the Commonwealth as debts of like amount are by law recoverable, which sum when so recovered shall be paid to the State Pharmaceutical Examining Board. (Id. § 9332.)

438. Renewal Certificates Need Not be Exhibited.—Hereafter no druggist shall be required to pay any fee for any renewal of his certificates, and shall not be required to exhibit in his place of business any certificate except the original. (Id. § 9333.)

439. Formularies to be Kept in Pharmacies.—There shall be kept in every pharmacy a copy of the latest revision of the United States Pharmacopœia, and the latest edition of the National Formulary, and, if homeopathic remedies are compounded and dispensed, a copy of the latest revision of the American Homeopathic Pharma-

*This act, so far as it requires an exhibition of renewals of certificates of registration, is amended by the act of 1901, April 24, P. L. 99, § 1, infra, 9333. (Compiler's note.)

copœia, or the Homeopathic Pharmacopœia of the United States, which books must be open to the inspection of the Pennsylvania Board of Pharmacy or the agents thereof. Any person violating this section of this act of Assembly shall, upon conviction, be sentenced to pay a fine of ten dollars ($10.00) and the costs of prosecution. (Id. § 9334.)

440. **Prescriptions to be Filed; Inspection.**—All physicians' prescriptions compounded and dispensed shall be kept on file in the pharmacy in which compounded for a period of at least five years, and during that time the same shall be open to the inspection of the police authorities, upon presentation of an order from the court, or to the members of the Pennsylvania Board of Pharmacy. (Id. § 9335.)

441. **Ownership of Pharmacies and Drug Stores Regulated.**—Every pharmacy or drug store shall be owned only by a licensed pharmacist, and no corporation, association or copartnership shall own a pharmacy or drug store, unless all the partners or members thereof are licensed pharmacists; except that any corporation organized and existing under the laws of the Commonwealth or of any other State of the United States, and authorized to do business in the Commonwealth, and empowered by its charter to own and conduct pharmacies or drug stores, and any association or copartnership which, at the time of the passage of this act, still owns and conducts a registered pharmacy or pharmacies or a drug store or drug stores in the Commonwealth, may continue to own and conduct the same; but no other or additional pharmacies or drug stores shall be established, owned, or conducted by such corporation, association, or copartnership, unless all the members or partners thereof are registered pharmacists; but any such corporation, association, or copartnership, which shall not continue to own at least one of the pharmacies or drug stores theretofore owned by it, or ceases to be actively engaged in the conduct of a pharmacy, shall not be permitted thereafter to own a pharmacy or a drug store, unless all of its partners or members are registered pharmacists; and except that any person, not a licensed pharmacist, who, at the time of the passage of this act, owns a pharmacy or a drug store in the Commonwealth, may continue to own and conduct the same, but shall not establish or own any additional pharmacy, or drug store, or if he or she ceases to operate such pharmacy or drug store, shall not thereafter own a pharmacy or drug store, unless he or she be a registered pharmacist; and except that the administrator, executor or trustee of the estate of any deceased owner of a registered pharmacy or drug store, may continue to own and conduct such pharmacy or drug store during the period necessary for the settlement of the estate: Provided, that nothing in this section shall be construed to prevent or affect the ownership, by other than a registered pharmacist, of a store or stores wherein the sale or manufacture of drugs or medicines is limited to proprietary medicines and commonly used household drugs, provided such commonly used household drugs are offered for sale or sold in packages which have been put up ready for sale to consumers by pharmacists, manufacturing pharmacists, wholesale grocers, or wholesale druggists. (L. 1927, Act No. 491, § 1.)

442. **Violations—Penalty.**—Any person, copartnership, or corporation, violating the provisions of this act, shall be guilty of a misdemeanor and, upon conviction thereof, shall be sentenced to pay a fine of not more than one hundred dollars. Each day any such pharmacy is owned contrary to the provisions of this act shall be considered a separate offense. (Id. § 2.)

443. **Pharmacy and Sale of Poisons and Drugs—Registration of Apprentices—Fee.**—On and after the approval of this act every person who shall enter a pharmacy or drug store with the intention of becoming a pharmacist or assistant pharmacist shall make application to the State Board of Pharmacy on a form furnished by it for registration and certificate as registered apprentice. The fee for such registration and certificate shall be two dollars ($2.00), or such other sum as may be fixed by the Department of Public Instruction under authority of law. (L. 1925, Act No. 164, § 1.)

444. **Duty of Pharmacist to Require Apprentices to Apply for Registration.**—It shall be the duty of any registered pharmacist or other employer who takes into his or its employ an apprentice for the purpose of becoming a pharmacist or assistant pharmacist, to require such person to apply to the State Board of Pharmacy for registration as apprentice; and for failure to see that every apprentice employed by him or it is registered such registered pharmacist or other employer shall be liable as for a violation of this act. (Id. § 2.)

445. **Qualifications of Apprentices.**—Every applicant for apprentice registration must be at least sixteen years of age. The State Board of Pharmacy, with the approval of the Department of Public Instruction, shall establish the preliminary educational qualifications and furnish upon request proper blanks for the purpose of registration and authorize the Department of Public Instruction to issue a certificate thereof. (Id. § 3.)

446. Rights of Apprentices.—A registered apprentice pharmacist shall have the right, in the presence and under the personal supervision of a pharmacist or assistant pharmacist, but not otherwise, to prepare or dispense recipes or prescriptions and to sell or furnish medicines or poisons. (Id. § 4.)

447. Computation of Term of Practical Experience.—The beginning of the term of practical experience required of applicants for registration as pharmacists or assistant pharmacists shall be computed from the date of registration as apprentice. (Id. § 5.)

448. Violation and Penalty.—Any person violating any provision of this act shall upon conviction be sentenced to pay a fine of ten dollars ($10.00) and costs of prosecution. (Id. § 6.)

449. Sale, Etc., of Cocaine and Eucaine.—No person shall sell, furnish, or give away cocaine, or its salts, derivatives or compounds; or alpha or beta eucaine, or their salts, derivatives or compounds; or any substance or preparation containing cocaine, its salts, derivatives, or compounds, or alpha or beta eucaine, their salts, derivatives, or compounds, except upon the prescription of a duly registered, practicing physician, or of a dentist, or of a veterinarian, which prescription shall be filled but once, and of which no copy shall be taken by any one, and which shall be retained and kept on file by the dispenser thereof for a period of at least five years; nor shall any physician, dentist, or veterinarian prescribe, sell, or give away any cocaine, or its salts, derivatives, or compounds, or any alpha or beta eucaine or their salts, derivatives, or compounds, to any person known to such physician, dentist, or veterinarian to be an habitual user of those drugs. (Pa. St. 1920, § 9349.)

450. Sales by Wholesalers and Manufacturers.—Provided, that the provisions of this act shall not apply to persons engaged in the wholesale drug trade, regularly selling cocaine, its salts, derivatives, or compounds, alpha or beta eucaine, their salts, derivatives, or compounds, to persons engaged in the retail drug trade, under the following conditions; that the wholesale dealer shall affix or cause to be affixed to the bottle, box, vessel, or package containing the article sold, and upon the outside wrapper of the package as originally put up, a label distinctly displaying the name and quantity of cocaine or its salts, alpha or beta eucaine, or their salts, sold, and the word "poison," with the name and place of business of the seller—all printed in red ink; and provided also, that the wholesale dealer shall, before delivering any of the articles, make or cause to be made, in a book kept for the purpose, an entry of the sale thereof, stating the date of sale, the quantity, name, and form in which sold, the name and address of the purchaser, and the name of the person by whom the entry is made—and the said book shall be always open for inspection by the proper authorities, and shall be preserved for at least five years after the date of the last entry made therein; and provided also, that any manufacturer may sell to another manufacturer of the same article or to a wholesale dealer in drugs, or a wholesale dealer in drugs may sell to a manufacturer of the same article or to another wholesale dealer in drugs, alkaloid cocaine, or its salts, derivatives, or compounds, or alpha or beta eucaine, or their salts, derivatives, or compounds, or any substance or preparation containing cocaine, its salts, derivatives, or compounds, alpha or beta eucaine, their salts, derivatives, or compounds, in their original package. Such package shall be labeled as herein provided, and shall be securely sealed. Each manufacturer and each wholesale dealer in drugs shall before the delivery or at the time of the receipt, as the case may be, of any such drug, enter or cause to be entered in a book to be kept by them respectively for that purpose, a record of the purchase and sale of such drug, stating the date of purchase and the name and address of the person to whom sold, the quantity, name, and form in which sold, and a description of the package or container in which sold, and how sealed, and there shall also be entered in such book, at the place of such record, a statement that such drug was sold or purchased, as the case may be, in the original package, that the seals thereon were undamaged and unbroken, and the labels were attached thereto as herein provided and were not in any manner defaced or damaged, which statement shall be signed by the person selling such drug, in the book herein required to be kept by him. Each manufacturer and each wholesale dealer shall also file, as a part of this record, all orders for cocaine, its salts, derivatives, or compounds, or alpha or beta eucaine, their salts, derivatives, or compounds; or any substance or preparation containing its salts, derivatives, or compounds; alpha or beta eucaine, their salts, derivatives, or compounds, from other dealers. (Id. § 9350.)

451. Reports of Sales by Wholesalers.—And further, it shall be the duty of all wholesale dealers to make quarterly reports of their sales to other dealers, wholesalers or retailers, of cocaine or its salts, derivatives, or compounds, or any substance or preparation containing cocaine, its salts, derivatives or compounds, alpha or beta eucaine, their salts, derivatives, or compounds, to the State Pharmaceutical

Examining Board, upon blanks to be provided for this purpose by the said board. (Id. § 9351.)

452. Punishment for Violations.—Any person violating any of the provisions of this act shall be sentenced to pay a fine of not more than five hundred dollars, and undergo an imprisonment of not more than two years, or both, or either, at the discretion of the court. (Id. § 9352.)

453. Illegal Possession; Punishment.—If any person—not being a practicing physician, dentist, or veterinarian, or manufacturer, or wholesale or retail dealer in drugs—shall have in his or her possession any cocaine, alpha or beta eucaine, or their salts, or any patent or proprietary remedies containing the same, except by reason of a prescription of a practicing physician, dentist, or veterinarian, he shall be guilty of a misdemeanor, and, upon conviction thereof, be sentenced to pay a fine of not more than one hundred dollars, and undergo an imprisonment of not more than six months, or both or either, at the discretion of the court. (Id. § 9353.)

454. Enforcement by Pharmaceutical Examining Board*; Agents and Assistants.—The enforcement of this act shall be entrusted to the State Pharmaceutical Examining Board, appointed under the act of May twenty-fourth, one thousand eight hundred and eighty-seven, who shall appoint to carry out the provisions of this act an executive secretary, and shall also have power to employ such agents, chemists, and assistants as may be necessary for this purpose. (Id. § 9354.)

455. "Drugs" Defined.—Except as limited in section two [9356] of this act, the word "drug," as used in this act, shall be construed to include—(a) opium; or (b) coca leaves; or (c) any compound or derivative of opium or coca leaves; or (d) any substance or preparation containing opium or coca leaves; or (e) any substance or preparation containing any compounds or derivatives of opium or coca leaves. (Pa. St. Supp. 1924, § 9355.)

456. What Not Included; Sales to Habitual Users or Children.—The word "drug" shall not be construed to include—(1) preparations and remedies and compounds which do not contain more than two grains of opium, or more than one-fourth of a grain of morphine, or more than one-eighth of a grain of heroin, or more than one grain of codeine, or any salt or derivative of any of them, in one fluid ounce, if the same is liquid; or, if a solid or semi-solid, in one avoirdupois ounce; (2) liniments, ointments, or other preparations, prepared and dispensed in good faith for external use only, providing such liniments, ointments, and preparations do not contain cocaine or any of its salts, or alpha or beta eucaine or any of their salts, or any synthetic substitute for cocaine or eucaine or their salts; (3) decocanized coca leaves, or preparations made therefrom, or other preparations of coca leaves which do not contain cocaine:

Provided, however, that no preparations, remedies, or compounds, containing any opium, or coca leaves, or any compounds or derivative thereof, in any quantity whatsoever, may be sold, dispensed, distributed, or given away to, or for the use of, any known habitual user of drugs or any child of twelve years of age or under, except in pursuance of a prescription of a duly licensed physician or dentist. (Id. § 9356.)

457. "Person" and "Prescription" Defined; Number and Gender.—The word "person," as used in this act, shall be construed to include an individual, a copartnership, a corporation, or an association. Masculine words include the feminine or neuter. The singular includes the plural. The word "prescription" shall be construed to designate a written order, by a duly licensed physician, dentist, or veterinarian, calling for a drug, or for any substance or preparation containing a drug. (Pa. St. 1920, § 9357.)

458. Possession, Sale, Etc., Prohibited; Persons Excepted.—No person shall have in his possession or under his control, or deal in, dispense, sell, deliver, distribute, prescribe, traffic in, or give away, any of said drugs. This section does not apply, in the regular course of their business, profession, employment, occupation, or duties, to—(a) manufacturers of drugs; (b) persons engaged in the wholesale drug trade; (c) importers or exporters of drugs; (d) registered pharmacists actually engaged as retail druggists; (e) bona fide owners of pharmacies or drug stores; (f) licensed physicians; (g) licensed dentists; (h) licensed veterinarians; (i) persons in the employ of the United States, or of this Commonwealth, or of any county, municipality, or township of this Commonwealth, and having such drugs in their possession by reason of their official duties; (j) warehousemen, or common carriers, engaged, bona fide, in handling or transporting drugs; (k) persons regularly in charge of drugs in dispensaries, hospitals, asylums, sanatoriums, poor houses, jails, penitentiaries, or public institutions; (l) nurses under the supervision of a physician; (m) persons in charge of a laboratory where such drugs are used for the purpose of

*Now State Board of Pharmacy. See Nos. 402 and 413.

medical or scientific research only; (n) captains, or proper officers, of ships upon which no regular physician is employed, for the actual medical needs of the officers and crews of their own ship only; (o) persons having said drugs in their possession for their own personal use only, provided that they have obtained the same in good faith, for their own use, from a duly licensed physician, or dentist, or in pursuance of a prescription given them by a duly licensed physician or dentist; (p) persons having said drugs in their possession for the use of an animal belonging to them, provided that they have obtained the same in good faith, from a duly licensed veterinarian, for the use of such animal, or in pursuance of a prescription given by a duly licensed veterinarian; (q) persons in the bona fide employ of any of the persons above enumerated. (Id. § 9358.)

459. Use or Administration to Others.—No person shall use, take, or administer to his person, or cause to be administered to his person, or administer to any other person, or cause to be administered to any other person any of the aforesaid drugs, except under the advice and direction, and with the consent, of a regularly practicing and duly licensed physician or dentist. (Id. § 9359.)

460. To Whom Sales by Manufacturers, Wholesalers, Etc., Permitted.—No manufacturer, producer, importer, exporter or person engaged in the wholesale drug trade, and regularly selling drugs, shall sell, dispense, distribute, or give away, any of said drugs, except to—(a) a duly licensed physician; (b) a duly licensed pharmacist (c) a duly licensed dentist; (d) a duly licensed veterinarian; (e) a manufacturer of drugs; (f) a person engaged in the wholesale drug trade and regularly selling drugs; (g) an exporter of drugs; (h) a bona fide hospital, dispensary, asylum, or sanatorium; (i) a public institution; (j) a bona fide owner of a pharmacy or drug store; (k) a person in a foreign country; (l) a person in charge of a laboratory where such drugs are used for the purpose of scientific and medical research only; (m) the captain, or proper officer, of a ship upon which no regular physician is employed, for the actual medical needs of the officers and crew of such ship only; (n) a person in the employ of the United States, of this Commonwealth, or of any county, municipality, or township thereof, purchasing or receiving the same in his official capacity. (Id. § 9360.)

461. Necessity of Written Order; Preservation.—No manufacturer, producer, importer, or person engaged in the wholesale drug trade, and regularly selling drugs, shall sell, dispense, distribute, or give away any of said drugs, except in pursuance of a written order signed by the person to whom such drug is sold, dispensed, distributed, or given. Such order shall be preserved for a period of two years, in such a way that it will be readily accessible to inspection by the proper authorities. (Id. § 9361.)

462. To Whom Pharmacists and Druggists May Sell.—No registered pharmacist, or bona fide owner of a pharmacy or drug store, regularly engaged in the sale of drugs at retail, shall sell, dispense, distribute, or give away any of said drugs, except to (a) another registered pharmacist or bona fide owner of pharmacy or drug store; (b) a duly licensed physician; (c) a duly licensed dentist; (d) a duly licensed veterinarian; (e) a bona fide hospital, dispensary, asylum, sanatorium, or public institution; (f) an individual, in pursuance of a written prescription issued by a physician, dentist, or veterinarian, which prescripton shall be dated as of the day on which signed; and shall be signed by the physician, dentist, or veterinarian, who issued the same; (g) a person in charge of a laboratory where such drugs are used for the purpose of medical or scientific research only; (h) the captain, or proper officer, of a ship upon which no regular physician is employed, for the actual medical needs of the officers and crew of such ship only; (i) a person in the employ of the United States, or of this Commonwealth, or of any county, municipality, or township thereof, purchasing or receiving the same in his official capacity. (Id. § 9362.)

463. Necessity of Written Order; Preservation; Prescription a Sufficient Order.—No registered pharmacist, or bona fide owner, of a pharmacy or drug store, regularly engaged in the sale of drugs at retail, shall sell, dispense, distribute, or give away any of said drugs, except in pursuance of a written order signed by the person to whom such drugs are sold, dispensed, distributed or given. Such order shall be preserved, for a period of two years, in such a way that it will be readily accessible to inspection by the proper authorities. When such drugs are sold, dispensed, distributed, or given to an individual, in pursuance of a prescription, such prescription shall be regarded as the written order herein required, and no further written order shall be necessary. (Id. § 9363.)

464. Sale, Administration, Etc., to Habitual Users; Examination and Report.—No physician or dentist shall sell, dispense, administer, distribute, give, or prescribe any of said drugs to any person known to such physician or dentist to be an habitual user of any said drugs, unless said drug is prescribed, administered, dispensed, or given for the cure or treatment of some malady other than the drug habit: Provided, how-

ever, that, if any physician desires to undertake, in good faith, the cure of the habit of taking or using opium or any of its derivatives in any form, such physician may prescribe or dispense opium or its derivatives to a patient, provided such opium or its derivatives are prescribed or dispensed in good faith for the purpose of curing such patient of such habit, and not merely for the purpose of satisfying a craving for the drugs. In every such case the physician shall himself make a physicial examination of the patient, and shall report, in writing, to the State Department of Health, the name and address of such patient, together with his diagnosis of the case and the amount and nature of the drug prescribed or dispensed in the first treatment. When the patient leaves his care, such physician shall report, in writing, to the State Department of Health the result of his said treatment. (Pa. St. Supp. 1924, § 9364.)

465. Penalty for Divulging Information.—Any person divulging any information contained in any such report, except for the purpose of enforcing this act, or to a physician who may, in the opinion of the Commissioner of Health, be entitled to such information for the purpose of enabling him to comply with the provisions of this act, shall be sentenced to pay a fine not exceeding one thousand dollars, or to undergo an imprisonment not exceeding one year, or both, in the discretion of the court. (Id. § 9365.)

466. Necessity of Physical Examination.—No physician, dentist, or veterinarian shall administer, dispense, give away, deliver, or prescribe any of said drugs, except after a physical examination of the person or animal for whom said drugs are intended; said examination to be made at the time said prescription is issued, or at the time said drug is administered, dispensed, given away, or delivered by said physician, dentist, or veterinarian. No veterinarian shall sell, dispense, distribute, give, or prescribe any drug for the use of a human being. (Pa. St. 1920, § 9366.)

467. Record to be Kept; Preservation; Emergencies.—Every physician, dentist, and veterinarian shall keep a record of all said drugs administered, dispensed, or distributed by him, showing the amount administered, dispensed, or distributed, the date, the name and address of the patient; and, in the case of a veterinarian, the name and address of the owner of the animal to whom such drugs are dispensed or distributed; such record shall be kept for two years from the date of administering, dispensing, or distributing such drug, and shall be open for inspection by the proper authorities. No record need be kept of any drug administered in an emergency case. (Id. § 9367.)

468. Institutions to Which Inapplicable.—This act shall not be construed to apply to the treatment of habitual users of drugs in public hospitals, sanatoriums, poor houses, prisons, or public institutions, except that all such public institutions shall render an annual report to the State Department of Health, giving therein the names, addresses, ages, clinical conditions, and the results of treatment of all habitual uses of drugs given treatment in said institutions. (Pa. St. Supp. 1924, § 9368.)

469. Punishment for Violations; Liability of Officers, Etc., of Corporations.—Any person who shall violate, or fail to comply with, any of the provisions of this act, except as provided in the last paragraph of section eight [9365], shall be guilty of a misdemeanor; and upon conviction, shall be sentenced to pay a fine not exceeding two thousand dollars, or to undergo an imprisonment not exceeding five years, or both, at the discretion of the court. If the violation is by a corporation, copartnership, or association, the officers and directors of such corporation, or the members of such copartnership or association, their agents and employees, with guilty knowledge of the fact, shall be deemed guilty of a violation of the provisions of this act to the same extent as though said violations were committed by them personally. (Pa. St. 1920, § 9369.)

470. Negativing Exceptions; Burden of Proof.—If any prosecution under this act it shall not be necessary to negative any of the exemptions of this act in any complaint, information, or indictment. The burden of proving any exemption under this act shall be upon the defendant. (Id. § 9370.)

471. Revocation of Professional Licenses for Use of Drugs.—Any license heretofore issued to any physician, dentist, veterinarian, pharmacist, druggist, or registered nurse may be either revoked or suspended by the proper officers or boards having power to issue licenses to any of the foregoing, upon proof that the licensee is addicted to the use of any of said drugs, after giving such licensee reasonable notice and opportunity to be heard. (Id. § 9371.)

472. Revocation or Suspension on Conviction for Violation.—Whenever any physician, dentist, veterinarian, pharmacist, druggist, or registered nurse is convicted in a court having jurisdiction, of any violation of this act, the license of such physician, dentist, veterinarian, pharmacist, druggist, or registered nurse may be revoked or suspended by the proper officers or boards having power to issue licenses to any of the foregoing classes, after giving such licensee reasonable notice and opportunity to be heard. (Id. § 9372.)

473. Definition of "License" and "Officers or Boards."—The term "license," as used in sections fourteen and fifteen [9371-9372] of this act, shall be construed to include all licenses heretofore issued to any physician, dentist, veterinarian, pharmacist, druggist, or registered nurse whether said license was issued by the officers or boards at present having power to issue the same, or whether granted under previous authority.

The term "officers or boards," as used in sections fourteen and fifteen [9371 and 9372] of this act, shall be construed to designate such officers or boards as have power to issue licenses to physicians, dentists, veterinarians, pharmacists, druggists, or registered nurses at the time the power to revoke or suspend the license is exercised. (Id. § 9373.)

474. Enforcement of Department of Health; Employment of Assistants, Etc.; Examination of Records and Reports; Inspectors; Arrests by.—The provisions of this act shall be enforced by the Department of Health of the Commonwealth of Pennsylvania; and for that purpose the Commissioner of Health* is hereby authorized to establish, in the Department of Health, a bureau or division for such purpose, and to employ such assistants, stenographers, inspectors, clerks and other employees as, in his opinion, may be necessary and to fix their compensation. For the purpose of enforcing the provisions of this act, the Commissioner of Health and his assistants, either in said bureau or division or any other bureau or division of his department, shall have the right to examine, at any time, any or all of the records required by this act to be kept; and the Commissioner of Health may further require persons dealing in, buying, selling, handling, or giving away drugs to make such reports to him, or to the bureau aforesaid, as he may deem necessary or advisable. This section shall not be construed to exclude the other duly constituted authorities in this Commonwealth from enforcing the provisions of this act.

The Commissioner of Health shall appoint, subject to the approval of the Governor in each instance, inspectors in said bureau, who shall be authorized and empowered to make arrests, without warrant, for all violations of this act by any person or persons who are not taxed as legal dealers in opium, et cetera, by the government of the United States. (Pa. St. Supp. 1924, § 9374.)†

475. Confiscation of Drugs Offered in Evidence.—All drugs offered in evidence in the trial of any cause in this Commonwealth involving illegal sale or possession of such drugs, shall be confiscated by the district attorney of the county in which said trial takes place. (Id. § 9374b-1.)

476. Disposition of Confiscated Drugs.—The district attorney of the county of this Commonwealth who shall thus confiscate such drugs, is hereby authorized to deliver such drugs to the State Department of Health or to any other legally constituted health board of any county of this Commonwealth, as in his discretion he may deem fit. (Id. § 9374b-2.)

477. Narcotic Drugs.—The Department of Health shall have the power, and its duty shall be, to supervise the enforcement of and administer the act,‡ approved the eleventh day of July, one thousand nine hundred and seventeen (Pamphlet Laws, seven hundred and fifty-eight), entitled "An act for the protection of public health by regulating the possession, control, dealing in, giving away, delivery, dispensing, administering, prescribing, and use of certain drugs, and keeping records thereof; by regulating the use of drugs in the treatment of the drug habit; by providing for the revocation and suspension of licenses of physicians, dentists, veterinarians, pharmacists, druggists, and registered nurses for certain causes, and by providing for the enforcement of this act, and penalties." (Pa. St. Supp. 1924, Administrative Code, § 50a-1808.)

478. Poison Defined; Sales; Label; Duty Respecting Purchaser.—A poison, in the meaning of this act of Assembly, shall be any drug, chemical, or preparation, which, according to standard works on medicine, toxicology, or materia medica, is liable to be destructive to adult human life, in quantities of sixty grains or less, or any mixture, compound, or preparation containing, in sixty grains or less, a sufficient quantity of any such drug, chemical, or preparation as to make the same liable to be destructive to adult human life, if sixty grains or less were to be taken.

No person shall sell at retail or dispense any poison, except as herein provided, without affixing to the bottle, box, vessel, or package containing same a label, printed, or plainly written, containing the name of the article, the word "poison,"

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*Now Secretary of Health. See No. 30b.

†This section is repealed in so far as it is inconsistent with act of 1923, June 7, P. L. 498. (Pa. St. Supp. 1924, Administrative Code, § 50a-1 et seq.) See also No. 477.

‡Quoted in Nos. 455-474.

and the name and place of business of the seller; nor shall he deliver poison to any person without satisfying himself that the purchaser understands the poisonous nature of the article, and that such poison is to be used for legitimate purposes. (Pa. St. 1920, § 9375.)

479. Sales of Certain Poisons to be Registered.—It shall be the further duty of anyone selling at retail or dispensing any poison, which according to standard works on medicine, toxicology, or materia medica, is liable to be destructive to adult human life, in quantities of five grains or less, before delivering them, to enter in a book kept for this purpose the name of the seller, the name and address of the buyer, the name of the article, the quantity sold or disposed of, the date on which sold, and the purpose for which it is said to be intended. Such book of registry shall be preserved for at least two years from the last date of entry, and shall at all times be open to inspection of the coroner, police authorities, or the agents of the Pennsylvania Board of Pharmacy; Provided, however, that the provisions of this section shall not apply to the dispensing of physicians' prescriptions, specifying poisonous articles; nor to the sale of mixed paints of all kinds, white lead and colors ground in oil, and all lead products for technical purposes. (Id. § 9376.)

480. Penalty for Violations.—Any person violating this section of this act of Assembly shall be guilty of a misdemeanor, and upon conviction shall be sentenced to pay a fine of not more than one hundred dollars ($100). (Id. § 9377.)

481. Sales for Technical Use Excepted.—This act shall not apply to the sale of poisons for technical use, and not sold or offered for sale as a drug within the meaning of this act; provided that the article is labeled to show plainly that it is for technical use and not for for medicinal use, and is sold in compliance with section seventeen [9375-9376] of this act of Assembly. (Id. § 9378.)

482. Sale of Poisons.—No apothecary, druggist, or other person shall sell or dispose of, by retail any morphia, strychnia, arsenic, prussic acid, carbolic acid, or corrosive sublimate, except upon the prescription of a physician, or on the personal application of some respectable inhabitant, of full age, of the town or place in which such sale shall be made; in all cases of such sale the word "poison" shall be carefully and legibly marked or placed upon the label, package, bottle, or other vessel or thing, in which such poison is contained; and when sold or disposed of otherwise than under the prescription of a physician, the apothecary, druggist, or other person selling or disposing of the same, shall note in a register, kept for that purpose, the name and residence of the person to whom such sale was made, and the quantity sold, and the date of such sale; any person offending herein shall be guilty of a misdemeanor, and, on conviction, shall be sentenced to pay a fine not exceeding fifty dollars. (Id. § 8006.)

483. Keeping Opium Joints Prohibited.—If any person shall set up or establish, or cause to be set up or established, in any house, room, outhouse, tent, booth, arbor or other place whatsoever, any apparatus or device, or instrument, whereby opium may be smoked or used in any manner, whatsoever, by other persons, or if any person shall procure, permit, suffer or allow persons to collect and assemble in his house, room, outhouse, booth, tent, arbor or other place whatsoever under his control, for the purpose of smoking opium, or of using opium in any manner, or if the owner, tenant, lessee or occupant of any house, room, outhouse, tent, booth, arbor or other place whatsoever, shall lease, hire, or rent the same, or any part thereof, to be used and occupied or employed for the purpose of smoking opium, or of using opium in any way or manner by other persons, the persons so offending, in either of the enumerated cases, shall be guilty of a misdemeanor, and on conviction be sentenced to pay a fine not exceeding five hundred dollars, and undergo an imprisonment not exceeding one year. The owner of such house, room, outhouse, tent, booth, arbor or other place whatsoever, who shall have received information that any such smoking, or use as aforesaid, is in or upon the said premises, and shall not, within ten days thereafter, cause complaint to be made against the person who has set up or established the same, shall be deemed and held to have knowingly leased, hired or rented the premises for the said unlawful purposes. (Id. § 16307.)

484. Penalty for Keeping Apparatus for Opium Smoking.—If any person shall keep or exhibit any apparatus, device or instrument for the smoking of opium, or of using opium, in any way or manner, by other persons, or aid or assist or permit others to do the same, such persons shall be deemed guilty of a misdemeanor, and upon conviction thereof be sentenced to an imprisonment not exceeding one year, and to a fine not exceeding five hundred dollars. (Id. § 16308.)

485. Frequenting Opium Joints a Misdemeanor.—If any person shall be found in any house, room, outhouse, tent, arbor, or other place whatsoever, set up or established as aforesaid, smoking opium or using opium in any way or manner, or in any way or manner aiding, assisting, abetting or permitting the smoking of opium, or the use of opium in any way or manner as aforesaid, such person, so offend-

ing, shall be guilty of a misdemeanor, and upon conviction thereof be sentenced to an imprisonment not exceeding one year, and to a fine not exceeding five hundred dollar. (Id. § 16309.)

486. Soliciting Persons to Visit Opium Joints a Misdemeanor.—If any person, shall, through solicitation, invitation or device, persuade, or prevail on, any person to visit any room, building, arbor, booth, shed or tenement, or other place kept for the purpose of the smoking of opium, or of using opium in any way or manner, such person shall be deemed guilty of a misdemeanor, and upon conviction thereof be sentenced to pay a fine not exceeding five hundred dollars, and undergo an imprisonment not exceeding one year. (Id. § 16310.)

487. Seizure of Apparatus for Opium Smoking.—If an affidavit be made and filed before any magistrate, before whom complaint has been made of the commission of either of the crimes provided against in the preceding sections, setting forth that the affiant has reason to believe, and does believe, that the person charged in such complaint has, upon his person or at any other place named in said affidavit, any opium device, apparatus or instrument, the discovery of which might lead to establish the truth of such charge, the said magistrate shall, by his warrant, command the officer, who is authorized to arrest the person so charged, to make diligent search for such opium device, apparatus or instrument, and if found, to bring the same before such magistrate, and the officer so seizing shall deliver the same to the magistrate before whom he takes the prisoner, who shall retain possession, and be responsible therefor, until the discharge, commitment or letting to bail of the person so charged, after which such officer shall retain such opium device, apparatus or instrument subject to the order of the court before which such offender may be required to appear, until his discharge or conviction, and in case of the conviction of such person, the opium device, apparatus or instrument shall, by the direction of the court, be destroyed. It shall and may be lawful for any sheriff, constable or other officer or justice, to seize upon, secure and remove, any opium device, apparatus or instrument of any kind, character or description whatsoever used and employed for the purposes of the unlawful smoking of opium, or of the unlawful use of opium as aforesaid, and to arrest, with or without warrant, any person using or employing the same, and the said court, upon hearing the parties, if they should appear, if satisfied that such opium device, apparatus or instrument was employed and used for the purpose of the unlawful smoking of opium, or of the unlawful use of opium as aforesaid, shall adjudge the same forfeited, and order it to be publicly destroyed, and at the same time order reasonable costs and charges to the seizing officer, to be paid by the owner or possessor of such opium device, apparatus or instrument, or in case of his default, or in case he cannot be found, to be paid as costs are now by law paid on indictment, and such adjudication shall be exclusive evidence to establish the legality of such seizure in any court of this Commonwealth; in any cases in which the question of its legality shall arise, no writ of replevin shall issue for any opium device, apparatus or instrument seized as aforesaid, nor shall any action be instituted for or on account of such seizure, until the court shall have first adjudicated upon the premises, but such writ or action shall forthwith, on motion, be quashed and abated by the court in which it shall be sued or brought; Provided, that this act shall not apply to druggists or physicians, or others engaged in the legitimate use or sale of opium. (Id. § 16311.)

488. Taking Liquors or Drugs into Prison Without Permit Prohibited.—No spirituous or fermented liquors, drug, medicine, poison, opium, morphine, or any other kind or character of narcotics, shall, on any pretense whatever, be sold or given away in any prison or in any building appurtenant thereto, or on the land granted to or owned or leased by the State for the use and benefit of the prisoners; nor shall any kind of spirituous or fermented liquor, drug medicine, poison, opium, morphine, or any other kind or character of narcotics, be brought into any prison or any building appurtenant thereto, or on to the land granted to or owned or leased by the State for the use of and benefit of the prisoners, without a written permit signed by the physician of such prison, specifying the quantity and quality of the liquor or narcotic which may be furnished to any convict or employee in the prison, the name of the prisoner or employee for whom, and the time when, the same may be furnished, except the ordinary hospital supply of the prisons; which permit shall be delivered to and kept by the warden or superintendent of the prison; nor shall any spirituous or fermented liquor, drug, medicine, poison, opium, morphine, or any other kind or character of narcotic, be sold, given away or furnished, either directly or indirectly, to any convict, either in or anywhere outside of the prison, or be disposed of in such manner or in such a place that it may be secured by any prisoner or employee of the prison; Provided, however, that tobacco may be supplied and used, subject to such regulations as may be adopted by the managers of such prison. (Id. § 12674.)

NOTE: See also Nos. 14, 559 et seq. and 583-584; the Mental Health act quoted in Pa. St. Supp. 1924, § 14726a-1 et seq., amended L. 1925, Act No. 195 and L. 1927. Act No. 281. See, further, Pa. St. 1920, § 14471 et seq., as amended.

Tuberculin, Etc.

489. Tuberculin, Etc., Tests; Methods of Making.—The State Veterinarian* may prescribe methods of making tests with tuberculin, mallein, or other recognized tests for the diagnosis of diseases of animals. (Pa. St. 1920, § 355.)

490. Injection of Virus Without Permission Prohibited.—No person shall inject into, or otherwise administer to, any domestic animal that is producing, or that is to be used as, food for man, any virus or other substance containing pathogenic or disease-producing germs of a kind that is virulent for man or for animals, excepting upon specific permission so to do from a member or authorized agent of the State Live Stock Sanitary Board.* (Id. § 356.)

491. Report of Sale or Injection of Virus.—Each sale in this commonwealth of tuberculin for cattle, or of mallein for horses, jacks or mules, and each injection or test made with tuberculin or mallein, shall be reported in writing to the State Veterinarian within one week after such sale or test. Each such report shall be signed by the person who shall have made the sale or test; and shall give the name of the purchaser of the tuberculin or mallein; with the amount sold, the date of sale, the name and address of the owner of the cattle or horses or mules or jacks tested, the locality where such test has been made, a description of the animal or animals tested, and a complete statement of the actual result of such test. It shall be unlawful for any person, whose duty it is hereby made to make such report, to fail or refuse to do so. (Id. § 357.)

492. Manufacture or Sale of Biological Products.—It shall be unlawful for any person to manufacture for sale, or sell or offer for sale, any biological product intended for diagnostic or therapeutic purposes with animals, excepting upon specific permission so to do from the State Live Stock Sanitary Board,* or unless such product is officially endorsed by the Bureau of Animal Industry of the United States (Id. § 358.)

493. Violations of Act; Punishment.—Any person, firm, or corporation that shall violate any of the provisions of this act shall be guilty of a misdemeanor, and upon conviction thereof shall for the first offense be sentenced to pay a fine of not more than one hundred dollars. For each subsequent offense such person, firm, or corporation shall be sentenced to pay a fine of not more than five hundred dollars, and, in addition thereto, such person, or each of the members of the firm or each of the directors of the corporation, as the case may be, with guilty knowledge of the fact, may be sentenced to undergo imprisonment in the jail of the proper county for a period of not less than ten nor more than ninety days, or either or both, at the discretion of the court. (Id. § 363.)

NOTE: See also No. 31a.

Venereal Disease Drugs.

494. Advertising Treatment of Generative Organs.—It shall be unlawful for any person, copartnership, association, or corporation to advertise, in any manner whatsoever, representing such person, copartnership, association, or corporation as being engaged in the business or profession of treating diseases of the generative organs of either sex; and it shall be unlawful for any person, copartnership, association, or corporation operating a printing establishment to insert such advertisement in any publication issued by such printing establishment. (Pa. St. 1920, § 7674.)

495. Punishment.—Any individual, or the members or agents of any copartnership, association, or the officers or directors or agents of any corporation, violating the provisions of this act, shall be guilty of a misdemeanor, and, upon conviction, shall be sentenced to pay a fine of not exceeding one thousand dollars, and to imprisonment for a period not exceeding one year. (Id. § 7675.)

496. Advertising Cures for Venereal Diseases.—It shall be unlawful for any person to publish, or cause to be published, to deliver or distribute, or cause to be delivered or distributed, in any manner whatsoever, or to post or display, or to permit to be posted, displayed, or to remain on any buildings, windows, or outhouses, or premises, or other surface, owned or controlled by him, in the State of Pennsylvania, or to have displayed in or on any window or place where the same could

*This law is now enforced by the Department of Agriculture. See No. 30 et seq.

be read by passers-by or the public, any advertisement, label, statement, print, or writing, which refers to any person or persons from whom, or by any means which, or to any office or place at which, may be obtained any treatment or cure for syphilis, gonorrhea, chancroid, lost manhood, sexual weakness, lost vitality, impotency, seminal emissions, gleet, varicocele, or self-abuse whether described by such names, words, terms, or phrases, or by any other names, words, terms, or phrases, calculated or intended to convey to the reader the idea that any of said diseases, infirmities, disabilities, conditions, or habits are meant or referred to, or which refers to any medicine, article, device, or preparation that may be used for the treatment or cure of any of the diseases, infirmities, disabilities, conditions, or habits, mentioned in this act. (Pa. St. Supp. 1924, § 7675b-1.)

497. Person Defined.—The word "person," as used herein, shall mean and include natural persons, copartnerships, corporations, and associations, and shall include persons of both sexes. (Id. § 7675b-2.)

498. Penalty.—Any individual, or members or agents of any copartnership, association, or the officers or directors or agents of any corporation, or any person herein referred to, violating the provisions of this act shall be guilty of a misdemeanor, and, upon conviction, shall be sentenced to pay a fine not less than five hundred dollars or more than one thousand dollars, and to imprisonment for a period of not exceeding one year. (Id. § 7675b-3.)

499. Advertisements of Cures for Venereal Diseases Forbidden.—It shall not be lawful to print or publish advertisements of medicines, drugs, nostrums, or apparatus for the cure of secret or venereal diseases, or for the cure of those diseases peculiarly appertaining to females; and if any person shall print or publish, or procure to be printed or published, in any newspaper in this State, any advertisement of medicines, drugs or nostrums, or apparatus for the cure of secret or venereal diseases, or for the cure of those diseases peculiarly appertaining to females, or shall, by printing or writing, or in any other way publish an account or description of such medicines, drugs, nostrums, or apparatus, or shall procure the same to be published or written, or in any other way published, or shall circulate or distribute any such newspaper advertisement, writing or publication, every such person so offending shall be guilty of a misdemeanor, and shall, upon conviction thereof, be fined in any sum not exceeding one thousand dollars, or be imprisoned in the county jail not exceeding six months, or both, at the discretion of the court. (Pa. St. 1920, § 9348.)

Wood Alcohol.

See Nos. 26-28.

Intoxicating Liquors.

500. Departmental Administrative Bodies, Boards, Commissions and Offices.—The following departments, boards, commissions, and offices are hereby placed and made departmental administrative bodies, boards, commissions, or offices, as the case may be, in the respective administrative departments mentioned in the preceding section as follows: . . .

In the Department of Welfare— . . .

Pennsylvania Alcohol Permit Board. . . .

(Pa. St. Supp. 1924, Administrative Code, § 50a-202, as amended L. 1927, Act No. 164.)

501. Pennsylvania Alcohol Permit Board.—The Pennsylvania Alcohol Permit Board shall consist of the Secretary of Welfare, the Secretary of Health, and the Attorney-General.

Two members of the board shall constitute a quorum.

The board shall select from among its members a chairman, and may elect a secretary who need not be a member of the board.

None of the regular employees of the Department of Welfare shall be authorized or permitted to engage or assist in the work of the board.

(Pa. St. Supp. 1924, Administrative Code, § 50a-447, added L. 1927, Act No. 164.)

502. Pennsylvania Alcohol Permit Board.—Subject to any inconsistent provisions in this act contained, the Pennsylvania Alcohol Permit Board shall continue to exercise the powers and perform the duties vested in and imposed upon the said board by the act,* approved the nineteenth day of February, one thousand nine hundred and twenty-six (Pamphlet Laws, sixteen), entitled "A supplement to the act,

*Included in Nos. 509-529b.

approved the twenty-seventh day of March, one thousand nine hundred and twenty-three (Pamphlet Laws, thirty-four) entitled 'An act concerning alcoholic liquors; prohibiting the manufacture, advertising, furnishing, traffic in, and possession of intoxicating liquors for beverage purposes, and articles and substances designed or intended for use in the manufacture thereof; defining intoxicating liquors; providing for penalties, forfeitures, and the abatement of nuisances; and repealing existing alcoholic liquor laws and alcoholic liquor license laws;' providing for the registering of Federal permits; also regulating, under permit, through a Pennsylvania Alcohol Permit Board created in the Department of Welfare, the manufacture, production, distillation, development, use in manufacture, denaturization, redistillation, recovery, reuse, holding in bond, holding in storage by bailees for hire, sale at wholesale, and transportation for hire, of any alcohol or alcoholic liquid, by certain persons; also providing for fees and the disposition thereof; also authorizing the inspection of the records of permittees and purchasers of said alcohol or alcoholic liquid; also declaring certain places nuisances and providing for their abatement; also providing penalties; and also repealing all acts or parts of acts inconsistent with this act," its amendments and supplements. (Id. § 50a-2023.)

503. Power Under Which Act Enacted.—This entire act is an exercise of the power granted by amendment XVIII of the Constitution of the United States, and of the police power of this Commonwealth for the protection of the public welfare, health, peace, safety and morals of the people of this Commonwealth—and all of its provisions shall be liberally construed for the accomplishment of these purposes. (Pa. St. Supp. 1924, § 14098a-1.)

504. Definitions.—(a) The phrase "intoxicating liquor," as used in this act, shall mean anything found and determined, from time to time, to be intoxicating by act of Congress passed pursuant to, and in the enforcement of, the Constitution of the United States of America.

(b) The word "person" shall mean and include natural persons, associations, partnerships and corporations for whatever purpose organized.

(c) The word "officer" shall mean and include all sheriffs, deputy sheriffs, constables, State and municipal policemen, county and city detectives, and any other persons authorized to serve warrants.

(d) The term "private dwelling" shall be construed, not only in its ordinary sense, but also to include the room or rooms used and occupied, not transiently, but solely, as a residence, in an apartment house, hotel, or boarding house. (Id. § 14098a-2.)

505. Manufacture of and Traffic in Intoxicating Liquor Prohibited.—It shall be unlawful for any person to manufacture, sell, offer for sale, barter, furnish, transport, possess, or deliver within, or import into, or export out of, this Commonwealth any intoxicating liquor for beverage purposes, except as hereinafter set forth; Provided, however, that nothing in this act shall prohibit the alcoholic contents of malt or brewed liquors from exceeding one-half of one per cent. during the process of manufacture only thereof; and provided further, that it shall not be unlawful to manufacture non-intoxicating cider and fruit juices exclusively for use in the private dwelling. (Id. § 14098a-3.)

506. Advertisement and Manufacture of, and Traffic in, Implements, Substances, and so Forth, Used to Manufacture.—It shall be unlawful for any person to advertise, maunfacture, sell, offer for sale, or possess for sale any utensil, contrivance, machine, preparation, compound, tablet, capsule, confection, substance, formula, direction, or receipt, designed or intended, for use in the unlawful manufacture of intoxicating liquor. (Id. § 14098a-5.)

507. Penalties.—Any person who shall violate any of the provisions of this act shall be guilty of a misdemeanor, and, upon conviction thereof, shall be sentenced to pay a fine of not less than one hundred dollars ($100.00), nor more than five thousand dollars ($5,000.00), or undergo an imprisonment of not more than three (3) years, or both, at the discretion of the court. (Id. § 14098a-10.)

508. Evidence; Pleadings.—In any prosecution under this act when proof has been given in evidence of the manufacture, sale, offering for sale, bartering, furnishing, transportation, possession, delivery, importation, or exportation of any intoxicating liquor, the same shall be prima facie evidence that the same was so manufactured, sold, offered for sale, bartered, furnished, transported, possessed, delivered, imported, or exported for beverage purposes; but this presumption shall not apply to the manufacturing, furnishing, transportation, possession, delivery, importation, or exportation of medicines, nor to the sale of such by or to registered pharmacists and regularly licensed physicians, or others lawfully authorized to buy and sell such medicine; nor to the sale of intoxicating liquor for medicinal purposes to a duly registered pharmacist, physician, or surgeon, or by any such pharmacist upon the prescription of a duly licensed physician or surgeon; nor shall it apply to anything

unfit for beverage purposes, or to extracts ordinarily used for culinary purposes. And this act shall not apply to such when intended to be used for flavoring anything which when so flavored shall not violate the provisions of this act; nor shall it apply to the manufacture, sale, transportation, importation, possession, distribution, or use of wine for sacramental purposes or like religious rites.

It shall be unnecessary in any complaint, information, indictment, or other pleadings to negative any proviso or exception contained in this act. (Id. § 14098a-13.)

509. Alcoholic Liquors—Act an Exercise of Police Power.—This entire act is an exercise of the police power of this Commonwealth for the protection of the public welfare, health, peace, safety and morals of the people of this Commonwealth, and all of its provisions shall be liberally construed for the accomplishment of these purposes. (L. 1926, Ex. Sess., Act. No. 3, § 1.)*

510. Definitions.—For the purpose of this act, the following terms shall have the following meanings respectively designated for each:

(a) The phrase "intoxicating liquor," as used in this act, shall mean anything found and determined from time to time to be intoxicating, by act of Congress passed pursuant to and in the enforcement of the Constitution of the United Sates of America.

(b) The word "person" shall mean and include natural persons, associations, partnerships and corporations, for whatever purpose organized.

(c) The phrase "alcohol and alcoholic liquid," whenever used in this act, shall mean and include alcohol and all distilled, redistilled, denatured, recovered liquids or substances, and any compound or admixture thereof, from whatever source or by whatever processes produced, which contain any alcohol, by volume capable of being used for beverage purposes, or as intoxicating liquor, during or after manufacture, production, distillation, redistillation, denaturization or recovery.

(d) The term "application" shall mean a formal, verified, written request, under oath or supported by a verified statement of facts, for a permit for the privilege authorized by law.

(e) The term "permit" shall mean a formal, written authorization by the board setting forth specifically therein the things that are authorized.

(f) The term "board" shall mean the Pennsylvania Alcohol Permit Board authorized and created by this supplemental act.

(g) The term "regulation" shall mean any regulation prescribed by the board for carrying out the provisions of this act.

(h) The term "container" shall mean and include any receptacle, vessel, or form of package, tank, vat, cask, barrel, drum, keg, can, bottle, or conduit, used or capable of use for holding, storing, transferring or shipment of alcohol or alcoholic liquid.

(i) The term "federal permit" as used in this act, shall be construed to mean what is commonly known as the basic permit, issued by authority of the United States of America, in conformity with the National Prohibition Act, and the regulations issued pursuant thereto, and shall not include a subsidiary or installment permit, for a particular transaction, issued to the holder of a basic permit.

(j) The phrase "National Prohibition Act" shall be construed to mean the Act of Congress, approved October twenty-eight, one thousand nine hundred and nineteen, known as the National Prohibition Act, as supplemented and amended.

(k) The term "industrial alcohol plant" shall mean and include any plant or distillery, wherein alcohol or alcoholic liquid is manufactured, made and distilled from raw materials, or any place wherein alcohol or alcoholic liquid is produced by any method suitable for the production of alcohol.

(l) The term "denaturing plant" shall mean and include all plants used exclusively for the denaturization of alcohol, either specially or completely, by the admixture of such denaturing materials as shall render the alcohol or any compound in which it is authorized to be used, unfit for use as an intoxicating beverage.

(m) The phrase "dealcoholizing plant" shall mean and include all premises and plants where alcohol or alcoholic liquids or beverages are produced by the process by which beer, ale, porter or wine is produced, or premises and plants wherein liquids such as beer, ale, porter or wine are produced by wasting the alcohol, or by arrested fermentation, and all premises and plants where alcohol, alcoholic liquids, or beverages are treated so that the percentage of alcohol is diminished.

(n) The term "bonded warehouse" shall mean and include all places and warehouses legally established under the provisions of the National Prohibition Act and the administrative provisions of the internal revenue laws of the Government of the United States of America, for the storage, concentration, distribution and holding in bond of alcohol or alcoholic liquid.

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*This act supplements the act quoted in No. 503 et seq.

(o) The term "manufacture" shall mean and include all means, methods and processes used, employed, and made use of, to produce and make alcohol or alcoholic liquid from raw materials, and shall mean and include the production, recovery or reuse of alcohol in the making, developing, using in the process of manufacture, denaturing, redistilling or recovering of any alcohol or alcoholic liquid, in distilleries, industrial alcohol plants, denaturing plants, breweries and dealcoholizing plants.

(p) The term "denatured alcohol" shall mean and include all alcohol, or alcoholic liquid, or any compound thereof, which, by the admixture of such denaturing material or materials, is rendered unfit for use as an intoxicating beverage. (Id. § 2.)

511. Unlawful to Manufacture, Etc., Without Permit.—It shall be unlawful for any person, without a permit from the Commonwealth obtained as hereinafter provided, except as exempted by section five hereof, to manufacture, produce, distill, develop, or use in the process of manufacture denature, redistill, recover, reuse, hold in bond, hold in storage as bailee for hire, sell at wholesale, or transport for hire, within this Commonwealth, any alcohol or alcoholic liquid. (Id. § 3.)

512. Federal Permits to be Recorded; Effect of Conviction.—Every person, except as exempted by section five hereof, holding a federal permit, under the National Prohibition act, to manufacture, produce, distill, develop, or use in the process of manufacture, denature, redistill, recover, reuse, hold in bond, hold in storage as bailee for hire, sell at wholesale, or transport for hire, within this Commonwealth, any alcohol or alcoholic liquid, shall, within thirty (30) days after this act takes effect, file a true and exact copy of the same with the Pennsylvania Alcohol Permit Board, and every person thereafter obtaining such a Federal permit, shall file forthwith a true and exact copy of the same with said board. Said board shall keep a record of said Federal permits and register therein the name and address of each person to whom said Federal permit is issued, the date of the Federal permit, the date of its expiration, and a brief description of the provisions of the Federal permit, and shall file said copy in its office; Provided, however, that no Federal permit shall be registered for any applicant who is not a citizen of the United States, or who has, within two (2) years prior to the making of such application, been convicted of a violation of the laws of this Commonwealth, or of the United States, relating to intoxicating liquors.

Conviction of a violation of any of the statutes of this Commonwealth, or the laws of the United States, relative to the traffic in intoxicating liquors, by the holder of any Federal permit, shall operate as a revocation of the registration of such Federal permit. (Id. § 4.)

513. Persons Exempted from Provisions of Act.—It is hereby declared that registration of a Federal permit, or securing a permit hereunder, shall not be required from any registered pharmacist; or a physician licensed by the State Board of Medical Education and Licensure; or a person or persons who make and sell vinegar, non-intoxicating cider, and fruit juices; or a person or persons who make methanol, distilled from wood; or a person or persons who conduct a wholesale drug business; or a person or persons who conduct a mercantile business, chiefly devoted to the sale of foodstuffs, and having an established place located within the Commonwealth; or a person or persons who manufacture alcoholic liquids and preparations, not fit for use as a beverage, or for intoxicating beverage purposes; a person or persons engaged in the manufacture, possession or sale of patent, patented or proprietary medicines, toilet, medicinal or antiseptic preparations or solutions, or flavoring extracts, or syrups; or a person or persons who manufacture or sell paints, varnishes, enamels, lacquers, stains, or paint or varnish removing or reducing compounds, or wood fillers; or a person or persons who manufacture any substance, where the alcohol or alcoholic liquid is changed into other chemical substances and does not appear in the finished product as alcohol or alcoholic liquid; or such common carriers as are subject to regulation by the Public Service Commission of the Commonwealth of Pennsylvania. (Id. § 5.)

514. Pennsylvania Alcohol Permit Board.—There is hereby created, in the Department of Welfare, a departmental administrative board, consisting of the Secretary of Welfare, the Secretary of Health and the Attorney-General, to be known as the Pennsylvania Alcohol Permit Board, hereafter in this act called the board; Provided, that if any of the said officers shall have any business or other interests, which, in the judgment of the Governor, render it unwise for such officer to act as a member of the said board, the Governor may designate a deputy, in the department of which such officer is the head, to act in the place and stead of such officer as a member of the said board. Two members of the board shall constitute a quorum. The board shall select, from among its members, a chairman and may elect a secretary who need not be a member of the board, and said board shall exercise the powers and perform the duties hereafter in this act set forth.

The board shall from time to time appoint and fix the compensation of such clerks, stenographers, inspectors and other assistants or employees as may be required for the proper conduct of the work of the board. The number and compensation of all employees appointed hereunder shall be subject to approval by the Governor.

None of the regular employees of the Department of Welfare shall be authorized or permitted to engage or assist in the work of the board, and no part of the appropriation to the Department of Welfare, other than the appropriation made by this act, shall be expended for the payment of salaries, wages or other compensation, or for the purchase of supplies or equipment for the board.

The Department of Property and Supplies shall furnish to the board such forms and other printed matter and such furniture, office equipment and supplies as may be necessary for the conduct of the work of the board, until such time as the board shall be able to purchase its furniture, supplies, equipment and printing out of the special fund hereinafter created. All furniture, equipment and supplies, purchased out of said special fund, shall be purchased through the Department of Property and Supplies as purchasing agent.

The board shall in all respects be subject to the laws of this Commonwealth limiting the powers of departmental administrative boards, with regard to the expenditure of money and prescribing the duties of departmental administrative boards with reference to the making of financial reports, the furnishing of financial and budgetary information to the department with which it is connected, and the making of biennial reports. (Id. § 6.)

515. Contents of Petition.—Every applicant for a permit under this act shall file with the board a petition, in writing, duly verified, in such form as the board shall from time to time prescribe, setting forth—

1. The legal names of the applicant, and of the owner of the place where business under the permit will be carried on, with their residence addresses by street and number, if a partnership, of each separate partner and, if a corporation, of each individual officer thereof.

2. The exact location of said place of business, and of every place to be occupied or used in connection with such business; the productive capacity of each plant where any alcohol or alcoholic liquid is to be manufactured, produced, distilled, developed, or used in the process of manufacture, denatured, redistilled, recovered, reused; the capacity of every warehouse or other place where such alcohol or alcoholic liquid is to be held in bond or stored for hire; the storage capacity of every place where a wholesale business in any alcohol or alcoholic liquid is to be conducted; or the equipment to be used where a transportation business is to be carried on under the permit.

3. The period of time the applicant has been carrying on the business for which the permit is desired.

4. If the permit is for the manufacture, production, distillation, development, or denaturization, holding in bond, holding in storage, of any alcohol or alcoholic liquid, the maximum quantity per month to be manufactured, developed, or stored; and, if the permit is for the use, redistillation, recovery or reuse of any alcohol or alcoholic liquid, the purpose or purposes for which the same is to be used.

5. No one of the applicants has been convicted of a violation of this act, or of any law or regulation of the United States of America, or of the Commonwealth of Pennsylvania, for the control of the manufacture, possession and traffic in any intoxicating liquor.

6. Each and every one of the applicants is a citizen of the United States of America.

7. Such other relevant information as the board shall from time to time require by rule or regulation.

This petition must be verified by affidavit of the applicant, made before any officer legally qualified to administer oaths, and, if any false statement is willfully made in any part of said petition, the applicant or applicants shall be deemed guilty of the crime of perjury, and, upon indictment and conviction, shall be subject to its penalties. (Id. § 7.)

516. Issuance of Permit—Condition of Bond.—Upon the filing of the application in the form herein provided, and upon execution of a bond to the Commonwealth, and a warrant of attorney to confess judgment in the penal sum of ten thousand dollars ($10,000), with surety to be approved by the board, which bond shall be conditioned for the faithful observance of all the laws of this Commonwealth relating to the manufacture, sale, offering for sale, bartering, furnishing, transporting, possessing, delivering within, or importing into, or exporting out of, this Commonwealth, of intoxicating liquors, and the conditions of the permit, the board may grant to such applicant a permit to engage in the manufacturing, pro-

ducing, distilling, developing, or using in the process of manufacturing, denaturing, redistilling, recovering, reusing, holding in bond, holding in storage as bailee for hire, selling at wholesale, and transporting for hire, of alcohol or alcoholic liquid. (Id. § 8.)

517. Container to be Labeled.—All persons, except as exempted by section five hereof, manufacturing, producing, distilling, developing, or using in the process of manufacture, denaturing, redistilling, recovering, reusing, holding in bond, holding in storage as bailee for hire, selling at wholesale, or transporting for hire, of alcohol, or alcoholic liquid, under the provisions of this act of Assembly, shall securely and permanently attach to every container, ready for shipment thereof, as the same is manufactured, produced, distilled, developed, denatured, redistilled, recovered, reused, a label, stating name of manufacturer, kind and quantity of alcohol or alcoholic liquid contained therein, and the date of its manufacture, together with the number of the permit authorizing the manufacture thereof, and all persons possessing such alcohol or alcoholic liquid in wholesale quantities, shall securely keep and maintain such label thereon; and all persons, selling at wholesale, shall attach to every package of alcohol or alcoholic liquid, when sold, a label, setting forth the kind and quantity of alcohol or alcoholic liquid contained therein, by whom manufactured, the date of sale, and the person to whom sold, which label shall likewise be kept and maintained thereon until the alcohol or alcoholic liquid is used for the purpose for which such sale was authorized. (Id. § 9.)

518. Specifications of Permit—Violation of Specifications.—Every permit issued under the provisions of this act for the manufacture, production, distillation, development, denaturization, redistillation, recovery, reuse, holding in bond, holding in storage, of any alcohol or alcoholic liquid, shall specify the maximum quantity of such alcohol or alcoholic liquid per month, which may lawfully be manufactured, produced, distilled, developed, denaturized, redistilled, reused, held in bond, or stored, under such permit. Any permit issued for the use of any alcohol or alcoholic liquid in the process of manufacture, shall specify the purpose or purposes for which such alcohol or alcoholic liquid is to be used, and the maximum quantity per month which may lawfully be used under such permit. Every permit shall specify, by definite location, every place to be occupied or used in connection with the business to be conducted thereunder. It shall be unlawful for the holder of any permit to manufacture, produce, distill, develop, denaturize, redistill, recover, reuse, hold in bond, hold in storage, or use, a greater quantity of any alcohol or alcoholic liquid in any month than that specified in his permit, or to use any alcohol or alcoholic liquid for any purpose other than that specified in his permit, or to occupy or use any place in connection with any business authorized under a permit other than the place or places designated therein. (Id. § 10.)

519. Permittee to Keep Records.—Every person holding a permit, issued under the provisions of this act, shall keep daily, permanent records, which shall show (a) the quantities of any alcohol or alcoholic liquid manufactured, produced, distilled, developed, denatured, redistilled, recovered, reused, stored in bond, stored as bailee for hire, received or used in the process of manufacture, by him, and of all other material used in manufacturing or developing any alcohol or alcoholic liquid; (b) the sales or other disposition of any alcohol or alcoholic liquid; (c) the quantities thereof, if any, stored in bond, stored for hire, or transported for hire, by or for the permittee; and (d) the names and addresses of the purchasers or other recipients thereof: Provided, however, that persons holding permits, issued under the provisions of this act, for the transportation for hire of any alcohol or alcoholic liquid, shall not be required to keep the above records, but shall keep daily, permanent records showing the names and addresses of the persons from whom any alcohol or alcoholic liquid was received and to whom delivered. (Id. § 11.)

520. Inspection by Board.—Every place, operated under permit secured hereunder, where any alcohol or alcoholic liquid is manufactured, produced, distilled, developed, or used in the process of manufacture, denatured, redistilled, recovered, reused, held in bond, stored for hire, or in connection with a permittee's business, or sold at wholesale, shall be subject to inspection by the members of the board, or by persons duly authorized and designated by the board, at any and all times of the day or night as they may deem necessary, (a) for the detection of violations of this act, or of the rules and regulations of the board promulgated under the authority of this act, or of the act to which this is a supplement, or (b) for the purpose of ascertaining the correctness of the records required by this act to be kept by permittees, and the books and records of permittees, and the books and records of their customers, insofar as they relate to purchases from said permittees, shall at all times be open to inspection by the members of the board, or by persons duly authorized and designated by the board for the purpose of making inspections as authorized by this section. Members of the board, and the persons duly authorized and designated by the board,

shall have the right, without fee or hindrance, to enter any place, which is subject to inspection hereunder, or any place, where records subject to inspection hereunder, are kept, for the purpose of making such inspections. (Id. § 12.)

521. Permittee May be Cited for Violations—Revocation of Permit.—Upon learning of any violation of this act, or of any rule or regulation promulgated by the board under the authority of this act, or of any provision of the act to which this is a supplement, by the holder of a permit, issued under the provisions of this act, the board shall cite such permittee to appear before it, not less than ten (10) nor more than fifteen (15) days from the date of sending such permittee, by registered mail, a notice to show cause why the permit should not be revoked. And, upon such hearing, if satisfied that any such violation has occurred, the board shall immediately revoke such permit, notifying the permittee thereof by registered letter.

Any permittee, aggrieved by any decision of the board, may file, within thirty days thereafter, in the Court of Common Pleas of the county in which the permittee is resident, a petition, against the board as defendant, alleging therein the action and decision complained of and praying for a reversal thereof. Upon personal service of a summons on any member of the board, returnable within three days of the date thereof, the board shall, within one week from such return date, file an answer, in which it shall allege by way of defense the grounds for its decision and such other grounds as shall in the meantime accrue or be discovered. All allegations of the answer shall be deemed to stand denied without further pleading and, upon application of either party, the cause shall be advanced and heard without delay. Mere technical irregularities in the procedure of the board shall be disregarded. A judgment, sustaining the revocation of a permit by the board, shall not bar, after one year, a new application by the plaintiff for a permit, nor shall a judgment in favor of the plaintiff, prevent the board from thereafter revoking or refusing a permit, for any proper cause which may thereafter accrue or be discovered. The court shall have full power to dispose of all costs. From the judgments of the Court of Common Pleas, appeals may be taken, as in other actions at law, but, during the pendency of any such appeal in which a former permittee is appellant, such former permittee shall not carry on any business of the kinds regulated by this act. (Id. § 13.)

522. Expiration and Renewal of Permits.—All permits shall expire at the close of the calendar year, but new permits for the succeeding year shall be issued upon written application therefor, duly verified by affidavit, stating that the facts in the original petition are unchanged, and upon payment of the fee as hereinafter provided, without the filing of further statements, or the furnishing of any further information, unless specifically requested by the board: Provided, however, that a permit issued to a corporation under the provisions of this act shall expire thirty (30) days after any change in the officers of such corporation, unless the name and address of the new officer, or the names and addresses of the new officers, of such corporation shall within that period, be reported to the board by certificate duly verified. Applications for renewals must be made not less than thirty (30) nor more than sixty (60) days before the first day of January of the ensuing year. All applications for renewal received otherwise shall be treated as original applications. (Id. § 14.)

523. Permits for Existing Business.—All persons now carrying on any business requiring a permit under the provisions of this act, must apply for the same within sixty (60) days after its passage, and any such business may continue if a permit has been so applied for, until it is granted or refused. The fee for every permit issued under the provisions of this act shall be one hundred dollars ($100.00). All fees shall be paid to the board, which shall deposit the same in the State treasury, where they shall be kept apart from all other funds in the State treasury in a separate fund to be known as the "Permit Fund." The moneys from time to time in the said fund are hereby specifically appropriated to the board for the payment of any and all expenses of every kind and description which may be necessary for the proper administration and enforcement of this act. Moneys shall be paid out of the said fund, by warrant of the Auditor-General upon the State Treasurer, after requisition by the Secretary of Welfare. (Id. § 15.)

524. Issuance of Permits.—Permits shall be issued by the board under the official seal of the Department of Welfare. Every permit so issued must at all times be posted, in a conspicuous place, where the business is carried on under it, and said place of business must be kept open during general business hours of every day in the year except Sundays and legal holidays. No permit shall be issued hereunder to any person unless (a) in case of individuals, he or she is a citizen of the United States of America; (b) in case of companies or unincorporated associations of individuals, each and every one is a citizen of the United States of America; (c) in case of corporations, each and every stockholder thereof is a citizen of the United States of America; or to any person who has been convicted of a violation of this act, or of any law or regulation of the United States of America, or of

the Commonwealth of Pennsylvania, for the control of traffic in any alcoholic liquor. (Id. § 16.)

525. **Rules and Regulations.**—The board shall have the power to make and promulgate appropriate rules and regulations for carrying into effect the provisions of this act; Provided, that, as far as practicable, the rules and regulations of the board shall conform to the rules and regulations promulgated by the appropriate agency of the government of the United States for carrying into effect the provisions of any act or acts of Congress regulating the manufacture, development, storage, sale, or transportation of any alcohol or alcoholic liquid or intoxicating liquor. (Id. § 17.)

526. **Place of Violation Declared to be a nuisance—Suspension of Permit—Abatement.**—Any place within this Commonwealth in which any alcohol or alcoholic liquid is manufactured, produced, distilled, developed, or used in the process of manufacture, denatured, redistilled, recovered, reused, stored in bond, stored for hire, or sold at wholesale, by a person without a permit as required by the provisions of this act, and any place in which a person holding a permit issued under the provisions of this act, shall violate any provision of this act, or any rule or regulation of the board, or any provisions of the act to which this is a supplement, is hereby declared to be a common nuisance, and, upon such violation, the permit, if any, held by such person, shall be automatically suspended. Any nuisance, as in this section defined, may be abated under the provisions of the act of the twenty-seventh day of March, one thousand nine hundred and twenty-three, Pamphlet Laws thirty-four, to which is a supplement. (Id. § 18.)

527. **Sale, Use or Concealment of Withdrawn Alcohol Before Being Denatured—Recovery or Reuse of Alcohol.**—Whenever any person or persons withdraw or remove any alcohol or alcoholic liquid, which has not been denatured, from any distillery, industrial alcohol plant, denaturing plant, dealcoholizing plant, brewery, or bonded warehouse, for the purpose of denaturing the same, it shall be unlawful for any such person or persons to use, sell or conceal or attempt to use, sell or conceal, or be concerned in the sale, use or concealment of any such alcohol or alcoholic liquid, unless, before such sale or use, the said alcohol or alcoholic liquid shall be denatured by adding thereto denaturing material or materials or admixtures thereof which render it unfit for beverage purposes.

It shall be unlawful for any person or persons to recover and reuse, or attempt to recover and reuse, by redistillation, or by any other process or means whatsoever, any alcohol or alcoholic liquid from denatured alcohol, or to knowingly use, sell, conceal, or otherwise dispose of alcohol or alcoholic liquid so recovered or redistilled. (Id. § 19.)

528. **Violations—Misdemeanor—Penalty.**—Any person or persons, who knowingly violate any of the provisions of this act, or any person who shall violate any of the conditions of any permit, or who shall falsify any record or report required by this act to be kept, or who shall violate any rule or regulation of the board, or who shall interfere with, hinder or obstruct any inspection authorized by this act, or prevent any member of the board, or any person duly authorized and designated by the board, from entering any place which such member of the board, or such person, is authorized by this act to enter for the purpose of making an inspection, or who shall violate any other provision of this act, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be sentenced to pay a fine of not less than one hundred dollars ($100.00) nor more than five thousand dollars ($5,000.00), or undergo imprisonment of not more than three (3) years, or both, at the discretion of the court. (Id. § 20.)

529. **No Property Rights in Alcohol Unlawfully Held.**—No property rights shall exist in any alcohol or alcoholic liquid manufactured, produced, distilled, developed, or used in the process of manufacture, denatured, redistilled, recovered, reused, held in bond, held in storage as bailee for hire, sold at wholesale, or transported for hire, in violation of any of the provisions of this act, and the same shall be deemed contraband and forthwith destroyed. No alcohol or alcoholic liquid in the custody of any officer of the law shall be seized or taken from him on any writ of replevin, injunction or other like process. (Id. § 21.)

529a. **Pleadings Need Not Negative Exceptions.**—It shall be unnecessary in any complaint, information, indictment, or other pleadings, to negative any provision or exception contained in this act. (Id. § 22.)

529b. **Witnesses.**—No person shall be excused on the ground that it may tend to incriminate him or subject him to a penalty or forfeiture, from attending and testifying, or producing books, papers, documents and other evidence, in obedience to a subpœna of any court, in any suit or proceeding, based upon or growing out of any alleged violation of this act, but no natural person shall be prosecuted or subjected to any penalty or forfeiture for or on account of any

transaction, matter or thing as to which, in obedience to a subpœna and under oath, he may so testify or produce evidence, but no person shall be exempt from prosecution and punishment for perjury committed in so testifying. (Id. § 23.)

PART IV.

Miscellaneous Laws.

Convict-Made Goods.

530. Convict-Made Goods to be Branded.—From and after the passage of this act, all goods, wares, merchandise or other article or thing made by convict labor, in any penitentiary, reformatory prison, school or other establishment in which convict labor is employed, whether for the direct benefit and maintenance of such penitentiary, reformatory prison, school or other establishment, or upon contract by the authorities of the same with any third person, all and every such goods, wares, merchandise, article or thing, immediately upon the completion of the same, shall be branded as hereinafter provided, and shall not be taken into or exposed in any place, for sale at wholesale or retail, without such brand. (Pa. St. 1920, § 12731.)

531. Style and Place of Brand.—The brand herein required shall be in plain English lettering, and shall contain at the head or top of said brand the words "convict-made," followed by the year and name of the penitentiary, reformatory prison, school or other establishment in which made. That the brand aforesaid shall in all cases, when the nature of the article will permit, be placed upon the same, and only where such branding is impossible it shall or may be placed on the box or other receptacle or covering in which it is contained. And the same shall be done by casting, burning, pressing or other such process or means as that the same may not be defaced, and in all cases shall be upon the most conspicuous place upon such article, or the box, receptacle or covering containing the same: Provided, that goods, wares and merchandise shipped to points outside of the State shall not be so branded. (Id. § 12732.)

532. Managers to See that Goods are Branded.—It shall be the duty of the manager, principal or superintendent of any penitentiary, reformatory prison, school or other establishment within this Commonwealth wherein convict labor is employed, to see that the brand herein required shall be so placed as aforesaid before such goods, wares, merchandise or other article or thing shall be removed or taken from the place where made; and upon failure or neglect so to do, such manager, principal or superintendent shall be deemed guilty of a misdemeanor and, upon conviction thereof, shall be sentenced to pay a fine of not exceeding one thousand dollars, or undergo an imprisonment not exceeding one year, or either or both, at the discretion of the court. (Id. § 12733.)

533. Dealing in Convict-made Goods, Not Branded, Prohibited.—It shall not be lawful for any person, dealing in any such convict-made goods, wares, merchandise or other article, at wholesale or retail, to have in his possession, or offer for sale, any such convict-made goods, wares, merchandise or other article manufactured by convict labor in Pennsylvania, or any other State, without the brand provided by this act. And in all cases where the brand aforesaid is upon the box, receptacle or other covering in which such goods, wares, merchandise or other article is contained, it shall not be lawful for any such person retailing to remove the same from such box, receptacle or other covering, except as he shall retail the same to a customer for his individual use, and at all times, the box, receptacle or covering containing said brand, shall be open to the inspection of such customer. And any person knowingly and willfully offending against this section, shall be deemed guilty of a misdemeanor and, upon conviction thereof, shall be sentenced to pay a fine not exceeding five hundred dollars, or undergo an imprisonment not exceeding six months, or both or either, at the discretion of the court. (Id. § 12734.)

False Advertising.

534. False and Misleading Advertising.—Whoever, in a newspaper, periodical, circular, form, letter, or other publication, published, distributed, or circulated in this Commonwealth, in any advertisement in this Commonwealth, knowingly makes

or disseminates, or causes to be made or disseminated, any statement or assertion concerning the quantity, the quality, the value, the merit, the use, the present or former price, the cost, the reason for the price, or the motive or purpose of a sale, of any merchandise, securities, or services; or concerning the method or cost of production or manufacture of such merchandise; or the possession of rewards, prizes, or distinctions conferred on account of such merchandise; or the manner or source of purchase of such merchandise or securities,—which is untrue or calculated to mislead, shall be guilty of a misdemeanor, and on conviction shall be sentenced to pay a fine of not more than one thousand dollars, or by imprisonment in the county jail not exceeding sixty days, or by both such fine and imprisonment. (Pa. St. 1920, § 7671.)

535. **Advertisements of Merchandise, Securities, Etc., Containing False Statements; Penalty; Publishers, Etc., Acting in Good Faith.**—Any person, firm, corporation, or association who, with intent to sell or in any wise dispose of merchandise, securities, service, or anything offered by such persons, firm, corporation, or association directly or indirectly to the public for sale, distribution or investment, or with intent to increase the consumption thereof, or to induce the public in any matter to enter into any obligation relating thereto, or to acquire title thereto or any interest therein, makes, publishes, disseminates, or causes, directly or indirectly, the same to be made, published, disseminated, circulated, or placed before the public in this State, in a newspaper or other publication in the form of a book, notice, handbill, poster, sign, bill, circular, pamphlet, or letter, or in any other way, an advertisement of any sort regarding merchandise, security, investment, service or anything so offered to the public which advertisement contains any assertion, representation, or statement of fact which is untrue, deceptive, or misleading, and which is known, or which by the exercise of reasonable care should be known, to be untrue, deceptive, or misleading by the person, firm, corporation, or association making, publishing, disseminating, circulating, and placing before the public said advertisements, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined and punished as hereinafter provided: Provided, however, that the provisions of this act shall not apply to any owner, publisher, printer, agent or employees of a newspaper or other publication, periodical, or circular, who, in good faith and without knowledge of the falsity or deceptive character thereof, publishes, causes to be published, or takes part in the publication of such advertisement. (Pa. St. Supp. 1924, § 7675a-1.)

536. **Deceptive Advertising to Falsely Indicate Sale Being Made by Private Party Not Engaged in Particular Business.**—It shall be deemed deceptive advertising, within the meaning of this act, for any person, firm, or corporation, engaged in the business of buying or selling new or second-hand furs, wearing apparel, jewelry, furniture, pianos, phonographs, or other musical instruments, motor vehicles, stocks, or generally any form of property, real, personal, or mixed, in in the business of furnishing any kind of service or investment, to advertise, by "liner ads" or otherwise, such articles, property, or service for sale, in any manner indicating that the sale is being made by a private party or householder not engaged in such business. And every such firm, corporation, or association, engaged in any such business, in advertising goods, property, or service for sale, either through "liner ads" or otherwise, shall affirmatively and unmistakably indicate and state that the seller is a business concern and not a private party. (Id. § 7675a2.)

537. **Duties of Newspapers and Publishers.**—No owner or owners of any newspaper or publication of any kind or character, or employee thereof, shall hereafter accept any advertisement for its classified or other columns without, at the time, obtaining the name and address of the advertiser, and making a record of the same. Such record shall be retained for a period of two weeks, and shall be subject to the examination of any duly constituted law officer of this Commonwealth. No owner or owners of any newspaper or publication, or employee thereof, shall knowingly accept any advertisement from any person, firm, association, or corporation, engaged in any of the businesses mentioned in section two [7675a-2] of this act, if such advertisement does not affirmatively state that the merchandise, property, or service advertised belong to, and are the property of, the business concern from whom such advertisement is directly or indirectly received. (Id. § 7675a-3.)

538. **Signs on and in Places of Business.**—Any person, firm, or corporation, engaged in any of the businesses mentioned in section two [7675a-2] of this act, or in any other kind of business, whether conducting such business in a store, business block, residence, or other building, shall at all times keep a conspicuous sign posted on the outside of his establishment and another conspicuous sign in the salesroom, which sign shall clearly state the name of the association, corporation, or individual who actually owns said merchandise, property, or service which are being offered to the public and not the name of any other person: Provided, the exterior sign shall not be required where the seller has no control over the exterior of the premises where such business is conducted. (Id. § 7675a-4.)

539. Penalty.—Any person, firm, corporation, or association who fails to comply with any of the provisions of this act, shall upon conviction, be subject to a fine not exceeding five hundred ($500) dollars for each offense, or to imprisonment for a term of not exceeding ninety (90) days, or both such fine and imprisonment, in the discretion of the court. (Id. § 7675a-5.)

Flag Desecration.

540. Desecration of Flag; Use on Advertisements Forbidden; Penalty.—Any person, who, in any manner, for exhibition or display, shall place or cause to be placed any word, figure, mark or picture, design, drawing or any advertisement, of any nature, upon any flag, standard, color or ensign of the United States, or of this State; or shall expose or cause to be exposed to public view any such flag, standard, color or ensign upon which shall be printed, painted or otherwise placed, or to which shall be attached, appended, affixed or annexed, any word, figure, mark, picture, design or drawing or any advertisement, of any nature; or who shall expose to public view, manufacture, sell, expose for sale, give away, or have in possession for sale or to give away or for use, for any purpose, any article or substance, being an article of merchandise or a receptacle of merchandise, upon which shall have been printed, painted, attached or otherwise placed a representation of any such flag, standard, color or ensign, to advertise, call attention to, decorate, mark or distinguish, for the purpose of sale, barter or trade, the article or substance on which so placed; or who shall publicly or privately mutilate, deface, defile or defy, trample upon, or cast contempt either by words or act upon, any such flag, standard, color or ensign, shall be deemed guilty of a felony, and shall be punished by a fine not exceeding five hundred dollars, or by imprisonment for not more than six months, or both, in the discretion of the court. (Pa. St. 1920, § 10970.)

541. Definitions of Terms.—The words flag, standard, color, or ensign, as used in this act, shall include any flag, standard, color, ensign, or any picture or representation of either thereof, made of any sustance or represented on any substance, and of any size, evidently purporting to be either of said flag, standard, color or ensign of the United States of America or of this State, or a picture or a representation of either thereof, upon which shall be shown the colors, or any color, or any combination of colors, or either the stars or the stripes, or the stars and the stripes, in any number of either thereof, or anything which the person seeing the same, without deliberation, may believe the same to represent the flag, colors, standard, or ensign of the United States, or of this State. (Id. § 10971.)

542. Exemptions from Operation of Act.—This act shall not apply to any act permitted by the statute of the United States of America, or by the United States Army and Navy regulations; nor in case where the government of the United States has granted the use of such flag, standard, color, or ensign as a trade-mark; nor shall it be construed to apply to a newspaper, periodical, book, pamphlet, circular, certificate, diploma, warrant, or commission of appointment to office, ornamental picture, or badges, or stationery for use in correspondence, on any of which shall be printed, painted, or placed said flag, or representation thereof, disconnected from any advertisement for the purpose of sale, barter, or trade; nor shall it apply to any patriotic or political demonstration or decorations. (Id. § 10972.)

Tobacco—Tobacco Products.

543. Furnishing Cigarettes or Cigarette Paper to Minors a Misdemeanor; Jurisdiction; Penalty.—Any person who shall furnish to any minor, by gift, sale, or otherwise, any cigarettes or cigarette paper shall be guilty of a misdemeanor, and, upon being convicted thereof, upon the first offense, before any alderman, magistrate, or justice of the peace, shall be sentenced to pay a fine of twenty-five dollars ($25), and, in default of the payment thereof, shall be committed to and imprisoned in the county jail of the proper county for a period not exceeding thirty (30) days; and upon being convicted thereof of a second offense, before any alderman, magistrate, or justice of the peace, shall be fined the sum of one hundred dollars ($100); and upon the third offense shall be duly held for trial in the Court of Quarter Sessions of the proper county, and, upon conviction thereof, shall be sentenced to pay a fine of not less than one hundred dollars ($100) nor more than three hundred dollars ($300), or to undergo imprisonment not exceeding in one (1) year or both. (Pa. St. Supp. 1924, § 2665.)

544. Refusal of Minor to Give Information Concerning Procuring Cigarettes a Misdemeanor; Penalty.—Any minor, being in possession of a cigarette or of

cigarette paper, and being by any police officer, constable, juvenile court officer, truant officer, or teacher in any school, asked where and from whom such cigarette or cigarette paper was obtained, who shall refuse to furnish such information, shall be guilty of misdemeanor; and upon conviction thereof, before any alderman, magistrate, or justice of the peace, such minor, being of the age of sixteen years or upwards, shall be sentenced to pay a fine not exceeding five dollars, or to undergo an imprisonment in the jail of the proper county not exceeding five days, or both. If such minor shall be under the age of sixteen years, he or she shall be certified by such alderman, magistrate, or justice to the juvenile court of the county for such action as to said court shall seem proper. (Pa. St. 1920, § 2666.)

545. Tobacco Not to be Sold to Minors Under Sixteen.—No person or persons shall sell tobacco, in any form, to any person under the age of sixteen years. (Id. § 13326.)

546. Tobacco Not to be Furnished to Minors Under Sixteen.—No person or persons shall, by purchase, gift or other means, furnish tobacco, in any form, to a person under the age of sixteen years. (Id. § 13327.)

547. Violation of Act a Misdemeanor; Penalty.—Any person violating the provisions of this act shall be guilty of a misdemeanor, and upon conviction shall be sentenced to pay a fine not exceeding one hundred dollars, or to undergo confinement in the county jail for a period not exceeding thirty days, or both, as the court may determine. (Id. § 13328.)

548. Sweat-shops Prohibited.—No person, firm or corporation engaged in the manufacture or sale of clothing or other wearing apparel, cigars or cigarettes, shall bargain or contract with any person, firm or corporation for the manufacture, or partial manufacture, of any of said articles or goods where the same are to be made in any kitchen, living-room or bedroom in any tenement-house or dwelling-house, except where the persons bargaining or contracting to make or partially make any of the aforesaid articles or goods are resident members of the family, residing in such tenement-house or dwelling-house where the said articles or goods are to be made or partially made, and who have furnished the person, firm or corporation engaged in the manufacture or sale of said articles or goods, and with whom the bargain or contract is to be made, a certificate from the board of health, of the city or town in which such tenement-house or dwelling-house is situated, that the same is free from any infectious or contagious disease; which certificate may be revoked by the board of health whenever the exigencies of the case shall require; Provided, that the term "family" in this section shall include only the parents and their children, or the children of either. (Id. § 13594.)

549. Workshops Must be Safe and Sanitary; Permit.—No person, firm or corporation engaged in the manufacture or sale of any of the articles or goods enumerated in section fourteen [13594] of this act, shall bargain or contract with any person, firm or corporation for the manufacture, or partial manufacture, of any of the said articles or goods in any workshop, not part of a tenement or dwelling house, unless the said workshop shall have been inspected by the Chief Factory Inspector or by one of his deputies, and who shall have issued a printed permit to the person in charge of such workshop, stating that the same is in a clean and safe and sanitary condition, and fixing the maximum limit to the number of persons who may be employed therein; the permit to be posted and kept posted in a conspicuous place in such workshop: Provided, that this section shall not apply to any workshop wherein the aforesaid articles or goods are manufactured for the general trade, and are to be sold and delivered in or upon the premises, and are not manufactured, or partially manufactured, under a bargain or contract with any person, firm or corporation employed in the manufacture and sale of the article aforesaid. (Id. § 13595.)

549a. Cancellation of Permit Where Workshop not Sanitary.—Whenever the sanitary conditions of any workshop, as defined in section fifteen [13595], is dangerous to the health and safety of the employees therein or to the public, the Chief Factory Inspector or his deputy shall cancel the permit aforesaid, and shall order that the workshop be vacated until the provisions of this act shall have been complied with and the workshop restored to proper sanitary conditions. (Id. § 13597.)

550. Penalty for Violation of Act.—Any person who violates any of the provisions of the foregoing sections of this act, or who suffers any female, minor or a child to be employed in or about his or her establishment, in violation of any of the provisions of the foregoing sections of this act, or who, being authorized to administer oaths, shall violate any of the provisions of sections five and six of this act, shall be deemed guilty of a misdemeanor, and, on conviction, shall be punished by a fine of not less than twenty-five dollars and not more than five hundred dollars, or an imprisonment in the county jail for a term not less than ten days nor more than sixty days, for each and every such violation. In all cases the prosecution shall be instituted, in the name of the Commonwealth, by the deputy factory inspector of

the district where the offense is alleged to have been committed, and the hearing shall be conducted by the alderman, justice of the peace or other committing magistrate before whom the information is lodged. After full hearing of the parties in interest, the alderman, justice of the peace or other committing magistrate shall, if the evidence warrants it, impose the penalty herein provided, which shall be final to the party against whom the penalty is imposed, unless the party upon whom the penalty is imposed shall furnish good and sufficient bail for his or her appearance at the next term of the Court of Quarter Sessions of the county wherein the offense is alleged to have been committed. (Id. § 13603.)

Trade-Marks, Etc.

551. Registration and Certificate.—Whenever any person or persons, copartnership or corporation has heretofore adopted or used, or shall hereafter adopt or use, any label, trade-mark, trade-name, device, shop-mark, designation or form of advertisement, for the purpose of designating, making known or distinguishing any goods, wares, merchandise or other product of labor as having been manufactured, prepared, packed, bottled or placed on sale by such person or persons, copartnership or corporation, he or they, if residents of or doing business in the United States, may file the same for record in the office of the Secretary of State of the State of Pennsylvania, by leaving two copies, counterparts or facsimiles thereof, with said secretary; and shall file therewith a certificate, specifying the names of the person or persons, copartnership or corporation, so filing such label, trade-mark, trade-name, device, brand, shop-mark, designation or form of advertisement; his or its residence, location or place of business; the class of merchandise, and the particular description of goods comprised therein, the class to which it has been or is intended to be appropriated, and the length of time, if any, during which it has been in use. Such certificate shall be accompanied by the written declaration, verified under oath by the person or one of [the] persons, or some member of the copartnership or officer of the corporation, by whom it is filed, to the effect that the party so filing such label, trade-mark, trade-name, device, shop-mark, designation, description, or form of advertisement, has the right to the use of the same and that no other person or persons, copartnership or corporation, has a right to such use, either in the identical form or in any such near resemblance thereto as may be calculated to deceive, and that the facsimiles, copies or counterparts filed therewith are true and correct. There shall be paid to such secretary, for such filing, a fee of one dollar. Said secretary shall deliver to such person or persons, copartnership or corporation so filing the same, a duly attested certificate of the record of the same, for which he shall receive a fee of one dollar. Such certificate of record, shall in all suits and prosecutions under this act, be sufficient proof of the adoption of such label, trade-mark, trade-name, stamp, design, device, term, brand, shop-mark, designation, description or form of advertisement. (Pa. St. 1920, § 21207.)

552. Imitations Not to be Registered.—No label, trade-mark, trade-name, stamp, design, device, term, brand, shop-mark, designation, description, or form of advertisement, shall be recorded that would reasonably be mistaken for the label, trade-mark, trade-name, stamp, design, device, term, brand, designation, shop-mark, description, or form of advertisement, already filed for record. (Id. § 21208.)

553. Rules and Regulations.—The Secretary of State is authorized to make rules and regulations, and prescribe forms for the filing of labels, trade-marks, trade-names, stamps, designs, devices, terms, brands, designations, shop-mark[s], descriptions, and forms of advertisement, under the provisions of this act. (Id. § 21209.)

554. Infringement Prohibited.—Whenever a person or persons, copartnership or corporations, has heretofore adopted and filed for record or registry, or shall hereafter adopt and file for registry, any label, trade-mark, trade-name, device, shop-mark, designation, or form of advertisement, as herein provided, it shall be unlawful and a violation of this act for any other person, copartnership, or corporation to make any use, sale, offer for sale, or display of the genuine label, trade-mark, trade-name, device, shop-mark, designation, or form of advertisement, or any such likeness or imitation thereof as shall be calculated or liable to deceive, of [or] any such person, or persons, copartnership or corporations, filing the same; or to sell, offer to sell, or dispose of any goods, wares, or merchandise, in bulk, or in box, case, can, bottle or package to or which any genuine label, trade-mark, trade-name, device, shop-mark, designation, or form of advertisement, filed for record as aforesaid, or any such likeness or imitation thereof, is attached, affixed or displayed; or to make any wrongful use whatever of any such genuine label, trade-mark, trade-name, device, shop-mark, designation, or form of advertisement, or

any such likeness or limitation thereof; or to, in any way, use the name or seal of any such person or persons, copartnership or corporation, or any other likeness or imitation thereof, in and about the sale of goods, or otherwise, without first obtaining, in every such case, the license, consent or authority of the person or persons, copartnership or corporation, adopting, filing and registering the same; and it shall be unlawful for any other person or persons, firm, copartnership, or corporation to remove any such label, trade-mark, trade-name, device, shop-mark, designation, or form of advertisement, so registered as atoresaid, and attached to merchandise or products of labor, for the purpose of using such merchandise or products of labor as a pattern for the reproduction of the same; Provided, however, that nothing herein contained shall be taken to prohibit the using of such merchandise or products af labor as a pattern for the reproduction of the same, in individual cases of emergency repair. And it shall be unlawful for any other person or persons, firm, copartnership, or corporation to make any use of such label, trade-mark, trade-name, device, shop-mark, designation, or form of advertisement, so filed, or any such likeness or imitation thereof, or utter or display the same orally or in any printed or written form in the conduct of his business or in any business transaction, attached to merchandise or products of labor, or detached from and independent of the same, on invoice, letter-heads, bills, or advertisement, without express consent, license and authority of the person or persons, copartnership or corporation, so filing the same; and any such license, consent or authority may be revoked and terminated at any time, upon notice, and thereafter any use thereof shall be a violation of this act, and subject those violating the same to all the liabilities and penalties herein provided against any violation thereof. (Id. § 21210.)

555. Infringing Marks Not Registered Unless Prior Adoption Shown.—He shall refuse to file or register any label, trade-mark, trade-name, device, shop-mark, designation, or form of advertisement, identical with, or so similar to as to be calculated or liable to deceive, any label, trade-mark, trade-name, device, shop-mark, designation, or form of advertisement, filed or registered, unless it shall be proved to his satisfaction that the person or persons, copartnership or corporation, lastly applying for the registry of such label, trade-mark, trade-name, device, shop-mark, designation, or form of advertisement, shall be entitled thereto, and the owner thereof by right of prior adoption; in which case the date of the adoption shall determine the ownership, and shall be proved by affidavits of persons conversant with such dates. In the case of the Secretary of State, becomes satisfied, after hearing the said affidavits, that the person or persons, copartnership or corporation, last applying for registry is entitled to priority of adoption to register such trade-mark, trade-name, device, shop-mark, designation, or form of advertisement, he shall revoke the first registry thereof, and re-register the same in the name of said applying person or persons, copartnership or corporations. (Id. § 21211.)

556. Penalty and Injunction.—Any person or persons who shall hereafter wrongfully perform, or permit to be performed, any act expressly prohibited or declared unlawful by section three [21210 and 21211] of this act, shall be subject to a penalty of two hundred dollars, to be sued for in any court having jurisdiction of an action for a fine or penalty by any person or persons, copartnership or corporation, aggrieved in the matter; and the court having jurisdiction of the parties shall grant an injunction restraining the defendant from such unlawful acts, and in addition to the penalty provided for in this section shall award to the plaintiff such damages, resulting from such wrongful and unlawful acts, as may be proved, and shall require the defendant to pay to the plaintiff the profits derived from such unlawful acts. (Id. § 21212.)

557. Unlawful Use of.—It is unlawful for any person, corporation, partnership, or association to use, in the sale, exchange, or delivery of milk or cream, or their products or any other products, any bottle, jar, vessel, can, or other container of another upon which is stamped, blown, or engraved the name, title, or mark of the owner. (Id. § 21214.)

558. Violations of Act; Punishment.—Any person, being the general manager, superintendent, or other person in charge of the work of any corporation, firm, partnership, or association, or any individual, violating any of the provisions of this act, shall be guilty of a misdemeanor; and, upon conviction, shall be sentenced to pay a fine not exceeding twenty-five dollars, or undergo an imprisonment in the county jail of the proper county for a period not exceeding one month, or both, at the discretion of the court. (Id. § 21215.)

559. Filing and Publishing Description and Certificate.—Any person or corporation engaged in the manufacturing, bottling or selling of soda-waters, mineral or aerated waters, porter, ale, root beer, cider, ginger ale, milk, cream, small beer, lager beer, weiss beer, white beer, or other beverages, or any medicines, medical preparations, perfumery, oils, ketchup, compounds or mixtures, in bottles, boxes,

siphons, siphon-heads, tins, cans, kegs, soda-fountains, cylinders of carbonic acid gas, or other containers with his, her, their, or its name or names, or other mark or marks, or device or devices, branded, stamped, engraved, etched, blown, impressed, or otherwise produced upon such bottles, boxes, siphons, siphon-heads, tins, cans, kegs, or other containers used by him, her, them, or it, may file in the office of the Secretary of the Commonwealth a description of the name or names, marks or devices, so used by him, her, them, or it, respectively, and cause such description to be printed once a week for two weeks successively in a newspaper published in the county in which the principal office or place of business of the owner shall be located; and, upon legal proof being furnished the Secretary of the Commonwealth, a certificate shall be issued by the Secretary of the Commonwealth, upon payment of the sum of twenty-five cents, which certificates shall be competent evidence in any court of law of the Commonwealth of Pennsylvania of the right of such person or persons, or such corporation or corporations, to the absolute use of such bottles with such devices marked thereon and of the publication and registration of the same. (Id. § 21216.)

560. **Refilling Container or Removing Device Prohibited.**—It is hereby declared to be unlawful for any person or corporation to fill with soda-waters, mineral or aerated waters, porter, ale, root beer, cider, ginger ale, milk, cream, ketchup, small beer, lager beer, weiss beer, white beer, or other beverages, or with medicines, medical preparations, perfumery, oils, compounds, or mixtures, any bottle, box, siphon, tins, cans, kegs, soda-fountains, cylinders of carbonic acid gas, or other containers, so marked or distinguished with or by any name, mark, or device, of which a description shall have been filed and published as provided in the first section [21216] of this act; or to deface, erase, obliterate, cover up, or otherwise remove or conceal, any such name, mark, or device thereon; or to sell, buy, give, take, retain or destroy, or otherwise dispose of or traffic in the same; without the written consent of the owner or owners thereof being first obtained. (Id. § 21217.)

561. **Informations, Search Warrants, Penalties and Appeals.**—If any person shall make oath before any magistrate or justice of the peace of any city, borough, or township of this Commonwealth, that he has reason to believe and does believe that any of the bottles, boxes, siphons, siphon-heads, tins, cans, kegs, soda-fountains, cylinders of carbonic acid gas, or other containers, the property of any person, firm, or corporation who have complied with the provisions of the first section [21216] of this act, are being unlawfully used, filled, or trafficked in, retained or destroyed or possessed by any person, firm, or corporation engaged in manufacturing or selling soda-waters, mineral or aerated waters, porter, ale, root beer, cider, ginger ale, milk, cream, ketchup, small beer, lager beer, weiss beer, white beer, or other beverages, or any medicines, medical preparations, perfumery, oils, compounds, or mixtures; or that any junk dealer in second-hand articles, or any other person, firm or corporation has any such bottles, boxes, siphons, siphon-heads, tins, kegs, soda-fountains, cylinders of carbonic acid gas, or other containers, in his, her, their, or its possession, or secreted in any place; such magistrate or justice of the peace shall issue a search warrant, which may be served at any time during the day or night, to discover and obtain the same, and to bring before such magistrate or justice of the peace the person or persons in whose possession such bottles, boxes, siphons, siphon-heads, tins, cans, kegs, soda-fountains, cylinders of carbonic acid gas, or other containers may be found; and if any such are found unlawfully in the possession of such person or persons, the said person or persons shall for the first offense, forfeit and pay the sum of fifty cents for each bottle, box, siphon, siphon-head, tin, can, keg, soda-fountain, cylinder of carbonic acid gas, or other container so unlawfully filled or sold or used or disposed of, bought or trafficked in, together with the costs of suit; to be recovered, as debts are by law recovered, in an action to be instituted in the name of the Commonwealth, before any magistrate or justice of the peace in the county wherein the offense shall have been committed. No appeal shall be allowed from any judgment rendered in such case, except upon special allowance of the Court of Common Pleas, subject to all the rules and regulations applicable to appeals in actions for summary convictions. One-half of such penalties for fines so recovered, shall be paid to the person informing, and the other one-half for the use of the Commonwealth. (Id. § 21218.)

562. **Offenses and Prima Facie Evidence Thereof.**—The use, possession, control, in any manner whatsoever by any person, firm or corporation other than the person, firm, or corporation whose device, name, or mark shall be, or shall have been, upon any such marked or distinguished bottle, or who shall have the legal right to use and control such bottle, box, siphons, siphon-heads, tins, cans, kegs, soda-fountains, cylinders of carbonic acid gas or other containers, after a description of such name, mark, or device shall have been filed and published in the manner provided for in the first section [21216] of this act, and a certificate issued therefor, without the written consent, as aforesaid, for the sale or storage therein of soda-

waters, mineral or aerated waters, porter, ale, root beer, cider, ginger ale, milk, cream, ketchup, small beer, lager beer, weiss beer, white beer, or other beverages, or any medicines, medical preparations, perfumery, oils, compounds, or mixtures, or for the furnishing of such or similar beverages or articles to customers; or the buying, selling, using, disposing of, destroying, retaining, or trafficking in any such bottles, boxes, siphons, siphon-heads, tins, cans, kegs, soda-fountains, cylinders of carbonic acid gas or other containers, by any person other than the owner or owners thereof, without such written consent; or having in his, her, their, or its possession, by any junk dealer or other dealers in second-hand articles, of any such bottles, boxes, siphons, siphon-heads, tins, kegs, soda-fountains, cylinders of carbonic acid gas, or other containers, a description of the marks, names, or devices thereon shall have been so filed and published as aforesaid, without such written consent, is declared to be prima facie evidence of the unlawful use, retention, purchase of, or traffic in such bottles, boxes, siphons, [siphon-heads,] tins, cans, kegs, soda-fountains, cylinders of carbonic acid gas, or other containers. (Id. § 21219.)

563. Requiring Deposit Before Delivery of Container Not a Sale.—The requiring, taking, or accepting of any deposit upon the delivery of any bottle, box, siphon, soda-gas, or other container, the name, mark, or device upon which has been filed and published as provided for in the first section [21216] of this act, shall not be deemed to constitute a sale thereof, either optional or otherwise. (Id. § 21220.)

564. Former Registrations and Transfers of Certificates.—Any person, firm, or corporation, having heretofore filed in any of the offices mentioned in the first section [21216] of this act a description of the name or names, marks or devices, under his, her, their, or its property herein mentioned, and having also caused the same to be published according to the law existing at the time of such filing and publication, shall not be required to again file and publish such description in order to be entitled to the benefits of this act: Provided, however, that if such person or persons, corporation or corporations, shall have obtained a certificate from the Secretary of the Commonwealth, and thereafter retire from business, such person or persons, corporation or corporations, shall have the right to legally transfer such certificate to such person or persons, corporation or corporations, who shall succeed such person in the business aforesaid. (Id. § 21221.)

565. Filing and Publishing Description.—Any person or persons engaged in the manufacture of malt liquor, for sale in butts, hogsheads, barrels, half-barrels, casks, half-casks, quarter-casks or kegs, or any person or persons owning and using milk cans, milk-bottles and milk-jars, butter boxes, ice cream cans, or ice cream tubs, with his, her or their name or names, or any other private marks, respectively, branded or stamped thereon, may file in the office of the prothonotary of the county in which such articles shall be manufactured or used, a description of the names used, and other private mark or marks to be branded or stamped thereon, and shall cause the same to be published, once a week for six weeks successively, in a newspaper published in such county or counties, and in the city of Philadelphia, where such publications shall be made for the same time, in two daily newspapers published in said city. (Id. § 21222.)

566. Unauthorized Use by Others Penalized.—It is hereby declared to be unlawful for any person or persons hereafter, other than the lawful owner or owners as mentioned and referred to in the first section [21222] of this act, to fill with malt liquor or liquors, for any purpose whatever, any such butt, hogshead, barrel, half-barrel, cask, half-cask, quarter-cask, or keg, or to fill with milk, cream, butter or ice cream, for any purpose whatever, any such milk can, butter box, ice cream can or ice cream tub, or to use, traffic in, purchase, sell, dispose of, detain, convert, mutilate or destroy or willfully or unreasonably refuse to return or deliver to such owner, upon demand being made, any such butt, hogshead, barrel, half-barrel, cask, half-cask, quarter-cask or keg, or any such milk can, butter box, ice cream can or ice cream tub, so branded or stamped, or from which such brand or stamps have been removed, cut off, defaced, obliterated, or to remove, cut off, deface, or obliterate, or to stamp other brands or stamps on the same, without the written permission of such original or lawful owner or owners thereof, or unless there shall have been a sale in express terms of any such article, exclusive [of] the malt liquor or other ingredient contained therein, to such person or persons by said original or lawful owner or owners; any person so offending shall, upon conviction, be deemed guilty of a misdemeanor; to be punished for the first offense by a fine of ten dollars for each and every such butt, hogshead, barrel, half-barrel, cask, half-cask, quarter-cask, keg, milk can, butter box, ice cream can or ice cream tub so filled and trafficked in, purchased, sold, disposed of, detained, converted, mutilated or destroyed, or not so delivered or returned, and by a fine of twenty dollars and by imprisonment in a county jail for not less than one and not more than three months, for each and every

subsequent offense, to be recovered in same manner as fines are now recoverable. (Id. § 21223.)

567. Search Warrants.—Any such owner or owners, or the agent of such owner or owners, who shall make oath or affirmation before any justice of the peace, alderman, or any magistrate having jurisdiction in criminal matters, that he has reason to believe, setting forth the facts upon which such belief is founded, and does believe, that any of the above-named articles belonging to him, or them, so branded or stamped as aforesaid, or from which the brands or stamps have been cut off, removed, defaced or obliterated, or which have been mutilated, or willfully detained after demand has been made, by any person or persons manufacturing or selling malt liquors, or any other liquor or liquid, or by any person or persons owning or using milk cans, butter boxes, ice cream cans or ice cream tubs, or that any junk dealer, or cask dealer, or any other person or persons whomsoever, shall have in his, her or their possession any of the articles above described, unlawfully as aforesaid, or secreted on his, her or their premises or in any other place under his, her or their control, and said magistrate shall thereupon, on proof of such demand having been made, issue a search warrant, directed to any constable or other proper officer, to search the premises of the offender or offenders, or said place where any such articles are alleged to be, particularly describing such premises or place; and if, upon search, any such articles shall be found, to take possession of the same, and to bring the person in whose possession or control any such articles may be found before such magistrate, to be tried as provided by law for the trial of misdemeanors, and be punished in the manner set forth in second section [21223] of this act. (Id. § 21224.)

568. Unauthorized Use of Stamped Containers Prohibited.—No person or persons shall, without the consent of the owner or owners thereof, sell or offer for sale, any milk can, butter tub or box used for the transportation of milk, cream, butter, or other produce, having the name and residence of the owner stamped thereon, nor shall any person willfully detain for their own use, or have in his or their possession for any cause whatever, any milk can, butter tub or box, as before specified, belonging to another, without the consent of the owner thereof. (Id. § 21225.)

569. Destruction of Owner's Marks a Misdemeanor.—Any person or persons who shall willfully remove, obliterate, mutilate or otherwise destroy any lettering or plate containing the name and residence of such owner or owners of any milk can, butter tub or box, used for the transportation of milk, cream, butter or other produce, without the consent of the owner, shall be deemed guilty of a misdemeanor. (Id. § 21226.)

570. Search Warrants.—Any owner or owners, or the agent of such person, who shall make oath before any justice of the peace, alderman or magistrate, that he has reason to believe (setting forth the facts upon which such belief is founded), and does believe, that any person is in the unlawful possession, or is wrongfully detaining his or their milk cans, butter tubs or boxes, in which other produce is shipped, or has secreted on his, her or their premises or in any other place under his, her or their control, the said justice of the peace, alderman or magistrate shall thereupon, on proof of demand having been made, issue a search warrant, directed to any constable or other proper officer, to search the premises of the offender or offenders, or said place where such articles are alleged to be, and if, upon such search, said articles shall be found, to take possession of the same and deliver them to the owner thereof, and to bring the body of the person in whose possession or control any such article may be found before said justice of the peace, alderman or magistrate, who shall bind the defendant over to the next term of court, or in default of bail to commit to jail for trial. (Id. § 21227.)

571. Unauthorized Use of Milk and Butter Containers Penalized.—Every person or persons who shall have in his, her or their possession and using any milk can, butter tub, boxes used for transporting milk, butter or other produce, and not being the owner thereof, and without permission of the owner to use said milk can, tub or box, in violation of the preceding sections of this act, such offender or offenders, for every such offense, shall forfeit and pay the sum of ten dollars for each article so held and used; which sum shall be recoverable, with costs of suit, by any person suing in the name of the Commonwealth, as debts of like amount are by law recoverable; which sum when so recovered, shall be paid to the person or persons at whose instance such a suit shall or may be commenced and prosecuted to recovery. (Id. § 21228.)

572. Violation of Act a Misdemeanor.—Every person who shall violate any of the preceding sections of this act, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be liable to pay a fine not exceeding one hundred dollars, or imprisonment not exceeding thirty days, or both or either, at the discretion of the court. (Id. § 21229.)

573. **Filing and Publishing Description.**—The manufacturers or vendors of beverages, or other articles of merchandise in bottles, upon which bottles said manufacturers' or vendors' names or other marks shall be respectively impressed, may cause a description of said bottles and of the names or marks impressed thereon, to be published once a week, for six weeks successively, in a newspaper of the county where the same shall be manufactured or sold, and upon producing proof of said publication, may file said description in the office of the Secretary of the Commonwealth where the same shall then be registered. (Id. § 21230.)

574. **Certificate Conclusive Evidence of Registration.**—The certificate of the Secretary of the Commonwealth or his authorized deputy, under the seal of his department, shall, in all cases, be conclusive evidence of the publication, marking and registering of such bottles. (Id. § 21231.)

575. **Definition of Illegal Use of Registered Bottles.**—It shall be unlawful for any person or persons, without the written permission of the owner or owners thereof, to refill with any beverage or other article of merchandise for the purpose of sale, or to buy, or sell, or deal, or traffic in any bottle or bottles having impressed upon it, or them, the manufacturer's or vendor's name, or names, or other marks which shall have been registered according to law. (Id. § 21232.)

576. **Unauthorized Use a Misdemeanor.**—It is hereby declared to be a misdemeanor to refill said bottles with any beverage or other article of merchandise for the purpose of sale, or to buy, or sell, or deal, or traffic in said bottles so registered, without the permission in writing of the owner or owners thereof, and upon conviction thereof the offender shall be sentenced to pay a fine not exceeding five hundred dollars or to suffer an imprisonment for a term not exceeding six months, or both, at the discretion of the court. (Id. § 21233.)

577. **Prima Facie Proof of Offense.**—The fact of any person, other than the rightful owner thereof, refilling any such bottles or using the same for the sale therein of any beverage or other article of merchandise, or having in his or her possession said bottles for the purpose of dealing or trafficking therein, shall be prima facie proof of the unlawful use, or purchase of, or for the unlawful dealing or trafficking in such bottles aforesaid. (Id. § 21234.)

578. **Prima Facie Proof and Search Warrants.**—The fact of any person other than the rightful owner thereof using any such bottles for the sale therein of any beverage, shall be prima facie proof of the unlawful use or purchase of such bottles as aforesaid, and any such owner, or agent of the owner, who shall make oath or affirmation before any alderman or justice of the peace, that he has reason to believe, and does believe, that any of his bottles stamped and registered as aforesaid are being unlawfully used, or are concealed by any person or persons selling or manufacturing mineral waters or other beverages, that the said alderman or justice of the peace shall thereupon issue a process in the nature of a search warrant, directed to any constable, commanding him to search the premises, wagons, carts or other places of the offender or offenders where said bottles are alleged to be, and if upon such search any bottles so marked shall be found, to bring the same, together with the body of the person in whose possession they may be found, before said alderman or justice of the peace, there to be dealt with according to law. (Id. § 21235.)

579. **Forgery of Brands.**—If any person shall counterfeit or fraudulently impress the brand, mark, or any number or mark of any public inspector, or mark or number in imitation thereof, upon any article subject to inspection, or upon any cask or vessel containing such article, or shall counterfeit the stamp of any such inspector upon any plug, or shall fraudulently stamp any plug put into any cask, or shall fraudulently alter, deface, conceal or erase any inspection mark duly made; or if any person shall counterfeit or fraudulently impress upon any article liable to inspection, or upon any cask or vessel containing such article, the brand, mark or other mark of any miller, manufacturer, packer or other person, or shall fraudulently alter, deface or erase any such mark, or shall fraudulently impress the brand, mark or other mark of any person upon such article or vessel, the person so offending shall be guilty of a misdemeanor, and be sentenced to pay a fine not exceeding two hundred dollars, and undergo an imprisonment not exceeding one year, or both, or either, at the discretion of the court. (Id. § 7858.)

580. **Forgery of Trade-Marks.**—If any person shall knowingly and willfully forge or counterfeit, or cause or procure to be forged or counterfeited, any representation, likeness, similitude, copy or imitation of the private stamps, wrappers or labels, usually affixed by any mechanic or manufacturer to and used by such mechanic or manufacturer on or in the sale of any goods, wares or merchandise, with intent to deceive or defraud the purchaser or manufacturer of any goods, wares or merchandise whatsoever, such person shall be guilty of a misdemeanor and, on conviction thereof, be sentenced to pay a fine not exceeding one hundred dollars, and undergo an imprisonment not exceeding two years. (Id. § 7859.)

581. Having Possession of Forged Dies, Stamps, Etc.—If any person shall have in his possession any die, plate, engraving or printed label, stamp or wrapper, or any representation, likeness, similitude, copy or imitation of the private stamp, wrapper or label usually affixed by any mechanic or manufacturer to and used by such manufacturer or mechanic on or in the sale of any goods, wares or merchandise, with intent to use or sell the said die, plate, engraving or printed stamp, label or wrapper, for the purpose of aiding or assisting, in any way whatever, in vending any goods, wares or merchandise, in imitation of or intended to resemble and to be sold for the goods, wares or merchandise or such mechanic or manufacturer, such person shall be guilty of a misdemeanor, and, upon being thereof convicted, be sentenced to pay a fine not exceeding one hundred dollars, and to undergo an imprisonment not exceeding one year. (Id. § 7860.)

582. Vending Goods Fraudulently Marked.—If any person shall vend any goods, wares or merchandise, having thereon any forged or counterfeited stamps or labels of any mechanic or manufacturer, knowing the same to be forged or counterfeited, and resembling or purporting to be imitations of the stamps or labels of such mechanic or manufacturer, without disclosing the fact to the purchaser thereof, such person shall, upon conviction, be deemed guilty of a misdemeanor, and be sentenced to pay a fine not exceeding five hundred dollars. (Id. § 7861.)

583. Use of Second Hand Bottles or Jars; Exceptions.—On and after the passage of this act, it shall be unlawful for any person or persons, firm or corporation, to put up for sale, offer for sale, or sell any goods or merchandise put up in any bottle or jar that has been used as a package or cover for the same or any other goods. And it shall be unlawful for any person or persons to gather bottles from any place where ashes, garbage or refuse of any kind has been dumped or disposed of, except the same be immediately broken to be sold as cullet; Provided, however, that this act shall not apply to brewers or bottlers engaged in the manufacture and sale of beer, under the laws of this Commonwealth, or to persons engaged in the furnishing and delivery of milk or any medicinal or mineral water, or to the refilling of prescriptions by doctors or druggists. (Id. § 2393.)

584. Violation of Act; Penalty; Enforcement of Act.—Any person or persons, firm or corporation, violating the provisions of this act shall be deemed guilty of a misdemeanor; and, upon conviction thereof, shall be punished, for the first offense, by a fine of not more than twenty-five dollars or by imprisonment in the county jail not more than ten days, and each subsequent offense shall be punished by a fine not to exceed one hundred dollars, or by imprisonment not to exceed three months, or either or both, at the discretion of the court. And it shall be the duty of the board of health or any peace officer to enforce the provisions of this act in their respective districts. (Id. § 2394.)

NOTE: See also No. 63 et seq.

Trading Stamps.

584a. Offering or Giving Premiums with Sales Prohibited.—From and after the passage of this act, it shall be unlawful for any person, partnership, or corporation, licensed to sell vinous, spirituous, malt, or brewed liquors at wholesale or retail to offer or give anything of value as a premium for the return of caps, stoppers, corks, stamps, or labels taken from any bottle, case, keg, barrel, or package containing such vinous, spirituous, malt, or brewed liquors, or to offer or give anything of value as a premium or present to induce the purchase of such liquors or for any other purpose whatsoever, in connection with the sale of such liquors. (Pa. St. 1920, § 14026.)

584b. Rebates and Discounts for Return of Packages Excepted.—This act shall not prohibit the offering or giving of any rebate or discount by any person, partnership, or corporation, licensed to sell vinous, spirituous, malt, or brewed liquors at wholesale or retail, for the return of any bottle, case, keg, barrel, or package in which such vinous, spirituous, malt, or brewed liquor is actually sold. (Id. § 14027.)

584c. Penalty for Violations.—Any person, partnership, or corporation violating the provisions of this act shall be deemed guilty of a misdemeanor and upon conviction thereof shall be punished, for the first offense, by a fine of not more than one hundred dollars, or by imprisonment in the county jail for not more than ten days; and subsequent offense shall be punished by a fine not to exceed five hundred dollars, or by imprisonment not to exceed three months, either or both, at the discretion of the court. (Id. § 14028.)

584d. Giving Customers Tickets or Checks Representing Value.—Any merchant, manufacturer, importer, retailer or dealer doing business within this Com-

monwealth who shall offer, give, or sell, or authorize, or permit any agent, salesman or employee to offer, give or sell any purchaser or customer any ticket or tickets, check or checks, or other tokens or memoranda entitling such purchaser or customer to demand or receive money or any article of value, shall be deemed guilty of a misdemeanor, and, upon conviction, shall be sentenced to pay a fine not less than ten, nor exceeding one hundred dollars, or suffer imprisonment not exceeding one year, or either, or both, at the discretion of the court. (Id. § 7935.)*

Weights and Measures.†

585. Standards.—The Department of Internal Affairs shall have the power, and its duty shall be:

(a) To regulate and maintain uniform standards of legal weights and measures in this Commonwealth, to conform with the original standards of weights and measures adopted by the Congress of the United States and verified by the National Bureau of Standards;

(b) To assist in securing the enforcement of the laws relating to sealers of weights and measures which are now in force or may hereafter be enacted;

(c) To have custody of the State's standards of weights and measures;

(d) To compare, test, and regulate all weights and measures of all city and borough sealers now in office, or hereafter who may be appointed, with the State standards, when presented at the office of the department for that purpose, and to certify to their correctness by affixing the department's official stamp thereto, with the name of the examiner and the date of examination clearly marked thereon; and

(e) To file annual and other reports received from the local sealers of weights and measures. (Pa. St. Supp. 1924, Administrative Code, § 50a-1206, added L. 1927, Act No. 164.)

586. Standard of Linear Measures.—The standard unit of all measures of length shall be the "yard," to conform to that in use in this Commonwealth at the date of the Declaration of Independence: the positive standard to be obtained as hereinafter described, and that one-third of said yard shall be one foot, and that one twelfth of said foot shall be one inch. (Pa. St. 1920, § 21523.)

586a. Standard of Measures of Capacity.—The standard liquid measure shall be the gallon, to contain two hundred and thirty-one cubic inches, of the standard aforesaid, and no more; and that the standard of dry measure shall be the bushel, to contain two thousand one hundred and fifty cubic inches and forty-two hundredths of a cubic inch, of the standard aforesaid, and no more. (Id. § 21524.)

587. Standard of Weight.—The standard of weight shall be a pound, to be computed upon the Troy pound of the mint of the United States, referred to in the Act of Congress of the nineteenth of May, 1828, to-wit: The Troy pound of this Commonwealth shall be equal to the Troy pound of the mint aforesaid, and the avoirdupois pound of this Commonwealth shall be greater than the Troy pound aforesaid, in the proportion of seven thousand to five thousand seven hundred and sixty. (Id. § 21525.)

588. Governor to Provide Positive Standard of Length.—It shall be the duty of the Governor of this Commonwealth to procure, within three years from the date of the passage of this act, a standard yard, to constitute the positive standard of length in this Commonwealth, said standard to be equal in length, at the temperature of melting ice, to the distance between the eleventh and forty-seventh inches on a certain brass scale of eighty-two inches in length, procured for the survey of the coast of the United States and now deposited in the War Department; the materials of said standard to be brass, and the divisions upon it to be inches and parts of an inch of the brass scale aforesaid. (Id. § 21526.)

589. Governor to Provide Positive Standards of Measure of Capacity.—It shall be the duty of the Governor to procure, within three years after the passage of this act, for the use of this Commonwealth, a standard gallon and bushel, to conform to the provision of section second [21524] of this act, the material of said standard to be of cast brass. (Id. § 21527.)

590. Governor to Provide Positive Standards of Weight.—It shall be the duty of the Governor of this Commonwealth to procure, within three years after the passage of this act, a duly authenticated copy of the Troy pound of the mint of the

*Held unconstitutional in Commonwealth v. Moorhead, 7 C. C. 513 (1890.)

†See No. 30 et seq. for administrative changes. The sections hereunder are to be corrected accordingly.

United States to constitute the positive standard of weight of this Commonwealth, the material of said standard to be brass. (Id. § 21528.)*

591. Preparation of Standards.—The Governor of this Commonwealth be and he is hereby authorized to have prepared standards of weight, measure and capacity, specified in the act of Assembly, passed April 15, 1834; and he be authorized to carry into effect the provisions of the said act as soon as practicable. (Id. § 21529.)

592. Secretary of Commonwealth to Procure Cases for Standards.—The Secretary of the Commonwealth be authorized and directed to procure, as soon as practicable, suitable cases for the standards of weights and measures now in his office, and to prescribe and publish the terms upon which standards of approved construction, carefully compared with the State standards, aforesaid, shall be furnished to the commissioners of the several counties of the Commonwealth, according to the directions of the act of April 15, 1834, entitled "An act to fix the standards and denominations of measures and weights in the Commonwealth of Pennsylvania." (Id. § 21530.)

593. Preservation of Positive Standards.—It shall be the duty of the Governor of this Commnowealth to have the positive standards of measures of length and capacity, and of weight, provided by the foregoing sections, inclosed in suitable cases and deposited in the office of the Secretary of the Commonwealth, to be by him there carefully preserved. (Id. § 21531.)

594. Verification of Positive Standards.—It shall be lawful for the Governor of this Commonwealth, when he shall deem it expedient to have tested the conformity of said positive standards of measure and weight to the foregoing provisions of this act, or to the natural invariable standards hereinafter provided, and if Congress shall at any time hereafter establish standards of weight and measure, the standard aforesaid shall be made to conform thereto. (Id. § 21532.)

595. Distribution of County Standards.—It shall be the duty of the Governor to provide, within three years after the passage of this act, for each of the counties of this Commonwealth, at the charge of the counties respectively, positive standards of measures of length, of capacity and of weight of the several denominations in common use or such of them as may be necessary for the accurate and convenient adjustment of weights and measures, said standards to be of approved construction carefully compared with the State standards aforesaid, and made of the same material, and having caused the same to be duly stamped, to have them delivered to the commissioners of the counties respectively, to be used as standards for the adjusting of weights and measures, and for no other purpose. (Id. § 21533.)

596. Verification of County Standards.—It shall be the duty of the commissioners of the respective counties, at least once in every ten years and oftener if they have reason to believe it necessary, to cause the standards of the respective county to be examined and tried, and if necessary, to be corrected or renewed according to the standards of the Commonwealth heretofore referred to. (Id. § 21534.)

597. Positive Standards to be Referred to Natural Invariable Standards.—It shall be the duty of the Governor, within ten years after the passage of this act, to cause the positive standards herein described to be referred to natural invariable standards and to deposit in the office of the Secretary of the Commonwealth the authentic certificates of such reference with the apparatus by which it was made, the length of the standard yard to be compared with that of the pendulum vibrating seconds, at a certain and defined spot in the Independence Square in the city of Philadelphia, or in some unalienable public property at an ascertained and convenient temperature and pressure, all the circumstances of the comparison to be stated, the standard weight to be compared with that of one hundred standard cubic inches of water at its maximum density, and at a convenient atmospheric pressure. (Id. § 21535.)

598. Definitions.—The word "type," as used in this act, is defined as a class the individual objects of which are similar one to another in design, construction, size, and material.

The term "standard weights and measures," as used in this act, is to be construed to include the standards of weights and measures adopted by the United States and the State of Pennsylvania, in accordance with those furnished by the Federal government under joint resolutions of Congress, approved June fourteenth, eighteen hundred and thirty-six, and July twenty-seventh, eighteen hundred and sixty-six, and now recognized and in use throughout the United States.

The term "use in trade or commerce," as used in this act, shall be construed to include use in buying or selling goods, wares, or merchandise.

The word "person," as used in this act, shall be construed to import both the plural and singular, as the case demands, and shall include corporations, copartnerships, companies, societies, and associations.

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*This section is probably obsolete. (Compiler's note.)

The term "Bureau of Standards"* shall be held to mean under or by authority of the chief of the Pennsylvania Bureau of Standards of the Department of Internal Affairs. When construing or enforcing the provisions of this act, the act, omission, or failure of any officer, agent, or other person, acting for or employed by any corporation, company, society, or association, within the scope of his employment or office, shall in every case be deemed to be the act, omission, or failure of such corporation, partnership, company, society, or association, as well as that of the person. (Pa. St. Supp. 1924, § 21535a-1.)

599. Approval of Types of Weights and Measures and Weighing and Measuring Devices.—The Bureau of Standards of the Department of Internal Affairs is authorized to pass upon each type of weight and measure and weighing and measuring device manufactured, offered or exposed for sale or sold or given away, for the use in trade or commerce, or used in trade or commerce, in the Commonwealth of Pennsylvania, and to approve or disapprove of said type. The said bureau shall approve each type of weight and measure and weighing and measuring device, submitted to it for approval by any person, if such type is so designed and constructed that it conforms to, or gives correct results in terms of, standard weights or measures or in terms of values derived therefrom, and is reasonably permanent in its indication and adjustment, and does not facilitate the perpetration of fraud, otherwise the bureau shall disapprove the same. (Id. § 21535a-2.)

600. Submission for Approval.—The submission of a type may be by sample or by specifications if, in the best judgment of the bureau, such specifications are adequate, or in such other manner as may be prescribed by the rules and regulations promulgated under the authority of this act. (Id. § 21535a-3.)

601. Certificates of Approval; Disapproval; Notice; Hearing; Appeal to Secretary of Internal Affairs and Court of Common Pleas.—When a type of weight or measure or weighing or measuring device is approved, the said bureau shall issue a certificate to this effect to the person submitting such type. When a type is disapproved, the said bureau shall notify the person submitting the same of its decision, setting out the reasons therefor, together with such information and references as may be useful in judging of the propriety of the disapproval, and shall give such person an opportunity to be heard in support of his application for approval. The bureau shall then reconsider its decision. If the new decision is adverse to such person, and he is dissatisfied with the same, he may take an appeal from this decision to the Secretary of Internal Affairs, who shall examine the matter, and decide whether the type should be approved or disapproved. If the person is dissatisfied with the decision of the Secretary of Internal Affairs, he may appeal to the Court of Common Pleas of the county of which he is a resident, whose decision shall be final. (Id. § 21535a-4.)

602. Sale, Etc., of Unapproved Weights and Measures.—From and after one year after this act takes effect, it shall be unlawful for any person to manufacture, offer or expose for sale, or sell or give away, for use in trade or commerce, or to use in trade or commerce, any weight or measure or weighing or measuring device of a type not approved in accordance with the provisions of this act; Provided, however, that in this case of weights and measures and weighing and measuring devices manufactured and ready for sale or in use in the Commonwealth of Pennsylvania at the time this section takes effect, no approval of type shall be necessary, and it shall be lawful for any person to offer or expose for sale or sell, for the use in trade or commerce, or to use in trade or commerce, such weights and measures and weighing and measuring devices, unless they do not conform to or give correct results in terms of standard weights or measures or in terms of values derived therefrom; and provided further, that the type of a weight or measure or weighing or measuring device need not be approved if said weight or measure or weighing and measuring device is intended for shipment outside the State of Pennsylvania, but if said weight or measure or weighing or measuring device shall in fact be sold or offered for sale, for use in trade or commerce, or used in trade or commerce, in the Commonwealth of Pennsylvania, then this proviso shall not exempt such weight or measure or weighing or measuring device from the operation of any of the provisions of this act. (Id. § 21535a-5.)

603. Manufacturer's or Vendor's Guaranty; Effect.—No person shall be prosecuted under the provisions of this act if he can establish a guaranty, signed by the person from whom the weight or measure or weighing or measuring device was purchased, or otherwise obtained, or from the manufacturer thereof, to the effect that the type of the same has been approved, if such approval is required by the pro-

*But see No. 30, wherein the Bureau of Standards was abolished. See also Nos. 30a et seq. and 585 for administrative changes. This law is to be corrected accordingly.

visions of this act, and, if such approval is not required, setting out this fact, or if he can establish that the weight or measure or weighing or measuring device has been sealed by the local sealer of weights and measures. The said guaranty, to afford protection, shall contain the name and address of the guarantor, and, in such case, said guarantor shall be amenable to the prosecution, fines, or other penalties which would attach in due course to such person under the provisions of this act. But in any case where any such person has actual notice that the type of such weight or measure or weighing and measuring device has not in fact been approved, when such approval is required by the provisions of this act, it shall be unlawful and a violation of the provisions of this act, for such person thereafter to offer or expose such weight or measure or weighing or measuring device for sale, or to sell it for use in trade or commerce, or use it in trade or commerce. (Id. § 21535a-6.)

604. **Registration, Serial Numbers, and Descriptions of Approved Weights and Measures.**—The bureau of standards shall register and give a serial number to each type of weight or measure or weighing or measuring device submitted and approved as provided in this act, and shall issue, from time to time, descriptions of such approved types, giving serial number of each type, copies of which shall be furnished to all weights and measures officials. (Id. § 21535a-7.)

605. **Marking of Approved Weights and Measures.**—From and after one year after this act takes effect, it shall be unlawful to manufacture, offer or expose for sale or sell or give away, for use in trade or commerce, or to use in trade or commerce, any weight or measure or weighing or measuring device which does not have cast, stamped, etched, or otherwise marked thereon, in such manner as may be prescribed by the rules and regulations authorized by this act, the name of the manufacturer and the serial number of the approved type to which it belongs: Provided, however, that, whenever it shall appear to the satisfaction of the Bureau of Standards that any type of weight or measure or weighing or measuring device is such as to render it impracticable to mark it as required by this section, the said bureau shall furnish a certificate to that effect to any manufacturer applying for the same, and such weights and measures and weighing and measuring devices need not be marked as required by the provisions of this section. (Id. § 21535a-8.)

606. **Marking of Unapproved Weights and Measures.**—It shall be unlawful to cast, stamp, etch, or otherwise mark, upon any weight or measure or weighing or measuring device, the type of which has not been approved as required by the provisions of this act, any design or device simulating a serial number required by the provisions of section seven [21535a-7] of this act.

Any person who shall violate any of the provisions of this section shall be guilty of a misdemeanor, and, upon conviction thereof, shall be punished by a fine of not more than five hundred dollars, or by imprisonment for not more than one year, or by both such fine and imprisonment, in the discretion of the court. (Id. § 21535a-9.)

607. **Approval of Parts of Weights and Measures.**—In case any person may desire to have the type of a part of a weight or measure or weighing or measuring device separately approved and serialized, and shall apply therefor, and the Bureau of Standards, decides that the part is such that this may properly be done, then such part may be approved and serialized or disapproved as to type, under the same provisions and restrictions as are applied to the approval and serialization or the disapproval of a type of weight or measure or weighing or measuring device by the provisions of this act. (Id. § 21535a-10.)

608. **Marking of Weights and Measures "Not Legal for Trade."**—It shall be conclusively presumed that a weight or measure or weighing or measuring device is intended for use in trade or commerce if it is manufactured, offered or exposed for sale, or sold, for use in the Commonwealth of Pennsylvania, or is used therein, unless it shall bear a plain, legible, conspicuous, and permanent statement to this effect "Not legal for trade." It shall be unlawful to use in trade or commerce any weight or measure or weighing or measuring device which is marked as described above: Provided, however, that whenever it shall appear to the satisfaction of the Bureau of Standards that any type of weight or measure or weighing or measuring device is such as to render it impracticable to mark it as required by this section, or is of such design and construction that it is obviously not intended for use in trade or commerce, the said bureau shall furnish a certificate to that effect to any manufacturer applying for the same, and such types of weights and measures and weighing and measuring devices need not be marked as required by the provisions of this section. (Id. § 21535a-11.)

609. **Rules and Regulations for Enforcement of Act.**—Rules and regulations for the carrying out and enforcement of the provisions of this act, not inconsistent with the provisions thereof, shall be adopted by the Bureau of Standards, with the approval of the Secretary of Internal Affairs, which rules and regulations shall include reasonable variations or tolerances which may be allowed on weights

and measures and weighing and measuring devices included within the provisions of this act, and also specifications for such weights and measures and weighing and measuring devices for the guidance of manufacturers in the design and construction of such weights and measures and weighing and measuring devices. (Id. § 21535a-12.)

610. **Sealing of Approved Weights and Measures.**—Inspectors of Weights and Measures of the Commonwealth of Pennsylvania and of the several counties and cities of the Commonwealth of Pennsylvania may seal, for use in trade or commerce, all weights and measures and weighing and measuring devices, the type of which has been approved as required by the provisions of this act or specifically exempted from the necessity of approval by the provisions of this act, when they find that the same are within the tolerances prescribed under the rules and regulations: Provided, however, that this shall not be construed as meaning that the approval of a type shall be taken as evidence of the correctness of any individual weight or measure or weighing or measuring device of that type, or prevent any such inspector of weights and measures from prohibiting the use of or confiscating any individual weight or measure or weighing or measuring device which is found to be inaccurate or otherwise defective or unlawfully used. (Id. § 21535a-13.)

611. **Violations of Act; Jurisdiction; Penalties.**—Any person, copartnership, association, or corporation who or which shall violate any provision of this act shall, upon conviction thereof in a summary proceeding before any alderman, magistrate, or justice of the peace of the proper county or city, be punished for the first offense by a fine of not more than twenty-five dollars; and, upon conviction of the second offense, by a fine of not less than twenty-five dollars nor more than one hundred dollars; and, upon conviction for the third and each subsequent offense, by a fine of not less than one hundred dollars nor more than two hundred and fifty dollars. In default of the payment of any fine, as aforesaid, any person convicted shall be sentenced to serve one day in jail of the proper county for each dollar of the fine or costs. (Id. § 21535a-14.)

612. **Persons Required to Enforce Act.**—It shall be the duty of the Chief of the Bureau of Standards* and his deputies and the inspectors of weights and measures of the several counties and cities who shall find satisfactory evidence of any violation of the provisions of this act to cause appropriate proceedings to be commenced and prosecuted, without delay, for the enforcement of the penalties as in such case herein provided; Provided, however, that no action or prosecution shall be brought against any person for any violation of this act unless the same is commenced within one year after the offense is committed. (Id. § 21535a-15.)

613. **Disposition of United States Positive Standards.**—The original standards of weights and measures furnished by the United States, and now in the office of the Secretary of the Commonwealth, shall remain in the case provided for that purpose, which shall only be opened under the direction of the Governor or the said secretary, for the sole purpose of comparing such standards with the copies hereinafter described, unless by a joint resolution of the two houses of the Legislature, or on the call of either house, or by permission of the Governor, for scientific purposes. (Pa. St. 1920, § 21536.)†

614. **Copies to be Furnished County Commissioners.**—Copies of such original standards, for general use, to be made of such materials as the Governor and the the said secretary shall direct, shall be transmitted by them, on application therefor to the county commissioners of each county in this Commonwealth, at the expense of the several counties to which the same are sent, and not otherwise. (Id. § 21537.)

615. **Devices on Standards.**—The said secretary shall cause to be impressed on each of the copies of such original standards the letters "Pa.," and such other additional device as he shall direct for the particular county, which device shall be recorded in the secretary's office and a copy thereof, transmitted to the respective county commissioners. (Id. § 21538.)

616. **County Commissioners to Test Standards.**—It shall be the duty of the county commissioners receiving such standards as aforesaid, and their successors in office, in every five years, and oftener if they shall have reason to believe it necessary, to cause such standards so received by them, or their predecessors in office, to be tried and examined, to be corrected or renewed, so as to conform exactly to the standards prepared according to act of Congress, and deposited in the office of the Secretary of the Commonwealth as aforesaid. (Id. § 21539.)

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*See footnote to No. 598.

†This act was repealed by the act of 1859, March 22, P. L. 198, as to the counties of Franklin, Lancaster, Montgomery, Bucks, Berks, Lehigh, Dauphin and Westmoreland, and by the act of 1860, April 2, P. L. 511, as to the counties of Lebanon, Adams, Washington, Cumberland and Perry. By the act of 1867, February 20, P. L. 233, it was extended to Montgomery county. (Compiler's note.)

617. Liquid Measure.—The denominations of liquid measure of this Commonwealth, whereof, the gallon as heretofore provided is the standard unit, with the relations to said unit and to each other, shall be:

Four gills make one pint.
Two pints make one quart.
Four quarts make one gallon.
Thirty-one and a half gallons make one barrel.
Two barrels make one hogshead.
Two hogsheads make one pipe.
Two pipes make one tun. (Id. § 21542.)

618. Dry Measure.—The denominations of dry measure of this Commonwealth, whereof the bushel as heretofore provided is the standard unit, with the relations to said standard and to each other, shall be:

Four pecks make one bushel.

And the minor divisions of the peck shall be its aliquot parts; Provided, that the form of the dry measure shall be conical; that the diameter of the circle of the top of the measure shall be not less than one-twentieth greater than the diameter of the bottom of the measure, and the height not more than nine-twelfths of the diameter of the bottom. (Id. § 21543.)

619. Troy Weight.—The denominations of weight of this Commonwealth, whereof the troy pound as heretofore provided is the standard unit, with the relations thereof to said standard and to each other, shall be:

Twenty-four grains make one pennyweight.
Twenty pennyweights make one ounce.
Twelve ounces make one pound. (Id. § 21544.)

620. Avoirdupois Weight.—The denominations of weight of this Commonwealth, whereof the pound avoirdupois as heretofore provided is the standard unit, with relations to said pound and to each other, shall be:

Sixteen drams make one ounce.
Sixteen ounces make one pound.
Twenty-five pounds make one quarter.
Four quarters make one hundred.
Twenty hundred make one ton. (Id. § 21545.)

621. Establishment Authorized.—The establishment of a Bureau of Standards* be and is hereby authorized, in the Department of Internal Affairs of Pennsylvania, for the purpose of regulating and maintaining a uniform standard of legal weights and measures in this Commonwealth, to conform with the original standards of weights and measures as adopted by Congress, and verified by the National Bureau of Standards; and to assist in securing the enforcement of laws relating to sealers of weights and measures, now in force or that may hereafter be enacted. (Id. § 21546.)

622. Appointment, Salary, Duties and Powers of Chief of Bureau; Deputies and Clerical Assistance.—The Chief of said Bureau of Standards shall receive a salary of four thousand dollars per annum, payable as other employees of said department are now paid and all necessary expenses incurred in the discharge of his official duties under this act. The Secretary of Internal Affairs is authorized to appoint twelve deputies in the Bureau of Standards at an annual salary of twenty-five hundred dollars each. Such deputies shall also receive their actual and necessary expenses incurred in the performance of their duties. The Secretary of Internal Affairs may also assign such additional assistance, from the clerical force of his department, to the work of said bureau as he may find necessary from time to time. (Pa. St. Supp. 1924, § 21547.)

623. Standards to be Procured for Bureau.—In order to carry this act into effect, it shall be the duty of the Secretary of Internal Affairs of this Commonwealth to procure, as soon as practicable after the passage of this act, a complete set of standards of weight, length, and capacity, to be verified by the Bureau of Standards of the United States Government, and to conform with the standards of weight, length, and capacity established by the National Congress, at a cost not exceeding the sum of two thousand five hundred dollars, to be paid for on warrant of the Auditor-General out of funds of the State treasury, which sum is hereby specifically appropriated for that purpose, or so much thereof as may be necessary. (Pa. St. 1920, § 21548.)

624. Rooms to be Provided for Bureau.—The Board of Public Grounds and Buildings are hereby required to furnish a suitable room or rooms, in the State Capitol Building for the safe-keeping and convenient use of said standards of weights and measures and for office use of said Bureau of Standards. (Id. § 21549.)

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*See footnote to No. 598.

625. **Appointment; Salary and Expenses; Term of Office; Performing Other Duties.**—The mayors of cities of the second and third class, and the several boards of county commissioners, shall, respectively, appoint one or more competent persons as inspectors of weights and measures, in the respective county or city, whose salary shall not be less than one thousand dollars per annum, to be paid out of the respective revenues of such county or city; Provided, however, that the payment of a minimum salary shall not apply to counties having a population of fifteen thousand or less. In addition to the salary provided by law, the said county and city inspectors shall be entitled to receive the actual expenses incurred by them personally in performing the duties of their office; such as transportation, hotel, livery, telephone, telegraph, and postal charges, to be paid by the boards of county commissioners of their respective counties and by the proper officers of their respective cities, in such proportion as may be agreed upon by said boards of county commissioners and proper officers of cities, on bills itemized and properly sworn to; Provided, however, that nothing in this act shall be construed to prevent two or more counties, or any county and city, from combining the whole or any part of their districts, as may be agreed upon by the board of county commissioners and mayors of cities, with one set of standards and one inspector, upon the written consent of the Chief of the Bureau of Standards; Provided further, in cities of the first class the inspectors shall be appointed by the county commissioners of the county in which the said city may be located. Any inspector appointed in pursuance of an agreement for such combination shall, subject to the terms of his appointment, have the same authority and duties as if he had been appointed by each of the authorities who are parties to the agreement. The county and city inspectors of weights and measures, as appointed by the respective counties and cities, shall hold their office during good behavior; and shall not be removed, discharged, or reduced in pay or position except for inefficiency, incapacity, conduct unbecoming employees, or other just cause, and until the said officials shall have been furnished with written statements of the reason for such removal, discharge, or reduction, and shall have been given reasonable time to make written answer thereto. Nor shall such removal, discharge, or reduction be made until the charge or charges shall have been examined into and found true in fact by the appointing power of such county or city, at a hearing, upon reasonable notice to the person charged, at which time he may be represented by counsel and offer testimony or witnesses in his own behalf. It shall be unlawful for any sealer or inspector of weights and measures, or any of his deputies, to perform clerical or other services for the county or city of their respective districts. (Id. § 21550.)*

626. **Standards to be Furnished; Comparing and Stamping.**—All county and city inspectors so appointed shall be supplied, at the expense of their respective counties and cities, with standard tests of weights and measures, in conformity with those established by the government of the United States or the Bureau of Standards of the State, and the laws of this Commonwealth; and to ensure the accuracy of these tests they shall be compared with the standard tests to be purchased by the Secretary of Internal Affairs, and, when so compared and their correctness established, they shall be so stamped or marked in such manner as may be established by the rules and regulations hereinbefore referred to, to be put in force by said Secretary of Internal Affairs, and approved by the Governor of the Commonwealth. (Id. § 21551.)

627. **Reports to Bureau of Standards.**—Each inspector shall report in writing, at least once every month, to the Chief of the State Bureau of Standards, upon blanks furnished by the chief. Such report shall contain: (1) the number of tests made since the last preceding report. (2) The number of weights, measures, and balances found by such tests to be correct. (3) The number of weights, measures, and balances found by such tests to be false. (4) The number of prosecutions instituted by such inspector since the last preceding report, together with the name of the accused, the title of the court where the prosecution was instituted, and the result of such prosecution. (5) Such other matters as the chief may, from time to time, prescribe. (Id. § 21552.)

628. **Duties and Powers; Disposition of Illegal Instruments.**—The inspectors shall take charge of and safely keep the proper standards. They shall be furnished by the Chief of the Bureau of Standards of this Commonwealth with full specifications of tolerances and allowances to be used by them in the performance

*The act of July 24, 1913, P. L. 960, of which the act of July 19, 1917, P. L. 1102, quoted in No. 625, is amendatory, was declared unconstitutional in so far as it provides that inspectors of weights and measures cannot be removed by the power which appointed them except for the causes specified in the act. (Commonwealth, ex rel. Lowell, v. Hoyt, 254 Pa. 45; 98 Atl. 782; 63 Super. Ct. 434 (1916).

of their duties. Each inspector shall have power, within his respective jurisdiction, to test all instruments and devices used in weighing or measuring anything sold or to be sold, including instruments and devices for weighing at coal mines, and seal the same if found to be correct. Such test shall include all appliances connected or used with such instruments or devices. For the purpose of making such test, each inspector, at any reasonable time and without formal warrant, may enter upon any premises; and may, on any public highway, stop any vendor or dealer, or the agent or servant of such vendor or dealer, or stop any vehicle used in delivering any commodity which is weighed or measured as delivered. He may condemn and mark as condemned, or may seize, any false or illegal instrument or device used, or intended to be used, in weighing or measuring. If he shall seize any such instrument or device, he shall retain possession thereof until it shall have been used as evidence in any prosecution under the laws of this Commonwealth relating to weights and measures or to the sale of commodities. After the determination of such prosecution, the false or illegal instrument or device shall be destroyed, unless otherwise ordered by the proper court. (Id. § 21553.)

629. Inspection and Adjustment of Measures.—The duty of each inspector shall be to visit every place not more than four times a year, where measures, scales and weights are used or sold, including all market houses, shops, stores, and all places where meats, provisions and other articles are sold by weight or measure in said cities, to inspect, regulate and adjust the same. (Id. § 21554.)

630. New Scales, Weights and Measures to be Tested.—Any person or persons purchasing new scales, weights or measures that do not contain the stamp of the inspector shall, before using them, notify the inspector of the district and have them tested, and all scales, weights or measures that cannot be adjusted by the inspector shall be removed and destroyed. (Id. § 21555.)

631. Violations; Use of False Weights; Use by Inspector of False Standards; Penalties.—Each person who shall, directly or indirectly, or by his servant, or agent, or as the servant or agent of another, violate any of the provisions of this act, or give or offer to give any false or insufficient weight or measure, or use any weighing device after it shall have been condemned and before it shall have been adjusted and sealed, or obstruct or attempt to obstruct any inspector in the performance of his duty, shall, upon conviction thereof in a summary proceeding before any alderman, magistrate, or justice of the peace of the proper city or county, for the first offense, be sentenced to pay a fine not to exceed twenty-five dollars; for the second offense, shall be sentenced to pay a fine not exceeding fifty dollars; and for each subsequent offense, shall be sentenced to pay a fine of not more than one hundred dollars, or to undergo an imprisonment in the proper county jail for not more than thirty days, or both, in the discretion of the court. In default of the payment of any fine as aforesaid, the person convicted shall be sentenced to serve one day in jail of the proper county for each dollar of the fine and costs. All such fines shall be paid to the treasurer of the respective city or county in which the offense was committed.

It shall be unlawful for any inspector to use any tests or standards, or to attempt to use the same, in ascertaining the correctness or accuracy of weights and measures, until such comparisons are made and their accuracy established and so stamped or marked. It shall be unlawful for any inspector to manufacture, sell, or offer to sell, any weighing or measuring device used in the sale of commodities, or to repair or offer to repair any weighing or measuring device other than such adjustments as he may find necessary in the performance of his official duties, for which no fees shall be collected. Any inspector violating the provisions of this act shall be guilty of a misdemeanor, and, upon conviction therefor, shall be fined not exceeding one thousand ($1,000) dollars, or undergo imprisonment for a period not exceeding one year, or both or either, at the discretion of the court. (Pa. St. Supp. 1924, § 21556.)

632. Refusal to Allow Inspection.—Any person, upon arrest and conviction before a magistrate or justice of the peace for refusing to allow his scales, weights and measures to be inspected, shall be fined ten dollars and costs of court, or be sentenced to imprisonment for a period of not more than ten days. (Pa. St. 1920, § 21557.)

632a. Altering Scales, Etc., After Adjustment.—Any person who shall, after his scales, weights and measures have been inspected in accordance with the provisions of the fifth section [21555] of this act alter or cause to be altered his said inspected scales, weights and measures so that they be decreased in size or amount, or who shall substitute for said inspected weights and measures any other weight and measures of smaller size or amount, shall, upon arrest and conviction before a magistrate or justice of the peace, be fined not more than twenty dollars and costs

of court, and in default of the payment of such fine and costs shall be imprisoned for a period of not more than ten days. (Id. § 21558.)

633. **Selling by False Scales, Weights or Measures.**—In case any maker, vendor or proprietor of beams, scales, weights or measures, within the city or county of Philadelphia, or county for which a sealer has been appointed, shall neglect or refuse to comply with the requisitions which the regulator of weights and measures is authorized and directed to make, or shall sell by false beams, scales, weights or measures, such person or persons so offending shall, for each and every offense, forfeit and pay the sum of five dollars, which may be sued for and recovered as debts of the like amount are by law recoverable for the use of the poor of the city, district or township, in which such fine shall have been incurred: Provided, that the provisions of the fifth and sixth sections of this act [Repealed] shall not be so construed as to extend to such beams, scales, weights and measures, as shall not be used by the proprietors thereof, for the purpose of buying and selling the same. (Id. § 21559.)

634. **Selling Dry Goods, or Groceries by Short Weight or Measure.**—Whenever any description of manufactured goods, commonly called dry goods or groceries, shall be sold by the piece, in packages, or by weight, and the said pieces or packages shall be marked or represented to contain a certain number of yards, pounds or ounces, and the same shall be sold as containing that number or weight, when in fact the said pieces or packages shall contain a less number of yards, or pounds or ounces than so represented, the seller or manufacturer thereof shall forfeit and pay to the purchaser a sum equal to double the value of the quantity or weight found to be deficient, to be recovered by action of debt, in any court of law, or before any alderman or justice of the peace in this Commonwealth, in the same manner that debts of like amount are now by law recoverable. (Id. § 21560.)

635. **Using False Scales, Etc.**—Any person or persons who shall willfully use and sell by false beams, scales, weights and measures, any article, merchandise, commodity or thing, shall be guilty of a misdemeanor, and on being convicted thereof shall be sentenced to pay a fine not exceeding two hundred dollars and to undergo an imprisonment not exceeding three months, or both or either, at the discretion of the court. (Id. § 21561.)

636. **"Commodity" Defined.**—The word "commodity," as used in this act, shall be taken to mean any tangible personal property sold or offered for sale. (Id. § 21566.)

637. **Manner of Sale of Commodities.**—All liquid commodities, when sold in bulk or from bulk, shall be sold by weight or liquid measure. All dry commodities, when sold in bulk or from bulk, shall be sold by weight, dry measure or numerical count. No dry commodities shall be sold by liquid measure; dry commodities in car load lots may be sold by weight. (Id. § 21567.)

638. **Measures to Have Bottoms.**—It shall be unlawful to use a measure without a bottom in selling any commodity. (Id. § 21568.)

639. **Measures to be Marked as to Capacity; Milk Bottles.**—It shall be unlawful, in selling any commodity, to use any measure unless the same shall have thereon marked in distinct letters and figures the capacity thereof. If such measure be of the capacity of one-half bushel or less, or of one-half gallon or less, it shall be marked in terms of a quart, dry or liquid measure respectively. If the measure be of the capacity of over one-half bushel or one-half gallon it shall be marked in terms of a bushel or gallon, respectively: Provided, that bottles or jars used for the sale of milk or cream shall be regarded and considered as measures within the meaning of this act, and shall be in all respects subject to all rules and regulations heretofore or hereafter made by the Chief of the Pennsylvania Bureau of Standards as to reasonable variations and tolerances. (Id. § 21569.)

640. **Fraud in Sales.**—It shall be unlawful for any person, firm or corporation, with intent to defraud:

(1) To sell, or offer for sale, any commodity on the container of which is marked any false statement respecting the kind, number, quantity, weight, or measure of such commodity, or of any part thereof, or respecting the place or country where such commodity was manufactured or produced, or respecting the quality or grade of such commodity.

(2) To orally or otherwise represent that any commodity offered for sale in bulk, to which no name or trade-mark shall be attached, is the manufacture or production of some other than the actual manufacturer or producer: Provided, that nothing in this act is to be construed as applying to drugs, medicines, chemicals, or pharmaceutical or proprietary preparations used as medicine, nor to toilet preparations. (Id. § 21570.)

641. **Weight of Bushel—Fruits or Vegetables Sold in Standard Containers.**—Whenever any commodity named in this section shall be sold by the bushel, the bushel shall consist of the number of pounds herein stated; and wherever sold in the

subdivisions of the bushel, the number of pounds shall consist of the fractional part of the number of pounds as are herein set forth for the bushel, namely:

Alfalfa seed, sixty pounds.
Apples, forty-five pounds.
Apples, dried, twenty-five pounds.
Barley, forty-eight pounds.
Beans, dried, sixty pounds.
Beans, castor (shelled), forty-six pounds.
Beets, fifty-six pounds.
Blue grass seed, fourteen pounds.
Bran, twenty pounds.
Broom corn seed, fifty pounds.
Buckwheat, forty-eight pounds.
Cabbage, fifty pounds.
Carrots, fifty pounds.
Cement, one hundred pounds.
Charcoal, twenty pounds.
Cherries, with stems, fifty-six pounds.
Cherries, stemmed, sixty-four pounds.
Chestnuts, hulled, fifty pounds.
Clover seed, sixty pounds.
Coal, anthracite, seventy-five pounds.
Coal, bituminous, seventy-six pounds.
Coal, stone, eighty pounds.
Coke, forty pounds.
Corn, shelled, fifty-six pounds.
Corn, ear (husked), seventy pounds.
Corn meal, fifty pounds.
Cranberries, thirty-two pounds.
Cucumbers, forty-eight pounds.
Currants, forty pounds.
Flaxseed, fifty-six pounds.
Gooseberries, forty pounds.
Grapes, forty-eight pounds.
Hair (plastering), eighty pounds.
Hemp seed, forty-four pounds.
Herd's grass, forty-five pounds.
Hickory nuts, fifty pounds.
Hominy, sixty pounds.
Horse radish, fifty pounds.
Hungarian grass seed, fifty pounds.
Kaffir corn, fifty-six pounds.
Lentils, sixty pounds.
Lime, eighty pounds.
Linseed, fifty-six pounds.
Malt, thirty-eight pounds.
Millet, fifty pounds.
Oats, thirty-two pounds.
Onions, fifty pounds.
Onion sets, twenty-eight pounds.
Orchard grass seed, fourteen pounds.
Parsnips, fifty pounds.
Peaches, forty-eight pounds.
Peaches, dried (peeled), thirty-eight pounds.
Peaches, dried (unpeeled), thirty-three pounds.
Peanuts, twenty-two pounds.
Pears, fifty pounds.
Peas, green (unshelled), twenty-eight pounds.
Peas, dried, sixty pounds.
Plums, sixty-four pounds.
Potatoes, sixty pounds.
Potatoes, sweet, fifty-four pounds.
Quinces, forty-eight pounds.
Rape seed, fifty pounds.
Raspberries, forty-eight pounds.
Redtop grass seed, fourteen pounds.
Rice, rough, forty-five pounds.
Rutabagas, sixty pounds.
Rye, fifty-six pounds.
Rye meal, fifty pounds.
Salt (course), eighty-five pounds.
Salt (ground), sixty-two pounds.
Sand, one hundred pounds.
Shorts, twenty pounds.
Sorghum seed, fifty pounds.
Spelt, forty pounds.
Spinach, twelve pounds.
Strawberries, forty-eight pounds.
Timothy grass seed, forty-five pounds.
Tomatoes, fifty-six pounds.
Turnips, fifty-six pounds.
Walnuts (common), fifty pounds.
Wheat, sixty pounds.

Provided, that when any fruits or vegetables named in this section are sold in Pennsylvania standard containers, which are the original packages and are filled in accordance with good commercial practices, such fruits and vegetables shall be exempt from the provisions of this section. (Pa. St. Supp. 1924, § 21571, as amended L. 1925, Act. No. 186.)

642. **Marking Packages.**—If in package form, the quantity of the contents shall be plainly and conspicuously marked on the outside of the package in terms of weight, measure, or numerical count: Provided, however, that reasonable variations shall be permitted; and tolerances and also exemptions as to small packages shall be established by rules and regulations made by the Chief of the Pennsylvania Bureau of Standards. (Pa. St. 1920, § 21572.)

643. **Violations of Act; Penalty.**—Each person, firm, or corporation that shall violate any of the provisions of this act shall be guilty of a misdemeanor, and, upon conviction thereof, before any alderman, magistrate, or justice of the peace of the proper county, for first offense shall be fined not more than twenty-five dollars; upon conviction for the second offense, such person, firm, or corporation shall be fined not less than twenty-five dollars nor more than one hundred dollars; and, upon conviction for the third and each subsequent offense, such person, firm, or corporation shall be fined not less than one hundred dollars nor more than two hundred and fifty dollars. All fines collected under the provisions of this act shall be paid to the treasurer of the respective city or county in which the offense was committed. (Pa. St. Supp. 1924, § 21573.)

644. **Enforcement of Act.**—It shall be the duty of the proper city and county inspectors of weights and measures to enforce the provisions of this act. (Pa. St. 1920, § 21574.)

645. **Time of Taking Effect of Act; Wholesale Jobbers or Commission Merchants Excepted.**—This act shall go into effect the first day of January, one thousand nine hundred and fourteen: Provided, however, that no penalty shall be enforced for any violation of its provisions as to domestic products prepared, or foreign products imported, prior to eighteen months after its passage; and further, that this act shall not apply to the marking of the net quantity of the contents on containers or packages handled, sold, or offered for sale by wholesalers, jobbers, or commission merchants. (Id. § 21575.)

646. **Bread to be Sold by Weight.**—All loaf bread made for sale within this Commonwealth, shall be sold by the pound avoirdupois; and every baker or other person offering the sale [same] for sale, shall keep at his or her house, or at such other place at which he or she shall at any time offer or expose for sale any such bread, sufficient scales and weights, lawfully regulated for the purpose of weighing the same; and if any baker or other person shall . . . sell or offer for sale any loaf bread in any other manner, the contract respecting the same shall be void; and the person offending against this act shall, on conviction, forfeit and pay the sum of ten dollars for every such offense, one-half to the use of the informer, and the other half to the use of this Commonwealth; and it shall be the special duty of the clerk of the market, in any place where such officer is appointed, to discover and prosecute all persons offending against this act. (Id. § 21586.)

647. **Measure of Corn and Salt.**—There [shall] be appointed by the Supreme Executive Council of this Commonwealth some proper and discreet person, to be the measurer of all kinds of corn and salt imported or brought into the port and city of Philadelphia for sale; which officer, before he enters on the duty of the office, shall take and subscribe, before one of the judges of the Court of Common Pleas for the county of Philadelphia, an oath or affirmation that he will in all things well and faithfully execute the office of measurer of corn and salt, within the city and port of Philadelphia, according to the best of his knowledge and ability, and the directions contained in this act. (Id. § 21633.)*

648. **Duties of Measurer.**—The duty of the said officer shall be:

To provide, at his own cost, a sufficient number of barred half-bushel measures for corn, and unbarred half-bushel measures for salt, made of dry, well-seasoned white-oak, and to have the same compared with and regulated by the public standard half-bushel measure, kept in the city of Philadelphia, at least twice in every year that the same shall be used.

To employ a sufficient number of able-bodied and trusty persons to act as his deputies, in the measuring and striking all kinds of corn and salt, which shall be imported and brought into the city or port of Philadelphia for sale; which deputies, before they shall take upon themselves to measure any corn or salt, shall take and subscribe, before one of the said judges, the like oath or affirmation hereinbefore mentioned.

The said officer shall, upon notice to him given in writing, that any ship, shallop or vessel, boat, cart or wagon, hath imported or brought into the city or port any corn or salt, and that the same is sold and ready to be delivered to the purchaser, send one or more of his deputies, within two hours, to measure the same; which deputy or deputies, taking with them a sufficient number of the said half-bushel measures, therewith shall well and faithfully measure the same, and forthwith deliver to the seller an account of the number of bushels by him measured and delivered, and a duplicate thereof to the buyer; and shall every day, on which he shall measure any corn or salt, return to the said officer an account of the whole quantity by him measured, which the name of the seller and buyer, and the ship, vessel, boat, cart or wagon from which the same was delivered.

The officer shall keep a fair book, in which he shall register the date, names of the sellers and buyers, the quantity and species of the corn and salt measured; which book shall be open for the inspection of the sellers and buyers, at any time when they shall have occasion to refer to the same. (Id. § 21634.)

649. **Account of Grain Weighed to be Kept.**—The head measurer and his deputies, when weighing grain, shall keep true and accurate accounts of the same, and furnish to buyer and seller a certificate of the weight; and whenever their services may be required by buyer or seller, to weigh grain, the charges therefor shall be no greater than for measuring; and for all grain that a deputy may either measure or weigh, he shall make return to the head measurer. (Id. § 21635.)

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*All the powers of the Executive Council were vested in the Governor by the Act of 1794, April 22, 3 Sm. L. 185, . . . (Compiler's note.)

650. Limitation on Application of Law.—Nothing in this act contained shall extend, or be construed to extend to any retailers of corn or salt, in or out of any store or the public market places in the city, township or district aforesaid, nor to entitle the said officer to the reward aforesaid, upon any corn or salt which has once been measured in manner aforesaid, and delivered into any store, warehouse or granary in the said city, township or district. (Id. § 21636.)

651. Removal of Deputy by Justices.—[Upon complaint made by any two dealers in corn or salt, dwelling in the city of Philadelphia, the township of the Northern Liberties, or district of Southwark], to be made to two of the justices of the Court of Common Pleas for the county of Philadelphia, that any of the deputies of the said officer has misbehaved himself, or neglected his duty, the said two justices shall . . . summon the party complained of, and if they see cause, deprive him of the office of deputy measurer, after which he shall not be qualified to measure any grain or salt bought or sold within this city or port. (Id. § 21637.)

652. Removal of Deputies by Measurer.—Upon complaint made to the said measurer, by any two citizens of this Commonwealth, that any of his deputies have misbehaved themselves in the performance of their duties, or have neglected the same, and if he shall find the said complaint to be true, he shall remove such deputy measurer from office. (Id. § 21638.)

653. Penalty for Acting After Removal.—The measurer of all kinds of corn and salt, imported or brought into the port of Philadelphia for sale, shall have full power and authority to remove any deputy measurer, and appoint another or others, from time to time, as he may deem necessary; and if any deputy or deputies, after such removal, shall measure any grain, seed, salt or coal, contrary to the meaning of this act, he shall, for every such offence, forfeit and pay a fine of fifty dollars, to be recovered in the same manner that any other debt is by law recoverable. (Id. § 21639.)

654. Fees of Measurer.—The fees to be received by the measurer of grain or his deputies for the port and city of Philadelphia, shall be forty cents for every one hundred bushels of grain of whatever description, including flaxseed, beans and peas, which he or they shall measure, and keep an account of, agreeably to law, and the provisions of any act so far as they are altered or supplied by this act are hereby repealed. (Id. § 21640.)

655. Weight of Salt Per Bushel.—Each and every bushel of foreign salt shall be bought and sold by weight per bushel in the manner following, to-wit: The weight of each bushel of coarse salt shall be eighty-five pounds, each bushel of ground salt seventy pounds, and each bushel of fine salt sixty-two pounds: Provided, nevertheless, that nothing herein contained shall be so construed as to prevent any person or persons from selling or buying the several kinds of salt aforesaid by measure. (Id. § 21655.)

656. Weight Per Barrel.—All salt manufactured by evaporation, within the limits of this Commonwealth, and put in packages purporting to be a barrel, said package shall contain two hundred and eighty (280) pounds of salt, and this exclusive of the weight of the package. (Id. § 21656.)

657. Fees for Measuring.—By the measurer of corn and salt: In performing the duties enjoined upon him by law, for every one hundred bushels of corn and salt, seven cents.

By the deputies of the said measurer, for every one hundred bushels of corn which they shall measure and keep an account of agreeably to law, fifteen cents.

And for every hundred bushels of salt which they shall measure and keep an account of, ten cents. (Id. § 21657.)

658. Fees for Measuring Corn and Salt.—The fee to be received . . . by the measurer of corn and salt:

In performing the duties enjoined upon him by law, for every one hundred bushels of corn and salt ..... .07

By the deputies of the said measurer, for every one hundred bushels of corn which they shall measure and keep an account of agreeably to law ..... .15

And for every one hundred bushels of salt which they shall measure and keep an account of ..... .10

(Id. § 10684.)

659. Fees for Measuring Grain.—The fees to be received by the measurer of grain or his deputies for the port and city of Philadelphia, shall be forty cents for every one hundred bushels of grain of whatever description, including flaxseed, beans, and peas, which he or they shall measure and keep an account of, agreeably to law, and the provisions of any act, so far as they are altered or supplied by this act, are hereby repealed. (Id. § 10685.)

660. Fees of Regulator of Weights and Measures.—The fees hereafter to be paid for the trial or adjusting every platform scale, which draws five hundred pounds

or under, shall be one dollar, and additional sum of ten cents for every one hundred pounds over five hundred pounds, and not exceeding two thousand pounds: Provided, always, for the sealing of such scales as have been sealed, the previous year, as are or shall be correct, he shall demand only one-half the aforesaid fees. (Id. § 10692.)

661. In Philadelphia.—All the requirements and provisions contained in the third section [10692] of the act of the 11th day of March, 1840, fixing the fees for adjusting and sealing platform scales, be and the same [are] hereby extended and applied to all beam or patent balances, in the city and county of Philadelphia. (Id. § 10693.)

NOTE: See also Nos. 30 et seq., 38 et seq., 84f, 104 et seq., 284 et seq., and 339 et seq.

PART V.

Cases.

1. General Food and Drug Law.

Act of May 4, 1889, Relating to Sale of Provisions by Description: Satterfield v. Hayes, 27 Pa. C. C. 439 (1903); *Weiss v. Swift & Co., 36 Pa. Super. Ct. 376 (1908).

Act of June 26, 1895—Prohibits Addition to Food of Any Foreign Substance Poisonous or Injurious to Health, Regardless of Quantity Added or Whether It Was Sufficient to Make the Food Poisonous or Injurious to Health: *Commonwealth v. Kevin, 202 Pa. 23, 51 Atl. 594, 90 Am. St. Rep. 613 (1902), affirming Same, 18 Pa. Super. Ct. 414, 4 J. P. 140 (1901).

Act of June 18, 1897—Repeals Acts of June 11, 1891, and June 26, 1895: Commonwealth v. Brown, 20 Pa. C. C. 139, 7 Pa. Dist. 117 (1897).

Acts of May 29, 1901 and March 31, 1860—Fines and Penalties: Commonwealth v. Faulkner, 32 Pa. C. C. 574 (1906).

Act of June 1, 1907—Appeal from Judgment by Justice of Peace: *Commonwealth v. Kephart, 39 Pa. Super. Ct. 524 (1909), affirming *Same, 35 Pa. C. C. 337, 17 Pa. Dist. 1051, 56 Pitts. Leg. J. 147 (1908).

Act of June 1, 1907—Imprisonment for Non-payment of Penalty: Pure Food Penalties, 34 Pa. C. C. 349, 55 Pitts. Leg. J. 240, 10 Dauphin 245 (1907).

Act of June 1, 1907—Repeals Lard Act of June 8, 1891: Commonwealth v. Alleva, 35 Pa. C. C. 171, 24 Montg. 128 (1908).

Addition of Poisonous or Injurious Substance to Food——Power to Prohibit: *Commonwealth v. Kevin, 202 Pa. 23, 51 Atl. 594, 90 Am. St. Rep. 613 (1902), affirming Same, 18 Pa. Super. Ct. 414, 4 J. P. 140 (1901).

Adulteration—Defined: *Commonwealth v. Hartman, 19 Pa. C. C. 97, 6 Pa. Dist. 136 (1897).

Agency or Employment—No Defense: Commonwealth v. Kolb et al., 13 Pa. Super. Ct. 347 (1900).

Baking Powder: Commonwealth v. Gross, 13 Dauphin 100 (1910).

Boric Acid—In Canning Compound: *Commonwealth v. Fulton, 263 Pa. 332, 106 Atl. 636 (1919), affirming *Same, 70 Pa. Super. Ct. 95 (1918).

Boric Acid—In Dried Fish: Food Control Act, 27 Pa. Dist. 184 (1917).

Butter—Excessive Water: Commonwealth v. Kiefer, 78 Pa. Super. Ct. 460 (1922), affirming Same, 30 Pa. Dist. 1031, 13 Berks 229 (1921).

Candy: Pure Food Law, 23 Dauphin 359 (1920).

Canning Compound—Containing Boric Acid: *Commonwealth v. Fulton, 263 Pa. 332, 106 Atl. 636 (1919), affirming *Same, 70 Pa. Super. Ct. 95 (1918).

Catsup: Catsup Bottles, 44 Pa. C. C. 180, 25 Pa. Dist. 350, 19 Dauphin 113 (1915).

Coffee—Not Within Act of May 13, 1909: Commonwealth v. Einhorn, 43 Pa. C. C. 445, 24 Pa. Dist. 708 (1914).

Coffee Compound—Adulterated: Stephens & Widlar, 5 Pa. Dist. 104 (1896).

Compound, Imitation or Blend—Law Construed: Stephens & Widlar, 5 Pa. Dist. 104 (1896); *Commonwealth v. Wickert, 19 Pa. C. C. 251, 6 Pa. Dist. 387, 5 North. 387 (1897); Commonwealth v. Chickerina, 18 Pa. Dist. 96, 24 Montgomery 102 (1908).

Confectionery—Containing Sulphur Dioxide: *Commonwealth v. Pflaum, 236 Pa. 294, 84 Atl. 842, Ann. Cas. 1913 E, 1287 (1912), affirming *Same, 50 Pa. Super. Ct. 55 (1912).

Constitutional Law—Drug Act of May 25, 1897: *Commonwealth v. Costello and Marshall, 18 Pa. Dist. 1067 (1909).

Constitutional Law—Drug Act of May 8, 1909: *Commonwealth v. Sweeney, 61 Pa. Super. Ct. 367 (1915).

Constitutional Law—Act of May 4, 1889, Relating to Sale of Provisions by Description: *Weiss v. Swift & Co., 36 Pa. Super. Ct. 376 (1908).

Constitutional Law—Food Act of June 26, 1895: *Commonwealth v. Curry, 4 Pa. Super. Ct. 356 (1897), reversing *Same, 18 Pa. C. C. 513, 6 Pa. Dist. 143, 40 W. N. C. 369 (1897); *Commonwealth v. Hartman, 19 Pa. C. C. 97, 6 Pa. Dist. 136 (1897); *Commonwealth v. Wickert, 19 Pa. C. C. 251, 6 Pa. Dist. 387, 5 North. 387 (1897); *Commonwealth v. Kevin, 202 Pa. 23, 51 Atl. 594, 90 Am. St. Rep. 613 (1902), affirming Same, 18 Pa. Super. Ct. 414, 4 J. P. 140 (1901); *Pure Food v. Preserved Meat, 27 Pa. C. C. 33, 11 Pa. Dist. 423 (1902); *Commonwealth v. Wilson, 9 Delaware 357 (1904); *Commonwealth v. Arow, 32 Pa. Super. Ct. 1 (1906).

Constitutional Law—Food Act of June 26, 1895—Invalid, as Applied to Drinks: *Commonwealth v. Kebort, 212 Pa. 289, 61 Atl. 895 (1905), reversing *Same, 26 Pa. Super. Ct. 584 (1904), which reversed *Same, 30 Pa. C. C. 164, 13 Pa. Dist. 677, 52 Pitts. Leg. J. 182 (1904); *Commonwealth v. Pfoutz, 22 Lancaster 102 (1905). See also: *Liquor Food Fines, 31 Pa. C. C. 244, 14 Pa. Dist. 698, 8 Dauphin 120 (1905).

Constitutional Law—Food Act of June 1, 1907: *Commonwealth v. Dougherty, 39 Pa. Super. Ct. 338 (1909); *Commonwealth v. Kephart, 35 Pa. C. C. 337, 17 Pa. Dist. 1051, 56 Pitts. Leg. J. 147 (1908), affirmed in *Same, 39 Pa. Super. Ct. 524 (1909).

Constitutional Law—Food Act of May 13, 1909: *Commonwealth v. Pflaum, 236 Pa. 294, 84 Atl. 842, Ann. Cas. 1913 E, 1287 (1912), affirming *Same, 50 Pa. Super. Ct. 55 (1912); *Commonwealth v. Fulton, 263 Pa. 332, 106 Atl. 636 (1919), affirming *Same, 70 Pa. Super. Ct. 95 (1918).

Contract for Sale of Misbranded Drugs—Court Will Not Enforce it: Digestive Ferments Co. v. American Chemical Laboratories, 80 Pa. Super. Ct. 373 (1923).

Costs—Prosecutions Under Food Law: Costs in Prosecutions Under Pure Food Laws, 8 Dauphin 191 (1905).

Cotton Seed Oil—Labeled "Olive Oil"—Adulterated: *Commonwealth v. Curry, 4 Pa. Super. Ct. 356 (1897), reversing *Same, 18 Pa. C. C. 513, 6 Pa. Dist. 143, 40 W. N. C. 369 (1897).

Dairy and Food Bureau—Compensation of Special Agents When Prosecutors or Witnesses: In re Compensation of Special Agents When Prosecutors or Witnesses, 61 Pitts. Leg. J. 592 (1913).

Dairy and Food Commissioner: *Commonwealth v. Spencer, 28 Pa. Super. Ct. 301 (1905); *Commonwealth v. Arow, 32 Pa. Super. Ct. 1 (1906); Brown et al. v. Dairy and Food Commissioner, 15 Pa. Dist. 829 (1906); *Dairy and Food Commissioner's Office, 32 Pa. C. C. 520 (1906); *Commonwealth ex rel. v. Warren, 217 Pa. 163, 66 Atl. 322 (1907); *Commonwealth v. Hanley, 38 Pa. Super. Ct. 430 (1909).

Drug Law—"Alcoholic Iiodine"—Adulterated: Drugs, 23 Dauphin 38 (1920).

Drug Law—Enforcement: Climax Picnic Ginger, 30 Pa. C. C. 78 (1904).

Drug Law—Pharmacopœia, Formulary, Dispensatory—Law Refers to Editions in Existence When It Was Enacted: *Commonwealth v. Costello and Marshall, 18 Pa. Dist. 1067 (1909). See also: Adulteration of Drugs, 9 Dauphin 215 (1906).

Fish—Boric Acid In Dried Fish: Food Control Act, 27 Pa. Dist. 184 (1917).

Food—Defined: Commonwealth v. Hufnal, 185 Pa. 376, 39 Atl. 1052, 42 W. N. C. 78 (1898), reversing Same, 4 Pa. Super. Ct. 301, 40 W. N. C. 360 (1897).

Food—Defined—Does Not Include Drink: *Commonwealth v. Kebort, 212 Pa. 289, 61 Atl. 895 (1905), reversing *Same, 26 Pa. Super. Ct. 584 (1904), which reversed *Same, 30 Pa. C. C. 164, 13 Pa. Dist. 677, 52 Pitts. Leg. J. 182 (1904); Pure Food Laws, 8 Dauphin 125, 52 Pitts. Leg. J. 84 (1905); *Commonwealth v. Pfoutz, 22 Lancaster 102 (1905); Commonwealth v. Einhorn, 43 Pa. C. C. 445, 24 Pa. Dist. 708 (1914).

Food—Defined—Includes Baking Powder: Commonwealth v. Gross, 13 Dauphin 100 (1910).

Food—Defined—Includes Butter: Commonwealth v. Kiefer, 78 Pa. Super. Ct. 460 (1922), affirming Same, 30 Pa. Dist. 1031, 13 Berks 229 (1921).

Food—Defined—Includes Candy: Pure Food Law, 23 Dauphin 359 (1920).

Food—Defined—Includes Milk: *Commonwealth v. Hartman, 19 Pa. C. C. 97, 6 Pa. Dist. 136 (1897); *Commonwealth v. Wilson, 9 Del. 357 (1904); Pure Food Laws, 8 Dauphin 125, 52 Pitts. Leg. J. 84 (1905).

Forging Name of Chief Health Officer in Letter Recommending a Disinfectant, With Intent to Defraud: Commonwealth v. Moore, 27 Lancaster 389 (1910).

Good Character—No Defense in Fact of Habitual Violation of Law: Commonwealth v. Kolb et al., 13 Pa. Super. Ct. 347 (1900).

Guaranty Under Food Law: Commonwealth v. Chickerina, 18 Pa. Dist. 96, 24 Montgomery 102 (1908); *Commonwealth v. Dougherty, 39 Pa. Super. Ct. 338 (1909); *Commonwealth v. Pflaum, 236 Pa. 294, 84 Atl. 842, Ann. Cas. 1913 E, 1287 (1912), affirming *Same, 50 Pa. Super. Ct. 55 (1912).

Indictment—Sufficiency: Commonwealth v. Kolb et al., 13 Pa. Super. Ct. 347 (1900); *Commonwealth v. Arow, 32 Pa. Super. Ct. 1 (1906); Commonwealth v. Young, 39 Pa. C. C. 73, 21 Pa. Dist. 548 (1911).

Interstate Commerce: Catsup Bottles, 44 Pa. C. C. 180, 25 Pa. Dist. 350, 19 Dauphin 113 (1915); Commonwealth v. Kerr, 49 Pa. C. C. 85, 29 Pa. Dist. 896, 68 Pitts Leg. J. 278 (1920).

Magistrate's Judgment Under Food Law—Not in Due Form: Commonwealth v. Foulkrod, 17 Pa. Dist, 360 (1908).

Milk—Act of June 1, 1907, Does Not Apply To It: Commonwealth v. Foulkrod, 17 Pa. Dist. 360 (1908).

Oleomargarine: Commonwealth v. Kolb et al., 13 Pa. Super. Ct. 347 (1900).

Preserved Meat: *Pure Food v. Preserved Meat, 27 Pa. C. C. 33, 11 Pa. Dist. 423 (1902).

Sale of Adulterated Food—Action to Recover Price: Jennings et al. v. Gratz, 3 Rawle 168 (1831).

Sale of Adulterated Food by Federal Officers—Not An Offense: Pure Food Law, 23 Dauphin 359 (1920).

Sale of Adulterated Food Upon Notice of Its Adulteration—An Offense: Pure Food Law, 23 Dauphin 359 (1920).

Salicylic Acid—Added to Food: *Commonwealth v. Kevin, 202 Pa. 23, 51 Atl. 594, 90 Am. St. Rep. 613 (1902), affirming Same, 18 Pa. Super. Ct. 414, 4 J. P. 140 (1901).

Sample—Food Law: Commonwealth v. Koller et al., Mss. case decided in Quarter Sessions of Blair County (1909).

Skimmed Milk—Not Offense to Sell as "Skimmed Milk" Milk From Which Cream Has Been Taken by Centrifugal Process: Commonwealth v. Hufnal, 185 Pa. 376, 39 Atl. 1052, 42 W. N. C. 78 (1898), reversing Same, 4 Pa. Super. Ct. 301, 40 W. N. C. 360 (1897).

State Laboratory: State Laboratory, 29 Pa. C. C. 251 (1904).

Sulphur Dioxide—Added to Confectionery: *Commonwealth v. Pflaum, 236 Pa. 294, 84 Atl. 842, Ann. Cas. 1913 E, 1287 (1912), affirming *Same, 50 Pa. Super. Ct. 55 (1912).

Walnuts: Commonwealth v. Ferry, 21 Pa. Dist. 541 (1912).

2. Special Food Laws.

Bakeries: Commonwealth v. Seemiller, Public Ledger of Phila., August 17, 1897 (1897).

Bakeries—Nuisance: Takach v. Schulze et al., 69 Pitts. Leg. J. 459 (1921); Coombs v. March, 7 Pa. Dist. & C. 791, 22 Sch. 116 (1926).

Bakers—License: Mt. Joy Boro. v. King & Co., 6 Lanc. Rev. 345 (1889); Mt. Joy Boro. v. Hartman, 8 Lanc. Rev. 242 (1891); Meuschke's Appeal, 43 Pitts. Leg. J. 342 (1896).

Beverages—Adulteration: Myers et al. v. Kahn, 1 W. N. C. 106 (1874); Freiberg v. Kahn, 1 W. N. C. 221 (1875); M'Glinn v. Carrigan, 2 W. N. C. 323 (1876); Glenn v. Keenan, 9 W. N. C. 170 (1880); Clohessy v. Roedelheim, Bing & Co., 99 Pa. 56 (1881); Reid & Co. v. Dearie, 2 Kulp 20 (1882); Rothschild Bros. v. McGrath, 2 Kulp 104 (1882); Rheinstrom v. Wolf, 26 Pa. Super. Ct. 559 (1904); Spellman v. Kelly, 27 Pa. Super. Ct. 39 (1904), affirming Spellman & Co. v. Kelly, 30 Pa. C. C. 395, 13 Pa. Dist. 393 (1904); Adulterated Liquor Prosecutions, 31 Pa. C. C. 260, 8 Dauphin 125 (1905).

Beverages—Container Protection Law: Commonwealth v. Gillingham, 6 Phila. 321, 24 Leg. Int. 244, 1 Brewster 396 (1867); O'Malin v. Commonwealth, 4 C. P. Rep. 172 (1887); Bottle Descriptions, 39 Pa. C. C. 534 (1911); *Commonwealth v. Bargono, 56 Pa. Super. Ct. 637 (1914), affirming *Same, 23 Pa. Dist. 635, 12 Del. 414 (1913); *Commonwealth v. Declimendo, 56 Pa. Super. Ct. 643 (1914); *Commonwealth v. Bottari, 56 Pa. Super. Ct. 644 (1914); *Commonwealth v. Falconi,

56 Pa. Super. Ct. 644 (1914); *Commonwealth v. Archino, 56 Pa. Super. Ct. 645 (1914); Charles E. Hires Co. v. Reuwer, 20 Dauphin 217 (1917); Commonwealth v. Rudy, 3 Pa. Dist. & C. 383 (1923). See also: *Milk— Container Protection Law.*

Beverages—Distilled Spirits—Inspection: Commonwealth v. Giltinan, 64 Pa. 100 (1870).

Beverages—Fruit Juices: Commonwealth v. Baldassari, 4 Pa. Dist. & C. 657 (1923).

Beverages—Jamaica Ginger: *Vigliotti v. Commonwealth of Pennsylvania, 258 U. S. 403, 42 S. Ct. 330, 66 L. Ed. 686 (1922), affirming *Commonwealth v. Vigliotti et al., 271 Pa. 10, 115 Atl. 20 (1921), which affirmed *Commonwealth v. Vigliotti (No. 1), 75 Pa. Super. Ct. 366 (1921), *Commonwealth v. Vigliotti (No. 2), 75 Pa. Super. Ct. 381 (1921), *Commonwealth v. Williams, 75 Pa. Super. Ct. 382 (1921), Commonwealth v. Krizon, 75 Pa. Super. Ct. 383 (1921), Commonwealth v. Mondalek, 75 Pa. Super. Ct. 384 (1921), Commonwealth v. Saab, 75 Pa. Super. Ct. 386 (1921), Commonwealth v. Esper, 75 Pa. Super. Ct. 388 (1921).

Beverages—Non-Alcoholic Beverage Law—Application: Commonwealth v. Piagge, 25 Pa. Dist. 770, 30 York 16, 8 Berks 98 (1916); Commonwealth v. Hollister, 49 Pa. C. C. 142, 30 Pa. Dist. 13 (1920); Virginia Wine Case, 49 Pa. C. C. 194, 29 Pa. Dist. 166 (1920).

Beverages—Non-Alcoholic Beverage Law—Application to Ginger Ale: In re Ginger Ale, 6 Pa. Dist. & C. 586, 73 Pitts. Leg. J. 877 (1925).

Bread—Weight: Johnson v. Kolb, 3 W. N. C. 273 (1877); Commonwealth v. Oglesby, 23 Pa. Dist. 979, 32 Lanc. Law Rev. 26 (1914); Commodities Act, 1 Pa. Dist. & C. 370 (1921).

Butter—Renovated Butter: *Commonwealth v. Seiler, 20 Pa. Super. Ct. 260 (1902); Renovated Butter Licenses, 29 Pa. C. C. 112, 13 Pa. Dist. 512 (1903); Commonwealth v. Nice, 29 Pa. C. C. 607, 13 Pa. Dist. 309, 5 Lack. Jur. 148 (1904).

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Meat—Action for Slander: Leitz v. Hohman, 16 Pa. Super. Ct. 276, 16 Lanc. Rev. 409 (1901).

Meat—Butcher Shop—Offensive Business: Faeet et al. v. Fisher, 32 Montgomery 41 (1916).

Meat—Diseased: Commonwealth v. Horn, 2 Pa. Dist. 487, 13 Pa. C. C. 164 (1893).

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Hertzler, 27 Lanc. L. Rev. 43 (1903); Commonwealth v. Brodie, 25 Pa. Dist. 997 (1916); Baeder v. Board of Health, 27 Pa. Dist. 281 (1918); Commonwealth v. Brann, 78 Pa. Super. Ct. 345 (1922); *Same, 81 Pa. Super. Ct. 38 (1923).

Meat—Weight and Measure Marking Act of July 24, 1913, Does Not Apply to Wrapped Ham, Etc.: Sales Per Package, 24 Pa. Dist. 671, 63 Pitts. Leg. J. 378 (1915).

Milk—Act of May 25, 1878—Valid: *Commonwealth v. Hough, 1 Pa. Dist. 51 (1892).

Milk—"Adulterated Milk"—Meaning: *Commonwealth v. Hough, 1 Pa. Dist. 51 (1892).

Milk—Adulteration—Affidavit as to Purity: Commonwealth v. Schatz, 14 Del. 397 (1917).

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Milk—Evidence: *Commonwealth v. Hough, 1 Pa. Dist. 51 (1892); Commonwealth v. Darlington, 9 Pa. Dist. 700 (1900).

Milk—Indictment—Sufficiency: *Commonwealth v. Wilson, 9 Del. 357 (1904).

Milk—Inspection: *Reading City v. Miller, 45 Pa. Super. Ct. 28 (1910), affirming *Same, 37 Pa. C. C. 617, 3 Berks 59 (1910); *Hill v. Fetherolf, 236 Pa. 70, 84 Atl. 677 (1912), affirming *Same, 4 Berks 69 (1911); *Commonwealth v. Bracony, 17 Dauphin 25 (1912).

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Milk—Is Food Within Act of July 22, 1913, the Cattle Quarantine Law: Commonwealth v. Bomberger, 44 Pac. C. C. 673, 26 Pa. Dist. 841, 19 Dauphin 426 (1916).

Milk—Jurisdiction of Justice of Peace: Commonwealth, ex rel., Leslie v. May, 24 Pa. C. C. 546 (1900).

Milk—Lactometer Test: See Commonwealth v. Darlington, 9 Pa. Dist. 700 (1900).

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Milk—License and Registration Fee: *Lancaster, ex rel., Board of Health v. Reese, 14 Pa. Dist. 447 (1904).

Milk—Mercantile License Tax: Commonwealth v. Abbott's Alderney Dairies, 62 Pa. Super. Ct. 451 (1916), affirming Same, 24 Pa. Dist. 576 (1915).

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Pa. 247, 21 Atl. 10, 11 L. R. A. 530, 27 W. N. C. 182, 23 Am. St. Rep. 182, 48 Leg. Int. 243, 38 Pitts. Leg. J. 271 (1891); Braunn & Fitts v. Keally, 146 Pa. 519, 30 W. N. C. 447, 23 Atl. 389, 28 Am. St. Rep. 811 (1892); Commonwealth v. Reiser, 147 Pa. 342, 23 Atl. 454 (1892); *Commonwealth v. Paul, 148 Pa. 559, 24 Atl. 78 (1892); Commonwealth v. Blossom, 12 Pa. C. C. 580 (1892); Hess, Ritchie & Co. v. Monier et al., 1 Pa. Dist. 606, 40 Pitts. Leg. J. 44 (1892); *Commonwealth v. Shirley, 15 Pa. 170, 25 Atl. 819, 31 W. N. C. 397, 40 Pitts. Leg. J. 465 (1893); Commonwealth v. Roberts, 152 Pa. 174, 25 Atl. 820 (1893); Commonwealth v. Staving et al., 152 Pa. 176, 25 Atl. 822 (1893); Commonwealth for use, etc., v. Schollenberger, 12 Pa. C. C. 170, 1 Pa. Dist. 437 (1892), affirmed in Commonwealth v. Schollenberger, 153 Pa. 625, 25 Atl. 999 (1893); Commonwealth v. Madden, 153 Pa. 627, 25 Atl. 896 (1893); Commonwealth for use, etc., v. Callahan, 12 Pa. C. C. 170, 1 Pa. 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Andrews, 211 Pa. 110, 60 Atl. 554 (1905), affirming *Same, 24 Pa. Super. Ct. 571 (1904); *Commonwealth v. Caulfield, 211 Pa. 644, 61 Atl. 243 (1905), affirming *Same, 27 Pa. Super. Ct. 279 (1905); Commonwealth v. Mellet, 27 Pa. Super. Ct. 41 (1905); *Commonwealth v. Brady, 14 Pa. Dist. 883 (1905); Commonwealth v. Henderson, 31 Pa. Super. Ct. 383 (1906); Commonwealth v. Faulkner, 34 Pa. C. C. 344, 15 Pa. Dist. 708 (1906); Judicial Oleo Sales, 33 Pa. C. C. 577, 10 Dauphin 135 (1907); Tinted Oleo, 34 Pa. C. C. 661 (1908); *Commonwealth v. McDermott (No. 1), 224 Pa. 362, 73 Alt. 427 (1908), affirming *Commonwealth v. McDermott (No. 2), 37 Pa. Super. Ct. 19 (1908); *Commonwealth v. McDermott (No. 2), 224 Pa. 363, 73 Atl. 427, 24 L. R. A. (N. S.) 431 (1908), reversing *Commonwealth v. McDermott (No. 1), 37 Pa. Super. Ct. 1 (1908), which affirmed Same, 55 Pitts. Leg. J. 252 (1908); Oleomargarine Fines, 36 Pa. C. C. 286, 12 Dauphin 127 (1909); License Violations, 19 Pa. Dist. 927, 37 Pa. C. 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Pharmacy: Commonwealth v. Johnson, 144 Pa. 377, 22 Atl. 703 (1891); *Commonwealth v. Zacharias, 181 Pa. 126, 37 Atl. 185, 40 W. N. C. 169 (1897), affirming *Same, 3 Pa. Super. Ct. 264, 39 W. N. C. 406 (1897), which reversed *Same, 5

Pa. Dist. 475 (1896); Pharmaceutical Certificates, 33 Pa. C. C. 142, 10 Dauphin 11 (1906); Hospital Pharmacists, 35 Pa. C. C. 328, 11 Dauphin 194 (1908); Philadelphia Pharmacists, 35 Pa. C. C. 399 (1908); Raines' Case, 38 Pa. C. C. 233, 20 Pa. Dist. 257, 13 Dauphin 310 (1910); Retail Drug Licenses, 20 Dauphin 93 (1917); Registration of Pharmacists, 24 Dauphin 230 (1921). See also: Davenport's Estate, 4 Kulp 231 (1887); Commonwealth v. Johnston, 2 Pa. Super. Ct. 317 (1896); Same, 5 Pa. Super. Ct. 585 (1897).

Pharmacy—Druggist's Contract With Physician Not Unlawful: Davenport's Estate, 4 Kulp 231 (1887).

Poisons: Commonwealth, ex rel., Mengle v. Sheriff, 16 Phila. 518, 41 Leg. Int. 366 (1884); *Commonwealth v. Yealy, 21 Pa. Dist. 543 (1912).

Poisons—Phosphorus Matches: Phosphorus Matches, 39 Pa. C. C. 425, 21 Pa. Dist. 554, 15 Dauphin 215 (1912).

Venereal Disease Drugs: Theel v. Commonwealth, 9 Sadler 263, 12 Atl. 148, 35 Pitts. Leg. J. 399, 22 W. N. C. 58 (1888); *Commonwealth v. Redmond, 30 Pa. Dist. 470, 13 Berks 64, 2 Erie L. J. 207 (1920); Illegal Advertisements, 8 Pa. Dist. & C. 555, 74 Pitts. 823 (1926). See also: Revocation of Physician's License, 2 Pa. Dist. & C. 339 (1922); Allison's and Miller's Appeal, 86 Pa. Super. Ct. 451 (1925).

4. Civil Action to Recover Damages for Injury Alleged to Have Been Caused by Consumption or Use of Product.

Can (Molasses)—Explosion: McSorley v. Katz, 53 Pa. Super. Ct. 243 (1913).

Carbonic Acid Gas—Explosion of Cylinder: Kilbride v. Carbon Dioxide & Magnesia Co., 201 Pa. 552, 51 Atl. 347, 88 Am. St. Rep. 829 (1902).

Drugs: West v. Emanuel, 198 Pa. 180, 47 Atl. 965, 53 L. R. A. 329 (1901); Butterfield v. Snellenburg et al., 231 Pa. 88, 79 Atl. 980 (1911); McIlvaine v. Lutz, 57 Pa. Super. Ct. 527 (1914).

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Food: Catani v. Swift & Co., 251 Pa. 52, 95 Atl. 52, L. R. A. 1917 B, 1272, 14 Pa. J. L. R. 57 (1915), reversing Same, 17 Luz. Rep. 181 (1914), writ of error dismissed in Swift & Co. v. Catani, 241 U. S. 690, 36 S. Ct. 554, 60 L. Ed. 1238 (1916); Tavani v. Swift & Co., 262 Pa. 184, 105 Atl. 55 (1918). See also: McNaughton v. Joy, 1 W. N. C. 470 (1875); Ryan v. Ulmer, 108 Pa. 332, 16 W. N. C. 121, 56 Am. Rep. 210 (1885); Ulmer v. Ryan et al., 137 Pa. 309, 20 Atl. 705 (1890); Tete Bros. v. Eshler, 11 Pa. Super. Ct. 224 (1899); Satterfield v. Hayes, 27 Pa. C. C. 439, 12 Pa. Dist. 723 (1903); *Weiss v. Swift & Co., 36 Pa. Super. Ct. 376 (1908).

Hair Tonic: Henigin v. Cruzan, 71 Pitts. Leg. J. 493 (1922).

Horse Medicine—Intravenous Injection of Nuclein: Young v. Parke, Davis & Co., Inc., 49 Pa. Super. Ct. 29 (1912).

Horse Medicine—Linseed Oil: Strawbridge v. Hawthorne, 47 Pa. Super. Ct. 647 (1911), reversing Same, 38 Pa. C. C. 444, 58 Pitts. Leg. J. 223 (1910).

Linseed Oil: See Bihn & Co. v. Worrall, 4 Lanc. Law Rev. 194 (1887).

Shoes: Checchio v. S. Goldman Sons, 8 Pa. Dist. & C. 1 (1926).

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Whiskey: Dolan v. Burke, 89 Pa. Super. Ct. 295 (1926).

5. Miscellaneous.

Cigarettes—Sale to Minors: Commonwealth v. Feldser, 25 Pa. C. C. 243 (1898).

False Advertising: Commonwealth, ex rel., Cunningham v. Dean, 30 Pa. Dist. 563 (1921). See also: Commonwealth v. Kronberg (No. 1), 37 Lanc. Law Rev. 433 (1920); Commonwealth v. Kronberg (No. 2), 37 Lanc. Law Rev. 434 (1920).

Flag Desecration: Commonwealth v. George et al., 46 Pa. C. C. 296, 27 Pa. Dist. 845, 21 Dauphin 48, 66 Pitts. Leg. J. 702 (1918).

Gift Enterprise: Commonwealth, ex rel., Peaslee v. Sheriff, 10 Phila. 203, 6 Leg. Gaz. 51, 31 Leg. Int. 33 (1874); *Commonwealth v. Moorhead, 7 Pa. C. C. 513 (1890); Commonwealth v. Painter, 15 Pa. Dist. 491 (1906); *Commonwealth v. Mutual Union Brewing Co., 252 Pa. 168, 97 Atl. 206 (1916), affirming *Same, 58 Pa. Super. Ct. 647 (1915), which reversed *Same, 42 Pa. C. C. 433, 24 Pa. Dist. 353 (1914).

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Clyde et al., 9 Phila. 513, 29 Leg. Int. 172 (1872); Morse v. Worrell, 10 Phila. 168, 31 Leg. Int. 380, 1 W. N. C. 80 (1874); McNair et al. v. Cleave et al., 10 Phila. 155, 6 Leg. Gaz. 211, 31 Leg. Int. 212 (1874); Glendon Iron Co. v. Uhler & Fulmer, 75 Pa. 467, 15 Am. Rep. 599, 31 Leg. Int. 252, 22 Pitts. Leg. J. 1, 2 Foster 191 (1874); Sawyer v. Meyer et al., 2 W. N. C. 197 (1875); Morse v. Conwell, 2 W. N. C. 12 (1875); Witthaus v. Wallace, 2 W. N. C. 610 (1876); Same, 2 W. N. C. 618 (1876); Siegert et al. v. Meinhard et al., 3 W. N. C. 114 (1877); Day v. Walls, 12 Phila. 274, 34 Leg. Int. 418 (1877); Wamsutta Mills v. Allen et al., 6 W. N. C. 189 (1878); Wehn v. Krause, 5 W. N. C. 272 (1878); Sheppard et al. v. Stuart et al., 7 W. N. C. 498 (1879); Peterson's Appeal, 4 Walker 80 (1879); White v. Schlect, 9 W. N. C. 77 (1880); Thomas v. Thomas, 8 W. N. C. 375 (1880); Barnett v. Kent et al., 8 W. N. C. 355 (1880); McVey et al. v. Brendel, 144 Pa. 235, 22 Atl. 912, 13 L. R. A. 377, 27 Am. St. Rep. 625, 29 W. N. C. 1 (1891), reversing Same, 7 Lanc. Rev. 399, 5 Lanc. Rev. 350, 3 Del. 509 (1880); Dreydoppel v. Young et al., 14 Phila. 226, 37 Leg. Int. 397 (1880); Tetlow v. Savournin, 15 Phila. 170, 38 Leg. Int. 478, 11 W. N. C. 191 (1881); William Rogers Mfg. Co. v. Rogers Mfg. Co., 16 Phila. 178, 40 Leg. Int. 294 (1883); Desmond's Appeal, 103 Pa. 126, 49 Am. Rep. 118, 13 W. N. C. 303 (1883); Gowans et al. v. Ahlborn Bros., 4 Kulp 31 (1886); Pratt's Appeal, 117 Pa. 401, 11 Atl. 878, 2 Am. St. Rep. 676, 35 Pitts. Leg. J. 392, 20 W. N. C. 452 (1887); Wilcox v. Cutter et al., 9 Sadler 409, 12 Atl. 578, 11 Cent. 613 (1888); Laughman's Appeal, 128 Pa. 1, 18 Atl. 415, 5 L. R. A. 599, 24 W. N. C. 465 (1889), reversing Piper et al. v. Laughman et al., 6 Pa. C. C. 232 (1888), re-argument refused in Laughman's Appeal, 25 W. N. C. 536 (1889); Lewis v. Smith, 46 Leg. Int. 506 (1889); Pittsburgh Brass Co. Ltd. v. Adler, 2 Monaghan 235 (1889); Lewis v. 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J. 31 (1901); Kolb v. Stewart Bread Co., 198 Pa. 390, 48 Atl. 1119 (1901); Commonwealth v. Banks, 198 Pa. 397, 48 Atl. 277 (1901); Nerve Food Co. v. Robertson, 199 Pa. 486, 49 Atl. 234 (1901); Commonwealth v. Norton, 16 Pa. Super. Ct. 423 (1901); Commonwealth v. Howells, 18 Pa. Super. Ct. 323 (1901); *Commonwealth v. Burkholder et al., 18 Lanc. Rev. 240 (1901); Harris v. Brown, 202 Pa. 16, 51 Atl. 586, 90 Am. St. Rep. 610 (1902), affirming Same, 9 Pa. Dist. 521 (1900); Van Stan's Stratena Co., Ltd., v. Van Stan, 209 Pa. 564, 58 Atl. 1064, 103 Am. St. Rep. 1018 (1904); *Commonwealth v. Meads, 29 Pa. Super. Ct. 321 (1905); Erie Printing Co. v. Erie Lithographing & Printing Co., 31 Pa. C. C. 1, 53 Pitts. Leg. J. 4, 6 Lack. Jur. 185 (1905); Shoemaker et al. v. Ulmer et al., 15 Pa. Dist. 159 (1905); Penn. Baptist State Convention v. Penna. Baptist State Convention (Colored), 53 Pitts. Leg. J. 74 (1905); *Bergner & Engle Brewing Co. v. Koenig, 30 Pa. Super. 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Rep. 469 (1915); Akron Tire Co. of Philadelphia, Inc., v. Akron Tire Co., Inc., 25 Pa. Dist. 157 (1915), affirming Same, 24 Pa. Dist. 676 (1915); Scranton Stone Works v. Clark et al., 255 Pa. 23, 99 Atl. 170 (1916), affirming Same, 17 Luz. 469 (1915); Gibson Distilling Co. v. Netter, 62 Pa. Super. Ct. 136 1916; Charles E. Hires Co. v. Boon, 25 Pa. Dist. 557 (1916); Rokeach & Sons v. Kramer et al., 64 Pitts. Leg. J. 551 (1916); Industrial Cigar Co. v. Finkelman, 64 Pitts. Leg. J. 729 (1916); Rowand et al. v. Enterprise Amusement Co. et al., 64 Pitts. Leg. J. 736 (1916); Penn. Central Brewing Co. v. Anthracite Beer Co., 258 Pa. 45, 101 Atl. 925 (1917); Peoples Trust Co. of Pittsburgh v. Safe Deposit & Trust Co. of Pittsburgh, 259 Pa. 62, 102 Atl. 412 (1917), affirming Same, 65 Pitts. Leg. J. 161 (1917); Collins v. Public Ledger Co., 45 Pa. C. C. 534, 26 Pa. Dist. 699 (1917); Black & White Co. v. Weir, 26 Pa. Dist. 650 (1917); Fowler v. Hanna & Fowler Co., Ltd., 27 Pa. 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RHODE ISLAND.*

PART I.

General Food and Drug Law.

1. **Penalty for the Selling or Offering for Sale, Any Drug or Article of Food, Adulterated or Misbranded.**—It shall be unlawful for any person, firm or corporation, as principal, or by a servant, or agent, to manufacture, sell, or offer for sale within this State, any drug, or article of food which is adulterated or misbranded within the meaning of this chapter, and any person, firm or corporation, as principal or by a servant, or agent, violating any of the provisions of this chapter, shall be guilty of a misdemeanor, and shall, upon conviction, be punished for the first offense by a fine not exceeding fifty dollars, for the second offense by a fine not exceeding one hundred dollars, and for the third and each subsequent offense by a fine of not exceeding two hundred dollars, or imprisonment for one year: Provided, that no article shall be deemed misbranded or adulterated within the provisions of this chapter when intended for export to any foreign country and prepared or packed according to the specifications or directions of the foreign purchaser, when no substance is used in the preparation or packing thereof, in conflict with the laws of the foreign country to which said article is intended to be shipped; but if such article shall be in fact sold or offered for sale for domestic use or consumption, then this proviso shall not exempt said article from the operation of any of the other provisions of this chapter. (G. L. 1923, c. 168, § 1.)

2. **Terms "Drug" and "Food," What to Include.**—The term "drug" as used in this chapter shall include all medicines and preparations recognized in the United States Pharmacopœia or National Formulary for internal or external use and any substance or mixture of substances intended to be used for the cure, mitigation, or prevention of disease of either man or other animals. The term "food" as used herein shall include all articles whether simple, mixed, or compound, used for food, drink, confectionery or condiment by man or other animals. When the substance answers both descriptions, a "food" and a "drug," as above defined, the purpose for which it was manufactured, sold or offered for sale as the case may be, shall determine its character. (Id. § 2.)

3. **Drug Deemed to be Adulterated, When.**—A drug shall be deemed to be adulterated:

First. If, when sold under or by a name recognized in the United States Pharmacopœia or National Formulary, it differs from the standard of strength, quality, or purity prescribed therein.

Second. If its strength, quality, or purity falls below the professed standard under which it is sold: Provided, that in no case shall a drug be deemed to be adulterated, as differing from such professed standard, when the variation is caused by the evaporation of any volatile ingredient or by other changes beyond control, happening after the manufacture of the same: Provided, that due care be taken to preserve its integrity. (Id. § 3.)

4. **Food Deemed to be Adulterated, When.**—Food shall be deemed to be adulterated:

First—If any substance has been mixed and packed with it so as to reduce or lower or injuriously affect its quality, strength, or purity.

Second—If any substance has been substituted wholly or in part for the article.

Third—If any valuable constituent of the article has been wholly or in part abstracted.

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*CITATIONS: "G. L. 1923" refers to the General Laws of Rhode Island, revision of 1923, published by authority of Chapter 1928, Public Laws of 1920. "P. L." refers to the public laws of the year cited.

Fourth—If it is mixed, colored, powdered, coated, stained, or put up in a manner whereby damage or inferiority is concealed.

Fifth—If it contains any added poisonous or other added ingredient which may render such article injurious to health: Provided, that when in the preparation of food products for shipment they are preserved by any external application applied in such manner that the preservative is necessarily removed mechanically or by maceration in water, or otherwise, and directions for the removal of said preservative shall be printed on the covering of the package, the provisions of this chapter shall be construed as applying only when said products are ready for consumption.

Sixth—If it consists in whole or in part of a filthy, decomposed, or putrid animal or vegetable substance, or any portion of an animal unfit for food, whether manufactured or not, or if it is the product of a diseased animal, or one that has died otherwise than by slaughter. (Id. § 4.)

5. Confectionery Deemed to be Adulterated, When.—Confectionery shall also be deemed to be adulterated if it contains terra alba, barytes, talc, chrome yellow, or other mineral substances or poisonous colors or flavors or other ingredients deleterious or detrimental to health or any vinous, malt, or spirituous liquor or compound or narcotic drug. (Id. § 5.)

6. Drug or Article of Food Deemed to be Misbranded, When.—A drug or an article of food, or an article which enters into the composition of food, shall be deemed to be misbranded:

First—If the package containing it, or the label on such package, shall bear any statement, design, or device regarding such article, or the ingredients or substances contained therein, which shall be false, deceptive or misleading in any particular, or if the same is falsely branded as to the State, Territory or country in which it is manufactured or produced.

Second—If the package contains a proprietary or patent medicine, or a proprietary or patent food, and the label fails to bear a statement of the quantity or the proportion of any alcohol, morphine, opium, cocaine, heroin, alpha or beta eucaine, chloroform, cannabis indica, chloral hydrate, or acetanilide, or any derivative or preparation of any such substances contained therein: Provided, that the provisions of this section shall not apply to the sale and distribution of such proprietary or patent medicines or proprietary or patent foods as were in the possession of any dealer within this State on the twenty-sixth day of May, nineteen hundred and eight.

For the purposes of this chapter an article shall also be deemed to be misbranded:

In the case of drugs:

First—If it be an imitation of or offered for sale under the name of another article.

Second—If its package or label shall bear or contain any statement, design, or device regarding the curative or therapeutic effect of such article or any of the ingredients or substances contained therein, which is false, deceptive or misleading.

In the case of food:

First—If it be an imitation of or offered for sale under the distinctive name of another article.

Second—If in package form, the quantity of the contents be not plainly and conspicuously marked on the outside of the package in terms of weight, measure or numerical count: Provided, however, that reasonable variations shall be permitted and tolerances and also exemptions as to small packages shall be established by rules and regulations made in accordance with the provisions of section twelve of this chapter. (Id. § 6.)

7. Dealer Establishing Guaranty Not to be Convicted.—No dealer shall be convicted under the provisions of this chapter, when he can establish a guaranty, signed by the wholesaler, jobber, manufacturer, or other party residing in the United States, from whom he purchases such articles, to the effect that the same is not adulterated or misbranded within the meaning of the food and drugs act of the United States, approved June thirty, nineteen hundred and six, or of this chapter. Said guaranty, to afford protection, shall contain the name and address of the party or parties making the sale of such articles to such dealer, and in such case said party or parties shall be amenable to the prosecutions, fines, and other penalties which would attach, in due course, to the dealer under the provisions of this chapter. (Id. § 7.)

8. Commissioner or Agent to be Furnished With Sample of Any Drug or Article of Food, Upon Application to Person Offering Same for Sale.—Every person offering for or exposing for sale or delivering to a purchaser any drug or article of food included in the provisions of this chapter shall furnish to any commissioner, or other officer or agent appointed hereunder, who shall apply to him for the purpose and shall tender to him the value of the same, a sample or samples, of any drug or article of food which is in his possession, sufficient, after division into two equal or nearly equal parts, for the purpose of analysis. The official or agent thus taking said sample or samples shall then and there in the presence of the person for whom he obtained it, unless said person refuse to witness the operation, divide said sample or samples into two equal or nearly equal parts or specimens, and seal and label the same, said label to state the kind of food or drugs, the date of such taking, and, if obtainable, the name of the person from whom they were taken; also, if obtainable, the name or names of the parties, if there be any, whom said person represents. Said official or agent shall then and there deliver one of said specimens to the person from whom the same were taken. If any such sample or samples so taken shall appear to be adulterated within the meaning of this chapter, notice in writing of the fact of such adulteration, containing a description of such sample or samples, shall forthwith be given by mail or otherwise, directed to the person from whom the same were obtained, to the address given by him at the time such sample or samples were taken, before any prosecution shall be instituted thereon: Provided, however, that if the person from whom such sample or samples are taken shall omit or refuse to give his name or address, such notice shall not be required. Whoever hinders, obstructs, or in any way interferes with any commissioner or other officer or agent appointed hereunder, in the performance of his duty, shall, upon conviction, be fined a sum not exceeding one hundred dollars. (Id. § 8.)

9. Article of Food or Any Drug Adulterated or Misbranded May be Seized and Destroyed; Sample May be Retained by Owner.—Any article of food or any drug that is adulterated or misbranded within the meaning of this chapter or which is decayed, diseased, unwholesome or unfit for food may be seized and destroyed by any commissioner or other officer or agent appointed hereunder in the performance of his duty. All such seizures shall be at once reported to said Board of Food and Drug Commissioners by any commissioner or other officer or agent making such seizures, and a complete record of such seizure shall be kept in the office of said board: Provided, however, that any such commissioner or other officer or agent making such seizure shall upon request of the owner of any such article or upon the request of said owner's agent or servant, permit such owner, his agent or servant, to retain a sample of any such article, and such commissioner or other officer or agent shall retain such article for the period of two hours for examination by such person or persons as said owner or his agent or servant may select. Said commissioner or other officer or agent at the expiration of two hours after seizure of any such article shall treat such article in a manner to render it impossible to use such article for human consumption: Provided, however, that said Board of Food and Drug Commissioners may in its discretion order said article so seized to be sold and the proceeds thereof, less the legal costs and charges, shall be paid into the treasury of the State; and provided further, however, that upon payment of the costs of such proceedings, and the execution and delivery of a good and sufficient bond payable to the State to the effect that such articles or drugs shall not be sold or otherwise used or disposed of contrary to the provisions of this chapter, said Board of Food and Drug Commissioners may direct that such articles or drugs be delivered to the owner thereof. Any owner of any articles of food or drugs, so seized may demand trial by jury of any issue of fact in such case and all such proceedings shall be at the suit of and in the name of the State. (Id. § 9.)

10. Canned Articles of Food Prepared From Dried Products, How to be Labeled.—All canned articles of food which have been prepared from dried products and have been soaked before canning shall be plainly marked by a brand or label having on its face the word "Soaked," in letters of legible type and not smaller than eight point (Brevier) caps. (Id. § 10.)

11. Board of Food and Drug Commissioners, How Constituted.—There shall be a Board of Food and Drug Commissioners, consisting of three members, who shall hold office for the term of their appointment, and until their successors, respectively, shall be elected and qualified to act.

At the January session of the General Assembly in any year in which a vacancy occurs in said board, the Governor, with the advice and consent of the Sen-

ate, shall appoint a person to be a member of said board to succeed the member whose term of office shall next expire and the person so appointed shall hold his office until the first day of February in the fifth year after his appointment. Any vacancy which may occur in said board when the Senate is not in session shall be filled by the Governor until the next session thereof, when he shall, with the advice and consent of the Senate, appoint some person to fill such vacancy for the remainder of the term. (Id. § 11.)

12. Board to Adopt Rules for Enforcements of This Chapter; to Have Office in State House; Officers, Etc.—It shall be the duty of said Board of Food and Drug Commissioners to enforce the provisions of this chapter and to prosecute every person, firm or corporation violating the same and for this purpose said board may employ experts if necessary. Any member of said commission may make complaints for any violation of the provisons of this chapter and such commissioner making such complaint shall not be required to give surety for the payment of costs. They shall adopt such rules, consistent with the provisions of this chapter as may be necessary for its enforcement, and shall adopt rules regulating minimum standards of strength, purity, and quality for food and drugs, defining specific adulterations when such standards are not specified or fixed under this chapter or by the laws of this State, and subject to the provisions of this chapter, declaring the proper methods of collecting and examining drugs and articles of food; but such rules and standards shall not be more stringent than, nor conflict with, the rules and standards adopted, or which may hereafter be adopted, for the enforcement of the food and drug act of the United States, approved June thirtieth, nineteen hundred six, or of any food and drug act of the United States hereafter in force, regulating the misbranding or adulteration of food and drug products for interstate commerce: Provided, however, that in prosecutions under this chapter, when the strength, quality, or purity of a drug or an article of food is in issue and the standard of strength, quality, or purity of such drug or article of food is fixed by said board, proof that such drug or article of food is below the standard of strength, quality, or purity fixed by said board shall be evidence that such drug or article of food is adulterated within the meaning of this chapter.

The said commissioners shall have an office in the State House. They shall be allowed such office, traveling, and personal expenses as may be approved by the Governor, to be paid, upon the order of the State Auditor, out of any money in the treasury not otherwise appropriated.

They shall meet at least once in three months and as much oftener as may be necessary. They shall biennially organize by the election of a chairman and an executive secretary, who shall be a practical chemist. Said board shall have authority to appoint such other agents as may be necessary to assist in the enforcement of this chapter. Said executive secretary and agents shall work under the direction of the said board of commissioners and shall perform such duties as the said board shall prescribe for them to perform. (Id. § 12.)

13. Appropriation for Use of Board.—The salary of the executive secretary shall be two thousand dollars, annually, and the sum of two thousand dollars is hereby annually appropriated, out of any money in the treasury not otherwise appropriated, to pay such salary; the General Assembly shall also annually appropriate such sum as it may deem necessary and sufficient, to be expended by the Board of Food and Drug Commissioners, for the purpose of meeting the expenses incurred in the enforcement of this chapter, the cost of collection of samples, purchase of laboratory supplies, and aid in prosecuting offenders against the provisions of this chapter. (Id. § 13.)

13a. Certain Public Laws Not Repealed.—The provisions of this chapter shall not be construed to repeal an act entitled "An act authorizing the city of Providence to elect an inspector of beef and pork for said city," passed June twenty-nine, eighteen hundred and thirty-three, or sections one and two of chapter two hundred and eighty-one of the public laws, entitled "An act in amendment of and in addition to title fourteen, chapter seventy-four, of the Revised Statutes, 'Of regulations for the prevention of infectious and contagious diseases'," passed March five, eighteen hundred and fifty-eight. (Id. § 14.)

Miscellaneous General Provisions.

14. Sale of Unwholesome Provisions, How Punished.—Except as otherwise provided, in respect to specific articles of meat or drink, every person who shall sell any kind of diseased, corrupted, or unwholesome provisions, whether for meat

or drink, shall be imprisoned not exceeding six months or be fined not exceeding two hundred dollars. (G. L. 1923, c. 400, § 1.)

14a. State Department of Agriculture Created; Duties.—There shall be a State Department of Agriculture under the supervision of a State Commissioner of Agriculture, who shall be assisted by an advisory council as hereinafter provided. The department shall comprise all the State agencies and activities in operation at the passage of this act for the promotion of agriculture and husbandry in their several branches, including the inspection and suppression of contagious diseases among animals; the regulation of the marketing of farm products; the inspection of milk; . . . (G. L. 1923, c. 241, § 1, as amended P. L. 1927, c. 1014.)

14b. State Commissioner of Agriculture, Appointment; Duties.—(a) There shall be a State Commissioner of Agriculture who shall be appointed by the Governor with the advice and consent of the Senate. The first commissioner so appointed shall hold office until the first day of February, 1931, and in the month of January, 1931, and in said month in every fourth year thereafter the Governor shall so appoint a State Commissioner of Agriculture to succeed the commissioner whose term is about to expire, to hold office until the first day of February in the fourth year after his appointment, and until his successor is appointed and qualified. Any vacancy which may occur in said office when the Senate is not in session shall be filled by the Governor until the next session thereof, when he shall, with the advice and consent of the Senate, appoint some person to fill such vacancy for the remainder of the term. The commissioner may be removed by the Governor for cause shown after a public hearing of which the commissioner shall receive not less than seven days' notice in writing. It shall be the duty of the State Commissioner of Agriculture to supervise and direct the various agencies and activities under the control of the State Department of Agriculture, to promote the general interests of agriculture and husbandry throughout the State and to perform such duties as have heretofore been vested in the State Board of Agriculture.

(b) The State Commissioner of Agriculture shall devote his entire time to the duties of his office and he shall be paid an annual salary of four thousand five hundred dollars in full compensation for his services to the State. (Id. § 2.)

14c. Advisory Council, Appointment; Duties of Members.—(a) There shall be an advisory council of the State Department of Agriculture consisting of not exceeding eleven members, who shall be qualified electors of the State, and who shall be appointed as follows: One member shall be appointed by the Governor with the advice and consent of the Senate and four members shall be appointed by the Governor from eight nominations for such appointments that shall be submitted to the Governor by the Rhode Island Agricultural Conference, a corporation duly incorporated under the laws of this State, and the four members so appointed shall represent each of the following basic agricultural industries of the State, viz.: dairy husbandry, poultry husbandry, fruit growing and market gardening. . . . (Id. § 3.)

14d. Appointment of Officers by Commissioner of Agriculture.—The State Commissioner of Agriculture shall appoint a Chief of the Bureau of Animal Industry, a Chief Inspector of Apiaries, a Chief Entomologist, a Chief of the Bureau of Markets, a Chief Milk Inspector, . . . each of whom shall serve during the pleasure of said commissioner, and he may fix the compensation of such officers within the amount appropriated therefor, in all cases where the same is not fixed by law, and the compensation of all such officers shall be paid upon vouchers approved by the State Commissioner of Agriculture. The Chief of the Bureau of Animal Industry shall be a veterinary surgeon and shall act as Chief Veterinarian, and he may employ and remove at his pleasure such number of veterinarians as he may deem necessary to assist him in carrying out his duties, but such employment and removal shall be subject to the approval of the State Commissioner of Agriculture. The compensation of the assistant veterinarians shall be fixed by the State Commissioner of Agriculture within the amount appropriated for such purpose, and shall be paid upon vouchers approved by said commissioner. (Id. § 5.)

14e. Terms Construed.—Wherever in any other general law, public law, or resolution of the General Assembly or in any document, record, instrument or proceedings authorized by any such law or resolution, the following words and phrases are used, they shall hereafter be construed as follows, unless the context otherwise requires:

"Board" when referring to the State Board of Agriculture shall mean "State Commissioner of Agriculture."

"State Board of Agriculture" or "Executive Committee of State Board of Agriculture" or "Secretary of the State Board of Agriculture" or "Secretary" when referring to the Secretary of the State Board of Agriculture shall mean "State Commissioner of Agriculture." . . .

"State Entomologist" or "State Nursery Inspector" shall mean "Chief Entomologist."

"State Inspector of Apiaries" shall mean "Chief Inspector of Apiaries."

"Commissioner of Markets" shall mean "Chief of the Bureau of Markets." (P. L. 1927, c. 1014, § 9.)

14f. Rules and Regulations.— . . . Wherever in any general law or public law it is provided that rules and regulations shall be adopted or prescribed by the State Board of Agriculture, such rules and regulations shall hereafter be prescribed by the State Commissioner of Agriculture, but such rules and regulations establishing grades and standards for agricultural commodities shall not go into effect until they are adopted by the advisory council. . . . (Id. § 10.)

14g. Present Members of State Board of Agriculture; Duration of Terms of Office.—The members of the State Board of Agriculture and the several officers and employees appointed by said board, holding office or employed at the time of the passage of this act shall continue to hold their respective offices and employment and perform the duties thereof as if this act had not been passed, until the first State Commissioner of Agriculture is appointed and qualified, whereupon their terms of office and employment shall cease and determine and the State Commissioner of Agriculture shall take over the office of the State Board of Agriculture in the State House, the furnishing and equipment thereof, all property owned by the State in the custody of said board, and the books, documents and records of said board. . . . The first members of the advisory council created by section 3 of said chapter 241* of the general laws as amended by this act shall all be appointed within thirty days after this act goes into effect, and shall be called together by the State Commissioner of Agriculture for organization within ten days after their appointment, and at such meeting the members of said council shall elect a chairman and a clerk. (Id. § 11.)

14h. Officers, When to be Appointed.—Upon the passage of this act a State Commissioner of Agriculture and the members of the advisory council of the State Department of Agriculture shall be appointed in the manner and for the terms provided in sections 2 and 3 of said chapter 241† of the general laws as amended by this act; and upon his appointment and qualification the first State Commissioner of Agriculture shall appoint the officers as prescribed in section 5 of said chapter 241‡ of the general laws as amended by this act. (Id. § 14.)

NOTE: See also Nos. 42, 172, 189, and 238 et seq.

PART II.

Special Food Laws.

Apples.

See No. 290.

Bakeries.

See No. 158 et seq.

Beverages.

15. Bottler's Permits; Fee.—It shall be unlawful for any person, firm or corporation to manufacture or bottle for sale, or to sell or offer for sale any carbonated or non-alcoholic beverage, soda water, grape juice, fruit juice, syrup, mineral or spring water, either plain or carbonated, or any other soft drink, so-called, without a permit from the Board of Food and Drug Commissioners. No carbonated or non-alcoholic beverage, soda water, grape juice, fruit juice, syrup, mineral or spring water, either plain or carbonated, or any other soft drink, so-called, which has been manufactured outside of this State shall be sold or offered for sale within this State unless the person, firm or corporation manufacturing or bottling the same for sale shall hold a permit so to do from the Board of Food and Drug Commissioners. Said

*See No. 14c.

†See Nos. 14b and 14c.

‡See No. 14d.

permits shall be known respectively as a "bottler's permit," and the person, firm or corporation receiving said permits shall be known as the "bottler." Blank forms of application for permits shall be furnished by the board without cost. The fee for such permits shall be twenty dollars and all permits shall expire on December thirty-first of the year in which they are issued. Application for renewal of permits must be made on or before the first day of January of each and every year. The fee received by said board for "bottler's permits" shall be turned over to the general treasurer. All permits granted hereunder shall be posted in a conspicuous place on the premises of the bottler so that they may readily be seen by any person inspecting the premises. (G. L. 1923, c. 168, § 15, as amended P. L. 1927, c. 1059.)

16. Suspension or Revocation of Permits; Public Hearing; Notice; Appeal to Superior Court.—Permits granted hereunder may be suspended or revoked by the Board of Food and Drug Commissioners for violation of any provision of this chapter or for any other sufficient reason, but no permit shall be suspended or revoked until the bottler has been notified of the reason for suspension or revocation and is given an opportunity for a public hearing at which he may present evidence and be represented by counsel. He shall receive at least five days' notice of the hearing, and if, after the hearing, his permit is suspended or revoked, he may, within five days after he is informed of the suspension or revocation, appeal to the Superior Court which shall hear the case and affirm, modify or revoke the action in respect to suspension or revocation. (G. L. 1923, c. 168, § 16.)

17. Ingredients.—Any sweetening matter used in the manufacture of any beverage to which this chapter applies shall consist of pure cane or pure beet sugar or pure corn sugar. If any artificial coal tar colors are used in the manufacture of any beverage to which this chapter applies, they shall be only such colors as are specified for use by the United States Department of Agriculture. If any vegetable colors are used in the manufacture of the same, they shall be only such colors as shall be approved by the Board of Food and Drug Commissioners or the United States Department of Agriculture. It shall be unlawful for any person, firm or corporation to use hydrogen dioxide as a preservative. (Id. § 17, as amended P. L. 1927, c. 1059.)

18. Of Factories, Etc., Machinery, Containers, Etc.—All factories and other buildings in which the products to which this chapter applies are manufactured or bottled shall be well lighted and ventilated and shall, at all times, be kept in a sanitary condition. All machinery, bottles, jars, containers and utensils used for the said purpose shall, at all times, be kept in a clean and sanitary condition. (G. L. 1923, c. 168, § 18.)

19. Sanitary Provisions Relative to Bottles.—All bottles used in manufacturing or bottling any beverage specified in section fifteen shall, before being filled, be sterilized by any process that will properly sterilize the bottles, provided that it is approved by the Board of Food and Drug Commissioners. No bottles shall be used in which the metal or rubber part of the stopper comes in contact with the beverage. The provision of this section shall not apply to carbonated or vichy water put up in siphon bottles, or steel soda fountains, block tin lines. (Id. § 19.)

20. Penalty for Placing, Etc., Any Offal, Kerosene, Etc., in Bottles, Etc.—Whoever by himself or by his servant or agent, or as the servant or agent of any other person, firm or corporation having custody of a jar, bottle, measure, or other vessel used as a container for any carbonated or non-alcoholic beverage, soda water, grape juice, mineral or spring water either plain or carbonated, or any other soft drink, so-called, places or causes or permits to be placed therein any offal, kerosene, or article other than waters or beverages as herein enumerated, or any agent used for cleansing said jar, bottle, measure or other vessel, shall be punished by a fine of ten dollars for each vessel so misused. (Id. § 20.)

21. Provisions Not to Apply to Certain Dealers at Retail.—The provisions of sections fifteen, sixteen, seventeen, eighteen, nineteen and twenty shall not apply to dealers at retail who purchase from the bottler of any carbonated or non-alcoholic beverage, soda water, grape juice, mineral or spring water either plain or carbonated, or any other soft drink, so-called. (Id. § 21.)

22. Inspection and Report to be Made by Board of Food and Drug Commissioners.—It shall be the duty of the board to make a semi-annual inspection of all places or premises for which permits are issued and a report kept on file at the office of the Board of Food and Drug Commissioners as to the sanitary condition maintained by said bottler. The board shall make inspections at such other times as it shall determine. (Id. § 22.)

23. Penalties for Sale of Liquor Adulterated so as to Injure Health; Penalty on Second Conviction, Under This and Preceding Sections.—Every person keep-

ing for sale or offering to sell or selling any spirituous or intoxicating liquors which are adulterated with any poison or deleterious ingredients injurious to health, shall be fined not less than three hundred dollars nor more than five hundred dollars or be imprisoned in the State workhouse and house of correction for not less than three months nor more than six months; and upon the second conviction of a violation of this or of any preceding section of this chapter, the person convicted shall be sentenced to be both fined and imprisoned. (G. L. 1923, c. 208, § 6.)

NOTE: See also Nos. 14, 238 et seq., 241 et seq., 261 et seq., and 305 et seq.

Bicarbonate of Soda.

See No. 139 et seq.

Bread.

See No. 158 et seq.

Canned Food.

See No. 10.

Cider.

See Nos. 242 and 245.

Cold Storage.

See No. 77 et seq.

Confectionery.

See Nos. 5 and 158 et seq.

Cream of Tartar.

See No. 139 et seq.

Dairy Products—Substitutes for Dairy Products.

24. How Butter Tubs Are to be Branded.—Every person who shall make or bring into the State any butter firkins or tubs shall brand or mark each one of the same with the weight thereof and with the initial letters of his name, in a plain and durable manner, before he offers the same for sale. (G. L. 1923, c. 202, § 1.)

25. Sale of, Without Brand, Prohibited.—No person shall offer for sale any butter by the firkin or tub unless each firkin and tub shall be branded or marked as aforesaid. (Id. § 2.)

26. Penalty for Sale Without Brand.—Every person who shall offer for sale any butter firkin or tub before the same shall be marked or branded as required in section one of this chapter, or any butter by the firkin or tub, in any firkin or tub not marked or branded as aforesaid, or in any firkin or tub which shall weigh more than the mark or brand on it, allowing two pounds additional for the brine absorbed by the same, shall forfeit five dollars, unless there shall be a special contract in relation to the kind, quantity, and quality of the article sold. (Id. § 3.)

27. Oleomargarine, How to be Marked, Etc.—Every person, firm or corporation, as principal, or by a servant or agent, who shall manufacture for sale or who shall offer or expose for sale any article or substance in semblance of butter, not the legitimate product of the dairy, and not made exclusively from milk or cream, but into which any oil or fat, not produced from milk, enters as a component part, or into which melted butter or any oil thereof has been introduced to take the place of cream shall distinctly and durably stamp, brand or mark conspicuously upon the top and side of every tub, firkin, box or package of such article or substance the word "OLEOMARGARINE" in letters at least one-quarter inch in length; and in case of retail sale of such article or substance in parcels, the seller shall in all cases deliver therewith to the purchaser a written or printed label bearing the plainly written or printed word "OLEOMARGARINE"; and every sale of such article or substance not so stamped, branded, marked or labeled, shall be unlawful; and no action shall be maintained in any of the courts of the State

to recover on any contract for sale of any such article or substance not so stamped, branded, marked or labeled. (Id. § 4.)

28. Penalties for Violation of Preceding Section; Evidence on Trial for Offenses Herein Prohibited.—Every person, firm or corporation, as principal, or by a servant, or agent, who shall sell or offer to sell or expose for sale or have in their possession with intent to sell, contrary to the provisions of this chapter, any of the said articles or substances required by section four or nine of this chapter to be stamped, branded, marked or labeled as therein stated, or in case of retail sale without delivery of the label required by section four or nine of this chapter, shall for each such offense be fined not less than twenty-five dollars, nor more than one hundred dollars; one-half thereof to the use of the complainant and one-half thereof to the use of the State; and on trial of such offense, proof of the sale or offer to sell or of the exposure for sale, shall be evidence of knowledge of the character of the article so sold or offered or exposed and of knowledge that the same was not marked, branded, stamped or labeled as required by this chapter. (Id. § 5.)

29. Process Butter, How to be Marked, Etc.—Every person, firm or corporation, as principal, or by a servant, or agent, who shall manufacture for sale or who shall offer or expose for sale, or have in his possession with intent to sell, any article or substance which is produced by taking original packing stock or other butter, or both, melting the same so that the butter fat can be drawn off, and mixing the said butter fat with skim milk, cream or other milk product, and rechurning said mixture, or which is produced by any similar process, and is commonly known as process butter, shall distinctly and durably stamp, brand or mark in a straight line in printed letters at least one-half inch in length upon the top and side of every tub, firkin, box or package of such article or substance the words, "RENOVATED BUTTER"; and in case of retail sale of such article or substance in parcels, the seller shall in all cases deliver therewith to the purchaser a written or printed label or wrapper bearing the plainly written or printed words "RENOVATED BUTTER"; and every sale of such article or substance not so stamped, branded or labeled, shall be unlawful; and no action shall be maintained in any of the courts of this State to recover on any contract for sale or any such article or substance not so stamped, branded, marked or labeled. (Id. § 9.)

30. Duty of Food and Drug Commissioners.—It shall be the duty of the Board of Food and Drug Commissioners to prosecute any person, firm or corporation violating any of the provisions of this chapter, and any such commissioner making such complaint shall not be required to give surety for the payment of costs. (Id. § 10.)

31. Officer May Enter Premises, and Take Specimens; Penalty for Refusal.—Every commissioner or other officer or agent appointed under the provisions of chapter one hundred sixty-eight of the general laws,* may enter any place where oleomargarine or process butter is made, sold or kept for sale, for the purpose of examining into any suspected violation of the preceding sections of this chapter; and whenever he has reason to believe that any oleomargarine or process butter is being kept or sold or offered for sale in violation of the preceding sections of this chapter, he shall take specimens thereof, and cause the same to be analyzed or otherwise satisfactorily tested, the result of which he shall record and preserve as evidence, and a certificate of such result, sworn to by the analyzer, shall be admissible in evidence in all prosecutions under this chapter. Every person refusing any such commissioner or other officer or agent reasonable entry for said purpose of examination, or refusing to allow him to take specimens, shall upon conviction, be fined a sum not exceeding fifty dollars. (Id. § 11.)

32. Milk to be Sold by Standard Wine Measure; Vessels to be Sealed; State Sealer May Issue and Revoke Licenses to Seal Vessels.—All milk, cream, and skimmed milk shall be sold only by standard wine measure, and by or in measures, cans, jars, bottles, or other vessels or receptacles which shall, prior to being used in such sale, be sealed by the manufacturer thereof as hereinafter provided, or by the sealer of weights and measures of the town where the person so using the same shall usually reside in this State, or of the town where such milk shall be sold for use; and every person selling any of the same contrary to this section or delivering any of the same sold contrary hereto, shall be fined for the first offense not less than twenty dollars and not exceeding fifty dollars, and for any subsequent offense not less than fifty dollars, or imprisonment not to exceed sixty days, or both such fine and imprisonment. Any purchaser of milk, cream or skimmed milk, having reason to believe that any measure, can, jar, bottle, or other vessel or receptacle in which milk, cream, or skimmed milk is sold and de-

*See No. 1 et seq.

livered to him is not of sufficient size or capacity to contain, by standard wine measure, the amount thereof purchased, may apply to the sealer of weights and measures of the town in which such milk, cream or skimmed milk is delivered to him, which sealer shall, upon receipt of a fee of twenty-five cents therefor, test the capacity of the same and issue to such purchaser his certificate stating the capacity thereof; and if such capacity according to such certificate shall be less than the amount purchased such purchaser may make complaint and deliver such certificate to any officer of such town authorized to make complaints for the violation of this chapter, who thereupon shall duly make complaint against and prosecute the person or persons selling or delivering the same, for violation of this section. Upon the application of a manufacturer of a can, jar, bottle or other vessel or receptacle to be used in the sale of milk, cream or skimmed milk, the State Sealer of Weights and Measures and Balances may issue a license to such manufacturer to seal any such can, jar, bottle, or other vessel or receptacle for use in this State. All such cans, jars, bottles, or other vessels or receptacles shall be sealed by the manufacturer thereof in such manner and in accordance with such regulations as the State Sealer of Weights, Measures and Balances may prescribe and shall be marked with the name, initials, or trade-mark of the manufacturer, and by any other mark which the State Sealer of Weights, Measures and Balances may require. The State Sealer of Weights, Measures and Balances may revoke any such license at any time after giving the manufacturer holding such license ten days' notice of the proposed revocation. The sealing of any such can, jar, bottle, or other vessel or receptacle by a manufacturer shall not authorize the use of the same as legal measures nor shall any such sealing be held to affect the provisions of law relating to the giving of false measure, or the using of a false measure, or the having in possession a false measure with intent to use the same: Provided, however, that the wine measure as defined in this section shall permit a variation of one-half an ounce in the contents of glass bottles or jars. (G. L. 1923, c. 203, § 1.)

33. Milk Dealers to be Licensed in Cities.—No person, firm or corporation, as principal, servant, or agent, shall sell, exchange, or deliver, or have in his or its possession, care, custody, or control with intent to sell, exchange, or deliver, in any manner whatsoever, milk, cream, or skimmed milk, within any city, unless such person, firm, or corporation shall have first obtained and have in force a license therefor from the board of aldermen of such city. (Id. § 2.)

34. Licenses How Granted.—The board of aldermen of such city may grant licenses to any person, firm, or corporation making written application therefor at the office of the inspector of milk of such city on printed form or forms provided for that purpose by such inspector of milk. Such application shall state the name, residence, and location of the business place or places of the applicant, the number and the description of each and every wagon, carriage, or other vehicle used by the applicant in the milk, cream, or skimmed milk business, and the names and residences of all persons from whom such applicant purchases any milk, cream, or skimmed milk. Any licensee hereunder shall at any time, on request of said inspector, give said inspector such information. All applications shall be signed by the applicant, and in case of corporations so applying the application shall be made by the treasurer or other duly authorized officer thereof, and the names of the officers of any corporation so applying, or to which such license is granted, shall be furnished in writing by such corporation to such inspector at any time on his request. The inspector of milk shall promptly present to said board of aldermen each such application, with his recommendations thereon in writing. All licenses issued shall expire on the first Monday of February next following the date of such license. (Id. § 3.)

35. Inspector of Milk to Keep Record of Licenses.—The inspector of milk shall keep a record of all such licenses issued, including the name, residence, and place of business of each and every person to whom such license is issued and the date of issue and the date of license, and so much of section twelve of this chapter as requires milk dealers to register their names and places of business in the inspector's book shall not apply to such licensees. No person, firm, or corporation holding such license shall have power to transfer, sell, or assign such license. Such license shall not be required for a person acting as the servant or agent of a person, firm, or corporation having a license, but they shall record the names and residences of such servants and agents in the office of the inspector of milk. Any person, firm, or corporation licensed under the provisions of this chapter shall immediately cause to be, and remain posted such license upon some conspicuous part of the room, place, or office in which the business is carried on. (Id. § 4.)

36. License May be Revoked, When.—The board of aldermen of such city shall have the power at any time in their discretion, upon the complaint of the inspector of milk or of any other person, to revoke or suspend any such license for any violation of the provisions of this chapter, or for any other good and sufficient cause, or when the interest of the public health demands it: Provided, however, that no such license shall be revoked or suspended until after said board of aldermen shall give the licensee five days' previous notice and an opportunity to be heard in person or by counsel. (Id. § 5.)

37. Penalties.—Any person violating any provision of section 2 of this chapter shall, upon conviction, be fined for the first offense not less than fifteen dollars and not exceeding one hundred dollars, and for any subsequent offense not less than one hundred dollars or imprisonment not to exceed ninety days, or both such fine and imprisonment. (Id. § 6.)

38. Of the Acceptance of This Chapter by Towns.—Any town may at any time accept the provisions of sections two to seven inclusive of this chapter by vote of the town council thereof and by filing in the office of the Secretary of State a copy of such vote of acceptance duly certified by the town clerk thereof; whereupon the foregoing provisions of this chapter shall apply to such town for the purpose of granting and issuing such licenses, and at the expiration of thirty days from such filing shall wholly apply to such town for all purposes therein, and the town council thereof shall have all the powers conferred thereby upon the board of aldermen of any such city. (Id. § 7.)

39. Inspectors of Milk, Election of; Inspector, Deputy and Collector in Providence.—The mayor and aldermen of any city, and the town council of any town, may annually elect one or more persons to be inspectors of milk therein, except in the city of Newport, where such inspector shall be elected by the board of health of said city, who shall be engaged to the faithful performance of the duties of their office. Every such inspector shall give notice of his election by publishing notice thereof, for two weeks in some newspaper published in the city or town for which he shall be elected; or if no newspaper be published therein, by posting up such notice in two or more public places in such city or town. Provided, that in the city of Providence the superintendent of health thereof ex officio shall be the inspector of milk therein, and as such inspector shall appoint biennially on the first Monday in January, beginning A. D. nineteen hundred twenty-five, subject to the approval of the board of aldermen of said city, a deputy inspector of milk therein, who, subject to the directions of the inspector, shall have and exercise the same powers and duties as the inspector of milk therein, and who in the absence or disability of the inspector shall have all the powers and duties of said inspector; and such deputy shall be engaged to the faithful discharge of the duties of his office, and shall receive such salary as may be fixed by said board of aldermen; and said inspector at said times shall appoint, subject to such approval, two collectors of samples of milk in said city with the powers and duties of collectors of samples hereunder; and said inspector at any time in his discretion may remove any such deputy or any such collector of samples from his office, and said inspector shall fill any vacancy occurring for any cause in the office of such deputy or any such collector by appointing, subject to said approval, another person in his stead for the unexpired term. (Id. § 8.)

40. Inspectors of Milk May Appoint Collectors.—Any inspector of milk of any town or city may appoint, subject to the approval of the town council or the mayor and aldermen, one person as collector of samples, except in the city of Providence, where two may be appointed, who shall have the same powers and be subject to the same duties and liabilities provided by law relative to the taking of specimens or samples, as an inspector of milk. All specimens or samples taken and retained by any such collector shall be delivered to such inspector, who shall have the same powers and duties relative to the same as in case of specimens or samples taken by himself. Such inspector at any time may revoke the appointment of any such collector and, subject to the approval aforesaid, appoint another person in his stead. Such collector upon being appointed shall be duly engaged to the faithful discharge of his duties before the city or town clerk, who shall keep a record thereof; and shall receive such salary as the mayor and aldermen or town council shall determine. (Id. § 9.)

41. Duties of Inspectors.—Every inspector of milk shall have an office and a book for the purpose of recording the names and places of business of all persons engaged in the sale of milk within the limits of his town. He may enter any place where milk is stored or kept for sale and examine all carriages used in the conveyance of milk, and whenever he has reason to believe any milk found by him is adulterated, he shall take specimens thereof and cause the same to be analyzed or otherwise satisfactorily tested, the result of which he shall record and

preserve as evidence; and a certificate of such result, sworn to by the analyzer, shall be admissible in evidence in all prosecutions under this chapter. Such inspector shall receive such compensation as the mayor and aldermen or town council shall determine. (Id. § 10.)

42. To Take Samples of Food Suspected of Adulteration.—Whenever the inspector of milk shall have reason to believe that adulterated produce or food is being sold or kept for sale contrary to law, he shall take at least two specimens from the same package or bulk as samples thereof, such specimens, if solid, not to exceed in weight one pound each, and, if liquid, not to exceed in measure one pint each. He shall take said samples in the presence of the owner or his agent and shall seal and label the same in the presence of such owner or agent, said label to state the kind of provisions or food and the name of the seller, and shall then and there deliver one of said samples to such owner or agent. (Id. § 11.)

43. Penalty for Failure to Register Name and Residence With Inspector.—Whoever, engaging in or being engaged in the business of selling milk and conveying the same for sale, neglects to cause his name and place of business to be recorded in the inspector's book and his name to be legibly and conspicuously placed and constantly kept upon all carriages and vehicles used by him in the conveyance of milk or in the sale thereof, and whoever, being engaged in the business of selling milk and conveying the same for sale, shall neglect to renew such record annually between the first day of February and the first day of March, shall be fined twenty dollars for the first offense and fifty dollars for the second and each subsequent offense; and whoever offers for sale milk produced from cows fed upon the refuse of distilleries or any substance deleterious to the quality of the milk, and whoever offers for sale milk produced from sick or diseased cows, shall be fined twenty dollars for the first offense and fifty dollars for every subsequent offense; and whoever, in the employment of another, violates any provision of this section shall be held equally guilty with the principal and shall suffer the same penalty. (Id. § 12.)

44. Adulterated Milk Not to be Sold; Penalties.—No person, firm or corporation shall sell or exchange or have in his possession with intent to sell or exchange, adulterated milk or milk to which water or any foreign substance has been added.

Every person, firm or corporation who shall be found guilty of violating any of the provisions of this section upon first conviction shall be fined not to exceed twenty dollars, and upon the second and every subsequent conviction shall be fined not to exceed fifty dollars and may be imprisoned in the county jail for not exceeding ten days. (Id. § 13.)

45. Skimmed Milk to be Marked; Penalties.—Every person, firm or corporation who shall sell, exchange or deliver, or have in his custody or possession with intent to sell, exchange or deliver for himself or as the employee of any other person, milk from which the cream or any part thereof has been removed, or which shall not contain three and twenty-five one-hundredths per centum of milk fats, shall distinctly mark, in letters not less than one inch in length, in a conspicuous place above the center, upon the outside of every vessel, can or package containing such milk, the words "Skimmed milk," and such milk shall only be sold in or retailed out of a can, vessel or package so marked.

Every person, firm or corporation who shall be found guilty of violating any of the provisions of this section upon first conviction shall be fined not to exceed twenty dollars; and upon the second and every subsequent conviction shall be fined not to exceed fifty dollars and may be imprisoned in the county jail for not exceeding ten days. (Id. § 14.)

46. What Milk Not to be Sold; Penalties, Etc.—Any milk which contains less than twelve per centum of milk solids or contains less than three and twenty-five one-hundredths per centum of milk fats shall be deemed below the legal standard. No person, firm or corporation shall sell, exchange or deliver, or shall have in his possession with the intent to sell or exchange or deliver for himself or as the employee of any other person, milk which contains less than twelve per centum of milk solids or contains less than three and twenty-five one-hundredths per centum of milk fats. No rule or regulation of the board of health of any town or city shall prohibit the sale within such town or city of milk that conforms to the standards prescribed by this chapter: Provided, however, that any such board of health may regulate by rule as to the amount of bacteria in and the sanitary condition of the milk sold in such city or town and as to the sanitary condition of the premises or place where the milk is produced, kept or sold.

Every person who shall be found guilty of violating any of the provisions of this section upon first conviction shall be fined not to exceed twenty dollars; and

upon the second and every subsequent conviction shall be fined not to exceed fifty dollars and may be imprisoned in the county jail for ten days: Provided, that no person, firm, or corporation shall be liable to the prosecution under the provisions of sections thirteen, fourteen, or fifteen of this chapter, unless the samples of milk upon which such prosecution is based are taken upon his premises or while in his possession or under his control by any inspector of milk or a collector of samples of milk of any city or town or a member of the Board of Food and Drug Commissioners or its agent, and a sealed sample thereof is given to him; and provided, further, that when any milk sample taken by an inspector of milk or collector of samples of milk under the provisions of this section shall fall below the milk standard established by section fourteen or fifteen of this chapter, but analysis fails to prove adulteration by the addition of water or other substances or by the removal of the cream or any part thereof, the inspector of milk or the person taking such sample shall send written notice to the person, firm or corporation from whom such sample was taken that his milk is below standard and shall inform him of the exact proportions of milk solids and milk fats as revealed by the analysis; the person, firm or corporation from whom such sample was taken shall be allowed sixty days after the sending of such notice in which to bring his milk up to the legal standard as established by sections fourteen and fifteen of this chapter, and at any time within two years after the expiration of such sixty days from the sending of such written notice, or sooner at the request of the person, firm or corporation from whom such sample was taken further samples of milk may be taken from time to time in the same manner as hereinbefore provided by any inspector of milk or collector of samples of milk, and if the milk shall be found to be below the legal standard for milk solids or milk fats prosecution may follow: Provided, however, that if the person, firm or corporation from whom such sample was taken shall make a request in writing at any time after one week from the taking of the first sample, additional samples of milk shall be taken from time to time as the person, firm or corporation from whom such sample was taken may request and a fee may be charged by the inspector of milk or the collector of samples of milk for the actual expenses incurred in taking such additional samples of milk; and provided, further, that samples of milk may be taken at any time for the purpose of determining whether or not said milk has been adulterated. (Id. § 15.)

47. Penalty for Placing Offal in Vessels Used as Container of Milk.—Whoever by himself or by his servant or agent, or as the servant or agent of any other person, firm, or corporation having custody of a can, jar, bottle, measure, or other vessel used as a container for milk destined for sale, places or causes or permits to be placed therein any offal, swill, kerosene, vegetable matter, or any article other than milk, skimmed milk, buttermilk, cream, or water or other agent used for cleansing said can, jar, bottle, measure, or other vessel, shall be punished by a fine of ten dollars for each vessel so misused. (Id. § 16.)

48. Penalty for Returning, Etc., to Any Producer of Milk Any Vessel so Misused.—Whoever by himself or by his servant, or agent, or as the servant or agent of any other person, firm, or corporation, sends, ships, returns, or delivers, or causes or permits to be sent, shipped, returned, or delivered, to any producer of milk any can, jar, bottle, measure, or other vessel used as a container from milk containing any offal, swill, kerosene, vegetable matter, rotten or putrid milk, or any other offensive material, shall be punished by a fine of ten dollars for each said vessel so misused. (Id. § 17.)

49. Penalty for Returning Vessels Used as Container of Milk Unless Cleansed.—Whoever by himself or by his servant or agent, or as the servant or agent of any other person, firm, or corporation, sends, ships, returns, or delivers, or causes or permits to be sent, shipped, returned, or delivered, to any producer, dealer in, or consumer of milk any can, jar, bottle, measure, or other vessel used as a container for milk without first thoroughly cleaning and cleansing, by the use of boiling water, steam, or other proper agent, such can, jar, bottle, measure, or other vessel used as a container for milk, shall be punished by a fine of ten dollars for each said vessel so misused. (Id. § 18.)

50. Inspector to Complain, When.—Every inspector of milk shall institute complaints on the information of any person who shall lay before him satisfactory evidence by which to sustain the same. (Id. § 19.)

51. To Publish Names of Persons Convicted.—Every inspector of milk shall cause the name and place of business of all persons convicted under this chapter to be published in two newspapers published in the town or county where the offense shall have been committed. (Id. § 20.)*

*Section renumbered by P. L. 1923, c. 434.

52. What Officers to Prosecute for Violations of This Chapter.—Any chief of police and any inspector of milk, and such special constables as the town council of any town or the board of aldermen of any city, may appoint for that purpose, may make complaints and prosecute for all violations within the city or town wherein they are appointed or elected, of any of the provisions of this chapter; and they each shall be exempt from giving surety for costs on any complaint made as aforesaid. (Id. § 21.)*

53. Standards of Milk, Defined, Viz: "Certified Milk"; "Grade A, Raw Milk"; "Grade A Pasteurized Milk"; All Milk Defined to Conform to Legal Standard.—The following standards of milk are hereby declared to be as follows:

"Certified milk." Certified milk shall mean milk produced and handled in conformity with "Methods and standards for the production and distribution of certified milk," adopted by the American Association of Medical Milk Commissions, June 25th and June 26th, A. D. 1923, in effect at the time of production and certified to by a medical milk commission constituted in compliance therewith.

"Grade A Raw Milk." Grade A raw milk shall mean milk produced under sanitary condition from tuberculosis free cows which are under the supervision of the Bureau of Animal Industry of the United States Department of Agriculture and of a State Board of Agriculture, which milk when delivered to the consumer, shall not be more than forty-eight hours old, and the bacteria therein shall not exceed one hundred thousand per cubic centimeter.

"Grade A Pasteurized Milk." Grade A pasteurized milk shall mean milk within the definition of grade A raw milk, except that it shall have been pasteurized within twenty-four hours from the time of milking, and shall have been delivered to the consumer within thirty hours after pasteurization, and the bacteria therein when delivered to the consumer shall not exceed twenty-five thousand per cubic centimeter.

All milk defined in this section shall conform to the legal standard prescribed by section 15 of this chapter. (Id. § 22. added P. L. 1926, c. 820.)

54. Containers of Milk to be How Marked.—All containers in or from w' milk is sold or is offered for sale, shall bear a label or mark correctly stating the grade or character of milk contained therein, and all milk not designated as certified milk, grade A raw milk or grade A pasteurized milk shall bear the label or mark "Raw Milk" or "Pasteurized Milk," as the case may be, and all labels or marks shall be displayed in such manner and have printed thereon such matter as shall be prescribed by the rules and regulations of the Rhode Island State Board of Agriculture,* and no other label or mark referring to grade or character of milk shall be placed on any container except as provided for skimmed milk by section 14 of this chapter. (Id. § 23.)

55. State Board of Agriculture† to Make Rules and Regulations for Grade A, Raw and Pasteurized Milk; License for Sale, Etc., of, to be Obtained.—The State Board of Agriculture shall make reasonable rules and regulations governing sanitary conditions of places where grade A raw milk or grade A pasteurized milk is produced, bottled or pasteurized for sale, and for the cleanliness and purity of the production and transportation of such milk, and no owner, lessee or proprietor of any such place, or his agent or servant, shall sell, exchange or deliver, or have in his possession with intent to sell, exchange or deliver in any manner whatsoever, any such milk, unless such owner, lessee or proprietor shall first obtain and have a license therefor from said State Board of Agriculture, which said license shall remain in force until suspended or revoked by said board for cause; provided, however, that said board shall not revoke or suspend any such license until it shall have given the licensee five days' previous notice in writing of its intention so to do, and an opportunity to be heard in person or by council. The State Board of Agriculture shall, upon compliance by such owner, lessee or proprietor with such rules and regulations to the satisfaction of said board, grant to such owner, lessee or proprietor such license, provided that application therefor shall be made in writing upon a printed form provided by said board, giving such information as shall be required. (Id. § 24.)

56. Rule or Regulation of Board of Agriculture† to be Published Before Becoming Effective.—No rule or regulation of said board adopted under the authority of this act, shall become effective until the same shall have been published twice each week for three successive weeks in some newspaper or newspapers of general circulation in this State. (Id. § 25.)

57. Penalties for Violation of Provisions of Sections 23 and 24 of This Chapter; Examinations of Samples of Milk With Notice of Findings.—Any person, firm or corporation who shall violate any of the provisions of section 23 or

*Section renumbered by P. L. 1923, c. 434.

†State Commissioner of Agriculture. See No. 14e.

section 24 of this chapter, or any rule or regulation of said State Board of Agriculture, promulgated pursuant thereto, shall be fined not less than twenty dollars nor more than three hundred dollars, or be imprisoned not more than one year, provided that when any milk sample taken by an inspector of milk or other proper authority, shall upon examination show a higher bacteria content than is allowed under the provisions of this chapter, a notice in writing shall be sent forthwith to the person, firm or corporation from whose milk such sample was taken, which notice shall state the bacteria content of such sample, and not less than five days after receipt of said notice, a second sample shall be taken, and if said second sample shall show a higher bacteria content than allowed under the provisions of this chapter, a second notice in writing shall be sent forthwith to the person, firm or corporation from whose milk such samples were taken, which notice shall state the bacteria content of such sample, and not less than three days after receipt of such notice, a third sample shall be taken, and if all of said samples shall show a higher bacteria content than that allowed under the provisions of this chapter, prosecution of such person, firm or corporation may follow. (Id. § 26.)

58. Board of Aldermen, Town Council, Etc., May Make Further Regulations.—The board of aldermen, town council or other authority of any city or town having or exercising control over or regulation of the sale, transportation or handling of milk, are hereby authorized and empowered to make such further regulations as they may see fit concerning the bacteria content and pasteurization of all other milk, and the sanitary condition of the premises where such milk is produced, kept or sold. (Id. § 27.)

59. Certain Provisions of This Chapter Not to Apply to the County of Newport.—The provisions of sections 22 to 27 inclusive of this chapter shall not apply to milk produced and consumed in the county of Newport. (Id. § 28.)

59a. Enforcement.—It shall be the duty of the Chief Milk Inspector appointed by the State Commissioner of Agriculture to assist in the enforcement of the provisions of this chapter and of chapter 204 of the general laws,* and of all other laws relating to the milk supply of the State, under the direction of said commissioner, and for such purpose he may, with the approval of said commissioner, employ such assistants as may be necessary to enable him to properly discharge his duty. The Chief Milk Inspector and his assistants shall be paid such compensation as may be fixed by the commissioner within the sum appropriated therefor, upon vouchers approved by the commissioner. (G. L. 1923, c. 203, § 29, as added P. L. 1927, c. 1014, § 5.)

60. Terms "Station" or "Milk Gathering Station," What to Include.—The term "station" or "milk gathering station" as used in this chapter, shall include an established office where the business of buying milk or cream as herein provided is carried on, with or without a place or premises in connection therewith for the physical handling of milk or cream. (G. L. 1923, c. 204, § 1.)

61. License Required for Dealing in Milk or Cream, When; Application for License; Fee.—No person, firm, association or corporation, shall buy milk or cream within the State from producers for the purpose of shipping the same to any city for consumption or for manufacture, unless such business be regularly transacted at an office or station within the State and unless such person, firm, association or corporation be duly licensed as provided in this chapter. Every such person, firm, association or corporation before engaging or continuing in the business of buying milk or cream for the purposes aforesaid, shall, annually, on or before June first, file an application with the State Board of Agriculture† for a license to transact such business. The application shall state the nature of the business, as hereinabove set forth, the full name of the person or corporation applying for the license, and, if the applicant be a firm or association, the full name of each member of such firm, or association, the city, town or village and street number at which the business is to be conducted, and such other facts as the State Board of Agriculture shall prescribe. The applicant shall further satisfy said board of his or its character, financial responsibility and good faith in seeking to carry on such business. The State Board of Agriculture shall thereupon issue to such applicant, on payment of ten dollars, a license entitling the applicant to conduct the business of buying milk and cream from producers for the purpose aforesaid at an office or station at the place named in the application until the first day of July next following: Provided, however, that if the application be presented in the month of May, and if the applicant so elects, such license may be granted to begin on the first day of July next following and run for a term of one year. A license shall not be issued, however, to any applicant if during the year

*See Nos. 60-75.

preceding the filing of the application a complaint from any producer and seller of milk or cream shall have been filed with the State Board of Agriculture against such applicant for any of the grounds specified in section twelve of this chapter, and such complaint shall have been established as true and just to the satisfaction of said board after such complaint shall have been investigated by it in the manner provided by section eleven of this chapter. (Id. § 2.)

62. **Bond to be Filed With State Board of Agriculture;* How Approved.**—A license shall not be issued as provided in the preceding section, unless the applicant for such license shall file with the application a good and sufficient surety bond, executed by a surety company, duly authorized to transact business in this State, in such sum as the said Board of Agriculture shall direct. Such bond shall be approved as to its form and sufficiency by said Board of Agriculture. The bond required to be filed hereunder shall be given to the said Board of Agriculture and shall be conditioned for the faithful compliance by the licensee with the provisions of this chapter, and for the payment of all amounts due to persons who may sell or have sold milk or cream to such licensee. (Id. § 3.)

63. **Of the Default of Licensee in Payment of Money Due to Creditors.**—Upon default by the licensee in the payment of any money due for the purchase of milk or cream, which payment is secured by the bond herein provided for, the creditor may file with the State Board of Agriculture,* upon a form prescribed by it, a verified statement of his claim. If such creditor shall have received such claim to judgment or shall thereafter and before the commencement of the action by the State Board of Agriculture, as hereinafter provided for, reduce such claim to judgment, a certified copy of the record of such judgment shall also be filed with said State Board of Agriculture. Such statements may be filed at any time during the period of the license for purchases made during such period or within ninety days from the termination of such period. (Id. § 4.)

64. **Of the Default of Licensee in Payment of Money Due to Creditors.**—After the expiration of ninety days from the termination of any license period the State Board of Agriculture shall, by proper action wherein all such creditors and any surety upon any bond given as herein provided for and the licensee shall be parties, proceed to determine the amount due each such creditor, and the judgment rendered in such action shall be enforced ratably for such creditors against the surety on the bond. If any such creeditor shall have reduced his claim to judgment such judgment shall be presumptive proof of the amount due such creditor in any action brought by the State Board of Agriculture, as herein provided for. (Id. § 5.)

65. **Bond to be Applicable to What Claims.**—Every bond given in accordance with the provisions of this chapter shall be applicable, in the first instance, to the payment of all claims arising during the license period for which such bond shall continue, and filed either during such period or within ninety days after the expiration thereof. If all such claims shall be paid the balance available upon such bond shall be devoted to the extinguishment ratably of claims arising during such license period, but for which statement shall not have been filed until after ninety days after the expiration of such period. (Id. § 6.)

66. **Licensee to Make Statement of Disbursements, When.**—A person or corporation licensed hereunder shall make a statement under oath of his or its disbursements during a period to be prescribed by the State Board of Agriculture, containing the names of the persons from whom such products were purchased, the amount purchased and the amount due to the vendors thereof. Such statements shall be submitted to the State Board of Agriculture when requested by it and shall be in the form prescribed by said board. If it appears from such statement or other facts ascertained by the State Board of Agriculture, upon inspection or investigation of the books and papers of such licensee as authorized by section nine of this chapter that the security afforded to persons selling milk and cream to such licensee by the bond executed by such licensee as herein provided does not adequately protect such vendors, the State Board of Agriculture may require such licensee to give an additional bond, to be executed in a sum to be determined by the State Board of Agriculture, but not exceeding by more than fifty per centum the maximum amount paid out by such licensee to sellers of milk in any one month. (Id. § 7.)

67. **Board* May Make Certain Investigations; Complaint and Hearing.**—The State Board of Agriculture shall have power to investigate upon the complaint of any interested person, or of its own motion, the record of any person, firm or corporation applying for or holding a license, or any transaction involving the purchase of milk for shipment as provided for in this chapter; and for such purpose may exam-

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*State Commissioner of Agriculture. See No. 14e.

ine the ledgers, books of account, memoranda or other documents of any such person, firm, association or corporation applying for or holding a license and may take testimony therein under oath; but information relating to the general business of any such person, firm, association or corporation, disclosed by such investigation and not relating to the immediate purpose thereof shall be deemed of a confidential nature by the State Board of Agriculture and its assistants. When a complaint is filed with the State Board of Agriculture it shall attempt to secure an explanation or adjustment, and, failing this within ten days, the said board shall cause a copy of the complaint, together with a notice of the time and place for a hearing thereon, to be served personally or by mail upon said applicant or licensee. If served by mail, such complaint and notice shall be directed to the applicant or licensee at his place of business, with postage fully prepaid thereon. Such service shall be made at least seven days before the hearing. At the time and place appointed for such hearing, the State Board of Agriculture or its representatives shall hear the parties to the complaint, shall have power to administer oaths and shall enter in the records of the office of the State Board of Agriculture a decision either dismissing such complaint or specifying the facts which it deems established on such hearing. (Id. § 8.)

68. Board* May Decline to Grant or Revoke License, When.—The State Board of Agriculture may decline to grant a license or may revoke a license already granted when it is satisfied of the existence of the following cases or either of them:

1. Where a money judgment has been secured by any milk producer and has been entered against such applicant or licensee and remains unsatisfied of record.
2. Where there has been a failure to make prompt settlements to persons from whom such applicant buys milk, with intent to defraud.
3. Where there have been combinations to fix prices.
4. Where there has been a continual course of dealing of such nature as to satisfy the State Board of Agriculture of the inability of the applicant or licensee to properly conduct the business or of an intent to deceive or defraud customers.
5. Where there has been a continued and persistent failure to keep records required by the State Board of Agriculture in accordance with this chapter. (Id. § 9.)

69. Refusal to Grant, or Revocation of License, How Reviewed.—The action of the State Board of Agriculture in refusing to grant a license, or in revoking a license granted under this chapter shall be subject to review by writ of certiorari, and if such proceedings are begun to review the revocation of license, the license shall be deemed to be in full force and effect until the final determination of certiorari proceedings and all appeals therefrom. (Id. § 10.)

70. Proprietor of Milk Gathering Station to Keep Record of Transactions, Etc.—Every proprietor of a milk gathering station shall keep, in such form as the State Board of Agriculture may prescribe, a record of transactions of purchases of milk or cream by him and he shall, at least semi-monthly (or weekly if so agreed upon by the parties to the transaction), deliver to each person from whom he receives or purchases milk or cream, and in the unit of measure used in computing the amount due therefor, an itemized statement of the several amounts or quantities of such milk or cream so received or purchased at such milk station from such person during the prior half month or, if statements are delivered more frequently than semi-monthly, during that period of time which has elapsed since the delivery of such last prior statement. Every such proprietor of a milk gathering station shall post in a conspicuous place in such milk station, a schedule of the prices being paid for milk or cream, and shall keep a correct account of all the milk or cream daily received or purchased from each person at such milk station which account shall be open to inspection by any person selling or delivering milk or cream to such proprietor. (Id. § 11.)

71. Seller or Buyer May Apply for an Investigation.—If either party to the transaction of purchase and sale between a milk producer and a licensed buyer of milk shall be dissatisfied relative to any transaction of purchase and sale of milk between a milk producer and a licensed buyer of milk, he may apply to the State Board of Agriculture, in writing, within thirty days after the delivery of such milk to the licensed buyer, for investigation. The State Board of Agriculture shall treat such application as a complaint, and shall cause a full investigation of the transaction complained of to be made. (Id. § 12.)

72. Penalty for Attempt to Defraud, Etc.—Any person who, being a buyer of milk for shipment for the purposes set forth in this chapter, whether such person be licensed or whether his business be transacted at a station or otherwise,

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*State Commissioner of Agriculture. See No. 14e.

shall fail to make prompt payments for milk purchased, with intent to defraud, or shall make any false or misleading statement or statements enumerated in this chapter, with intent to deceive, or enter into any combination to fix prices, or not being licensed, shall conduct the business of buying milk for shipment as provided in this chapter, or being licensed or otherwise, engaged in such business without having a station or office therefor, or fails to conform to any requirement of or violates any of the provisions of this chapter, with intent to deceive a seller of milk, shall be guilty of a misdemeanor and upon conviction shall for the first offense be fined not more than two hundred dollars or imprisoned not more than thirty days, or both; and shall for the second offense be fined not more than five hundred dollars or imprisoned not more than sixty days, or both; and shall for the third offense within any one calendar year be imprisoned for not more than ninety days, and shall thereby forfeit his license and be thereby disqualified from obtaining such license within two years thereafter. (Id. § 13.)

73. Fines or Fees, How Disposed of.—All moneys collected in fines or fees under the provisions of this chapter shall be turned over to the general treasurer, and by him added to the regular annual appropriation of the State Board of Agriculture and by said board used in enforcing the provisions of this chapter. (Id. § 14.)

74. State Board of Agriculture* Authorized to Incur Expenses, Etc., to Carry Out Provisions of This Chapter.—The State Board of Agriculture may employ such help and incur such expense as may be necessary to carry out the provisions of this chapter to an amount not to exceed in the aggregate in any one year the amount collected during that year under the provisions of this chapter. (Id. § 15.)

75. This Chapter When and How Effective.—Nothing herein contained shall be construed to repeal or alter or vary the provisions of chapter two hundred and three† of the general laws, or to require the license herein provided for from any person whose principal business is the production of milk or to require such license from a producer of milk who may deliver milk direct to any store or place or who retails his product direct to the consumer. (Id. § 16.)

76. Penalty for Selling Diseased Cattle, or Milk From Same.—Every person who shall sell or offer to sell any cattle or other domestic animals, or any part thereof, known to him to be infected with any contagious disease, or with any disease dangerous to the public health, or who shall sell or offer to sell any milk from any such cattle or other domestic animals, shall be fined not exceeding one thousand dollars or be imprisoned not exceeding two years, either or both, in the discretion of the court. (G. L. 1923, c. 245, § 6.)

NOTE: See also No. 14a et seq., the sanitation law, No. 158 et seq.; the trademark law, No. 261 et seq.

Eggs.

77. Term "Cold Storage Eggs," How Defined.—The term "cold storage eggs" as used in this chapter shall be construed to mean eggs that have been artificially cooled for thirty days or more at or below a temperature of forty degrees Fahrenheit, and no other eggs shall be sold as "cold storage eggs." (G. L. 1923, c. 168, § 29.)

78. Eggs Sold as "Cold Storage Eggs" to be Plainly so Marked.—Whenever "cold storage eggs" are sold at wholesale or retail, or offered or exposed for sale, the case, package, box or other container in which the eggs are placed or delivered shall be marked plainly and conspicuously with the words "cold storage eggs," or there shall be attached to such container a placard or sign having on it the said words. If "cold storage eggs" are sold at retail or offered or exposed for sale without a container, or placed upon a counter or elsewhere, a sign or placard having the words "cold storage eggs" plainly and conspicuously marked upon it shall be displayed in, upon or immediately above the said eggs; the display of the words "cold storage eggs" as required by this chapter shall be in letters not less than one inch in height and shall be done in such manner as is approved by the Board of Food and Drug Commissioners. (Id. § 30.)

79. Penalty for Violation of Provisions of Section 30.—Any person, firm or corporation violating any of the provisions of section thirty of this chapter shall be punished by a fine of not less than ten, nor more than one hundred dollars for each offense. (Id. § 31.)

80. Board of Food and Drug Commissioners to Make Rules and Regulations for the Enforcing of Section 30.—The Board of Food and Drug Commissioners

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*State Commissioner of Agriculture. See No. 14e.

†See Nos. 32-59a.

shall have the same duties and powers relative to the making of rules and regulations hereunder relative to the enforcement of section thirty as is or shall be conferred upon them by this chapter with reference to other foods. (Id. § 32.)

81. Complaints, How Made.—Complaints for the violation of the provisions of section thirty of this chapter and any amendments thereof, or additions thereto, may be made by any person, and if made by a member of the Board of Food and Drug Commissioners said member shall be exempt from giving surety for costs on any such complaint. (Id. § 33.)

Feeding Stuffs.

82. Concentrated Commercial Feeding Stuffs, Sale of Regulated.—Every lot or parcel of any concentrated commercial feeding stuff, as defined in section three of this chapter, used for feeding domestic animals, sold, offered or exposed for sale in this State, shall have affixed thereto, in a conspicuous place on the outside thereof, a legible and plainly printed statement stating and truly certifying the number of net pounds of feeding stuff contained therein, the name, brand, or trade-mark under which the article is sold, the name and address of the manufacturer or importer, and a statement of the percentage it contains of crude protein, allowing one per cent of nitrogen to equal six and one-fourth per cent of protein and of crude fat, both constituents to be determined by the methods adopted at the time by the Association of Official Agricultural Chemists of the United States. (G. L. 1923, c. 247, § 1.)

83. What Not Included.—The term concentrated commercial feeding stuff, as herein used, shall not include hays and straws, the whole seeds, nor the unmixed meals made directly from the seed of wheat, rye, barley, oats, Indian corn, buckwheat, or broom corn; nor shall it include wheat, rye and buckwheat brans or middlings unmixed with other substances and sold separated, as distinct articles of commerce. (Id. § 2.)

84. Term Concentrated Commercial Feeding Stuffs, Defined.—The term concentrated commercial feeding stuff, as herein used, shall include linseed meals, cottonseed meals, pea meals, cocoanut meals, gluten meals, gluten feeds, maize feeds, starch feeds, sugar feeds, dried brewer's grains, malt sprouts, hominy feeds, cerealine feeds, rice meals, oat feeds, corn and oat chop, corn and oat feeds, ground beef or fish scraps, mixed feeds, provenders, and all materials of a similar nature not included within section two of this chapter. (Id. § 3.)

85. Statement to be Filed Before Selling, Upon Request.—Each and every manufacturer, importer, agent or seller of any concentrated commercial feed stuff shall, upon request, file with the board of managers of the Rhode Island State College a certified copy of the statement named in section one of this chapter. (Id. § 4.)

86. Penalties.—Each and every manufacturer, importer, agent or person selling, offering or exposing for sale, in this State, any concentrated commercial feeding stuff, as defined in section three of this chapter, without the statement required by section one of this chapter, stating that said feeding stuff contains substantially a larger percentage of either of the constituents mentioned in section one than is contained therein, or in relation to which the provisions of all the foregoing sections have not been fully complied with, shall be fined not exceeding one hundred dollars for the first offense, and not exceeding two hundred dollars for each subsequent offense. (Id. § 5.)

87. Samples to be Collected and Analyzed by Whom.—The Board of Managers of the Rhode Island State College is hereby authorized to have collected by the chemist of the Agricultural Experiment Station, or by a deputy or deputies of said chemist, a sample, not exceeding two pounds in weight, for analysis, from any lot, parcel, or package of concentrated commercial feeding stuff as defined by section three of this chapter, or unmixed meals, brans or middlings named in section two of this chapter which may be in the possession of any manufacturer, importer, agent or dealer, but said sample shall be taken in the presence of such party or parties in interest, or their representatives, and taken from a number of parcels or packages which shall not be less than five per cent of the whole lot inspected, and shall be thoroughly mixed, divided into two samples, placed in glass vessels, carefully sealed, and a label placed on each stating the name or brand of the feeding stuff or material sampled, the name of the party from whose stock the sample was taken, and the time and place of taking the same; and said label shall be signed by said chemist, or his deputy, and by the party or parties in interest, or their representatives, present at the taking and sealing of said sample; one of said samples shall be retained by said chemist, or his deputy, and

the other by the party whose stock was sampled. Said Board of Managers shall cause at least one sample of each brand of feeding stuff collected, as herein provided, to be analyzed annually by or under the direction of said chemist. Said analysis shall include determinations of crude fat and crude protein and such other determinations as may be at any time deemed advisable. Said Board of Managers shall cause the analyses so made to be published in station bulletins, together with such additional information in relation to the character, composition, and use thereof as may seem to be of importance, and issue the same annually, or more frequently if deemed advisable. (Id. § 6.)

88. Prosecutions.—It shall be the duty of the Board of Managers of the Rhode Island State College to prosecute every person violating the provisions of this chapter, and for this purpose said Board of Managers may employ experts, if necessary, and may designate some one of their own number, or some person connected with said college, to make complaints in its behalf, and, in making complaints for violations thereof, such person so designated shall not be required to enter into any recognizance nor give surety for the payment of costs. (Id. § 7.)

89. Term Importer Defined.—The term importer, for all the purposes of this chapter, is intended to apply to such person or persons as shall bring into and offer for sale, within this State, concentrated commercial feeding stuffs manufactured without the State. (Id. § 8.)

90. Appropriation.—The sum of thirteen hundred dollars, or so much thereof as may be necessary is hereby appropriated, annually, out of any money in the treasury not otherwise appropriated, for the purpose of defraying the expenses of collection, analysis, distribution of bulletins, correspondence, laboratory fittings, chemicals, and such other expenses as are incident to and properly arise from the execution of the provisions of this chapter, and the State Auditor shall draw his order upon the General Treasurer for said sum, or so much thereof as may be necessary, on the presentation of vouchers properly authenticated by the Board of Managers of the Rhode Island State College, and approved by the Governor. (Id. § 9.)

Fish.

91. Duties of Packers of Fish.—In every town in which pickled fish are packed for sale or exportation from the State, the packers of such town shall see that the same have been properly pickled; that they are properly repacked in casks, in good shipping order, with good salt sufficient in each cask to preserve such fish from damage in transportation to any foreign port. (G. L. 1923, c. 190, § 1.)

92. Packers to Give Bond.—Every packer shall give bond to the town treasurer of the town in which he shall be appointed, in the sum of one thousand dollars, with sufficient surety or sureties to the satisfaction of such town treasurer, for the faithful performance of the duties of his office. (Id. § 2.)

93. Casks to Contain Only One Kind of Fish.—Pickled fish, whether codfish, mackerel, menhaden, herrings or other fish, shall be sorted and one kind only be put into the same cask. (Id. § 3.)

94. Dimensions of Casks; How Filled.—Every cask shall be well seasoned and bound with twelve hoops; casks for menhaden and herrings shall be of the capacity to hold twenty-eight gallons, and those for other fish of the capacity, if a barrel, to hold two hundred pounds, and if a half-barrel, one hundred pounds weight of fish; each cask shall be full and the fish shall be sound and well cured. (Id. § 4.)

95. Casks, How to be Branded.—Every cask before being packed or repacked for exportation shall be first searched, examined and approved by a packer; and shall, when so packed or repacked for exportation, be branded legibly on one head with the kind of fish it contains and the weight thereof, or the capacity of the cask with the first letter of the christian and the whole of the surname of the packer, the name of the town and the words Rhode Island in letters not less than three-fourths of an inch long, to denote that the same is merchantable and in good order for exportation. (Id. § 5.)

96. Numbers to Denote Quality of Codfish.—Every cask of pickled codfish offered for sale or for exportation from the State shall also be branded "No. 1," "No. 2," or "No. 3," to denote the quality of such fish. (Id. § 6.)

97. Mackerel, Five Qualities, How Distinguished; Not to be Sold Without Brand of Quality.—There shall be five qualities of mackerel. Mackerel of the best quality, not mutilated, measuring not less than fourteen inches from the extremity of the head to the notch or fork of the tail, free from rust, taint or dam-

age, and that shall count not more than one hundred and fifty fish to the barrel, shall be branded on the barrel or covering containing them, Bloaters. (Id. § 7.)

98. Same Subject.—Mackerel of the best quality, not mutilated, being not less than thirteen inches, measured as aforesaid, free from rust, taint or damage, that shall count not more than two hundred fish to the barrel, shall be branded Number One. (Id. § 8.)

99. Same Subject.—Mackerel being not less than eleven inches, measured as aforesaid, free from rust, taint or damage, and that shall count not more than three hundred and fifty fish to the barrel, shall be branded Number Two. (Id. § 9.)

100. Same Subject.—Mackerel of the next inferior quality, free from taint or damage, not less than ten inches, measured as aforesaid, that shall count not more than five hundred fish to the barrel, shall be branded Number Three. (Id. § 10.)

101. Same Subject.—All other mackerel, free from taint, or damage, shall be branded Number Four. (Id. § 11.)

102. Same Subject.—No person or persons shall sell or offer for sale any mackerel without having stamped, upon the barrel or covering containing the same, in a plain and legible manner the quality of said fish as classified above. (Id. § 12.)

103. Fish Brought From Other States by Fishermen, Etc.; Excepted From Provisions of This Chapter.—Nothing in this chapter contained shall be so construed as to prevent any fishermen or owners of fish, coming to this State from their fishing trips, from selling or reshipping their fish to any other of the United States without being packed into barrels or half-barrels. (Id. § 13.)

104. Penalty for Sale of Fish Not Approved and Branded.—Every person who shall offer for sale in or attempt to export from the State any pickled fish which have not been approved by a sworn packer, or in casks which are not branded as aforesaid, shall be fined fifty dollars for each offense. (Id. § 14.)

105. Penalty for Altering Contents of Branded Cask or Imitating Brand.—Every person who shall shift any fish from any cask after the same has been branded by the packer, and shall offer to sell or export the same from this State, or shall brand any cask into which the same shall be shifted, or shall brand any cask with the branding iron of a packer or with any iron made in imitation thereof, shall be fined not less than thirty dollars nor more than one hundred and sixty dollars for each offense. (Id. § 15.)

106. Penalty for Fraud.—Every packer who shall be guilty of any fraud or neglect in packing any fish contrary to this chapter, or shall brand any cask not thoroughly examined according to the provisions thereof, shall be fined fifty dollars for each offense. (Id. § 16.)

107. Fees of Packers of Fish.—The packers of fish shall be paid for opening, assorting, inspecting, weighing, pickling, packing, or repacking, heading-up, nailing, and giving a certificate, if pickled codfish or mackerel, twenty cents for every barrel and fifteen cents for every half-barrel by the owner thereof: Provided, that for all pickled codfish or mackerel which have been inspected in some one of the United States and which shall not in the judgment of the packer require repacking, the said owner shall pay to the packer twenty cents only for unheading, inspecting, reheading, branding, nailing and giving a certificate thereof, and for all other, except codfish and mackerel, the owner thereof shall pay the packer twenty-five cents for every cask. (Id. § 17.)

108. Barrel and Half-Barrel, Size of; to be Sealed; Penalty for Sealing Falsely.—Whenever fish are sold by measure for manure they shall be measured in a barrel or half-barrel, the barrel containing twenty-eight gallons and the half-barrel fourteen gallons, which shall be sealed by a sealer of weights and measures. (G. L. 1923, c. 207, § 1.)

109. Same Subject.—Every sealer of weights and measures who shall seal any barrel or half-barrel which shall contain a less quantity than prescribed in the preceding section, shall be fined fifty dollars. (Id. § 2.)

110. Penalty for Measuring in Barrel or Half-Barrel Not Sealed.—Every person who shall measure any fish sold by measure in any barrel or half-barrel not sealed according to the provisions of this chapter, shall be fined ten dollars for each offense. (Id. § 3.)

NOTE: See also Nos. 134, 135 and 143 et seq.

Flavoring Extracts.

See No. 247.

Flour, Meal, Etc.

See Nos. 158 et seq., 290 and 296.

Fruit Juices.

See Nos. 15 et seq. and 245.

Fruits, Vegetables, Etc.

110a. Bureau of Markets Created.—A Bureau of Markets under the direction and control of and within said State Board of Agriculture* is hereby created. (G. L. 1923, c. 241, § 32, as added P. L. 1926, c. 789.)

110b. Board of Agriculture* Authorized to Make Rules and Regulations.—Said State Board of Agriculture is hereby authorized and instructed to pass reasonable rules and regulations relative to the marking, labeling, packing and branding of packages or other containers of products of the farm. (Id. § 33.)

110c. Same Subject.—Said board* is hereby authorized to pass rules and regulations for the uniform packing and grading of fruit, vegetables and other farm products and all fruit, vegetables and other farm products so packed or graded shall be packed and graded as prescribed by such rules or regulations adopted by said board. (Id. § 34.)

110d. Penalty for Misbranding or Mislabeling.—Any person, firm or corporation who shall misbrand or mislabel any package or other container of farm products or who shall violate any rule or regulation passed by said board* providing for branding and labeling shall be punished by a fine of not less than twenty-five dollars or more than one hundred dollars or be imprisoned for a term of three months or by both such fine and imprisonment. (Id. § 35.)

110e. Enforcement.—It shall be the duty of the Chief of the Bureau of Markets appointed by the State Commissioner of Agriculture to assist in the enforcement of the provisions of sections 32 to 35 inclusive of this chapter and the provisions of any rule or regulations adopted by the advisory council to carry out such provisions. He shall receive an annual salary to be fixed by the State Commissioner of Agriculture not to exceed three thousand five hundred dollars, to be paid from the appropriation therefor. (Id. § 36, as amended P. L. 1927, c. 1014, § 4.)

NOTE: See also Nos. 4, 14a et seq., 158 et seq. and 290 et seq.

Grain.

See No. 293 et seq.

Ice.

See No. 261 et seq.

Meat—Meat Products.

111. Inspector of Meat, How Appointed, Term; Bond; Vacancy; Fees; Salary.—There shall be an Inspector of Meat to be appointed by the Governor, with the advice and consent of the Senate, at the January session, A. D. nineteen hundred twenty-four, and in the month of January of every fifth year thereafter, to serve until the first day of February of the fifth year succeeding his appointment or until his successor has been appointed and qualified, who shall be vested with all the powers and who shall perform all the duties hereinafter described. He shall, before entering upon the duties of his office, give bond with sufficient surety to the General Treasurer in the penal sum of one thousand dollars for the faithful discharge thereof. Any vacancy that may occur in the office of the Inspector of Meat when the General Assembly is not in session, shall be filled by the Governor until the next session of the General Assembly, when, with the advice and consent of the Senate, he shall appoint a person to fill such vacancy for the remainder of the term. All fees received by said Inspector of Meat shall be by him turned over to the General Treasurer quarterly, and he shall receive in full compensation for his services as such Inspector of Meat and in lieu of all fees by him received, the annual salary of fifteen hundred dollars. The Inspector of Meat and his deputies shall be allowed actual traveling expenses in the perform-

*Commissioner of Agriculture. See No. 14e.

ance of their duties, not to exceed in the aggregate, for himself and said deputies, the sum of three hundred dollars, annually, to be paid on presentation of proper vouchers signed by said Inspector of Meat. (G. L. 1923, c. 187, § 1.)

112. May Appoint Deputies for Counties, Who Shall Give Bonds.—He may appoint a deputy inspector in each county, who shall be sworn to the faithful discharge of his duty and shall give bond therefor to the inspector and his successors in office, with sufficient surety, in a penal sum not exceeding five hundred dollars. (Id. § 2.)

113. Answerable for Deputies; May Remove Them.—The inspector shall be answerable for the conduct of his deputies and may remove them at his pleasure. (Id. § 3.)

114. Deputy Inspectors May Appoint Town Inspectors, Who Shall Give Bonds.—The deputy inspector in each county may appoint, in the several towns therein, such number of assistant inspectors as shall be necessary, who shall be sworn to the faithful discharge of their duties and shall give bonds therefor, with sureties, to the deputy inspector appointing them, in a penal sum not exceeding one hundred dollars. (Id. § 4.)

115. Deputies May Act, Though Office of Inspector Vacant.—In case of a vacancy in the office of Inspector, the deputy inspectors and their assistants shall continue in office until the next annual election. (Id. § 5.)

116. Beef and Pork to be Packed and Inspected.—No person shall sell, ship or export for sale from this State any salted beef or pork except in casks of the quality and dimensions hereinafter provided, nor unless the contents thereof shall be inspected and packed and the casks containing the same branded agreeably to the directions in this chapter, unless a special contract be made respecting the same. (Id. § 6.)

117. How Beef Shall be Cut and Put Up.—All beef put up in casks for sale or exportation shall be of fat cattle. It shall be cut in pieces as nearly square as may be, which shall be not more than eight pounds nor less than four pounds in weight. (Id. § 7.)

118. How Sorted and Divided; "Mess," "Prime," and "Cargo" Beef Defined.—All beef which the inspector, deputy inspector or assistant shall find on examination to have been killed of a proper age, to be fat and otherwise good and merchantable, shall be sorted and divided by him into three different sorts for packing into casks, to be denominated "mess," "prime" and "cargo."

Mess beef shall consist of the choicest pieces of an ox or steer well fatted, not under three years old, and weighing six hundred pounds and upwards; the shin, shoulder-clod and neck shall be taken from the fore quarter, and the leg and leg round from the hind quarter; and each cask containing beef of this description shall be branded on one of the heads with the words mess beef.

Prime beef shall consist of choice pieces of oxen, steers, cows and heifers, not under three years old nor under four hundred pounds weight, and to average five hundred pounds weight without any necks or shanks; on one head of each cask containing beef of this description shall be branded the words prime beef.

All other fat cattle of two years old and upwards, and all other parts of cattle that are not above described, which shall be packed, shall be branded on one head of the cask with the words cargo beef. (Id. § 8.)

119. How Salted.—Every cask shall be well salted with seventy-five pounds of clean St. Ubes, Isle of May, Lisbon or Turk's Island salt or eighty pounds of coarse Liverpool salt or other salt of equal quality, exclusive of pickle made of fresh water as strong as salt will make it, for every two hundred pounds weight of beef that each cask may contain, and two ounces of saltpetre for every one hundred pounds of beef. (Id. § 9.)

120. Three Qualities of Pork, "Clear," "Mess" and "Prime."—There shall be three qualities of pork distinguished by the name of "clear," "mess" and "prime."

Clear pork shall consist of middling pieces taken from well-fatted hogs weighing not less than two hundred and fifty pounds, excluding head, neck, shoulders, legs, chine-bone, the spare ribs, the lean and blades from the back and shoulders.

Mess pork shall consist of hogs well fatted, weighing not less than two hundred pounds, excluding the head, neck, legs and shoulders.

Prime pork shall consist of hogs well fatted of not less than one hundred pounds weight, including in each barrel three shoulders and one head and a half, not weighing more than twenty-four pounds, and excluding no part of a hog not declared refuse. (Id. § 10.)

121. **Refuse Pieces, What.**—The following parts of every hog shall be deemed "refuse" and shall not be put into any cask of pork inspected, to-wit: Nose-pieces ears, brains, tails, feet, lard and faces when separated from the cheek. (Id. § 11.)

122. **Barrel of Pork, How Salted and Branded.**—Every barrel of pork shall be salted and pickled with the same weight of salt and the same kind of pickle as is in this chapter provided for packing beef; and each cask, when so inspected and packed or repacked shall be branded in the same manner as is herein prescribed for branding beef, designating the different qualities or denominations herein described. (Id. § 12.)

123. **Casks, How Made.**—Every cask in which mess beef or in which clear or mess pork shall be packed shall be made of good seasoned white oak or white ash staves and heading not less than five-eighths of an inch in thickness, free from sap and every defect; to be covered three-fourths of the length with good hoops, leaving one-fourth in the centre, the hoops to be well set and drawn together; but casks containing prime beef and cargo beef or prime pork may be hooped with only twelve hoops, which shall be well secured with not less than three pins on each bulge. (Id. § 13.)

124. **How Branded.**—On the head of every cask in which beef or pork is packed shall be branded the weight it contains, which shall be only even hundreds, with the first letter of the christian name and the surname at length of the inspector who has inspected the same, with the name of the town where it was inspected and the words RHODE ISLAND in legible letters not less than three-fourths of an inch long. (Id. § 14.)

125. **Weight of Beef and Pork to the Barrel.**—Two hundred pounds of beef shall be considered and taken as a barrel of beef, and two hundred pounds of pork shall be considered and taken as a barrel of pork. (Id. § 15.)

126. **Penalty for Sale of Beef and Pork Without Inspection.**—Every person who shall sell or offer for sale any salted beef or pork in casks before it shall have been inspected and branded as aforesaid, unless there shall be a special contract in relation to the kind and quality of the article sold, shall forfeit twenty dollars for each cask. (Id. § 16.)

127. **Fees for Inspection and Certificates.**—For each and every certificate given by the inspector, deputy inspector or assistant, for beef or pork inspected, he shall receive twenty-five cents, to be paid by the person calling for the inspection, and they are severally required to give such certificate whenever requested. (Id. § 17.)

128. **Penalty for Alteration of Contents of Casks Inspected.**—Every person who shall knowingly intermix, take out or shift any beef or pork out of any casks inspected or branded as by this chapter is required, or put in any other beef or pork for sale contrary to the intent hereof, shall for each and every offense forfeit one hundred dollars. (Id. § 18.)

129. **How Inspectors Shall Proceed in Packing; Penalty for Use of Weights Not Sealed.**—Whenever any inspector, surveyor or packer shall be requested to cut, pack or repack any beef or pork in any store, yard or place other than his customary store or yard, the owner or owners of such beef or pork shall without delay furnish all materials and conveniences necessary to perform the same, excepting the tools of such inspector, surveyor or packer, who shall not be liable to any expense for the use of the store, yard or place wherein such beef or pork shall be deposited; and in case any inspector or packer shall in the discharge of his office use any steelyards or weights which shall not have been tried and sealed according to law, he shall for each offense forfeit twenty-five dollars. (Id. § 19.)

130. **Penalty on Deputy or Assistant and Others.**—Every deputy or assistant who shall inspect or brand any cask of beef or pork out of the county or town for which he shall be appointed, shall forfeit one hundred dollars; and if any person other than the said inspector, his deputy or assistant, shall stamp or brand any cask of beef or pork in manner directed by this chapter, he shall forfeit fifty dollars for each and every cask so unlawfully branded. (Id. § 20.)

131. **Fees of Inspectors and Assistants.**—The inspector shall have ten cents for every barrel inspected by him, and the deputy in each county shall have ten cents for each barrel of beef or pork inspected as aforesaid in the county whereof he shall be inspector; and each assistant inspector shall have for his services in cutting, weighing, packing, salting, pickling, heading and branding each barrel of beef or pork, fifty cents; and for performing the same exclusive of cutting he shall receive for each barrel twenty-five cents, to be paid by the owner thereof. (Id. § 21.)

132. **When Assistants May Perform Duties in Adjoining Towns.**—Every deputy inspector may on any special occasion send an assistant inspector from the

town in which such assistant resides into an adjoining town to perform the duties of his office in said town. (Id. § 22.)

133. Penalty on Inspectors for Fraud.—Every inspector or deputy inspector or assistant, appointed by virtue of this chapter, who shall be guilty of any neglect or fraud in inspecting any beef or pork contrary to the true intent and meaning of this chapter, or shall mark with his brand any cask containing beef or pork which has not been actually inspected, shall forfeit fifty dollars for each and every offense. (Id. § 23.)

133a. Providence Act Not Repealed.—This chapter shall not be so construed as to repeal or to affect an act entitled "An act authorizing the city of Providence to elect an inspector of beef and pork for said city," passed June twenty-ninth, one thousand eight hundred and thirty-three, nor the inspection of beef and pork in said city: Provided, the inspection be conformable to this chapter. (Id. § 24.)

134. Importing, Selling, Etc., Tainted or Diseased Meat or Fish, Prohibited.—The importation or exportation, and the sale, offering for sale, exposing for sale, or having in possession with intent to sell, within this State, of any carcass of any slaughtered animal, or any meat or fish of any kind consisting wholly or in part, and whether manufactured or not, of any tainted, diseased, corrupted, decomposed, putrid, rotten, decayed, or unwholesome animal substance or article, untfit for food, is hereby prohibited. (Id. § 25.)

135. Powers and Duties of Inspector of Meat, and Deputies and Assistants, With Reference to Such Meat and Fish.—The Inspector of Meat, each deputy inspector, each assistant inspector, and each inspector of beef and pork of any town or city, within their respective jurisdictions, shall seize and cause to be destroyed or disposed of otherwise than for food, all the articles mentioned in the preceding section found within their respective jurisdictions, and for such purpose they may enter any building, enclosure or other place in which such articles are stored, kept or exposed for sale: Provided, that every such inspector shall, upon the request of the owner of any such article, or upon the request of such owner's agent or servant, permit such owner, his agent or servant, to retain a sample of any such article, and such inspectors shall retain such article for the period of one hour for examination by such person or persons as said owner or his agent or servant may select. Every such inspector, at the expiration of one hour after seizure of any such article, shall treat such article with kerosene oil or other substance rendering it impossible to use such article for food or food products. It shall also be the duty of each of such officers to act forthwith within their respective jurisdictions upon notice from the State Board of Health, the Superintendent of Health, the city physician, the mayor of any city or the town council of any town. Such inspectors shall forthwith report every such seizure to the chief of police or town sergeant, respectively, of their town or city. (Id. § 26.)

136. Town and City Councils May Elect Inspectors of Beef and Pork.—The town council of any town and the city council of any city are hereby authorized to elect annually, or appoint one or more inspectors of beef and pork, and to provide for their compensation by salary or fees. Every such inspector shall, before entering upon the duties of his office, give bond in the sum of one thousand dollars for the faithful performance of the duties of such office and the payment of the value of any property illegally or unlawfully destroyed under the provisions of section twenty-six, and shall have all the rights, powers, fees, and privileges, and be subject to all the duties, penalties, and forfeitures, the same as the Inspector of Meat, with the power to appoint deputy inspectors: Provided, that nothing in this section shall be construed to embrace the provisions of section one* of this chapter in regard to the fees, compensation, and expenses of the Inspector of Meat and his deputies. (Id. § 27.)

137. Penalty for Interfering With Inspector.—Whoever prevents, obstructs, or interferes with any such officer, or whoever hinders, obstructs, or interferes with any such inspection or examination, or whoever secretes or removes any article mentioned in section twenty-five, for the purpose of preventing the same from being inspected or examined, shall be fined not exceeding one hundred dollars. (Id. § 28.)

138. Killing, Etc., for Sale, of Calf Not Four Weeks Old, How Punished.—Every person who shall kill or cause to be killed, for the purpose of sale, or who shall sell to any person engaged in the business of killing of animals to be used for food purposes, any calf less than four weeks old and the weight of which is less than seventy-five pounds, or shall sell, or have in his possession with intent to sell, the flesh of any calf which he knows to have been killed when less than four weeks old, or the weight of which calf before being killed he knows to have

*See No. 111.

been less than seventy-five pounds, shall be fined not exceeding fifty dollars. (G. L. 1923, c. 400, § 2.)

NOTE: See also Nos. 4, 14 et seq., 76 and 172.

Oysters.

See No. 143 et seq.

Saleratus, Etc.

139. Inspectors, How Appointed.—The city council of Providence shall, and the town councils of the several towns may, appoint an inspector of saleratus, bicarbonate of soda and cream of tartar for said city and towns respectively. (G. L. 1923, c. 194, § 1.)

140. Inspectors to Test, Etc., and Give Certificate, Etc.—Every inspector shall, whenever requested, test any of such articles, which shall be presented to him for inspection, and shall give his certificate to any person applying therefor, whether said article be impure or adulterated, and for every such certificate he shall be entitled to the sum of two dollars. (Id. § 2.)

141. To Make Analysis, Etc., and Give Certificate.—Every inspector shall, whenever requested, make an analysis of any such article which may be presented to him for that purpose, and shall give his certificate to any person who shall apply therefor, of the result of such analysis, for which certificate he shall be entitled to the sum of ten dollars. (Id. § 3.)

142. Penalty for Selling Impure Article.—Every person who shall sell saleratus, bicarbonate of soda or cream of tartar, which has been adulterated and thereby rendered an impure article, shall be fined twenty dollars, together with the cost of testing and analyzing such impure article; one-half of said fine to the use of the city or town where such sale shall be made, and one-half thereof, together with the cost of testing and analyzing such impure article, to the use of the person who shall sue for the same. (Id. § 4.)

Salt.

See Nos. 290 and 293 et seq.

Shellfish.

143. Expenses.—The expenses incurred by the Commissioners of Shellfisheries in the performance of the duties imposed upon them by this chapter shall be paid by the general treasurer, out of any funds in the treasury not otherwise appropriated, upon the presentation of vouchers therefor duly certified by their chairman. (G. L. 1923, c. 233, § 1.)

144. Commissioners of Shellfisheries to Inspect Certain Premises, Etc.—The Commissioners of shellfisheries shall inspect the premises designated in section three of this chapter, at such times as they may deem advisable, for the purpose of determining whether said premises are kept in a proper sanitary condition for opening, handling, or packing shellfish for the trade. Also said commissioners shall inspect the methods followed on the premises in opening, packing, or preparing shellfish for the trade, to determine whether such methods are proper from a sanitary standpoint. (Id. § 2.)

145. Certain Premises Exempt From Inspection.—The premises which come within the scope of this chapter are all establishments where oysters or other shell fish are opened, packed, or prepared for the trade. Retail or wholesale markets where shellfish are sold which are purchased from the original opening or packing houses designated in this section shall not come within the scope of this chapter. (Id. § 3.)

146. To Inspect Sanitary Conditions.—Said commissioners shall inspect any or all the leased oyster grounds and other shellfish grounds within the State, at such times as they may deem advisable, to determine whether said grounds are in a proper sanitary condition for the production of shellfish for consumption as food. (Id. § 4.)

147. May Make Sanitary Regulations.—Said commissioners may make such regulations in regard to sanitation as they may deem advisable, from time to time, with reference to the sanitary handling of shellfish and with reference to maintaining opening or packing houses in a proper sanitary condition. (Id. § 5.)

148. Commissioners to Issue Certificates as to Sanitary Condition.—Said commissioners may issue certificates from time to time to any person whose premises or grounds are found by them to be in a sanitary condition, setting forth that they have examined such opening or packing house or such shellfish ground and that the methods followed in the preparation of oysters or other shellfish in such opening or packing house are sanitary and that the grounds inspected are in proper sanitary condition for the production of shellfish for consumption as food. (Id. § 6.)

149. Use of Grounds or Premises Which Are Uncertified, Prohibited.—No person shall take shellfish from any grounds which are not certified by said commissioners as being in a sanitary condition, except for the purpose of transplantation. No person shall prepare shellfish for the trade except on premises and by methods certified by said commissioners as being sanitary. (Id. § 7.)

150. Penalties.—Any person who shall violate any sanitary regulation made by said commissioners, as provided for in section five, shall be fined twenty dollars for the first offense, and for each subsequent offense one hundred dollars and be imprisoned not more than ninety days in jail. Any person violating the provisions of section seven of this chapter shall be fined twenty dollars for the first offense, and for each subsequent offense one hundred dollars and be imprisoned not more than ninety days in jail. (Id. § 8.)

151. Commissioners to Prosecute.—It shall be the duty of the Commissioners of Shellfisheries to prosecute any person in their opinion guilty of a violation of any of the provisions of this chapter, and in all such prosecutions said commissioners shall not be required to enter into any recognizance or to give surety for costs. It shall be the duty of the Attorney-General to conduct the prosecution of all cases brought by said commissioners under the provisions of this chapter. (Id. § 9.)

Vinegar.

152. Sale of Adulterated Vinegar as Cider-Vinegar is Prohibited.—No person shall by himself, his servant or agent, or as the servant or agent of any other person, sell, exchange, or have in his custody or possession, with intent to sell or exchange, or expose or offer for sale or exchange, any adulterated vinegar, or label, brand, or sell as cider-vinegar any vinegar not made exclusively from apple cider. (G. L. 1923, c. 205, § 1.)

153. What is Pure and What is Adulterated Vinegar.—All vinegars shall be without artificial coloring matter, and shall contain not less than four grams of acetic acid in one hundred grams of the vinegar. Cider vinegar shall contain in addition to four grams of acetic acid not less than one and six-tenths grams of cider vinegar solids in one hundred grams of the vinegar. If any vinegar contains any artificial coloring matter, or less than the above amount of acidity, or, in the case of a cider-vinegar, if it contains less than the above amount of acidity or cider-vinegar solids, it shall be deemed to be an adulteration within the meaning of this chapter. (Id. § 2.)

154. Certain Substances Not to be Contained in Vinegar.—All vinegars shall be without any metallic salts of arsenic, lead, copper, tin, or zinc, or any sulphuric, hydrochloric, nitric, or other mineral acid injurious to health; and if any vinegar contains any metallic salts of arsenic, lead, copper, tin, or zinc, or any sulphuric, hydrochloric, nitric, or other mineral acid injurious to health, it shall be deemed to be adulterated within the meaning of this chapter. (Id. § 3.)

155. Who to Make Complaints.—It shall be the duty of the Board of Food and Drug Commissioners appointed under chapter one hundred sixty-eight* to make complaint for all violations of this chapter, and they shall not be required to give surety for costs. (Id. § 4.)

156. Inspection of Vinegar; Certificate of Analysis to be Received in Evidence.—Every commissioner or other officer or agent appointed under the provisions of chapter one hundred sixty-eight* may enter any place where vinegar is stored or kept for sale, and examine all carriages used in the conveyance of vinegar; and whenever he has reason to believe any vinegar found by him is adulterated, he shall take specimens thereof and cause the same to be analyzed or otherwise satisfactorily tested, the result of which he shall record and preserve as evidence, and a certificate of such result, sworn to by the analyzer, shall be admissible in evidence in all prosecutions under this chapter. (Id. § 5.)

157. Penalty for Violation of This Chapter.—Any person violating the provisions of this chapter shall be subject to the penalties prescribed in chapter one hundred sixty-eight* for like offenses. (Id. § 6.)

NOTE: See also No. 245.

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*See No. 1 et seq.

Sanitation.

158. **Inspection of Bakeries, Confectioneries and Ice Cream Manufactories.**—Said Chief Inspector, or any assistant factory inspector required by him, shall have charge of the inspection of bakeries, confectioneries, and ice cream manufactories, and any premises upon which bread or other products or flour or meal are baked or mixed or prepared for baking or for sale as food in this State. Said inspector shall have charge of the inspection of cooked and prepared foods and foodstuffs displayed, or offered for sale in any store, market, restaurant, lunch cart or lunch counter, or other place of public display, and all foods of this description shall be kept in tight wooden or glass cases or cupboards, or under glass, earthen, or tin covers, or in cases or cans, or wrapped in paraffine paper, or protected in such a manner that no dust or animals can come in contact with such foods while thus displayed, or offered for sale. Said foods, when carried through any street, private way, or public place, shall be protected in a similar manner. All candies, confectionery, dried or preserved fruits, dates, figs, cut fruits, cut melons, cracked nuts or nutmeats shall be protected as provided above when displayed, or offered for sale, and any such inspector so acting, whether one or more of such inspectors, or whether acting at the same or different times, shall for such purposes be designated as a State Inspector of Bakeries and Foods. Such inspector shall not be pecuniarily interested, directly or indirectly, in the manufacture or sale of any article or commodity used in any business included in the provisions of this chapter, and shall not give certificates or written opinions to a maker or vendor of any such article or commodity. (G. L. 1923, c. 85, § 18.)

159. **Certificate of Inspection to be Issued.**—No person, copartnership, or corporation shall carry on the business of a public bakery, confectionery, or ice cream manufactory, or place where bread or other products of flour or meal are baked or mixed or prepared for baking or for sale as food, until such premises are inspected by said State inspector. If such premises be found to conform to the provisions of this chapter, said inspector shall issue a certificate to the owner or operator of such bakery, confectionery, or ice cream manufactory, or place where flour or meal food products are baked or mixed or prepared for baking or for sale as food. (Id. § 19.)

160. **Premises Used for Bakery, Etc., Business How to be Drained, Plumbed and Otherwise Constructed.**—All buildings or rooms used or occupied as biscuit, bread, macaroni, spaghetti, pie or cake bakeries, ice cream or confectionery manufactories, or where flour or meal food products are baked or mixed or prepared for baking or for sale as food, shall be drained and plumbed in a manner conducive to the proper and healthful sanitary condition thereof, and shall be constructed with air shafts, windows, or ventilating pipes sufficient to insure adequate and proper ventilation. No cellar, basement or place which is below the street level shall hereafter be used or occupied for the purposes mentioned in this section: Provided, that the same may be so used or occupied by the present occupant only; provided, further, that any cellar, basement or place below the street level which complies with the following requirements, in addition to those otherwise provided in this chapter, may be so used and occupied: The ceiling shall be of plaster, cement, tile, metal or other impermeable material. The floor and walls shall be of even, smooth cement or of even, smooth tiles embedded in cement. The floor, walls and ceiling shall be impervious to seepage of moisture. The floor shall be properly and adequately drained. The distance from floor to ceiling shall be at least ten feet. There shall be proper and adequate illumination. There shall be proper and adequate ventilation, either by windows opening directly outside the building, or by such mechanical system as will adequately and properly supply fresh air and exhaust used air, steam vapors, gases and excess heat. (Id. § 20, as amended P. L. 1923, c. 446.)

161. **Other Requirements.**—Every room used for the purposes included in this chapter shall have, if deemed necessary by such inspector, an impermeable floor constructed of cement, or of titles laid in cement, or of wood or other suitable non-absorbent material which can be flushed and washed clean with water. Such inspector shall require said premises to be kept at all times in a sanitary condition; he may also require the woodwork of such walls to be well oiled, varnished, or painted. The furniture and utensils shall be so arranged as to be readily cleansed and not prevent the proper cleaning of any part of the room. The manufactured flour or meal food products shall be kept in dry and airy rooms, so arranged that the floors, shelves, and all other facilities for storing the same can be properly cleaned. No domestic animals except cats shall be allowed to remain in a

room used as a biscuit, bread, pie, or cake bakery, or any room in such bakery where flour or meal products are stored or kept. (G. L. 1923, c. 85, § 21.)

162. Bakeries to Have Proper Washrooms and Water-closets; Employees to Wash Hands, Etc.; Sleeping in Bakery Forbidden.—Every such bakery, confectionery, or ice cream manufactory, or place where flour or meal food products are baked or mixed or prepared for baking or for sale as food, shall be provided with a proper washroom and water-closet, or water-closets, apart from the bake rooms or rooms where the manufacture of such food products is conducted, and they shall be maintained in a sanitary condition; no water-closet, earth closet, privy, or receptacle for garbage shall be within or connect directly with the bake room of any bakery or room where ice cream or confectionery is manufactured. Operatives, employees, clerks, and all persons who handle the material from which food is prepared, or the finished product, before beginning work, or after visiting toilet or toilets, shall wash their hands and arms thoroughly in clean water.

No person shall sleep in a room occupied as a bake room. Sleeping places for the persons employed in the bakery shall be separate from the rooms where flour or meal food products are manufactured or stored. If the sleeping places are on the same floor where such products are manufactured, stored, or sold, such inspector may inspect and order them put in a proper sanitary condition. (Id. § 22.)

163. Partition Wall Required Between Bakery, Etc., and Stable.—No bakery, confectionery, or ice cream manufactory, or place where flour or meal food products are baked or mixed or prepared for baking or for sale as food, shall be conducted in a room adjoining a stable, unless separated from such stable by a wall or partition without any door or other opening between such stable and such bakery, confectionery, or manufactory, or place where flour or meal food products are baked or mixed or prepared for baking or for sale as food; and no material used therein shall be kept in a stable. (Id. § 23.)

164. Protection of Articles Used in Baking.—Packages or receptacles containing butter, lard, cooking oils, molasses, sugar, spices, dried fruits, tartars, and similar articles, in such bakery, confectionery, or manufactory, or place where flour or meal food products are baked or mixed or prepared for baking or for sale as food, must be kept covered when not necessarily uncovered for use. (Id. § 24.)

165. Smoking, Chewing, Etc., of Tobacco Forbidden in Bakeries, Etc.—Smoking, snuffing, or chewing of tobacco, or spitting on floor in working rooms in such bakery, confectionery, or manufactory, or place where flour or meal food products are baked or mixed or prepared for baking or for sale as food, is strictly forbidden. (Id. § 25.)

166. Diseased Persons Not to be Employed in Bakeries, Etc.—No employer in any bakery, confectionery, or ice cream manufactory, or place where flour or meal food products are baked or mixed or prepared for baking or for sale as food, shall require, permit, or suffer any person to work, nor shall any person work, in a building, room, basement, cellar, or vehicle occupied or used for the production, preparation, manufacture, packing, storage, sale, distribution, and transportation of food, who is affected with any venereal disease, smallpox, diphtheria, scarlet fever, yellow fever, tuberculosis or consumption, bubonic plague, Asiatic cholera, leprosy, trachoma, typhoid fever, epidemic dysentery, measles, mumps, German measles, whooping cough, chickenpox, or any other infectious or contagious disease. (Id. § 26.)

167. Requirements as to Use of Floor, Labels, Wrapping, Etc.—Bread or pastry must not be laid on the floor in such bakery, confectionery, or manufactory, or place where flour or meal food products are baked or mixed or prepared for baking or for sale as food. No label shall be stuck on bread or other bakery goods by means of gum, saliva, or any material other than the article baked. No baker shall use or cause to be used newspapers or other second-hand paper for the purpose of lining tins or wrapping up bread or other bakery goods. All bakers' wagons must be kept clean, both inside and out, and so arranged that no dust can blow on bread or pastry while in transit. (Id. § 27.)

168. Bakeries, Confectioneries, Etc., to be Kept Cleaned, and Inspected at Least Twice Yearly; Unclean Place May be Closed; Inspector May Bring Complaint.—Bakeries, confectioneries, and ice cream manufactories, or places where flour or meal food products are baked or mixed or prepared for baking or for sale as food, shall be kept at all times in a clean and sanitary condition, and shall be inspected by said inspector at least twice each year. If on inspection said inspector finds any bakery, confectionery, or ice cream manufactory, or place where flour or meal food products are baked or mixed or prepared for baking or for sale as food, to be so unclean, ill-drained, or ill-ventilated, as to be unsanitary, he may, after such reasonable time, to be fixed by said inspector, not less than

five days, by notice in writing, to be served by affixing the notice on the inside of the main entrance door of said bakery, confectionery, or ice cream manufactory, or place where flour or meal food products are baked or mixed or prepared for baking or for sale as food, order the person found in charge thereof immediately to cease operating it until it be properly cleaned, drained, or ventilated. If at any time subsequent to the expiration of said five days' notice the inspector shall again find said bakery, confectionery or ice cream manufactory to be so unclean, ill-drained or ill-ventilated as to be unsanitary, he may bring a complaint against the owner of said bakery, confectionery or ice cream manufactory in the District Court. (Id. § 28, as amended P. L. 1925, c. 586.)

169. Appeal From Order of Inspector.—Any person who is aggrieved by any order or requirement of said State Inspector may appeal therefrom in the same manner in all respects, and with the same rights and liabilities, as provided in section ten* of this chapter. (G. L. 1923, c. 85, § 29.)

170. Penalties.—Any person who violates any of the provisions of sections eighteen to twenty-eight, both inclusive, of this chapter or who refuses to comply with any lawful requirement of the authority vested with the enforcement of such sections, as provided therein, shall be guilty of a misdemeanor, and on conviction, shall be punished by a fine of not less than twenty or more than fifty dollars for a first offense, and for a second offense by a fine of not less than fifty or more than one hundred dollars or by imprisonment for not more than ten days, and for a third offense by a fine of not less than one hundred or more than two hundred and fifty dollars or by imprisonment for not more than thirty days, or by both such fine and imprisonment. (Id. § 30.)

171. General Powers and Duties of Inspectors.—Such inspector shall be empowered to visit and inspect all parts of stores, bakeries, confectioneries, and storerooms and places where ice cream, flour and meal food products are manufactured, and all stores, markets, restaurants, lunch carts or lunch counters, and other places where food is kept for sale, at any and all reasonable times, and as often as practicable. Such inspector shall promptly enforce the provisions of this chapter, and shall prosecute all violations of the same before any court of competent jurisdiction in the State. The Attorney-General shall act as his legal advisor in all matters pertaining to his official duties. He shall cause copies of sections eighteen to thirty-one inclusive of this chapter to be printed and kept posted in all bakeries, confectioneries, and manufactories of ice cream, flour and meal food products, and all places where such business is carried on. Any mutilation of such printed matter shall be punished as provided in the preceding section. Such inspector shall not be required to give surety, nor furnish recognizance for costs, in any prosecution or proceeding under this chapter. (Id. § 31.)

172. Meats and Provisions Not to be Wrapped in Unsanitary Manner.—No dealer in groceries, meats, provisions or any articles of food whatsoever shall use or cause to be used newspapers, printed paper or other second-hand paper for the purpose of wrapping up such articles of food, unless the same shall first be placed in paper carton boxes, jars, tins or other sanitary receptacles. Any person who violates the provisions of this chapter, shall be fined not exceeding twenty dollars for each offense. (G. L. 1923, c. 400, § 4.)

NOTE: See also the beverage law, No. 15 et seq.; the dairy law, No. 24 et seq.; the shellfish law, No. 143 et seq.

PART III.

Special Drug Laws.

Abortifacients.

173. Penalty for Assisting or Advising so as to Cause Miscarriage of Pregnant Woman.—Every person who knowingly advertises, prints, publishes, distributes or circulates, or knowingly causes to be advertised, printed, published, distributed or circulated, any pamphlet, printed paper, book, newspaper, notice, advertisement or reference containing words or language giving or conveying any notice, hint or

*Relates to appeals from order of factory inspector, omitted herein.

reference to any person, or to the name of any person, real or fictitious, from whom, or to any place, house, shop or office where, any poison, drug, mixture, preparation, medicine, or noxious thing, or any instrument or means whatsoever, or any advice, direction, information or knowledge, may be obtained for the purpose of causing or procuring the miscarriage of a woman pregnant with child, or who knowingly exhibits, advertises or sells to be used for such purpose any poison, drug, mixture, preparation, medicine, noxious thing, instrument or means whatsoever, or who with or without any charge therefor, gives to any person any advice, information, instruction or direction for the purpose of causing or assisting in any such miscarriage shall be punished by imprisonment for not more than two years, or by a fine of not more than one thousand dollars, or by both. (G. L. 1923, c. 399, § 14.)

174. Of Search Warrants; and Disposition of Articles Found.—Any justice or clerk of a District Court, upon complaint being made to him under oath, may issue a search warrant for the purpose of searching for any obscene book, pamphlet, ballad, printed paper, or other thing mentioned in section thirteen* of this chapter, or for any print, publication, circular, advertisement or notice described in section fourteen of this chapter, and such warrant may be issued to any officer authorized to make an arrest for any criminal offense in the city or town where such search is to be made, and all such things as shall be found by any such officer in executing any such search warrant, or which shall be produced and brought into court, shall be safely kept so long as shall be necessary, for the purpose of being used as evidence in any case, and as soon as may be afterwards, shall be destroyed by order of the court before which the same shall be brought. (Id. § 15.)

Distribution of Samples.

175. Medicines, Pills, Powders, Etc., Containing Drugs or Poisons Not to be Sold or Distributed on Street or From House to House; Exception.—No person shall, by himself or his servant or agent, sell, distribute or give away in any street or highway, or from house to house any bottle, box, envelope, or package containing any liquid medicine or any pills, powder, tablets, or other articles which contains any drug or poison: Provided, however, that the provisions of this section shall not apply to any person acting as a member, officer or agent of any pharmaceutical house in the distribution of samples of its products to physicians. (G. L. 1923, c. 168, § 23.)

176. Penalty.—Any person, whether acting for himself or another, or as member, officer or agent of any partnership or corporation, who shall violate any of the provisions of the preceding section shall be fined not more than fifty dollars, or imprisoned not more than one year, or both. (Id. § 24.)

177. Board of Food and Drug Commissioners Not Obliged to Give Surety for Costs in Prosecutions.—It shall be the duty of the Board of Food and Drug Commissioners to prosecute any person, firm or corporation violating the provisions of section twenty-three, and any such commissioner making such complaint shall not be required to give surety for the payment of costs. (Id. § 25.)

Pharmacy, Poisons and Narcotics.

178. Who May Retail, Compound or Dispense Drugs, Medicines or Poisons.—No person, unless a registered pharmacist or registered assistant pharmacist assisting a registered pharmacist, or unless acting as an aid under the immediate supervision of a registered pharmacist or a registered assistant pharmacist, within the meaning of this chapter, shall retail, compound or dispense drugs, medicines or poisons, except as hereinafter provided. No person, copartnership or corporation shall, after the first day of July, 1926, except as hereinafter provided, keep and maintain any open shop or store for the purpose of retailing, compounding or dispensing drugs, medicines or poisons, without first obtaining and having in force from the State Board of Pharmacy a license to do so, said license to be issued to the pharmacist registered by the State board at such open shop or store, or as having supervision over such shop or store or shops or stores. If a person, copartnership or corporation keep and maintain more than one such shop or store, he or it shall employ at least one registered pharmacist and shall have a separate registered pharmacist or registered assistant pharmacist at each such shop or store at all times when open. (G. L. 1923, c. 167, § 1, as amended P. L. 1926, c. 794.)

*Relates to the selling of obscene literature generally, omitted herein.

179. Definitions.—Every person in order to be a registered pharmacist within the meaning of this chapter shall be either a graduate in pharmacy or a practicing pharmacist, and who shall have presented satisfactory evidence of his qualifications to the Board of Pharmacy, and who shall have declared in writing his intention of keeping open shop for the compounding of prescriptions and the retailing of drugs and medicines, either on his own account or as an employee of a person, copartnership or corporation, and who shall have served three years in a shop or store where the prescriptions of medical practitioners are compounded. A graduate in pharmacy shall be a person who has obtained a diploma in pharmacy from a regularly incorporated educational institution authorized to confer degrees by the laws of the State in which it is located. A practicing pharmacist shall be a person who, on the twenty-fourth day of March, one thousand eight hundred and seventy-one, kept, and continued thereafter to keep, an open shop for compounding and dispensing the prescriptions of medical practitioners and for the retailing of drugs and medicines and who shall have given to the State Board of Pharmacy satisfactory evidence of his qualifications; and such other persons as shall have given to the State Board of Pharmacy satisfactory evidence of their qualifications, and who, prior to the first day of January, one thousand nine hundred and ten, shall have declared in writing their intention of keeping open shop for the compounding of prescriptions and the retailing of drugs and medicines. Every person, in order to be a registered assistant pharmacist within the meaning of this chapter, shall have served three years in a shop or store, where the prescriptions of medical practitioners are compounded, and shall have passed a satisfactory examination before the State Board of Pharmacy. Every applicant for examination, in order to be a registered pharmacist, or registered assistant pharmacist, within the meaning of this chapter, must be a citizen of the United States. (Id. § 2.)

180. State Board of Pharmacy.—Clause 1. There shall be a State Board of Pharmacy consisting of seven suitable persons who shall be qualified electors, all of whom shall be registered pharmacists of the State, and who shall hold office for the terms of their appointment or until their successors, respectively, shall be appointed and qualified to act. Immediately upon the passage of this act the Governor, with the advice and consent of the Senate, shall appoint seven such persons to be members of the State Board of Pharmacy, two to hold office until the first day of February, A. D. 1930, two to hold office until the first day of February, A. D. 1929, two to hold office until the first day of February, A. D. 1928, and one to hold office until the first day of February, A. D. 1927. In the month of January, A. D. 1927, and in the month of January in each year thereafter the Governor, with the advice and consent of the Senate, shall appoint a member or members of said State Board of Pharmacy to succeed the member or members as the case may be whose terms will next expire, to hold office until the first day of February in the fourth year after their apointment, and until their successors are appointed and qualified to act. Any vacancy which may occur in said board when the Senate is not in session shall be filled by the Governor until the next session thereof, when he shall, with the advice and consent of the Senate, appoint some such person to fill such vacancy for the remainder of the term. Four members of said board shall constitute a quorum.

Clause 2. Nothing contained in this act shall be construed as preventing the members of the State Board of Pharmacy in office at the time of the passage of this act from continuing to serve in that capacity until the members appointed under the provisions of section 3 hereof shall be qualified to act.

Clause 3. Said board shall organize by electing from their number a president and secretary, both of whom shall sign all certificates and other official documents. The secretary shall also be registrar of pharmacists. Said board shall meet in the city of Providence once in three months or as often as they may deem necessary, and shall make such by-laws, rules and all necessary regulations not repugnant to law, for the proper fulfillment of their duties in carrying out the provisions of this chapter. The presiding officer of said board may administer oaths in relation to all matters connected with or in the administration of the duties of the board. The said board shall examine all applicants for registration, shall direct the registration by the registrar of all persons properly qualified or entitled thereto, and shall report annually to the General Assembly at its January session the condition of pharmacy, together with the names of all registered pharmacists, assistant pharmacists and licensed pharmacies.

Clause 4. The registrar of pharmacists shall keep a book in which shall be entered, under the supervision of the State Board of Pharmacy, the name and address of every person who shall apply for registration. The registrar shall note the fact against the name of any registered pharmacist or assistant pharmacist who

may have died or removed from the State or disposed of or relinquished his business, and shall make all necessary alterations in the location of persons registered under this chapter. The said board may appoint an inspector who shall receive such salary as the board may deem proper, not exceeding fifteen hundred dollars annually, and perform such duties as the board may from time to time prescribe. The secretary of said board shall receive an annual salary of eight hundred dollars, which shall be in full compensation as secretary and member of said board.

Clause 5. The members of the board, except the secretary, shall receive as compensation for their services the sum of ten dollars, respectively, for attendance at each meeting, and for conducting examinations, but no compensation shall be paid for more than twelve meetings in any calendar year. The traveling expenses of members while engaged in the duties of the board, shall be paid out of the amount appropriated for expenses of said board. The General Assembly shall annually appropriate such sum as it may deem necessary for the purposes of this section; and the State Auditor is hereby authorized and directed to draw his orders upon the general treasurer for the payment of such sum, or so much thereof as may be from time to time required, upon receipt by him of proper vouchers approved by the president and secretary of the State Board of Pharmacy. (Id. § 3.)

181. Certificate of Secretary and Registrar to be Received in Evidence.—The certificate of the secretary of the State Board of Pharmacy and registrar of pharmacists as to any matter of record of said board or of the non-existence of any matter in the record of said board, as to which said secretary may be called upon to testify in his official capacity, shall be admissible evidence in any court in this State of the existence or non-existence of such matter. Said secretary shall be paid the sum of twenty-five cents for every such certificate, which sum shall be taxed in the costs of any proceedings pending in any court in which the same shall be offered as evidence. (G. L. 1923, c. 167, § 4.)

182. Fees; Revocation of License.—Clause 1. Every person applying for examination and registration shall pay to the State Board of Pharmacy ten dollars, and on passing the examination required shall be furnished, free of expense, with a certificate of registration. Every registered assistant pharmacist whose registration shall be in force on the thirty-first day of December, 1909, and every registered assistant pharmacist who is, or may become a graduate in pharmacy (as hereinbefore defined) and who shall declare his intention of keeping open shop, on his own account or as an employee of a person, copartnership or corporation, for the compounding of prescriptions and the retailing of drugs and medicines may, with the consent of the board, be entitled to registration as a registered pharmacist and shall be furnished with a certificate of registration, for which certificate he shall pay the registrar two dollars. Every certificate issued by said board shall be renewed annually, for which renewal two dollars shall be paid to the registrar.

Clause 2. The fees received for examination, registrations, certificates and licenses shall be turned over to the general treasurer for the use of the State. The registration of every person registered by the board shall expire on the first day of July next ensuing the granting thereof; and if any person so registered shall not apply for a renewal of his registration on or before the first day of July, annually, the registrar of pharmacists shall note the fact against the name of such person, who shall thereafter cease to be a registered pharmacist or registered assistant pharmacist. Said board may, in their discretion, refuse to renew any such registration, and may at any time, for good and sufficient cause, discontinue any registration previously granted. Every application for a pharmacy license shall be in writing and shall be accompanied by a payment to said board of the sum of five dollars as a license fee. Such licenses shall be consecutively numbered, and shall be renewed annually, for which renewal five dollars shall be paid to the registrar. Said license must be displayed conspicuously in the pharmacy, and will not be transferable. Said Board of Pharmacy shall furnish each licensed pharmacy with a uniform sign designating it as such. Such sign must be displayed conspicuously, subject to the approval of the board.

Clause 3. Said board may for good and sufficient cause refuse to grant or to renew and may revoke any such license; any person, copartnership or corporation now owning or operating, in the State of Rhode Island, a pharmacy, drug store, or open shop or store for the purpose of retailing, compounding or dispensing medicines and poisons may continue to own and operate the same, and to use the terms "pharmacy" and "drug store," and may establish, own and operate, in the State of Rhode Island, additional pharmacies, drug stores or open shops or stores for the purpose of retailing, compounding or dispensing medicines and poisons, and may use the terms "pharmacy" and "drug store" in connection there-

with except when good and sufficient cause shall exist for refusing or terminating the license of any such pharmacy or drug store; and subject to said conditions, any such person, copartnership or corporation shall be entitled to receive the necessary licenses for such pharmacies, drug stores or open shops or stores for retailing, compounding or dispensing medicines and poisons now or hereafter owned and operated. (Id. § 5, as amended P. L. 1926, c. 794.)

183. Certificate of Registration May be Used, Where.—The certificate issued by said board shall be used by the person to whom issued in but one place of business; but said board may permit such person, in removing to another place of business, to continue the use of such certificate with the same force and effect as in the place for which such certificate was issued. Such person removing shall notify said board of the change of his place of business, and failing so to do shall cease to be a registered pharmacist. No registered pharmacist shall be the proprietor of more than one place of business, unless he shall keep, at each place of business of which he is the proprietor, at all times when open, a registered pharmacist or registered assistant pharmacist. No registered pharmacist doing business or employed in any other State, shall be permitted to open shop in this State, unless he shall keep, at all times when open, a registered pharmacist or a registered assistant pharmacist in each shop operated in this State. (G. L. 1923, c. 167, § 6.)

184. Certificate of Registration to Become Null and Void, When.—Every certificate of registration granted under the provisions of this chapter shall be granted upon the condition that the person registered will not violate or permit to be violated, upon the premises occupied by him thereunder, any of the provisions of this chapter or of chapters one hundred twenty* or one hundred twenty-seven† and every such certificate hereafter granted shall contain such condition written or printed upon the face thereof, and such certificate and the registration of the person named therein shall become and be null and void upon conviction of such person of any offense, under either of said chapters, committed upon the premises occupied by such registered person. (Id. § 7.)

185. Board of Pharmacy to Investigate Complaints for Violation of Law.—It shall be the duty of the said State Board of Pharmacy to investigate all complaints of disregard, non-compliance with, or violation of the provisions of this chapter or of the provisions of chapter one hundred twenty-seven† on the part of druggists and persons licensed to sell medicines and poisons, and to bring all such cases to the notice of the proper prosecuting officers; and the members of said board shall not be required to enter into any recognizance for costs on any complaint made for any violation of the provisions of this chapter. (Id. § 8.)

186. Unlawful to Use Titles "Pharmacist," "Druggist," Etc.; Exceptions; Dispensing, Etc., Drugs, Medicines, Etc., as a Registered Pharmacist, Etc.; Exceptions; Penalties.—It shall be unlawful, except as otherwise in this act provided, for any one but a registered pharmacist under this act who shall conform to the rules and regulations of the State Board of Pharmacy to take, use and exhibit the titles, "pharmacist," "druggist," "pharmacy" and "drug store" or any term, sign or device implying the same, and to have charge of, engage in or carry on for himself or for another, the dispensing, compounding or sale of drugs, medicines or poisons anywhere within this State; and except as prescribed by the provisions of this act, it shall not be lawful for any person to practice as a registered pharmacist, registered druggist, or to advertise himself by sign or otherwise to be such, or to engage in, conduct, carry on or be employed in the dispensing, compounding or retailing of drugs, medicines or poisons within this State; provided, however, that this section shall not apply to or be construed so as to affect any registered pharmacist or registered assistant pharmacist located in any incorporated hospital or public, State or charitable institution where prescriptions are compounded, or any licensed pharmacy owned by the estate of any registered pharmacist and carried on and conducted, with the approval and permission of the State Board of Pharmacy, by the representative appointed by the court of probate of any registered pharmacist who is deceased or not sui juris, and every person, copartnership or corporation who shall violate any of the provisions of this chapter shall, unless otherwise provided, upon the first conviction be fined fifty dollars, and upon the second and every subsequent conviction, shall be fined one hundred dollars. (Id. § 9, as amended P. L. 1926, c. 794.)

187. Terms "Drugs," "Medicines," and "Poison," What to Include; Who Excepted From the Provisions of This Chapter; Term "Poison" What not to Include.—The terms "drugs," "medicines," and "poisons" as used in this chapter

*Relates to the Suppression of Certain Nuisances. Omitted herein.

†See No. 241 et seq.

shall mean and include all drugs and preparations sold under or by a name recognized in the United States Pharmacopœia or National Formulary, and of the standards of strength, quality or purity as determined by the test, if any, laid down in the United States Pharmacopœia or National Formulary. Nothing in this chapter contained shall apply to any practitioner of medicine who does not keep open shop for the retailing, dispensing or compounding of medicines and poisons, nor prevent him from administering or supplying to his patients such articles as he may deem fit and proper; nor shall it interfere with the making and dealing with proprietary medicines, popularly called patent medicines, or the ordinary household remedies and drugs, unless such medicines be wholly or in part composed of some of the articles enumerated in schedule A of this chapter, nor with the business of wholesale dealers in supplying medicines and poisons to registered pharmacists and physicians, and for use in the arts; nor shall it apply to such wholesale dealers in drugs and medicines in the trade on the twenty-sixth day of March, 1874, as the State Board of Pharmacy shall in their discretion deem suitable persons, and who shall keep and maintain in their employ one or more registered assistant pharmacists, who shall have the sole charge and care of the compounding and dispensing of all medicines and poisons sold at retail: Provided, however, that the said term "poisons" as used in this chapter shall not include any substance, mixture of substances or preparation commonly kept on sale in retail grocery stores and commonly used for disinfecting, polishing, or cleaning purposes, nor any non-poisonous substance, mixture of substances or preparation, which is or may be in common use for purposes other than the cure, mitigation or prevention of disease, regardless of whether any of the substances, mixtures of substances or preparations referred to in this proviso are or are not recognized in the United States Pharmacopœia or National Formulary. (Id. § 10.)

187a. Re-examination Authorized.—The State Board of Pharmacy is hereby authorized to admit for re-examination those persons who have taken the examination subsequent to January 1st, 1926, and who by reason of the passage of chapter 794 of the public laws of 1926, entitled "An act in amendment of sections 1, 2, 3, 5, 9 and 10 of chapter 167* of the general laws, entitled 'Of medicines and poisons'," have been deprived of the privilege of re-examination because at the time of the passage of the act they were not citizens of the United States, but have since filed their intentions to become citizens. (P. L. 1927, c. 1017.)

188. Regulation for Sale of Poisons, Named in Schedule A.—No person shall hereafter sell, either by wholesale or retail, any of the poisons enumerated in Schedule A of this chapter, without distinctly labeling the bottle, box, vessel or paper and wrapper or cover in which said poison is contained, with the name of the article, the word "poison," and the name and place of business of the seller; and every registered pharmacist selling or dispensing any of said poisons shall first enter in a book, to be kept for that purpose only, and subject always to inspection by the State Board of Pharmacy or any officer or agent thereof or other proper authority, and to be preserved for at least five years, a record of the same in accordance with Schedule B of this chapter: Provided, that if any of said poisons form a part of the ingredients of any medicine or medicines compounded in accordance with the written prescription of a medical practitioner, the same need not be labeled with the word "poison," but all prescriptions, whether or not composed in part or in whole of any of said ingredients, shall be carefully kept by the pharmacist on a file or in a book used for that purpose only and numbered in the order in which they are received or dispensed, and every box, bottle, vial, vessel or packet containing medicines so dispensed, shall be labeled with the name and place of business of the registered pharmacist so dispensing said medicine, and be numbered with a number corresponding with that on the original prescription retained by said pharmacist on such book or file. Such prescriptions shall be preserved at least five years and shall be open to the inspection of the writer thereof, and a copy shall be furnished free of expense whenever demanded by either the writer or the purchaser thereof. (G. L. 1923, c. 167, § 11.)

189. Penalty for Adulteration of Medicines and Drugs, or Selling Same, Knowing Them to be Adulterated.—Every person who shall knowingly adulterate, or cause to be mixed any foreign or inert substance with any drug or medicinal substance, or any compound medicinal preparation recognized by the pharmacopœia of the United States or of other countries, as employed in medicinal practice, with the effect of weakening or destroying its medicinal power, or who shall sell the same knowing it to be adulterated shall, in addition to the penalties prescribed in section one of chapter one hundred sixty-eight,† forfeit to the use of

*See Nos. 178-180, 182, 186 and 187.

†See No. 1 et seq.

the State all articles so adulterated found in his possession and shall be deprived of the right of practicing as a pharmacist in this State thereafter. Whenever complaint shall be made of any violation of the provisions of this section, the State Board of Pharmacy, on being notified thereof, shall make investigation of the same, employing competent persons when necessary to make analysis of the articles alleged to be adulterated; and if such complaint shall be substantiated said board shall assist in making prosecution against the respondent.

SCHEDULE A.

Arsenic and its preparations.
Carbolic acid.
Cotton root and its preparations.
Corrosive sublimate.
Cyanide of potassium.
Ergot and its preparations.
Hydrocyanic acid.
Opium and its preparations, paregoric excepted.
Oxalic acid.
Savin.
Strychnia.
Volatile oil of bitter almonds, of pennyroyal, of savin and of tansy.
Proprietary or secret medicines recommended, sold or advertised as emmenagogues and parturients.

SCHEDULE B.

Form in which registered pharmacists and retail dealers in poison shall keep their poison book:

Date.	Name of Purchaser.	Name and quantity of poisons sold.	For what purpose said to be required.	Remarks.

(Id. § 12.)

190. Registered Pharmacist to Forfeit Registration, When.—Any registered pharmacist or assistant registered pharmacist who shall have been convicted of a violation of the provisions of chapter one hundred fifty-eight* of the general laws, or of the act of Congress of the United States approved December seventeenth, nineteen hundred fourteen, entitled "An act to provide for the registration of, with collectors of internal revenue, and to impose a special tax upon all persons who produce, import, manufacture, compound, deal in, dispense, sell, distribute, or give away opium or coca leaves, their salts, derivatives or preparations, and for other purposes," shall be deemed to have forfeited his right to registration, and the State Board of Pharmacy shall thereupon discontinue his registration and shall not renew the certificate of registration of such convicted person within two years thereafter. (Id. § 13.)

191. Physician Deemed Guilty of Malpractice, When.—Any physician who shall violate any of the provisions of chapter one hundred fifty-eight* of the general laws, shall upon conviction therefor be deemed guilty of malpractice and unprofessional conduct, and it shall be the duty of the State Board of Health thereupon to revoke and annul the certificate of such physician to practice medicine in this State. (Id. § 14.)

192. Sale or Distribution of Certain Narcotic Drugs to be Unlawful Except Upon Written Orders.—Except as otherwise provided in sections two and three

*See No. 192 et seq.

hereof it shall be unlawful for any person, firm or corporation to sell, furnish, give away or deliver coca leaves or any cocaine or any alpha or beta eucaine or any synthetic substitute therefor, or any salts, compound or derivative thereof, except decocainized coca leaves and preparations thereof, or any opium, morphine, heroin, codeine or any preparation thereof, or any salt, compound or derivative of the same, except upon the written order of a manufacturer or jobber in drugs, wholesale druggist, registered pharmacist actively engaged in business as such, physician, dentist, veterinarian, registered under the laws of the State in which he resides, or an incorporated hospital, college or scientific institution through its superintendent or official in immediate charge, or upon the written prescription of a physician, dentist or veterinarian, registered under the laws of the State in which he resides, bearing his legal signature, the date of the signature, his office address, the registry number given him under public act two hundred and twenty-three of the sixty-third Congress, approved December seventeenth, nineteen hundred and fourteen, and the name, age and address of the patient for whom it is prescribed. The prescription, when filled, shall show the date of filling and the legal signature of the person filling it written across the face of the prescription, together with the legal signature of the person receiving any such drug and the prescription shall be retained on file by the druggist filling it for a period of at least five years. No prescription shall be filled except in the manner indicated therein, and at the time when it is received, and the full quantity of each substance prescribed shall be given. No order or prescription shall be received for filling or filled more than five days after its date of issue as indicated thereon. Any pharmacist who fills a prescription for a narcotic drug shall securely attach to the container thereof a label giving the name and address of the store, in which the prescription is filled, the date of filling, the name of the person for whom it is prescribed, the name of the physician, dentist, or veterinarian who issued it; and the narcotic drug so delivered shall always be kept in its container until actually used. The prescription shall not again be filled, nor shall a copy of the same be made, except for the purpose of record by the druggist filling the same, and it shall at all times be open to inspection by the officers of the State Board of Health, the State Board of Pharmacy, and the authorized agents of said departments and boards, and by the police authorities and police officers of cities and towns: Provided, however, that the provisions of this chapter shall not apply to prescriptions, nor to the sale, distribution, giving away or dispensing or possession, of preparations or remedies, if such prescriptions, preparations and remedies, do not contain more than two grains of opium or more than one quarter of a grain of morphine, or more than one-eighth of a grain of heroin or more than one grain of codeine, or any salt, compound or derivative of any of them in one fluid ounce, or, if a solid or semi-solid preparation, in the avoirdupois ounce, nor to liniments, ointments or other preparations which are prepared for external use only, except liniments, ointments and other preparations which contain cocaine or any of its salts or alpha or beta eucaine or any of their salts or derivatives, or any synthetic substitute for them; provided, that such preparations, remedies or prescriptions are sold, distributed. given away or dispensed or held in possession in good faith as medicines and not for the purpose of evading the provisions of this chapter, and provided, further, that the possession of any of the drugs mentioned in this chapter, except prescriptions and preparations or remedies especially exempted in this section, by any one not being a manufacturer or jobber of drugs, or wholesale druggist, registered pharmacist, actively engaged in business as such, or a physician, dentist or veterinarian, registered under the laws of the State in which he resides, or superintendent or official in charge of an incorporated hospital, college or scientific institution shall, except as provided in section eight, be presumptive evidence of an intent to violate the provisions of this chapter. The provisions of this section shall not apply to persons having in their possession any of the above mentioned articles by virtue of a legal prescription legally issued as provided in this chapter and not obtained by any false representation made to the physician, dentist or veterinarian issuing it, or to the pharmacist who filled it, nor shall the provisions of this chapter apply to decocainized coca leaves or preparations made therefrom or to other preparations of coca leaves which do not contain cocaine. (G. L. 1923, c. 158, § 1.)

193. Prescribing and Administering, Etc., of Narcotic Drugs, Unlawful, Under Certain Conditions.—It shall be unlawful for any practitioner of veterinary medicine or surgery to prescribe any of the drugs mentioned in section one of this chapter for the use of, or in such manner that it may be used subcutaneously by a human being, and it shall be unlawful for any physician or dentist to prescribe, dispense, administer, sell, give away, or deliver any narcotic drug to any person except when the drug is obviously and in good faith then and there

needed for the treatment and cure of a disease or ailment, and not for any condition or disease directly due to any drug habit or resulting solely from the failure of an habitual user of narcotic drugs to procure the particular narcotic drug or drugs to which he is addicted. (Id. § 2.)

194. Administering of Narcotic Drug by Physician Not Unlawful, When.—It shall not be unlawful for a physician personally to administer any narcotic drug at such time and under such circumstances as he, in good faith and in the legitimate practice of medicine, believes to be necessary for the alleviation of pain and suffering or for the treatment or alleviation of disease. (Id. § 3.)

195. Certain Narcotic Drugs May Be Sold Upon Certain Written Orders.—Any manufacturer or jobber of drugs, any wholesale druggist, any registered pharmacist actively engaged in business as such, and any physician, dentist or veterinarian registered under the laws of the State in which he resides may sell coca leaves, cocaine or any alpha or beta eucaine or any synthetic substitute for them or any preparation containing the same, or any salts, compound or derivative thereof, or any opium, morphine, codeine, heroin, or any preparation thereof, or any salt or compound or derivative of such substances, to any manufacturer or jobber in drugs, wholesale druggist, registered pharmacist actively engaged in business as such, or physician, dentist or veterinarian registered under the laws of the State in which he resides, or to any incorporated hospital, college or scientific institution, but such substances or preparations, excepting such preparations as are included within the exemptions set forth in section one, shall be sold only upon the written order of an incorporated hospital, college or scientific institution, duly signed by its superintendent or official in immediate charge, or upon a written order duly signed by such manufacturer or jobber in drugs, wholesale druggist, registered pharmacist actively engaged in business as such, or physician, dentist or veterinarian registered under the laws of the State in which he resides, and the order shall state the article or articles ordered, the quantity ordered and the date. The said orders shall be kept on file in the laboratory, warehouse, pharmacy or store in which they are filled by the proprietor thereof or his successors for a period of not less than two years after the date of delivery, and shall be at all times open to inspection by the State Board of Health, the State Board of Pharmacy, and the authorized agents of said department and boards, and by the police authorities and police officers of cities and towns. (Id. § 4.)

196. Duplicate of Order Given to be Preserved for Two Years.—Any manufacturer or jobber in drugs and any wholesale druggist, any registered pharmacist actively engaged in business as such, any physician, dentist or veterinarian registered under the laws of the State in which he resides, and any incorporated hospital, college or scientific institution through its superintendent or official in immediate charge that shall give an order for any of the aforesaid drugs in accordance herewith shall preserve a duplicate thereof for a period of two years after the date of giving the same, which shall at all times be open to inspection by the State Board of Health, members of the State Board of Pharmacy, and the authorized agents of said department and boards, and by the police authorities and police officers of cities and towns. The order now or hereafter required by the regulations of the Commissioner of Internal Revenue under and by virtue of said public act number two hundred and twenty-three of the sixty-third Congress, shall be deemed to be a sufficient order to comply with this and the preceding section. (Id. § 5.)

197. Certain False Representations, Making or Altering of Prescriptions, or Orders, or Issuing of False Prescriptions or Orders, to be Violations of This Chapter.—Any person who, for the purpose of evading or assisting in the evasion of any provision of this chapter shall falsely represent that he is a physician, dentist or veterinarian, or that he is a manufacturer or jobber in drugs or wholesale druggist or pharmacist actively engaged in business as such, or that he is superintendent or official in immediate charge of an incorporated hospital, college or scientific institution, or a person registered under said public act two hundred and twenty-three of the sixty-third Congress, or who, not being an authorized physician, dentist or veterinarian, makes or alters a prescription or written order for any of the narcotic drugs above mentioned, or knowingly issues or utters a prescription or written order falsely made or altered, or whoever makes any false representation or statement as to his name, age, address, or any other matter, either in writing or orally, to any physician, dentist, pharmacist, or veterinarian for the purpose of procuring a prescription for, or the delivery of a narcotic drug, shall be deemed guilty of a violation of this chapter. A prescription or order that is altered or is obtained by a false representation shall be void and of no effect. **(Id. § 6.)**

198. Possession of a Federal Certificate to be Prima Facie Evidence.—The possession of a Federal certificate issued under and by virtue of said public act number two hundred and twenty-three of the sixty-third Congress, by any person shall be prima facie evidence of an intent to sell, furnish, give away or deliver any of the drugs mentioned in this chapter. (Id. § 7.)

199. Provisions of This Chapter to Apply to Whom.—Nothing in this chapter shall apply to common carriers engaged in transporting the aforesaid drugs or to any employee, acting within the scope of his employment, of [or] any person who shall lawfully be in possession, for the purpose of delivery, of any of the drugs mentioned in this chapter, or to any person who shall deliver any such drug, which has been prescribed or dispensed by a physician, dentist or veterinarian registered under the laws of the State in which he resides, who has been employed to prescribe for the particular patient receiving such drug, or to a nurse under the supervision of a physician, dentist or veterinarian having possession or control by virtue of his employment or occupation and not on his own account, or to the possession of any of the aforesaid drugs which have been prescribed in good faith by a physician, dentist or veterinarian or to any United States, State, county, municipal, district, territorial or insular officer or official who has possession of any of said drugs by reason of his official duties, has the same in his possession for the purpose of assisting in the prosecution of violations of this chapter. (Id. § 8.)

200. Certain Provisions of This Chapter to Apply to Certain Other Drugs, Except When.—The provisions of this chapter, except those sections which require the ordering of the above mentioned drugs on an official order blank and the keeping of the same on file, and the keeping of the record relative thereto, shall apply to cannabis indica and cannabis sativa, except that the same shall not apply to prescriptions, preparations or remedies which do not contain more than one-half grain of extract of cannabis indica or more than one-half grain of extract of cannabis sativa in one fluid ounce, or, if a solid or semi-solid preparation in the avoirdupois ounce, nor to liniments, ointments or other preparations containing cannabis indica and cannabis sativa, which are prepared for external use only. (Id. § 9.)

201. Certain Dealers in Drugs Not to be Liable for Prosecution, Except When.—A manufacturer or jobber in drugs or wholesale druggist or registered pharmacist shall not be liable to prosecution if he fills any prescription or written order for a narcotic drug in good faith, unless he knows or has reasonable cause to suspect that the prescription, or order was issued in violation of the provisions of this chapter, in which event any sale or delivery of a narcotic drug so made shall constitute an unlawful sale and delivery of a narcotic drug under this chapter. (Id. § 10.)

202. Physician, Pharmacist or Dealer, Etc., Not to Solicit for Applications for Prescriptions, Sales, Etc.—No physician, dentist, or veterinarian, and no druggist or pharmacist, either wholesale or retail, shall solicit by public advertisement or otherwise application to him for prescriptions for, or sales of, narcotic drugs, or shall publicly advertise any treatment the principal element of which consists in the administering, dispensing, furnishing, giving away or delivering of a narcotic drug, except, however, that wholesale druggists or manufacturing pharmacists may advertise in journals and publications intended for circulation among the medical profession and drug trade generally. (Id. § 11.)

203. Buildings, Etc., Resorted to by Habitual Users of Narcotic Drugs, or Used for Keeping or Sale of Same to be Deemed Common Nuisances.—All buildings, places or tenements which are resorted to by habitual users of narcotic drugs for the purpose of using such drugs, or which are used for the illegal keeping or sale of the same, shall be deemed common nuisances. Whoever keeps or maintains such a common nuisance shall be punished for the first offense by a fine of not more than three hundred dollars or imprisonment for not more than two years and for the second offense by a fine of not more than one thousand dollars, or by imprisonment for not more than five years, or both such fine and imprisonment; and for any subsequent offense by imprisonment for not more than ten years. (Id. § 12, as amended P. L. 1927, c. 1024.)

204. Penalty for Having Certain Drugs in Possession Without a Lawful Prescription.—Whoever, not being a manufacturer or jobber of drugs, wholesale druggist, registered pharmacist, registered physician, registered veterinarian, registered dentist, nurse acting under the direction of a physician, or an employee of an incorporated hospital acting under the direction of its superintendent or official in immediate charge, or a common carrier or messenger when transporting any drug mentioned herein between parties hereinbefore mentioned in the same package in which the drug was delivered to him for transportation, is found in

possession thereof, except by reason of a physician's prescription lawfully and properly issued shall be punished by a fine of not more than one thousand dollars, or by imprisonment for not more than three years, or by both such fine and imprisonment. (G. L. 1923, c. 158, § 13.)

205. Penalty for Selling, Delivering, Etc., Narcotic Drugs.—Whoever shall have in his possession a narcotic drug with intent unlawfully to sell and deliver such drug, or any part thereof, or whoever unlawfully sells, furnishes, gives away or delivers any narcotic drug in violation of the provisions of this chapter, shall be punished by imprisonment in the State Prison for not less than five years or by a fine not exceeding two thousand dollars, or by both such fine and imprisonment. (Id. § 14, as amended P. L. 1927, c. 1024.)

206. Possession of Hypodermic Needle or Syringe Unlawful, When; Selling of Such Needle or Syringe Unlawful, When; Record to be Kept of Such Instruments Sold; Penalties for Violation of This Section.—It shall be unlawful for any person, not being a physician, dentist or a veterinarian, registered under the laws of this State or under the laws of the State in which he resides, wholesale druggist, manufacturing pharmacist, registered pharmacist, manufacturer of surgical instruments or any official of any government, having possession thereof by reason of his official duties, or a nurse, acting under the direction of a physician, or the employee of an incorporated hospital, acting under the directions of its superintendent or officer in immediate charge, or a carrier or messenger engaged in the transportation thereof, to have in his possession a hypodermic syringe, a hypodermic needle, or any instrument adapted for the use of narcotic drugs by subcutaneous injection. No such syringe, needle, or instrument shall be delivered or sold except to a registered pharmacist, physician, dentist, veterinarian, wholesale druggist, manufacturing pharmacist, a nurse upon the written order of a physician, or to an employee of an incorporated hospital upon the written order of its superintendent or officer in immediate charge. A record shall be kept by the person selling such instruments which shall give the date of the sale, the name and address of the person purchasing the same, and a description of the instrument. This record shall at all times be open to inspection by the State Board of Health, the State Board of Registration in Dentistry, the State Board of Veterinarians, and the State Board of Pharmacy, by the authorized agents of said department and boards, and by the police authorities and police officers of cities and towns. Any violation of this section shall be punishable by a fine of not more than two hundred dollars, or by imprisonment for not more than one year, or by both such fine and imprisonment, and upon conviction thereof any registered pharmacist, physician, dentist or veterinarian who may hold a license to practice under the provisions of any general law, or of any public law in amendment thereof, may lose his license and the State Board of Pharmacy, the State Board of Health, the State Board of Registration in Dentistry, or the State Board of Veterinarians, as the case may be, may forthwith revoke such license granted to such registered pharmacist, physician, dentist or veterinarian convicted of violating this section. (G. L. 1923, c. 158, § 15, as amended P. L. 1926, c. 793.)

207. Prosecutions Under This Chapter.—In a prosecution under this chapter for unlawfully prescribing, selling, furnishing, giving away, or delivering a narcotic drug in violation of any provision of this chapter, it shall be sufficient to allege that the defendant did unlawfully prescribe, sell, furnish, give away, or deliver, as the case may be, the alleged narcotic drug, without any further allegations, and without expressly negativing the different exceptions of this chapter, and without naming the person for whom said prescription was issued, or the amount or quantity of the drug, or the person to whom such sale, furnishing, giving away or delivery was made. (G. L. 1923, c. 158, § 16.)

208. Burden of Proof as to Legality of Prescription or Order, to be Upon Defendant.—The defendant in a prosecution under this chapter who relies for his defense and justification upon a prescription, written order, registration, appointment, or authority, as an excuse under this chapter, shall prove the same; and, until he has proved it, the presumption shall be that he is not so justified or authorized. (Id. § 17.)

209. Certain Forms to Apply to Complaints as Well as to Indictments.—The forms hereto annexed shall apply as well to complaints as to indictments, and such forms shall be sufficient in cases to which they are applicable. In other cases, forms as nearly like the forms hereto annexed as the nature of the case and the provisions of law will allow may be used; but any other form of indictment or complaint which is authorized by law may be used.

Forms and schedules of pleading:

Common nuisance.—That A. B., during the three months next before the finding of this indictment, at said ....., did keep and maintain a

certain tenement resorted to by habitual users of narcotic drugs for the purpose of using narcotic drugs.

Unlawful possession.—That A. B. did have in his possession unlawfully certain narcotic drugs, to-wit, morphine (cocaine, heroin, or the name of the drug as it is commonly known).

Unlawful possession with intent to sell.—That A. B. did have in his possession with intent unlawfully to sell and deliver a certain narcotic drug (naming the drug).

Conspiracy.—That A. B. and C. D. conspired together to engage in unlawful traffic in narcotic drugs.

Sale and Delivery.—That A. B. did unlawfully sell (or give away, or deliver), a narcotic drug, to-wit, morphine (or name drug is commonly known by).

Unlawful Prescribing and Delivery, etc., by Physician, etc.—That A. B., a physician (or pharmacist, dentist or veterinarian, etc.) did unlawfully prescribe (or sell, give away, furnish, or deliver) a certain narcotic drug, to-wit (naming it).

Possession of Hypodermic Instrument.—That A. B. did have in his possession unlawfully a hypodermic syringe and needle.

Sale and Delivery of Hypodermic Instrument.—That A. B. did unlawfully sell (or deliver) a hypodermic syringe (or needle).

False Making of Prescription.—That A. B. did falsely make (or alter) a prescription for a narcotic drug.

Uttering a False Prescription.—That A. B. did utter and publish as true a certain false prescription for a narcotic drug, well knowing the same to be falsely made (or altered).

Misrepresentation.—That A. B. did falsely represent to C. D. (a physician, dentist, veterinarian, pharmacist, etc.), for the purpose of obtaining a narcotic drug that (state the substance of the statements claimed to be representations). (Id. § 18.)

210. Terms, How Construed.—Terms used in this chapter shall be construed as follows, unless a different meaning is clearly apparent from the language or context, or unless such construction is inconsistent with the manifest intention of this chapter.

"Narcotic drug" shall mean cannabis indica, coca leaves, or any cocaine, or any alpha or beta eucaine, or any synthetic substitute for them, or any salts, compound or derivative thereof, except decocainized coca leaves and preparations thereof, or any opium, morphine, heroin, codeine, or any preparation thereof, or any salt, compound or derivative of the same.

"Physician," "practitioner of medicine," "veterinarian," "veterinary surgeon," "dentist" shall mean persons duly registered and authorized to practice medicine, veterinary medicine, surgery, and dentistry.

"Druggist," "apothecary" or "pharmacist" shall mean a person duly registered under chapter one hundred sixty-seven* of the general laws and actively engaged as a practitioner, or employee, in an established and fixed place of business for the sale, compounding and dispensing of drugs.

"Persons," as used herein shall include all corporations, associations, partnerships, or other aggregations of individuals, including also their agents, clerks and salesmen.

"Drug addict," as used herein shall include any person who is an habitual user of cannabis indica, coca leaves or any cocaine or any alpha or beta eucaine, or any synthetic substitute therefor or any salts, compound or derivative thereof, except decocainized coca leaves and preparations thereof, or of any opium, morphine, heroin, codeine or any preparation thereof, or any salt, compound or derivative of the same.

"Opium," "morphine," "heroin," "codeine" and "cocaine" as used in statutes or in complaints or indictments shall include any synthetic substitute for such drugs or any salts, compounds, derivatives, or preparations thereof, except decocainized coca leaves and preparations thereof. (Id. § 19.)

211. Narcotic Drug Board Authorized to Make Rules and Regulations for Treatment of Drug Addicts, Etc.—The Narcotic Drug Board, created by section 22 of this chapter, is hereby authorized, empowered and directed to make such rules and regulations as it may deem proper for the treatment of drug addicts within the State, and said board may designate and authorize physicians to treat said drug addicts, or said board may confine said drug addicts in an institution or home designated and approved by said board; provided, however, that no

*See No. 178 et seq.

hypodermic syringe, hypodermic needle, or other instrument for subcutaneous injection of a drug shall be issued or distributed to a drug addict for self-medication. (Id. § 20, as amended P. L. 1926, c. 793.)

212. **Penalties for Violations of Chapter Not Otherwise Specified.**—Any violation of the provisions of this chapter, the punishment for which is not specified herein, shall be punished by a fine of not more than one thousand dollars, or by imprisonment for a term not exceeding one year, or by both such fine and imprisonment. (G. L. 1923, c. 158, § 21.)

213. **Narcotic Drug Board Created; How Appointed and Terms of Office; Vacancy; Members to Serve Without Compensation.**—There is hereby created a Narcotic Drug Board. At the January session of the General Assembly in the year 1926 the Governor shall, with the advice and consent of the Senate, appoint five qualified electors to serve as members of said board. The Governor, on his first appointment, shall so appoint one person for a term of two years, one person for a term of three years, one person for a term of four years, one person for a term of five years and one person for a term of six years, and upon the expiration of their respective terms the Governor shall so appoint a qualified elector to serve for a term of five years. If at any time there shall be a vacancy in said board, the Governor shall, with the advice and consent of the Senate, appoint a qualified elector to serve for the remainder of the unexpired term. Said members shall serve without compensation, but shall be entitled to traveling expenses incurred in the performance of their duties as members of said board. (Id. § 22, as added P. L. 1926, c. 793.)

214. **Duties of Board of Pharmacy.**—In addition to the authority granted to said board in section 20 of this chapter, it shall be the duty of said board to promote the enforcement of the provisions of this chapter and all acts in amendment thereof and in addition thereto, and in the furtherance of this purpose said board may call upon the Attorney-General and the police authorities of the several cities and towns to prosecute any violations of this chapter. Said board shall elect from its members a chairman and a secretary. (Id. § 23, as amended P. L. 1927, c. 1024.)

215. **Same; Appropriation.**—Said board shall have an office in the State House which shall be assigned for its use by the State House Commission. The General Assembly shall annually appropriate such sum as it may deem necessary for the payment of clerical assistance to the board and for other necessary expenses incurred by the board in the performance of its duties and the State Auditor is directed to draw his order upon the general treasurer for the payment of the sum so appropriated or so much thereof as may from time to time be necessary upon receipt of proper vouchers approved by a majority of the members of said board. (Id. § 24.)

216. **Apprehension of Persons Addicted to the Use of Drugs; Examination of Person Apprehended; Place of Holding, Etc.; of Commitment of Drug Addict to an Institution.**—Whenever complaint in writing and under oath shall be made to any justice or clerk of a District Court, that any person within the county is addicted to the use of drugs so as to be dangerous to the peace or safety of the people of the State, or so as to render his restraint and treatment necessary for his own welfare, such justice or clerk shall issue his warrant under his hand and seal, returnable forthwith, directed to the sheriff, deputy sheriffs, chiefs of police, town sergeants, or constables in said county, requiring the officer charged therewith to apprehend such person and have him, with such warrant, before such or some other District Court for examination relative to such complaint at such time and place within the district as shall be named in the warrant. And whenever such complaint shall be accompanied by a certificate signed by two practicing physicians in this State, which shall declare that said alleged drug addict is an invalid or that his condition, mental or physical, is such that he cannot, without serious prejudice to his welfare, be examined in open court, District Courts are hereby empowered and directed to hold such examinations at such times and places within their districts as shall be most conducive to the health and comfort of the person to be examined, naming the place of examination in each mittimus of commitment, if such shall be made. Whenever an examination is made, such justice shall not commit such person to an institution without having the testimony of two practicing physicians of good standing that such person is a drug addict or in need of restraint. (Id. § 25.)

217. **Same Subject.**—If the court on such examination shall adjudge such complaint to be true, it shall, unless some provisions for the adequate restraint and treatment of such person satisfactory to said court shall be made, commit such person by warrant under its hand and seal to a part of the State institutions set aside by the State Public Welfare Commission for the treatment of drug

addicts, there to be detained in accordance with chapter 108, section 50* of the general laws of 1923. (G. L. 1923, c. 158, § 26, as added P. L. 1926, c. 793.)

218. Costs, How Paid.—The costs of apprehending, examining, committing, and detaining such drug addict shall be paid by such person if he have any estate, but in case there is no estate, said costs shall be paid by the State. (Id. § 27.)

219. Action for Recovery of Costs.—Whenever any person chargeable with the costs and expenses of apprehending, committing and detaining or keeping any such drug addict shall neglect to pay the same, or either or any part thereof, the State Public Welfare Commission shall give notice of such neglect to the Attorney-General, who in the name and at the expense of the State shall commence an action of the case in behalf and for the benefit of all persons interested against the person so neglecting, for the recovery of such costs and expenses, or either of the same, and prosecute the same to final judgment and execution. (Id. § 28.)

220. Drug Addict May be Confined Upon His Own Application.—Any person addicted to the use of drugs, who believes that he may receive benefit from confinement, may make application to the Narcotic Drug Board and shall be committed in manner provided by section 26 of this chapter for a period of one year; provided, however, that if within the period of one year rehabilitation has been effected, the hospital staff may release such person in accordance with chapter 108, section 50* of the general laws of 1923, but if within any time in said period of one year the person thus committed shall relapse he shall be again committed in the manner provided by section 26 of this chapter. (Id. § 29.)

221. Of the Commitment of Drug Addict, Who Has Committed a Criminal Offense, or is a Refractory Delinquent, Etc.—Any drug addict who has committed a criminal offense, or is, in the opinion of the court, a refractory delinquent, shall be committed in manner specified by section 26 of this chapter, but if at any time he shall be released from custody in accordance with the provisions of this chapter, he shall be required to report in accordance with the terms of his parole or release for a period of three years and if during that period it is found that he has again relapsed to the excessive use of drugs, he shall be again committed in the manner provided by section 26 of this chapter. (Id. § 30.)

222. Issue of Search Warrant for Narcotic Drugs.—If any person, being a legal voter in this State, shall, before any justice or clerk of a District Court, within the district in which such court is established, make complaint in writing under oath that narcotic drugs are kept or deposited in any place within any town or in any vessel or craft in any of the public waters of the State, in violation of law, such justice or clerk may issue a search warrant for the purpose of searching for such narcotic drugs. (Id. § 31.)

223. Of the Service of Search Warrant, Etc.—Such search warrant shall be served in the day time or at such other time as the place therein commanded to be searched may appear to be conducted in violation of the provisions of this chapter, and shall describe as nearly as may be the place to be searched and shall state the name of the owner or keeper thereof, if known to the complainant; and all such narcotic drugs, together with the receptacles in which the same are contained, shall be taken and be kept by such officer in some proper place or security until they can be proceeded against in manner hereinafter provided; and the officer shall summon the owner or keeper, if any be named in the complaint, if to be found by him, and the warrant shall be returned by said officer, with his doings thereon, as soon as may be, to the District Court having jurisdiction of the same in the district where such narcotic drugs shall have been seized. (Id. § 32.)

224. Searching of a Dwelling House; Term "Private Dwelling," How Construed; Property Seized Not to be Taken From Officer by Replevin, Etc.—If the place to be searched be a dwelling house, used and occupied exclusively as such, such warrant shall not be issued unless the complainant shall make oath that he has reason to believe and does believe that narcotic drugs have been and are being manufactured, sold or distributed in such dwelling house or taken therefrom for the purpose of sale or distribution by the occupant thereof or by his permission, contrary to law, within one month next before making such complaint, and are then kept therein for manufacture, sale or distribution contrary to law; and shall also in like manner state the facts on which such belief is founded, which facts shall be recited in the complaint.

The term "private dwelling" shall be construed to include the room or rooms used or occupied not transiently but solely as a residence, an apartment, hotel or boarding house.

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*Relates to temporary leave to be granted inmates of the State Hospital for the Mentally Diseased. Omitted herein.

The property seized on any such warrant shall not be taken from the officer seizing the same on any writ of replevin or other like process. (Id. § 33.)

225. **Notice of Seizure to be Given, When.**—If the owner or keeper be not named in the warrant or be not found, the court shall order a notice of such seizure to be given by posting up written notices in at least three public places in the city or town, one of which shall be on the building or near the place where the seizure was made, and such other notice shall be given as the court shall deem to be necessary. (Id. § 34, as amended P. L. 1927, c. 1024.)

226. **Narcotic Drugs and Receptacles Seized, to be Forfeited to the State.**—All narcotic drugs and the receptacles containing the same seized under this chapter, which were kept in violation of law, shall be forfeited to the State, and the officer making such seizure or an officer designated by the court for that purpose, shall forthwith proceed to prosecute for the forfeiture thereof in the manner provided by law. (G. L. 1923, c. 158, § 35, as added P. L. 1926, c. 793.)

227. **Sentence of Forfeiture; Appeal by Person Aggrieved by Such Sentence; Seized Narcotic Drugs, Etc., to be Restored, When.**—If the cause of forfeiture be proved, the court before which the complaint or information shall be tried shall enter sentence of forfeiture to the State against said narcotic drugs and the receptacles containing the same; and any person aggrieved by such sentence may appeal therefrom to the Superior Court. If the cause of forfeiture be not proved, then all such seized narcotic drugs, the receptacles containing the same, and all other property seized shall be forthwith restored to the proper owner thereof or to the place from which they were taken by the officer who seized the same. (Id. § 36.)

228. **Warrant to Destroy Narcotic Drugs, Etc.**—Upon entry of sentence of forfeiture against such narcotic drugs or property, if no appeal be then taken and no recognizance given as prescribed in other criminal cases, the court shall forthwith issue a warrant to the officer, commanding him forthwith to destroy said narcotic drugs and property; and every such officer shall execute said warrant and shall return the same, with his doings thereon, to the court, within such time as the court shall direct. In case of final judgment for the State on appeal, the court entering such final judgment shall issue the like warrant, as aforesaid, for the destruction of the narcotic drugs and property seized. **(Id. § 37.)**

229. **Officers Having Custody of Receptacles, Etc., Forfeited, Authorized to Destroy.**—The officers having in their custody any receptacles or other property which have been forfeited to the State under the provisions of this chapter, are hereby authorized to destroy said receptacles and property. (Id. § 38.)

230. **Irregularity in Service of Process, or Omission of Notices, Etc., May be Amended.**—Whenever in any proceeding for forfeiture of narcotic drugs or property hereunder, it shall appear to the court that there has been any irregularity in the service of any process issuing upon the complaint or information, or any omission to publish the notices required, or any defect or omission in the citation or notice or in the service thereof, the court may permit the same to be amended, and direct such further service of process or publication of notice as will, in the judgment of the court, be most effectual in securing personal notice thereof to the owner of the property seized. (Id. § 39.)

231. **Allowance to Officer for Seizure, Etc., to be Taxed in Bill of Costs.**—There shall be allowed and paid to the officer who shall make the same for every seizure made under the foregoing provisions, the sum of five dollars, with two dollars additional for very [every] day after the first that such officer shall be necessarily employed in causing the narcotic drugs or property seized to be condemned, and ten cents for every mile which he shall necessarily travel therein, together with such reasonable sum as the court may deem just for necessary expenses incurred in providing storage for narcotic drugs or property seized, pending proceedings for condemnation; all which costs shall be taxed in the bill of costs, and the amount allowed by the court in which final judgment shall be rendered, to such officers, shall be paid by the State Auditor out of any money in the treasury not otherwise appropriated. (Id. § 40.)

232. **Detention of Persons Committed to be Provided for, How.**—The State Public Welfare Commission shall provide suitable quarters for the detention of persons committed under the authority of this chapter and the commission shall assign separate quarters to men and women thus committed. (Id. § 41.)

233. **Appropriation for Carrying Out the Provisions of This Act.**—For the purpose of carrying out the provisions of this act during the fiscal year ending November 30, 1926, the sum of twenty-five hundred ($2500.00) dollars is hereby appropriated, out of any money in the treasury not otherwise appropriated; and the State Auditor is hereby directed to draw his orders upon the general treasurer for the payment of said sum, or so much thereof as may from time to time

be required, upon receipt by him of proper vouchers approved by the majority of the Narcotic Drug Board. (P. L. 1926, c. 793, § 6.)

234. Addicts May be Restrained.—Every person who is so addicted to the habitual excessive and dangerous use of alcohol or of any poisonous drug, as to render it necessary for his own welfare or for the safety of the community that he should be restrained and cured, may be restrained by his next friend either within his own house or in the Butler Hospital, during such period, not exceeding one year at any one time, as may be requisite to effect his cure from such habit; but no such person shall be so restrained without a certificate from two practicing physicians of good standing, not connected or employed in any hospital or asylum for the insane, that such person is addicted to such habitual use as aforesaid and that such restraint is necessary for his own welfare or for the safety of the community: Provided, however, that no such person shall be so restrained except under the personal supervision of the physician who is the superintendent for the time being of the Butler Hospital; and any person so committed may be lawfully received and restrained in such house or in the Butler Hospital by such next friend or said superintendent and by their agents and servants until the expiration of such year from the time of such committal unless sooner discharged, in one of the methods hereinafter set forth; and neither such next friend, superintendent, their agents or servants, nor the trustees or agents of said hospital shall be liable civilly or criminally, for receiving or detaining any person so committed or detained. (G. L. 1923, c. 109, § 1.)

235. Same, Discharged.—Such person may be discharged from such detention at any time by the said superintendent when confined in the house of his next friend, and by the said superintendent with the approbation in writing of the visiting committee of the trustees when he is confined in the Butler Hospital. (Id. § 2.)

236. Same, Right of Petition.—On petition of any person confined under the provisions of this chapter, or of any person on his behalf, either for the appointment of a commission or for the writ of habeas corpus, the like and similar proceedings shall be had with the same rights and privileges to the petitioner and to the person restrained, and upon the like similar conditions as are provided in sections fifteen, sixteen, seventeen, eighteen, nineteen, twenty and twenty-one of chapter one hundred eight,* with reference to persons detained as insane: Provided, however, that upon the trial of any such petition either before the court or any justice thereof, or before such commissioners, or before a jury upon issues framed, the issue shall be whether or not the person restrained is or is not addicted to such habit as hereinbefore set forth, and whether or not it is necessary for his cure from such habit, or for the safety of the community, that he should be so restrained. (Id. § 3.)

237. Agent of State Charities and Corrections, Duties, Etc.—The duties and authority of the agent of State charities and corrections and of the chairman of the State Board of Health as a commission as set forth in sections twenty-nine, thirty, thirty-one, thirty-two, thirty-three, thirty-four, of chapter one hundred eight,* shall extend and apply to all persons restrained under the provisions of this chapter, and to the places where they are restrained, and to the persons restraining them. (Id. § 4.)

NOTE: See also No. 261.

Wood Alcohol.

238. Label "Wood Alcohol Poison" and Other Words to be Affixed to Vessels Containing Wood Alcohol or Methyl Alcohol, When.—Any person who sells, exchanges or delivers to another person any wood alcohol, sometimes known as methyl alcohol, shall affix to the vessel or container holding the same a label bearing the words, "Wood alcohol poison," printed or written thereon in letters not less than one-fourth of an inch in height, and in addition thereto the words "it is unlawful to use this fluid in any article of food or drink, or in any medicinal or toilet preparation, intended to be used internally or externally," printed or written thereon in letters not less than one-eighth of an inch in height. Any person violating the provisions of this section shall be fined not less than fifty dollars, nor more than five hundred dollars. (G. L. 1923, c. 168, § 26.)

239. Penalty for Selling or Having in Possession, With Intent to Sell, Any Food, Drink, Drug, Perfume or Toilet Article Containing Wood or Methyl Alcohol.—Any person who sells, exchanges or delivers or has in his possession

*Chapter 108 relates to the Restraint and Cure of the Insane, omitted herein.

with intent to sell, exchange or deliver, any article of food or drink, or any drug, intended for external or internal use, or perfumes or toilet articles, containing any wood alcohol, sometimes known as methyl alcohol, shall be punished by a fine of not less than fifty dollars, nor more than five hundred dollars, or by imprisonment for not more than six months, or by both such fine and imprisonment. (Id. § 27.)

240. Board of Food and Drug Commissioners to Prosecute Violation of Provisions of Sections 26 and 27.—It shall be the duty of the Board of Food and Drug Commissioners to prosecute any person, firm or corporation violating the provisions of sections twenty-six and twenty-seven, and any member of said board may make complaint for the violation of the provisions of said sections, and such commissioner making such complaint shall not be required to give surety for the payment of costs. (Id. § 28.)

NOTE: See also No. 246.

Intoxicating Liquors.

241. Chapter Deemed to be an Exercise of Police Power of the State.—This chapter shall be deemed to be an exercise of the police power of the State. (G. L. 1923, c. 127, § 1.)

242. Certain Words and Phrases, How Construed.—The word "liquor" or the phrase "intoxicating liquor," when used in this chapter, shall be construed to include alcohol, brandy, whiskey, rum, gin, beer, ale, porter, and wine, and in addition thereto any distilled spirituous, malt, vinous or fermented liquor and also liquid or compound whether or not the same is medicated, proprietary, or patented, and by whatever named called, containing one-half of one per centum or more of alcohol by volume which is fit for use for beverage purposes: Provided, that the foregoing definition shall not extend to de-alcoholized beer, ale, porter, wine, vinegar or preserved sweet cider, nor to any beverage or liquid produced by the process by which beer, ale, porter, or wine is produced if it contains less than one-half of one per centum of alcohol by volume.

The term "given away" and the term "possess," when used in this chapter shall not apply to intoxicating liquor in a bona fide private dwelling.

The word "person" when used in this chapter shall mean and include actual persons, firms, associations, copartnerships and corporations. (Id. § 2.)

243. Manufacture, Sale, Transportation, Etc., of Intoxicating Liquors for Beverage Purposes to be Illegal.—No person shall manufacture, sell, barter, transport, import, export, deliver, furnish, receive, give away, possess, solicit or advertise any intoxicating liquors to be used for beverage purposes: Provided, that nothing herein contained shall be construed to prevent the transportation of liquor for beverage purposes, lawfully acquired or held by any person when he may remove the same from one bona fide private dwelling to another. (Id. § 3.)

244. Permit to be Obtained to Manufacture, Sell, Purchase, Transport, Prescribe, Etc., Liquor for Sacramental or Non-Beverage Purposes.—No person without first having a permit from the United States Commissioner of Internal Revenue in conformity with the National Prohibition Act passed by the sixty-sixth Congress, said act being public act sixty-six of the Federal statutes, to engage in this State in the business of manufacturing, using, selling, purchasing, transporting, or prescribing any liquor or to sell any wine for sacramental purposes, or to manufacture any liquor or liquor preparations or compounds and medicinal preparations for non-beverage purposes, shall manufacture, use, sell, purchase, transport, or prescribe any intoxicating liquor or purchase any wine for sacramental purposes or manufacture any intoxicating liquor preparations or compounds for non-beverage purposes: Provided, that nothing in this chapter shall be held to restrict the manufacture, sale, distribution, transportation, importation, possession or distribution of wine for sacramental purposes or like religious rites in any other manner than is provided for in said National Prohibition Act. (Id. § 4.)

245. Penalties for Violation of Provisions of This Chapter.—Any person who violates the provisions of this chapter for a first offense shall be fined not more than one hundred dollars, for a second offense he shall be fined not more than three hundred dollars, and for a third and each subsequent offense he shall be fined not more than five hundred dollars or be imprisoned for not more than one year in the Providence county jail or both such fine and imprisonment in the discretion of the court. The penalties provided in this chapter shall not apply to a person manufacturing vinegar, or non-intoxicating cider and fruit juices exclusively for use in his home, but such cider and fruit juices shall not

be sold or delivered after they become intoxicating except to persons having permits from the United States Government to manufacture vinegar. Nothing herein shall be construed to prevent the sale of vinegar and said penalties shall not apply to any such sale. (Id. § 18.)

246. Term "Alcohol" What to Mean; Penalty for Sale of Wood Alcohol.—The term "alcohol" when used in this chapter shall mean ethyl alcohol, hydrated oxide of ethyl, or spirit of wine. Whoever sells, furnishes or gives away wood alcohol or any preparation or compound containing wood alcohol, knowing that the same is to be used for beverage purposes, shall be subject to civil suit for injury or death resulting therefrom and also, to criminal prosecution and shall be imprisoned for life or any term of years. If death results therefrom he shall be guilty of murder. (Id. § 19.)

247. Manufacture and Sale of Certain Preparations Containing Alcohol Not Unlawful.—It shall not be unlawful to manufacture, buy, sell or deal in any medicinal, pharmaceutical, scientific, sacramental, mechanical, culinary, flavoring or toilet preparations which may contain such percentage of alcohol as may be necessary to extract or hold the constituents in solution, preserve the preparation or keep it from freezing; provided, however, that no such preparation shall be manufactured, bought, sold, dealt in or possessed for use for beverage purposes. (Id. § 23.)

NOTE: See also Nos. 184-185.

PART IV.

Miscellaneous Laws.

False Advertising.

248. Penalty for False Advertising.—Any person, firm, corporation, or association, who with intent to sell, or in anywise dispose of merchandise, securities, services, or anything offered by such person, firm, corporation or association, directly or indirectly, to the public for sale or distribution, or with intent to increase the consumption thereof, or to induce the public in any manner to enter into any obligation thereto or to acquire title thereto, or an interest therein, makes, publishes, disseminates, circulates, or places before the public, or causes, directly or indirectly, to be made, published, disseminated, circulated, or placed before the public, in this State in a newspaper or other publication, or in the form of a book, notice, handbill, poster, bill, circular, pamphlet, letter, or in any other way, an advertisement of any sort regarding merchandise, securities, service, or anything so offered to the public, which advertisement contains any assertion, representation, or statement of fact, which is untrue, deceptive, or misleading, shall be guilty of a misdemeanor, and on conviction thereof, shall be punished by a fine of not less than fifty dollars, or more than three hundred dollars, or by imprisonment in the county jail, not exceeding ninety days or by both such fine and imprisonment. (G. L. 1923, c. 401, § 57.)

Flag Desecration.

249. Penalty for Desecrating Flag of the United States.—Any person who in any manner, for exhibition or display, shall place or cause to be placed any word, figure, mark, picture, design, drawing, or advertisement of any nature upon any flag, standard, color, or ensign of the United States of America, or shall expose or cause to be exposed to public view any such flag, standard, color, or ensign upon which shall be printed, painted, or otherwise placed, or to which shall be attached, appended, affixed, or annexed, any word, figure, mark, picture, design, or drawing, or any advertisement of any nature, or who shall expose to public view, manufacture, sell, expose for sale, give away, or have in possession for sale or to give away, or for use for any purpose, any article or substance, being an article of merchandise, or a receptacle of merchandise, upon which shall have been printed, painted, attached, or otherwise placed a representation of any such flag, standard, color, or ensign, to advertise, call attention to, mark, or distinguish the article or substance on which so placed, or who shall publicly mutilate, deface, defile, or defy, trample upon, or cast contempt, either by words or act, upon any such flag, standard, color, or ensign, shall be deemed guilty of a misdemeanor, and

shall be punished by a fine not exceeding one hundred dollars or by imprisonment for not more than thirty days, or both, in the discretion of the court. (G. L. 1923, c. 401, § 39.)

250. Words "Flag," Etc., Defined.—The words flag, standard, color, or ensign as used in this chapter, shall include any flag, standard, color, ensign, or any picture or representation of either thereof, made of any substance, or represented on any substance, and of any size, evidently purporting to be either of said flag, standard, color, or ensign of the United States of America, or a picture or a representation of either thereof, upon which shall be shown the colors, the stars and the stripes, in any number of either thereof, or by which the person seeing the same, without deliberation may believe the same to represent the flag, colors, standard, or ensign of the United States of America. (Id. § 40.)

251. Exceptions.—The provisions of sections thirty-nine and forty shall not apply to any act permitted by the statutes of the United States of America or by the United States Army and Navy regulations, nor shall it be construed to apply to a newspaper, periodical, book, pamphlet, circular, certificate, diploma, warrant, or commission of appointment to office, ornamental picture, articles of jewelry, or stationery for use in correspondence, on any of which shall be printed, painted, or placed, said flag, disconnected from any advertisement. (Id. § 41.)

Tobacco—Tobacco Products.

252. Penalty for Delivering of Cigarettes to Minors Under Sixteen.—No person shall sell, give or deliver to any minor under sixteen years of age any tobacco in the form of cigarettes. Any person violating the provisions of this section shall be fined not more than twenty dollars for each offense. (G. L. 1923, c. 399, § 28.)

253. Penalty for Public Use of Tobacco by Minors Under Sixteen.—No person under sixteen years of age shall smoke or chew in any public street, place, or resort, any tobacco in any form whatsoever. Any such person violating the provisions of this section shall be fined not more than five dollars for each offense. (Id. § 29.)

Trade-Marks, Etc.

254. Certain Trade-Marks, Labels, Etc., Not to be Counterfeited or Imitated.—Whenever any person, or any association or union of workingmen, has heretofore adopted or used, or shall hereafter adopt or use, any label, trade-mark, term, design, device, or form of advertisement for the purpose of designating, making known, or distinguishing any goods, wares, merchandise, or other product of labor as having been made, manufactured, produced, prepared, packed, or put on sale by such person, or association or union of workingmen, or by a member, or members, of such association or union, it shall be unlawful to counterfeit or imitate such label, trade-mark, term, design, device, or form of advertisement, or to use, sell, offer for sale, or in any way utter or circulate any counterfeit or imitation of any such label, trade-mark, term, design, device, or form of advertisement. (G. L. 1923, c. 223, § 1.)

255. Penalty.—Whoever knowingly counterfeits or imitates any such label, trade-mark, term, design, device, or form of advertisement which has been filed and recorded in the office of the Secretary of State as hereinafter provided; or knowingly sells, offers for sale, or in any way utters or circulates any counterfeit or imitation of any such label, trade-mark, term, design, device, or form of advertisement, or knowingly keeps or has in his possession, with intent that the same shall be sold or disposed of, any goods, wares, merchandise, or other product of labor to which or on which any such counterfeit or imitation is printed, painted, stamped, or impressed; or knowingly sells or disposes of any goods, wares, merchandise, or other product of labor contained in any box, case, can, or package to which or on which any such counterfeit or imitation is attached, affixed, printed, painted, stamped, or impressed; or knowingly keeps or has in his possession, with intent that the same shall be sold or disposed of, any goods, wares, merchandise, or other product of labor in any box, case, can or package to which or on which any such counterfeit or imitation is attached, affixed, printed, painted, stamped, or impressed, shall be punished by a fine of not more than one hundred dollars or by imprisonment for not more than three months. (Id. § 2.)

256. Trade-Marks, Etc., to be Filed in Office of Secretary of State; Description to be Advertised.—Every such person, association, or union that has heretofore adopted or used, or shall hereafter adopt or use, a label, trade-mark,

term, design, device, or form of advertisement as provided in section one of this chapter, shall file the same for record in the office of the Secretary of State by leaving two copies, counterparts, or facsimiles thereof, with said Secretary, and by filing therewith a sworn application specifying the name or names of the person, association, or union on whose behalf such label, trade-mark, term, design, device, or form of advertisement shall be filed; the class of merchandise, and a description of the goods to which it has been or is intended to be appropriated, stating that the party so filing, or on whose behalf such label, trade-mark, term, design, device, or form of advertisement shall be filed, has the right to the use of the same, that no other person, firm, association, union, or corporation has the right to such use, either in the identical form or in any such near resemblance thereto as may be calculated to deceive, and that the facsimile or counterparts filed therewith are true and correct, before there shall be any liability to any suit or proceeding for any violation of this chapter. There shall be paid for such filing and recording a fee of one dollar. Said Secretary of State shall cause a description of such label, trade-mark, term, design, device, or form of advertisement to be published once a week for three successive weeks, at the expense of the applicant, in some newspaper published in the city of Providence. After such publication said Secretary shall deliver to such person, association, or union so filing or causing to be filed any such label, trade-mark, term, design, device, or form of advertisement so many duly attested certificates of the recording of the same as such person, association, or union may apply for, for each of which certificates said Secretary shall receive a fee of one dollar. Any such certificate of record shall in all suits and prosecutions under this chapter be sufficient proof of the adoption of such label, trade-mark, term, design, device, or form of advertisement. Said Secretary of State shall not record for any person, union, or association any label, trade-mark, term, design, device, or form of advertisement that would probably be mistaken for any label, trade-mark, term, design, device, or form of advertisement theretofore filed by or on behalf of any other person, union, or association. (Id. § 3.)

257. Penalty for Fraudulently Filing Any Label, Trade-Mark, Etc.—Any person who shall, for himself or on behalf of any other person, association, or union, procure the filing of any label, trade-mark, term, design, or form of advertisement in the office of the Secretary of State under the provisions of this chapter by making any false or fraudulent representations or declarations, verbally or in writing, or by any fraudulent means, shall be liable to pay any damages sustained in consequence of any such filing, to be recovered by or on behalf of the party injured thereby in any court having jurisdiction, and shall be punished by a fine not exceeding one hundred dollars or by imprisonment not exceeding three months. In any suit or prosecution under the provisions of this chapter, the defendant may show that he or it was the owner of such label, trade-mark, term, design, device, or form of advertisement prior to its being filed under the provisions of this chapter, and that it has been filed wrongfully or without right by some other person, association, or union. (Id. § 4.)

258. Use of Counterfeits or Imitations May be Enjoined.—Every such person, association, or union adopting or using a label, trade-mark, term, design, device, or form of advertisement, as aforesaid, may proceed by suit to enjoin the manufacture, use, display, or sale of any counterfeits, or imitations thereof, and all courts of competent jurisdiction may grant injunctions to restrain such manufacture, use, display, or sale, and may award the complainant in any such suit damages resulting from such manufacture, use, sale, or display, as may be by the said court deemed just and reasonable, and may require the defendants to pay to such person, association, or union all profits derived from such wrongful manufacture, use, display, or sale; and such court may also order that all such counterfeits or imitations in the possession or under the control of any defendant in such cause be delivered to an officer of the court, or to the complainant, to be destroyed. In all cases where such association or union is not incorporated, suits under this chapter may be commenced and prosecuted by an officer or member of such association or union, on behalf of and for the use of such association or union. (Id. § 5.)

259. Penalty.—Any person or persons who shall in any way use the name or seal of any such person, association, or union, or officer thereof, in and about the sale of goods or otherwise, not being authorized to use the same, shall be guilty of a misdemeanor, and shall be punished by imprisonment for not more than three months or by a fine of not more than one hundred dollars. (Id. § 6.)

260. Exceptions as to Certain Trade-Marks.—The provisions of this chapter shall not abridge any rights to any trade-marks existing on the twelfth day of April, nineteen hundred, whether the same shall be recorded or not. (Id. § 7.)

261. Brands on Cans, Bottles, Etc., How Protected, on Certain Utensils.—Any person engaged in manufacturing, bottling, delivering, or selling soda waters, mineral or aerated waters, or any kind of beer, ales, wines, cider, milk, cream, or any other liquids that may be lawfully sold as food or beverage, or any medicines, medical preparations or mixtures, perfumery, oils, compounds or mixtures, in bottles, jugs, cans, tins, casks, barrels, kegs, trays, crates, boxes, siphons, fountains, or any other kind of vessel whatsoever, or any utensil, tool or receptacle used in the manufacture, production, distribution or sale of ice, upon which any name, mark, device, or other designation of ownership is branded, stamped, engraved, blown, etched, carved, or otherwise produced, may file in the office of the Secretary of State a description of the name, device or other designation of ownership so used by him, and cause such description to be printed once a week for three successive weeks in some newspaper published in the city of Providence. After such description shall be filed and published as aforesaid, the Secretary of State shall give such person a certificate under the seal of his department that the description aforementioned has been filed and published according to law, and such certificate shall be received in all legal proceedings as evidence of such filing and publishing. (G. L. 1923, c. 225, § 1.)

262. Penalty for Unlawful Use of Certain Bottles, Utensils, Etc., May be Seized When, and by Whom.—It is hereby declared to be unlawful for any person, copartnership, or body corporate, other than the manufacturer, bottler, distributor, or dealer whose name, mark, device, or other designation of ownership is upon any vessel, utensil, tool, or receptacle, mentioned in section one of this chapter, and which has been filed and published as aforesaid either by themselves or through any agent or employee, to buy, sell, offer for sale, take, give, receive, handle in the course of business except when containing the liquid therein placed by the owner, bottler, or manufacturer, hire, rent, lend, transport, carry in wagons, carts, push carts, or other vehicles, or to take or collect from ash or garbage receptacles, from public or private dumps, cellars, yards, lots, or premises, or to keep in stock or otherwise store or dispose of, deal or traffic in the same or any parts or pieces of the same, or any utensil, tool, or receptacle used in the manufacture, production, distribution or sale of ice, without the written consent of said manufacturer, bottler, distributor, or dealer, respectively, whose name, mark, or device, or other designation of ownership shall be therein or thereon. And without such written consent it shall be unlawful to willfully break, destroy, or otherwise injure any such vessel, utensil, tool, or receptacle, or to willfully mar or erase, cover up, conceal, or remove any such name, brand, mark, or other designation of ownership so appearing upon such vessel, utensil, tool, or receptacle, or without such written consent, for the purpose of trade or gain, to fill any such bottle, vessel, or other receptacle with any beverage, liquid, medicine, compound, or substance whatsoever, except bottles having contained a prescription may be refilled for any medicinal purposes. And if any of the within described bottles, vessels, utensils, tools, and receptacles, are found in possession of any person, copartnership, or body corporate other than the manufacturer, bottler, distributor, dealer, or legal purchaser or purchasers or receiver thereof without the written consent of such manufacturer, bottler, distributor, or dealer, the same may be seized by any peace officer, police officer, or any inspector of any incorporated State bottling protective association who is also a peace officer, without warrant, wherever he shall find the same being illegally held or used, as specified in this section, and may detain the same in some place of safekeeping until a warrant can be secured against the person so illegally holding or using the same. Any person offending against the provisions of this section shall be punished by imprisonment for not more than three months, or by a fine of one dollar for each and every such vessel, utensil, tool, or receptacle so filled, sold, given, held, disposed of, or trafficked in, or from which the name, device, or other designation of ownership has been erased, defaced, covered up, or otherwise removed or canceled, or by both such fine and imprisonment. (Id. § 2.)

263. Search Warrants, When to be Issued.—Whenever any person believes that any vessel, utensil, tool, or other receptacle aforesaid having a name, mark, device, or other designation of ownership therein or thereon, of which a description has been filed and published as mentioned in section one of this chapter, as being unlawfully acquired, used, or disposed of, or having been unlawfully acquired is being unlawfully secreted in any place, the aforesaid person or his agent may make complaint in writing, under oath, before the justice or clerk of the District Court of the district within which the same is being unlawfully acquired, used, disposed of or secreted, that he has reasonable cause to believe and does believe that the same is being unlawfully acquired, used, disposed of or secreted, and thereupon the justice or clerk of the District Court, if he be satisfied that there is reasonable

ground for such belief, the place to be searched and the things to be seized being described as nearly as may be, shall issue a search warrant for the purpose of searching for and seizing the same, and shall also cause to be brought before him the person or persons in whose possessions the same are found, and shall then enquire into the circumstances of such possession, and if he finds that such person or persons have been guilty of violating section two of this chapter, he shall impose the punishment provided in said section two, and shall also award possession of the property taken upon such warrant to the owner thereof. (Id. § 3.)

264. Requiring of a Deposit, for Any Vessel, Etc., Not to Constitute a Sale.—The requiring, taking or accepting of any deposit, for any purpose, upon any vessel, utensil, tool, or receptacle aforesaid shall not be deemed or constitute a sale of such property, either optional or otherwise, in any proceedings under this chapter. (Id. § 4.)

NOTE: See also the dairy law, No. 24 et seq.

Trading Stamps.

265. Issuance of Trading Stamps Illegal, When.—All schemes and devices whereby any person or corporation shall sell, give or distribute any stamp, trading stamp, cash discount stamp, amusement stamp, check, coupon or other similar device to any purchaser of goods, wares, or merchandise, which will entitle the holder of such stamp, trading stamp, cash discount stamp, amusement stamp, check, coupon, or other similar device, on presentation thereof, either singly or in definite numbers, to receive either directly from the vendor or indirectly through any other person or corporation, some indefinite and undescribed article the nature and value of which are unknown to the purchaser of said goods, wares and merchandise at the time of the purchase thereof, are hereby declared to partake so much of the nature of a lottery as to be detrimental to the public morals, and are hereby declared to be illegal. (G. L. 1923, c. 401, § 5.)

266. Same Subject.—No person or corporation shall sell, give, or distribute any stamp, trading stamp, cash discount stamp, amusement stamp, check, coupon or other similar device, to any purchaser of goods, wares, or merchandise, which will entitle the holder of such stamp, trading stamp, cash discount stamp, amusement stamp, check, coupon, or other similar device, on presentation thereof either singly or in definite numbers, to receive either directly from the vendor or indirectly through any other person or corporation, some indefinite and undescribed article the nature and value of which are unknown to the purchaser of said goods, wares, and merchandise at the time of the purchase thereof. (Id. § 6.)

267. Same Subject.—No person or corporation shall, either directly or indirectly, give, sell, or distribute any stamp, trading stamp, cash discount stamp, amusement stamp, check, coupon, or other similar device with the promise, expressed or implied, as an inducement to the purchase of some article of goods, wares, or merchandise, that the holder of said stamp, trading stamp, cash discount stamp, amusement stamp, check, coupon, or other similar device is to receive on presentation thereof and in return therefor some gift, prize, or gratuity, the nature and value of which are unknown to the purchaser of said goods, wares, or merchandise at the time of the purchase thereof, said promise to be fulfilled only upon the presentation of said stamp, trading stamp, cash discount stamp, amusement stamp, check, coupon, or other similar device, together with such a number of like stamps, trading stamps, cash discount stamps, amusement stamps, checks, coupons, or other similar devices, as the issuer or redeemer thereof may elect shall be redeemed at any one time. (Id. § 7.)

268. Same Subject.—Whoever shall violate any provision of the preceding three sections shall be guilty of a misdemeanor, and for each such offense shall be punished by a fine of not less than one hundred dollars nor more than five hundred dollars, or by imprisonment for a term not exceeding three months. (Id. § 8.)

Weights and Measures.

269. Standard Weights, Measures and Balances, Established.—The weights, measures and balances received from the United States, and now in the custody of the State Sealer, and such new weights, measures and balances as shall be received from the United States as standard weights, measures and balances in addition thereto or in renewal thereof, shall be the authorized standards by which all town standards of weights and measures shall be tried, proved and sealed. (G. L. 1923, c. 221, § 1.)

270. **State Sealer, Appointment, Etc.**—There shall be a State Sealer of Weights, Measures, and Balances, who shall be sworn to the faithful performance of his duty. At the January session of the General Assembly in the year A. D. nineteen hundred twenty-six, and in each fifth year thereafter, the Governor, with the advice and consent of the Senate, shall appoint some person to succeed the person then holding such office; and the person so appointed shall hold his office until the first day of February in the fifth year after his appointment. Any vacancy which may occur in said office when the Senate is not in session shall be filled by the Governor until the next session thereof, when he shall, with the advice and consent of the Senate, appoint some person to fill such vacancy for the remainder of the term. (Id. § 2.)

271. **Duties of State Sealer.**—The State Sealer shall have the exclusive custody and control of the standards so received by the State from the United States, which standards shall be kept in a suitable fireproof place to be provided by the State. He shall have the oversight of all the standards furnished by the State to the various towns and cities, and shall keep a complete list of the same and shall see that they are kept in good order and repair. He shall also keep the standards belonging to the State, furnished by the United States, in perfect order, and shall keep a complete list of the same, and shall take a receipt for the same from his successor in office. His office shall be kept open at least two specified days in each week. He shall try, prove and seal all town standards of weights, measures and balances brought to him for that purpose, the compensation for which is hereinafter provided. (Id. § 3.)

272. **Set of Standards for Towns, When and How Furnished.**—The State Sealer shall furnish a set of standards of weights, measures and balances, at such cost as he may deem proper, to each city or town that in his judgment shall not have a suitable set, the same to be paid for by the State on the order of the State Auditor on the General Treasurer, the said set to consist as follows: One even balance of a capacity not less than one hundred pounds; one brass yard-gauge; five iron dry measures, one each of the following capacities: One-half bushel, one peck, one-half peck, two quarts, and one quart; six iron wine measures, one each of the following capacities: One gallon, one-half gallon, one quart, one pint, one-half pint, and one gill; five iron ring weights, avoirdupois standard, one each as follows: Fifty pounds, twenty-five pounds, twenty pounds, ten pounds and five pounds; ten brass weights, avoirdupois standard, one each as follows: Four pounds, two pounds, one pound, eight ounces, four ounces, one ounce, one-half ounce, one-quarter ounce, one-eighth ounce, one-sixteenth ounce; together with a suitable case or cabinet to contain the same. He shall also furnish each town and city, at the expense of said town or city, a portable even-balance scale, with a set of weights and measures, to be used by the said town or city sealers in the discharge of their duties as hereinafter provided. (Id. § 4.)

273. **Of Inspection by State Sealer, and Record and Report Thereof.**—The State Sealer may, in the discharge of his duties, inspect the weights, measures and balances of any person or persons, which are used for selling any goods, wares, merchandise or other commodities, or for public weighing in any town or city in this State, and if he finds the same to be inaccurate he shall forthwith inform the mayor of the city or the president of the town council, as the case may be, and such mayor or president shall at once call the attention of the town or city sealer thereto. The State Sealer shall keep a record in detail of the towns and cities visited by him in the performance of his duties; of the weights, measures and balances tested and sealed by him; and he shall annually, during the first week in December, make a report to the Governor of his doings for the year. (Id. § 5.)

274. **Town Sealers to Send Inventory Annually to State Sealer.**—The sealers of the different towns and cities shall make an inventory of weights, measures and balances furnished by the State and the condition of the same, on a blank prepared for that purpose, in the month of October of each year, and shall forward the same to the State Sealer of Weights and Measures. (Id. § 6.)

275. **Deputy Town Sealers, Appointment and Duties.**—The different town councils of the several towns, and the boards of aldermen of cities, may appoint, upon recommendation of their respective town or city sealers, one or more persons as deputy sealers of their town or city, who shall assist the said town or city sealer and, in the absence from duty of such town or city sealer, shall perform all the duties of town or city sealer as may be required of them for the time being. (Id. § 7.)

276. **Duties of Town Sealers.**—Every town or city sealer shall, at the expense of his town or city, provide therein a suitable place for the safekeeping and preservation of the weights, measures and balances furnished by the State, which shall be used only as standards, and shall not be taken from the office. He

shall have the care and oversight thereof; shall see that they are kept in good order and repair; and if any portion of them are lost, damaged, or destroyed, shall at the expense of the town or city, replace the same by similar weights, measures or balances. He shall procure, at the expense of his town or city, a suitable set of sealing stamps for stamping dry and wine measures, with the date of the year thereon, and, for coal and wood baskets, a branding iron, with letters not less than one-half inch high and the date of the year thereon. (Id. § 8.)

277. Penalty for Injury to Standard Weights, Etc., by His Neglect.—Every town or city sealer who neglects to provide a suitable place for keeping such weights, measures and balances, or suffers any of them through his neglect to be lost, damaged or destroyed, shall be fined the sum of not less than twenty nor more than fifty dollars. (Id. § 9.)

278. Town Standards to be Adjusted Triennally by State Sealer.—Every town or city sealer shall, once at least in every three years, have the standard weights, measures and balances in his custody tried, adjusted and sealed by the State Sealer, who shall receive as compensation therefor the sum of fifteen dollars, which sum, together with the necessary expenses incurred by him in so performing such service, shall be paid by the town or city to which such set of standards belongs. (Id. § 10.)

279. Town Sealer to Advertise Annual Sealing of Weights, Etc., Used in Trade.—Every town or city sealer shall annually, at the expense of his town or city, advertise or post up notifications in public places in different parts of his town or city, for every person engaged in the trade of buying and selling, or as a public weigher, who uses weights and measures, to bring in within a certain time, in each notification limited, being not less than one month from the date of such notification, his weights, measures, balances and scales to be adjusted and sealed, and he shall forthwith adjust and seal all weights and measures brought to him for that purpose. (Id. § 11.)

280. Duty of Town Sealer to Inspect and Seal Platform Balances and Weights, Etc.—After the expiration of the time limited in the notification which is required to be given in the preceding section, the sealer of weights and measures in every town or city shall visit the places of business, and enter upon the carts, wagons, and other vehicles then in use for business, of all the persons engaged in the trade of buying and selling or of selling, who have weights, measures or balances which have not been sealed during the current calendar year, and try, adjust, and seal the same. He shall go at least once in every six months, to every hay scale, coal scale, wagon scale, railroad track scale, or platform scale or balance used in the trade of buying and selling or of selling or for public weighing, in his town or city, which is not brought to him under the provisions of the preceding section, and try, adjust, and seal the same. (Id. § 12.)

281. Penalties on Town Sealer for Neglect of Duties.—For every neglect of duty prescribed in the next preceding section the town or city sealer shall be fined a sum not exceeding twenty dollars; and every town or city sealer who shall seal any weight, measure or balance otherwise than according to the town or city standard, duly tried, proved and sealed by the State Sealer, shall be fined not exceeding fifty dollars nor less than twenty-five dollars. (Id. § 13.)

282. Fees of Town Sealer.—The sealer of weights and measures, in any town or city, shall receive a fee of three cents for every weight, wine or dry measure sealed by him at his office; he shall receive a fee of five cents for every yard-stick or yard measure sealed by him; and for sealing every spring balance of a capacity less than one hundred pounds he shall receive a fee of twenty-five cents; for every spring balance of a capacity of one hundred and less than five hundred pounds, fifty cents; for every platform scale of a capacity of five thousand pounds or more, one dollar; for every balance of a capacity of less than five thousand pounds, fifty cents; for every steel-yard of a capacity of fifty pounds or less, twenty-five cents; and for every steel yard of a capacity over fifty pounds, fifty cents; every scale or balance used for weighing people shall be tested, and if found correct shall be sealed, by the said sealer, and he shall receive a fee of fifty cents for each and every scale or balance so sealed. If any of the said scales or balances are found to be incorrect, then they shall be condemned and their use forbidden as hereinbefore provided. For proving and sealing coal and wood baskets he shall receive a fee of fifteen cents each, and for every charcoal basket so sealed, twenty cents; he shall also have a reasonable compensation for all repairs, alterations, and adjustments which it may be necessary for him to make, made by him, and for the expenses incurred in visiting any place, as provided for in section twelve of this chapter. Such fees and compensation shall be paid to said sealer by the person owning or using the weights, measures or balances so adjusted and sealed. Every person violating the provisions of this section shall be fined not ex-

ceeding twenty dollars for each offense, one-half thereof to go to the town or city and one-half to the complainant. All said fees received by any sealer of weights and measures of any town or city shall be retained by him as compensation for his services except as hereinafter provided. Any town or city council may at any time by ordinance fix an annual salary for the sealer of weights and measures of such town or city, and in such case said fees received by him shall be paid over by him to the town or city treasurer, at the time or times prescribed by any ordinance of such town or city. (Id. § 14.)

283. Unlawful Weights, Etc., Are Prohibited, and May be Seized.—No person engaged in the trade of buying and selling shall have or permit to be kept at his place of business or upon any cart, wagon or other vehicle used by him in carrying on his business, any weight, measure or balance of whatever description which is not at the time duly sealed in accordance with this chapter, or which, having been sealed, is no longer correct. If such weights, measures or balances can be readily adjusted by such means as the sealer has at hand, he may adjust and seal them; but if they cannot be readily adjusted, he shall either seize such weights, measures and balances forthwith and destroy them, or shall affix to the same a notice forbidding their use until he is satisfied that they have been so adjusted as to conform to the standards; and whoever removes said notice without the consent of the officer affixing the same, shall for each offense be fined not less than twenty nor more than fifty dollars, one-half to the town or city and one-half to the use of the complainant. (Id. § 15.)

284. Penalty for Use of Weights, Etc., Not Sealed.—Every person engaged in the trade of buying and selling, or of selling, or as a public weigher, who shall use or permit to be used for him, or have in his possession at his place of business, or upon any cart, wagon, or other vehicle which is used by him in carrying on his business, or upon his person while engaged in his business, any weight, measure, balance, or scale of whatever description, unless such weight, measure, balance, or scale shall have been duly sealed in conformity with the provisions of this chapter, and every such person who alters any weight, measure, balance, or scale after it has been duly sealed, so that it does not conform to the United States standard, or has in his possession any such weight, measure, balance or scale, which has been so altered, and every such person who shall use or permit to be used for him, or have in his possession, as aforesaid, any weight, measure, balance, or scale which he has refused to allow to be examined or sealed by the sealer of weights and measures, or deputy sealer, according to the provisions of this chapter, or who shall use or permit to be used for him, or have in his possession any spring balance having a sliding or adjustable face plate or index, or any measure not made of the shape or dimensions required by law, shall be fined the sum of twenty dollars for each offense, one-half thereof to the use of the town or city in which the offense shall have been committed, and one-half thereof to the complainant. (Id. § 16.)

285. Penalty for Fraudulent Sale by Weight or Measure.—Whoever, himself or by his servant or agent or as the servant or agent of another person, is guilty of giving false or insufficient weight or measure shall for first offense be punished by a fine of not more than fifty dollars, for a second offense by a fine of not more than two hundred dollars and for a subsequent offense by a fine of fifty dollars and by imprisonment for not less than thirty nor more than ninety days. (Id. § 17.)

285a. Hay-scales to be Tried and Sealed.—Every person who shall keep hay-scales or platform-balances for public use shall cause the same to be tried and sealed at least once in six months by a sworn sealer of weights and measures. (Id. § 18.)

286. Penalty for Using if Not Sealed.—Every person who shall keep hay scales or platform balances for public use, or shall weigh or suffer to be weighed in such scales or balances any article of merchandise, unless such scales or balances shall have been tried and sealed as provided in the preceding section, shall be fined one hundred dollars. (Id. § 19.)

287. Who to Seal Same, if Office of Sealer Vacant.—Whenever the owner or keeper of such hay scales or balances shall apply to the mayor of the city or president of the town council as the case may be, or to any person by him appointed for the purpose in any town or city in which the office of sealer of weights and measures shall from any cause be vacant, to try such scales or balances, and to seal the same if found correct, such mayor, president or person so appointed shall try such scales or balances and seal the same if found correct; and in case of his neglect so to do, such owner or keeper shall be exempt from the fine prescribed in the next preceding section. (Id. § 20.)

288. Weighers of Coal and Other Merchandise, How Appointed, and Duties.—The town councils of the several towns and the boards of aldermen of any city shall appoint one or more persons to be weighers of coal and other articles of merchandise, who shall be sworn and be removable at the pleasure of the town council or board of aldermen appointing them, and shall receive such fees as may be fixed by the town council or board of aldermen of the several towns or cities, which shall be paid by the seller: Provided, that no person shall act as a public weigher of coal or other merchandise of which he is either the buyer or seller, or in the sale whereof he has any interest. (Id. § 21.)

289. Penalty for Selling Coal or Other Merchandise Not Weighed, When.—Every person who shall sell coal or other merchandise without its being first weighed by a weigher provided for in section twenty-one of this chapter, when the same shall be demanded by the purchaser, and procuring a certificate of such weight for the purchaser, shall be fined twenty dollars for each offense. (Id. § 22.)

290. Legal Weights of Certain Commodities.—The legal weights of certain commodities in the State of Rhode Island shall be as follows:

A bushel of apples shall weigh forty-eight pounds.
A bushel of apples, dried, shall weigh twenty-five pounds.
A bushel of apple seed shall weigh forty pounds.
A bushel of barley shall weigh forty-eight pounds.
A bushel of beans shall weigh sixty pounds.
A bushel of beans, castor, shall weigh forty-six pounds.
A bushel of beets shall weigh fifty pounds.
A bushel of bran shall weigh twenty pounds.
A bushel of buckwheat shall weigh forty-eight pounds.
A bushel of carrots shall weigh fifty pounds.
A bushel of charcoal shall weigh twenty pounds.
A bushel of clover seed shall weigh sixty pounds.
A bushel of coal shall weigh eighty pounds.
A bushel of coke shall weigh forty pounds.
A bushel of corn, shelled, shall weigh fifty-six pounds.
A bushel of corn, in the ear, shall weigh seventy pounds.
A bushel of corn meal shall weigh fifty pounds.
A bushel of cotton seed, upland, shall weigh thirty pounds.
A bushel of cotton seed, Sea Island, shall weigh forty-four pounds.
A bushel of flax seed shall weigh fifty-six pounds.
A bushel of hemp shall weigh forty-four pounds.
A bushel of Hungarian seed shall weigh fifty pounds.
A bushel of lime shall weigh seventy pounds.
A bushel of malt shall weigh thirty-eight pounds.
A bushel of millet seed shall weight fifty pounds.
A bushel of oats shall weigh thirty-two pounds.
A bushel of onions shall weigh fifty pounds.
A bushel of parsnips shall weigh fifty pounds.
A bushel of peaches shall weigh forty-eight pounds.
A bushel of peaches, dried, shall weigh thirty-three pounds.
A bushel of peas shall weigh sixty pounds.
A bushel of peas, split, shall weigh sixty pounds.
A bushel of potatoes shall weigh sixty pounds.
A bushel of potatoes, sweet, shall weigh fifty-four pounds.
A bushel of rye shall weigh fifty-six pounds.
A bushel of rye meal shall weigh fifty pounds.
A bushel of salt, fine, shall weigh fifty pounds.
A bushel of salt, coarse, shall weigh seventy pounds.
A bushel of timothy seed shall weigh forty-five pounds.
A bushel of shorts shall weigh twenty pounds.
A bushel of tomatoes shall weigh fifty-six pounds.
A bushel of turnips shall weigh fifty pounds.
A bushel of wheat shall weigh sixty pounds.
A barrel of flour shall contain one hundred ninety-six pounds.
A ton of coal, net, shall weigh two thousand pounds.
A ton of coal, gross, shall weigh two thousand two hundred forty pounds. (Id. § 25.)

291. Sealers of Weights and Measures to be Special Constables.—The State Sealer of Weights and Measures and the city and town sealers of weights and measures in the various cities and towns throughout the State, shall be, by virtue of their respective offices, special constables, and as such they shall have power to prosecute all persons violating the provisions of this chapter, and shall not be

required in such prosecutions to furnish any surety for costs. They shall also have power to arrest upon view without warrant and to detain for a period of not more than twelve hours any person found violating any of the provisions of this chapter. (Id. § 26.)

292. Legal Bushel and Half-Bushel Box Defined; How Marked.—A box which shall measure on the inside thereof seventeen and one-half inches by seventeen and one-half inches in length and width, and which on the inside thereof shall measure seven and one-sixteenth inches in depth, measured from the highest part of the bottom thereof, is hereby declared to be a legal bushel box for the sale of farm produce. A box which shall measure on the inside thereof thirteen by thirteen inches in length and width and which on the inside thereof shall measure six and one-sixteenth inches in depth, measured from the highest part of the bottom thereof, is hereby declared to be a legal half-bushel box for the sale of farm produce. All bushel boxes of the dimensions specified by this section shall be marked in letters not less than one inch in height with the words "standard bushel for farm produce." All half-bushel boxes of the dimensions specified by this section shall be marked in letters not less than one inch in height with the words "standard half-bushel for farm produce." (Id. § 27.)

293. Measurers in Certain Towns, How Elected.—The towns of Bristol, Warren, Warwick, West Warwick, East Greenwich and North Kingstown shall, and any other towns may, at any annual meeting for the choice of town officers, elect in each of said towns respectively not exceeding two persons to be measurers of grain and salt. The city councils of the several cities, at the time of the election of city officers, shall respectively elect at least two such measurers for said cities. (G. L. 1923, c. 195, § 1.)

294. May Appoint Deputies and Employ Assistants.—Such measurers may appoint as many deputy measurers and employ as many assistants as they may deem expedient, who shall be engaged to the faithful performance of their duties. (Id. § 2.)

295. Their Duties.—The measurers shall measure or cause to be measured in their presence, and shall certify the measure, of all corn, rye, oats, barley and other grain and salt imported into such town from without the limits of the State, which shall be sold and delivered from any vessel or water craft or any railroad car in said town, in any quantity exceeding twenty-five bushels at one sale, to one person or company. (Id. § 3.)

296. Weight of Bushel of Indian Corn and Rye; Indian Meal and Rye Meal.—In the sale of Indian corn and rye the same shall be estimated at the rate of fifty-six pounds to the bushel, barley at the rate of forty-eight pounds to the bushel, and oats at the rate of thirty-two pounds to the bushel. In the sale of Indian meal or rye meal by weight, the same shall be estimated at the rate of fifty pounds to the bushel. Every person who shall sell a less number of pounds for a bushel shall be fined ten dollars. (Id. § 4.)

297. Compensation of Measurers.—The measurers shall receive as compensation, for every bushel of grain or salt aforesaid by them measured and certified, where the same shall exceed one hundred and fifty bushels, one-half of one cent per bushel, and for any quantity less than one hundred and fifty bushels, one cent per bushel, to be paid by the vendor upon the tender of the certificate of the measurers, the vendor charging one-half of the same to the purchaser, unless otherwise by them agreed; but no measurer shall be entitled to receive more than one-half of one cent per bushel for measuring whenever the quantity shall exceed one hundred and fifty bushels, delivered from the same vessel or any car. (Id. § 5.)

298. Duties and Fees in Case of Disputes, Etc.—The measurers or their deputies shall measure and certify as aforesaid in all cases of sale and delivery of said articles in the towns where they are appointed, in quantity aforesaid, from any store or other places of selling in said towns, whenever a dispute shall arise between the seller and the purchaser, if called on for that purpose by either party, for which duty they shall receive the same compensation, and payable in like manner, as hereinbefore provided. (Id. § 6.)

299. Penalty for Selling Grain or Salt Without Measurement and Certificate.—Every person who shall sell and deliver from any vessel, water craft or railroad car in said towns any such grain or salt in a quantity exceeding twenty-five bushels, at one sale and delivery, without having the same duly measured and certified as aforesaid by one of the said measurers, or shall refuse to permit a measurer or deputy to measure such articles when sold from any water craft or railroad car, shall forfeit fifty dollars for each offense, one-half thereof to the use of the person who shall sue for the same and one-half thereof to the use of the town where the offense shall be committed. (Id. § 7.)

300. Penalty on Measurer for Neglect of Duty.—Every measurer or deputy measurer who shall, after being duly requested to perform any of the duties prescribed by this chapter and after tender of his fees therefor, refuse or neglect so to do, shall forfeit ten dollars for each offense, one-half thereof to the person who shall sue therefor and one-half thereof to the use of the town where such neglect occurred. (Id. § 8.)

301. Sales Regulated by Contract for Measure or Weight.—Nothing in this chapter shall be so construed as to apply to or affect the sale, delivery or measuring of any of the articles aforesaid, in the sale whereof it shall have been contracted by the seller and purchaser that the same shall be sold and delivered at custom house measure, the same being measured under the inspection of a custom house inspector, or to the sale of grain where the contract is that it shall be delivered by weight. (Id. § 9.)

302. Weight of Bushel of Potatoes.—In the sale of potatoes by weight, the same shall be estimated at and after the rate of sixty pounds per bushel. (G. L. 1923, c. 202, § 6.)

303. Weight of Bushel of Onions and Other Root Crops.—In the sale of onions and of all other root crops by weight, the same shall be estimated at and after the rate of fifty pounds per bushel. (Id. § 7.)

304. Nuts, Shelled Beans and Berries, How Measured.—Nuts and shelled beans and all kinds of berries, whenever sold by measure, shall be sold by dry measure. And any person who shall sell any nuts or shelled beans or any kind of berries by any measure other than dry measure shall be fined not exceeding twenty dollars, one-half thereof to the use of the town or city in which the offense shall have been committed and one-half thereof to the complainant. (Id. § 8.)

305. Rules for Gauging.—All casks which shall be gauged in this State shall be gauged by the method or rule commonly called "guaging by Gunter," computing the gallon at two hundred and thirty-one cubic inches. Care shall be taken to ascertain, as near as may be practicable, the true average of the head and bung diameter, also of the internal length of the cask; its mean diameter shall be ascertained in accordance with the principles laid down in the work on the subject of gauging by Daniel Anthony, published in Providence in the year one thousand eight hundred and seventeen. (G. L. 1923, c. 222, § 1.)

306. Fees for Gauging; Casks, How Branded.—The fees for gauging a single cask shall be twenty-five cents, and for gauging any number of casks not exceeding ten, ten cents each, and for any number above ten, seven cents each; the gauger who shall gauge any cask shall fairly mark with branding irons or marking irons on the head or bulge of each cask the initials of his name and the quantity of the gauge or capacity of such cask. (Id. § 2.)

307. Penalty for Fraudulent Gauging.—Every person, not holding the office of gauger, who shall put upon any cask any gauge or other permanent mark to denote the capacity of such cask, or who shall exercise the office of gauger or business of gauging, shall forfeit one hundred dollars for each offense; but nothing contained in this section shall be so construed or held as to apply to the sale of petroleum or any of its products by weight or for exportation from the State. (Id. § 3.)

308. Penalty for Selling by Unofficial Gauge.—Every person who shall sell any commodity by any gauge or gauge mark, which shall not have been made by a gauger appointed under this chapter, shall forfeit the value of such commodity sold. (Id. § 4.)

309. Gaugers in City of Providence, How Appointed.—The city council of the city of Providence may, whenever they deem it expedient appoint for said city a gauger, who may appoint under him such deputy gaugers as said city council may approve, and for the official conduct of such deputies he shall be answerable. Said gaugers shall be subject to such regulations as said city council may establish not repugnant to law. (Id. § 5.)

310. Sale by Gauge Mark of United States Inspector, Not prohibited.—Nothing in this chapter shall be so construed as to prevent the sale of any commodity under the lawful gauge or gauge mark of the United States by the inspector of such commodity. (Id. § 6.)

NOTE: See also No. 6; the dairy law, No. 24 et seq.; the fish law, No. 91 et seq.; the meat law, No. 111 et seq.

PART V.

Cases.

1. Special Food Laws.

Beverage—Intoxicating Liquor Containing Poison: State v. De Fonti, 34 R. I. 51, 82 Atl. 722 (1912).

Beverage—License: See Fainardi et al. v. Pausata et al., 126 Atl. 865 (1924).

Milk—Added Foreign Substance—Intent Not Necessary Ingredient of Offense: State v. Smith, 10 R. I. 258 (1872).

Milk—Criminal Complaint—By Whom Made: State v. Entwistle, 38 R. I. 417, 96 Atl. 306 (1916).

Milk—General Laws, Chapter 282, Section 1, Does Not Apply to Adulterated Milk: State v. Luther, 20 R. I. 472, 40 Atl. 9 (1898).

Milk—Maximum Watery Fluids and Minimum Milk Solids and Fats Standard: *State v. Smyth, 14 R. I. 100, 51 Am. Rep. 344 (1883); *State v. Groves, 15 R. I. 208, 2 Atl. 384 (1885); State v. Luther, 20 R. I. 472, 40 Atl. 9 (1898).

2. Civil Action to Recover Damages for Injury Alleged to Have Been Caused by Consumption of Product.

Drugs: Santos v. Santos, 110 Atl. 326 (1920).

Shaving Soap: Slattery v. Colgate et al., 25 R. I. 220, 55 Atl. 639 (1903).

3. Miscellaneous.

Trade-Marks: Davis v. Kendall, 2 R. I. 566 (1850); Barrows v. B. B. & R. Knight, 6 R. I. 434, 78 Am. Dec. 452 (1860); A. Carmichel & Co. v. Latimer, Stillman & Co., 11 R. I. 395, 23 Am. Rep. 481 (1876); American Solid Leather Button Co. v. Anthony, Cowell & Co. et al, 15 R. I. 338, 5 Atl. 626, 2 Am. St. Rep. 898 (1886); Buchanan & Lyall v. Carpenter, 19 R. I. 337, 36 Atl. 90 (1896); Armington v. Palmer et al., Sims v. Palmer et al., 21 R. I. 109, 42 Atl. 308, 43 L. R. A. 95, 79 Am. St. Rep. 786 (1898); Harson v. Halkyard, 22 R. I. 102, 46 Atl. 271 (1900); *State v. Hand Brewing Co., 32 R. I. 56, 78 Atl. 499 (1911); Ryder et al. v. Provost, 1 R. I. Dec. 128 (1925). See also: Alexander Bros. v. Morse et al., 14 R. I. 153, 51 Am. Rep. 369 (1883); Cady v. Schultz, 19 R. I. 193, 32 Atl. 915, 29 L. R. A. 524, 61 Am. St. Rep. 763 (1895); Yellow Cab Co. of Rhode Island v. Anastasi, 46 R. I. 49, 124 Atl. 735 (1924).

Trading Stamps: *State v. Dalton, 22 R. I. 77, 46 Atl. 234, 48 L. R. A. 775, 84 Am. St. Rep. 818 (1900).

SOUTH CAROLINA.*

PART I.

General Food and Drug Law.

1. **Unlawful to Manufacture or Sell Impure Food or Drugs; Definitions.**—It shall be unlawful for any person to manufacture or sell, or offer for sale, any article of food or drug which is adulterated or misbranded, within the meaning of this section, and any person who shall violate any of the provisions of this section, shall be deemed guilty of a misdemeanor, and, upon conviction thereof shall be punished by a fine not exceeding fifty dollars, or by imprisonment not exceeding fifteen days for the first offense, and one hundred dollars, or thirty days' imprisonment, for each subsequent offense. That the term "drug," as used in this section, shall include all medicines and preparations recognized in the United States Pharmacopœia or National Formulary or United States Dispensatory, for internal or external use, and any substance or mixture of substances intended to be used for the cure, mitigation or prevention of disease of either man or other animals. The term "food," as used herein, shall include all articles used for food, drink, confectionery or condiment by man or other animals, whether simple, mixed or compound. That for the purpose of this section an article shall be deemed to be adulterated:

In the case of drugs and flavoring extract:

If, when a drug or flavoring extract sold under or by a name recognized in the United States Pharmacopœia or National Formulary or United States Dispensatory it differs from or does not conform to the standard of strength, quality or purity, as determined by the test laid down in the United States Pharmacopœia, or National Formulary or United States Dispensatory official at the time of investigation.

In the case of confectionery: If it contains terra alba, barytes, talc, chrome yellow or other mineral substance or poisonous color or flavor, or other ingredient deleterious or detrimental to health, or any vinous, malt or spirituous liquors, compound or narcotic drug.

In the case of food:

First. If any substance has been mixed and packed with it so as to reduce or lower or injuriously affect its quality or strength.

Second. If any substance has been substituted wholly or in part for the article.

Third. If any valuable constituent of the article has been wholly or in part abstracted.

Fourth. If it be mixed, colored, powdered, coated or stained in a manner whereby damage or inferiority is concealed.

Fifth. If it contains any added poisonous or other added deleterious ingredient, which may render such article injurious to health: Provided, that when in the preparation of food products for shipment they are preserved by any external application, applied in such a manner that the preservative is necessarily removed mechanically, or by maceration in water, or otherwise, and directions for the removal of said preservative shall be printed on the covering or [of] the package, the provisions of this section shall be construed as applying only when said products are ready for consumption. Non-alcoholic drink shall be deemed to be adulterated: (1) If it contain any boric acid or borate, salicylic acid or salicylate, formaldehyde, hydrofluoric acid or fluoride, fluoborate, fluosilicate or other fluorine compound, dulcin, glucin, saccharine, betanapthol, abrastol, asaprol, compound of copper, pyroligneous acid, uncertified coal-tar dye, saponin derived from soap bark, or other substance deleterious or injurious to health.

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*CITATIONS: "Code 1922" refers to the Code of Laws of South Carolina, 1922, published by authority of the Acts of March 10, 1920 and March 11, 1922. "Acts" refers to the general acts of the year cited.

Sixth. If it consists in whole or in part of a filthy, decomposed or putrid animal or vegetable substance, or any portion of an animal unfit for food, whether manufactured or not, or if it is the product of a diseased animal or one that has died otherwise than by slaughter.

The term "misbranded," as used herein, shall apply to all drugs or articles of food, or articles which enter into the composition of food, the package or label of which shall bear any statement, design or device regarding such article, or the ingredients or substances contained therein, which shall be false or misleading in any particular and to any food or drug which is falsely branded as to the State, Territory or county [country] in which it is manufactured or produced. That for the purposes of this section an article shall also be deemed to be misbranded:

In the case of drugs:

First. If it be an imitation of or offered for sale under the name of another article.

Second. If the contents of the package as originally put up shall have been removed, in whole or in part, and other contents shall have been placed in such package, or if the package fail to bear a statement on the label of the quantity or proportion of any alcohol, morphine, opium, cocaine, heroin, alpha or beta eucaine, chloroform, cannabis indica, chloral hydrate, acetanilide, or any derivative or preparation of any such substances contained therein. Provided, that the package contains more than two grains of opium, or more than one-quarter grain of morphine, or more than one-quarter grain of heroin, or more than ten grains of chloral hydrate in one fluid ounce, or, if a solid preparation, in one avoirdupois ounce: Provided, further, that nothing in this paragraph shall be construed to apply to the filling of written prescriptions, furnished by regular licensed practicing physicians, and kept on file by druggists as required by law, or as to such preparations as are specified and recognized by the United States Pharmacopœia or National Formulary or United States Dispensatory, which are in accordance therewith.

In the case of food:

First. If it be an imitation of or offered for sale under the distinctive name of another article.

Second. If it is labeled or branded so as to deceive or mislead the purchaser, or purport to be a foreign product when not so, or if the contents of the package as originally put up shall have been removed, in whole or in part, and other contents shall have been placed in package, or if it fail to bear a statement on the label of the quantity or proportion of any morphine, opium, cocaine, heroin, alpha or beta eucaine, chloroform, cannabis indica, chloral hydrate, acetanilide, or any derivative or preparation of any such substances contained therein.

Third. If in package form, and the contents are stated in terms of weight or measure, they are not plainly and correctly stated on the outside of the package.

Fourth. If the package containing it, or its label, shall bear any statement, design or device regarding the ingredient or the substances contained therein, which statement, design or device shall be false or misleading in any particular. Provided, that an article of food which does not contain any added poisonous or deleterious ingredients shall not be deemed to be adulterated or misbranded in the following cases:

First. In the case of mixtures or compounds, which may be now, or from time to time hereafter, known as articles of food, under their own distinctive names and not in imitation of, or offered for sale under, the distinctive name of another article, if the name be accompanied on the same label or brand with a statement of the place where said article has been manufactured or produced.

Second. In the case of articles labeled, branded or tagged so to plainly indicate that they are compounds, imitations or blends, and the word "compound," "imitation' or "blend," as the case may be, is plainly stated on the package in which it is offered for sale: Provided, that the term blend, as used herein, shall be construed to mean a mixture of like substances, not excluding harmless coloring or flavoring ingredients used for the purpose of coloring and flavoring only; and provided, further, that nothing in this section shall be construed as requiring or compelling proprietors or manufacturers of proprietary foods, which contain no unwholesome added ingredient, to disclose their trade formulas, except in so far as the provisions of this section may require to secure freedom from adulteration or misbranding.

No dealer shall be prosecuted under the provisions of this section when he can establish a guaranty, signed by the wholesaler, jobber, manufacturer, or other party residing in the United States, from whom he purchases such

articles, to the effect that the same is not adulterated or misbranded, within the meaning of this section designating it.

For the purpose of carrying out the provisions of this section, the Commissioner of Agriculture, and all inspectors and chemists employed under the Commercial Feed Stuffs Act, shall take cognizance of the interests of the public health, as it relates to the sale of food, drugs, spirituous, fermented and malt liquors, and the adulteration thereof, and make all necessary inquiries and investigations relating thereto and shall take such action in the courts as provided for; and the commissioner shall adopt such measures as he may deem necessary to facilitate the enforcement of this section; and shall prepare in co-operation with the State Board of Health, and issue, when approved by the State Board of Health, rules and regulations with regard to the proper method of collecting and examining drugs and articles of food. The commissioner and his assistants designated, shall also be charged with the enforcement of sections (397), (399), and (401)-(408) of the Criminal Law Volume, Code of 1922, Volume II,* and of such other regulations relating to food and drugs as the State Board of Health may issue under the authority of any other act or law. (Code 1922, Vol. II, § 398, as amended Acts 1924, No. 591.)

Miscellaneous General Provisions.

2. General Duties of Board of Health as to Inspection of Foods, Drugs, Etc.—The State Board of Health shall take cognizance of the interests of the public health as it relates to the sale of food, drugs, spirituous, fermented and malt liquors, and the adulteration thereof, and make all necessary inquiries and investigations relating thereto, and for such purpose may appoint inspectors, analysts and chemists, who shall be subject to its supervision and removal. Within sixty days after February 19, 1898, the said State Board of Health shall adopt such measures as it may deem necessary to facilitate the enforcement thereof. It shall prepare rules and regulations with regard to the proper method of collecting and examining drugs, articles of food, and spirituous, fermented and malt liquors. (Code 1922, Vol. III, § 3451.)†

3. Duty of Board of Health to Publish Exempted Articles.—It shall be the duty of the State Board of Health to prepare and publish from time to time lists of the articles, mixtures or compounds declared to be exempt from the provisions of this article in accordance with the preceding section. The State Board of Health shall from time to time fix the limits of variability permissible in any article of food or drug, or compound, the standard of which is not established by any national pharmacopœia. (Id. § 3452.)†

4. Persons Offering Certain Articles for Sale to Furnish Samples for Analysis When Demanded.—Every person offering or exposing for sale, or delivering to a purchaser, any drug or article of food, or spirituous, fermented or malt liquors, included under the provisions of section 20 [3451], shall furnish to any analyst, or other officer or agent appointed hereunder, who shall apply to him for the purpose and shall tender to him the value of the same, a sample sufficient for the purpose of analysis of any such drug or article of food or drink which is in his possession. (Id. § 3453.)†

5. Meaning of Word "Food" and Word "Drug."—The term "food" as used in section 20 [3451] shall include every article used for food or drink by man, including all candies, teas, coffees, and spirituous, fermented and malt liquors. The term "drug" as used in section 20 [3451] shall include all medicines for internal or external use. (Id. § 3454.)†

6. Adulterated Articles; State Board of Health May Declare Certain Articles Exempt.—An article shall be deemed to be adulterated:

(a) In the case of drugs:

1. If, when sold under or by a name recognized in the United States Pharmacopœia, it differs from the standard of strength, quality or purity laid down therein.

2. If, when sold under or by a name not recognized in the United States Pharmacopœia, but which is found in some other pharmacopœia or other standard work on Pharmacopœia Materia Medica, it differs materially from the standard of strength, quality or purity laid down in such work.

3. If its strength or purity falls below the professed standard under which it is sold.

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*For § 397, see No. 136. For § 399, see No. 66. For §§ 401-408, see No. 8 et seq.

†But see the subsequent law in No. 1.

(b) In case of food or drink:

1. If any substance or substances has or have been mixed with it so as to reduce or lower or injuriously affect its quality or strength.

2. If any inferior or cheaper substance or substances has or have been substituted wholly or in part for the article.

3. If any valuable constituent of the article has been wholly or in part abstracted.

4. If it be an imitation of, or be sold under, the name of another article.

5. If it consists wholly or in part of a deceased [diseased], or decomposed, or putrid, or rotten animal or vegetable substance, whether manufactured or not, or in the case of milk, if it is the product of a diseased animal.

6. If it be colored or coated, or polished, or powdered, whereby damage is concealed, or it is made to appear better than it really is, or of greater value.

7. If it contains any added poisonous ingredient, or any ingredient which may render such article injurious to the health of the person consuming; Provided, that the State Board of Health may declare from time to time certain articles or preparations to be exempt from the provisions of sections 20 to 24 [3451 to 3455]; and provided, further, that the provisions of sections 20 to 24 shall not apply to mixtures or compounds recognized as ordinary articles of food, provided that the same are not injurious to health, and that the articles are distinctly labeled as a mixture, stating the components of the mixture.

(c) In the case of spirituous, fermented and malt liquors; if it contains any substance or ingredient not normal or healthful to exist in spirituous, fermented or malt liquors or which may be deleterious or detrimental to health when such liquors are used as a beverage or as a medicine, and if it does not conform in respect to strength and purity required by the laws of this State. (Id. § 3455.)*

6a. To Impede the Commissioner of Agriculture, etc., or Discriminate Against Employee as Member of Labor Organization, a Misdemeanor.—Every person or corporation who shall wilfully impede or prevent the Commissioner of Agriculture, Commerce and Industries, his agents or inspectors, in the free and full performance of his duties, or who shall discharge or discriminate in the payment of wages against any person because of his or her membership in a labor organization, shall be deemed guilty of a misdemeanor; and, upon conviction of the same, shall be fined not less than ten or more than fifty dollars, or be imprisoned not less than ten nor more than thirty days. Any owner or operator of any establishment which is engaged in manufacturing, who shall fail to render or submit a schedule properly filled in as required in section 940, Civil Code, Volume III, 1922, before the fifth day of December, or who shall hinder or obstruct in any manner the filing of such schedules with the Commissioner of Agriculture, Commerce and Industries, shall be guilty of a misdemeanor, and, upon conviction in a court of competent jurisdiction, shall be fined not less than $10.00 (ten dollars) nor more than $100.00 (one hundred dollars), or by imprisonment in the county jail for not less than ten (10) days or more than thirty (30) days, or both such fine and imprisonment, in the discretion of the court. (Code 1922, Vol. II, § 194, as amended Acts 1924, No. 659.)

6b. Misdemeanor to Violate Rules of Board of Health—Proviso.—Any person who shall, after notice, violate, disobey, refuse, omit or neglect to comply with any rule of the Executive Committee of the State Board of Health, made by it in pursuance of Article I, Chapter XXIII, Civil Code,† shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not exceeding the sum of one hundred dollars, or be imprisoned for thirty days; Provided, this section shall not apply to any person until the rules of the State Board of Health are promulgated. (Code 1922, Vol. II, § 395.)

NOTE: See also No. 226 et seq.

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*But see the subsequent law in No. 1.

†Comprising Code 1922, Vol. III, §§ 2308-2398. See Nos. 6c-6e.

PART II.

Special Food Laws.

Beverages.

6c. **Analyses Required of Public and Quasi-public Water Supplies.**—Every person, corporation, commission, municipality or company conducting or operating a public water supply, serving municipalities, districts, communities, or a quasi-public water supply serving institutions, colleges, hospitals, factories or a business of bottling water to be sold or used for drinking, beverage or medicinal purposes, shall have made at least once every three months, at its own expenses by a chemist and bacteriologist, to be approved by the State Board of Health, a chemical and bacterial analysis, and that no charge shall be rendered for additional analysis other than the quarterly analysis above required, to be approved by the State Board of Health, of a sample of its water drawn from a faucet used for drinking purposes, packed and shipped in accordance with the instructions to be furnished by the Secretary of the State Board of Health, and the result of such examination shall be verified by the chemist and bacteriologist making the same, and published at least once in a newspaper published in the town or city using said water, within ten days after receipt thereof. (Code 1922, Vol. III, § 2343, as amended Acts 1922, No. 514.)*

6d. **Analyses of Water.**—A sample of water used in every hotel and restaurant except in cases where the water is derived from such public water supply, shall be sent by the proprietor to the State Board of Health for analysis twice each year, with a certificate that it is the water used in such hotel or restaurant, and if the sample is found by such analysis to be unfit for the use that is made of the water in the hotel or restaurant, the further use of such water shall be discontinued until permission is granted by the said State Board of Health to resume the use of such water. (Code 1922, Vol. III, § 2375.)

6e. **Violation a Misdemeanor—Penalty—Each Day a Separate Offense.**—Any owner or manager, agent or person in charge of a hotel or restaurant or any other person who shall willfully obstruct, hinder or interfere with any inspector in the proper discharge of his duty, or who shall willfully fail or neglect to comply with any of the provisions of this article, after notice from the inspector or any other person in authority, shall be guilty of a misdemeanor, and, upon conviction thereof, be fined not less than twenty-five dollars nor more than one hundred dollars for each offense, and each day of failure to comply with the provisions of this article shall be a separate and distinct offense. (Id. § 2391; Code 1922, Vol. II, § 446.)

6f. **Water Companies to Have Analysis of Water Made and Published—Fee—Inspection of Water Sheds.**—Every water company, whether owned by private individuals or corporations, or by a municipality, shall have made, not less frequently than once in every three months, at its own expense, by a chemist to be approved by the State Board of Health, a chemical analysis, and once every three months a bacteriological examination, at its own expense, by a biologist to be approved by the State Board of Health, of a sample of its water, drawn from a faucet used for drinking purposes, packed and shipped in accordance with the instructions to be furnished by the Secretary of the State Board of Health, and the result of such examination shall be verified by a statement under oath of the chemist or biologist making the same, and published at least once in a newspaper published in the town or city using said water, within ten days after receipt thereof. For carrying out the provisions of this section, the State Board of Health is authorized and empowered to have the bacteriological examination made as hereinbefore provided for and to charge for the same the sum of five dollars for each examination. As a check and as a guarantee of the faithful performance of the requirements laid down in this section, the State Board of Health shall make, or have made by its authorized agents, such inspections of the watersheds and such chemical and bacteriological examinations of the public water supplies of the State as may be deemed necessary to insure their purity. Should such inspections or examinations show condition or conditions dangerous to the public health the Secretary of the State Board of Health shall notify the mayor, the municipal health officer and the superintendent or manager of the waterworks at fault, and demand the immediate removal of said dangerous condition or conditions. If, at the end of thirty days after the service of said notice and demand, the said dangerous condition or conditions shall have not been removed, to the extent that due diligence could accomplish such removal, the said secretary shall have printed in

*See No. 6b and footnote thereto.

one or more of the local newspapers a plain statement of the facts for the information and protection of the citizens using the water: Provided, that nothing herein contained shall be construed to prohibit any municipality from imposing such additional tests and requirements as they may deem necessary, and the decision of the municipal authorities shall be supreme. Every water company, its managing officers and directors, and the mayor and aldermen of every city and town, who shall neglect or fail to comply with and carry out the provisions of this section, shall be guilty of a misdemeanor, and punished by a fine not exceeding one hundred dollars, or by imprisonment not exceeding thirty days for each and every offense. (Code 1922, Vol. II, § 396.)

NOTE: See also Nos. 1, 2 et seq., 6, 69a et seq., 137 et seq., and 215.

Canneries.

See No. 71 et seq.

Coffee.

See No. 5.

Confectionery.

See Nos. 1 and 5.

Corn Meal.

7. Standard Weight for Bushels of Corn Meal; Sale in Packages; Penalty.—The standard weight of a bushel of corn meal, whether bolted or unbolted, shall be forty-eight pounds. It shall be unlawful for any person or persons to pack for sale, sell or offer for sale, in this State, any corn meal or grist, except in bags or packages containing by standard weight two bushels, or one bushel, or one-half bushel, or one-fourth bushel, or one-eighth bushel, respectively. Each bag or package of corn meal shall have plainly printed or marked thereon, whether the meal is "bolted" or "unbolted," the amount it contains, in bushels or fraction of a bushel, and the weight: Provided, the provisions of this section shall not apply to the retailing of meal or grist direct to consumers from bulk stock when priced and delivered by actual weight or measure. Any person or persons guilty of violating this section shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be punished by fine of not exceeding one hundred dollars, or by imprisonment not exceeding thirty days, or by both fine and imprisonment, in the discretion of the court. (Code 1922, Vol. II, § 195.)

NOTE: See also Nos. 40 et seq., 217 and 221.

Dairy Products—Substitutes for Dairy Products.

8. Sale of Milk, Butter and Cheese Regulated.—It shall not be lawful for any person or corporation or agent knowingly to sell or expose for sale, or deliver for domestic use, or to be converted into any product of human food whatsoever, any unclean, impure, unwholesome, adulterated or skimmed milk, or milk from which has been held back what is known as strippings, or milk taken from an animal having disease, sickness, ulcers or abscesses: Provided, that this section shall not prohibit the sale of buttermilk or of skimmed milk when sold as such. For the purposes of this section, milk which is proven by any reliable test or analysis to contain less than three per centum of butter fat and eight and one-half per cent of solids other than butter fat, shall be regarded as skimmed milk. For the purposes of this section every article, substance or compound other than produced wholly from pure milk, or cream from the same, made in semblance of butter or of cheese, and designed to be used as a substitute for butter or cheese made from pure milk or cream from the same, is hereby declared to be imitation butter or imitation cheese, as the case may be: Provided, the use of salt, rennet and harmless coloring matter for coloring the product of pure milk or cream shall not be construed to render such product an imitation. (Code 1922, Vol. II, § 401.)*

9. Coloring Matter in Substitutes for Butter or Cheese Prohibited.—No person shall coat, powder or color with annatto or any coloring matter whatever any substance designed to be used as a substitute for butter or for cheese, whereby such substance or product shall be caused to resemble butter or cheese, the product of pure milk or cream. (Id. § 402.)

10. Combination of Certain Ingredients with Butter or Cheese Prohibited.—No person shall combine any animal fat or vegetable oil or other substance with butter or cheese, or combine with butter or cheese, or with animal fat or vegetable oil or combination of the two, or any other substance or substances whatever, any annatto or any other coloring matter for the purpose or with the effect of imparting thereto a yellow color, or any shade of yellow, or that such sub-

*See No. 1.

stance shall resemble genuine yellow butter or cheese, nor introduce any such coloring matter or any such substance into any of the ingredients of which such substitute may be composed: Provided, that nothing in this or the three preceding sections shall be construed to prohibit the use of salt, rennet or harmless coloring matter for coloring the products of pure milk or cream from the same. (Id. § 403.)

11. Manufacture and Sale of Imitation Butter or Cheese Prohibited, When.—No person shall by himself, or employee, or agents, product or manufacture, or sell, or keep for sale, or offer for sale, any imitation butter or imitation cheese made or compounded in violation of this or the four preceding sections, whether such imitation shall have been made or produced in this State or elsewhere Provided, that said sections shall not be construed to prohibit the manufacture and sale of imitation butter or imitation cheese, under the regulations hereinafter provided, not manufactured or colored as herein prohibited. (Id. § 404.)

12. Substitutes to Be So Marked.—Every person who lawfully manufactures any substance designed to be used as a substitute for butter or for cheese shall mark by branding, stamping or stenciling upon the top side of each tub, box or other vessel in which such substitute shall be kept, or in which it shall be removed from the place where produced, in a clear and durable manner, in the English language, the words "substitute for butter," or "substitute for cheese," as the case may be, in printed letters in plain Roman type, each of which shall be not less than one inch in height and one-half inch in breadth. (Id. § 405.)

13. Possession of Unmarked Imitations Prohibited.—No person shall have in his possession or control any substance designed to be used as a substitute for butter or for cheese, unless the tub, box, or other vessel containing the same shall be clearly and durably marked as provided in section (405). Provided, that this section shall not apply to a person who has such imitation butter or imitation cheese in his possession for the actual consumption of himself or family. (Id. § 406.)

14. Sale of Imitation Butter or Cheese Prohibited.—No person, by himself, or agent or employee, shall sell or offer for sale any imitation butter or imitation cheese under the pretense that the same is genuine butter or genuine cheese. (Id. § 407.)

15. Hotels and Restaurants Using Imitations to Advertise the Same.—No keeper or proprietor of any hotel or restaurant, or other person having charge thereof, shall knowingly use, or serve therein, either as food or for cooking purposes, any imitation butter or cheese, as defined in section (401), unless such keeper, proprietor or other person in charge of such place of entertainment shall keep constantly posted in a conspicuous place in the room or rooms, or other place or places where such imitations shall be served, so that the same may be easily seen and read by any person in such room or place, a white card, not less than ten by fourteen inches in size, on which shall be printed in English language, in plain black Roman letters, not smaller than one inch in height and one-half inch in width, the words "imitation butter used here," or "imitation cheese used here," as the case may be, and the cards shall not contain any other impressions than the words above prescribed. (Id. § 408.)

16. Penalty; Certificate Prima Facie Evidence.—Any person violating any provisions of sections 401 to 408 shall be guilty of a misdemeanor and may be proceeded against by any of the processes provided for misdemeanors, and may be tried by any court having jurisdiction of misdemeanors in this State, and, upon conviction, shall be punished by a fine not to exceed one hundred ($100.00) dollars and not less than ten ($10.00) dollars. The sworn certificate or a certified official report of the chemist of the Department of Agriculture, Commerce and Industries of the analysis of a suspected sample shall be recognized in any and all courts of this State as prima facie evidence of such analysis and of the composition and character of such sample. (Id. § 409.)

17. Traffic in Milk Cans or Defacing Marks Thereon, Unlawful.—1. It is hereby declared to be unlawful for any person or persons, without the consent of the agent of the owner or owners or shipper or shippers, to use, or sell, dispose of, buy or traffic in any milk or cream can or cans belonging to any dealer or dealers, or shipper or shippers of milk or cream residing in the State of South Carolina or elsewhere, who may ship milk or cream to any city, town or place within this State, having the name or initials of the owner or owners of such dealer or dealers, or shipper or shippers stamped, marked or fastened on such can or cans, or to willfully mar, erase or change by remarking or otherwise, said name or initials of any such owner or owners or dealer or dealers, or shipper or shippers so stamped, marked or fastened upon said can or cans.

2. The fact of any person or persons without the consent of the agent of the owner, dealer or dealers, or shipper or shippers thereof, either using, selling, disposing of, buying, trafficking in or having in his, her or their possession or under his, her or their control any such milk or cream can or cans, shall be presumptive evidence of the unlawful use, sale, purchase of or traffic in such can or cans.

3. Any person or persons who shall, in violation of this section, either use, sell, dispose of, buy, traffic in or have in his, her or their possession any such can or cans, or who shall will fully mar, erase or change by remarking or otherwise the said initials of any such owner or owners, dealer or dealers, shipper or shippers so stamped, marked or fastened upon said can or cans as in this section provided, shall be guilty of a misdemeanor, and, upon conviction, shall be punished by a fine not exceeding one hundred ($100.00) dollars, nor less than ten ($10.00) dollars, or by imprisonment not exceeding thirty days. (Id. § 236.)

NOTE: See also No. 6.

Feeding Stuffs.

18. Use of Crushed Whole Ear Corn in Feed Stuffs.—It shall be unlawful to sell, offer or expose for sale, any mixed or compounded commercial feeding stuff containing as an ingredient crushed or ground ear corn: Provided, that nothing herein shall prevent the sale of crushed or ground ear corn by itself and not mixed with any other substance, but the crushed or ground ear corn when sold by itself is a concentrated commercial feeding stuff defined in section 2421 (3498) of the Civil Code, and the sale thereof within this State shall be governed by the provisions of sections 2420 (3497)* to 2433 (3510), inclusive, of the Civil Code, and sections 480 (267) to 483 (270) of this Criminal Code, and the rules and regulations prescribed by the Commissioner of Agriculture, Commerce and Industries: Provided, further, that the provisions of this act referring to the use of crushed whole ear corn as a feed or mixed with other ingredients in the manufacture of commercial feed stuff shall not apply to manufacturers in South Carolina: Provided, further, that the amount of corn cobs present shall in no case exceed the amount derived from the milling of the crushed whole ear corn. (Code 1922, Vol. II, § 267, as amended Acts 1922, No. 499.)

19. Sale of Feed Stuffs.—Any manufacturer, importer, jobber, agent or dealer, who shall sell, offer or expose for sale or distribution in this State any concentrated commercial feeding stuff, as defined in section 2421 (3498) of the Civil Code, without complying with the requirements of sections 2420 (3497)* to 2433 (3510), inclusive, of the Civil Code, and sections 480 (267) to 483 (270) of the Criminal Code, or who shall sell, or offer or expose for sale or distribution, any concentrated commercial feeding stuffs which contains substantially a smaller percentage of crude protein or crude fat or carbohydrates, or a larger percentage of crude fibre than certified to be contained, or who shall mix or adulterate any concentrated commercial feeding stuffs with foreign, mineral or other substance or substances, such as rice chaff or hulls, peanut shells, ground or crushed corncobs, or similar materials of little or no feeding value, or with substances injurious to the health of domestic animals, or who shall sell, offer or expose for sale, any concentrated commercial feeding stuff so mixed or adulterated, shall be guilty of a violation of this section. (Code 1922, Vol. II, § 268 as amended Acts 1923, No. 46.)

20. Penalty for Sale Without Stamp.—Any manufacturer, importer, jobber, agent or dealer who shall sell, offer or expose for sale, or distribute in this State, any concentrated commercial feeding stuff without having attached thereto or furnished therewith such tax stamps, as required by the provisions of sections (3497) to (3510), inclusive, of the Civil Code or who shall use the required tax stamps a second time to avoid the payment of the tonnage tax, or any manufacturer, importer, jobber, agent or dealer who shall counterfeit or use a counterfeit of such tax stamps, shall be guilty of a violation of the provisions of this section. (Code 1922, Vol. II, § 269.)

21. Obstructing Inspector.—Any manufacturer, importer, jobber, or dealer who refuses to comply with the requirements of the provisions of sections (3497) to (3510) of the Civil Code, or any manufacturer, importer, jobber, agent or dealer, or person who shall impede, obstruct, hinder or otherwise prevent or attempt to prevent any chemist inspector or other authorized agent in the performance of his duty in connection with the provisions of said sections of the Civil Code, shall be guilty of a violation of the provisions of this section. (Id. § 270.)

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*See No. 24 et seq.

22. Fine for Violating Sections.—Any manufacturer, importer, jobber, agent or dealer who shall violate any of the provisions of sections (267) to (270), or the regulations adopted by the Commissioner of Agriculture, Commerce and Industries, upon conviction thereof, shall be fined not exceeding fifty dollars for the first offense nor more than two hundred dollars for each subsequent offense, and the proceeds from such fines shall be covered into the State treasury for use of the department executing the provisions of sections (3497) to (3510), inclusive, of the Civil Code. (Id. § 271.)

23. Certificate of Analysis Prima Facie Evidence.—In all prosecutions in the courts of this State arising under sections (267) to (270), inclusive, and the rules and regulations made in accordance therewith, the certificate of the analyst or other officer making the analysis or examination, when duly sworn to and subscribed by such analyst or officer, shall be prima facie evidence of the facts therein certified. (Id. § 272.)

24. Concentrated Animal Food to Contain Statement of Contents.—Every lot or parcel of concentrated commercial feeding stuff, sold, offered or exposed for sale within this State shall have affixed thereto, or printed thereon in a conspicuous place on the outside thereof, a legible and plainly printed statement, in the English language, clearly and truly certifying the weight of the package (provided that all concentrated commercial feeding stuffs shall be in standard weight bags or packages of 25, 50, 75, 100, 125, 150, 175 or 200 pounds); the name, brand or trade-mark under which the article is sold; the name and address of the manufacturer, jobber or importer; the names of each and all ingredients of which the article is composed; a statement of the maximum percentage it contains of crude fibre, and the percentage of crude fat, and the percentage of crude protein, and the percentage of carbohydrates, allowing one per cent of nitrogen to equal six and one-fourth per cent of protein; all four constituents to be determined by the methods in use at the time by the Association of Official Agricultural Chemists of the United States. (Code 1922, Vol. III, § 3497.)

25. What Included in "Concentrated Commercial Feeding Stuffs."—The term "concentrated commercial feeding stuffs" shall be held to include all feeds used for live stock and poultry, except whole hays, straw, cottonseed hulls and corn stover, when the same are not mixed with other materials; nor shall it apply to the unmixed whole seeds or grains of cereals when not mixed with other materials, and when not in damaged condition as determined by inspection to be unfit for feed purposes, mixed or unmixed. (Id. § 3498.)

26. Statement to Be Filed With Commissioner of Agriculture, Commerce and Industries.—Each and every manufacturer, importer, jobber, agent or seller, before selling, offering or exposing for sale in this State any concentrated commercial feeding stuffs, shall, for each and every feeding stuff bearing a distinguished [distinguishing] name or trade-mark, file for registration with the Commissioner of Agriculture, Commerce and Industries a copy of the statement required in section 1 [3497], and accompany said statement, on request, by a sealed glass jar or bottle containing at least one pound of such feeding stuff to be sold, exposed or offered for sale, which sample shall correspond within reasonable limits to the feeding stuff which it represents in the percentage of crude protein, crude fat, crude fibre and carbohydrates which it contains. (Id. § 3499.)

27. If Manufacturer Files Statement the Seller Need Not.—Whenever a manufacturer, importer or jobber of any concentrated commercial feeding stuff shall have filed a statement, as required by section 3 [3499], no agent or seller of such manufacturer, importer or jobber shall be required to file such statement. (Id. § 3500.)

28. Commissioner May Refuse Registration.—The Commissioner of Agriculture, Commerce and Industries shall have power to refuse the registration of any concentrated commercial feeding stuff under a name which would be misleading as to the materials of which it is composed or when the names of each and all ingredients of which it is composed are not stated. Should any concentrated commercial feeding stuffs be registered and it is afterwards discovered that they are in violation of any of the provisions of this article, the Commissioner of Agriculture, Commerce and Industries shall have the power to cancel such registration. (Id. § 3501.)

29. Concentrated Commercial Feedstuff; Inspection Tax Stamp Sales in Bulk Regulated; Stamp; Exception as to Tax Stamps Redeemed; No Restriction of Sales Between Importers and Manipulators Except Tag, Etc.—Commissioner of Agriculture to Prescribe Form of Stamps.—Each and every manufacturer, importer, jobber, agent or seller of any concentrated commercial feeding stuff, as defined in section 2 [3498], shall pay to the Commissioner of Agriculture,

Commerce and Industries, who shall deposit same in the State treasury on or before the tenth day of each month, as other funds, an inspection tax of 25 cents per ton for each ton of such commercial feeding stuff sold, offered or exposed for sale or distributed in this State, and shall affix to, or accompany each car shipped in bulk and to each bag, barrel or other package of such concentrated commercial feeding stuff, a stamp to be furnished by the Commissioner of Agriculture, Commerce and Industries, stating that all charges specified in this section have been paid. Provided, whenever any concentrated commercial feeding stuff, as defined in section 2 [3498], is kept for sale in bulk, stored in bins or otherwise, the manufacturer, dealer, jobber or importer keeping the same for sale shall keep on hand cards of proper size, upon which the statement or statements in section 1 [3497] is or are plainly printed; and if the feeding stuff is sold at retail in bulk, or if it is put up in packages belonging to the purchaser, the manufacturer, dealer, jobber, or importer shall furnish the purchaser with one of said cards, upon which is, or are, printed the statement, or statements, described in this section, together with sufficient tax stamps to cover same: Provided, that the inspection tax of 25 cents per ton shall not apply to whole seeds and grains when not mixed with other seeds or materials: Provided, further, that upon demand, said inspection stamps shall be redeemed by the department issuing said stamps upon surrender of same, accompanied by an affidavit that the same have not been used: Provided, that nothing in this article shall be construed to restrict or prohibit the sale of concentrated commercial feeding stuffs in bulk to each other by importers, manufacturers or manipulators who mix concentrated commercial feeding stuff for sale; but importers, manufacturers and manipulators shall attach to such feeding stuff a tax [tag] stating that it is to be used for mixing purposes only, and this tag shall give the number of pounds in bulk or package, the name of the manufacturer, the name of the stuff and its analysis, showing crude protein, crude fat, crude fibre and carbohydrates; and a duplicate of said tag shall be sent to the Commissioner of Agriculture, Commerce and Industries, together with a request for inspection. The Commissioner of Agriculture, Commerce and Industries is hereby empowered to prescribe the form of such tax stamps. (Id. § 3502.)

30. Penalty for Violation of Provisions.—Any manufacturer, importer, jobber, agent or dealer who shall sell, offer or expose for sale or distribution in this State any concentrated commercial feeding stuffs, as defined in section 2 [3498], without complying with the requirements of the preceding sections of this article, or who shall sell or offer or expose for sale or distribution any concentrated commercial feeding stuffs which contain substantially a smaller percentage of crude protein or crude fat or carbohydrates or a larger percentage of crude fiber than certified or who shall mix or adulterate any concentrated commercial feeding stuffs with foreign, mineral or other substance or substances, such as rice chaff or hulls, ground or crushed corn cobs or similar materials of little or no feeding value, or with substances injurious to the health of domestic animals, or who shall sell, offer or expose for sale any concentrated commercial feeding stuffs so mixed or adulterated shall be guilty of a violation of this article, and the lot of feeding stuffs in question shall be seized and condemned, sold or destroyed by the Commissioner of Agriculture, Commerce and Industries, or his duly authorized representative, and the proceeds from said sales shall be covered into the State treasury for the use of the department executing the provisions of this article. Such seizure and sale shall be made by the Commissioner of Agriculture, Commerce and Industries, or under the direction of an officer of his appointment. The sale shall be made at the courthouse door in the county in which the seizure is made: Provided, that whenever, for sufficient reasons appearing to the Commissioner of Agriculture, Commerce and Industries or his representative aforesaid, another place of sale is more convenient and more desirable, such place of sale may be selected. The sale shall be advertised for thirty days in a newspaper published in the county in which seizure is made, or if no newspaper be published in such county, then it shall be advertised in a newspaper published in the nearest county thereto having a newspaper. The advertisement shall state the brand or name of the goods, the quantity and why seized and offered for sale, and must show the time and place of sale. The Commissioner of Agriculture, Commerce and Industries, however, may, in his discretion, release the feeding stuffs so withdrawn when the requirements of the provisions of this article have been complied with and upon payment of all the costs or expenses incurred in any proceeding connected with such seizure and withdrawal. (Id. § 3503, as amended Acts 1924, No. 652.)

31. Commissioner May Suspend Sales.—If at any time the Commissioner of Agriculture, Commerce and Industries, or his duly authorized representative, shall have reason to believe that any feeding stuff offered or exposed for sale in this State does not comply with the requirements of this article as to the ingredients or substances of the same, it shall be his duty by written order to suspend the sale of the same until he shall have satisfied himself, or shall be satisfied by an analysis, or otherwise, that such feeding stuff is made up or compounded as required by this article. If he shall find that the same does not comply with this article then he is authorized to proceed with regard to the same as provided in section 7 [3503]. (Code 1922, Vol. III, § 3504.)

32. Commissioner May Inspect and Take Samples Wherever Found.—The Commissioner of Agriculture, Commerce and Industries, together with his deputies, agents and assistants, shall have free access to all places of business, mills, buildings, vehicles, cars, vessels and packages of whatsoever kind used in the manufacture, importation or sale of any concentrated commercial feeding stuff, and shall have power and authority to open any package containing or supposed to contain any concentrated commercial feeding stuff; and upon tender and full payment of the selling price of said samples, take therefrom, in the manner hereinafter prescribed, samples for analysis; and he shall annually cause to be analyzed at least one sample so taken of every concentrated commercial feeding stuff that is found, sold or offered or exposed for sale in this State under the provisions of this article. Said samples, not less than one pound in weight, shall be taken from not less than ten bags or packages, or, if there be less than ten bags or packages, then the samples shall be taken from each bag or package, if it be in bag or package form, or, if such feeding stuff be in bulk, then it shall be taken from ten different places of the lot. The Commissioner of Agriculture, Commerce and Industries is hereby authorized to publish from time to time in reports or bulletins the results of the analysis of such sample or samples, together with such additional information as circumstances advise: Provided, however, that if such a sample or samples as analyzed by the Commissioner of Agriculture, Commerce and Industries differ from the statement prescribed in section 1 [3497], then, at least thirty days before publishing the results of such analysis, the Commissioner of Agriculture, Commerce and Industries shall give written notice of such results to the manufacturer, importer, agent or jobber of such stock, if the name and address of such manufacturer, jobber or importer be known: Provided, further, that if the analysis of any such samples does not differ substantially from the statement prescribed in section 1 [3497], appearing upon the goods, the manufacturer may be considered as having complied with the requirement of this article. (Id. § 3505.)

33. Commissioner to Publish Regulations.—The Commissioner of Agriculture, Commerce and Industries shall from time to time prescribe and publish rules and regulations for carrying out the provisions of this article. (Id. § 3506.)

34. Prescribing Rules and Regulations as to Grading.—The Commissioner of Agriculture, Commerce and Industries is authorized to prescribe rules and regulations governing the grading of any and all concentrated commercial feeding stuffs defined in section 2 [3498]. (Id. § 3507.)

35. Commissioner to Notify Dealer and Solicitor.—Whenever the Commissioner of Agriculture, Commerce and Industries, or his duly authorized representative, becomes cognizant of any violations of the provisions of this article, he shall immediately notify in writing the manufacturer, importer, jobber or dealer, if same be known, and after thirty days he shall notify the circuit solicitor, who shall cause such person or persons so violating this article to be prosecuted in the manner required by law. (Id. § 3508.)

36. Appropriation for Enforcing Provisions of This Article; Payment of Expenses.—There is hereby appropriated for the purpose of enforcing the provisions of this article a sum not exceeding the amount of fees and fines collected, and moneys or proceeds derived from the seizure and sale of feeding stuffs under its provisions. Such expenses shall be paid by warrant of the Comptroller General, upon itemized bills filed by the Commissioner of Agriculture, Commerce and Industries. All fees collected under the provisions of this article shall be paid into the State treasury on or before the tenth day of each month. (Id. § 3509.)

37. Analysts and Inspectors.—The Commissioner of Agriculture, Commerce and Industries shall appoint such analysts, chemists and inspectors as may be required to carry out the provisions of this article, and any part of the labor of analysts and chemists, upon request of the Commissioner of Agriculture, Commerce and Industries, shall be performed by the South Carolina Experiment Station, with such compensation therefor as may be approved by the said Commis-

sioner of Agriculture, Commerce and Industries. Such inspectors shall also assist in the enforcement of the pure food and drug law of the State. (Id. § 3510.)

38. Ingredients of Mixed Feeds to be Shown in Addition to Analysis.—In addition to the analysis now required by law on all mixed feed sold within the State, or rules of the Commissioner of Agriculture, Commerce and Industries, there shall be included in such analysis a showing in full of each ingredient contained therein. (Id. § 3511.)

39. Penalty for Violation.—Any violation of the provisions of the preceding section shall subject the offender to the same penalty now provided by law in case of failure to attach the analysis hereinbefore required. (Id. § 3512.)

NOTE: See also Nos. 1 and 105 et seq.

Fish.

39a. Records of Persons Trading in Shad and Sturgeon—Reports.—All persons engaged in buying, shipping and selling shad or sturgeon shall keep books wherein shall be entered the date, kind and quantity of each sale, purchase or shipment and the name of each person from whom purchased and a copy of each bill of lading, and shall make monthly reports to the Board of Fisheries not later than the fifth day of each month showing these details. (Acts 1924, No. 623, § 87.)

39b. Records of Persons Catching and Shipping Sturgeon.—All persons engaged in catching and shipping sturgeon shall keep a record of the catches and shipment and the number and weights of the sturgeon and the yield of caviar and make a report of the same within five days of the end of each calendar month and at the end of the season. (Id. § 89.)

39c. General Provisions.—It shall be unlawful to use any edible fish for any purpose than food and any person knowingly using the same for fertilizer or knowingly selling the same for any other purpose than food shall be guilty of a misdemeanor punishable in the discretion of the court. (Id. § 98.)

39d. Punishment for Violation of Act Where Not Otherwise Provided—Proviso.—Any person violating any of the provisions of this act for which no punishment has been specially provided shall be punished by fine not exceeding one thousand (1,000) dollars or imprisoned not exceeding six months, in the discretion of the court: Provided, however, that the Board of Fisheries may, in its discretion, prosecute for such violations in the original jurisdiction of the Magistrate's Court by special request in writing endorsed upon the warrant that the Magistrate's Court shall assume such jurisdiction, whereupon, in the event of conviction in such court, the magistrate shall impose sentence of fine not exceeding one hundred (100) dollars or imprisonment not exceeding thirty days. (Id. § 106.)

NOTE: See also No. 70 et seq., and No. 217.

Flavoring Extracts.

See Nos. 1 and 191.

Flour and Meal.

40. Inspector of Flour for City of Charleston; Appointment, Bond and Terms.—The city council of Charleston shall appoint a competent person as inspector of flour for the city of Charleston, who shall hold his office for two years, and who shall give bond to the State of South Carolina, with good security, to be approved by the city council of Charleston, in the penal sum of two thousand dollars, conditioned for the faithful discharge of the duties of the said office. (Code 1922, Vol. III, § 3432.)

41. Inspection of Flour Before Sale; Exception.—It shall not be lawful, if inspection be demanded by the seller or purchaser, to sell in the city of Charleston any barrel, half barrel or bag of flour or meal of wheat, rye, or corn unless the same shall have been first submitted to the view and examination of the inspector of the aforesaid city, and by him examined in some lot, street or warehouse, open and accessible to all persons; but flour of wheat, rye, or corn manufactured in the city of Charleston for export to any other port or ports beyond the limits of the State shall not be liable to inspection in the said city. (Id. § 3433.)

42. Regulations as to Barrels, Etc.—Every cask or barrel containing flour or meal of wheat, rye or corn brought into or manufactured in the city of Charleston for sale shall be well made, of good seasoned materials, and sufficiently hooped and nailed; and the said inspector shall cause all casks or barrels not made

as aforesaid, and not in merchantable condition, but capable of being made so at a reasonable expense, to be repaired and put in merchantable condition at the expense of the owner thereof. (Id. § 3434.)

43. Barrel to Contain What Quantity, Etc.—Every barrel submitted for inspection as aforesaid shall contain such quantity of flour or meal as upon inspection shall be found to be of the net weight of one hundred and ninety-six pounds; and each and every half barrel shall contain such quantity as shall be of the net weight of ninety-eight pounds; and the said inspector shall cause all barrels or half barrels containing a less quantity to be made of full weight at the expense of the owners thereof. (Id. § 3435.)

44. Manner of Inspecting; Branding; Designation of Brands.—Every cask or bag of flour or meal submitted to the view and examination of the inspector as aforesaid shall by him be searched and tried, by boring on the head and piercing it through with an instrument by him to be provided; and he shall afterwards plug the same with soft seasoned wood, to prevent the entrance of water therein. If the inspector shall judge the same to be merchantable, he shall brand every such cask or bag with the word "Charleston," and shall brand the degrees of fineness of which he shall, on inspection, determine the said flour or meal to be, in letters of half an inch in length, which degrees shall be distinguished as follows, to wit: "Family," "Extra," "Super," "Fine," "First Middlings," or "Second Middlings," "Ship Stuff," "First Rye," "Second Rye," "First Corn," or "Second Corn," as the case may be; but if, on examination, it proves unsound, then he shall mark the cask or bag with the broad arrow. (Id. § 3436.)

45. Inspector's Fees.—The Inspector shall be allowed not more than two and a half cents per package for inspecting, which shall be paid by the owner thereof, or his agent. (Id. § 3437.)

46. When Inspector May Appoint Deputy.—In case of sickness or temporary absence of the inspector, or if necessary for the convenient dispatch of the duties of his office, he is hereby empowered to appoint a deputy to act for him during such sickness, absence, or such time as he may think proper, who shall also be made liable to the same penalties, and shall take the oath hereinafter prescribed. (Id. § 3438.)

47. Inspector's Oath.—The inspector of flour and meal under this chapter shall, before he proceeds to perform the duties, make oath or affirmation, as the case may be, before the clerk of the Court of Common Pleas, that, without fear, favor or affection, malice, partiality or respect of persons, he will diligently and carefully examine and inspect, to the best of his skill and ability, all flour or meal offered to him for inspection, and that he will brand, or cause to be branded, as merchantable, all barrels, half barrels or bags of flour or meal that appear sufficiently sweet and sound, and no other, according to the best of his knowledge and judgment; and also the oath provided for public officers. (Id. § 3439.)

48. Flour, Etc., in Transit Not Subject to Inspection.—No flour merely passing through the city of Charleston from any place in this or any other State to another port or place out of this State, shall be required to be inspected in the said city of Charleston: Provided, such flour be distinctly marked before it comes into the said city, upon the barrels or bags, with the name of the place from whence it comes, and the name of the port or place of its destination, with the words "in transit" between the names of the said two places. (Id. § 3440.)

49. Charleston Chamber of Commerce May Appoint Flour Committee.—The Charleston Chamber of Commerce shall appoint a flour committee consisting of five members, who shall arrange and adopt suitable standards for the different grades of flour; the standards so selected to conform as nearly as possible to similar standards adopted by the boards of inspection in the principal Atlantic cities. (Id. § 3441.)

50. Flour Committee to Arrange Standards.—The said committee shall, as often as once in every three months, provide and adopt suitable standards for the different grades of flour, viz.: "Fine," "Superfine," "Extra," "Family," and "Extra Family." The standards thus approved shall be kept in the possession of the committee for reference in all cases of dispute which may arise. They shall also furnish the inspector or inspectors herein provided for with similar standards for their guidance; and all flour inspected by the said inspectors shall be legibly branded or marked "Charleston Chamber of Commerce Standard," with grade, day, month, year, and name of inspector. (Id. § 3442.)

51. Settlement of Disputes Between Inspectors and Parties by Flour Committee; Mode, Appeal, Etc.—The said flour committee shall also be umpire to settle and decide all cases of dispute that may arise in reference to the inspection

of flour between the inspectors and the parties for whom the inspection may have been performed; and when an inspector is charged with passing flour which proves to be below the standard, unsound or damaged when inspected, or deficient in any way, it shall be the duty of said committee, when called upon, to investigate the case, and, if the inspector is in fault, to assess such damages to be paid by him as in their judgment is fair and just. In all cases calling for their action a majority of said committee shall constitute a quorum, and their decision in such cases shall be made in writing; the decision so made, however, to be subject to the right of appeal by either party to the arbitration court of the said chamber of commerce—the decision of said court to be final; and suit may be brought on the bond herein provided for the inspector, if he shall be in default, in the name of the Charleston Chamber of Commerce, by the party in whose favor a decision may be so made, to recover the amount of damages so assessed. (Id. § 3443.)

52. Flour Committee May Appoint Inspectors.—The said committee shall appoint one or more inspectors of flour, and the inspectors so appointed shall each make and execute a good and satisfactory bond to the Charleston Chamber of Commerce in the penal sum of two thousand dollars ($2,000), (the said bond to be approved by the president of said Charleston Chamber of Commerce), conditioned for the faithful performance of the duties of the inspector, and for the payment of all claims and demands which may be decided against him as aforesaid: Provided, always, that the said committee shall have power to suspend or dismiss an inspector at any time for any cause satisfactory to them; and no inspector so to be appointed shall be directly or indirectly engaged in the flour trade during such time as he may hold the office, on penalty of forfeiture of his commission as inspector. (Id. § 3444.)

53. Duty of Inspectors.—It shall be the duty of the Inspectors so appointed carefully to inspect all flour submitted to them and to decide on the grade and soundness of the same; all flour thus inspected must be equal in quality to the standard furnished by the committee; and any inspector passing flour which is not equal in quality to the standard for the grade which he makes it, shall be liable for any damage accruing from such action. (Id. § 3445.)

54. Standard Weight.—It shall be the duty of the inspector to weigh a suitable number of barrels of each lot of flour inspected, to be assured that they contain the full weight of one hundred and ninety-six (196) pounds, and no inspector shall use the brand of the Charleston Chamber of Commerce on any flour in barrels that is of less weight than one hundred and ninety-six (196) pounds to the barrel. For such inspection, weighing and branding the inspector shall receive two (2) cents per barrel or bag for each and every barrel or bag so inspected, weighed and branded, to be paid by the party requesting the same to be done, and the same fee on reinspection. (Id. § 3446.)

55. Pay of Committee.—In all cases calling for the action of the committee to decide disputes as regards grade, soundness or any other defect, between the inspector and parties for whom such inspection has been made, the members of the committee serving in said cases shall be paid one dollar for each meeting, the amount to be paid by the party against whom the case is decided by the committee, or, in case of appeal, by the party against whom the appeal court, herein provided for, shall decide. (Id. 3447.)

NOTE: See also Nos. 7, 217 and 221.

Fruits, Vegetables, Etc.

56. Purpose of Article.—The purpose of this article is to give authority to investigate marketing conditions and to establish and maintain standard containers and grades and State brands for fresh fruits and vegetables in the State of South Carolina. (Code 1922, Vol. III, § 3569.)

57. Division of Markets of Extension Service Charged With Execution—To be Without Expense to the State.—The Division of Markets of the Extension Service is charged with the execution of the provisions of this article and has authority to employ such agents and assistants as may be necessary, fix their compensation and define their duties, and require bonds in such amount as the Chief of the Division of Markets deems advisable, conditioned upon the faithful performance of duties by any employee or agent: Provided, that no said compensation, or other expenses involved in the execution of this article, shall be a charge against the State. (Id. § 3570.)

58. Division of Markets to Assist in Marketing Farms Products.—It shall be the duty of the Division of Markets of the Extension Service to investigate

the subject of marketing farm products, to diffuse useful information relating thereto, and to furnish advice and assistance to the public in order to promote efficient and economical methods of marketing farm products, and authority is hereby given to gather and diffuse timely information concerning the supply, demand, prevailing prices and commercial movement of farm products, including quantities in common and cold storage, and may interchange such information with the United States Department of Agriculture. (Id. § 3571.)

59. Division of Markets May Establish Standards of Containers, Grades, Etc.; May Regulate Use of Brands, Etc.—After investigation, and from time to time as may be practicable and advisable, the Division of Markets of the Extension Service shall have authority to establish and promulgate standards of open and closed receptacles for, and standards for the grade and other classification of farm products, by which their quantity, quality and value may be determined, and prescribe and promulgate rules and regulations governing the marks, brands and labels which may be required for receptacles for farm products, for the purpose of showing the name and address of the producer or packer; the quantity, nature and quality of the product, or any of them, and for the purpose of preventing deception in reference thereto, and for the purpose of establishing a State brand for any farm product produced in South Carolina. Provided, that any standard for any farm product or receptacle therefor, or any requirement for marketing receptacles for farm products, now or hereafter established under authority of the Congress of the United States, shall forthwith, as far as applicable, be established or prescribed and promulgated as the official standard of requirement in this State: Provided, further, that no standard established or requirement for marketing prescribed under this article shall become effective until the expiration of thirty days after it shall have been promulgated. (Id. § 3572.)

60. Packing of Farm Products for Sale to Conform to Grades, Receptacles, Etc.; Provisos; Exceptions.—Whenever any standard for the grade or other classification of any farm product becomes effective under this article no person thereafter shall pack for sale, offer to sell, or sell within this State any such farm product to which such standard is applicable, unless it conforms to the standard, subject to such reasonable variations therefrom as may be allowed in the rules and regulations made under this article: Provided, that any farm product may be packed for sale, offered for sale, or sold, without conforming to the standard for grade or other classification applicable thereto, if it is especially described as not graded or plainly marked "Not graded." Whenever any standard for an open or closed receptacle for a farm product shall be made effective under this article no person shall pack for sale in and deliver in a receptacle, or sell in and deliver in a receptacle, any such farm product to which such standard is applicable, unless the receptacle conforms to the standard, subject to such variations therefrom as may be allowed in the rules and regulations made under this article: Provided, that the requirement as to receptacle shall not apply to produce sold or offered for sale in less than car lots. Whenever any requirement for the marketing, branding or labeling of a receptacle for a farm product becomes effective under this article, no person thereafter shall pack for sale, offer for sale, consign for sale, or sell and deliver, any such farm product in a receptacle to which such requirement is applicable, unless the receptacle be marked, branded or labeled according to such requirement, or unless such product be brought from outside the State and offered for sale, consigned for sale, or sold in the original package. The Chief of the Division of Markets is authorized, at any time, to cause such inspections and classifications to be made and such certificates to be issued, as he may deem necessary to enforce the provisions of this article. Such inspections to be made without charge only when no request is made by grower, shipper, receiver or any other party and inspection is made for the purpose of demonstration or for enforcing the provisions of this article. (Id. § 3573.)

61. Fees of Inspectors of Farm Products.—The Chief of the Division of Markets may designate any competent employee or agent of the Division of Markets, and, upon satisfactory evidence of competency, may license any other person, to make upon request inspections and classifications of farm products in accordance with standards which have become effective under this Article, both at shipping points and at designations points when within this State. Inspections may be made in car lots or less than car lots and of products loaded in cars or of products not in cars.. The fee to be charged shall be determined by the Chief of the Division of Markets, and the fee for the isnpection of a car or less than a car shall in no case exceed $5.00. When any such inspection and classification is made blank forms of certificates shall be furnished by the Division of Markets to all State inspectors, to be filled out by them to accompany each car load or less than car load of fruits

and vegetables to market or to cover any produce inspected at destination. Where State inspection is enforced, said certificate shall name the time and grade of fruits and vegetables and contain such other information as may be required by the Chief of the Division of Markets to be shown in the certificate together with the words, "Graded and packed under State inspection." The Chief of the Division of Markets is authorized to fix, assess and collect, or cause to be collected, fees from such services when they are performed by employees or agents of the Division of Markets. License inspectors may charge and collect as compensation for their services, only such fees as may be approved by the Division of Markets. The Chief of the Division of Markets may suspend or revoke any license whenever, after opportunity for a hearing has been afforded to the licensee, the Chief of the Division of Markets shall determine that such licensee is incompetent, or has knowingly or carelessly failed to classify any farm product correctly in accordance with such standards, or has violated any provisions of this Article or of the regulations made hereunder. Pending investigation the Chief of the Division of Markets may suspend a license temporarily without a hearing. (Id. § 3574, as amended Acts 1924, No. 682.)

62. Appeals from Classification of Products.—The owner or person in possession of any farm product classified in accordance with the provisions of this article may appeal from such classification under such rules and regulations as the Division of Markets may prescribe. (Code 1922, Vol. III, § 3575.)

63. Division of Markets to Make Rules, Etc.; To Conform to U. S. Regulations.—The Division of Markets is authorized to make and promulgate such rules and regulations as may be necessary to carry out the provisions of this article. Such rules and regulations shall be made to conform as nearly as practicable to the rules and regulations of the Secretary of Agriculture of the United States prescribed under any act of Congress of the United States relating to the marketing of farm products. (Id. § 3576.)

64. Violation of Article or Interference With Inspector, a Misdemeanor.—Any person who violates any provisions of this article, or of the rules and regulations made under the article for carrying out its provisions, or fails or refuses to comply with any of the requirements thereof, or who willfully interferes with agents or employees in the execution or on account of the execution, of his or their duties, shall be guilty of a misdemeanor. (Id. § 3577.)

65. Penalty.—Any person convicted of a misdemeanor under this article shall be punished by a fine of not more than one hundred ($100.00) dollars or by imprisonment in the county jail for not more than thirty days, or by both such fine and imprisonment, in the discretion of the court. (Id. § 3578.)

65a. Violation of Law as to Standard Containers and Grades or Interference with Inspector, a Misdemeanor.—Any person who violates any provisions of Sections (3569) to (3579), Civil Code, or of the rules and regulations made thereunder for carrying out its provisions, or fails or refuses to comply with any of the requirements thereof, or who willfully interferes with agents or employees in the execution or on account of the execution, of his or their duties, shall be guilty of a misdemeanor. Any person convicted of a misdemeanor under this act shall be punished by a fine of not more than one hundred ($100.00) dollars or by imprisonment in the county jail for not more than thirty days, or both such fine and imprisonment, in the discretion of the court. (Code 1922, Vol. II, § 293.)

65aa. Commissioner of Agriculture to Arrange for Inoculating Material.—The Commissioner of Agriculture, Commerce and Industries is hereby authorized to make arrangements with any reliable manufacturer of inoculation material for the sale of such material to the citizens of the State of South Carolina at prices that shall be reasonable, and will allow a reasonable profit on the cost of production, and that failing to make such arrangements, the said Commissioner is hereby authorized to manufacture inoculation material for leguminous crops, and distribute same to the citizens of the State applying for the same at cost. The commissioner is hereby authorized to expend from any surplus or other funds collected from other sources in his hands, such amounts as may be necessary to inaugurate the work of manufacturing inoculation material, and refund as soon as possible from the sums collected from the sale of such material such sums as may be so expended to those respective funds. (Code 1922, Vol. III, § 956.)

NOTE: See also No. 217 et seq.

Grain.

65b. City Council of Charleston to Regulate Sale of Grain.—The city council of Charleston shall have full power and authority to regulate and control the sale of grain by measurement or weight, or both, sold within the corporate limits of

the city, in such manner as will insure a fair, equal and uniform sale and measurement of the same. (Code 1922, Vol. III, § 3450.)

Grits.

See No. 221.

Meat—Meat Products.

66. Selling Flesh of Animal Diseased or Injured at Time of Death.—Any person who shall knowingly sell, or expose for sale, the flesh of any animal which was diseased or seriously injured at the time of slaughtering, or which died a natural death, or which may be found dead from a cause or causes, unknown to such person, shall be guilty of misdemeanor, and, on conviction, shall be fined not less than five dollars nor more than one hundred dollars, or imprisoned not less than ten nor more than thirty days: Provided, that this section shall not apply to the sale of the flesh of any animal which is accidentally killed, when the same is immediately prepared for market, and the seller informs the buyer of the time, place and nature of the death of such animal. (Code 1922, Vol. II, § 399.)*

66a. Casks and Barrels to be Branded, Etc.—Penalty for Failure.—Every person who shall sell or expose for sale in any part of this State any pitch, tar, rosin, turpentine, beef, or pork, in any casks or barrels, shall first set on every such cask or barrel a burnt mark, with the first letter of the Christian name, and the surname at length, of the maker of such commodity, with an iron brand; and if the person shall, in any port or place of exportation within this State, sell or expose to sale any of the said commodities hereinbefore enumerated, in any cask or barrel, before the same be marked and branded as aforesaid, every such person shall, for every such cask or barrel, forfeit the sum of two dollars to the person or persons who will inform and sue for the same, to be recovered before any magistrate. (Code 1922, Vol. III, § 3465.)

66b. Penalty for Exporting Without Brands, Etc.—If any merchant, factor, trader, or other person, shall ship or put on board any ship or vessel any of the said commodities hereinbefore enumerated, in any casks or barrels, with the intent to export the same, before such casks or barrels be marked and branded as aforesaid, every such merchant, factor, trader, or other person, shall forfeit the sum of two dollars for every such cask or barrel, to be sued for, recovered, and disposed of in manner aforesaid. (Id. § 3466.)

67. Barrels to Contain and Weigh What; How to be Packed.—Every barrel of pork or beef packed and sold in this State shall contain thirty gallons and two hundred pounds weight of wholesome, well cured meat in the same, which shall be weighed by the packers, and well packed with salt and pickle, each piece not to weigh more than eight pounds, and not to be cut or mangled further than to take out the kernels or where the bones require it, and not more than two heads in one barrel of pork. No beef's heads or shanks shall at all be packed. (Id. § 3469.)

68. Penalty for Killing Cattle for Packing Not Previously Penned Twelve Hours.—In case any person shall kill any cattle to put in barrels for sale, without having first penned them twelve hours before killing them, every such person shall forfeit the sum of ten dollars, current money, for every head of cattle so killed, to the person who will sue for the same, to be recovered before any magistrate. (Id. § 3470.)

69. Barrels to be Made of Seasoned White or Water Oak.—Every person in this State shall make the casks for packing beef or pork of sound, dry and well seasoned white or water oak timber, without sap, the heads as well as bodies of which casks shall be made tight, so as to hold pickle, and shall fill the said casks with water before the same are packed with any beef or pork. (Id. § 3471.)

NOTE: See also Nos. 217 and 234 et seq.

Molasses.

69a. Certain Liquors, Etc., in Charleston to be Gauged Before Delivery—Gauger.—All oils, molasses, syrups, wines, vinegar and liquors (not domestic) sold in the city of Charleston, either by the hogshead, pipe, puncheon, barrel, cask, keg or tank, shall, before their delivery, be gauged by a sworn gauger, elected by the city council of Charleston, whose term of office shall be for four years. (Code 1922, Vol. III, § 3456.)

69b. Unlawful for Others to Exercise Duties of Gauger—Penalty.—It shall not be lawful for any person or persons, except those duly elected by the city council

*See No. 1.

of Charleston, to exercise the duties of gauger, or gauge any of the aforesaid articles, under such penalty for each offense as may have been or may hereafter be fixed by the ordinances of said city, the said penalty to be recovered in any court of competent jurisdiction. (Id. § 3457.)

69c. **Fees of Gauger.**—The fee charged for the said gauging shall not exceed ten cents per package, to be paid by the seller to the authorized gauger; and all fees accruing to the city gaugers in the discharge of their duties shall be equally shared between them. (Id. § 3458.)

Oysters, Etc.

70. **Removal of Shell Fish in the Shell from State Unlawful Except as Provided—Penalty—Proviso—Tax—Stamps.**—It shall be unlawful for any person to carry any shellfish in the shell out of the State except as hereinafter provided, under penalty of punishment as for a misdemeanor or by fine of not less than one hundred ($100.00) dollars, nor more than five hundred ($500.00) dollars, imprisonment not less than one nor more than twelve months: Provided, however, that oysters taken from grounds leased from the State may be exported in the shell in containers of sizes of one bushel or even multiple thereof and that a tax of ten cents per bushel be paid on such exported oysters and that stamps to cover the tax be affixed to the containers according to quantity contained in each. (Acts 1924, No. 623, § 55.)

71. **Oyster Canneries and Raw Shucking Plants.**—Canneries shall not commence operation before October 1st of each year, and both canneries and raw shucking plants shall cease operation on May fifteenth: Provided, that the Board of Fisheries shall have authority in their discretion to permit the operations to continue not later than April first or earlier than October thirty-first. (Id. § 61, as amended Acts 1925, No. 156.)

72. **Records of Canneries; Duplicate Bills of Lading; Reports.**—All managers or persons in charge of canning factories shall be required under a penalty of not less than one hundred ($100.00) dollars for each infraction of this requirement to keep a book in which shall be entered the name of each person from whom he shall purchase oysters in the shell, together with the date of purchase and quantity purchased; such book to be of the size and description prescribed by the Board of Fisheries; and in which under appropriately headed columns shall be shown the name, rig, State license number and approximate tonnage of the boat in which the oysters were brought to the factory. They shall also in the same or another book of size and description to be prescribed by said board keep a record of the quantity of oysters purchased each day in bushels; the quantity in ounces canned each day, the quantity in ounces shipped each day with the destination and manner of such shipment and name of carrier. They shall also retain duplicates of the bills of lading on file for comparison with such books and shall make a written report to the Board of Fisheries not later than the fourth day of each calendar month containing in itemized form the above required information. The said books or record and bills of lading to be open at all times to the inspection of the Board of Fisheries or its agents or the Comptroller General or his agents. They shall within the first six days of May in each year make a report to the Board of Fisheries of the quantity of canned oysters and stamps of each denomination on hand on the first day of May and of such other data as may be required by the board. (Acts 1924, No. 623, § 62.)

73. **Leases for Canneries.**—Persons desiring to operate canning factories or raw shucking plants for oysters or clams may obtain leases of bottoms above low water mark not exceeding five acres for each canning factory or shucking plant for a period of ten years for each leased area with privilege of renewal; such leases to be at a rental of one (1) dollar per acre per annum. (Id. § 63.)

74. **Minim [Minimum] Sizes of Oysters and Clams; Penalty.**—All oysters taken from public grounds of the State shall be culled and all oysters the shells of which measure less than three inches from hinge to mouth, except what are attached to a larger oyster and cannot be removed without destroying them, and all shells taken, and all clams of less than one and one-half inches in width, shall be returned to the public grounds near where taken, and no oysters shall be marketed containing more than ten per cent of culls; such prohibited sizes to be measured in bulk. And it shall be unlawful for any person engaged in shucking or canning oysters for market to shuck, can, purchase or have in possession oysters containing more than ten per cent of prohibited size as above provided under penalty of fine of not less than two hundred (200) dollars or imprisonment not less than one month nor more than twelve months. (Id. § 64.)

75. Conduct of Shucking for Market.; Records.—All persons engaged in shucking raw oysters or clams for market shall conduct such shucking in sheds at places and of a construction approved by the Board of Fisheries and all oysters shucked in such sheds must be measured and a record kept by such persons showing the number of bushels of oysters in the shell shucked and the quantity in quarts shucked therefrom and a report made at the end of each month showing the same, which reports must be delivered or mailed on or before the fifth day of each succeeding month. (Id. § 66.)

76. Purchases of Shucked Oysters.—All persons engaged in shucking raw oysters for market who shall purchase oysters previously shucked shall show the same separately on their records and on their monthly reports. No person engaged in shucking raw oysters, for market shall be permitted to purchase shucked raw oysters from other than persons regularly engaged to shuck same on premises in sheds provided for that purpose and approved by the Board of Fisheries. (Id. § 67.)

77. Premises, Utensils, etc., Used for Shucking to be Kept Sanitary; Board May Prescribe Rules; Penalty for Violation.—All premises, sheds, utensils, measures, tools and implements used on premises of shucking plants must be kept in sanitary condition and to that end the Board of Fisheries may prescribe such rules and regulations for sanitation and provide for such inspections as in their judgment may be advisable and may for persistent violations of such sanitary rules and regulations revoke the licenses of the persons violating them. (Id. § 68.)

78. Use of Tax Stamps.—All containers used in shipping raw shucked oysters must have affixed to them in a manner to be prescribed by the Board of Fisheries canceled tax stamps to the amount of five cents for each gallon of raw shucked oysters contained therein, under penalty of punishment as herein provided: Provided, however, that no stamp tax shall be required of local shuckers on raw shucked oysters sold to local consumers in less than gallon quantities. (Id. § 69.)

79. Standard Measures.—The following standard measures are hereby established for use in this State in selling and marketing shellfish and fixing the amount of taxes or licenses to be paid thereon: (a) The bushel measure for oysters shall be cylindrical with a perforated bottom, the diameter of the cylinder to be eighteen (18) inches and the length from bottom to top sixteen (16) inches. (b) The half-bushel measure for oysters in the shell shall be cylindrical, with a diameter of thirteen and three-quarter (13¾) inches and a depth of ten (10) inches with a perforated bottom. (c) The peck measure for oysters in the shell shall be cylindrical, with a diameter of ten and one-half (10½) inches and a depth of eight (8) inches. All bushel, half-bushel or peck measures found at any place where oysters are purchased or sold in the shell which do not conform in shape and contents to this standard shall be destroyed by the board or its authority. (Id. § 70.)

80. Use of Measures Not Standard a Misdemeanor; Penalty.—Any person who shall buy or sell oysters in the shell, using a bushel, half-bushel or peck measure which does not conform to the standard above described as to contents shall be deemed guilty of a misdemeanor, and, on conviction, shall be punished for each offense by a fine of not less than ten (10) dollars nor more than fifty (50) dollars or by imprisonment of not more than thirty days. (Id. § 71.)

81. Size of Packages; Stamps.—Each package containing oysters or clams shall contain a bushel or even multiple thereof and before being tendered for transportation or offered for sale shall be stamped or tagged with the quantity and kind of shellfish contained therein and the correct amount of tax stamps affixed and canceled and wherever any package shall contain less than one bushel the tax upon one bushel shall be nevertheless paid as aforesaid. (Id. § 72.)

82. Record Required to be Kept by Person or Persons Buying Clams, etc., for Shipment or Canning Purposes—Penalty.—Any person or persons engaged in buying clams or oysters for shipment or canning purposes, shall be required to keep a record of the number of bushels brought, dates, name of person from whom bought, places where the clams or oysters were gathered, and whether by permission of the owner of the property or not. This list shall be produced, when demanded by a court of competent jurisdiction, and may be used as evidence in cases where suit is brought for the violation of section 83* of the Criminal Code of South Carolina. Failure to obtain and keep such record shall be a misdemeanor, and, upon conviction, punishable by a fine of not less than twenty-five dollars or more than fifty dollars in each case, or service for not more than thirty days on the public works of the county. (Id. § 87a, added Acts 1925, No. 156.)

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*Omitted herein.

83. Inspection and Control of Sanitary Conditions of Shellfish Beds, Etc.—Duty of State Board of Health.—It shall be the duty of the Board of Fisheries and the State Board of Health to determine and inspect and control as to sanitary conditions all beds on which shell fish are grown; to inspect and control as to sanitary operation all shucking plants or plants where shell fish are packed or otherwise prepared, to provide such method of identification in the form of a certificate number that will make plain the source of the shell fish in the container: Provided, no certificate number may be used as advertising media unless the beds from which the shell fish have been taken, the plants in which they have been shucked or packed have been passed on by a representative of the State Board of Health: Provided, further, that no person shall be employed to handle shell fish until they have produced a certificate issued by the State Board of Health to the effect that they are free of typhoid bacilli. This certificate must be renewed each year. Penalty for hiring a worker without such certificate shall be cancellation of license and not less than $500.00 fine, and unlawfully advertising of oysters or shad including the certificate of the State Board of Health shall be fined not less than $1,000.00. The method of storing and shipping shell fish shall be supervised, inspected and controlled by the State Board of Health and the Board of Fisheries.

It shall be the duty of the State Board of Health to see to it that the product conforms to the proper standards for salinity water content, feed proportion, to the Pure Food Law standards and to an established bacterial standard. In order to provide the inspection of beds and shucking plants, the expense of the representative of the State Board of Health in getting to and from these beds, shucking plants and packing houses shall be borne by the owner of the shed or shucking plant or packing house. (Id. § 91-A.)

84. Transportation Unstamped of Products Subject to Tax—Penalty.—It shall be unlawful for any person to transport any of the fish or fisheries products required by law to have the tax paid by stamps affixed thereto, unless such requirement shall have been complied with, and any person transporting any of said products in violation of this provisions shall be deemed guilty of a misdemeanor and punished by a fine of not less than five hundred ($500) nor more than one thousand ($1,000) dollars or imprisonment of not less than six months nor more than twelve months. (Acts 1924, No. 623, § 101.)

84a. Punishment for Violation of Act Where Not Otherwise Provided—Proviso.—Any person violating any of the provisions of this act for which no punishment has been specially provided shall be punished by fine not exceeding one thousand ($1,000) dollars or imprisoned not exceeding six months, in the discretion of the court: Provided, however, that the Board of Fisheries may, in its discretion, prosecute for such violations in the original jurisdiction of the magistrate's court by special request in writing endorsed upon the warrant that the magistrate's court shall assume such jurisdiction, whereupon, in the event of conviction in such court, the magistrate shall impose sentence of fine not exceeding one hundred ($100) dollars or imprisonment not exceeding thirty days. (Id. § 106.)

Rice.

85. Fraudulent Mixtures to be Forfeited to the State; How Examined.—If any planter or other person shall sell or expose for sale to any merchant, factor or any other person, at any port or place of exportation within this State any casks or barrels of rice which, upon opening or uncasking the same, shall be found to contain any unfair and fraudulent mixtures of small or damaged rice, then, and in every such case the seller of the said rice, or person offering the same for sale, shall immediately, on request of the buyer, or person offering to buy the same, name one indifferent person, being a freeholder, and the said buyer another, to view the said rice, and if such two persons shall agree in opinion, and certify the same in writing under their hands, that such rice was deceitfully and fraudulently packed and exposed for sale, every such cask or barrel so fraudulently packed and exposed for sale shall be forfeited to the State, and the same shall be sold or caused to be sold by the State Treasurer, or by the person or persons who shall condemn the same for the use aforesaid, who shall be allowed thereout five per cent for their trouble. (Code 1922, Vol. III, § 3472.)

86. Proceedings in Case Sellers do Not Nominate Arbitrators.—If the seller shall refuse to nominate a person to view the said rice then the buyer shall nominate both the persons to view such rice, who shall have the same power as if one has been named by the seller and one by the buyer. Provided, that in case the said persons nominated as aforesaid shall not agree in opinion, they shall have power to nominate a third person, being a freeholder as aforesaid, who shall

have the same power as the first two by this chapter have; and in case either of the said two persons shall refuse or neglect to join or cannot agree in nominating such third person, then in such case any magistrate, or notice given by both or either of the said persons, shall, and he is hereby, required to nominate such third person, which third person shall have the same power in the premises as if he had been nominated by both. And such adjudication and certificate shall be made within twenty-four hours from the first application, and the said certificate shall be deemed a sufficient condemnation of the said rice to warrant the sale thereof as aforesaid; any law, statute, usage or custom to the contrary notwithstanding. (Id. § 3473.)

Syrups.

See Nos. 69a-69c.

Tea.

See No. 5.

Vinegar.

See Nos. 69a-69c.

Water.

See Nos. 6c-6f.

Sanitation.

See No. 70 et seq. For hotel and restaurant sanitation, see Code 1922, Vol. III, § 2376 et seq.

PART III.

Special Drug Laws.

Dangerous Caustic or Corrosive Substances.

87. **Definitions.**—The term "dangerous caustic or corrosive substance" means each and all of the acids, alkalis and substances named below:

(a) Hydrochloric acid and any preparation containing free or chemically unneutralized hydrochloric acid (HCL) in a concentration of ten per centum or more;

(b) Sulphuric acid and any preparation containing free or chemically unneutralized sulphuric acid (H_2SO_4) in a concentration of ten per centum or more;

(c) Nitric acid or any preparation containing free or chemically unneutralized nitric acid (HNO_3) in a concentration of five per centum or more;

(d) Carbolic acid, otherwise known as phenol, and any preparation containing carbolic acid or phenol in a concentration of five per centum or more;

(e) Oxalic acid and any preparation containing free or chemically unneutralized oxalic acid ($H_2C_2O_4$) in a concentration of ten per centum or more;

(f) Any salt of oxalic acid and any preparation containing any such salt in a concentration of ten per centum or more;

(g) Acetic acid or any preparation containing free or chemically unneutralized acetic acid ($HC_2H_3O_2$) in a concentration of twenty per centum or more;

(h) Hypochlorous acid, either free or combined, including calx chlorinate bleaching powder, chloride of lime, chlorinated soda and chlorinated potash, and any preparation containing any of the aforesaid substances so as to yield a concentration of ten per centum or more of available chlorine;

(i) Potassium hydroxide and any preparation containing free or chemically unneutralized potassium hydroxide (KOH), including caustic potash and Vienna paste, in a concentration of ten per centum or more;

(j) Sodium hydroxide and any preparation containing free or chemically unneutralized sodium hydroxide (NaOH), including caustic soda and lye, in a concentration of ten per centum or more;

(k) Silver nitrate, sometimes known as lunar caustic, and any preparation containing silver nitrate ($AgNO_3$) in a concentration of five per centum or more; (l) Ammonia water and any preparation yielding free or chemically uncombined ammonia (NH_3), including ammonium hydroxide and "Hartshorn," in a concentration of five per centum or more; and (m) any other alkali, acid, salt, or preparation thereof having caustic or corrosive properties equivalent to those of any of the alkalis, acids, salts and preparations named above.

The term "misbranded parcel, package, or container," means a retail parcel, package, or container of any dangerous caustic or corrosive substance for household use, not bearing a conspicuous, easily legible label or sticker, containing (a) the name of the article; (b) the name and place of business of the manufacturer, packer, seller, or distributor; (c) the word "POISON," running parallel with the main body of reading matter on said label or sticker, on a clear plain background of a distinctly contrasting color, in uncondensed gothic capital letters, the letters to be not less than 24-point size unless there is on said label no other type so large, in which event the type shall be not smaller than the largest type on the label, and (d) directions for treatment in case of accidental personal injury by the dangerous caustic or corrosive substance. (Acts 1924, No. 688, § 1.)

88. Sale, Offer, Etc., of Dangerous Caustic or Corrosive Substance in Misbranded Package Prohibited.—No person shall sell, barter, or exchange, or receive, hold, pack, display, or offer for sale, barter, or exchange in the State of South Carolina any dangerous caustic or corrosive substance in a misbranded parcel, package, or container, said parcel, package, or container being designed for household use. (Id. § 2.)

89. Such Misbranded Packages Subject to Confiscation; Procedure; Proviso.— Any dangerous caustic or corrosive substance in a misbranded parcel, package, or container for household use, that is being sold, bartered, or exchanged, or held, displayed, or offered for sale, barter, or exchange, shall be liable to be proceeded against in any magistrate's court, and seized for a confiscation in a manner provided by law, and if such substance is condemned as misbranded, by said court, it shall be disposed of by destruction or sale, as the court may direct; and if sold, the proceeds less the actual costs and charges shall be paid over to the magistrate, but such substance shall not be sold contrary to the provisions of the laws of the State; provided, however, that upon payment of the costs of such proceedings and the execution and delivery of a good and sufficient bond to the effect that such substance will not be unlawfully sold or otherwise disposed of, the court may by order direct that such substance be delivered to the owner thereof. Such proceedings shall conform as near as may be to the law providing for confiscating goods exposed for sale on Sunday. (Id. § 3.)

90. Penalty for Violation of Act.—Any person violating the provisions of this act shall upon conviction thereof be punished by a fine of not more than one hundred ($100.00) dollars, or by imprisonment for not more than ninety days, or by both such fine and imprisonment, in the discretion of the court. (Id. § 4.)

91. Enforcement.—The sheriff, deputy sheriffs and other peace officers, shall enforce the provisions of this act, and he, or they are hereby authorized and empowered to approve and register such brands and labels intended for use under the provisions of this act, as may be submitted to him for that purpose and as may in his judgment conform to the requirements of this statute: Provided, however, that in any prosecution under this act, the fact that any brand or label involved in said prosecution has not been submitted to said sheriff or deputy sheriffs or peace officers to whom there is presented, or who in any way procures, satisfactory evidence of any violation of the provisions of this act shall cause appropriate proceedings to be commenced and prosecuted, without delay, for the enforcement of the penalties as in such cases herein provided. (Id. § 5.)

Disinfectants.

92. Marking of Commercial Disinfectants.—No commercial disinfectant, by its nature subject to the test hereinafter provided, [shall] be sold or offered for sale in South Carolina unless it have, plainly stamped upon the container, the coefficient strength as compared with pure phenol, the said coefficient to be determined by the method employed by the Hygienic Laboratory of the United States Public Health Service, or the Redial Walker Method. (Code 1922, Vol. III, § 3520.)

93. Certificate and Sample to be Filed With Commissioner of Agriculture, Etc.—Before any commercial disinfectant either is sold, offered or exposed for

sale in the State, the manufacturer, importer, dealer, agent or person who causes it to be sold or offered for sale, by sample or otherwise, within this State shall file with the Commissioner of Agriculture, Commerce and Industries a statement that he desires to offer such commercial disinfectants for sale in this State, and also a certificate, the execution of which shall be sworn to before a notary public or other proper official for registration, stating the name of the manufacturer, the location of the principal office of the manufacturer, and the name, brand or trade-mark under which the said preparation or preparations will be sold, together with the guaranty and that preparation or preparations meet the requirements of this article, and that the name or trade-mark under which the article is sold shall not mislead or deceive the purchaser in any way; also, that any statement, design or device on the label or package regarding the substance therein shall be true and correct, and any claim made for the article shall not be false or misleading in any particular, and file with the Commissioner of Agriculture, Commerce and Industries a labeled package of each brand of goods, showing claims made for same, which labeling and claim shall not be changed during the fiscal year for which registration is made without the consent of the Commissioner of Agriculture, Commerce and Industries. (Id. § 3521.)

94. Fees.—For the expense incurred in registering, inspecting and analyzing commercial disinfectants, a registration fee of ten ($10) dollars for each separate brand, or in lieu thereof a maximum fee of fifty ($50) dollars per annum, covering all brands made by a single manufacturer, shall be paid by the manufacturer or seller of same to the Commissioner of Agriculture, Commerce and Industries during the month of July, one thousand nine hundred and nineteen, and during the month of January in each succeeding year, said fees to be used by the Commissioner of Agriculture, Commerce and Industries for executing the provisions of this article. (Id. § 3522.)

95. Sale, Etc., of Unregistered Disinfectants a Misdemeanor; Penalty.—Any person, company, corporation or agent that shall offer for sale or expose for sale any package or sample or any quantity of any commercial disinfectant, or any similar preparation, regardless of the title under which it is sold, which has not been registered, but subsequently found by an analysis or examination made by or under the direction of the Commissioner of Agriculture, Commerce and Industries to violate any of the provisions of this article, or to contain harmful or injurious substances, or to be labeled with false or misleading statements regarding contents thereof, shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be fined in the sum of fifty ($50) dollars for the first offense and in the sum of one hundred ($100) dollars for each subsequent offense. (Id. § 3523; Code 1922, Vol. II, § 287.)

96. Procedure Upon Violation of Article.—Whenever the Commissioner of Agriculture, Commerce and Industries becomes cognizant of any violation of any of the provisions of this article he shall immediately by written order suspend the sale of the goods and notify, in writing, the manufacturer, importer, jobber or dealer, if the same be known. Any party so notified shall be given an opportunity to be heard, under such rules and regulations as may be prescribed by the Commissioner of Agriculture, Commerce and Industries; and if it appears that any of the provisions of this article have been violated, the Commissioner of Agriculture, Commerce and Industries shall confiscate and destroy the goods, and certify the fact to the solicitor in the district in which said sample was obtained, and furnish that officer with a copy of the results of the analysis or other examination of the said article, duly authenticated by the analyst or other officer making such examination under the oath of such officer. In all prosecutions arising under this act the certificate of the analyst or other officer making the analysis or examination, when duly sworn to by such officer, shall be prima facie evidence of the fact or facts therein certified. (Code 1922, Vol. III, § 3524.)

97. Solicitors to Prosecute.—It shall be the duty of every solicitor to whom the Commissioner of Agriculture, Commerce and Industries shall report any violation of this article to cause proceedings to be commenced and prosecuted without delay for the fines and penalties in such cases prescribed. (Id. § 3525.)

98. Disposition of Moneys Received.—All moneys, including fines received under the provisions of this article, shall be kept as a distinct fund, to be styled the "Commercial Disinfectant Fund," to be paid into the State treasury at the end of each month; all checks or orders in payment for registration fees under this article shall be made payable to the Commissioner of Agriculture, Commerce and Industries, who is authorized to draw out of said funds upon his warrant such sums as may be necessary to pay all expenses incurred in connection with

this article, and he shall include in his report to the General Assembly an account of the operation and expenses under this article. (Id. § 3526.)

Insecticides and Fungicides.

99. Sale of Calcium Arsenate and Other Arsenical Preparations Regulated.—From and after the passage of this act it shall be unlawful for any person, persons, firm or corporation to sell or offer for sale for boll weevil control purposes within this State any substance or preparation represented to be calcium arsenate, or other arsenical preparations in dry powder form, unless the same shall comply with the specifications prescribed in the regulations of the South Carolina State Crop Pest Commission. (Acts 1923, No. 14, § 1.)

100. Specifications to be Filed; Labels.—Any person, persons, firm or corporation selling or offering for sale in this State any calcium arsenate, or any other material or preparations for the purpose of destroying, controlling or preventing injurious insects or plant diseases, shall file specifications of same with the South Carolina State Crop Pest Commission and shall plainly label, tag or mark each and every parcel, package, bottle or other container, and in the case of calcium arsenate, or other arsenical preparations in dry powder form said label, tag or marking shall state the contents of the container in terms of the specifications prescribed by the South Carolina State Crop Pest Commission for calcium arsenate, or other arsenical preparations in dry powder form; in case of other calcium arsenate preparations or other materials or preparations sold or offered for sale for the purpose of controlling, destroying or preventing boll weevil or other injurious insects or plant diseases; said label, tag or marking shall correctly state the chemical analysis of the contents of the container, and it shall be unlawful to offer any such preparations or materials unless they are so labeled or marked and unless the contents thereof are correctly stated in the label, tag or marking required by this act. (Id. § 2.)

101. Powers of State Crop Pest Commission.—The South Carolina Crop Pest Commission shall enforce the provisions of this act and shall have full and plenary powers to determine, prescribe and promulgate specifications of any and all materials covered by this act, including chemical composition, solubility and physical properties, and to make such rules and regulations which said commission deems necessary to carry out the intent and purposes of this act. (Id. § 3.)

102. Penalty for Violation of Act or Regulations.—Any person, persons, firm or corporation violating the provisions of this act, or the rules and regulations of the South Carolina State Crop Pest Commission promulgated to carry the purpose of this act into effect, shall be guilty of a misdemeanor and shall be punished by a fine of not less than fifty ($50.00) dollars, or imprisoned for not less than ten (10) days, or both, at the discretion of any court having jurisdiction. (Id. § 4.)

103. Penalties Additional; Damages.—The provisions as to the penalties in this act are in addition to the rights of the injured party to recover in a court of competent jurisdiction any damages sustained by reason of a violation of the provisions of this act, or the rules and regulations of the South Carolina State Crop Pest Commission by any seller of the materials covered in this act, his damage to be determined by a jury. (Id. § 5.)

104. Each Sale, Etc., a Separate Offense.—Each and every sale or offer for sale in violation of the terms of this act, or rules and regulations of the South Carolina State Crop Pest Commission shall be deemed and taken a separate and distinct offense and shall be punishable as such. (Id. § 6.)

Poultry and Stock Remedies.

105. Sale of Patent Poultry Preparations, Etc., Regulated.—Before any condimental patented, proprietary or trade-marked "stock or poultry tonic," "stock or poultry regulator," "stock or poultry conditioner," "stock or poultry remedy," or any similar preparation, regardless of the specific name or title under which it is sold, which is represented as containing "tonic," "remedial" or other "medicinal" properties, either is sold, offered or exposed for sale in the State, the manufacturer, importer, dealer, agent or person who causes it to be sold or offered for sale, by sample or otherwise, within the State, shall file with the Commissioner of Agriculture, Commerce and Industries a statement that he desires to offer such "stock or poultry tonic," "stock or poultry regulator," "stock or poultry condi-

tioner," "stock or poultry remedy," or similar preparation for sale in this State, and also a certificate, the execution of which shall be sworn to before a notary public or other proper official, for registration, stating the name of the manufacturer, the location of the principal office of the manufacturer, and the name, brand or trade-mark under which the said preparation or preparations will be sold together with the guaranty that said preparation or preparations are not injurious to the health of domestic animals and that they do not conflict with the drug requirements of the South Carolina Pure Food and Drug Act, and that the name or trade-mark under which the article is sold shall not mislead or deceive the purchaser in any way; also, that any statement, design or device on the label or package regarding the substances contained therein shall be true and correct, and any claim made for the feeding, condimental, tonic or medicinal value shall not be false or misleading in any particular, and file with the Commissioner of Agriculture, Commerce and Industries a labeled package of each brand of goods, showing claims made for same, which labeling and claims shall not be changed during the fiscal year for which registration is made without the consent of the Commissioner of Agriculture, Commerce and Industries. (Code 1922, Vol. III, § 3513.)

106. Registration Fee.—For the expense incurred in registering, inspecting and analyzing "stock or poultry tonics," "stock or poultry regulators," "stock or poultry conditioners," "stock or poultry remedies" and similar preparations defined in section 1 [3513], a registration fee of ten ($10) dollars for each separate brand, or in lieu thereof a maximum fee of fifty ($50) dollars per annum covering all brands made by a single manufacturer, shall be paid by the manufacturers or sellers of same to the Commissioner of Agriculture, Commerce and Industries during the month of July, one thousand nine hundred and thirteen, and during the month of January, in each succeeding year, said fees to be used by the Commissioner of Agriculture, Commerce and Industries for executing the provisions of this article. (Id. § 3514.)

107. Penalty.—Any person, company, corporation, or agent that shall offer for sale or expose for sale any package or sample or any quantity of condimental, patented, proprietary or trade-marked "stock or poultry tonic," "stock or poultry regulator," "stock or poultry conditioner," "stock or poultry remedy," or any similar preparation, regardless of the title under which it is sold, which has not been registered, but subsequently found by an analysis or examination made by or under the direction of the Commissioner of Agriculture, Commerce and Industries to violate any of the provisions of this article, or to contain harmful or injurious substances, or to be labeled with false or misleading statements regarding the contents or curative properties of said "stock or poultry tonic," "stock or poultry regulator," "stock or poultry conditioner," "stock or poultry remedy," or any other similar preparation, shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be fined in the sum of fifty ($50) dollars for the first offense and in the sum of one hundred ($100) dollars for each subsequent offense. (Id. § 3515; Code 1922, Vol. II, § 286.)

108. Commissioner of Agriculture to Enforce Laws.—Whenever the Commissioner of Agriculture, Commerce and Industries becomes cognizant of any violation of any of the provisions of this article he shall immediately notify, in writing, the manufacturer, importer, jobber or dealer, if same be known. Any party so notified shall be given an opportunity to be heard, under such rules and regulations as may be prescribed by the Commissioner of Agriculture, Commerce and Industries; and if it appears that any of the provisions of this article have been violated the Commissioner of Agriculture, Commerce and Industries shall certify the facts to the solicitor in the district in which said sample was obtained, and furnish that officer with a copy of the result of the analysis or other examination of the said article, duly authenticated by the analyst or other officer making such examination under the oath of such officer. In all prosecutions arising under this article the certificate of the analyst or other officer making the analysis or examination, when duly sworn to by such officer, shall be prima facie evidence of the fact or facts therein certified. (Code 1922, Vol. III, § 3516.)

109. Solicitors to Prosecute.—It shall be the duty of every Solicitor to whom the Commissioner of Agriculture, Commerce and Industries shall report any violation of this article to cause proceedings to be commenced and prosecuted without delay for the fines and penalties in such cases prescribed. (Id. § 3517.)

110. Condimental Feed Stuffs Fund; Commissioner of Agriculture.—All moneys, including fines received under the provisions of this article, shall be paid into the State treasury on or before the tenth day of each month as other funds and kept as a distinct fund, to be styled the "Condimental Feed Stuffs

Fund." The Commissioner of Agriculture, Commerce and Industries is authorized to draw out of said fund, upon his warrants, such sums as may be necessary to pay all expenses incurred in connection with this article, and he shall include in his report to the General Assembly an account of the operations and expenses under this article. (Id. § 3518.)

111. Not in Conflict With Feed Stuffs Law.—This article does not repeal any part of any concentrated commercial feeding stuff law which may be in effect in this State, but it is designed to fully cover all preparations commonly known as condimental, patented, proprietary or trade-marked "stock or poultry tonic," "stock or poultry regulators," "stock or poultry conditioners," "stock or poultry remedies," and all similar preparations used for "tonic," "regulative," "remedial" or "condition" purposes, and to protect the public from deception and fraud in the sale of these specific products. (Id. § 3519.)

NOTE: See also No. 18 et seq.

Pharmacy, Poisons and Narcotics.

112. Board of Pharmaceutical Examiners; Election; Terms; Vacancies; Meetings; Quorum; Organization; Rules.—The Pharmaceutical Association of the State of South Carolina shall elect six pharmacists doing business within this State who shall be commissioned by the Governor, who shall constitute the Board of Pharmaceutical Examiners of the State of South Carolina, and shall hold office as follows: One of them for the term of one year; another for two years; another for three years; another for four years; another for five years; and another for six years; each, however, to hold further until his successor shall have been duly elected and qualified, and the said association shall, at each election, indicate the person chosen for each of said terms respectively. Annually thereafter the said association shall elect one member of said board to fill vacancy annually recurring, such members so elected to hold office respectively for the term of six years, and until his successor shall be elected, qualified and commissioned. In the case of the death, resignation or removal from the State of any member of the board, the president of the association shall appoint in his place a pharmacist, who shall be commissioned by the Governor, to serve for the remainder of his unexpired term. The said board shall be styled "The Board of Pharmaceutical Examiners," and shall meet in the city of Charleston, or any other place in this State which may be designated by said association, once every four months, and keep in session until applicants who have previously made application to the secretary of said board shall have been examined. Four members of said board shall constitute the quorum for the transaction of business and the granting of licenses. The said board may elect a chairman and a secretary; and may also adopt any rules or regulations for the conduct of their business and needful for the proper discharge for the business of the board: Provided, such rules and regulations shall not conflict with any of the provisions of this act. (Acts 1925, No. 28, § 1.)

113. Power to License.—The Board of Pharmaceutical Examiners shall alone possess and exercise all the powers heretofore given and now possessed by the Medical College of the State of South Carolina and the medical faculty of the University of South Carolina, in respect to the licenses of pharmacists, apothecaries and druggists. (Id. § 2.)

114. License Required.—Every pharmacist, apothecary and retail druggist, who has not been previously licensed according to law, who carries on and conducts the business of such occupation in this State, must have a license therefor from the above named board. (Id. § 3.)

115. Sales of Poisons, Etc., Regulated; Special License for Physicians; Powers of Physicians and Dentists.—It shall not be lawful for the proprietor of any pharmacy or drug store to allow any person not qualified in accordance with the provisions of this act to dispense poisons or compounds of physicians, except under the personal supervision of a licensed pharmacist. Provided, however, that outside of cities, towns and villages, and in the towns and villages of three hundred inhabitants or less, where there is no regular pharmacist, practicing physicians shall have the right to compound and sell medicines, upon their obtaining a special license from said board, and paying therefor a fee of ten dollars. Nothing in this act, however, shall be construed as intending to hinder or prohibit any physician or dentist lawfully engaged in the practice of his profession anywhere within this State from putting up his own prescriptions or dispensing his own medicines. (Id. § 4.)

116. Qualifications of Applicants For License.—On or after July 1st, 1918, an applicant for examination as registered pharmacist must be twenty-one years of

age, of good moral character and temperate habits, a graduate from a school of pharmacy or department of pharmacy of a university, which is recognized by said board, such recognition to be established by the Board of Pharmaceutical Examiners on the basis of uniform and reasonable standards of educational requirements to be observed by school of pharmacy, college of pharmacy or departments of pharmacy of universities. The said educational requirements being at least a two years' course in a recognized high school as a matriculation requirement, and the said board may determine their reputability by reference to their compliance with such standards, and shall, further, furnish proofs of a three years' experience. Actual time of attendance at the school or college of pharmacy from which the applicant is a graduate, but not to exceed two years, shall be accredited upon the required experience of three years. The remainder of the experience required must have been in compounding and dispensing drugs, medicines and poisons under the supervision of a registered pharmacist in a drug store or pharmacy, where the prescriptions of medical practitioners are compounded. An applicant for examination as an assistant pharmacist must be eighteen years of age, of good moral character and temperate habits, and furnish proof of three years' experience. Actual time of attendance at a recognized college of pharmacy, school of pharmacy or department of pharmacy of a university, but not to exceed one year, shall be accredited upon the required experience of three years: Provided, that the applicant must show, by proper certificate from the college or school of pharmacy he attended, that his school work was satisfactory. The remainder of the experience required must have been under the supervision of a registered pharmacist in compounding drugs, medicines and poisons in a drug store or pharmacy where the prescriptions of medical practitioners are compounded: Provided, that a graduate of a reputable college of pharmacy shall be entitled to examination upon graduation and on afterwards producing proof of three years' experience may be licensed if otherwise qualified: Provided, further, that any person who has had ten years' practical experience in a drug store shall be allowed to take the examination herein provided: and, provided, still further, that any physician, licensed to practice medicine in this State, shall also be allowed to take the examination for the practice of pharmacy, as provided in this act. (Id. § 5.)

117. Assistant Pharmacists; "Temporary Absence."—An assistant pharmacist may lawfully take charge of a drug store or pharmacy during the temporary absence of the registered pharmacist, but cannot own, conduct or operate a drug store or pharmacy unless he employs a registered pharmacist, and places him in active charge of all professional duties connected with the proper and lawful conduct of the business. The said board shall make rules and regulations clearly defining temporary absence. (Id. § 6.)

118. Fees For Examination; For License; Revocation of License.—The fees for examining applicants shall be as follows: For a pharmacist ten dollars, and for an assistant pharmacist five dollars, and for licensing a pharmacist ten dollars, and for licensing an assistant pharmacist five dollars. The said board may revoke in their discretion any license or renewal thereof upon proof of fraud or misrepresentation. (Id. § 7.)

119. Labels For Poisons.—All persons in this State engaged in business as pharmacists, apothecaries or druggists, either in the wholesale or retail of drugs, shall, to every bottle, vial, box or other package containing any poison or any one of the following named articles, viz.: Oxalic acid, chloroform, belladonna and its preparations, henbane and its preparations, hemlock or conium, or any other articles that may be added to this list by the said board, securely attach a label, whereupon shall be either printed or legibly written, with red ink, the name of the poison and the name of at least one antidote, with brief directions to the mode of using the same: Provided, that nothing herein contained shall be construed to apply to the filling of prescriptions made by regular physicians; and, provided, further, that it shall be the duty of the said board, on application at the time of registration, to furnish to the party registering a form of label for poisons. (Id. § 8.)

120. Sales of Poisons; Records.—Every pharmacist or other person selling any poison shall be satisfied that the purchase is made for legitimate purposes and shall keep a book on file in which shall be recorded every sale of the following articles, viz.: Arsenic and its preparations, all metallic cyanides and cyanides of potassium, tartar emetic, corrosive sublimate, aconite and its preparations, strychnine and all other poisonous alkaloids, and their salts, cantharides, ergot, hydrocyanic acid; and the said record to also exhibit the name of the person to whom sold, place of residence and the purpose of purchase as stated, which book or file

shall be kept at all times subject to inspection of the coroner of the county and the solicitor or inspector of said association, or such other persons as either of them may designate. (Id. § 9.)

121. **Sales in Original Packages.**—This act shall not be construed to prevent merchants or shopkeepers from vending or exposing for sale in original packages medicines already prepared for use. (Id. § 10.)

122. **Renewal of Registration; Fees; Penalty For Default.**—Every person, actively engaged in the retail drug business holding a certificate of registration from the said board, shall renew annually his registration with said board as provided by this act. Every person holding a license as pharmacist or assistant pharmacist shall pay to the secretary or inspector on or before the first day of July in each year a renewal fee of four dollars, for which a renewal certificate for one year shall be issued. In case any person defaults for more than sixty days after the first day of July in each year in paying such renewal fee and securing a renewal license certificate a penalty of twenty-five dollars must be paid for such default; and in case such default shall continue for one year or more then a penalty of fifty dollars must be paid and collected in addition to the renewal fee before issuing a renewal license. If delinquency continue for more than two years then the original license shall be canceled: Provided, however, that upon payment of a penalty of seventy-five dollars and the renewal fees due, the said board may restore such defaulting member if otherwise in good standing. (Id. § 11.)

123. **Reciprocal Registration; Fee.**—The State Board of Pharmacy, in its discretion, may grant certificates of registration as pharmacists to such persons as shall furnish with their applications satisfactory proof that they have been registered by examination in some other State requiring a degree of competency equal to that required of an applicant in this State: Provided, however, that existing requirements in this State shall not prevent the said board from granting reciprocal registration to applicants whose experience and results of examination, together with the proofs of qualifications upon which they were permitted to take examination at the time of registration in the States from which they apply, would have entitled them to registration as a registered pharmacist in this State at that time; the fee for granting a reciprocal license shall be twenty dollars. (Id. § 12.)

124. **File of Registration.**—It shall be the duty of the said board to establish, carry and preserve, in a book or file, kept for that purpose, a register of all pharmacists, apothecaries and retail druggists in the State, and also all assistant pharmacists, including the names of persons registered, place of business, the fact whether the person registered be a graduate of medicine or pharmacy, or under license granted under examination, and any other matter of information the said association may see fit to add. (Id. § 13.)

125. **Inspector; Appointment; Term.**—Commencing on January first, 1925, and every two years thereafter, the Governor, upon the recommendation of a majority of the State Board of Pharmaceutical Examiners, shall appoint and commission an inspector, who shall qualify by taking the usual oath of office, and who shall continue in office until his successor shall be appointed, qualified and commissioned. (Id. § 14.)

126. **Duties.**—The inspector shall from time to time visit all of the drug stores in this State and inspect the same to see that the law relating to the licensing of pharmacists and assistant pharmacists is obeyed, and to see that all of the provisions of this act are obeyed and carried out by the drug stores and druggists of this State. In case of any violation of this act or the law is discovered the inspector shall either require the druggist or proprietor of the drug store in default to forthwith correct such delinquency or shall prosecute such offender under the law, using his discretion in relation thereto after consulting the Board of Pharmaceutical Examiners if deemed necessary. The inspector may swear out warrants for offenders against the provisions of this act. (Id. § 15.)

127. **Compensation.**—The inspector shall be paid by the State Pharmaceutical Association out of the fees collected under the provisions of this act. (Id. § 16.)

128. **Annual Registration; Reports.**—It shall be the duty of all active pharmacists, assistant pharmacists, apothecaries, and retail druggists to register annually, paying the renewal fees herein required; and at the same time to report what changes, if any, have been made in their respective businesses since their preceding annual registration: Provided, that inactive or retired druggists or traveling men holding licenses shall not be required to register annually. (Id. § 17.)

129. **Meaning of Terms.**—The terms pharmacist, druggist and apothecary, shall be construed as being correlative, interchangeable and meaning the same thing under the provisions of this act. (Id. § 18.)

130. Annual Report.—The Pharmaceutical Association of South Carolina shall make an annual report to the Governor of the work done in accordance with the provisions of this act during the preceding year, which report shall be filed with the Governor on or before December first in each year. (Id. § 19.)

131. Suspension of Licensee Upon Indictment; Cancellation of License Upon Conviction; Restoration; Conviction in Municipal Court.—Whenever any druggist or apothecary shall be indicted in any State or Federal court for any violation of the laws relating to intoxicating liquors, or the unlawful sale of extracts, upon true bill found, it shall be the duty of the inspector to obtain a certified copy of such indictment and deliver same to the Secretary of the State Board of Pharmaceutical Examiners, who shall suspend such delinquent druggist or apothecary, and upon proof of conviction therefor shall cancel his license; but the board may, in their discretion, afterwards restore the same upon proper showing made; and likewise if any druggist shall plead guilty or be convicted in any municipal court of a like violation, his license shall be revoked, and shall continue to stand revoked unless restored as hereinbefore provided. (Id. § 20.)

132. Violation of Act a Misdemeanor; Penalties.—Any person violating any provision of this act shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined twenty-five dollars or imprisoned for thirty days for the first offense, and upon a second conviction shall be punished by a fine of one hundred dollars or imprisonment for sixty days, or both, in the discretion of the court. (Id. § 21.)

133. Operation of Drug Store Without Licensed Pharmacist.—Any person who shall procure a license for or operate a store, calling or advertising it as a drug store, not having in charge thereof a licensed druggist, shall be deemed guilty of a misdemeanor and shall be punished under the provisions of this act. (Id. § 22.)

134. Prosecutions.—The said Board of Pharmacy is authorized, through its solicitor or inspector, or otherwise, as it may deem most expedient, to prosecute all persons violating the provisions of this act or any of them. (Id. § 23.)

135. Exemption From Act of Country Merchants.—This act shall not prohibit country merchants from handling lye, canned goods and drugs as they now handle. (Id. § 26.)

136. Sale of Cocaine Made a Misdemeanor.—Any person, firm or company who shall sell cocaine, except on the written prescription of a practicing physician to be used under the personal supervision of such physician, or any person who shall be found in possession of any cocaine, or any person who shall be found in possession of any compound or mixture thereof, except when the bottle, box or vessel containing said compound or mixture bears the name of the practicing physician prescribing it and the name of the druggist or pharmacist compounding or mixing it, shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be punished by a fine not exceeding $500, or by imprisonment not exceeding two years, or both, in the discretion of the court, with or without hard labor: Provided, that nothing herein contained shall prevent the sale of cocaine by wholesale druggists to the retail or wholesale druggists, nor the use of the same by any regular licensed dental practitioner in his own practice: Provided, that the unlawful possession by any person of cocaine, or any mixture, or combination thereof, shall be prima facie evidence of an intent to sell, give away, or otherwise, dispense same: Provided, that it shall be the duty of all boards of health in this State, whether State, county or municipal, to prosecute violators of this section, or assist in prosecution of same. (Code 1922, Vol. II, § 397.)*

136a. Unlawful to Sell Drugs from Place to Place Without License—Confederate Veterans.—It shall be unlawful for any person to travel as hawkers and peddlers from place to place in this State, and to sell or to offer for sale any medicine, drug or compound to be used as a curative, without first paying to the clerk of the court of each county in which such person seeks to sell such medicine, drug or compound, a fee of one hundred dollars for the use of such county, and procuring from him a license permitting such person to sell such medicine, drug or compound within such county. Such license to be good for twelve months from the date thereof: Provided, that every package or bottle of such medicine, drug or compound shall have plainly written or printed on it, in the English language, the formula of the contents thereof, which formula shall be approved in writing by a regularly licensed practicing physician of this State, and a copy of said approval shall be lithographed or printed on each package or bottle of such medicine, drug or compound: Provided, further, that any person who holds a certificate under the hand and official seal of the clerk of court of any county in

*See No. 1.

this State, that his name is on the Confederate pension roll of said county, shall be exempt from the payment of such license. (Code 1922, Vol. III, § 3942.)

NOTE: See also No. 1.

Serum.

136b. Duties and Powers of Board.—The duties and powers of the said Board of Trustees* are as follows: . . . 14. That the proper authorities of Clemson College are hereby required to furnish, at cost, to citizens of this State upon request therefor, sufficient quantities of serum for treatment of hog cholera: Provided, that no person shall be furnished more serum than needed for treatment of hogs actually owned by the person applying therefor. That no poor person shall be charged for serum applied for when unable to pay for same. (Code 1922, Vol. III,

NOTE: See also No. 65aa.

Intoxicating Liquors.

137. Sale of Alcoholic Liquors Prohibited.—All alcoholic liquors and beverages, whether manufactured within this State or elsewhere, or any mixture by whatsoever name called which if drunk to excess will produce intoxication, are hereby declared to be detrimental, and their use and consumption to be against the morals, good health and safety of the State, and contraband. It shall be unlawful for any person, firm, corporation or association within this State to manufacture, sell, barter, exchange, receive, accept, give away to induce trade, deliver, store, keep in possession in this State, furnish at public places or otherwise dispose of any spirituous, malt, vinous, fermented, brewed or other liquors and beverages, or any compound or mixture thereof which contains alcohol and is used as a beverage, and which if drunk to excess will produce intoxication, except as hereinafter provided. (Code 1922, Vol. II, § 820.)

138. Sales by Wholesale Druggists.—Wholesale druggists may lawfully sell in wholesale quantities to retail druggists and to public or charitable hospitals or to medical or pharmaceutical colleges, and in no other way, pure alcohol for medical purposes only, or grain alcohol to be used by chemists or bacteriologists actually engaged in scientific work and for such purposes only, and such wholesale druggist shall, at the end of each month in which any such sales have been made, file with the clerk of the court of the county in which they do business a statement shall be filed in the office of the clerk of the court of the county in statement in writing under oath,giving the name of the purchaser, the price paid, the date of sale, and the quantity and character of the alcohol sold. If said wholesale druggist making such sale is not a resident of the State of South Carolina, then such statement shall be filed in the office of the clerk of the court of the county in which the purchaser resides. (Id. § 821.)

139. Sales by Retail Druggists.—Any retail druggist whose place of business is located in any of the incorporated towns or cities of this State, who is himself a registered or licensed pharmacist, or who regularly employs a registered or licensed pharmacist, may sell, in the manner herein set out, upon filing a bond in the sum of five thousand dollars, to be approved by the clerk of the court in which such druggist does business, conditioned for a faithful observance of the provisions of sections (821) to (830), such bond to be approved by the clerk of the court, pure alcohol for medical purposes only, grain alcohol to chemists and bacteriologists actually engaged in scientific work, and for such purposes only, and wine to be used for sacramental or religious purposes only: Provided, that nothing herein contained shall prevent such druggists from using alcohol in the compounding of prescriptions or other medicines, the sale of which would not subject him to the payment of a special tax required of liquor dealers by the government of the United States: Provided, further, that nothing herein contained shall prevent such druggists from compounding or selling medicinal preparations manufactured in accordance with formulas prescribed by the United States Pharmacopœia and National Formulary which contain no more alcohol than is necessary to extract the medicinal properties of the drugs contained in such preparations, and no more alcohol than is necessary to hold the medicinal agents in solution, and which are manufactured and sold as medicine, and not as a beverage. (Id. § 823.)

140. Sales Upon Physician's Prescriptions.—No sale of pure alcohol, for medicinal purposes, shall be made by any retail druggist, except upon the pre-

*Reference is to the Board of Trustees of Clemson Agricultural College of South Carolina.

scription of a regular practicing physician of this State, who, before writing such prescriptions, shall make an actual examination of the person for whom the prescription is issued, and the said prescription shall be substantially in the following form: "State of South Carolina, ...county. To....., Druggist. I, ..., a regular licensed and practicing physician under the laws of this State, do hereby certify that I have examined..... ....., a patient in my charge, and I do hereby prescribe for the use of said patient..... alcohol; and I further certify, that the use of such alcohol is, in my judgment, absolutely necessary to alleviate or cure the illness or disease from which said patient is now suffering, and that I am not interested in the drug store to which this prescription is directed, nor in the profits on the drugs herein prescribed. Dated..... ....M. D." (Id. § 824.)

141. When and How Prescriptions May be Filled.—No prescription shall be filled herein except upon the day upon which it is issued or the following day, and no more than one-half pint of alcohol shall be sold and delivered on any one prescription, and when such prescription is filled, it shall not be refilled, but shall be delivered to the druggist filling the same, and at the end of the month in which the same is filled it shall be filed by such druggist in the office of the clerk of court of the county in which said druggist is engaged in business: Provided, no druggist, who is also a practicing physician, shall fill his own prescriptions hereunder, nor shall they be filled at any drug store in which the said physician is financially interested: Provided, further, that the delivery of such alcohol sold under such prescription shall be made only directly to the person for whom such prescription is issued or to the physician, or to some one authorized by the physician, or in case of a minor to his parent or guardian or physician, or some one authorized by said physician. (Id. § 825.)

142. Sales of Alcohol for Use in Arts or Scientific and Mechanical Purposes.—Any retail druggist whose place of business is located in any of the incorporated towns or cities of the State may lawfully sell alcohol in quantities not greater than five (5) gallons, to be used in the arts or for scientific or mechanical purposes, and such druggist may sell, in like quantities, to chemists and bacteriologists engaged in scientific work, and for such purposes only and such druggists may sell in quantities, not greater than one-half gallon, wine used for sacramental or religious purposes only. (Id. § 826.)

143. Statement by Purchaser.—Any person desiring to purchase alcohol for the purposes set out in section (826) shall sign a written printed statement, giving his name, residence, occupation and the purpose for which he intends to use said alcohol, and he shall certify that said alcohol is purchased in good faith for such purpose and no other, and that said druggist shall, at the end of each month, file with the clerk of court of the county in which he is engaged in business, all such statements, with a certificate under oath, that said statements contain a true statement of all such sales. (Id. § 827.)

144. Prescriptions to be Recorded.—All statements or prescriptions required by sections (821) to (830), inclusive, to be filed in the office of the clerk of the court, shall be recorded and properly indexed by him in a book kept for that purpose, which shall at all times be opened for public inspection, and a certified copy of such record, or the original statement or prescription, with the certificate of the clerk of the court indorsed thereon, showing that it has been recorded, shall be prima facie evidence of the facts recited therein. For making such record, the clerk of the court shall be entitled to charge and collect for each prescription, a fee of five cents, and for each statement, other than prescription, a fee of fifteen cents, which shall be paid by the party filing the same. (Id. § 829.)

145. Druggists to Keep a Record of Sales.—In addition to the requirements hereinbefore prescribed, all licensed and registered druggists selling alcohol by prescription shall keep a record thereof, which shall bear the true dates of the sales, the names of the persons to whom sales were made, the names of physicians or surgeons upon whose prescriptions each were made; such records shall be subject at all times to the inspection of the solicitor of the district, the sheriff and other peace officers of the county, the mayor and police officers of the city or town in which said licensed and registered pharmacist's business is located, and all other persons, and each druggist making any such sales shall be required to report, under oath, to the circuit judge presiding at each term of court of the county in which said druggist is engaged in business, a true statement of such facts, and also file on Monday morning of each week a list of the alcohol sold by him, to whom sold and by what physician prescribed, with the chief of police and

the mayor or intendant of municipality, and post one copy in some public place in such municipality. (Id. § 830.)

146. **Manufacture and Sale of Wood, Denatured Ethyl and Methyl Alcohol.**—Nothing in this chapter, inclusive, shall prevent the sale of wood or denatured alcohol. Any person, firm or corporation may manufacture ethyl and methyl alcohol from sawdust, slabs or any other wood substance, or from molasses. (Id. § 831.)

147. **Ethyl Alcohol Not to be Sold in This State Unless Denatured.**—Any person, firm or corporation engaged in the manufacture of ethyl alcohol, as provided in section (831), shall not sell the same in this State unless denatured, but may ship the same undenatured to any place without the State for use in manufacturing purposes, and the sciences and arts: Provided, no alcohol manufactured under the provisions of sections (831) to (836), inclusive, shall ever be used either within or without this State as a beverage or for medicinal purposes. (Id. § 832.)

148. **Shipment and Storage of Ethyl Alcohol in Warehouses.**—Ethyl alcohol, manufactured under the provisions of sections (831) to (836), inclusive, shall not be shipped to any point within this State unless denatured, and may be shipped to points without this State only in the manner hereinafter provided. Such alcohol may be carried from such warehouse as may be authorized under the provisions of said sections, and delivered to a common carrier and forthwith shipped to its destination without this State. Such alcohol may also be transported to another bonded warehouse without this State, when such shipment is made under bond, as required by the United States revenue laws. (Id. § 833.)

149. **Record of Shipments of Alcohol.**—A record shall be kept, which shall show the quantity of alcohol manufactured and the quantity transported or shipped, to whom and where shipped, and such record shall be subject to the inspection of any attorney representing the State of South Carolina. (Id. § 834.)

150. **Storing of Alcohol in Warehouses.**—All persons, firms and corporations manufacturing any alcohol under the provisions of sections (831) to (836), inclusive, shall, while such alcohol remains in this State, store and keep the same in general United States bonded warehouses, or in other warehouse or warehouses, and file with the Secretary of State a declaration setting forth the exact location, description and dimension of each and every such warehouse used, and to be used for such purpose, and it shall be unlawful to store or keep any alcohol manufactured under the provisions of said sections in any other place or places than such as may be described in the declaration above provided for. (Id. § 835.)

151. **Penalties and Remedies For Violation of Sections (831) to (836).**—If any person, firm or corporation manufacturing alcohol under the provisions of sections (831) to (836), inclusive, shall sell or consent to be used as a beverage, either within or without this State, any ethyl alcohol so manufactured, or shall violate the provisions of said sections in any respect, they, or it, shall forfeit to the State of South Carolina all property within this State connected with and incident to the manufacture of such alcohol. It shall be the duty of the Attorney-General and of solicitors to institute an action in any court of competent jurisdiction in any county in this State, which the Attorney-General or solicitor may select, for determining whether the provisions of said sections have been violated, and whether the property has been thereby forfeited to the State: Provided, further, that any person, firm or corporation engaging in the manufacture of alcohol under the provisions of said sections shall enter into a bond to the State of South Carolina, in the sum of ten thousand dollars, with surety, to be approved by the Governor, conditioned for the faithful observance and compliance with all the provisions of said sections. And it shall be the duty of the Attorney-General and the circuit solicitors, whenever any provision of said sections is violated, to sue in any county in this State for the penalty of such bond for the benefit of this State: Provided, further, it shall be prima facie evidence of the violation of the provisions of said sections if any ethyl alcohol, so manufactured and not denatured, shall be found within this State, and not in the custody of a United States revenue officer, or not in course of shipment to some point in another State: Provided, further, that a reasonable time shall be allowed for conveying the alcohol directly from a warehouse to a common interstate carrier. (Id. § 836.)

152. **Disposition of Forfeited Property.**—Any and all property forfeited under the provisions of sections (831) to (836), inclusive, shall be delivered to the Sinking Fund Commission. (Id. § 837.)

153. **Violators of Liquor Laws to be Imprisoned at Hard Labor; Provisos.**—Any person who violates any of the provisions of any law of this State

prohibiting, relating to or regulating the sale of intoxicating liquors, shall be guilty of a misdemeanor and upon conviction thereof, shall be imprisoned at hard labor for not less than six months, nor more than two years, and for any subsequent offense, upon conviction, shall be imprisoned for a term of not less than a year nor more than five years: Provided, that any circuit judge may, in his discretion, suspend all of such imprisonment except thirty days for the first offense and sixty days for subsequent offenses upon such terms and conditions as he may see fit to impose, but in each and every case any person convicted of the violation of any of said laws shall be required to serve at least thirty days for the first offense and sixty days for any subsequent offense of the sentence imposed upon him: Provided, that the provisions of this sections hall not apply to cases pending on or to offenses committed prior to February 19, 1916. (Id. § 838.)

154. License of Druggist to be Revoked For Violation.—Any druggist or physician who violates in any way the provisions of sections (820) to (830), inclusive, shall, in addition to the punishment herein provided, have their licenses revoked for a period of not more than one year for each offense. (Id. § 839.)

155. Not to Affect Punishment Under Former Law.—Nothing in this code shall have the effect of preventing the indictment, prosecution and conviction of any person who has been guilty of a violation of the criminal law relating to the dispensing or sales of intoxicating liquors, or punishment therefor, as provided by law existing either at, or prior to, the time of the adoption of this code, for offenses heretofore committed. (Id. § 840.)

156. Liquors on Arrival in the State to be Subjected to Its Laws.—All fermented, distilled or other liquors or liquids containing alcohol, transported into this State, or remaining herein for use, sale, consumption, storage or other disposition, shall, upon introduction and arrival in this State, be subject to the operation and effect of this law to the same extent and in the same manner as though such liquors or liquids had been produced in this State. (Id. § 841.)

157. Unlawful Soliciting Sales a Misdemeanor.—Any person who shall in this State offer for sale, or solicit the purchase of, any of the liquors or beverages mentioned in sections (820) and (840), other than for personal use, whether for present or future delivery, shall be deemed guilty of a misdemeanor, and, upon conviction in a court of competent jurisdiction, shall be punished by a fine of not less than one hundred dollars, or imprisonment for not less than three months. (Id. § 842.)

158. Soliciting Orders For Liquor a Misdemeanor.—Each and every person, whether acting for himself or as an agent for any person, firm or corporation, who shall conduct the business of liquor drummer, soliciting or receiving orders for interstate shipment within any county within this State, except as now authorized by law, of any spirituous, malt, vinous, fermented, brewed, whether lager or rice beer, or other liquors or beverages or any compound or mixture thereof which contains alcohol and is used as a beverage, shall be guilty of a misdemeanor, and, on conviction, fined in a sum not exceeding one thousand dollars or imprisoned not exceeding six months, or both fine and imprisonment, in the discretion of the court. (Id. § 843.)

159. Unlawful Sale., Etc., of Alcoholic Liquors a Common Nuisance.—The unlawful sale, barter, exchange, storage and keeping in possession in this State of any spirituous, malt, vinous, fermented, brewed (whether lager or rice beer), or other liquors and beverages, or any compound or mixture thereof which contains alcohol and is used as a beverage, is hereby declared a common nuisance. (Id. § 844.)

160. Resorts For Drinking Declared Nuisances.—All places where persons are permitted to resort for the purpose of drinking alcoholic liquors or beverages are hereby declared nuisances, and the keeper or manager of such places, upon conviction, shall be punished as provided in section (838). (Id. § 845.)

161. Penalty For Handling Liquor in the Night Time.—Any person handling contraband liquor in the night time, or delivering the same, shall be guilty of a misdemeanor, and, on conviction, shall be punished by imprisonment for not less than three months nor more than twelve months, or by a fine of not less than one hundred dollars nor more than five hundred dollars. (Id. § 848.)

162. Transportation or Possession of Falsely Branded Packages.—The carriage, transportation, possession, removal, sale, delivery or acceptance of any of the said liquors or liquids in any package, cask, jug, box or other package, under any other than the proper name or brand known to the trade as designating the kind and quality of the contents of the casks, packages or boxes containing the same, or the causing of such carriage, transportation, possession, removal, sale, delivery or acceptance, shall work the forfeiture of said liquors or liquids and

casks or packages, and the person or persons so offending, knowingly, be subject to pay a fine of not less than one hundred dollars nor more than five hundred dollars, or imprisonment for the term of not less than six months, nor more than one year, and the wrongful name, mark, address, stamp or style on such liquor when seized shall be considered evidence prima facie of guilt. The books and waybills of the common carrier may be examined to trace said liquor to the shipper, who shall be liable, upon conviction, in like penalty. (Id. § 849.)

163. Possession of Illicit Liquor Prohibited—Debt for, Void.—The possession of said illicit liquors is hereby prohibited and declared unlawful, and any obligation, note of indebtedness, contracted in their sale or transportation, is declared to be absolutely null and void, nor shall any action or suit for the recovery of the same be entertained in any court in this State. (Id. § 852.)

164. Persons Violating Law May be Arrested Without Warrant.—Any person detected in the act of violating any of the provisions of this chapter shall be liable to arrest without warrant: Provided, a warrant shall be procured within a reasonable time thereafter. (Id. § 854.)

165. Punishment for Violations of Law in Cases Not Specifically Prescribed.—Upon conviction of any person for the violation of any provisions of this chapter, where punishment is not provided for, such person shall be fined, or imprisoned at hard labor, in the discretion of the court: Provided, that fine shall not be less than one hundred dollars, and the imprisonment not less than three months. (Id. § 858.)

166. Receipt, Delivery, Storing, Keeping, Possession, Shipment or Transportation of Alcoholic Liquors in State Unlawful Except as Herein Provided.—It shall be unlawful for any person, firm, corporation or company to receive, store, keep or have in possession, or to ship, transport or convey any alcoholic liquors from any point without the State into this State, or from one point to another in this State, or to deliver the same to any person, firm, corporation or company within this State, except as hereinafter provided. (Id. § 860.)

167. Who May Receive Liquor; Amount Not to Exceed One Quart a Month and to be For Medicinal Purposes; Gallon of Wine For Religious Purposes.—Any natural person over the age of twenty-one years, except as hereinafter forbidden, may order and receive or transport in his personal baggage from any point without this State not exceeding one quart of alcoholic liquors containing not more than 50 per centum by volume of alcohol within any one calendar month, for medicinal purposes for his or her own use, or the use of his or her immediate family, and not more than one gallon of wine for religious purposes. (Id. § 861.)

168. Deliveries in Nighttime Unlawful.—It shall be unlawful for any common carrier to deliver or any person to receive any package containing such liquors in the nighttime, which may be construed to mean from sunset to sunrise. (Id. § 862.)

169. Record of Delivery to be Kept; Form; To be Preserved For Two Years.—It shall be the duty of the common carrier to keep a true and correct record of all alcoholic liquors transported and delivered by them to any person or persons, and to file with the clerk of court of the county in which such liquors are delivered, at least once a week, a verified statement, either printed, plainly written or typewritten, in duplicate clearly stating what liquors were delivered by it since its last statement, the date on which the said alcoholic liquors were delivered, the name and post-office address of the consignee, the place of delivery and the kind and amount of alcoholic liquors delivered, and the canceled permits upon which said deliveries were made. Said report and permits shall be kept in condition for convenient reference for two years and then destroyed. (Id. § 863.)

170. Inspection of Records.—Such common carrier shall permit any person to inspect and examine from time to time said records, kept as required in the preceding paragraph, as and when they make reasonable requests therefor, and any person shall have a right at any time to examine and inspect the reports filed by such common carrier in the office of the clerk of court or other officer, as herein provided. (Id. § 864.)

171. Officers May Inspect or Seize Shipments.—Any peace officer shall have the right at any time to inspect all packages of alcoholic liquors in the possession of any common carrier in this State, and seize such as are being transported for unlawful sale or in violation of law. (Id. § 865.)

172. Package to be Marked; Exceptions.—It shall be unlawful for any person or any common carrier, servant, agent or employee thereof, to knowingly ship or transport from without this State into this State, or from any one point or place in this State, any trunk, valise or package of any kind, containing any alcoholic

liquors, unless the true nature and character of the contents of such package is clearly and legibly marked on the outside thereof in letters at least one inch high. This provision shall not apply to one quart or less of such liquors in the baggage of a passenger and carried for his personal use or that of his immediate family, or for sacramental purposes. (Id. § 866.)

173. Where Offenses Committed.—In prosecution under sections (860) to (885) for unlawful shipment or transportation of alcoholic liquors, the offense shall be held to be committed in any county of the State through which or into which said alcoholic liquors have been carried or transported, or to which they have been conveyed or delivered. (Id. § 867.)

174. Shipments to be Received Only at Office of Carrier.—No person shall receive any alcoholic liquors shipped to him within the State except at the office of the common carrier transporting the same nearest the residence of the consignee. (Id. § 868.)

175. Affidavit and Application for Importation; Issue of Permits; Fee; Record.—Any person desiring to import any alcoholic liquors under this Chapter shall apply to the judge of probate of the county in which he resides and file with him an affidavit that he has not received any like permit during the same calendar month, and containing one of the following statements: (a) The amount and kind of alcoholic liquors desired, not exceeding one quart; that the consignee is not a minor nor a student of any institution of learning, and if a woman, that she is the head of a family; the office of the common carrier from which delivery is desired, and that same is the nearest office of said common carrier to the residence of the applicant, and that the same is desired for medicinal purposes; or (b) Applicant is a minister, pastor, priest, rabbi or regularly constituted officer of a regularly organized religious congregation or church, and the name and location of the church or congregation for which the same is desired, and that the same is purchased in good faith to be used for sacramental or religious purposes, and no other, the amount and kind of alcoholic liquors, not exceeding one gallon of wine; or (c) That the applicant is the head of a family of the Hebrew faith, is not a minor, the amount and kind of alcoholic liquors desired, not exceeding one gallon of wine, and that the same is desired for religious purposes for use during the Passover. This application shall only be filed during the month of March of any year.

Upon the receipt of such affidavit and the payment of a fee of ten cents the said probate judge shall issue a permit under his hand and official seal to receive the alcoholic liquors specified, which permit shall contain the name of the consignee, the amount and kind of alcoholic liquors and the office of the common carrier from which delivery is to be made. The said probate judge shall keep a record of all permits in a permanently bound book, in which the names of the applicants are entered alphabetically, and said permits shall be numbered consecutively and the number, the name of the consignee, the amount of alcoholic liquors, and the office of the delivering carrier and the date of said permit shall be entered on said record. The said probate judge shall, out of the fees received, procure the permits and records, herein required to be kept, and shall keep the remainder as his compensation for the issuance of the said permit: Provided, that in no case shall the probate judge issue such permit unless he is satisfied of the truth of each statement contained in the affidavit herein required, nor shall such permit be issued by other than the probate judge personally, or by his regularly constituted clerk, and within the precincts of his office. Any violation of the provisions of this chapter by the probate judge shall subject him to prosecution and penalties as for malfeasance or misfeasance in office: Provided, further, that the charge for issuing such permit and taking the affidavit required to obtain the same shall not exceed ten cents, and no charge in addition to this amount shall be made by the judge of probate or any clerk or assistant for taking the affidavit required for such permit, nor shall any officer be designated by the judge of probate to take such affidavit. (Id. § 869.)

176. No Delivery Without Permit.—No common carrier shall deliver any alcoholic liquors to any person until he has filed with the delivering carrier a permit issued as above provided and dated within two weeks of said delivery, which permit shall be immediately canceled by said common carrier. (Id. § 870.)

177. False Permits Constitute Forgery.—The making, uttering or using of any false permit shall constitute the crime of forgery. (Id. § 871.)

178. Punishment for Illegal Transportation.—Whoever shall knowingly transport or convey from one place to another, or from one person to another, any alcoholic liquors known by him to have been illegally sold or procured shall receive the same punishment as if convicted of the illegal sale of such alcoholic

liquors. Charges of illegal transportation thereof may be joined in the same indictment. (Id. § 872.)

179. Where Liquor May be Kept.—It shall be unlawful for any intoxicating liquors to be stored or kept except for one's own personal use, or that of his immediate family, or for religious purposes, and then only at his usual place of residence, and only when the same shall have been procured in a lawful manner. The residence of a person shall be where his family resides, if he has a family residing in this State, and if not, at the place where he usually sleeps: Provided, however, that it shall be unlawful for any person to have in his possession, or to store or keep, for any purpose, any quantity of such liquors in any room in which, or in connection with which, there is maintained or conducted any place of amusement, club house, fraternity house, lodge or meeting place, cafe, rest room, store, office, shop or factory, and no such place shall be considered a residence within the meaning of this section. (Id. § 873.)

180. Storage of Unusual Amount Evidence of Violation.—Storage of any unusual amount or in an unusual way of any alcoholic liquors shall be evidence of a violation of this chapter. (Id. § 874.)

181. Unlawful to Deliver Shipments to Certain Persons.—It shall be unlawful for any common carrier to deliver to any minor, or any person not the consignee, or to any woman not the head of a family, or to any student of an institution of learning; or for any minor, or any person not the consignee, or any woman not the head of a family, or any student of an institution of learning to receive any package containing alcoholic liquors. (Id. § 875.)

182. Where Record of Delivery to be Kept; Inspection.—The original record which common carriers are required to make and preserve under the terms of this chapter shall be kept in the county in which the delivery of said alcoholic liquors is made, and if practicable, at the same office making delivery, and said common carrier shall produce such records for the use and benefit of any officer of said county or of the courts of the State when requested to do so. (Id. § 876.)

183. Penalty for Violation.—Any violation of the provisions of sections (860) to (885), for which no other punishment is provided, shall be punished by imprisonment for not more than one year, or a fine of not more than one thousand dollars, or both. (Id. § 877.)

184. "Alcoholic Liquors" Defined.—The words "alcoholic liquors," as used herein, shall be considered to mean any liquor, beer, beverage or compound, whether distilled, fermented, or otherwise, by whatsoever name known or called, which will produce intoxication, or which contains in excess of one per centum of alcohol and is used as a beverage. (Id. § 878.)

185. Shipments of Alcohol, Etc., to Hospitals Unlimited.—This act shall not affect any existing laws regulating the transportation for, or the receipt, storage, sale or use by druggists, hospitals and laboratories, or for scientific or mechanical purposes of alcohol or preparations containing alcohol, or any law regulating the transportation and storage of medicines or extracts, which shall remain as heretofore: and provided, that this act shall not apply to alcoholic liquors required and used by hospitals or sanatoria bona fide established and maintained for the treatment of patients addicted to the use of liquors, morphine, opium, cocaine, or other deleterious drugs, when the same are administered to patients actually in such hospitals or sanatoria for treatment, and when the same are administered as an essential part of the particular system or method of treatment, and exclusively by or under the direction of a duly licensed and registered physician of good moral character and standing: and provided, further, that shipments of such liquors be shipped in the name of such hospitals and sanatoria, that the amount used shall not exceed five gallons in any one calendar month, and no permit shall be required therefor. (Id. § 879, as amended Acts 1925, No. 35.)

186. Provisions For Manufacture of Ginger Ale and Like Beverages.—Any person, firm or corporation manufacturing in this State ginger ale or similar soft drinks in which there is an alcoholic ingredient not exceeding one-third of one per cent may import alcohol into this State, or order and receive the same from another State quantities not exceeding ten gallons, for which no permit shall be required: Provided, that such person, firm or corporations first file with the clerk of court of the county in which said manufacturing plant is located a bond with an approved surety company as surety in the sum of one thousand ($1,000.00) dollars, to be forfeited to the State upon proof of misuse of such alcohol or disposition of it otherwise than contemplated in this section for the manufacture of said product. The solicitor shall bring action upon said bond upon information or belief, as he may see fit. (Code 1922, Vol. II, § 880.).

187. Manufacture and Sale of Ethyl or Methyl Alcohol Not Affected.—This law shall not affect any existing law regulating the manufacture, sale or disposition of ethyl or methyl alcohol from sawdust, slabs or other wood substance, which shall remain as heretofore. (Id. § 881.)

188. Manufacture of Wine Regulated.—Any person shall have the right to manufacture not exceeding five gallons annually of wine from fruits, berries or grapes, and to keep the same for his own use and that of his immediate family, or for sacramental puposes. (Id. § 882.)

189. False Statements a Violation.—The making of any false or untrue statement in any affidavit required herein, or the taking of such affidavit by any officer or person who knows same to be false, shall be deemed a violation of this chapter. (Id. § 883.)

190. Punishment of Common Carriers For Violation Hereof.—Should any agent or agents of any common carrier violate any of the provisions of sections (860) to (885), the said common carrier may be indicted, and upon conviction, fined for such violation, and in addition, such agent or agents may be personally indicted, and upon conviction, fined or imprisoned, or both, for the same violation. Jurisdiction of said common carrier, if a corporation, shall be obtained by serving upon said corporation a certified copy of the indictment against it in the same way and upon the same persons as provided for the service of a summons in civil actions. (Id. § 884.)

191. Sale, Barter or Exchange of Any Recipe, Formula or Distilling Apparatus For Making Intoxicating Beverages Prohibited; Penalty.—Any person or persons, firm or corporation, who shall sell or offer for sale any recipe, formula or distilling apparatus for the purpose of mixing, blending, manufacturing or distilling of any intoxicating beverage in the State of South Carolina shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be imprisoned at hard labor for not less than three months, nor more than three years, and pay a fine not less than one hundred dollars, nor more than one thousand dollars: Provided, that this section, shall not apply to recipes or formulas for the mixing, blending or manufacture of beverages containing less than two per cent of alcohol, and shall not apply to flavoring extracts, essences and preparations for medical purposes. (Id. § 886.)

192. Unlawful to Advertise Alcoholic Liquor or Beverage or Solicit Orders Therefor; Removal of Advertisements From Public Places.—It is hereby made unlawful: (1) To advertise upon any street car, railroad car or other vehicle of transportation, or at any public place or resort, or upon any sign or billboard, or by circulars, posters, price lists, newspapers, periodicals or otherwise within this State alcoholic liquors and beverages, or any of them, or to advertise the manufacture, sale, keeping for sale or furnishing of any of them, or the person from whom, or the firm or corporation from which, or the place where, or the price at which, or the method by which the same or any of them may be obtained; (2) to circulate or publish any newspaper, periodical or other written or printed matter in which any advertisement in this section specified shall appear, or to permit any sign or billboard, containing such advertisement to remain upon one's premises; or to circulate any price lists, order blanks or other matter for the purpose of inducing or securing orders for such alcoholic liquors, or any of them, no matter where located. Any sheriff, constable or police officer is authorized to remove any such advertisement from any sign, billboard, or other public place when it comes to his notice, and shall do so upon demand of any citizen.

2. Any advertisement or notice containing the picture of a brewery, distillery, bottle, keg, barrel, or box, or other receptacle represented as containing any of said liquors or beverages, or designed to serve as an advertisement thereof, shall be within the inhibition of this section.

3. Where and when any violation of any of the provisions of this section shall have occurred, the continuation or repetition of the unlawful act or any of like kind by the offending person, firm or corporation, may be prevented by a writ of injunction issued upon a bill filed in the name of the State by the State Attorney-General, or by any solicitor, or by any citizen or citizens of the county in which the offense has been committed. All persons, whether agents, servants or officers of corporations, or agents or servants of individuals aiding or abetting in the commission of the offense, may be made parties defendant to such bills.

4. Any violation of any provision of this section shall be punishable by a fine of not less than fifty nor more than five hundred dollars; to which may be added in the discretion of the court or judge trying the case, imprisonment in the county jail or at hard labor for the county for not more than six months. (Id. § 887.)

193. **Penalty For Violation of Prohibition Law; Limitation Upon Suspension of Sentence; To What Offenses Applicable.**—Any person or persons, firm or corporation, who violates any of the provisions of any law of this State prohibiting, relating to or regulating intoxicating liquors, or any other compound containing alcohol when used as a beverage, shall be guilty of a misdemeanor, and upon conviction thereof shall be imprisoned at hard labor for not less than six months nor more than two years, and for any subsequent offense upon conviction shall be imprisoned for a term of not less than one year nor more than five years.

Provided, that any circuit judge may, in his discretion, suspend all of such imprisonment except thirty days for the first offense and sixty days for subsequent offenses, upon such terms and conditions as he may see fit to impose, but in each and every case any person convicted of the violation of any of said laws shall be required to serve at least thirty days for the first offense and sixty days for any subsequent offense, of the sentence imposed upon him. That the provisions of this act shall apply only to persons manufacturing or having in possession any still or appliance for the purpose of manufacturing intoxicating liquors or selling liquors. (Acts 1924, No. 684, § 1.)

PART IV.

Miscellaneous Laws.

False Advertising.

194. **Making Intentionally Untrue Statement in Advertising a Misdemeanor; Penalty.**—Any person, firm, corporation or association who knowingly with intent to sell or in anywise dispose of merchandise, securities, service or anything offered by such person, firm, corporation or association, directly or indirectly, to the public for sale or distribution, or with intent to increase the consumption thereof, or to induce the public in any manner to enter into any obligation relating thereto, or to acquire title thereto, or an interest therein, makes, publishes, disseminates, circulates or places before the public, or causes, directly or indirectly, to be made, published, disseminated, circulated or placed before the public, in this State, in a newspaper or other publication, or in the form of a book, notice, handbill, poster, bill, circular, pamphlet or letter, or in any other way, an advertisement of any sort regarding merchandise, securities, service or anything so offered to the public, which advertisement contains any assertion, representation or statement of fact which is intentionally untrue, shall be deemed guilty of a misdemeanor; and upon conviction shall be punished by a fine of not less than one hundred ($100.00) dollars nor more than five hundred ($500.00) dollars, or imprisonment at hard labor for not less than thirty (30) days nor more than six months, in the discretion of the court. (Acts 1924, No. 692, § 1.)

Flag Desecration.

195. **Desecration of U. S. Flag a Misdemeanor.**—Every person who, for exhibition or display shall cause to be placed upon or affixed to any flag, standard, color or ensign of the United States, or upon a flag, standard, color or ensign purporting to be such, any inscription, design, device, symbol, name, advertisement, words, characters, picture, mark or notice whatever; or shall display or exhibit any such flags, standard, color or ensign to which any such inscription, design, device, symbol, name, advertisement, word, characters, photographs, mark or notice whatever; or who shall publicly mutilate, trample upon, deface, jeer at or defy such flag, standard, color or ensign shall be guilty of a misdemeanor. (Acts 1922, No. 501, § 82.)

195a. **Desecration, Mutilation or Improper Use of U. S. Flag Prohibited; Penalty.**—Any person who, in any manner, for exhibition or display, shall, after this act takes effect, knowingly place or cause to be placed, any word, figure, mark, picture, design, drawing or any advertisement, of any nature, upon any flag, standard, color or ensign of the United States, or shall knowingly expose or

cause to be exposed to public view any such flag, standard, color or ensign, upon which, after this act takes effect, shall have been printed, painted or otherwise placed, or to which shall be attached, appended, affixed or annexed any word, figure, mark, picture, design or drawing, or any advertisement of any nature, or who shall expose to public view, manufacture, sell, expose for sale, give away, or have in possession for sale or to give away, or for use for any purpose, any article or substance, being an article of merchandise, or a receptacle of merchandise or article or thing for camping [carrying] or transporting merchandise, upon which, after this act takes effect, shall have been printed, painted, attached, or otherwise placed, a representation of any such flag, standard, color or ensign, to advertise, call attention to, decorate, mark, or distinguish, the article or substance on which placed, or who shall publicly mutilate, deface, defile or defy, trample upon, or cast contempt, either by word or act, upon any such flag, standard, color or ensign, shall be deemed guilty of a misdemeanor, and shall be punished by a fine not exceeding one hundred dollars or by imprisonment for not more than thirty days, or both, in the discretion of the court; and shall also forfeit a penalty of fifty dollars for each such offense, to be recovered, with costs, in a civil action, or suit in any court having jurisdiction, and such action or suit may be brought by and in the name of any citizen of this State, and such penalty, when collected, less the reasonable cost and expense of action or suit and recovery to be certified by the clerk of court of the county in which the offense is committed, shall be paid into the treasury of this State; and two or more penalties may be sued for and recovered in the same action or suit. The words flag, standard, color or ensign, as used in this subdivision or section, shall include any flag, standard, color, ensign or any picture or representation, of either thereof, made of any substance, or represented on any substance, and of any size, evidently purporting to be, either of, said flag, standard, color or ensign of the United States of America, or a picture or a representation, or either thereof, upon which shall be shown the colors, the stars and the stripes, in any number of either thereof, or by which the person seeing the same, without deliberation, may believe the same to represent the flag, colors, standard or ensign, of the United States of America. The possession by any person, other than a public officer, as such, of any such flag, standard, color or ensign, on which shall be anything made unlawful at any time by this section, or of any article or substance or thing on which shall be anything made unlawful at any time by this section, shall be presumptive evidence that the same is in violation of this section, and was made, done or created after this section took effect, and that such flag, standard, color, ensign or article, substance, or thing, did not exist when this section took effect. (Code 1922, Vol. II, § 169.)

Gift Enterprises.

See Nos. 216-216a.

Tobacco—Tobacco Products.

196. Warehouse Charges on Leaf Tobacco.—The charges and expenses of handling and selling leaf tobacco upon the floor of tobacco warehouses in this State shall not exceed the following schedule of prices, to wit: For auction fees fifteen (15) cents on all piles over one hundred pounds or less, and twenty-five (25) cents on all piles over one hundred (100) pounds. For weighing and handling, ten (10) cents per pile for all piles of less than one hundred (100) pounds and ten cents for each additional one hundred (100) pounds; for commission on the gross sales of leaf tobacco in said warehouses not to exceed two and one-half per centum. The proprietor of each and every warehouse shall render to each seller of tobacco at his warehouse a bill, plainly stating the amount charged for weighing and handling, the amounts charged for auction fees and the commission charged on such sale; and it shall be unlawful for any other charges of fees exceeding those herein named to be made or accepted. (Code 1922, Vol. III, § 3919, as amended Acts 1922, No. 504.)

197. Warehousemen to Keep Tobacco Statistics.—The warehouseman of each and every leaf tobacco warehouse doing business in this State shall keep a correct account of the number of pounds of leaf tobacco sold upon the floor of his warehouse daily. (Code 1922, Vol. III, § 3920.)

198. Tobacco Warehousemen to Make Reports.—On or before the fifth day of each month the said warehouseman shall make a statement, under oath, of all the tobacco so sold upon the floor of his warehouse during the past month, and shall transmit the statement at once to the Commissioner of Agriculture at Columbia,

South Carolina. The reports so made to the Commissioner of Agriculture shall be so arranged and classified as to show the number of pounds of tobacco, the grade and price sold for the producers of tobacco from first hand; the number of pounds, grade and price sold for dealers, and the number of pounds, grade and price resold by the warehouseman for his own account or for the account of some other warehouse. (Id. § 3921.)

199. **Reports of Warehousemen as to Tobacco to be Kept and Published.**—The Commissioner of Agriculture shall cause said statement to be accurately copied into a book to be kept for this purpose, and shall keep separate and apart the statements returned to him from each leaf tobacco market in the State, so as to show the number of pounds of tobacco sold by each market for the sale of leaf tobacco, the number of pounds sold by producers, and the number of pounds resold upon each market, and the said Commissioner of Agriculture shall keep said books open to the inspection of the public, and shall, on or before the tenth day of each month, after the receipt of the reports above required to be made to him on or before the fifth day of each month, cause the said reports to be published in the bulletin issued by the Agricultural Department, and in one or more journals published in the State, having a large circulation therein. (Id. § 3922.)

200. **"Warehouseman" Defined.**—A warehouseman within the meaning of sections 41, 42, 43, 44 and 45 (3920 to 3924) shall be construed to mean the person, firm or corporation operating a warehouse for the sale of leaf tobacco, whether such person, firm or corporation be the owner or lessee of said warehouse. (Id. § 3923.)

201. **Commissioner of Agriculture to Furnish Blanks to Warehousemen.**—The said Commissioner of Agriculture shall prescribe the form of the statement herein required, and furnish a sufficient number of blanks to the several warehousemen of this State. (Id. § 3924.)

202. **Sale of Leaf Tobacco Regulated.**—Any person willfuly violating the provisions of sections (3919) to (3924), civil code, regulating the statistics of leaf tobacco sold, shall be guilty of a misdemeanor, and punished within the discretion of the court, and, in addition thereto, shall be subject to a penalty of five hundred dollars, to be sued for in the county in which the offender resides or does business; in case he resides without the State, by the Attorney-General whenever he may be advised by the Commissioner of Agriculture that persons required by law to make reports to him have failed to do so. (Code 1922, Vol. II, § 265.)

203. **Supplying Minors With Tobacco or Cigarettes Forbidden; Punishment; Disposition of Fine.**—It shall not be lawful for any person or persons, either by himself or themselves, to sell, furnish, give or provide any minor or minors under the age of eighteen years, with cigarettes, tobacco or cigarette paper, or any substitute therefor. Any person or persons violating the provisions of the preceding section,* either in person, by agent, or in any other way, shall be held and deemed guilty of a misdemeanor, and upon indictment and conviction therefor shall be punished by a fine not exceeding one hundred dollars nor less than twenty-five dollars, or by imprisonment for a term of not more than one year nor less than two months or both, in the discretion of the court; one-half of the fine imposed to be paid to the informer of the offense, and the other half to be paid to the treasurer of the county in which such conviction shall be had. (Id. § 410.)

204. **True Name of Owner or Producer of Tobacco to be Furnished Warehousemen and Co-operative Associations; Records; Proviso.**—Every person who shall deliver any leaf tobacco to a warehouseman or to a co-operative marketing association for sale, offer for sale or display for sale thereof, shall impart to such warehouseman or co-operative marketing association, the true name of the owner of said leaf tobacco, and, in case the then owner is not the producer, or the landlord on whose land such tobacco was produced, the true name of the person or persons from whom he obtained such tobacco and the true name of the grower thereof, or of the landlord on whose land it was grown; and it shall be the duty of such warehouseman or co-operative marketing association to keep a record of such purchase or delivery showing the quantity of leaf tobacco so delivered, and the name of the owner thereof given as provided herein, and, in addition thereto, the name of the person from whom the person other than the producer or landlord on whose land same was produced obtained same and the name of the landlord on whose land same was produced: Provided, however, that leaf tobacco dealers offering for resale tobacco once sold upon the warehouse floor and with respect to which the provisions of this act have previously been com-

*The preceding section (409 of Vol. II) apparently has no relation to section 410. See No. 16.

plied with, may offer for sale or sell such tobacco in the name or names under which the original sale was made, or in his own name. (Acts 1924, No. 613, § 1.)

205. Information Ticket to be Placed on Tobacco and Tobacco Being Sold or Awaiting Sale and Tickets and Records to be Open to Inspection.—Said warehouseman or co-operative marketing association shall also place upon all leaf tobacco delivered to him or to it for sale, offer for sale or display for sale, a ticket or card on which shall appear the matters and things required to be recorded by said warehouseman or co-operative marketing association under section one of this act, and the cards or tickets mentioned in this section shall be placed upon said tobacco at the time when it is delivered to a warehouse for sale and shall be on said tobacco at the time it is sold, and such cards or tickets and said tobacco awaiting sale shall be open to the inspection of any person at any time during the regular business hours of the warehouse and any person shall have access to the place where such tobacco is being sold, or is awaiting sale and to such tobacco at any time during the regular business hours of the warehouse. Such cards or tickets or duplicates or copies thereof after the sale of such tobacco, shall be collected by the warehouseman or co-operative marketing association and shall be kept by said warehouseman or co-operative marketing association for a period of not less than fifteen days after the sale of said tobacco and for the period of fifteen days after such sale, such tickets and such sale book or books as shall be kept by the warehouseman or co-operative association shall be open to the inspection of any person who knows or has reason to believe that there has been delivered or sold in said warehouse any tobacco in which such person or the principal or employer of such person has any legal or equitable interest: Provided, however, that no one shall have the right to inspect the books hereby authorized to be inspected during the sale hours. (Id. § 2.)

206. Failure to Give True Name a Misdemeanor; Offenses by Warehousemen and Co-operative Associations.—Any person who shall give a fictitious or false name to a warehouseman or co-operative marketing association or shall fail to give to said warehouseman or co-operative marketing association the name of the true owner of said leaf tobacco or said person from whom said tobacco was obtained or said grower and said landlord, as required by section one of this act, upon delivering the same as aforesaid, shall be guilty of a misdemeanor. Any warehouseman or co-operative marketing association who shall fail to comply with any provisions of this act, who shall place upon any pile of tobacco a ticket bearing information concerning the ownership which the warehouseman knows or has reason to believe is false; who shall sell tobacco without placing any name thereon; who shall fail and neglect to elicit from the person delivering tobacco the information required by this act, who shall deny any person the right to access to the place where tobacco is awaiting sale or being sold; who shall deny any person with an interest in tobacco the privilege of inspection of the tickets or sale books as provided in section two of this act, or who shall in any way violate any of the provisions of this act, shall be guilty of a misdemeanor. Any warehouseman or co-operative marketing association who shall buy or sell tobacco in a name other than that of the true owner and who knows or has reason to believe that the name in which said leaf tobacco is sold or any name given pursuant to the provisions of this act is false or fictitious, shall be guilty of a misdemeanor: Provided, whenever one person offers for sale more than one pile of tobacco that the full name must appear on the first pile and the correct initials on the other piles with consecutive numbers on piles following. (Id. § 3.)

207. Penalty.—Any person guilty of a misdemeanor under the provisions of this act shall be punished by a fine not less than fifty ($50.00) [dollars] nor more than one hundred ($100.00) dollars or by imprisonment not less than fifteen nor more than thirty days, and each sale or offering for sale shall constitute a separate and distinct offense under the provisions of this act. (Id. § 4.)

208. "Warehouseman" Defined.—The term "Warehouseman," as used in this act, is hereby defined as any person, firm or corporation engaged in the business of selling leaf tobacco at auction for a commission or for any other consideration, or any employee of such person, firm or corporation. (Id. § 5.)

209. Purpose of Act.—The purpose of this act is to prevent frauds in the handling and sale of leaf tobacco; to protect producers of leaf tobacco from loss of same; from theft or other improper conduct of irresponsible parties; to protect all persons having a lien on any tobacco or any interest in any tobacco and to protect persons purchasing tobacco or having contracts to purchase tobacco. (Id. § 6.)

209a. **License Required for Operation of a Warehouse when Tobacco is Handled Ungraded and Untied—Proviso.**—Every person, firm or corporation operating a warehouse for the sale of leaf tobacco in this State when offering for sale, selling or handling leaf tobacco ungraded and untied shall within fifteen days (15) from sale or offer or sale, pay to the clerk of the court of the county in which said warehouse is operated, an annual license of five thousand ($5,000.00) dollars to be turned into the school funds of such county: Provided, that this act shall not apply to those persons, firms or corporations operating a warehouse where leaf tobacco offered for sale on their floor is graded and tied. (Acts 1922, No. 461, § 1.)

209b. **Penalty.**—Any person violating Section 1 shall be fined not less than one thousand ($1,000.00) dollars, nor more than five thousand ($5,000.00) dollars or imprisonment for not less than six months, nor more than twelve months, in the discretion of the judge. (Id. § 2.)

Trade-Marks, Etc.

210. **Unlawful to Imitate or Counterfeit Labels, etc., of Union of Workmen; Penalty.**—Whenever any person, or any association or union of workingmen, has heretofore adopted or used, or shall hereafter adopt or use, any label, trade-mark, term, design, device, or form of advertisement for the purpose of designation, making known, or distinguishing any goods, wares, merchandise or other product of labor as having been made, manufactured, produced, prepared, packed, or put on sale by such person, or association or union of workingmen, or by a member, or members, of such association or union, it shall be unlawful to counterfeit or imitate such label, trade-mark, term, design, device or form of advertisement, or to use, sell, offer for sale, or in any way utter or circulate any counterfeit or imitation of any such label, trade-mark, term, design, device or form of advertisement. Whoever knowingly counterfeits or imitates any such label, trade-mark, term, design, device or form of advertisement which has been filed and recorded in the office of Secretary of State, as hereinafter provided; or knowingly sells, offers for sale, or in any way utters or circulates any counterfeit or imitation of any such label, trade-mark, term, design, device or form of advertisement; or knowingly keeps or has in his possession, with intent that the same shall be sold or disposed of, any goods, wares, merchandise or other product of labor to which or on which any such counterfeit or imitation is printed, painted, stamped or impressed; or knowingly sells or disposes of any goods, wares, merchandise or other product of labor contained in any box, case, can or package to which or on which any such counterfeit or imitation is attached, affixed, printed, painted, stamped or impressed; or knowingly keeps or has in his possession, with intent that the same shall be sold or disposed of, any goods, wares, merchandise or other product of labor in any box, case, can or package to which or on which any such counterfeit or imitation is attached, affixed, printed, painted, stamped or impressed, shall be punished by a fine of not more than one hundred dollars, or by imprisonment for not more than three months. (Code 1922, Vol. II, § 140.)

211. **Label, Etc., to be Recorded With Secretary of State.**—Every such person, association or union that has heretofore adopted or used, or shall hereafter adopt or use, a label, trade-mark, term, design, device or form of advertisement, as provided in section (140) shall file the same for record in the office of the Secretary of State by leaving two copies, counterparts or facsimiles thereof with said secretary, and by filing therewith a sworn application specifying the name or names of the person, association or union on whose behalf such label, trade-mark, term, design, device or form of advertisement shall be filed, the class of merchandise and a description of the goods to which it has been or is intended to be appropriated, stating the parties so filing or on whose behalf such label, trade-mark, term, design, device or form of advertisement shall be filed, has the right to the use of the same; that no other person, firm, association, union or corporation has the right to such use, either in the identical form or in any such near resemblance thereto as may be calculated to deceive, and that the facsimiles or counterparts filed therewith are true and correct, before there shall be any liability to any suit or proceeding for any violation of section (140) to (144), inclusive. There shall be paid for such filing and recording a fee of one dollar. Said Secretary of State shall cause a description of such label, trade-mark, term, design, device or form of advertisement to be published once a week for three successive weeks, at the expense of the applicant, in some newspaper published in the city of Columbia. After such publication said secretary shall deliver to such person, association or union, so filing or causing to be filed, any such

label, trade-mark, term, design, device or form of advertisement, so many duly attested certificates of the recording of the same as such person, association or union may apply for, for each of which certificates said secretary shall receive a fee of one dollar. Any such certificate of record shall in all suits and prosecutions under this section be sufficient proof of the adoption of such label, trade-mark, term, design, device or form of advertisement. Said Secretary of State shall not record for any person, union or association any label, trade-mark, term, design, device or form of advertisement that would probably be mistaken for any label, trade-mark, term, design, device or form of advertisement therefore filed by or on behalf of any other person, union or association. (Id. § 141.)

212. **Penalty For Fraudulent Registration of Labels, etc.**—Any person who shall, for himself or on behalf of any other person, association or union, procure the filing of any label, trade-mark, term, design, device or form of advertisement in the office of the said Secretary of State, under the provisions of section (141), by making any false or fraudulent representations, or declarations, verbally or in writing, or by any fraudulent means, shall be liable to pay any damages sustained in consequence of any such filing, to be recovered by or on behalf of the party injured thereby in any court having jurisdiction, and shall be punished by a fine not exceeding one hundred dollars, or by imprisonment not exceeding three months. In any suit or prosecution under the provisions of sections (139) to (144), inclusive, the defendant may show that he or it was the owner of such label, trade-mark, term, design, device or form of advertisement prior to its being filed under the provisions of section (141) and that it has been filed wrongly or without right by some other person, association or union. (Id. § 142.)

213. **Unlawful Use May be Enjoined.**—Every such person, association, or union, adopting or using a label, trade-mark, term, design, device or form of advertisement as aforesaid, may proceed by suit to enjoin the manufacture, use, display or sale of any counterfeit or imitations thereof, and all courts of competent jurisdiction may grant injunctions to restrain such manufacture, use, display or sale and may award the complainant in any such suit damages resulting from such manufacture, use, sale or display as may be by said court deemed just and reasonable, and may require the defendants to pay to such persons, association or union all profits derived from such wrongful manufacture, use, display or sale; and such may also order that all such counterfeits or imitations in the possession or under the control of any defendants in such case be delivered to an officer of the court, or to the complainant, to be destroyed. In all cases where such association or union is not incorporated, suits under section (140) to (144), inclusive, may be commenced and prosecuted by an officer or member of such association or union, on behalf of and for the use of such association or union. (Id. § 143.)

214. **Unlawful to Use Seal; Trade-Marks.**—Any person or persons who shall in any way use the name or seal of any such person, association or union, or officer thereof, in and about the sale of goods or otherwise, not being authorized to use same, shall be guilty of a misdemeanor and shall be punished by imprisonment for not more than three months, or by a fine of not more than one hundred dollars. The provisions of sections (140) and (144), inclusive, shall not abridge any rights to any trade-marks existing at the time of the passage of this statute, whether the same shall be recorded or not, nor any remedies or rights of action otherwise or theretofore existing in favor of owners of trade-marks. The judicial courts of the several judicial districts shall have jurisdiction of all complaints for violations of sections (139) to (144), inclusive. (Id. § 144.)

215. **Use of Bottles, Kegs, etc., of Others in Trade.**—It shall be unlawful for any person engaged in the business of manufacturer, bottler or dealer in beer, soda water or mineral waters to use in the course of his business any kegs, boxes, crates or bottles owned by any other person engaged in such business and rendered capable of identification by the name of the owner or other distinguishing marks stamped, stenciled, engraved, cut or in any other manner fixed thereon, without the consent of such owner in writing. No person, firm or corporation shall trade or traffic in any such boxes, crates, boxes, bottles, jugs, kegs or other such vesesls, except for the consumption of said beer, soda water or mineral waters placed therein by the owners. Any violation of this section shall be deemed a misdemeanor, punishable by a fine of not less than ten dollars nor more than one hundred dollars, or by imprisonment in the county jail for not less than ten days nor more than thirty days, or both, at the discretion of the court for each offense. (Id. § 232.)

NOTE: See also No. 17.

Trading Stamps—Gift Enterprise.

216. **No Gift or Premium to be Offered to the Purchaser; Penalty for Violation.**—No person shall sell, exchange or dispose of any article of food, or attempt to do so, upon any representation, advertisement, notice or indictment that any thing other than what is specially stated to be the subject of the sale or exchange is or is to be delivered or received, or in any way connected with or a part of the transaction as a gift, prize, premium or reward to the purchaser. Any person violating any of the provisions of this section shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be punished by a fine not exceeding one hundred dollars, or by imprisonment not exceeding thirty days. (Code 1922, Vol. II, § 133.)

216a. Premiums Forbidden.—It shall be unlawful for any person or persons to offer or give as a premium, with newspapers, books, magazines or merchandise, or in any other manner to induce trade, eyeglasses, spectacles or lenses. (Code 1922, Vol. III, § 2466.)

Weights and Measures.

217. **Standard Weights and Measures of Sundry Commodities.**—The following shall be the legal and uniform standard of weights and measures in this State for the sale and purchase of the following named products of the farm, orchard or garden, and articles of merchandise, to wit:

Apples, green, 2½ bushels per barrel.
Apples, green, 50 pounds per bushel.
Apples, dried, 24 pounds per bushel.
Apples, seed, 40 pounds per bushel.
Barley, 48 pounds per bushel.
Beans, castor, 46 pounds per bushel.
Beans, dried, 60 pounds per bushel.
Beans, green, in pods, 30 pounds per bushel.
Beans, green, in pods, 2½ bushels per barrel.
Beef, net, 200 pounds per barrel.
Beets, 50 pounds per bushel.
Blackberries, 48 pounds per bushel.
Blackberries, dried, 28 pounds per bushel.
Blue grass seed, 14 pounds per bushel.
Bran, 20 pounds per bushel.
Broom corn seed, 42 pounds per bushel.
Buckwheat, 50 pounds per bushel.
Cabbage, 50 pounds per bushel.
Canary seed, 60 pounds per bushel.
Cane seed, 50 pounds per bushel.
Carrots, 50 pounds per bushel.
Cement, 80 pounds per bushel.
Charcoal, 22 pounds per bushel.
Cherries, with stems, 56 pounds per bushel.
Cherries, without stems, 64 pounds per bushel.
Chestnuts, 50 pounds per bushel.
Clover seed, red and white, 60 pounds per bushel.
Coal, stone, 80 pounds per bushel.
Coke, 40 pounds per bushel.
Corn, green, with shucks, 100 pounds per bushel.
Corn, green, with shucks, 2½ bushels per barrel.
Corn, in ear, shucked, 70 pounds per bushel.
Corn, in ears, with shucks, 74 pounds per bushel.
Corn, matured, with shucks, 5 bushels per barrel.
Corn meal, bolted, 48 pounds per bushel.
Corn meal, unbolted, 48 pounds per bushel.
Corn, pop, shelled, 56 pounds per bushel.
Corn, shelled, 56 pounds per bushel.
Cotton seed, 30 pounds per bushel.
Cotton seed, long staple, 30 pounds per bushel.
Cranberries, 32 pounds per bushel.
Cucumbers, 48 pounds per bushel.
Currants, 40 pounds per bushel.
Fish, 200 pounds per barrel.

Flaxseed, 56 pounds per bushel.
Flour, 196 pounds per barrel.
Gooseberries, 48 pounds per bushel.
Grapes, with stems, 48 pounds per bushel.
Grapes, without stems, 60 pounds per bushel.
Hair, plastering, 8 pounds per bushel.
Hemp seed, 44 pounds per bushel.
Hickory nuts, 50 pounds per bushel.
Hominy, 62 pounds per bushel.
Horseradish, 50 pounds per bushel.
Hungarian seed, 48 pounds per bushel.
Kaffir corn, 56 pounds per bushel.
Land plaster, 100 pounds per bushel.
Lime, slacked, 40 pounds per bushel.
Lime, unslacked, 80 pounds per bushel.
Liquids, 42 gallons per barrel.
Melon, cantaloupe, 50 pounds per bushel.
Melon, cantaloupe, 2½ bushels per barrel.
Millet, German, seed, 50 pounds per bushel.
Millet, Missouri, 50 pounds per bushel.
Millet, Tennessee, 50 pounds per bushel.
Oats, seed, 32 pounds per bushel.
Onions, button sets, 32 pounds per bushel.
Onions, matured, 56 pounds per bushel.
Onions, top buttons, 28 pounds per bushel.
Orchard grass seed, 14 pounds per bushel.
Osage orange seed, 33 pounds per bushel.
Parsnips, 50 pounds per bushel.
Peaches, matured, 50 pounds per bushel.
Peaches, dried, 25 pounds per bushel.
Peanuts, 23 pounds per bushel.
Pears, dried, 26 pounds per bushel.
Pears, matured, 36 pounds per bushel.
Peas, dry, 60 pounds per bushel.
Peas, green, 30 pounds per bushel.
Peas, green, in hull, 2½ bushels per barrel.
Pie plant, 50 pounds per bushel.
Plums, 64 pounds per bushel.
Pork, net, 200 pounds per barrel.
Potatoes, Irish, 2½ bushels per barrel.
Potatoes, Irish, 60 pounds per bushel.
Potatoes, sweet, 50 pounds per bushel.
Potatoes, sweet, 2½ bushels per barrel.
Quinces, matured, 48 pounds per bushel.
Rape seed, 50 pounds per bushel.
Raspberries, 48 pounds per bushel.
Redtop, 14 pounds per bushel.
Rice, rough, 44 pounds per bushel.
Rutabagas, 60 pounds per bushel.
Rye seed, 56 pounds per bushel
Rye, grass, Italian, seed, 20 pounds per bushel.
Rye meal, 50 pounds per bushel.
Sage, 4 pounds per bushel.
Salads, turnips, kale, 12 pounds per bushel.
Salads, mustard, spinach, 12 pounds per bushel.
Salt, 50 pounds per bushel.
Sorghum molasses, 12 pounds per gallon.
Sorghum seed, 50 pounds per bushel.
Strawberries, 48 pounds per bushel.
Timothy, seed, 45 pounds per bushel.
Tomatoes, 56 pounds per bushel.
Turnips, 2½ bushels per barrel.
Turnips, 50 pounds per bushel.
Velvet, grass seed, 7 pounds per bushel.
Walnuts, 50 pounds per bushel.
Wheat, 60 pounds per bushel.
(Acts 1923, No. 39, § 1.)

218. **U. S. Standards Adopted For Other Produce; Packages.**—Any article of produce from garden or farm not mentioned in section 1, shall be the same standard per bushel, or per gallon, as adopted and approved by the United States government: Provided, further, that all packages of the articles enumerated in section 1 of this act shall correspond in weight and measures to the standards fixed in section 1. (Id. § 2.)

219. **Sales Not in Accordance With Standards Unlawful.**—It shall be unlawful to buy or sell any of the products of any farm, orchard or garden, or articles of merchandise mentioned in section 1, except in strict accordance with the standard weights and measures provided therein. (Id. § 3.)

220. **Docking For Weight and Container Without Allowance of Value Thereof Unlawful.**—It shall be unlawful to dock any of the articles mentioned in section 1, delivered in good condition and in marketable form on account of keg or barrel or other receptacle, without allowing the value of same. (Id. § 4.)

221. **Packing of Corn Meal, etc.; Proviso.**—It shall be unlawful for any person or persons to bag for sale, sell or offer for sale in this State, any corn meal or grits, except in bags or packages containing, by standard weight, two bushels, or one bushel, or one-half bushel, or one-fourth bushel, or one-eighth bushel, respectively; each bag or package of corn meal shall have plainly printed or marked thereon whether the meal is bolted or unbolted, the amount it contains in bushels or fractions of a bushel, and the weight: Provided, the provisions in this section shall not apply to the retailing of meal or grits except to consumers from bulk stock when priced and delivered by actual weight or measure. (Id. § 5.)

222. **Inspection of Scales, Measures, etc.**—It shall be the duty of the Commissioner of Agriculture, Commerce and Industries or his duly authorized representatives to inspect as often as practical all weights, scales, beams, measures of any kind, instruments or mechanical devices for weighing or measuring, and tools, appliances and accessories connected with any or all such instruments or measures used in trade in this State. The commissioner or his duly authorized representatives for the purposes above mentioned, and in the general performance of his duties, without formal warrant, may enter or go into or upon, any stand, place, building or premises or stop any vendor, peddler, junk dealer, driver or coal wagon or ice wagon or the driver of any wagon containing commodities for sale or delivery and if necessary, require him to proceed to some place which the commissioner or his agents may specify for the purpose of making proper tests. (Id. § 6.)

223. **Procedure as to Incorrect Weights, Measures, Etc.**—The Commissioner of Agriculture, Commerce and Industries or his duly authorized representatives shall condemn and seize and may destroy incorrect weights and measures and weighing and measuring devices which in his best judgment are not susceptible of repair, but any weight, measure or weighing or measuring device which shall be found to be incorrect, but which in his best judgment are susceptible of repair, he shall serve a written order upon the person or persons, firms or corporations in whose possession the inaccurate device is found forbidding the use of such device, and shall attach thereto a seal, tag or statement stating the device is condemned. Also, he shall lock the weighing or measuring device in such a manner that it cannot be used. The Commissioner of Agriculture, Commerce and Industries, however, may in his discretion release the weighing or measuring device so condemned and annul the restraining order when the requirements of the provisions of this act have been complied with. The commissioner is hereby empowered and authorized to prescribe and issue such regulations as may be necessary for the proper enforcement of this act, and any person or persons who shall violate any regulation issued by the commissioner shall be guilty of a violation of this act. The owners or users of any weights or measures or weighing or measuring devices which have been marked condemned, and upon whom an order has been served forbidding the use of such weighing device as in this section provided, may neither use or dispose of the same in any way, or remove or allow to be removed any seal, tag or statement attached thereto by a representative of the Department of Agriculture, Commerce and Industries without the approval and consent of the commissioner. (Id. § 7.)

224. **Possession of False Weights, etc., as Evidence; Seizure.**—Possession of any weight or measure or weighing or measuring device of any kind which appears to have been tampered with or altered in any manner whatsoever, so as to falsify any weight or measure or weighing or measuring device of any kind shall be prima facie evidence of the fact that it was intended to be used in violation of this act: Provided, further, that any weight or measure or weighing or

measuring device found upon inspection to have been tampered with or altered in any manner so as to falsify a weight or measure shall be seized and may be destroyed by the commissioner or his agent acting under his instructions. (Id. § 8.)

225. Refusal to Allow Inspection a Violation of Act.—Any person, who by himself, or his employee, or as a proprietor or manager, shall refuse to exhibit any weight, measure or weighing or measuring device of any kind, or appliance or accessories connected with any or all such devices or measures which is in his possession or under his control, to the Commissioner of Agriculture, Commerce and Industries or his duly authorized representatives, for the purpose of allowing the same to be inspected and examined as in this act provided, or who shall hinder or obstruct the inspector in the general performance of official duties shall be deemed a violation of this act. (Id. § 9.)

226. Packages to Show Net Contents.—Whenever any of the commodities within the provisions of section 1 of this act, or any article of merchandise of any kind whatsoever, not specified in this act are sold, or exposed for sale in packages or containers of any kind, the net quantity of the contents of the package or container shall be plainly marked, branded, or otherwise indicated on the outside or top thereof or on a label or tag attached thereto. (Id. § 10.)

227. Terms in Which Contents Shall be Designated; When Act Inapplicable.—The designation of the quantity of the commodity required in section 10 of this act, shall be in terms of weight, measure or numerical count, subject however to the following provisions: (a) The quantity of the contents so marked shall be the net amount of food or stuff or other commodity in the package or container. (b) If the designation is by weight it shall be in terms of avoirdupois pounds and ounces: if the designation is in liquid measure it shall be in terms of the United States gallon of two hundred and thirty-one cubic inches and its customary subdivisions, i. e., in gallons, quarts, pints or fluid ounces.

(c) The quantity of solids shall be designated in terms of weight and of fluid in terms of measure, except in case of articles in respect to which there exists a definite trade custom; in such case the designation shall be in terms of weight, measure or numerical count, in accordance with such custom.

(d) The quantity of the contents shall be designated in terms of weight or measure, unless the container marked by numerical count gives accurate information as to the quantity of the food or other commodity in the package. When the designation is by numerical count it shall be in English words or Arabic numerals.

(e) The quantity of the contents may be stated in terms of minimum count, but in such cases the designation must approximate the actual quantity and there shall be no tolerance below the minimum.

(f) The quantity of viscous or semi-solid foods, or of a mixture of solids and liquids, may be stated in terms of weight and measure. When products are packed in brine or other preserving fluids the weight or measure of such brine or fluids shall not be included in the weight or measure of the edible or commodity indicated on the container.

The provisions of this act shall not apply—

(a) To any sale of any commodity within the provisions of this section when such sale is made from bulk and the quantity is weighed, measured or counted for the immediate purpose of such sale.

(b) To a sale of any container of an ornamental or symbolic character with which a quantity of some community is sold as merely incidental.

(c) To a sale of a commodity in any container of a net weight of two ounces or less, or of a commodity of any container of a measure two fluid ounces or less, or of a commodity of any container of a numerical count of six or less.

(d) To the sale of medicine when prescribed by licensed physician, veterinarian or dentist; or to medicinal or pharmaceutical preparations or mixtures of two or more medicinal substances. (Id. § 11.)

228. Sales in Reliance Upon Labels on Packages; Proviso.—It shall not be held to be a violation of the provisions of this act when a commodity in a container is sold, or offered or exposed for sale, and there is a discrepancy between the actual quantity of the commodity in said container and the net quantity of the contents thereof indicated on the container as herein prescribed: Provided, that the seller purchased said commodity in said container, in good faith, relying upon the said indication of the net contents thereof, and sold said commodity in said container without altering the contents thereof or the indication of the contents thereof; and provided, further, that the exemption of this section shall not apply to any sale unless the container had the name of a packer, manufacturer, wholesaler or jobber thereon at the time the seller purchased it. (Id. § 12.)

229. **Meaning of Term "Person."**—The term of person used in this act shall include every person, firm, company, copartnership, society, association and corporation. (Id. § 13.)

230. **Meaning of Term "Container"; Proviso.**—The term container used in this act is hereby defined to be any receptacle or carton into which a commodity is packed, or any wrappings with which any commodity is wrapped or put up for sale: Provided, that where individual packages or containers, properly labeled to comply with this act, are packed in an outside case or carton for convenience in shipping or handling, the term "container" shall not be construed to include or apply to such outside case or carton. No containers, boxes or baskets wherein food products or other commodities are packed shall have a false bottom, or be so constructed as to facilitate the perpetration or deception or fraud. (Id. § 14.)

231. **Exposure of Sale of Mis-Marked Packages as Evidence.**—Any person, who by himself or by his servant or agent, or as the servant or agent of another, shall offer or expose for sale, sell for use, any commodity, package, article or thing, less than the quantity he represents, then such commodity, package, article or thing shall be prima facie evidence of the fact that it was intended to be sold, or proof of such shall be deemed a violation of this act. (Id. § 15.)

232. **Penalty For Violation.**—Every person, who by himself or his agent, servant or employee, violates or causes or permits to be violated any of the provisions of this act shall be guilty of a misdemeanor and upon conviction shall be fined not less than $25.00, nor more than $100.00, or shall be imprisoned in the county jail for a term not to exceed thirty days or both such fine and imprisonment. Each and every instance shall constitute a separate offense. (Id. § 16.)

233. **Official Weights and Measures; Proviso.**—Such weights and measures as have been or may hereafter be furnished this State, or such weights and measures as have been or may hereafter be approved by the government of the United States shall be kept by the Commissioner of Agriculture, Commerce and Industries; and the said weights and measures shall be deemed and taken to be the standard weights and measures, by which all the weights and measures in this State shall be regulated: Provided, further, that all tolerance now in effect or which may hereafter be established pursuant to the provisions of this act, shall be the same as now in effect or hereafter may be adopted or approved by the United States government. (Id. § 17.)

233a. **To be Regulated by United States Standard.**—Weights and measures shall be regulated by the standard fixed by the Congress of the United States. (Code 1922, Vol. III, § 3559.)

233b. **To be Kept by State Treasurer.**—Such weights and measures as have been, or may hereafter be, furnished this State by the Government of the United States, shall be kept by the State Treasurer; and the said weights and measures shall be deemed and taken to be the standard weights and measures, by which all the weights and measures in this State shall be regulated. (Id. § 3560.)

233c. **Kept by Clerks of Court—Weights to be Purchased by Governor.**—The clerk of the Court of Common Pleas and General Sessions of each county in this State shall furnish, and is required to keep in his office, the weights and measures established by law, which shall be the standards of all other weights and measures in said county, and to which any person shall have free access to test the same; and the Governor of the State is authorized and required to purchase such standard weights and measures out of the fines and forfeitures incurred in their respective counties. (Id. § 3561.)

233d. **Weight of Packages.**—. . . In the inspection of scales the inspectors shall take as the standard such weights and measures as have been or may hereafter be furnished this State by the Government of the United States, which shall be kept by the State Treasurer, and shall act otherwise in accordance with the provisions of sections 2 [3560] and 3 [3561] of this chapter. (Id. § 3568.)

234. **Public Weighers for Farm Products Permitted in Certain Cities—How Appointed.**—Upon the petition of at least fifty freeholders of any township within the State in which is located a town or city of five thousand (5,000) inhabitants or more, shall be appointed a public weigher for live stock of all descriptions and all other farm products offered for sale on the market of such town or city: Provided, that the said weighers shall be appointed by the Governor, upon the recommendation of the town council of said town or city. (Id. § 3368.)

235. **Bond and Oath Required of Weigher.**—Such Weighers shall each enter into bond in the sum of three hundred dollars with sureties to be approved by the clerk of the court of the county and shall file an oath with the clerk of the court of the county to truly and faithfully perform the duties as such weigher before entering upon the duties of his said office. (Id. § 3369.)

236. **Fees for services—By Whom Paid—Not to Weigh Lint Cotton in Bales—Other Weighers Allowed.**—Said Weighers shall be entitled to charge and receive the following fees for his services: For each hog weighed by him, five cents; for each cow weighed by him, ten cents; for each sheep, goat or other like animal weighed by him, five cents; for each load of hay, ten cents, and other farm products at the same rate. One-half of all such fees to be paid by the purchaser, the other half to be paid by the seller. The provisions of the two foregoing sections are not intended to apply to lint cotton in bales: Provided, that nothing herein shall prevent any person or persons from accepting the weights of other weighers. (Id. § 3370.)

237. **Certificates to be Issued.**—Such weigher shall issue to the persons for whom he makes weights a certificate of the true weight of each article so weighed by him, affixing thereto the date when made and his official signature. (Id. § 3371.)

NOTE: See also No. 1; the corn meal law, No. 7; the feeding stuffs law, No. 24; the flour and meal law, No. 40 et seq.; the fruit and vegetable law, No. 56 et seq.; the grain law, No. 65b; the meat law, No. 67 et seq.; the molasses, etc., law, No. 69a et seq.; the oyster law, No. 70 et seq.; the tobacco law, No. 196 et seq.

PART V.

Cases.

1. Special Food Laws.

Beverages—Extract of Ginger: Town of Belton v. Campbell, 103 S. C. 424, 88 S. E. 30 (1916).

Beverages—Jamaica Ginger: State v. Johnson, 113 S. C. 350, 101 S. E. 851 (1920); State v. Everall, 129 S. C. 159, 123 S. E. 824 (1924).

Beverages—Lemon Extract: State v. Johnson, 113 S. C. 350, 101 S. E. 851 (1920).

Bread—Weight: City Council v. Waxton, Mss. Dec., 1820.

Dairies—Board of Health—Power to Require That Dairies be Removed Beyond City Limits: *Alston v. Board of Health of City of Charleston, 93 S. C. 553, 77 S. E. 727 (1913).

Fish—Catching and Sale Prohibited During Specified Months: State v. Terry, 99 S. C. 507, 83 S. E. 970 (1915).

Flour—Inspector: Caulfield v. State ex rel. Attorney-General, 1 S. C. 461 (1869).

Meat—Colored Butcher—Tax: State ex rel. Wilkinson v. City Council of Charleston, 29 S. C. L. 623 (1843).

Meat—Inspection—Fees: *Grant v. City Council of Charleston, 82 S. C. 268, 64 S. E. 388 (1909).

Meat—Inspection—Slaughterhouse: *Ex parte Boyle, *City of Sumter v. Boyle, 128 S. C. 535, 123 S. E. 9 (1924).

Meat—License: City Council of Camden v. Roberts, 55 S. C. 374, 33 S. E. 456 (1899).

Meat—Markets: City Council of Charleston v. Goldsmith, 29 S. C. L. 428 (1844); *Town Council of Winnsboro v. Smart, 45 S. C. L. 551 (1858). See also: *Meat—License.*

2. Special Drug Laws.

Itinerant Vendors: State v. Ivey, 73 S. C. 282, 53 S. E. 428 (1906).

Libel of Druggist: McGregor v. State Co. & Irogen Chemical Co., 114 S. C. 48, 103 S. E. 84 (1920).

Narcotics: *State v. Freeland, 106 S. C. 220, 91 S. E. 3 (1916).

Pharmacy: Westmoreland v. Bragg, 20 S. C. L. 414 (1834); State ex rel. Smith v. Matthews, 77 S. C. 357, 57 S. E. 1099 (1907); State ex rel. Mauldin v. Matthews, 81 S. C. 414, 62 S. E. 695, 22 L. R. A. (N. S.) 735, 128 Am. St. Rep. 919, 16 Ann. Cas. 182 (1908). See also: *Information v. Jager, 29 S. C. 438, 7 S. E. 605 (1888).

Soda Fountain Clerk—Power to Act for Druggist: Bushardt v. United Investment Co., 121 S. C. 324, 113 S. E. 637, 35 A. L. R. 637 (1922).

3. Civil Action to Recover Damages for Injury Alleged to Have Been Caused by Consumption or Use of Product.

Bottle—Explosion: Herbert v. Parham, 86 S. C. 352, 68 S. E. 564, 35 L. R. A. (N. S.) 239 (1910); Same, 88 S. C. 410, 70 S. E. 1038 (1911).

Drugs: See Genay v. Norris, 1 S. C. L. 6 (1784).

Food: See Simmons et al. v. Roanoke City Mills, 116 S. C. 432, 107 S. E. 903 (1921).

Vaccine: *Sandel v. State, 115 S. C. 168, 104 S. E. 567, 13 A. L. R. 1268 (1920); *Same, 122 S. C. 268, 115 S. E. 302 (1922), writ of error dismissed in Sandel v. South Carolina, 263 U. S. 672, 44 S. Ct. 5, 68 L. Ed. 500 (1923).

4. Miscellaneous.

Cosmetics—License: Wingfield v. South Carolina Tax Commission, 134 S. C. 251, 131 S. E. 421 (1926).

Gift Enterprise: Rountree v. Ingle, 94 S. C. 231, 77 S. E. 931, 45 L. R. A. (N. S.) 776, Ann. Cas. 1915 A, 1002 (1913); Griste v. Burch, 112 S. C. 369, 99 S. E. 703 (1919).

Trade-Marks: Planters' Fertilizer & Phosphate Co. v. Planters' Fertilizer Co., 135 S. C. 282, 133 S. E. 706 (1926).

Weights and Measures: City Council v. Chur, Mss. Dec., 1819; City Council v. Waxton, Mss. Dec., 1820. See also: *City Council of Charleston v. Rogers, 13 S. C. L. 495, 13 Am. Dec. 751 (1823); *Barfield v. Stevens Mercantile Co., 85 S. C. 186, 67 S. E. 158 (1910); *State v. Mullins, 87 S. C. 510, 70 S. E. 9 (1910).

SOUTH DAKOTA.*

PART I.

General Food and Drug Law.

1. **Same; Standards, Rules and Regulations.**—Such commissioner† shall have power to establish, amend and repeal such standards of purity and such rules and regulations, not inconsistent with the laws of this State, as may be necessary for the proper enforcement of the provisions of this chapter, and any other law with the enforcement of which he is charged; which standards, rules and regulations shall become effective upon the approval of the Attorney-General and the publication thereof once each week for three consecutive weeks in a daily newspaper of general circulation printed in this State. (R. C. 1919, Title 6, Part 14, c. 11, art. 1, § 7793, as re-enacted L. 1925, c. 115.)

2. **Same; Bulletins.**—Bulletins containing the standards, rules and regulations mentioned in the preceding section, together with such information relating to the products regulated by the provisions of this chapter as shall be calculated to promote the public health and safety, may be distributed from time to time, by the commissioner to the newspapers of the State, to all persons dealing in the products to which they relate and to any citizen of this State, upon application therefor, the cost of which shall be paid out of the funds appropriated for the maintenance of the Food and Drug Department. (Id. § 7794.)

3. **Same; Access to Buildings.**—Such commissioner and his assistants, for the purpose of obtaining information regarding suspected violations of the law and in order to enforce the provisions of this chapter, shall have access to all buildings and premises where any product governed by this chapter is or may be manufactured, stored, held, prepared, served, sold or delivered, and to all cars, carriages, wagons, trucks or other vehicles used in the transportation or delivery of any such product. They also shall have authority to inspect any barrel, case, package, bottle, box, can, carton or other container and to open the same and take samples therefrom for analyses, upon payment of the market price thereof, and have the same analyzed to ascertain whether or not the contents of such container complies with the requirements of this chapter. All proprietors, clerks, bookkeepers, or other persons in any way dealing in any such product and all express agents and all employees of railroads or other common carriers shall render to such commissioner and his authorized assistants all aid within their power in discovering any such products which may be suspected of being in violation of this chapter, and all records appertaining thereto. Any refusal or neglect on the part of such proprietors, clerks, bookkeepers, or other persons in any way dealing in any such product or any express agent or employee of a railroad or other common carrier, to render such friendly aid, shall be deemed in violation of this chapter, and shall be punishable as herein provided. (Id. § 7795.)

4. **Same; May Call Upon Officers for Assistance.**—Such commissioner by written or oral notice may require any police officers to inspect any place or product subject to the supervision of such commissioner, under the provisions of this chapter, to determine whether its provisions are being complied with and to report the result of such inspection in accordance with the rules and regulations of the Food and Drug Department. All actual and necessary expenses, if any, incurred in connection with such inspection shall be paid by the civil township, county, city or town in which it is made. (Id. § 7798.)

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*CITATIONS: "R. C. 1919" refers to the South Dakota Revised Code, 1919, enacted by Chapter 300, Laws of 1919. "L." refers to the session laws of the year cited.

†Food and Drug Commissioner. Chapter 115, Laws of 1925, abolishes the office of Food and Drug Commissioner and transfers the powers and duties thereof to the Department of Agriculture. See No. 25 et seq. Chapter 274, Laws of 1925, provides that the State Department of Agriculture shall be known and designated as the State Fair Board. See No. 32. The laws herein are to be corrected accordingly.

5. **Same; Lists of Adulterated Foods.**—It shall be the duty of such commissioner to furnish to the auditor of each county a certified list of the adulterated and misbranded food products, beverages, candies, drugs, linseed oils and all other products and preparations under the jurisdiction of such commissioner, as found by the analyses and investigations of the commissioner and his assistants. Such list shall show the brand and name of the product, the manufacturer or jobber, and the reason for classing the same as illegal, together with any necessary comments thereon. The county auditor shall cause such list to be printed in the official papers of the county. Such publication shall be made not more than four times each year and shall be paid for by the county at the rate allowed by law for publishing the proceedings of the board of county commissioners: Provided, that whenever the Food and Drug Commissioner or his assistants shall discover any food products, beverages, candies, drugs, linseed oils, or other products or preparations under the jurisdiction of such commissioner to be adulterated or misbranded, the Food and Drug Commissioner shall immediately notify the party responsible for placing the same upon the market and such party shall have ten days in which to show cause why the results of such investigation or analysis should not be published. (Id. § 7799.)

6. **Same; Penalty for Hindering or Obstructing.**—Any person who shall in any manner hinder, obstruct or interfere with such commissioner or any one of his deputies, inspectors or employees, in the performance of any duty under the provisions of this chapter, shall be deemed guilty of a misdemeanor and upon conviction thereof shall be punished for the first offense by a fine not exceeding fifty dollars and for each subsequent offense by a fine not exceeding one hundred dollars. (Id. § 7800.)

7. **Fees Paid Into State Treasury.**—All fees received by such commissioner pursuant to the provisions of this chapter shall be paid into the State treasury as provided in section 6967, to the credit of the general fund, and all salaries and expenses necessary to its enforcement shall be paid out of the funds appropriated for the maintenance of the State Food and Drug Department. (Id. § 7801.)

8. **Violation; Penalty.**—Any person who shall violate any provisions of this chapter, for which a penalty is not expressly provided, shall be deemed guilty of a misdemeanor and upon conviction thereof shall be punished accordingly. (Id. § 7802.)

9. **Void Contracts.**—All contracts for the sale of any product in violation of the provisions of this chapter shall be void; no action shall be maintained in any court for the purchase price or value of any product the sale of which is thereby prohibited; nor shall any person be liable for the price or value of any product furnished in violation of any of its provisions. (Id. § 7803.)

10. **Construction of Chapter.**—For the purposes of this chapter the act or omission of any officer, agent or other person acting for or employed by any individual, corporation, association or partnership within the scope of his office, agency or employment shall be deemed to be the act or omission of such individual, corporation, association or partnership as well as his own. (Id. § 7804.)

11. **Adulterated or Misbranded Foods.**—It shall be unlawful for any person to manufacture, within this State, any article of food which is adulterated or misbranded within the meaning of this article, and any person who shall violate any of the provisions of this section shall be deemed guilty of a misdemeanor and for each offense shall, upon conviction thereof, be punished by a fine not exceeding fifty dollars, or by imprisonment in the county jail not exceeding thirty days or by both such fine and imprisonment; and for each subsequent offense and conviction thereof shall be punished by a fine of not less than one hundred dollars or by imprisonment in the county jail not exceeding thirty days or by both such fine and imprisoment. (R. C. 1919, Title 6, Part 14, c. 11, art. 2, § 7805, as re-enacted L. 1925, c. 115.)

12. **Unlawful to Transport.**—The transportation or shipment from any point within this State to any other point within this State of any article of food which is adulterated or misbranded, within the meaning of this article, is prohibited, and any person who shall ship or transport or deliver for shipment or transportation from any point within this State to any other point within this State, or who shall receive at any point within this State from any other point within this State and having so received shall deliver in original, unbroken packages, or offer to deliver to any person any such article so adulterated or misbranded, or any person selling or keeping for sale, or offering for sale in this State, any such adulterated or misbranded foods, shall be deemed guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine not exceeding fifty dollars for the first offense and for each subsequent offense not exceeding one hundred

dollars or by imprisonment in the county jail not exceeding thirty days, or by both; provided, that no article shall be deemed to be misbranded or adulterated within the meaning of this article when intended for export to any foreign country and prepared and packed according to specifications or directions of the foreign purchaser, if no substance is used in the preparation or packing thereof in conflict with the laws of the foreign country to which such article is intended to be shipped; but if such article shall be in fact sold, or kept for sale, or offered for sale, for use or consumption in this State then it shall be subject to all provisions of this article. (Id. § 7806.)

13. Food Defined.—The word "food" as used in this article shall include all substances used as food, drink, confectionery or condiments by man or other animals, whether simple, mixed or compound, and all substances or ingredients to be added to foods for any purpose. (Id. § 7807.)

14. "Adulterated" Defined.—For the purposes of this article a substance shall be deemed to be "adulterated":

In the case of confectionery, if it contains terra alba, barytes, talc, paraffin, all substances used as food, drink, confectionery or condiment by man or other ingredient deleterious or detrimental to health, or any vinous, malt or spirituous liquor or compound or narcotic drug.

In the case of food:

1. If any substance has been mixed and packed with it so as to reduce, lower or injuriously affect its quality or strength.

2. If any substance has been substituted wholly or in part for it.

3. If any valuable constituent thereof has been wholly or in part abstracted.

4. If it be mixed, colored, powdered, coated or stained in a manner whereby damage or inferiority is concealed.

5. If it contain any poisonous or otherwise deleterious ingredient, added or natural, which may render it injurious to health: Provided, that when in the preparation of food products for shipment they are preserved by an external application applied in such manner that the preservative is necessarily removed mechanically, or by maceration in water or otherwise before eating, and directions for the removal of such preservative shall be plainly and conspicuously printed on the label of the package, the provisions of this article shall be construed as applying only when such products are ready for consumption.

6. If it consists in whole or in part of a filthy, decomposed or putrid animal or vegetable substance, or of any portion of any animal unfit for food, whether manufactured or not; or if it is the product of a portion of a diseased animal or of an animal which has been fed upon the uncooked offal from a slaughterhouse or other substance unfit for animal food, or of one that has died otherwise than by slaughter.

7. If in the manufacture, sale, distribution, transportation, or in the offering or exposing for sale, distribution or transportation, it is not at all times securely protected from all filth, flies, dust, contamination or other unclean, unhealthful or unsanitary conditions. (Id. § 7808.)

15. "Misbranded" Defined.—The term "misbranded" as used in this article, shall apply to all substances used as food or which enter into the composition of food, the package or label of which shall bear any statement, design or device regarding such substance or the ingredients contained therein which shall be false, deceptive, or misleading in any particular, and to any food product which is falsely branded as to the State, Territory or country in which it is manufactured or produced; and for the purpose of this article a food product shall also be deemed to be misbranded.

1. If it be an imitation of or offered for sale under the distinctive name of any other food product.

2. If it be so labeled or branded as to deceive or mislead the purchaser, or purport to be a foreign product when not so, or if the contents of the package as originally put up shall have been removed in whole or in part and other contents shall have been placed in such package, or if it fail to bear a statement on the label of the quantity or proportion of any morphine, opium, cocaine, heroin, alpha or beta eucaine, chloroform, cannabis indica, chloral hydrate, or acetanilide, or any derivative or preparation of any such substance contained therein.

3. If in package form and the quantity of the contents be not plainly and conspicuously marked on the outside of the package in terms of weight, measure or numerical count, together with the name and address of the real manufacturer or jobber or other person responsible for placing the product upon the market; provided, however, that reasonable variations as to the quantity of the contents

of package shall be permitted, and tolerance and exemptions as to small packages shall be established by rules and regulations made in accordance with the provisions of section 7793.

4. If the package containing it, or its label, shall bear any statement, design or device regarding the ingredients, or the substance contained therein, which statement, design or device shall be false or misleading in any particular; provided, that an article of food which does not contain any added poisonous or deleterious ingredients shall not be deemed to be adulterated or misbranded in the following cases: First, in the case of mixtures or compounds which may be now or from time to time hereafter known as articles of food, under their own distinctive names, and not an imitation of or offered for sale under the distinctive name of another article, if the name be accompanied on the same label or brand with the statement of the place where said article has been manufactured or produced; second, in the case of articles labeled, branded or tagged so as to plainly indicate that they are compounds, imitations or blends, and the word "compound," "imitation," or "blend," as the case may be together with a statement of the character and constituents thereof, is plainly stated on the package in which it is offered for sale; provided, that the term "blend," as used herein, shall be construed to mean a mixture of like substances, not excluding harmless coloring or flavoring ingredients used for the purpose of coloring and flavoring only; and provided, further, that nothing in this act shall be construed as requiring or compelling proprietors or manufacturers of proprietary foods, which contain no unwholesome ingredients to disclose their trade formulas, except in so far as the provisions of this act (or the rules and regulations of the State Food and Drug Commissioner may require to secure freedom from adulteration or misbranding.) (R. C. 1919, Title 6, Part 14, c. 11, art. 2, § 7809, as amended L. 1923, c. 193, and re-enacted L. 1925, c. 115.)

16. Dealer Protected by Guaranty.—Whenever any dealer shall have received a guaranty, signed by the wholesaler, jobber, manufacturer or other person, residing within the United States, from whom he purchased the food product, to the effect that the same is not adulterated or misbranded as defined herein, he shall not be liable to prosecution under this article, unless he shall have knowledge or notice of the falsity of such guaranty, but the person making such guaranty shall be subject to the fines and penalties which otherwise would attach to such dealer. Such guaranty must contain the name and post office address of the wholesaler, jobber, manufacturer or person from whom the food product was purchased: Provided, that any food product which is evidently unfit for consumption must not be sold or offered for sale though the dealer may possess the guaranty provided for in this section. (R. C. 1919, Title 6, Part 14, c. 11, art. 2, § 7810, as re-enacted L. 1925, c. 115.)

17. Seizure of Products.—Any food product that is adulterated or misbranded within the meaning of this article, and is being transported from one point within this State to another point within this State or, having been so transported, remains unloaded, unsold or in the original unbroken packages, and any such adulterated or misbranded product which is sold, kept for sale or offered for sale in this State, shall be liable to be proceeded against by an action in the Circuit Court of the county where the same is found and seized for condemnation; and if such product be condemned as adulterated or misbranded or of a poisonous or deleterious character, within the meaning of this article, the same shall be disposed of by destruction or sale as the Circuit Court may direct, and the proceeds thereof, if sold, less the legal costs and charges shall be paid into the State treasury for the use of the public schools: Provided, that upon the payment of the costs and charges of such action for condemnation and the execution and delivery of a good and sufficient bond to the effect that such product shall not be sold or otherwise disposed of contrary to the laws of this State or the United States, or any State, Territory, district or insular possession of the United States, the court may direct that such product be delivered to the owner thereof. In any such action for condemnation either party may demand a trial by jury of any issue of fact joined in any such case, and all such actions shall be brought in the name of the State of South Dakota. (Id. § 7811.)

17a. Food Preservatives.—It shall be unlawful for any person to manufacture, sell, offer or expose for sale any food product to which has been added any borax, paraffin, boric acid, formaldehyde, salicylic acid, abrastol, beta naphtol, saccharine, dulcin, glucin, flourine compound, formic acid, or other injurious or unhealthful substance or any derivative thereof. It shall be unlawful to sell or offer for sale any meat or meat product to which has been added any sulphurous acid or any salt of the same or any substance capable of producing such acid or salt thereof. All food products which contain any preservative, other than those substances specifically

mentioned in this section, which may be permitted by the rules and regulations provided for in section 7793 shall be plainly and conspicuously labeled to show the presence and amount of such preservative. (Id. § 7818.)

18. Penalty.—It shall be unlawful for any person to manufacture, sell or offer for sale any drug which is adulterated or misbranded within the meaning of this article, and any person who shall violate any of its provisions shall be deemed guilty of a misdemeanor and upon conviction thereof shall, for the first offense, be punished by a fine not exceeding twenty-five dollars and for each subsequent offense by a fine not exceeding one hundred dollars or by imprisonment in the county jail not exceeding thirty days, or by both such fine and imprisonment: Provided, that no drug shall be deemed misbranded or adulterated, within the meaning of this article, when intended for export to any foreign country and prepared or packed according to the specifications or directions of the foreign purchaser, if no substance is used in the preparation or packing thereof in conflict with the laws of the foreign country to which such drug is intended to be shipped; but if such drug shall be in fact sold or offered for sale for domestic use or consumption, it shall be subject to all the provisions of this article. (R. C. 1919, Title 6, Part 14, c. 11, art. 5, § 7850, as re-enacted L. 1925, c. 115.)

19. Drug Defined.—The term "drug" as used in this article shall include all medicines and preparations recognized in the United States Pharmacopœia or National Formulary for internal or external use, and any substance or mixtures of substances intended to be used for the cure, mitigation or prevention of disease of either man or domestic animal. (Id. § 7851.)

20. "Adulterated" Defined.—For the purposes of this article a drug shall be deemed adulterated:

1. If, when sold under or by a name recognized in the United States Pharmacopœia or National Formulary, it differs from the standard of strength, quality or purity, as determined by the test laid down in such Pharmacopœia or Formulary, at the time of investigation; provided, that no drug defined in such Pharmacopœia or Formulary shall be deemed to be adulterated if the standard of strength, quality or purity be plainly stated upon the bottle, box, or other container thereof, although such standard may differ from that determined by the test laid down by such Pharmacopœia or Formulary.

2. If its strength or purity fall below the professed standard or quality under which it is sold.

3. If the storeroom, prescription case, shelves, containers or utensils used for dispensing drugs are not at all times kept in a clean and sanitary condition. (R. C. 1919, Title 6, Part 14, c. 11, art. 5, § 7852, as amended L. 1921, c. 238 and re-enacted L. 1925, c. 115.)

21. "Misbranded" Defined.—The term "misbranded," as used in this article shall apply to all drugs the package or label of which shall bear any statement, design or device regarding such drug, its ingredients or the substances contained therein which shall be false or misleading in any particular, and to any drug product which is falsely branded as to the State, Territory or country in which it is manufactured or produced; and for the purposes of this article a drug shall also be deemed to be misbranded:

1. If it be an imitation of or offered for sale under the name of another article.

2. If the contents of the package as originally packed shall have been removed in whole or in part and other contents shall have ben placed in such package, or if the package fail to bear a statement, on the label, of the quantity or proportion of any alcohol, morphine, opium, cocaine, heroin, alpha or beta eucaine, chloroform, cannabis indica, chloral hydrate, or acetanilide, or any derivative or preparation of any such substance contained therein: Provided, that nothing in this section shall be construed to apply to the dispensing of prescriptions written by regularly licensed practicing physicians, veterinary surgeons or dentists, and kept on file by the dispensing pharmacist, nor to such drugs as are recognized in the United States Pharmacopœia and the National Formulary, and which are sold under the name by which they are so recognized. (R. C. 1919, Title 6, Part 14, c. 11, art. 5, § 7853, as re-enacted L. 1925, c. 115.)

22. Dealer Protected by Guaranty.—Whenever any dealer shall have received a guaranty, signed by the wholesaler, jobber, manufacturer or other person, residing within the United States, from whom he purchased the drug, to the effect that the same is not adulterated or misbranded as defined herein, he shall not be liable to prosecution under this article unless he shall have knowledge or notice of the falsity of such guaranty, but the person making such guaranty shall be subject to the fines and other penalties which otherwise would attach to such dealer. Such

guaranty must contain the name and post office address of the wholesaler, jobber, manufacturer or person from whom the drug was purchased. (Id. § 7854.)

Miscellaneous General Provisions.

22a. **Marks of Quality.**—One who sells or agrees to sell any article to which there is affixed or attached a statement or mark to express the quantity or quality thereof, or the place where it was in whole or in part produced, manufactured or prepared, thereby warrants the truth thereof. (R. C. 1919, Title 1, Division 4, Part 2, c. 4, art. 4, § 949.)*

23. **Food Sound and Wholesome.**—One who makes a business of selling provisions for domestic use, warrants, by a sale thereof, to one who buys for actual consumption and not for the purpose of sale, that they are sound and wholesome. (Id. § 951.)*

24. **Failure of Guaranteed Cure; Misdemeanor.**—Any person who shall contract or guaranty, in writing, to cure any disease or ailment and shall fail to cure such disease or ailment, or perform such contract or guaranty, shall be deemed guilty of a misdemeanor. (R. C. 1919, Title 4, Part 4, c. 19, § 4387.)

25. **Creation of the Department.**—A department of the government of the State of South Dakota, to be known as the Department of Agriculture, is hereby created. Except as hereinafter provided, this department shall succeed to, and is hereby vested with, all the duties, powers, purposes, responsibilities and jurisdiction now, or hereafter by law to be vested in the following offices, officers, commissions, boards and agencies, to wit: Commissioner of Agriculture, Department of Agriculture, State Dairy Expert, State Entomologist, Inspector of Bees, State Live Stock Sanitary Board, State Veterinarian, State Brand Commission, State Board of Immigration, Immigration Commissioner, Game and Fish Commission, State Game Warden, Food and Drug Commissioner, Inspector of Hotels, Inspector and Sealer of Weights and Measures, Inspector of Petroleum Products, Department of Marketing, Director of Marketing, and of the several officers, deputies and employees of such bodies and offices; and whenever by the provisions of any statute or law now in force or that may hereafter be enacted, a duty or jurisdiction is imposed or authority conferred upon any of said bodies, officers, offices, deputies or employees, the enforcement of which is transferred to this department, such jurisdiction and authority are hereby imposed upon and transferred to the Department of Agriculture and the appropriate officers of said department, with the same force and effect as though the title of said Department of Agriculture had been specifically set forth and named therein, in lieu of the name of any such board, commission, office, officer, deputy or employee thereof, as the case may be. Said bodies and offices, together with the duties, powers, purposes, responsibilities and jurisdiction which are so transferred to, and vested in, the Department of Agriculture, and the position of all officers, deputies and employees thereunder are, and each of them is, hereby abolished, and shall have no further legal existence, but the statutes and laws under which they existed, and all laws prescribing their duties, powers, purposes, responsibilities and jurisdiction are hereby expressly continued in force. The Department of Agriculture shall also be in possession and control of all of the records, books, papers, equipment, supplies, moneys, funds, appropriations and other property, real or personal, now or hereafter held for the benefit or use of said bodies, offices and officers or any part thereof. (L. 1925, c. 115, sub. c. III, art. I, § 1.)

26. **General Powers.**—The Department of Agriculture shall have power:

First—To encourage, protect and promote, in every practical manner, the interests of agriculture, including horticulture, the live stock industry, dairying, cheese making, poultry, bee keeping, forestry, game and fish, the production of wool, and all other allied industries;

Second—To promote methods of conducting these several industries, with a view of increasing the production and facilitate the distribution thereof at the least possible cost;

Third.—To collect and publish statistics relating to crop production, marketing and farm economics, the production and marketing of all farm products only so far as such statistical information may be of value to the agricultural and allied interests of the State; to co-operate with the Federal Government, the State College of Agriculture and Mechanic Arts, and agricultural organizations in the matter of collecting such statistical information. Such published statistics shall be the

*See the uniform sales act, Chapter 355, Laws of 1921.

official agricultural statistics of the State; and to co-operate with the State Fair Board in furthering the agricultural interests of the State;

Fourth.—To encourage the planting of trees and shrubs and the improvement of farm homes generally;

Fifth.—To exercise control over the manufacture and distribution of biological products, to be distributed to live stock producers;

Sixth.—To inquire into the sources and cause of contagious, infectious, and communicable diseases among domestic animals, and means for the prevention and cure of the same, and to enforce all laws for the prevention and eradication of the same;

Seventh.—To take all measures necessary for the propagation, preservation and distribution, introduction and restoration of fish, animals, game birds, and other wild birds;

Eighth.—To exercise control over live stock yards and live stock kept in stockyards and other like places where live stock is confined, housed or fed, including railway stockyards and other public places where live stock is usually confined;

Ninth.—To execute and enforce all laws relating to the inspection of foods, drugs, dairy products, oils, cider, vinegar, oleomargarine, butterine, and all other food products, and sanitation of premises used for the manufacture, preparation, storage and sale of foods and food products; cold storage warehouses, seeds, noxious weeds, commercial feeding stuffs, live stock remedies, commercial fertilizer, hotels and restaurants, lodging houses, weights and measures, including the inspection of all warehouse and public scales, including scales of fuel dealers and all merchants, and from time to time promulgate such rules and regulations, and, with the advice of the State Chemist, adopt such standards of food products as are necessary and proper to enforce the provisions of this title;

Tenth.—To encourage and promote agriculture, and to co-operate with the State College of Agriculture and Mechanic Arts in their experimental and extension work;

Eleventh.—To co-operate with the Commissioner of School and Public Lands in protecting the forests of the State of South Dakota, and particularly in the matter of guarding against and preventing the devastation or destruction thereof by any insects, pests, or fires;

Twelfth.—To promote and encourage a system of marketing farm products, and co-operate with the Federal Government in the matter of securing new foreign markets for surplus farm products;

Thirteenth.—To promote and encourage immigration into this State;

Fourteenth.—To assume charge of the protection, preservation, propagation and distribution of fish, game and wild animals, and to have full charge of fish and game deputies;

Fifteenth.—To inspect apiaries and provide for the protection of bees;

Sixteenth.—To inspect and control the importation and sale of nursery stock. (Id. § 2)

27. Powers and Duties.—The head of this division* shall be known as the Director of Inspections. The Secretary of Agriculture, through the Division of Inspections shall, except as hereinafter provided, administer the laws, perform the duties and exercise the powers heretofore administered, performed and exercised by the State Entomologist, the State Food and Drug Commissioner, the State Dairy Expert and the State Bee Inspector. (L. 1925, c. 115, sub. c. III, art. V, § 1.)

28. Compensation.—The Director of the Division of Inspections shall receive a salary of three thousand dollars per annum, payable monthly as provided by law. (Id. § 2.)

29. Foods, Adulteration and Misbrandings.—Except as hereinafter provided, the Secretary of Agriculture shall succeed to the duties and powers heretofore placed upon and granted the State Food and Drug Commissioner, and wherever the expression "State Food and Drug Commissioner" or the term "Commissioner" now appear in any of the sections of the Revised Code of 1919 of South Dakota, or subsequent laws of the State of South Dakota, the Secretary of Agriculture shall be substituted in place of such State Food and Drug Commissioner or Commissioner. Through the Division of Inspections and the director thereof, the secretary shall be authorized to make complaint against any person violating any of the provisions of the laws he is hereby empowered and required to enforce and administer before any court having jurisdiction, and security for costs shall not be required of the complainant in any action or proceeding instituted by him or under

*Division of Inspection.

his authority for the purpose of such enforcement; and it shall be the duty of all prosecuting officers of this State to prosecute to completion all actions or proceedings brought under the provisions of this chapter. Section 7791 of the Revised Code of 1919 as amended by chapter 240 of the Session Laws of 1921, and sections 7792 and 7797 are hereby repealed. Sections 7793 to 7796, inclusive, and sections 7798 to 7804, inclusive, all relating to adulterated and misbranded foods, are hereby expressly retained in force with the substitution of authority provided in this section. Sections 7805 to 7808, inclusive, section 7809 as amended by chapter 193 of the Session Laws of 1923, and sections 7810 to 7820, inclusive, all relating to adulterated and misbranded foods, are hereby expressly retained in force with the substitution of authority provided in this section. (Id. § 3.)

30. Laboratory.—For the purpose of making the necessary tests and analyses of foods, drugs, oils, paints, petroleum products, feeding stuffs, medicinal stock foods, fertilizers and any other materials, the inspection of which is placed by this act, or any subsequent act, under the direction of the Department of Agriculture, the laboratory heretofore established by law at the State University as the laboratory of the State Food and Drug Department, shall be continued and maintained as the State chemical laboratory by the State Board of Regents of Education. The said Regents of Education upon recommendation of the president of the State University, shall employ a competent chemist, hereinafter referred to as State Chemist, and such assistant chemists and analysts and office help as may be required for carrying on the work of the State Chemical Laboratory, and shall fix the compensation of such chemist and assistants. It shall be the duty of such State Chemist to make or have made analyses, examinations and tests of such articles as may be furnished him by the Department of Agriculture for any and all purposes of such department. It shall also be the duty of such State Chemist and his assistants, upon request of the State Sheriff or any Deputy State Sheriff or upon request of the Attorney-General, or any of his deputies or States Attorney or his deputy, to make analyses of articles furnished by such officers in connection with the enforcement of the laws of this State. It shall also be the duty of such chemist to make analyses and tests of materials for the Division of Purchasing and Printing of the Department of Finance. It shall also be the duty of such chemist and his assistants to make such analyses of water and other materials as may be requested by the State Board of Health, in the discharge of its duties, and he shall furnish like service to any State department or institution requiring the same. Said State Chemist shall also have the custody and care of the State and office standards of weights and measures and at least once in each year all working standards used by the State Department of Agriculture, and any other State office or department, in the inspection of weighing and measuring devices in this State, and the standards used by any city maintaining a city inspector of weights and measures, shall be submitted to said State Chemist to be verified and sealed by comparison with the said office standards. All examinations, tests and analyses requested as above provided, shall be made promptly and the results immediately certified to the officer or department requesting the examination. A copy of the result of any examination or analysis of any product or article by the State Chemist, or his assistants, duly authenticated by the analyst, shall be prima facie evidence in all courts of the matters and facts therein contained. All laboratory equipment and furniture of the State Food and Drug Department, and such of the department's office furniture and equipment as may be required for the proper conduct of the work of the State Chemist shall be allowed to remain in the State Chemical Laboratory. All other office furniture, records, and equipment of the Food and Drug Department shall be turned over to the Secretary of Agriculture as provided in section 3 of this act. The salaries of the State Chemist and assistants and all necessary expense of maintenance of the work of the State Chemical Laboratory shall be paid from funds appropriated for the purpose by the legislature, such funds to be administered under supervision of the State Board of Regents of Education, in the same manner as the funds appropriated for the State Health Laboratory. The University of South Dakota shall furnish the necessary room, heat, light and janitorial service for such department, free of charge. (Id. § 19.)

31. Offices, Boards and Commissions Abolished.—Upon the taking effect of this act, the following offices, boards, commissions, bureaus, officers and departments of the State Government, heretofore created by law, shall be and are hereby abolished, to wit: State Food and Drug Commission, State Game and Fish Commission, State Game Warden, State Dairy Expert, Commissioner of Agriculture, Department of Marketing, Director of Marketing, State Entomologist, Bee Inspector, State Live Stock Sanitary Board, State Veterinarian, State Brand Commission, State Board of Immigration, Commissioner of Immigration, Inspector of Oils, Inspector

and Sealer of Weights and Measures, and Inspector of Hotels. (L. 1925, c. 115, sub. c. IV, § 5.)

31a. Penalty.—Any person who shall violate any of the provisions of this Code of laws included in this act, unless otherwise specifically provided in this act, shall be deemed guilty of a misdemeanor and on the conviction thereof, shall be fined in any sum not exceeding five hundred dollars, or imprisonment in the county jail for a period not exceeding six months, or by both such fine and imprisonment. (Id. § 6.)

32. State Fair Board.—The State Board of Agriculture of the State of South Dakota shall be hereafter known and designated as the State Fair Board. Whenever and wherever the expression "State Board of Agriculture" is used in the Statutes and Session Laws of the State of South Dakota, such expression shall be hereafter construed to relate to and mean "State Fair Board." (L. 1925, c. 274, § 1.)

33. General Powers.—Such board (of health) shall hold quarterly meetings in each year, two of which shall be at the State Capitol, and other meetings at such times and places as the superintendent of the board shall designate, and shall have the power:

1. To license and regulate the practice of medicine and surgery within this State and to make all rules and regulations which may be necessary or expedient to that end.

2. To exercise general supervision over all health officers and boards, to take any active measures for the prevention and eradication of contagious or communicable diseases among people of the State, investigate sanitary conditions, learn the cause and source of disease and epidemics, observe the effect upon human health of localities and employments, and gather and diffuse proper information upon all subjects to which its duties relate; to gather, collate and publish medical and vital statistics of general value, and advise all State officials and boards in hygiene and medical matters, especially those involved in the proper location, construction, sanitation and administration of prisons, hospitals, asylums and other public institutions.

3. To make, alter and enforce such orders, directions and regulations not inconsistent with the statutes of the State as may be necessary for the preservation and protection of the public health. With the approval of the Attorney General, and after due publication thereof as required by this chapter, such orders, directions and regulations may be of permanent application or for specified periods throughout the whole or any part of the State.

4. To adopt, alter and enforce, after approval by the Attorney-General, and after due publication as required by this chapter, regulations, not inconsistent with the statutes of the State, of permanent application, or for specified periods throughout the whole or any part of the State, which regulations shall be designed to preserve and protect the public health, and by which said board may regulate by requiring the taking out of licenses or other appropriate means, control, and, in proper cases, prohibit and suppress any of the following matters:

(a) The manufacture into articles of commerce, other than food, of diseased, tainted or decayed animal or vegetable matter.

(b) The business of scavangering and the disposal of sewerage.

(c) The location of mortuaries and cemeteries and the removal and burial of the dead.

(d) The management of lying-in houses and boarding places for infants, and the treatment of infants therein.

(e) The pollution of streams and other waters and the distribution of water by private persons for drinking or domestic use.

(f) The construction and equipment, in respect to sanitary conditions, of schools, hospitals, almshouses, prisons, and other public institutions.

(g) The treatment in hospitals and elsewhere of persons suffering from communicable diseases, the disinfection and quarantine of persons and places in case of such disease, and reporting of sickness, and deaths therefrom.

(h) The accumulation of filthy and unwholesome matter to the injury of public health, and the removal thereof.

(i) To require the Superintendent of Vital Statistics to furnish all information that he may have, regarding vital statistics.

(j) The supervision of slaughterhouses.

(k) The distribution by the State Board of Health of biological products to members of the county boards of health, which products shall be used for the cure and prevention of diphtheria and other communicable diseases. (R. C. 1919, Title 6, Part 14, c. 1, art. 2, § 7667, as amended L. 1919, c. 317.)

34. No Conflict With Food and Drug Commissioner.—Nothing in this chapter* shall be so construed as to interfere with the powers and duties of the Food and Drug Commissioner. (R. C. 1919, Title 6, Part 14, c. 1, art. 2, § 7674.)

NOTE: See also Nos. 133, 138, 178 et seq., and 221.

PART II.

Special Food Laws.

Beverages.

See Nos. 41, 122 et seq., 135a et seq., 138, 178, 181 et seq., 257 et seq., 265 et seq., and 276.

Bread—Bakeries.

35. Sale of Bread by Weight; Proviso; Enforcement of Act.—(a) It shall be unlawful for any person, firm or corporation to sell in this State, bread in loaves of any other weights than the following standard avoirdupois weights: One pound, one and one-half pounds, and any greater weight which is a multiple of one-half pound. These shall be the standard weights of bread to be sold in this State, and bread shall not be sold except of these weights; provided, however, that the provisions of this act regarding weight shall not apply to biscuits, buns, crackers, rolls, or to what is commonly known as "stale bread" and sold as such, if the seller at time of sale shall expressly state to the buyer that the bread so sold is "stale" bread, and provided further, that commercial bread shall be deemed stale forty-eight hours after baking. When twin or multiple loaves are baked, the weights specified in this section shall apply to each unit of the twin or multiple loaf, but nothing in this act shall be construed to prohibit making a twin loaf of total weight of twenty-four ounces, if the same be wrapped and sold as one twenty-four ounce loaf. There shall be printed upon the wrapper of each loaf of bread in plain and conspicuous type the name and address of the manufacturer of the bread and the weight of the loaf in terms of one of the standard weights herein specified, or in lieu of statement of weight, a declaration that the wrapped loaf is a standard weight loaf. The State Food and Drug Commissioner† shall enforce the provisions of this act and shall adopt and establish, in the manner provided by law, rules for such enforcement, including reasonable tolerances and variations within which all weights shall be kept; provided, however, that such tolerances shall apply only to individual loaves, and variations from the standard weights herein prescribed shall be as often above as below the standard and the average weight of all loaves of the same designated weight and kind produced by any baker shall at least equal the standard weight which such loaves are indicated by the label or otherwise represented as weighing.

(b) No bread or other bakery products shall be returned from any consumer or other purchaser to the dealer or baker, nor from any dealer to the baker, nor shall any baker or dealer directly or indirectly accept any returns from or make any exchange of bakery products with any person. All such products shall be kept moving to the consumer without unreasonable delay, and without any practice whatsoever which may disseminate disease or contagion among or inflict fraud upon the consumer, or disseminate the infection known as "rope" or other infection in bakeries, or otherwise cause waste in the food supply. (L. 1921, c. 239, § 1, as amended L. 1923, c. 188, and re-enacted L. 1925, c. 115.)

36. Sale of Bread Without Sanitary Wrapper Unlawful.—It shall be unlawful for any person, firm or corporation to keep or offer for sale or to sell bread unless each loaf of the same shall have been properly wrapped before leaving the bakery where made with a suitable sanitary wrapper; provided, that this shall

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*See No. 33. This chapter relates to the State Board of Health.

†See No. 25 et seq.

not apply to bread commonly known in the baking industry as hearth bread, when made in loaves of such shape as to make wholesale wrapping impracticable, or to bread manufactured or sold exclusively for hotel and restaurant purposes and not resold by the loaf if such bread be packed in the shop where made in clean and sanitary containers and so delivered to the hotel or restaurant where consumed. (L. 1921, c. 239, § 2, as re-enacted L. 1925, c. 115.)

37. Sanitary Regulations.—It shall be unlawful for any person, firm or corporation to deliver or transport or to deliver for transportation bread except in clean and sanitary vehicles or containers. Every box, basket, hamper or other container in which bread is shipped or delivered, except new one-service corrugated strawboard or other suitable sanitary one-service containers, to be used once only shall be completely lined with clean new paper every time such container is packed with bread for delivery or shipment in such manner as may be necessary to protect the bread contained therein from dust during delivery or shipment. Every empty box, basket, hamper, or other shipping container for bread, except one-service containers, shall be promptly returned by the consignee to the owner and no such container shall be placed or be permitted to remain in any place where it is subject to unclean or filthy contamination or to use as a receptacle for offal or waste of any kind. (Id. § 3.)

38. Penalty.—Any person, firm or corporation that shall violate any of the provisions of this act shall be deemed guilty of a misdemeanor and upon conviction shall be punished by a fine of not less than ten dollars ($10.00) nor more than one hundred dollars ($100.00) and each day's continuance of any practice, act or condition prohibited herein shall constitute a separate offense within the meaning of this act. (Id. § 4.)

39. Foods; Bread.—Chapter 239 of the Session Laws of 1921, as amended by chapter 188 of the Session Laws of 1923, relating to bread, the manufacture and sale thereof, and providing standard weights, therefor, is hereby retained in force; provided, that wherever in such chapter as so amended either of the following expressions "State Food and Drug Commissioner," "Food and Drug Commissioner" or "Commissioner" shall appear, there shall be substituted therefor the expression "Secretary of Agriculture" or "Secretary," and the Secretary of Agriculture shall enforce, through the Division of Inspections, the provisions of said chapter, as so amended. (L. 1925, c. 115, sub. c. III, art. V. § 6.)*

NOTE: See also No. 122 et seq.

Canned Products.

40. Canned Products.—It shall be unlawful for any person to manufacture, sell, offer or expose for sale any canned fruit or vegetables made from products dried or bleached before canning unless the container in which the same be packed be plainly and conspicuously labeled with the word "Soaked" or "Bleached," as the case may be, in letters of legible type not smaller than two-line pica, such words to be followed immediately with the name of the vegetable or fruit so packed. (R. C. 1919, Title 6, Part 14, c. 11, art. 2, § 7815, as re-enacted L. 1925, c. 115.)†

NOTE: See also Nos. 105 and 122 et seq.

Cider.

41. Apple Cider.—It shall be unlawful for any person to manufacture, sell, offer or expose for sale as cider or apple cider any other product other than the whole, unfermented juice of clean, sound, mature apples. (R. C. 1919, Title 6, Part 14, c. 11, art. 2, § 7812, as re-enacted L. 1925, c. 115.)†

NOTE: See also Nos. 26, 182, 257 et seq., and 265 et seq.

Cold Storage.

See Nos. 26, 83 and 122 et seq.

Confectionery.

See Nos. 14 and 122 et seq.

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*See the footnote to No. 1.

†For penalty see Nos. 8 and 11.

Dairy Products—Substitutes for Dairy Products.*

42. Definitions; Standards.—For the purposes of this chapter the following definitions, limitations and standards are fixed and adopted:

1. Milk is the fresh, clean, lacteal secretion obtained by the complete milking of one or more healthy cows, properly fed and kept, excluding that obtained within fifteen days before and five days after calving, and contains not less than eight and one-half per cent of solids not fat, and not less than three and one-quarter per cent milk fat.

2. Blended milk is milk modified in its composition so as to have a definite and stated percentage of one or more of its constituents.

3. Skim milk is milk from which a part or all of the cream has been removed and contains not less than nine and one-quarter per cent of milk solids.

4. Pasteurized milk is milk that has been heated below boiling, but sufficiently to kill most of the active organisms present and immediately cooled to fifty degrees Fahrenheit or lower.

5. Sterilized milk is milk that has been heated at the temperature of boiling water or higher for a length of time sufficient to kill all organisms present.

6. Condensed or evaporated milk is milk from which a considerable portion of water has been evaporated and contains not less than twenty-eight per cent of milk solids, of which not less than twenty-seven and five-tenths per cent is milk fat.

7. Sweetened condensed milk is milk from which a considerable portion of water has been evaporated and to which sugar (sucrose) has been added and contains not less than twenty-eight per cent of milk solids, of which not less than twenty-seven and five-tenths per cent is milk fat.

8. Condensed skim milk is skim milk from which a considerable portion of water has been evaporated.

9. Buttermilk is the product that remains when butter is removed from milk or cream in the process of churning.

10. Goat's milk, ewe's milk, et cetera, are the fresh, clean lacteal secretions, free from colostrum, obtained by the complete milking of healthy animals other than cows, properly fed and kept, and conform in name to the species of animal from which they are obtained.

11. Cream is that portion of milk, rich in milk fat, which rises to the surface of milk on standing, or is separated from it by centrifugal force, is fresh and clean and contains not less than eighteen per cent of milk fat.

12. Evaporated or clotted cream is cream from which a considerable portion of water has been evaporated.

13. Milk or butter fat is the fat of milk and has a reichert miessel number not less than twenty-four and a specific gravity of not less than 0.905 (4000).

14. Butter is the clean, non-rancid product made by gathering in any manner the fat of fresh or ripened milk or cream into a mass, which also contains a small portion of the other milk constituents, with or without salt, and contains not less than eighty per cent of milk fat. Butter may also contain added vegetable coloring matter.

15. Renovated or process butter is the product made by melting butter and reworking, without the addition or use of chemicals or any substance except milk, cream or salt, and contains not more than sixteen per cent of water and at least eighty per cent of milk fat. Renovated or process butter may also contain added vegetable coloring matter.

16. Cheese is the sound, solid and ripened product made from milk or cream by coagulating the casein thereof with rennet or lactic acid, with or without the addition of ripened ferments and seasoning, and contains, in the water-free substance, not less than fifty per cent of milk fat. Cheese may also contain added coloring matter.

17. Skim milk cheese is the sound, solid and ripened product made from skim milk by coagulating the casein thereof with rennet or lactic acid, with or without the addition of ripened ferments and seasoning.

18. Goat's milk cheese, ewe's milk cheese, et cetera, are the sound, ripened products made from the milks of the animals specified, but coagulating the casein thereof with rennet or lactic acid, with or without the addition of ripening ferments and seasoning.

19. Ice cream is a frozen product made from cream and sugar, with or without a natural flavoring, and contains not less than twelve per cent of milk fat.

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*See Nos. 25 et seq. and 80.

20. Fruit ice cream is a frozen product made from cream, sugar, and sound, clean, mature fruits, and contains not less than ten per cent of milk fat.

21. Nut ice cream is a frozen product made from cream, sugar, and sound non-rancid nuts, and contains not less than ten per cent of milk fat.

22. Whey is the product remaining after the removal of fat and casein from milk in the process of cheesemaking.

23. Kumiss is the product made by the alcoholic fermentation of mare's or cow's milk. (R. C. 1919, Title 6, Part 14, c. 12, § 7905, as re-enacted L. 1925, c. 115 and amended L. 1925, c. 136.)

43. Milk; Adulteration.—Milk shall be deemed to be adulterated:

1. If it does not conform to the standards herein fixed;

2. If it be in a filthy, unclean or unwholesome condition;

3. If at any time it be contained in a filthy, unclean, unsanitary or unwashed vessel, can, pail or other container;

4. If it be skimmed or partially skimmed or watered, or if it contain less than the amount of milk solids or butter fat required by the standard fixed in the preceding section;

5. If it be milk from which has been held back what is commonly known as strippings, or milk taken from an animal having any disease, ulcer, abscess or running sore, or which has been taken from the animal within fifteen days before or five days after parturition; of if it be milk from cows kept in an unhealthy place, or from cows which have been fed undesirable foods in a state of putrefaction or rottenness or of an unhealthful nature; or,

6. If it contain any artificial preservative or any other foreign substance detrimental to health. (R. C. 1919, Title 6, Part 14, c. 12, § 7906, as re-enacted L. 1925, c. 115.)

44. Cream for Domestic Use.—Cream for domestic or potable use shall be deemed to be adulterated:

1. If it does not conform to the standard herein fixed;

2. If it be in a filthy, unclean or unwholesome condition;

3. If at any time it be contained in a filthy, unclean, unsanitary or unwashed vessel, can, pail, or other container;

4. If it be cream that has been skimmed by a filthy, unclean, unsanitary or unwashed separator;

5. If it be cream from milk produced from an animal having disease, ulcer, abscess, or running sore, or which has been taken from the animal within fifteen days before or five days after parturition, or which has been taken from an animal kept in an unhealthy place, or which has been fed undesirable foods in a state of putrefaction or rottenness or of an unhealthful nature; or,

6. If it contain any artificial preservative or any other foreign substance detrimental to health. (Id. § 7907.)

45. Cream for Buttermaking.—For the purposes of this chapter, cream shall be deemed to be unmerchantable for buttermaking purposes:

1. If it be in an unclean, filthy or unwholesome condition;

2. If it be cream from milk which was in a filthy, unclean or unwholesome condition;

3. If it be cream from milk produced from animals having any disease, sickness, ulcer, abscess or running sore, or from milk which has been taken from the animal within fifteen days before or five days after parturition, or from milk which is produced from cows kept in an unhealthy place, or which have been fed undesirable foods in a state of putrefaction or rottenness or of an unhealthful nature;

4. If at any time it be contained in a filthy, unclean, unsanitary or unwashed vessel, can, pail or other container;

5. If it be cream from milk which at any time has been contained in a filthy, unclean, unsanitary or unwashed vessel, can, pail or other container;

6. If it be cream which has been skimmed by a filthy, unclean, unsanitary or unwashed separator;

7. If it contain less than twenty per cent of butter fat;

8. If it have an acidity exceeding thirty-five degrees, Mann's test;

9. If it be above seventy degrees Fahrenheit in temperature; or,

10. If it contain any artificial preservatives. (Id. § 7908.)

46. Cheese; Adulteration.—Cheese shall be deemed to be adulterated if it does not conform to the standards herein fixed, or if it be manufactured from skimmed milk or milk that is partially skimmed, unless the same is plainly branded, stamped or marked on the side or top of both cheese and package in a durable manner, in the English language, with the words "Skimmed Milk Cheese," the let-

ters of the words to be not less than one inch in height and one-half inch in width. (Id. § 7909.)

47. **Butter; Adulteration.**—Butter shall be deemed to be adulterated if it does not conform to the standards fixed by this chapter. (Id. § 7910.)

48. **Other Products.**—All milk and cream products, other than those the adulteration of which is herein expressly defined, shall be deemed to be adulterated if they do not conform to the standards fixed in this chapter. (Id. § 7911.)

49. **Substitutes; Sale; Transportation.**—No substitute for butter or cheese, having a yellow color, shall be manufactured, kept in possession, offered for sale, sold, shipped, consigned or forwarded by common carrier, public or private. A substitute for butter and cheese, not having a yellow color, may be manufactured, kept in possession, offered for sale, sold, shipped, consigned or forwarded by common carrier, public or private, if the tub, firkin, box or other package in which the same is kept, offered for sale, sold, shipped, consigned or forwarded, shall have branded, stamped or marked on the side or top thereof, in the English language, in a durable manner, the words "Substitute for Butter," or "Substitute for Cheese," as the case may be, the letters of the words to be not less than one inch in length by one-half inch in width. The defacing, erasure, canceling or removal of any such brand or mark, with intent to mislead or deceive, or to violate any provision of this chapter, shall be deemed a misdemeanor. Such substitute for butter or cheese may be kept, used or served as food or for cooking in hotels, restaurants, lunch counters, or other places of public entertainment, only in case the proprietor or person in charge of such place shall display and keep constantly posted a card opposite each table or other place where the guests or others are served with the same, which card shall be white, at least ten by fourteen inches in size, with the words "Substitute for butter used here" or "Substitute for cheese used here," as the case may be, printed in black Roman letters of the same size as required to be placed upon the tubs, firkins, boxes or other packages in which substitute for butter or cheese is kept, and no other words or figures shall be printed thereon. No substitute for butter or cheese shall be offered for sale in the manufacturer's original package under the name of or for true butter or cheese made from milk or cream from cows, nor shall any substitute for butter or cheese be offered for sale or sold unless the purchaser at the time is informed thereof, and in addition furnished with a printed statement in the English language in prominent type that the substitute sold is such substitute and giving the name and place of business of the maker. Nothing contained in this chapter, however, shall be construed to prohibit the transportation of imitation butter or cheese through and across the State. (Id. § 7912.)

50. **Marking; Branding.**—No person shall have in his possession or under his control, except for the actual consumption of himself or family, any substance designed as a substitute for butter or cheese unless the tub, firkin, box or package containing the same is branded or marked as provided in this chapter. Any person having in his possession or under his control such substance not so branded or marked shall be presumed to know its true character and name. (Id. § 7913.)

51. **Search Warrant.**—Whoever shall have in his possession or control any imitation butter or cheese, or any substance designed to be used as a substitute for butter or cheese, contrary to the provisions of this chapter, shall be presumed to have possession of such property with intent to use it to violate the provisions of this chapter, and all laws relating to search warrants and proceedings thereunder shall apply thereto. (Id. § 7914.)

52. **Sanitary Conditions.**—Whoever operates a creamery, cheese factory, ice cream factory, or cream-buying station, or produces milk or cream or any dairy product to be sold for human consumption or to be manufactured into any product or kind of human food, or any dealer in dairy products having in his possession any cans, ice cream containers or other receptacles, shall at all times keep all buildings on the premises surrounding or adjacent thereto and all cans, pails and other receptacles, cream separators and other mechanical contrivances used in handling such dairy products or used in the production thereof in a clean, hygienic and sanitary condition and shall not consign, for transportation by common carrier, empty cans or ice cream containers in an unsanitary condition. Every person engaged in the purchase or maufacture of any dairy product or ice cream, or in bottling milk and cream for sale and use, except those who produce for sale not to exceed ten gallons of milk or cream, or five gallons of ice cream, shall adopt a mark or marks of ownership to be stamped or marked on each can, cask, keg, barrel or other receptacle used in the handling and transportation of any such product, and shall file in the office of the Secretary of State a description of the name or mark so used by him, and the use to be made of any such can, cask, keg, barrel or other receptacle. The brand or mark so selected and adopted may consist of a name,

design, mark or marks, or some particular color of paint or enamel used upon the can, cask, keg, barrel or other receptacle, or any part thereof. It shall be unlawful for any person to adopt or use any brand or mark which has already been designated, appropriated or obtained under the provisions of this chapter. It shall be unlawful for any person other than the rightful owner thereof, or his lawful agent, to use any can, cask, keg, barrel or other receptacle, marked or branded as provided in this section. Any person other than the owner, or his lawful agent, having in his possession any such can, cask, keg, barrel or other receptacle marked or branded as provided in this section, shall be deemed guilty of having violated the provisions of this chapter; provided, that nothing in this section shall apply to transportation companies or their agents during the time that such can, cask, keg, barrel or other receptacle is being transported to or from the owner or his lawful agent. It shall be unlawful for any person other than the rightful owner or his lawful agent to deface or remove any such brand, mark or stamp put upon any such can, cask, keg, barrel or other receptacle. Any person who shall violate any provision of this chapter shall be deemed guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine for each and every offense in a sum not less than five nor more than one hundred dollars. For the purpose of preventing the use of such cans, casks, kegs, barrels or other receptacles by other than the owner, or for any purpose other than that provided in this chapter, and to insure the wholesomeness and high quality of such products and the sanitary condition of the receptacles in which the same are transported, it shall be the duty of the State Dairy Expert to enforce the provisions of this chapter. (Id. § 7915.)

53. **Only Licensed Person May Make Tests.**—It shall be unlawful for any person to sample cream or milk, or operate a Babcock test or any other test for fat in cream or milk for the purpose of determining their commercial value, when bought, without first having secured a license from the Secretary of Agriculture: Provided, that in case of sickness or necessary absence said person may appoint a substitute, but said person shall be responsible for the acts of said substitute. Said license may be issued upon a certificate from the State Dairy School, or, after due examination by the State Dairy Expert for one year or part thereof and may be renewed from year to year by the Secretary of Agriculture upon payment of the fees hereinafter stated. All licenses shall expire on the 31st day of December following the date of issue. The cost of taking the examination and issuing licenses shall be five ($5.00) dollars, payable prior to the time of taking the examination, Three ($3.00) dollars of which shall be returned in case the applicant fails to pass said examination. Said examinations to be held at convenient junction points or county seat towns in each county in the State. The Secretary of Agriculture may withhold a license from any applicant therefore under any provision of this act whom he may deem unworthy, and may temporarily suspend or revoke any license issued by him to any licensee who has violated the terms therof, or who has failed to comply with any requirement of this act, or refused or failed to obey his lawful request or direction, and every conviction of the licensee for an offense punishable under this act shall be a sufficient ground for suspending or revoking such license. The money obtained from examinations and license fees shall go into the hands of the State Treasurer to be placed to the credit of the general fund. Whoever uses the Babcock test or any other test for determining the quantity of butter fat in milk or cream purchased, used or received shall so operate the same as to produce tests of clear oil free from any foreign substance; shall weigh the samples to be tested, shall correctly read the measurement of butter fat in such tests and in all transactions concerning the purchase or receiving of any milk or cream to be tested shall use true and correct glassware and scales, and it shall be unlawful to report or use as a basis for settlement anything but the true and correct result as shown by said tests. Any person engaging in the buying and testing of milk or cream to be shipped to some distant point to be used in the manufacture of butter or other dairy products, shall keep a record of the number of pounds of butter fat in each shipment on file in his office and shall upon demand of the Secretary of Agriculture report to said Secretary of Agriculture the number of pounds of butter fat in each shipment and the date of said shipment, and the party receiving such shipment shall also keep a record of the number of pounds of butter fat received by such person, and shall send a notice in writing to the persons from whom the said milk or cream is received, which notice shall also be kept on file by the person so engaged in the buying and handling or testing of milk or cream, and upon demand, a copy of said notice shall also be transmitted to the Secretary of Agriculture with the number of pounds of butter fat in each shipment as above stated, and the Secretary of Agriculture shall at any time have access to said files of the local shipper or purchaser of milk or cream. The Secretary of Agriculture

shall make provision for the examination of all persons applying for a license, under the provisions of this act.

Any person or persons who shall violate any provisions of this section shall be deemed guilty of misdemeanor, and upon conviction thereof before a court having jurisdiction in such cases, shall be fined for each and every offense in a sum not less than twenty-five or more than one hundred dollars, and shall stand committed until such fine and costs are paid. (Id. § 7916, as amended L. 1925, c. 137.)

54. **Sampling.**—Whoever takes any samples of milk or cream for testing to determine the amount of butter fat contained therein shall use such methods as will result in the procuring of a uniform sample of such milk or cream. (R. C. 1919, Title 6, Part 14, c. 12, § 7917, as re-enacted L. 1925, c. 115.)

55. **Testing Apparatus.**—It shall be unlawful for anyone to use any inaccurate, incorrect, or false pipette, test bottle, scale or other apparatus in making tests of milk or cream to determine the quantity of butter fat contained therein. (Id. § 7918.)

56. **Reports.**—Every person owning or operating a creamery, cheese factory, or renovated butter factory in this State shall, not later than the first day of August of each year, report to the State Dairy Expert, upon blanks furnished by him, the amount of butter made and the amount of milk or cream received during the preceding year ended on the thirtieth day of June, and such general information as the dairy expert may require to enable him to compile proper statistics of the dairy industry of the State. (Id. § 7919.)

57. **Powers and Duties of Expert.**—The State Dairy Expert and his assistants, in order to enforce the provisions of this chapter, shall have access to all places of business, factories, farms, buildings, carriages, cars and vessels used in dairy and dairy product industries in this State, and shall have power to inspect all cans or packages or other containers used in the transportation, storage or sale of any milk, cream or other dairy product and in making such inspection they shall have the power to take samples of such milk, cream or other dairy product upon paying the person having possession of the same the market price thereof. All clerks, bookkeepers, express agents, railroad officials, employees or common carriers shall render to such expert and his assistants all the assistance and aid in their power, when requested, in tracing, finding or discovering the presence of any milk or cream or other dairy product which such expert or assistant believes to be in violation of this chapter. Any refusal or neglect on the part of any such clerk, bookkeeper, express agent, railroad official, employee or common carrier to render such friendly aid when required shall be deemed a misdemeanor and upon conviction thereof shall be punished as provided in this chapter; any clerk, bookkeeper, express agent, raliroad official, employee, common carrier or person, who violates any of the provisions of this section; and any person who in any manner hinders, obstructs or interferes with such expert or assistant in the performance of his duties, shall be deemed guilty of a misdemeanor and upon conviction thereof shall be subject to the penalties provided in this chapter. (Id. § 7920.)

58. **Quantity of Butter Fat Reported; Taxes.**—Every person, owning or operating a creamery, cheese factory or renovated butter factory, within or without this State, shall, on the first day of October, 1919, and every three months thereafter, report to the State Dairy Expert upon blanks furnished by him, the amount of butter fat, produced within this State, purchased or received by such person during the preceding three months; such report shall be filed not later than ten days after the same becomes due, and with such report the person making the same shall pay to the State Dairy Expert, as taxes, fifteen cents upon each and every one thousand pounds of butter fat so purchased or received by such person during such preceding three months. All money so received by the State Dairy Expert shall monthly be remitted by him to the State Treasurer, to be expended in such manner as the State Board of Regents shall direct in the payment of the salary of such expert and other expenses which may be incurred in maintaining the office of State Dairy Expert and in enforcing the provisions of this chapter. The State Dairy Expert shall give a bond in the sum of two thousand dollars as security for the accounting of all money and property that comes into his hands as such officer. (R. C. 1919, Title 6, Part 14, c. 12, § 7922.)

59. **Tuberculosis.**—It shall be unlawful for any dairymen to sell for consumption as milk the product of any cow which has been tested for tuberculosis and found to be subject to that disease. (Id. § 7923, as re-enacted L. 1925, c. 115.)

60. **Violations; Procedure.**—It shall be the duty of the State Dairy Expert and his assistants to prosecute any violation of this chapter. (Id. § 7924.)

61. Other Violations.—Whoever shall buy, sell, expose or offer for sale, exchange, deliver or have in his possession with the intent to buy, sell, expose or offer for sale, exchange or deliver any milk or cream which is unmerchantable within the provisions of this chapter, or any dairy product which is adulterated within the provisions of this chapter, or any human food product into the composition of which any such unmerchantable milk or cream or adulterated dairy product has entered, shall be deemed guilty of a misdemeanor and upon conviction thereof shall be subject to the punishment provided for in this chapter. (Id. § 7925.)

62. Penalties.—Any person who shall violate any of the provisions of this chapter shall be deemed guilty of a misdemeanor and upon conviction thereof shall be punished for the first offense by a fine of not less than ten nor more than fifty dollars or by imprisonment in the county jail not exceeding thirty days, or by both such fine and imprisonment, and for each subsequent offense by a fine of not less than fifty nor more than one hundred dollars, or by imprisonment not exceeding thirty days, or by both such fine and imprisonment. (Id. § 7926.)

62a. Enforcement.—The Secretary of the Department of Agriculture, through the Division of Inspections, shall carry into effect the provisions of this act, in connection with the enforcement of all other acts which may be in force or which may be hereafter enacted relating to dairies and dairy products, and he is hereby authorized and empowered to promulgate and enforce such rules and regulations as may be deemed proper and necessary to carry into effect the provisions of this act. (Act of March 4, 1927, § 1.)

62b. "Cream Station" Defined.—For the purposes of this act the term, "cream station" shall be defined to mean any place where milk or cream from more than one herd is received, and that is weighed or purchased, when such milk or cream is to be manufactured into butter, cheese or ice cream by some other individual, firm or corporation, or in some separate building or location than that in which such cream or milk is weighed, tested, or purchased; provided, however, that it is not intended by this article to include weighing on public scales by producers before shipment by themselves. (Id. § 2.)

62c. Licenses.—Every person, firm, association or corporation owning or operating any creamery, cheese factory, butter factory, renovating or process butter factory, ice cream factory or cream station in the State of South Dakota, shall be required, before beginning business, to obtain from the Secretary of the Department of Agriculture a license for each and every creamery, cheese factory, butter factory, renovating or process butter factory, ice cream factory, condensory, wholesale milk dealer, or cream station owned or operated by such person, firm, association or corporation in this State. That the fee for such license shall be ten dollars ($10.00) which shall be good for one year or any fraction thereof and shall terminate on December 31st of each year and no license shall be transferable. Provided, that if the period elapsing between the time it was issued and December 31st is less than a full year, then the amount of license shall be prorated. Each license shall record the name of the person, firm, association or corporation owning or operating the creamery, cheese factory, butter factory, renovating or process butter factory, ice cream factory, condensory, wholesale milk dealer, or cream station licensed, its place of business, the location thereof, the name of the manager thereof, and the number of the same. Each license so issued shall constitute a license to the manager or agent of the place of business named therein and in the event such person, firm, association or corporation is engaged in one or more of the businesses herein licensed within the same building in the same location, only one license fee shall be required to be paid. It shall be the duty of every person, firm, association or corporation holding a license to operate any plant as herein specified to post the license certificate in a conspicuous place at his or its place of business. (Id. § 3.)

62d. Disposition of Fees.—All license fees herein provided for shall be collected by the Secretary of the Department of Agriculture and shall be paid into the treasury of the State of South Dakota and placed to the credit of the general fund. (Id. § 4.)

62e. Revocation of License.—It shall be the duty of the Secretary of the Department of Agriculture, at any time, to revoke any license on evidence that licensee has violated any of the existing dairy statutes or has refused to comply with all lawful requests of the Secretary of the Department of Agriculture or his authorized agents; provided, however, that no license shall be revoked except on twenty days notice to the licensee, his or its agent or manager, to be served as summons is served in civil actions, specifying the substance of the complaint and the time and place at which evidence will be heard in support of the complaint, and that an opportunity will be afforded to such licensee complained about to submit evidence and proof in defense of such charges. **(Id. § 5.)**

62f. **Penalty.**—Any person, firm, association or corporation who engages in any of the businesses herein licensed without first procuring a license as required by this act shall be guilty of a misdemeanor and upon conviction thereof shall be punished for each offense by a fine of not less than fifteen dollars ($15.00) nor more than one hundred dollars ($100.00) or by imprisonment of not less than ten days nor more than ninety days, or both. (Id. § 6.)

62g. **Same.**—Any person, firm, association or corporation engaged in the business of operating a creamery, cheese factory, butter factory, renovating or process butter factory, ice cream factory, condensory, wholesale milk dealer, or cream station who shall violate any of the laws relating to the handling, purchasing and selling of dairy products under the dairy statutes now in force, or who shall violate any of the statutes relating to unfair and unlawful discrimination shall, as defined by the laws of this State, in addition to the penalties provided therefor, forfeit the license herein provided for, after notice and hearing as provided for by section 5 of this act. Provided, that when any license has been revoked the person, firm, association or corporation complained of may upon request be granted a re-hearing and if a satisfactory agreement can be reached by and between such person, firm, association or corporation and the Secretary of the Department of Agriculture, the license of said person, firm, association or corporation may be reinstated and he be authorized to resume business at the place named in the license. Provided, further, that if a re-hearing is denied or an agreement cannot be reached, then and in that case recourse may be had by an appeal to the Circuit Court. (Id. § 7.)

62h. **Inspection.**—The Secretary of the Department of Agriculture, his agents and employees, shall have access, ingress and egress to all places of business, factories or buildings where any dairy products are bought, manufactured, held or stored and shall have access to all of the books and records of such places of business for the purpose of enforcing the provisions of this act, as well as any other duty imposed upon him by any other statute regulating the purchasing, selling, manufacture or disposition of dairy products. The refusal to allow access, ingress or egress or inspection as herein provided for shall be deemed to be a violation of this act and shall be punishable as herein provided. (Id. § 8.)

63. **Dairy Cows Tested for Tuberculosis.**—It shall be the duty of the State Live Stock Sanitary Board* to cause to be tested for tuberculosis any cow or cows from which milk is sold for human consumption, when requested so to do by three or more patrons thereof and when deemed advisable and necessary by such board. (R. C. 1919, Title 6, Part 15, c. 10, art. 1, § 8074, as re-enacted L. 1925, c. 115.)

64. **When Unlawful to Use Certain Words.**—No person, firm or corporation shall use in any way, in connection or association with the sale or exposure for sale or advertisement of any substance designed to be used as a substitute for butter, the word "butter," "creamery," or "dairy," except as required by the dairy law of this State, or the name or representation of any breed of dairy cattle or any combination of such word or words and representation, or any words or symbols or combination thereof commonly used in the sale of butter.

Penalty.—Whoever violates the provisions of this act shall, upon conviction be liable to a fine of not less than ten dollars nor more than one hundred dollars. (L. 1923, c. 189, as re-enacted L. 1925, c. 115.)

65. **Addition of Fat or Oil Other Than Milk Fat to Milk, Cream, Etc., Unlawful.**—It shall be unlawful for any person, firm or corporation by himself his servant or agent, or as the servant or agent of another, to manufacture, sell or exchange, or have in possession with intent to sell or exchange, any milk, cream, skim milk, butter milk, Condensed or evaporated milk, powdered milk, condensed skim milk, or any of the fluid derivatives of any of them to which has been added any fat or oil other than milk fat, either under the name of said products or articles or the derivatives thereof or under any fictitious or trade name whatsoever. (L. 1923, c. 192, § 1, as re-enacted L. 1925, c. 115.)

66. **Regulating Sale of Condensed, Evaporated or Powdered Skim Milk in Containers; Label.**—It shall be unlawful for any person, firm or corporation by himself, his servant or agent, or as the servant or agent of another, to sell or exchange, or expose for sale or exchange, or have in possession with intent to sell or exchange, any condensed, evaporated or powdered skim milk in containers holding less than ten (10) pounds avoirdupois net weight and each said container shall bear the name and address of the manufacturer, distinctly branded, indented, labeled or printed thereon, together with the words "condensed skim milk," or "powdered

*See No. 25 et seq.

skim milk," as the case may be, in Roman letters of a size at least as large as any other words or letters appearing on said brand, indentation or label. (Id. § 2.)

67. Penalties.—Any violation of any of the provisions of this section is hereby declared to be a misdemeanor and any person whether individually or as a member of a partnership or as a responsible agent or officer of a corporation who shall be convicted of such violation, either on his own behalf or in the interests of a corporation shall be punished by imprisonment in the county jail for not less than thirty days nor more than sixty days or by a fine of not less than fifty dollars nor more than one hundred dollars or by both such fine and imprisonment. (Id. § 3.)

68. Enforcement of Act.—The Dairy Expert by himself or by his assistants, chemists, inspectors or agents, shall be charged with the enforcement of the provisions of this section. (Id. § 4.)

69. When Act Does Not Apply.—Nothing in this section shall be construed to prohibit the shipment into this State from a foreign State and the first sale thereof in this State in the original package intact and unbroken, of any of the products or articles, the manufacture, sale or exchange of which or possession of which, with intent to sell or exchange is prohibited hereby. (Id. § 5.)

70. Discrimination in Buying.—Any person or corporation, foreign or domestic, doing business in this State and engaged in the business of buying milk, cream, butter, butter fat, or any other dairy product, that shall intentionally, for the purpose of injuring or destroying the business or trade of a competitor in any locality or to prevent or destroy competition by any person, who in good faith, intends or attempts to engage in such business, discriminate between different sections, communities, or cities of this State, by paying for such milk, cream, butter, butter fat or any other dairy product, a higher price in one section, community or city, than such person or corporation is at the same time paying for such property in another section, community, or city within the State, after making due allowance for the difference, if any, in the grade or quality and in the actual cost of transportation from the point where same is purchased to the market where it is sold or intended to be sold, shall be deemed guilty of unfair discrimination, which is hereby prohibited and declared unlawful. (L. 1923, c. 195, § 1.)

71. Prima Facie Evidence of Discrimination.—Proof of the buying of any such product, a commodity or property by any person, firm or corporation at a higher price or rate in one section, community, or city of this State than is paid for the same commodity by such person, firm, or corporation in another section, community or city of this State after making due allowance for the difference, if any, in the grade or quality and in the actual cost of the transportation from the point where the same is purchased, to the market where it is sold, or intended to be sold, shall constitute prima facie evidence of a violation of this act. (Id. § 2.)

72. Penalty.—Any person or corporation violating any provision of this act shall, upon conviction thereof, be fined not less than two hundred dollars nor more than ten thousand dollars for such offense. (Id. § 3.)

73. Duty of Attorney-General.—If complaint shall be made to the Attorney-General that any corporation is guilty of unfair discrimination as defined by this act, he shall investigate such complaint, and for that purpose he may subpœna witnesses, administer oaths, take testimony and require the production of books or other documents, and, if in his opinion sufficient grounds exist therefor, he may prosecute an action in the name of the State in the proper court to annul the charter or revoke the permit of such corporation from doing business in this State, and if in such action the court shall find that such corporation is guilty of unfair discrimination as defined by this act, such court may annul the charter or revoke the permit of such corporation, and may permanently enjoin it from transacting business in this State. (Id. § 4.)

74. Operators of Creameries to Display Sign, Etc.—Every person, firm or corporation, foreign or domestic, doing business in this State, operating a creamery or cream buying station, or engaged in the business of buying milk, cream, butter, butter fat or any other dairy product, whether as agent or otherwise, shall at all times keep posted in the front window or on the front of the building or place where such business is transacted, a sign printed in letters and figures at least two inches in height, and so printed and posted as to be plainly legible from the outside of such building or place, stating and showing the price being offered or paid for such dairy products and every such person or corporation shall also keep in writing, at such building or place, a permanent record showing the price offered or paid for each kind of such dairy products and the exact time when each change in price was posted and such record shall at all times be subject to inspection and examination by any person interested, without giving any reason therefor. (Id. § 5.)

75. Failure to Comply With Provisions of Preceding Section a Misdemeanor; Revocation of License.—Every person, firm or corporation paying for any such dairy products any other price than that posted, as required by the foregoing section or violating any of the provisions of the foregoing section, or failing to comply with the provisions thereof shall be guilty of a misdemeanor, and the judgment of conviction shall operate as a forfeiture of the license to engage in such business. (Id. § 6.)

76. Remedies Cumulative.—The remedies provided for in this act shall be construed as cumulative and not exclusive. (Id. § 7.)

77. Discrimination in Buying.—Any person or corporation, foreign or domestic, doing business in this State and engaged in the business of buying dairy products of any kind, who shall discriminate between different sections, communities, or cities of this State, by paying for such product a lower price in one section, community or city, than such person or corporation is at the same time paying for such product in another section, community or city within the State, after making due allowance for the difference, if any, in the grade or quality, and in the actual cost of transportation from the point where same is purchased to the market where it is sold, intended to be sold or manufactured, shall be deemed guilty of unfair discrimination, which is hereby prohibited and declared unlawful. (L. 1925, c. 166, § 1.)

78. Penalty.—Any person or corporation violating any of the provisions of this act shall upon conviction thereof be fined not less than two hundred dollars (200.00) nor more than one thousand dollars ($1,000.00) for such offense. (Id. § 2.)

79. Remedies Cumulative.—Nothing in this act shall be construed as repealing any other act, or part of an act, but the remedies herein provided shall be cumulative to all other remedies provided by law. (Id. § 3.)

80. Dairy Products, Creameries, Cream Stations.—The Secretary of Agriculture shall succeed to the duties and powers heretofore placed upon and granted the State Dairy Expert, and wherever the expressions "State Dairy Expert" or "Expert" (meaning the State Dairy Expert) now appears in any of the sections of the Revised Code of 1919 or laws amendatory thereto, or subsequently enacted, the Secretary of Agriculture shall be substituted in place of such State Dairy Expert or Expert. Through the Division of Inspections of the Department of Agriculture and the director thereof, the Secretary of Agriculture shall have full authority and is hereby required to enforce all such laws and acts. Sections 7904 and 7921 of the Revised Code of 1919 are hereby repealed. Sections 7905 to 7920, inclusive, and sections 7923 to 7926, inclusive, of the Revised Code of 1919, and chapters 189 and 192 of the Session Laws of 1923, all relating to dairy products, the inspection thereof, and to any substitutes for milk, butter or other dairy products, are hereby expressly retained in force; provided, that wherever in such laws either of the following expressions "State Dairy Expert" or "Expert" shall appear there shall be substituted therefor the expression "Secretary of Agriculture" or "Secretary," and the Secretary of Agriculture shall enforce, through the Division of Inspections, the provisions of all laws retained in force by this section. (L. 1925, c. 115, sub. c. III, art. V, § 15.)

NOTE: See also Nos. 25 et seq., 105, 122 et seq., 135a et seq., 265 et seq., 277, 278 and 295.

Eggs.

81. Unlawful to Sell, Etc., Eggs Unfit for Human Food; When Deemed Unfit.—It shall be unlawful for any person, firm or corporation to sell, offer or expose for sale, or to traffic in, eggs which are unfit for human food. For the purpose of this act, eggs shall be deemed unfit for human food if they consist in whole or in part of a filthy, decomposed or putrid substance. (L. 1919, c. 208, § 1, as re-enacted L. 1925, c. 115.)

82. Unlawful to Use Eggs Unfit for Food.—It shall be unlawful for any person, firm or corporation to use eggs that are unfit for food as defined in section one in the preparation or manufacture of food for public consumption; and there shall be no delivery, sale, purchase or acceptance of such eggs in or at any establishment where food products are prepared or manufactured. (Id. § 2.)

83. Sale of Cold Storage Eggs, Etc., Regulated.—It shall be unlawful for any person, firm or corporation to advertise for sale, offer for sale or to sell, as and for fresh eggs, any eggs which have been held in cold storage for thirty days or any eggs which have been pickled in brine or in water glass or in lime water or which have been preserved in any manner whatsoever. For the purpose of this act and in all dealings having to do with the purchase and sale of eggs, the words "eggs," when used without further description or qualifications, shall in every in-

stance be understood to mean fresh, sweet eggs. In case eggs which have been held in cold storage for a period of thirty days or longer are offered or exposed for sale or sold, there shall be placed in or on the receptacle containing such eggs, in full view of the public, a card not smaller than six inches in width by six inches in length upon which shall be printed the words "cold storage" in plain gothic letters not less than two inches in length. In case eggs which have been preserved by pickling in brine, water glass or lime water, or which have been preserved by any process whatsoever shall be offered or exposed for sale or sold, there shall be placed in or on the receptacle containing such eggs, in full view of the public, a card not smaller than six inches in width by six inches in length upon which shall be printed the words "preserved eggs" in plain gothic letters not less than two inches in length. (Id. § 3.)

84. **Candling of Eggs; Candling Construed.**—It shall be unlawful for any person, firm or corporation, in buying or selling eggs, to take or to give a greater or less dockage for eggs unfit for food as defined in section one of this act than the actual dockage which shall be determined by the careful candling of the eggs so purchased or sold. The term "candling" as used herein shall be construed to mean the careful examination, in a partially dark room or place, of the whole eggs by means of a strong light, the apparatus and method employed to be such as shall be approved by the State Food and Drug Commissioner.* (Id. § 4.)

85. **Cases of Candled Eggs to Contain Certificate; Form.**—There shall be placed on the top layer under top flat of every case of candled eggs, by the person, firm or corporation candling the same, a candling certificate. Such candling certificate shall be printed on cards or sheets of paper not smaller in size than two and three-eighths by four and one-fourth inches and shall give the date of candling the eggs contained in the case in which it is placed, name, initials, or number of the person candling the eggs, the name, address and license number of the person, firm or corporation candling the eggs or for whom the eggs were candled. Such certificates shall be in the following words and form:

The eggs in this case were candled .....
Date.
By .....
(Signature of person candling the eggs.)
of .....
(Individual, firm, or corporation.)
License No. ....S. D.
Address.

(Id. § 5.)

86. **Buyers of Eggs to Maintain Place for Candling of Eggs; Buyers to Render Statement to Producers.**—Every person, firm or corporation engaged in the business of buying eggs in this State for resale or consignment shall provide and maintain an adequate place for the accurate candling of eggs and a suitable place for the proper handling of eggs which are intended to be used, or sold to be used, for human food. Persons, firms, or corporations buying eggs from producers shall render to the producer after such eggs have been candled as herein required a statement which shall show the total number of eggs received from the producer and the number of eggs rejected by the process of candling as unfit for human food. (L. 1919, c. 208, § 6, as amended L. 1923, c. 190, and re-enacted L. 1925, c. 115.)

87. **Dealers in Eggs to Obtain License; Exception.**—For the purpose of enforcing the provisions of this act it is hereby required that on or before the tenth day of July, 1919, and the first day of April annually thereafter, every person, firm or corporation engaged in the business of trading in eggs or of buying eggs, except retailers buying only candled eggs from licensed dealers and selling in lots not greater than one case, shall make application to the State Food and Drug Commissioner* for license to conduct such business. Any person, firm or corporation who may desire to engage in such business after the first day of April of any year shall first make application to the State Food and Drug Commissioner for license. The commissioner, upon receipt of proper application upon such forms as he may provide, shall issue license to engage in such business. All licenses provided for herein shall expire on the thirtieth day of March following the date of issue. (L. 1919, c. 208, § 7, as re-enacted L. 1925, c. 115.)

88. **Penalties.**—Any person, firm or corporation failing to comply with the requirements of this act as to license or violating any provisions of this act shall be guilty of a misdemeanor and shall on conviction for the first offense be fined not more than fifty dollars ($50). Upon conviction for a second or any subsequent

*See No. 25 et seq.

violation of the foregoing provisions of this act, the violator shall be fined not to exceed one hundred ($100) dollars, and, in addition thereto, and as part of the penalty imposed, the court may, in its discretion authorize the State Food and Drug Commissioner to withhold, suspend, or revoke the license of the party so convicted, either permanently or for a limited time to be specified in the judgment. Any person, firm or corporation that shall engage in the business of buying or trading in eggs during the time specified in any such judgment, and while his license is withheld, suspended or revoked by the operation thereof shall, upon conviction therefor be punished by a fine of one hundred ($100) dollars for each offense and by the permanent revocation or withholding of license to buy or trade in eggs. (Id. § 8.)

89. Foods; Eggs.—Chapter 208 of the Session Laws of 1919, as amended by chapter 190 of the Session Laws of 1923, relating to traffic in eggs, is hereby expressly retained in force; provided, that wherever in such chapter either of the following expressions "State Food and Drug Commissioner," "Food and Drug Commissioner," or "Commissioner" shall appear there shall be substituted therefor the expression "Secretary of Agriculture" or "Secretary," and the Secretary of Agriculture shall enforce, through the Division of Inspections the provisions of said chapter as so amended. (L. 1925, c. 115, sub. c. III, art. V, § 5.)

Feeding Stuffs.

90. Phrases Defined.—For the purposes of this article the phrase "concentrated commercial feeding product" shall be construed to include any product used for feeding live stock or poultry, except whole unmixed seed or grain, whole hay, straw and corn fodder; and the phrase "medicinal stock food" shall be construed to include any condimental, patented, proprietary, trade-marked stock or poultry food or remedy in powdered form, claimed to possess medicinal properties or both medicinal and nutritive properties, under whatever name it may be sold. (R. C. 1919, Title 6, Part 14, c. 11, art. 10, § 7892, as re-enacted L. 1925, c. 115.)

91. Stock-Food Label.—Any person who shall sell, offer or expose for sale or distribution in this State any concentrated commercial feeding product shall furnish with each shipment, and affix to every package or parcel of such product, in a conspicuous place on the outside thereof, a legible and plainly printed statement in the English language, in type as large as ten point, clearly and truly certifying:

1. The net weight of the package; provided, that all such products shall be in standard weight bags or packages of twenty-five pounds or multiples thereof, or in bulk;
2. The name, brand or trade-mark of the product;
3. The name and principal address of the manufacturer or person responsible for placing the product on the market;
4. The minimum per cent of crude protein therein;
5. The minimum per cent of crude fat therein;
6. The maximum per cent of crude fibre therein; and,
7. The specific name of each ingredient used in the manufacture thereof.

The several ingredients shall be determined according to the methods adopted by the Association of Official Agricultural Chemists of the United States. (Id. § 7893.)

92. Statement to be Filed.—Before any person shall sell, offer or expose for sale or distribution in this State any such product bearing a distinguishing name or trade-mark, he shall file, with the State Food and Drug Commissioner,* a certified copy of the statement specified in the preceding section, to be accompanied, when the Food and Drug Commissioner shall request, by a sealed package containing at least one pound of the product to be sold, offered or exposed for sale or distribution in this State, and the person furnishing such sample shall make affidavit that such sample corresponds to the product which it represents in the per cent of crude protein, crude fat, crude fibre, and the ingredients used in its manufacture. (Id. § 7894.)

93. Inspection Fee.—Every person manufacturing or selling any concentrated commercial feeding product shall pay the State Food and Drug Commissioner, on or before the fifteenth day of July of each year, an inspection fee of fifteen dollars for each brand of such product sold, offered or exposed for sale or distribution in this State; and when any person who has not paid for the inspection

*See No. 25 et seq.

thereof shall at any time desire to sell any such product, he shall pay the inspection fee provided in this section before selling the same. (Id. § 7895.)

94. Certain Products Excepted.—The provisions of the three preceding sections shall not apply to any such product manufactured in this State from wheat, oats, barley, rye or corn, when unmixed with other substances. (Id. § 7896.)

95. Medicinal Stock-Food Label.—Every lot, parcel or package of medicinal stock food sold, offered or exposed for sale or distribution within this State shall have affixed thereto a label in a conspicuous place on the outside thereof, containing a legible and plainly printed statement in black ink, in the English language, clearly and truly certifying:

1. The net weight of the package;
2. The name, brand or trade-mark of the product;
3. The name and principal address of the manufacturer or person responsible for placing the product on the market; and,
4. The specific name of each ingredient used in its manufacture. (Id. § 7897.)

96. Package of Product Filed.—Before any person shall sell, offer or expose for sale or distribution in this State any medicinal stock food bearing a distinguishing name or trade-mark, he shall file, with the State Food and Drug Commissioner, a certified copy of the statement specified in the preceding section, to be accompanied, when the Food and Drug Commissioner shall so request, by a sealed package containing at least one pound of the medicinal stock food to be sold, offered or exposed for sale or distributed in this State, and the person furnishing such sample shall make affidavit that such sample corresponds to the medicinal stock food which it represents as to each ingredient used in its manufacture. (Id. § 7898.)

97. Medicinal Stock-Food Fee.—Every person manufacturing or selling any medicinal stock food shall pay to the Food and Drug Commissioner, on or before the fifteenth day of July of each year, an inspection fee of fifty dollars for each medicinal stock food bearing a distinguishing name or trade-mark, sold, offered or exposed for sale or distributed in this State; and when any person who has not paid for the inspection thereof shall at any time desire to sell any such stock food, he shall pay the inspection fee provided in this section before selling the same. (Id. § 7899.)

98. Power to Refuse Registry.—The State Food and Drug Commissioner shall have power to refuse to register any concentrated commercial feeding product or medicinal stock food under any name, brand or trade-mark which would be misleading or deceptive, or which would tend to mislead or deceive as to the ingredients of which it is composed, or when the specific name of each ingredient used in its manufacture is not stated. Should any such product or medicinal stock food be registered in this State, and it is afterward discovered that such registration is in violation of any provision of this article, the Food and Drug Commissioner shall have power to cancel such registration; and he shall have power to refuse to allow any person to lower the guaranteed analysis or change the ingredients of any brand of concentrated commercial feeding product or medicinal stock food during the time for which it was registered, unless satisfactory reasons are presented for making such change. (Id. § 7900.)

99. When Certificate Shall Issue.—Whenever any person manufacturing or selling a brand of concentrated commercial feeding product or medicinal stock food shall have complied with the provisions of this article, he shall be entitled to a certificate from the State Food and Drug Commissioner, setting forth such fact: Provided, that no certificate shall issue if the statement required by section 7898 or the label required by section 7897 shall bear the name of any substance which is not present in the medicinal stock food in an amount sufficient to produce the therapeutic effects and physiological action ascribed to such substances by standard textbooks on Materia Medica and Therapeutics, when such medicinal stock food shall be administered in the doses recommended; or if such label shall not bear a true statement in the terms of percentage by weight, showing the proportion of any substance in such medicinal stock food claimed to possess or recognized as possessing value as a remedy, medicine or condiment. (Id. § 7901.)

100. Agent Not Required to Have Certificate.—No agent of any person holding a certificate issued pursuant to the preceding section shall be required to file any statement or pay any inspection fee. (Id. § 7902.)

101. Violation, Penalty.—It shall be unlawful for any person to sell, offer or expose for sale or distribution in this State any concentrated commercial feeding product or medicinal stock food, or to accept or solicit orders for the same for future delivery, such delivery to be made either in or out of the State, without having first complied with the provisions of this article; and any person who shall violate or fail to comply with any of its provisions shall be deemed guilty of a

misdemeanor and, upon conviction thereof, shall be punished for the first offense by a fine of not less than ten nor more than fifty dollars and for each subsequent offense by a fine of not less than fifty nor more than one hundred dollars, or by imprisonment in the county jail not exceeding thirty days, or by both such fine and imprisonment. (Id. § 7903, as amended L. 1925, c. 288.)

102. Commercial Feeding Products and Medicinal Stock Foods.—Sections 7892 to 7903 of the Revised Code of 1919, relating to commercial feeds and medicinal stock foods, their registration, labeling and sale, are hereby expressly retained in force; provided, that wherever in such sections either of the following expressions "State Food and Drug Commissioner," "Food and Drug Commissioner" or "Commissioner" shall appear there shall be substituted therefor the expression "Secretary of Agriculture" or "Secretary," and the Secretary of Agriculture shall enforce, through the Division of Inspections, the provisions of said sections. (L. 1925, c. 115, sub. c. III, art. V, § 10.)

NOTE: See also Nos. 26 and 30.

Fish.

See No. 105.

Flavoring Extracts.

See No. 221.

Flour.

103. Flour.—It shall be unlawful for any person to sell, offer or expose for sale any flour which in the process of manufacture has been subjected to any treatment whereby it is bleached or its natural color changed in any manner by any chemical or other artificial action, unless the container in which such flour is offered or exposed for sale or sold shall be plainly and conspicuously labeled with the words "Bleached," such label to be printed in capital letters of solid type not less than one inch in height, on the front of the sack, bag or other container or on the head of the barrel containing such flour. (R. C. 1919, Title 6, Part 14, c. 11, art. 2, § 7816, as re-enacted L. 1925, c. 115.)*

NOTE: See also Nos. 105 and 276.

Food Preservatives.

104. Food Preservatives.—It shall be unlawful for any person to manufacture, sell, offer or expose for sale any food product to which has been added any borax, paraffin, boric acid, formaldehyde, salicylic acid, abrastol, beta naphtol, saccharine, dulcin, glucin, flourine compound, formic acid, or other injurious or unhealthful substance or any derivative thereof. It shall be unlawful to sell or offer for sale any meat or meat product to which has been added any sulphurous acid or any salt of the same or any substance capable of producing such acid or salt thereof. All food products which contain any preservative, other than those substances specifically mentioned in this section, which may be permitted by the rules and regulations provided for in section 7793† shall be plainly and conspicuously labeled to show the presence and amount of such preservative. (R. C. 1919, Title 6, Part 14, c. 11, art. 2, § 7818, as re-enacted L. 1925, c. 115.)*

Fruits, Vegetables, Etc.

104a. Public Interest.—It is hereby declared that the business of marketing farm products so affects the public welfare as to be subject to regulation and control by the State. (R. C. 1919, Title 6, Part 15, c. 6, § 7982.)

104b. Marketing Defined.—For the purposes of this chapter, the word "marketing" shall be construed to mean buying and selling by any person other than the producer who sells his own product, transporting, storage for charge, receiving on consignment or the soliciting of sales on consignment. (Id. § 7983.)

105. Farm Product Defined.—For the purposes of this chapter, the phrase "farm product" shall be construed to mean live stock, meat, poultry, dried, canned,

*For penalty see Nos. 8 and 11.
†See No. 1.

preserved or processed fruits, or vegetables, and any agricultural or horticultural product, any marine food product, dairy product and any packing house or mill product designed for food. (Id. § 7984.)

105a. Same—Duties.—It shall be the duty of such director* to investigate the subject of marketing farm products, to disseminate useful information relating thereto, and to furnish advice and assistance to the public, in order to promote efficient and economical methods of marketing farm products. He shall have authority to gather and disseminate timely information concerning the supply, demand, prevailing prices, and the commercial movement of farm products, including such as may be in common and cold storage, and shall interchange such information with the United States Department of Agriculture. (Id. § 7987.)

105b. To Co-operate With Federal Department.—In carrying out the purposes of this chapter, such director shall co-operate, as far as practicable, with the United States Department of Agriculture and with any other agencies of the United States, and with agencies of this and other States, which are engaged in investigations or activities relating to the marketing of farm products and the grading and inspecting of grain. (Id. § 7988.)

105c. Dealers' Reports.—Such director shall be authorized to require any person engaged in the business of marketing farm products to prepare and submit to him, at such times and in such form as he may prescribe, reports showing such facts in the possession of such person relating to his business as may be necessary for carrying out the purposes of this chapter. (Id. § 7991.)

106. Director May Promulgate Standards and Grades.—After investigation and public hearings, with the approval of the Governor and the Secretary of Agriculture of the United States, such director may, from time to time, establish and promulgate standards for open and closed receptacles and the grading and classification of farm products, by which their quantity, quality or value may be determined; and prescribe and promulgate rules and regulations governing the marks, brands and labels which may be required upon receptacles for farm products, for the purpose of showing the name and address of the producer or packer, the quantity, nature and quality of the product, and for the purpose of preventing deception in reference thereto; provided, that any standard for any farm product or receptacle therefor, or any requirement for marking receptacles for farm products, established under authority of the Congress of the United States, shall forthwith, as far as applicable, be established, prescribed and promulgated as the official standard or requirement in this State; provided, further, that any such standard, rule or regulation shall become effective upon the expiration of sixty days after it shall have been signed by the director, approved by the Governor and published in at least one publication of two or more newspapers of general circulation in the territory affected thereby. (Id. § 7992.)

107. Products Must Conform to Standards.—Whenever any standard for the grade or other classification of any farm product becomes effective under this chapter, no person thereafter shall pack for sale, offer to sell or sell within this State any farm product to which such standard is applicable, unless it conforms to the standard, subject to such reasonable variations therefrom as may be allowed in the rules and regulations made under this chapter; provided, that any farm product may be packed for sale, offered for sale or sold without conforming to the standard for grade or other classification applicable thereto, if it is specially described or plainly marked "Not Graded." Whenever any standard for an open or closed receptacle for a farm product shall be made effective under this chapter, no person shall pack for sale, sell or deliver any such farm product in a receptacle to which such standard is applicable, unless the receptacle conforms to the standard, subject to such variations therefrom as may be allowed in the rules and regulations made under this chapter or unless the receptacle be of a capacity twenty-five per cent less than the capacity of the minimum standard receptacle for the product; provided, that any receptacle for such farm product of a capacity within twenty-five per cent of, or larger than the minimum standard receptacle for the product, may be used if it be specifically described as not a standard size, or be conspicuously marked with the phrase "Not Standard Size," in addition to any other marking which such director may prescribe for such receptacle under authority given him by this chapter. Whenever any requirement for marking a receptacle for a farm product shall have been made effective under this chapter, no person shall sell and deliver in this State any such farm product in a receptacle to which such requirement is applicable, unless the receptacle be marked according to such requirement. (Id. § 7993.)

108. Inspectors.—Such director shall be authorized to appoint persons to inspect and classify farm products, and to certify as to the grade or other classi-

*Director of Marketing. But see No. 114 et seq.

fications thereof, in accordance with the standards made effective under this chapter, and shall fix, collect, or cause to be collected the fees for such services. Whenever, after opportunity for a hearing is afforded to any person so appointed, it shall be determined by such director, that such person has failed to classify farm products correctly in accordance with the standards established therefor, or has violated any provision of this chapter or any rule and regulation made thereunder, such director may suspend or revoke the appointment of such person and, pending investigation, such director may suspend or revoke any such appointment, temporarily, without hearing. (Id. § 7994.)

109. Appeals From Classification.—The owner or person in possession of any farm product classified in accordance with the preceding section may appeal from such classification to the director, under such rules and regulations as he may prescribe, who shall issue a certificate of the grade or other classification thereof. (Id. § 7995.)

110. Certificate of Grade; Prima Facie Evidence.—A certificate of the grade or other classification of any farm product issued under this chapter shall be accepted in any court of this State as prima facie evidence of the true grade or other classification of such product at the time of its classification. (Id. § 7996.)

111. Unfit Products Must Not be Certified.—Neither the director nor any person appointed by him shall classify or certify as to the grade or other classification of any farm product which, in his judgment, is unwholesome or unfit for food of man or animal; and whenever, in the performance of his official duties, he discovers any farm product which is unwholesome or unfit as food for man or for the animal for which it is intended, he shall promptly report the fact to a health officer. (Id. § 7997.)

111a. Inventory and Inspection.—Such director, his agents and employees, are authorized from time to time to ascertain the amount of any farm product or products within the State, to inspect any farm products in the possession of any person engaged in the business of marketing the same within this State, and to take samples of such products upon payment of the market value thereof. (Id. § 7998.)

111b. Right of Entry.—For the purpose of carrying out the provisions of the preceding section, such director, his agents and employees, shall have authority to enter, on any business day, during the usual hours of business, any storehouse, warehouse, cold storage plant, packing house, stockyard, railroad yard, railroad car, or any other building or place where farm products are kept or stored by any person engaged in the business of marketing farm products. (Id. § 7999.)

112. Rules and Regulations.—Subject to the approval of the Governor, such director shall have authority to make and promulgate such rules and regulations, not inconsistent with the laws of this State, as may be necessary to carry out the provisions of this chapter. Such rules and regulations shall be made to conform as nearly as practicable to the rules and regulations of the Secretary of Agriculture of the United States prescribed under any act of Congress relating to the marketing of farm products. (Id. § 8000.)

113. Violation; Penalty.—Any person who shall violate any provision of this chapter or any rule or regulation established and promulgated in pursuance thereof shall be deemed guilty of a misdemeanor and upon conviction thereof shall be punished as provided in section 8006. (Id. § 8003.)

113a. Conviction—Penalty.—Any person convicted of a misdemeanor under this chapter shall be punished by a fine not exceeding one hundred dollars or by imprisonment in the county jail not exceeding two months or by both such fine and imprisonment. (Id. § 8006.)

113b. Construction of Chapter.—Nothing in this chapter shall be so construed as to impair any power conferred, or interfere with any duty imposed, by this Code upon the State Dairy Expert or the State Food and Drug Commissioner, with respect to any matter affecting the public health or safety. (Id. § 8007.)

114. Powers and Duties of Department of Marketing Transferred to Department of Agriculture; Word "Director" Construed.—All powers and duties conferred upon the Department of Marketing by sections 7982, 7983, 7984, 7987, 7988, 7990, 7991, 7992, 7993, 7994, 7995, 7996, 7997, 7998, 7999, 8000, 8001, 8002, 8003, 8004, 8005, 8006, and 8007 of the South Dakota Revised Code of nineteen hundred nineteen, and all provisions thereof are hereby transferred to and shall apply to the Department of Agriculture, and wherever the word "Director" occurs therein it shall be construed to mean and be "Commissioner of Agriculture." (L. 1921, c. 190, § 6, as re-enacted L. 1925, c. 115.)

115. Duties and Powers.—The head of this division* shall be known as the Director of Markets, Statistics and Immigration. The Secretary of Agriculture,

*Division of Markets, Statistics and Immigration.

through the Division of Markets, Statistics and Immigration shall, except as hereinafter provided, administer the laws, perform the duties and exercise the powers heretofore administered, performed and exercised by the Department of Agriculture, the Commissioner of Agriculture, the State Board of Immigration, the Immigration Commissioner, and the Department of Marketing. (L. 1925, c. 115, sub. c. III, art. IV, § 1.)

116. General Duties.—The Secretary of Agriculture through this division shall administer the laws, exercise the powers and perform the duties heretofore administered, exercised and performed by and shall be vested with all the duties, powers, purposes, responsibilities and jurisdictions that may have heretofore been and are now by law vested in the Department and Commissioner of Agriculture, the Department and Commissioner of Immigration and the Department of Marketing. He shall co-operate with the Federal Department of Agriculture so far as practicable, and with such other agencies relating to the marketing of farm products and the grading and inspection of grains. The general functions of the Division of Markets, Statistics and Immigration shall be to study market conditions, to co-operate with railroad companies and the State Board of Railroad Commissioners in securing better transportation facilities, and he is to supervise the grading and marketing of farm products so far as possible. It shall be the duty of said director to look after and devise means to advance the immigration interests of the State and to encourage and promote the permanent settlement and improvement of all sections of the State. He shall co-operate with the Director of Taxation in compiling and distributing a complete list of all crop statistics. (Id. § 2.)

NOTE: See also Nos. 25-26, 31, 33, 40, 274, 276, and 279.

Meat—Meat Products.

117. Lard.—It shall be unlawful for any person to manufacture, sell, offer or expose for sale as lard any product not wholly and legitimately and exclusively the rendered fresh fat of slaughtered healthy hogs. Every person who manufactures for sale, has in his possession with intent to sell, offers or exposes for sale, or sells, any substance made in the semblance of lard or as an imitation of lard, and which consists of any mixture or compound of animal or vegetable oils or fats, other than hog fat, in the form of lard, shall cause the container thereof to be distinctly and legibly branded or labeled "Lard Substitute"; provided, that this section shall not apply to products made entirely from vegetable oils or their derivatives when the same are sold in original packages under a distinctive name and are plainly labeled to show the plant or plants from which such fats are derived; and every person who manufactures for sale, has in his possession with intent to sell, offers or exposes for sale or sells, any substance made in the semblance of lard or as an imitation of lard, or as a substitute for lard, and which is designed to take the place of lard, and which consists of any mixture or compound of lard with animal or vegetable oils or fats, shall cause the container thereof to be distinctly and legibly branded or labeled either "Adulterated Lard" or "Lard Compound." Such brand or label shall be in letters not less than one inch in length. Every dealer or trader who, by himself or agent, or as the servant or agent of another person, offers or exposes for sale, or sells, any form of lard substitute or adulterated lard, as hereinbefore defined, shall securely affix or cause to be affixed to the package wherein the same is contained, offered for sale or sold, a label, upon the outside and the face of which is distinctly and legibly printed in letters not less than one-half inch in length, the words "Lard Substitute" or "Adulterated Lard" or "Lard Compound," or other appropriate word which shall correctly express its nature and use. (R. C. 1919, Title 6, Part 14, c. 11, art. 2, § 7813, as re-enacted L. 1925, c. 115.)*

118. Diseased Animals.—It shall be unlawful for any person to slaughter for the purpose of sale as food, or to expose for sale or to sell, or bring or cause to be brought into any city, town or village within this State, for food, any animal or carcass of the same or any part thereof unless it was in good healthy condition at the time of killing and, in case of calves, unless the same were at least four weeks old at the time of killing. (Id. § 7814.)*

119. Sausage.—It shall be unlawful to manufacture, sell, offer or expose for sale any sausage containing more than two per cent of cereal, and whoever shall

*For penalty see Nos. 8 and 11.

manufacture, sell, offer or expose for sale sausage containing cereal shall display in his place of business, where it may be read by all customers, a sign bearing the words: "Sausage Sold Here Contains Cereal," in black letters not less than one inch in height printed on a light background. (Id. § 7819.)*

NOTE: See also Nos. 25 et seq., 33, 104, 105, and 122 et seq.

Mill Products.

See No. 105.

Vinegar.

120. Vinegar.—It shall be unlawful for any person to manufacture, sell, offer or expose for sale any vinegar that does not contain at least four and one-half per cent, by weight, of absolute acetic acid, or which contains any preparation of copper, lead, sulphuric acid or other injurious ingredient or any artificial coloring matter. (R. C. 1919, Title 6, Part 14, c. 11, art. 2, § 7817, as re-enacted L. 1925, c. 115.)*

NOTE: See also No. 26.

Sanitation.

121. Unsanitary Conditions.—It shall be unlawful to manufacture, transport, sell, offer for sale, prepare, store or serve any food product under conditions or in surroundings liable to spread disease or to be otherwise injurious to health. (R. C. 1919, Title 6, Part 14, c. 11, art. 2, § 7820, as re-enacted L. 1925, c. 115.)*

122. Bakeries, Confectioneries, Etc., to be Adequately Lighted, Drained, Plumbed and Ventilated.—Every building, room, basement, inclosure or premises occupied, used or maintained as a bakery, confectionery, cannery, bottling works, packing house, slaughterhouse, creamery, cheese factory, restaurant, hotel, grocery, meat market, or as a factory, shop, warehouse and public place or manufacturing establishment used for the preparation, manufacture, packing, storage, sale or distribution of any food as defined by statute, which food is intended for sale, shall be properly and adequately lighted, drained, plumbed, and ventilated, and shall be conducted with strict regard to the influence of such conditions upon the health of the employees, operatives, clerks, or other persons therein employed, and the purity and wholesomeness of the food therein produced, prepared, manufactured, packed, stored, sold or distributed. (L. 1921, c. 242, § 1, as re-enacted L. 1925, c. 115.)

123. Other Requirements.—The floors, side walls, ceilings, furniture, receptacles, implements and machinery of every such establishment or place where such food intended for sale is produced, prepared, manufactured, packed, stored, sold or distributed, and all cars, trucks, and vehicles used in the transportation of such food products shall at no time be kept or permitted to remain in an unclean, unhealthful and insanitary condition; and for the purposes of this act, unclean, unhealthful and insanitary conditions shall be deemed to exist if food in the process of production, preparation, manufacture, packing, storing, sale, distribution or transportation is not securely protected from flies, dust, dirt, and as far as may be necessary, by all reasonable means, from all other foreign or injurious contamination; or if the refuse, dirt, or waste products subject to decomposition and fermentation, incident to the manufacture, preparation, packing, storing, selling, distributing, or transportation of such food are not removed daily or if all trucks, trays, boxes, buckets, or other receptacles, or the chutes, platforms, racks, tables, shelves, and knives, saws, cleavers, or other utensils, or the machinery used in moving, handling, cutting, chopping, mixing, canning, or other processes are not thoroughly cleaned daily; or if the clothing of operatives, employees, clerks, or other persons therein employed, is unclean; or if any person, by himself or by his servant or agent, or as the servant or agent of any other person, firm or corporation having custody of a jar, bottle, measure, or other vessel used as a container for any carbonated or non-alcoholic beverage, soda water, mineral, spring, or distilled water either plain or carbonated, or any other soft drink, so-called, places or causes or permits to be placed therein any offal, kerosene, or other article except waters or beverages as herein numerated, and chemical agents and water used for cleansing said vessels. (Id. § 2.)

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*For penalty see Nos. 8 and 11.

124. Requirements as to Floors, Walls and Ceilings.—The side walls and ceilings of every bakery, confectionery, creamery, cheese factory, and hotel or restaurant kitchen shall be so constructed that they can be easily kept clean; and every building, room, restaurant or enclosure occupied or used for the preparation, manufacture, packing, storage, sale or distribution of food shall have an impermeable floor made of cement, tile laid in cement, brick, wood or other suitable material which can be washed clean with water. (Id. § 3.)

125. Doors, Windows, Etc., to be Screened; Exception.—The doors, windows and other openings of every food producing or distributing establishment shall, during the period from April first to December first of each year, be fitted and equipped with self-closing screened doors and with window screens of wire gauze sufficiently fine to exclude flies, but this requirement shall not apply to warehouses or storerooms used for storage or handling of finished food products in original tight packages. (Id. § 4.)

126. Toilet Rooms and Washrooms to be Provided for.—Every such building, room, basement, inclosure, or premises occupied, used or maintained for the production, preparation, manufacture, canning, packing, storage, sale or distribution of such food shall have adequate and convenient toilet rooms, lavatory or lavatories. The toilet rooms shall be separate and apart from the room or rooms where the process of production, preparation, manufacture, packing, storing, canning, selling and distribution is conducted. The floors of such toilet rooms shall be of cement, tile, wood, brick, or other non-absorbent material, and shall be washed and scoured as often as necessary to keep them clean. Such toilet or toilets shall be furnished with separate ventilating flues and pipes discharging into soil pipes or shall be on the outside of, and well removed from the building. Lavatories and washrooms shall be adjacent to toilet rooms, or when the toilet is outside of the building, the washroom shall be near the exit to the toilet and shall be supplied with soap, clean water and sanitary towels and shall be maintained in a sanitary condition. (Id. § 5.)

127. When Conditions Deemed a Nuisance.—If any such building, room, basement, inclosure, or premises occupied, used or maintained for the purposes of the aforesaid or if the floors, side walls, ceilings, furniture, receptacles, implements, appliances, or machinery of any such establishment, shall be constructed, kept, maintained, or permitted to remain in a condition contrary to any of the requirements or provisions of the preceding five (5) sections of this act, the same is hereby declared a nuisance, and any toilet, toilet room, lavatory or wash room as aforesaid, which shall be constructed, kept, maintained or permitted to remain in a condition contrary to the requirements or provisions of section five (5) of this act, is hereby declared a nuisance; and any truck, car or vehicle used in the moving or transportation of any food product as aforesaid, which shall be kept or permitted to remain in an unclean or insanitary condition is hereby declared a nuisance. Whoever unlawfully maintains, or allows or permits to exist a nuisance as herein defined shall be guilty of a misdemeanor, and, on conviction thereof, shall be punished as herein provided. (Id. § 6.)

128. Cuspidors to be Provided.—Every person, firm, or corporation operating or maintaining an establishment or place where food is produced, prepared, manufactured, packed, stored, sold or distributed shall provide the necessary cuspidors for the use of operatives, employees, clerks and other persons and each cuspidor shall be thoroughly emptied and washed out daily with water or a disinfectant solution, and five ounces thereof shall be left in each cuspidor while it is in use; provided, that in unheated warehouses boxes of sand or sawdust may be used as cuspidors if they be emptied and refilled each week. Whoever fails to observe the provisions of this section shall be guilty of a misdemeanor and punished as hereinafter provided. (Id. § 7.)

129. Expectorating on Floors, Etc., Prohibited; Employees to Wash Hands.—No operative, employee or other person shall expectorate on the floor or on the utensils or on the floors or side walls of any building, room, basement, or cellar where the production, preparation, manufacture, packing, storing, or sale of any such food is conducted. Operatives, employees, clerks, and all other persons who handle the material from which such food is prepared or the finished product, before beginning work, or after visiting toilet or toilets, shall wash their hands thoroughly in clean water. Whoever fails to observe or violate the provisions of this section, shall be guilty of a misdemeanor and punished by a fine of not more than twenty-five dollars. (Id. § 8.)

130. Unlawful to Sleep in Bakeries, Etc.—It shall be unlawful for any person to sleep, or to allow or permit any person to sleep in any work room of a bake shop, kitchen, dining room, confectionery, creamery, cheese factory, or any place

where food is prepared for sale, served or sold, unless all foods therein handled are at all times in closed packages. (Id. § 9.)

131. **Diseased Persons Not to be Employed.**—It shall be unlawful for any employer to require, suffer or permit any person who is affected with any contagious or infectious disease to work, or for any person so affected to work in a building, room, basement, inclosure, premises or vehicle occupied or used for the production, preparation, manufacture, packing, storage, sale, distribution, or transportation of food, and on receiving reliable information the Food and Drug Commissioner* may require any person working in any building, vehicle or premises covered by the provisions of this act to obtain from a reputable physician a statement showing such person to be free from all contagious or infectious diseases. (Id. § 10, as amended L. 1925, c. 165.)

132. **General Powers and Duties of State Food and Drug Commissioner; Enforcement of Act.**—It shall be the duty of the State Food and Drug Commissioner* and those appointed by him to enforce this act, and for that purpose the State Food and Drug Commissioner and his appointees shall have full power at all times to enter every such building, room, basement, inclosure or premises occupied or used or suspected of being occupied or used for the production, preparation or manufacture for sale, or the storage, sale, distribution or transportation of food; to inspect the premises and all utensils, fixtures, furniture and machinery, used as aforesaid. If upon inspection any such food producing or distributing establishment, conveyance, or any employer, employee, clerk, driver or other person is found to be violating any of the provisions of act, or if the production, preparation, manufacture, packing, storage, sale, distribution or transportation of such food is conducted in a manner detrimental to the health of the employees, and operatives, or to the character or quality of the food therein being produced, manufactured, packed, stored, sold, distributed or conveyed, the officer or inspector making the inspection or examination shall report such conditions and violations to the State Food and Drug Commissioner. The State Food and Drug Commissioner or his deputy shall thereupon issue a written order to the person, firm, or corporation, responsible for the violation or condition aforesaid to abate such condition or violation or to make such changes or improvements as may be necessary to abate them within such reasonable time as may be required in which to abate them. Notice of such order may be served by delivering a copy thereof to said person, firm, or corporation or by sending a copy thereof to said person, firm, or corporation or by sending a copy thereof by registered mail, and the receipt thereof through the post office shall be prima facie evidence that notice of said order has been received. Such person, firm or corporation shall have the right to appear in person or by attorney before the State Food and Drug Commissioner or the person appointed by him for such purpose, within the time limited in the order, and shall be given an opportunity to be heard and show cause why such order or instructions should not be obeyed. Such hearings shall be under such rules and regulations as may be prescribed by the State Food and Drug Commissioner. If after such hearing it shall appear that the provisions of this act have not been violated, said order shall be rescinded. If it shall appear that the requirements or provisions of this act are being violated, and that the person, firm or corporation notified as aforesaid is responsible therefor, said previous order shall be confirmed or amended as the facts shall warrant, and shall thereupon be final, but such additional time as necessary may be granted within which to comply with said final order. If such person, firm or corporation is not present or represented when such final order is made, notice thereof shall be given as above provided. In failure of the party or parties to comply with the first order of the State Food and Drug Commissioner within the time prescribed, when no hearing is demanded, or upon failure to comply with the final order within the time specified, the State Food and Drug Commissioner shall certify the facts to the State's Attorney of the county in which such violation occurred, and the State's Attorney shall proceed against the party or parties for the fines and penalties provided by this act, and also for the abatement of the nuisance, provided, that the right of injunction shall not be invoked for the abatement of nuisances under this act and, provided, that the proceedings herein described for the abatement of nuisances as defined in this act shall not in any manner relieve the violator from prosecution in the first instance for every such violation, nor from the penalties for such violation prescribed by section thirteen of this act. (L. 1921, c. 242, § 11, as re-enacted L. 1925, c. 115.)

133. **When Possession of Foods Deemed Prima Facie Evidence That Same Are Kept for Use or Sale; Sale or Use of Unfit Foods Prohibited.**—The posses-

*See No. 25 et seq.

sion of any foods or any material to be used in the preparation of foods, served or otherwise sold, by any store, baker, restaurant, hotel, market, lunchroom, bottling works or other places where foods are produced, manufactured, stored, packed, served or sold shall be prima facie evidence that such foods or materials to be used in the preparation of food are kept for use or sale in such establishment. Foods which are obviously unfit for consumption or which consist in whole or in part of filthy, decomposed or putrid animal or vegetable substance must not be sold or used in the preparation of food for sale or serving, even though the dealer may possess a guaranty from the manufacturer or jobber, as provided in section 7810 of the Revised Code of 1919.* (Id. § 12.)

134. Penalties.—Whoever violates any of the provisions of this act, or who refuses to comply with any lawful order or requirement of the State Food and Drug Commissioner, duly made in writing as provided in section eleven of this act, shall be guilty of a misdemeanor and on conviction shall be punished for the first offense by a fine of not less than ten dollars ($10.00) nor more than one hundred dollars ($100.00) and for the second and subsequent offenses by a fine of not less than fifty dollars ($50.00) nor more than one hundred dollars ($100.00), or by imprisonment in the county jail for not more than thirty days, or both such fine and imprisonment, in the discretion of the court, and each day after the expiration of the time limit for abating unsanitary conditions and completing improvements to abate such conditions as ordered by the State Food and Drug Commissioner, as aforesaid, shall constitute a distinct and separate offense. (Id. § 13.)

135. Foods; Sanitation.—Chapter 242 of the Session Laws of 1921, regulating sanitary conditions in all establishments and premises where food is handled, is hereby expressly retained in force, provided, that wherever the term "Food and Drug Commissioner" or "Commissioner" shall appear in such chapter, there shall be substituted therefor the term or expression "Secretary of Agriculture" or "Secretary," and the Secretary of Agriculture shall enforce through the Division of Inspections the provisions of said chapter. (L. 1925, c. 115, sub. c. III, art. V, § 4.)

135a. Beverages; Sanitary Containers.—It shall be unlawful for any manufacturer or dispenser of carbonated or soft drinks or ice cream to pack or sell any such drink or products unless the glass, jug, bottle, can or other container in which the same is packed, stored, or served be a clean and previously unused individual, sanitary receptacle, or unless such receptacle be clean and sanitary, or since last being used for any purpose, shall have been thoroughly washed in clean water or in a disinfecting solution approved and authorized by the State Board of Health, and any spoons or other utensils used in serving the same and intended for future use shall be thoroughly cleansed. Nothing, however, in this act shall prevent the use of paper cups and dishes if used but once, nor hold the dispenser responsible for the violation of this act by the manufacturer. (Act of March 10, 1927, § 1.)

135b. Duty of State Board of Health.—It is made the duty of the State Board of Health to inspect all factories, bottling works and dispensaries of such products within the State and to report any violations of this act, to the State's Attorney, whose duty it shall be to prosecute the same. (Id. § 2.)

135c. Penalty.—Any person violating the provisions of this act shall be deemed guilty of a misdemeanor and for each offense shall be punished by a fine of not less than ten dollars ($10.00) nor more than one hundred dollars ($100.00). (Id. § 3.)

NOTE: See also Nos. 14, 26, 33, 36-37, 42 et seq. For the hotel and restaurant inspection law, see Revised Code, 1919, §§ 7821 to 7843, as amended by chapters 241 and 256 of the Laws of 1921, re-enacted by chapter 115 of the Laws of 1925, and further amended by chapters 194 and 195 of the Laws of 1925.

PART III.

Special Drug Laws.

Denatured Alcohol.

136. Unlawful to Sell Adulterated Denatured Alcohol; Term Construed.—It shall be unlawful for any person to keep for sale, offer for sale, or to sell any denatured alcohol which has been diluted or adulterated in any manner whatsoever.

*See No. 16.

For the purposes of this act the term "denatured alcohol" shall be understood to mean ethyl or grain alcohol which has been modified in accordance with any of the formulas prescribed for denaturing ethyl alcohol by the Commissioner of Internal Revenue of the United States Department of the Treasury, except alcohol denatured for medical purposes according to formulas prescribed by said Commissioner of Internal Revenue and commonly known as medicated or bathing alcohol. (L. 1921, c. 270, § 1, as re-enacted L. 1925, c. 115.)

137. Label.—It shall be unlawful for any person to sell, offer for sale or have in his possession with intent to sell, offer for sale, give away, deal in or supply any denatured alcohol under or by whatever name or trade-mark it may be called or known, unless the container in which it is sold, offered for sale, given away, dealt in or supplied shall bear a label printed in red ink on a white background setting forth in a plain and conspicuous manner the name and address of the seller and the following words and device:

POISON! (Skull and Crossbones) CAUTION!
DENATURED ALCOHOL.

To be used for art, mechanical and burning purposes only. COMPLETELY DENATURED ALCOHOL is a violent poison. It cannot be applied externally to human or animal tissue without serious injurious results. It cannot be taken internally without inducing blindness and general physical decay, ultimately resulting in death. (Id. § 2.)

138. Unlawful to Deal in Articles of Food, Etc., Containing Denatured Alcohol.—It shall be unlawful for any person to sell, offer for sale or have in his possession with intent to sell, offer for sale or give away any article of food or drink or any medicinal or toilet preparation, intended for human use internally or externally, which contains any denatured alcohol. (Id. § 3.)

139. "Person" Construed.—For the purposes of this act the term "person" shall be construed to include persons, firms, associations and corporations. (Id. § 4.)

140. Enforcement of Act.—The State Food and Drug Commissioner* shall be charged with the enforcement of this act. (Id. § 5.)

141. Penalty for Violation of Act.—Whoever shall violate any of the provisions of this act shall be deemed guilty of a misdemeanor and upon conviction shall be punished by a fine of not more than one hundred dollars or imprisonment in the county jail for not more than thirty days, or by both such fine and imprisonment. (Id. § 6.)

NOTE: See also Nos. 175 and 220.

Live Stock Remedies—Medicinal Stock Food.

See Nos. 26, 30 and 90 et seq.

Pharmacy, Poisons and Narcotics.

141a. Definitions.—(a) The term "pharmacist" when not otherwise limited, means a person licensed by the Board of Pharmacy, to prepare, compound and dispense physicians' prescriptions, drugs, medicines, and poisons;

(b) The term "pharmacy," when not otherwise limited means a place regularly registered by the State Board of Pharmacy in which drugs, chemicals, medicines, prescriptions and poisons are compounded, dispensed, and retailed;

(c) "Chemicals," where not otherwise limited, means the chemical materials or medicines;

(d) "Drugs," where not otherwise limited, means all substances used as medicines or in the preparation of medicines and such material as may be used in the treatment of disease;

(e) "Medicines," where not otherwise limited, means drugs or chemicals, or preparations thereof, in suitable form for the prevention, relief or cure of diseases, when used either internally or externally by man or for animal;

(f) "Potent Drugs or Poisons," where not otherwise limited, means any substance which applied externally or taken internally may impair the normal functions of any tissues or organ of the body;

(g) The term "Board" or "Board of Pharmacy" wherever used in this Act, unless otherwise specifically indicated shall mean the State Board of Pharmacy in this State.

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*See No. 25 et seq.

(h) "Pharmacopœia," when not otherwise limited, means the latest edition of the Pharmacopœia of the United States of America;

(i) "National Formulary" means the latest edition of that work as published by the "American Pharmaceutical Association." (Act of February 19, 1927.)

142. Board Constituted.—The State Board of Pharmacy shall consist of three members, who shall hold their office for a term of three years or until their successors are appointed and qualified. On or before the first day of October of each year, or whenever a vacancy shall occur on such board, the Governor shall appoint a licentiate in pharmacy who shall be a member of the South Dakota Pharmaceutical Association as a member of such board or to fill a vacancy therein. (R. C. 1919, Title 6, Part 14, c. 5, § 7734.)

143. Pharmaceutical Association.—The registered pharmacists of this State shall constitute an association under the name and title of the South Dakota Pharmaceutical Association, the purpose of which shall be to improve the science and art of pharmacy, and restrict the sale of medicines to regularly educated and qualified persons. The association shall hold an annual meeting at such time and place as may be by it determined, and it shall report annually to the Governor, recommending the names of at least three members who shall be practicing pharmacists doing a retail drug business in this State and otherwise qualified to be appointed as members of the State Board of Pharmacy. (Id. § 7735.)

144. Officers of Board.—The secretary and treasurer of the South Dakota Pharmaceutical Association shall be, respectively, the secretary and treasurer of the Board of Pharmacy and they shall each give such bonds as the association may require. The secretary shall pay over to the treasurer all money that shall come into his hands as such secretary, and the treasurer shall disburse the same only on orders of the president countersigned by the secretary. It shall be the duty of the board to examine all applications for registration submitted in due form as provided in the rules and regulations of the board, to grant certificates of registration to such persons as may be entitled to the same under the provisions of this chapter, and each member of the board shall investigate all charges brought to his notice in his district, and if in his judgment the charges can be sustained, shall make complaint to the proper prosecuting officer. (Id. § 7736.)

145. Meetings of Board.—Such board shall hold meetings for the examination of applicants for registration and the transaction of such other business as shall pertain to its duties, at such times and places as the South Dakota Pharmaceutical Association may direct. Provided, that special meetings of the board may be held whenever it shall be deemed necessary by a majority of the members thereof. It shall be the duty of the board to report annually to the Governor as provided in sections 6922 and 7067 and to the South Dakota Pharmaceutical Association upon the condition of pharmacy in this State, which report shall also furnish a record of the proceedings of the board for the year and also the names of all the pharmacists duly registered under this chapter, and shall be limited, to twenty pages. Such board shall have power to make by-laws and regulations for the proper performance of its duties and shall keep a book of registration in which shall be entered the names and places of business of all persons registered under this chapter, which book shall also specify such facts as such persons shall claim to justify their registration. Two members of such board shall constitute a quorum. (Id. § 7737.)

146. License Certificate; Applicant's Qualifications.—Any person of good moral character and temperate habits not less than twenty-one years of age, who is a graduate of a four-year high school course or whose education is equivalent thereto in the discretion of the board, who has had four years' experience in the practice of pharmacy or who holds a diploma from a reputable school or college of pharmacy as shall be approved by the Board of Pharmacy, and who has before or after graduation practiced pharmacy for one year under a regularly licensed druggist in the State of South Dakota in a drug store where physicians' prescriptions are compounded, and shall pass a satisfactory examination by the Board of Pharmacy, shall be entitled to a certificate of registration as a licentiate of pharmacy. The said board may in its discretion grant certificate of registration to such persons as shall furnish with their applications, satisfactory proof that they have been registered by examination in some other State; provided, that such other State shall require a degree of competency equal to that required of applicants in this State, and said board may also in their discretion under such rules and regulations as may be made by them, issue to applicants for an examination, temporary certificates which shall be valid only until the next regular meeting of the board, and provided that the Board of Pharmacy, in order to be informed, and join in determining the degree of fitness required by the several State Boards of Pharmacy, for granting license and reciprocal registration, may through its representatives join with like representatives from other State Boards of Phar-

macy, further provided, however, that anyone at the present time engaged or employed in the drug business and who has been so engaged or employed for a period of one year prior to the passage of this act shall have the right to register under the old requirements if such registration is completed prior to January 1st, 1931. (Id. § 7738, as amended Act of February 16th, 1927.)

147. Assistant Pharmacist.—Any applicant for licentiate in pharmacy who possesses the qualifications required in section 7738, and who fails to receive a general average of 75% may be granted a certificate of assistant registration; provided, the applicant has received a general average of 65% and not less than 55% in any subject required for examination by the Board of Pharmacy. Any registered assistant pharmacist shall have the right to compound medicines and sell poisons under the direct supervision of a registered pharmacist and he may take charge of the drug store or pharmacy during the temporary absence of the manager thereof. Provided, that nothing in this section shall be construed as giving such assistant authority to perform continuously any of the duties herein mentioned, except under the supervision and in the presence of the manager.

Provided further, that any person of good moral character, sixteen years of age, who desires to secure credit for practical experience as qualification for registration as a licentiate, shall be granted a certificate as an apprentice upon proper application to the Board of Pharmacy, under the rules and regulations prescribed by this Board. (Id. § 7739.)

148. Renewal of Certificate.—Every registered pharmacist or registered assistant pharmacist shall annually thereafter, on such date as the South Dakota Pharmaceutical Association may determine, pay to the secretary an annual registry fee to be fixed by such association, which in no case shall exceed the sum of five dollars, for which he shall receive from the Board of Pharmacy a renewal of his certificate of registration. The failure of any registered pharmacist or registered assistant pharmacist to pay such fee, within one year from the date of the expiration of his certificate, shall deprive him of the right of such renewal. Every certificate of registration or the renewal thereof granted under this chapter shall be posted by the person to whom granted, in a conspicuous place in the pharmacy to which it applies. (R. C. 1919, Title 6, Part 14, c. 5, § 7740.)

149. Fees.—Every person applying for registration as a registered pharmacist or as a registered assistant pharmacist, shall pay with his application ten dollars, and if upon examination, a certificate be not granted, the secretary of the board shall refund to the applicant five dollars. (Id. § 7741, as amended Act of February 16th, 1927.)

150. Secretary; Salary.—The secretary of the South Dakota Pharmaceutical Association shall receive a salary which shall be fixed by the association. He shall also receive his traveling and other necessary expenses incurred in the performance of his official duties. The members of the State Board of Pharmacy shall receive the sum of five dollars for each day actually engaged in its service and all legitimate and necessary expenses incurred in the performance of their duties; such expenses and compensation for services shall be paid from the fees received by the association under the provisions of this chapter; and no part thereof shall be paid out of the State treasury. (R. C. 1919, Title 6, Part 14, c. 5, § 7742.)

151. Who May Conduct Pharmacy.—It shall be unlawful for any person other than a registered pharmacist to retail, compound or dispense drugs, medicines or poisons, or to open or conduct any pharmacy or store for retailing, compounding or dispensing drugs, medicines, or poisons, unless such person shall be a registered pharmacist, except as herein provided; and any person not being a registered pharmacist who shall compound or dispense drugs, medicines or poisons or who shall keep a pharmacy or store for retailing or compounding medicines, or who shall take, use or exhibit the title of a registered pharmacist, shall be deemed guilty of a misdemeanor, and for each offense he shall, upon conviction thereof, be punished by a fine of not less than fifty nor more than one hundred dollars or by imprisonment in the county jail not less than ten days nor more than thirty days or by both such fine and imprisonment. Any registered pharmacist who shall permit the compounding or dispensing of prescriptions or the vending of drugs or poisons in his store or place of business, except under the supervision of a registered pharmacist or except by a registered assistant pharmacist as provided in this chapter, or any pharmacist or assistant who, while continuing in business, shall make any false representations to procure registration for himself or any other person, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not less than fifty nor more than one hundred dollars or by imprison§ ment in the county jail not less than ten days nor more than thirty days or by both such fine and imprisonment: Provided, that nothing in this chapter shall

apply to or in any manner interfere with the business of any physician as a physician or prevent him from supplying to his patients such articles as may seem to him proper, and provided, further, that no part of this section shall be so construed as to give the right to any physician to furnish any intoxicating liquors to be used as a beverage on prescription or otherwise. (Id. § 7743.)

152. Certificates Revoked.—Whenever the Board of Pharmacy shall be satisfied that any person holding a certificate of registration is for any reason incompetent or disqualified to perform the duties of a registered pharmacist, as contemplated by the provisions of this chapter, it shall have power to revoke his certificate: Provided, however, that such certificate shall not be canceled except after a hearing before the board at which a majority of its members shall be present and of which meeting the person holding the certificate to be canceled shall have not less than ten days' notice, and then only upon due proof by examination or otherwise; provided, further, that an appeal from the decision of the board may be taken to the Circuit Court of the county in which the person whose certificate is canceled resides, in the manner provided by law in cases of an appeal from the decision of the county commissioners. (Id. § 7744.)

153. Neglect of Duty by Board.—Any member of the State Board of Pharmacy or officer thereof who shall wilfully neglect any of the duties prescribed by this chapter or who shall aid or abet any person in the evasion or violation of this chapter shall be deemed guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not less than fifty dollars for each offense and, except as otherwise especially provided, any person violating any provision of this chapter shall be deemed guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not less than fifty dollars. (Id. § 7745.)

154. Sale Register.—Except as provided in this article, no person shall sell any poison named in schedule "A" by retail unless the box, bottle, wrapper or cover in which such poison is contained is distinctly labeled with the name of the article, the name and address of the person selling and the word "poison," and no person shall sell any poison named in schedule "B" to any person unknown to the seller, unless introduced by some person known to the seller, and on every sale the seller shall before delivery make entry on a book kept for that purpose stating the date of sale, the name and address of the purchaser, the name and quantity of the article sold, the purpose for which it is required and the name of the person, if any, who introduced the purchaser. Any person failing to comply with the requirements of this section shall be deemed guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not less than ten nor more than twenty-five dollars for every such omission.

Schedule "A."—Acetate of lead, Paris green, oxalic acid, carbolic acid, chloral hydrate, chloroform, ether, sulphate of zinc, and other poisonous medicines fatal to human life in doses of from fifteen to sixty grains.

Schedule "B."—Aconite, arsenic, belladonna, opium (except in paregoric and Dover's powders) and their preparations, strychnine, corrosive sublimate, prussic acid, cyanide of potassium, nitrate and sulphuric acids, tartar emetic and other poisonous medicines fatal to human life in doses of fifteen grains or less. (R. C. 1919, Title 6, Part 14, c. 11, art. 4, § 7844, as re-enacted L. 1925, c. 115.)

155. Sale by Merchant.—A merchant handling exclusively goods other than goods used for food, may procure a certificate of authority as provided in this article, and thereupon shall be authorized to sell the poisons known as Paris green, lead arsenate, formaldehyde, and insect powders; provided, however, that this section shall not apply to the sale of strychnine, arsenic, corrosive sublimate or carbolic acid: Provided, that in any town where there is no registered pharmacist and there is a merchant handling exclusively goods other than goods used for food or a merchant who handles goods used for food and who also handles goods other than those used for food in a separate department from that in which goods are handled and sold for food purposes, it shall be competent for such merchant to sell poisonous drugs known as Paris green, formaldehyde, wood alcohol, rat poison, gopher poison, and insect powder, provided, however, that this shall not apply to the sale of strychnine, arsenic, corrosive sublimate or carbolic acid. (R. C. 1919, Title 6, Part 14, c. 11, art. 4, § 7845, as amended L. 1923, c. 194 and re-enacted L. 1925, c. 115.)

156. Sale in Original Packages.—The poisons enumerated in the preceding section shall be sold by such merchant only in original packages, and each package shall be labeled, and marked in plain and distinct red letters "Poison," each letter thereof to be at least one-fourth inch in length, with the figures of the "Skull and Crossbones" printed in red thereon. (Id. § 7846.)

157. Register Kept by Merchant.—Every such merchant selling any such poisonous drugs shall keep a register, and when he sells any of the same, he shall record in his register the name of the purchaser, date of sale, kind of drug sold, amount of same and for what purpose bought, which register shall be open at all times for inspection. (R. C. 1919, Title 6, Part 14, c. 11, art. 4, § 7847, as re-enacted L. 1925, c. 115.)

158. Certificate of Authority to Sell.—No merchant shall have authority to sell any such poisonous drugs as provided in the three preceding sections, until he shall have procured a certificate of authority so to do from the State Board of Pharmacy. Any such merchant may make written application to such board and upon receipt of such application, accompanied by a fee of one dollar, it shall be the duty of such State Board of Pharmacy to issue a certificate of authority, which certificate shall be valid for a period of one year from the date of its issuance and may be renewed upon the application of any such merchant and the payment of the fee prescribed herein. (Id. § 7848.)

159. Violation; Penalty.—Any person who violates any provision of this article shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by imprisonment in the county jail for a period not exceeding thirty days or by a fine of not less than twenty-five dollars and not more than one hundred dollars, or both such fine and imprisonment. A conviction hereunder shall operate to invalidate and cancel a certificate of authority to sell the poisons enumerated in this article. (R. C. 1919, Title 6, Part 14, c. 11, art. 4, § 7849, as amended L. 1923, c. 194, and re-enacted L. 1925, c. 115.)

160. Sale and Distribution Regulated.—It shall be unlawful for any person to sell, barter, distribute or give away any opium, coca leaves, or any compound, manufacture, salt, derivative or preparation thereof; provided that this article shall not apply:

1.—To the dispensing or distributing of any of such drugs to any patient by a duly licensed practicing physician, either in person or by a duly authorized nurse or attendant in charge of such patient; provided, such distribution or dispensing shall be in the course of his professional practice only and that such physician shall personally attend such patient.

2.—To the sale, dispensing or distribution of any such drugs by registered pharmacists to a consumer under and in pursuance of a written prescription issued by a duly licensed and practicing physician; provided, however, that such prescription shall be dated as of the date on which it is signed, and shall be signed by the physician who shall have issued the same; and provided, further, that such prescription shall not be filled later than five days after the date thereof, and shall not be refilled, and the person filling such prescription shall indorse thereon the date of filling the same, and the name and address of the person to whom he delivers the drug as prescribed.

3.—To the sale or dispensing of any such drugs by any wholesale druggist, dealer or jobber within this State, to register pharmacists within this State owning and conducting a retail drug store, or to a duly licensed and practicing physician, dentist or veterinarian, within this State.

4.—To the sale or distribution of any of such drugs by any registered pharmacist owning and conducting a retail drug store within this State, to a regularly licensed and practicing physician, dentist, or veterinarian within this State.

5.—To the administering of any of such drugs to any patient by a duly licensed and practicing physician within this State; provided, however, that such administering shall be in the course of his professional practice only.

6.—To the administering of any such drugs by any duly licensed veterinarian in this State to any animal which such veterinarian may be treating in the course of his professional practice. (R. C. 1919, Title 6, Part 14, c. 11, art. 7, § 7858, as amended L. 1923, c. 191, and re-enacted L. 1925, c. 115.)

161. Required Records.—Every wholesale or retail dealer in any of the drugs mentioned in the preceding section, and every physician, dentist or veterinarian dispensing, administering or keeping on hand any of such drugs, shall keep in his place of business or office a complete record of registry, on the official order form and duplicate copies thereof, issued by the Commissioner of Internal Revenue of the United States Treasury Department, under the Act of Congress approved December 17th, 1914, entitled "An act to provide for the registration of, with collectors of internal revenue, and to enforce a special tax for all persons who produce, import, manufacture, compound, deal in, dispense, sell, distribute or give away opium or coca leaves, their salts, derivatives or preparations and for other purposes." All retail dealers and pharmacists doing business pursuant to terms of this article shall likewise, keep on file, for a period of two years, all prescrip-

tions containing such drugs which have been filled by them. Such records of every character shall be open to inspection by all State, county or municipal officers who are charged with the enforcement of any law or municipal ordinance regulating the sale, prescribing, administering, dealing in, or distribution of such drugs. Physicians who shall dispense or distribute any of such drugs shall keep a duplicate of all prescriptions issued by them for a term of two years, and such duplicate shall be subject to inspection by any of the officers named in this section. (R. C. 1919, Title 6, Part 14, c. 11, art. 7, § 7859, as re-enacted L. 1925, c. 115.)

162. Possession Evidence of Violation.—The possession or control of any of such drugs, by any person other than those excepted in the two preceding sections, shall be presumptive evidence of a violation of this article;* provided, that this section shall not apply to any employee of any person exempted as above who has such possession or control by virtue of his employment and not on his own account; nor to any United States, State or municipal officer, board or other officer who or which has possession of any such drugs for purposes of investigation, enforcement of law or otherwise; nor to a warehouseman holding possession of the same for a person exempted under the provisions of this article, nor to common carriers engaged in transporting such drugs; provided, further, that it shall not be necessary to negative any of the aforesaid exceptions in any pleading, process or proceeding brought under this article, and the burden of proof of any such exception shall be upon the defendant. (Id. § 7860.)

163. Disclosure of Registry, Prescription or Record Unlawful.—It shall be unlawful for any person to disclose any of the information contained in the registries, prescriptions, or other records mentioned in this article except for the purpose of enforcing its provisions, or some other law of the State or municipal ordinance. (Id. § 7861.)

164. Limit to Quantity in Preparation.—The provisions of this article shall not be construed to apply to the sale, distribution, giving away, or dispensing of preparations and remedies which do not contain more than two grains of opium or more than one-fourth of a grain of morphine, or more than one-eighth of a grain of heroin, or more than one grain of codein, or any salt or derivative of any of them, in one fluid ounce; or to liniments, ointments, or other preparations which are prepared for external use only, except liniments, ointments and other preparations which contain cocaine or any of its salts, or alpha or beta eucaine or any of their salts, or any synthetic substitute for them; provided, that such remedies and preparations are sold, distributed, given away, dispensed or possessed as medicine and not for the purpose of evading the intentions and provisions of this article; and provided further, that any manufacturer, producer, compounder or vendor, including dispensing physicians, of the preparations and remedies mentioned in this section, shall keep a record of all sales, exchanges or gifts of such preparations and remedies in such manner as the commissioner shall direct, but such direction shall be in conformity with the regulations of the Commissioner of Internal Revenue of the United States Department of the Treasury for the keeping of such records. All records shall be kept for a period of two years, in such a way as to be readily accessible for inspection by any officer named in section 7859 of this article. This article shall not apply to decocainized coca leaves, or preparations made therefrom, or to other preparations of coca leaves, which do not contain cocaine. (R. C. 1919, Title 6, Part 14, c. 11, art. 7, § 7862, as amended L. 1923, c. 191, and re-enacted L. 1925, c. 115.)

165. Unlawful to Write Prescription.—It shall be unlawful for any physician to write, furnish, sell or give to any person any prescription for any of the drugs mentioned in this article, except when, in the opinion of such physician the taking, of such drug by the person for whom prescribed will be beneficial to such person; and it shall also be unlawful for any physician to furnish, sell, administer or give away to any person any of such drugs except when, in the opinion of such physician, the taking of such drugs by the person to whom sold, given or administered will be beneficial to such person; but this article shall not forbid the giving of any of such drugs by any physician in his professional practice to any assistant or to any nurse or attendant of the patient of such physician, to be administered by such assistant, attendant or nurse to such patient under the immediate direction of such physician. (R. C. 1919, Title 6, Part 14, c. 11, art. 7, § 7864, as re-enacted L. 1925, c. 115.)

166. Violation; Penalty.—Any person who shall violate any provision of this article shall be deemed guilty of a misdemeanor and upon conviction thereof shall be punished, for the first offense, by a fine of not less than fifty dollars nor more than one hundred dollars, or by imprisonment in the county jail for not exceeding

thirty days, and for the second or any subsequent offense by a fine of not less than five hundred dollars, or by imprisonment in the county jail for not less than three months, or by both such fine and imprisonment; and upon conviction of such second or subsequent offense, the court shall transmit a certified copy of the judgment of conviction to the examining board from which the license or certificate of registration of such pharmacist, physician, dentist or veterinarian issued, and it shall be the duty of such examining board to forthwith cancel the license or certificate of registration of such pharmacist, physician, dentist or veterinarian and no further certificate of registration or license, as the case may be, shall be granted to such person during a period of one year from the date of such forfeiture. (Id. § 7865.)

167. **Smoking.**—It shall be unlawful for any person to smoke opium or any commodity whatever of which opium is an ingredient. (R. C. 1919, Title 4, Part 2, c. 4, art. 2, § 3963.)

168. **Premises Used For.**—It shall be unlawful for any person owning or having in charge or possession any room, building, cellar or other place or premises, to permit opium or any commodity of which opium is an ingredient, to be smoked in, upon or about such place or premises. (Id. § 3964.)

169. **Violation; Penalty.**—Any person violating any provision of the two preceding sections shall be guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine not exceeding one hundred dollars or by imprisonment in the county jail not exceeding thirty days, or both such fine and imprisonment. (Id. § 3965.)

170. **Nuisance.**—Any room, building, cellar or other place or premises used or permitted to be used for smoking of opium, or any commodity of which opium is an ingredient, is hereby declared to be a public nuisance. (Id. § 3966.)

171. **Duty of Officers.**—It is hereby made the especial duty of all peace officers to enter complaint in each case of a violation of this article, and they are hereby required to ascertain by inquiry and examination as to any such violations. (Id. § 3967.)

172. **Unlawful to Deal in Peyote.**—It shall be unlawful for any person, firm, corporation, or association to sell, furnish, or give away, or offer to sell, furnish, or give away, or to have in his or its possession Peyote (Pellote), botanically known as Lophophora Williamsii; or Agave Americana, commonly known as the mescal button; or any compound, derivative, or preparation thereof. (L. 1923, c. 159, § 1.)

173. **Penalty for Violation of Act.**—Any person who shall violate any of the provisions of this act shall be guilty of a misdemeanor and upon conviction thereof shall be fined not to exceed $500.00 or imprisoned in the county jail for a period of not to exceed six months, or by both such fine and imprisonment. (Id. § 2.)

174. **Rodent Poisons.**—All poison and poisoned baits prepared and distributed under the authority of the board of county commissioners for the destruction of injurious rodents shall be placed in containers plainly labeled to show the character and purpose of the contents thereof, and when poison or poisoned baits are laid out, all persons shall use the best known precautions, to prevent the destruction of domestic fowls or animals or game birds. (L. 1921, c. 354, § 5.)

175. **Drugs, Habit Forming Drugs, Etc.**—Sections 7850 and 7851 of the Revised Code of 1919, section 7852 as amended by chapter 238 of the Session Laws of 1921, and sections 7853 and 7854 are hereby expressly retained in force. Sections 7855, 7856, and 7857 of the Revised Code of 1919, relating to wood alcohol and products containing the same, are hereby expressly retained in force. Section 7858 of the Revised Code of 1919 as amended by chapter 191 of the Session Laws of 1923, also sections 7859, 7860, 7861, 7862, the last named as amended by chapter 191 of the Session Laws of 1923, and sections 7864, and 7865 of said Revised Code of 1919, relating to habit-forming drugs and traffic therein, are hereby expressly retained in force. Chapter 270 of the Session Laws of 1921, relating to denatured alcohol and its use and sale and products containing the same, is hereby expressly retained in force; provided, that wherever in any of the laws which are by this section retained in force either of the following expressions "State Food and Drug Commissioner," "Food and Drug Commissioner" or "Commissioner" shall appear there shall be substituted therefor the expression "Secretary of Agriculture" or "Secretary" and the Secretary of Agriculture shall enforce, through the Division of Inspections, the provisions of said laws. (L. 1925, c. 115, sub. c. III, art. V, § 7.)

176. **Poisons.**—Sections 7844, 7847 and 7848 of the Revised Code of 1919, also sections 7845, 7846 and 7849 of the same as amended by chapter 194 of the Session Laws of 1923, all relating to the possession and sale of poisons, are hereby expressly retained in force, provided, that wherever in such sections as so amended

either of the following expressions "State Food and Drug Commissioner," "Food and Drug Commissioner" or "Commissioner" shall appear there shall be substituted therefor the expression "Secretary of Agriculture" or "Secretary," and the Secretary of Agriculture shall enforce, through the Division of Inspections, the provisions of said sections as so amended. (Id. § 8.)

NOTE: See also No. 221.

Serum, Anti-Toxin, Etc.

See Nos. 26 and 33.

Tincture or Essence of Ginger.

See No. 182.

Venereal Disease Drugs.

177. Advertising Treatment of Venereal Diseases and Use of Harmful Drugs.—Any person who shall advertise in any manner, in any newspaper, pamphlet, circular or other written or printed paper, the treatment and curing of venereal diseases, the restoration of "lost manhood," or who shall advertise in any manner that he is a specialist in diseases of the sexual organs or diseases caused by sexual weakness, self-abuse, or excessive sexual indulgence, or in any diseases of like nature produced by like causes, or who shall advertise in any manner any medicine, drug, compound, or any means whereby sexual and venereal diseases of men or women may be cured or relieved or abortion or miscarriage produced, and the owner, publisher or manager of any newspaper who shall publish any such advertisement, or permit or allow any such advertisement to be inserted and published in any newspaper owned or controlled by him or in which he has an interest, shall be guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not less than twenty-five nor more than one hundred dollars. (R. C. 1919, Title 4, Part 4, c. 19, § 4399.)

Wood Alcohol.

178. Certain Uses Prohibited.—It shall be unlawful for any person, to sell, offer for sale, or have in his possession with intent to sell, offer for sale, supply or give away, any article of food or drink, or any medicinal or toilet preparation intended for human use internally or externally, which contains any wood alcohol or methyl alcohol, either crude or refined, under or by whatever name or trade-mark the same may be called or known. (R. C. 1919, Title 6, Part 14, c. 11, art. 6, § 7855, as re-enacted L. 1925, c. 115.)

179. Label.—It shall be unlawful for any person to sell, offer for sale, or have in his possession with intent to sell, offer for sale, give away, deal in or supply, any wood alcohol or methyl alcohol, either crude or refined, under or by whatever name or trade-mark it may be called or known, unless the container in which it is sold, offered for sale, given away, dealt in or supplied shall bear a notice containing the following device and words conspicuously printed or stenciled thereon:

(Skull and Crossbones)
POISON
WOOD ALCOHOL

WARNING: It is unlawful to use this fluid in any article of food, beverage or medicinal or toilet preparation for human use, internally or externally. (Id. § 7856.)

180. Violation; Penalty.—Any person who shall violate any provisions of this article shall be deemed guilty of a misdemeanor and upon conviction thereof shall be punished by a fine, of not less than fifty nor more than two hundred dollars, or by imprisonment in the county jail not more than three months. (Id. § 7857.)

NOTE: See also Nos. 175 and 220.

Intoxicating Liquors.

181. Purpose of Article.—This article shall be deemed to be an exercise of the police power of the State for the immediate protection and preservation of the

economic welfare, health, peace, safety and morals of the people of the State, and to prohibit the manufacture of and to regulate the traffic in intoxicating liquors and to provide for the enforcement of such prohibition and regulation, and all the provisions of this article shall be liberally construed for the accomplishment of such purposes. (R. C. 1919, Title 6, Part 22, c. 4, art. 1, § 10235.)

182. Intoxicating Liquors Defined.—The term "intoxicating liquors" wherever used in this article shall be construed to include whiskey, alcohol, brandy, gin, rum, wine, ale, beer, absinthe, cordials, hard or fermented cider, tincture or essence of ginger and all distilled, spirituous, vinous, malt, brewed and fermented liquors, and every other liquid, liquid mixture or compound containing alcohol, which mixture or compound is capable of being used as a beverage, whether or not the same is proprietary, medicated or patented. (Id. § 10237.)

183. Person Defined.—The word "person" wherever used in this article shall be held and construed to mean and include natural persons, partnerships, clubs, lodges, societies, fraternities, benevolent or charitable associations or organizations, any combination of individuals, stock companies, associations and corporations. (Id. § 10238.)

184. Retail Druggist Defined.—The term "retail druggist" wherever used in this article shall be held and construed to mean any registered pharmacist, duly licensed and registered to practice as a pharmacist under the laws of this State, whose certificate of registration or license is in force, and who is engaged in the business of compounding and selling drugs, medicines and druggists' supplies at retail to consumers for their own use and consumption. (Id. § 10239.)

185. Wholesale Druggist Defined.—The term "wholesale druggist" wherever used in this article shall be held and construed to mean and include any registered pharmacist, duly licensed and registered to practice as a pharmacist under the laws of this State, whose certificate of registration or license is in force, and who either by himself or as a member of a partnership, or as the manager or an officer of a corporation, is actively engaged in the business of compounding and selling drugs, medicines, pharmaceutical and druggists' supplies at wholesale to retail druggists for use in their business as pharmacists or druggists. (Id. § 10240.)

186. Physician Defined.—The word "physician" as used in this article shall not be deemed to include dentists, osteopaths, chiropractors or veterinarians. (Id. § 10241.)

187. The Word "Sell" Defined.—The word "sell" as used in this article shall be deemed to mean and include the transfer of title for a consideration, or to barter, trade, exchange, give away or furnish. (Id. § 10242.)

188. Pharmacy or Drug Store Defined.—The term "pharmacy" or "drug store" as used in this article shall be deemed to mean and include a place in which drugs, medicines, or poisons are compounded, retailed or dispensed on physicians' prescriptions, and in charge of and under the supervision of a duly registered pharmacist. (Id. § 10243.)

189. Manufacture and Sale Prohibited.—It shall be unlawful for any person, either by himself, clerk, servant, employee or agent, or for any partnership, club, lodge, society, fraternity, combination of individuals, association or corporation, by its officers, members, stockholders, clerks, servants, agents or employees, within this State, to make, brew, distill or manufacture, or to aid in making, brewing, distilling or manufacturing for sale, barter, trade, gift or beverage purposes, or upon any pretense or device whatever to import or aid in importing into this State for sale, barter, trade or gift, or for beverage purposes, or to sell, offer for sale, barter, or trade, or to give away or furnish, or to keep for sale, trade, barter, or gift, or to aid in selling, offering for sale, barter, trade or gift any intoxicating liquors as defined in this article, except as provided therein. (Id. § 10244.)

189a. Soliciting Orders Prohibited.—No person shall in this State, either directly or indirectly, in person or by telephone, telegraph, letters, signs, circulars, advertisements or by any other means or device, solicit, take or receive, or aid in soliciting, taking or receiving, orders for the sale or delivery of any intoxicating liquors as defined in this article, whether such liquors be situated in this or some other State, or whether or not such orders are to be accepted or approved by some person in this or any other State, other than the person soliciting such orders, nor shall any person order, purchase or procure, or aid in ordering, purchasing or procuring, any intoxicating liquors for any other person except as provided in this article. (Id. § 10245.)

190. Violation; Penalty.—Any person who shall violate any of the provisions of the two preceding sections shall for the first offense be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not less than two hundred and fifty dollars nor more than one thousand dollars, and by imprisonment in the county jail not less than thirty days nor more than six months,

and for the second and every subsequent offense, shall be deemed guilty of a felony and upon conviction thereof, shall be punished by imprisonment in the State Penitentiary not less than six months nor more than two years, and in addition thereto the court may, in its discretion, impose a fine of not to exceed two thousand dollars, and if the person so convicted shall be a retail druggist he shall be punished as provided in section 10271; provided, that whenever any person shall, as clerk, servant, agent or employee of any other person, violate any of the provisions of the two preceding sections, he shall be equally guilty with the principal and shall be punished as provided in this section. (Id. § 10246.)

191. Druggist With Permit May Sell.—It shall be lawful for any retail druggist who has secured a permit therefor, and who has executed and filed a bond as provided in this article to purchase, import, keep for sale or sell pure grain or ethyl alcohol for medicinal or scientific purposes only, under the restrictions and regulations and in the manner provided in this article. (Id. § 10249, as amended L. 1919, c 246.)

192. Application for Druggist's Permit.—Any retail druggist who shall desire to secure a permit for the purchase, importation, sale and keeping for sale of pure grain or ethyl alcohol for the purposes specified in the preceding section shall file a verified petition, in duplicate, for such permit in the office of the county auditor of the county wherein such permit is desired. Such petition shall be in writing and shall be signed by the applicant and shall be addressed to the State Sheriff and shall set forth:

1. The name of the applicant, his residence, the town, city or township where his pharmacy or drug store is located, and the particular place therein where such pharmacy or drug store is located and that the applicant is a person of good moral character and does not use intoxicating liquors as a beverage, and can be intrusted with the responsibility of selling pure grain or ethyl alcohol for the purposes permitted by this article, and that he has not since the twenty-first day of February, 1917, been convicted of, or pleaded guilty to, any charge of any violation of the laws relating to intoxicating liquors in this or any other State.

2. That such applicant is a registered pharmacist in good standing under the laws of this State, and is lawfully and in good faith engaged personally in the business of conducting a pharmacy or drug store at retail as the proprietor of such pharmacy or drug store at the place designated in such petition, and that he has owned and conducted such retail drug store at such place for not less than one year prior to the date of such application.

3. That such applicant, if he is conducting a retail business in a township, town or city of five hundred population or less, according to the last State or Federal census, has in his business exclusive of fixtures and pure grain or ethyl alcohol a stock of drugs and druggists' sundries of the value of at least one thousand dollars and, if in a township, town or city of over five hundred population according to the last State or Federal census, that he has a stock of drugs and druggists' sundries of the value of at least twenty-five hundred dollars.

4. If such applicant is a member of a partnership or a stockholder in a corporation that owns, conducts and operates the pharmacy or drug store where such applicant desires a permit, then such applicant shall in his petition set forth the name of such partnership and the names and residences of the partners, or the name of the corporation, the amount of the capital stock of such corporation outstanding and that he owns in his own right an interest in such partnership or in the capital stock of such corporation to an amount of at least five hundred dollars, if located in a township, town or city of five hundred or less population, and of at least fifteen hundred dollars, if located in a township, town or city of over five hundred inhabitants, and that he is the manager and in actual personal charge of the business of such partnership or corporation at the place designated in such petition and has been such manager and in charge for at least one year prior to the filing of such petition and that such partnership or corporation has in its pharmacy or drug store a stock of drugs and druggists' sundries, exclusive of fixtures and pure grain or ethyl alcohol of the value, if located in a township, town or city of five hundred or less inhabitants, according to the last State or Federal census, of at least one thousand dollars, and if located in a township, town or city of over five hundred inhabitants of the value of at least twenty-five hundred dollars.

5. That he desires a permit authorizing him to purchase, import, sell or keep for sale pure grain or ethyl alcohol for medicinal or scientific purposes under the regulations prescribed in this article. The applicant for such permit at the time of filing his petition shall pay to the county auditor the sum of five dollars, which sum shall be remitted to the State Sheriff at the same time the duplicate of such petition is forwarded to him. (Id. § 10250.)

193. County Auditor's Duty; Hearing.—When such petition for a retail druggist's permit shall be filed, it shall be the duty of the county auditor in whose office the same is filed forthwith to forward one of the duplicates to the State Sheriff, and the applicant or petitioner shall cause a notice of the filing of such petition to be published in a legal newspaper in the township, town or city where such permit is desired once each week for three successive weeks, and if no such newspaper shall be published in such township, town or city, then such publication shall be made in some legal newspaper in the county wherein such permit is desired. He shall also serve or cause a copy of such notice to be personally served upon the State's attorney of his county, at least two weeks before the expiration of the time for filing protests shall have expired. Such notice shall state the name and residence of the applicant and the name of the partnership or corporation, if any, with which he is connected, the purpose of the petition, the particular location of the petitioner's pharmacy or drug store, that the petition is on file in the office of the auditor of the county of ....., naming it, and that written protest or objections thereunder may be filed in the office of the county auditor wherein such permit is desired within thirty days, giving the specific date of the first publication of such notice. Proof of such publication and service shall be mailed to the State Sheriff. Any person may within thirty days after the first publication of such notice file in the office of such county auditor a written protest or objection against the issuance of such permit and, upon the filing of such protest or objection, the county auditor shall forthwith forward the same to the State Sheriff. The State Sheriff shall, upon the receipt of any such petition or of any such protest or objection, make such investigation of the truth of such petition as he shall deem necessary, and may in his discretion order a formal hearing thereon at such time and place as he shall think best. When a hearing shall be had, the State Sheriff shall issue a written order for the same, stating the time and place of such hearing, and copies of such order shall be mailed to the petitioner, the person or persons protesting against the issuance of the permit, if any, and the State's Attorney of the county wherein such petition is pending, at least ten days before such hearing. The manner and method of conducting such hearing shall be determined by the State Sheriff. For the purpose of conducting such hearing and any investigation he may make on any such petition, the State Sheriff and his special agents are hereby authorized to issue subpœnas, compel the attendance of witnesses, administer oaths and examine witnesses under oath. (R. C. 1919, Title 6, Part 22, c. 4, art. 1, § 10251.)

194. Issue of Permit.—If satisfied of the truth of the allegations and statements in such petition, the State Sheriff may in his discretion grant a permit to such petitioner to purchase, import, keep for sale or sell pure grain or ethyl alcohol for the purposes and in the manner provided in this article. Such permit shall be in writing and shall be filed in the office of the county auditor of the county wherein the same is granted and shall by him be entered in an appropriate book kept for that purpose, and the druggist to whom such permit shall be issued shall keep a certified copy of the same posted in a conspicuous place in his drug store or pharmacy. Such permit shall be in force for two years from the date of issue, unless sooner terminated as provided in this article. (Id. § 10252, as amended L. 1919, c. 246.)

195. Bond of Applicant.—Before any such retail druggist's permit shall be issued, the applicant therefor shall execute and file with the county auditor of his county a bond in the sum of one thousand dollars, executed by personal sureties or some surety company authorized to do business in this State, to be approved by the State Sheriff, conditioned that he and every one in his employ, or, where such druggist is a member of a partnership or stockholder of any corporation, that he and every member or stockholder and every one in the employ of such partnership or corporation, will well and truly observe and obey the laws of this State now or hereafter in force in relation to intoxicating liquors, and that he will pay all fines, penalties, damages, and costs that may be assessed or recovered against him for violation of any of such laws during the time for which the permit is granted, and the conviction of such retail druggist, or anyone in his employ, shall be deemed prima facie evidence of such violation. If at any time the surety company on such bond shall file with the county auditor a written request for release from such bond, or become insolvent, or be deemed insufficient by the State Sheriff, such State Sheriff shall require a new bond to be given, executed and filed within a reasonable time to be fixed by such sheriff. If the permit holder fails or neglects to furnish a new bond within the time so fixed, the permit shall from that date be null and void. (R. C. 1919, Title 6, Part 22, c. 4, art. 1, § 10253.)

196. Permits Deemed Trusts.—Permits issued to retail druggists for the sale of pure grain or ethyl alcohol, as provided in this article, shall be deemed trusts reposed in the recipients, and, may be revoked by the State Sheriff after a hearing has been accorded to the permit holder before such sheriff. Whenever a complaint in writing, verified on information and belief, is filed in the office of the State Sheriff by any officer who is charged with the enforcement of any of the provisions of this article, or by any citizen of the county where such permit holder is conducting his business to the effect that such permit holder has in any way abused the trust reposed in him, or that such permit holder or any of his clerks, servants, agents, employees or partners has [have] violated any of the provisions of this article, or that he has failed to fulfill or comply with any duty or obligation imposed upon him by this article, or that any of the required statements in such permit holder's petition for a permit were or are untrue, the State Sheriff shall issue an order requiring such permit holder to show cause before such State Sheriff, at a time and place specified, why his permit should not be revoked; or such sheriff may, on his own motion, issue such order. A copy of the complaint and of the order to show cause shall be personally served upon such permit holder at least five days before such hearing. The complainant and accused may be heard in person or by counsel, or both, and proof may be offered by both parties, and if it shall appear upon such hearing that any of the charges contained in such complaint are true, or if the State Sheriff shall be satisfied that the accused has violated any of the provisions of this article or that he can no longer be safely intrusted with the privilege granted by such permit, the State Sheriff shall revoke and set aside the permit. .All papers in such hearings shall be filed in the office of the county auditor of the county where such permit was granted. (Id. § 10254, as amended L. 1919, c. 246.)

197. Appeal.—Whenever anyone shall be dissatisfied with the decision of the State Sheriff, whether in granting or in refusing to grant a permit, or in revoking or refusing to revoke a permit, he may appeal from such decision to the Governor, Attorney-General and State Sheriff, who shall constitute a board of appeal. Such appeal shall be taken and heard in such manner and at such times as such board shall determine and the decision of such board shall be conclusive and final on the questions involved in such appeal. (R. C. 1919, Title 6, Part 22, c. 4, art. 1, § 10255.)

198. Sale on Prescription.—It shall be lawful for any retail druggist who has secured a permit and filed his bond as provided in this article, during the time that such permit shall be in force to sell pure grain or ethyl alcohol for medicinal purposes only upon a written prescription issued by a regularly licensed and practicing resident physician or veterinary of the county where such sale is made, which physician or veterinary shall hold a permit to issue such prescriptions as provided in this article. Such prescriptions shall be in form and substance as provided in section 10274 and only one sale shall be made on each prescription which shall be delivered to the druggist at the time of such sale, and no such sale shall be made by any person except by such retail druggist holding such permit and not more than one such prescription shall be filled for the same person on any day. (Id. § 10256, as amended L. 1919, c. 246.)

199. Sale for Scientific Purposes.—It shall be lawful for any retail druggist, who has secued a permit and filed a bond as provided in this article, to sell pure grain or ethyl alcohol for scientific purposes only, upon the written or printed affidavit of the purchaser. Such affidavit must state the true name of the applicant, his place of residence by street and number, if in a city or town, and the section, township and range if in the country; the kind and quantity of liquor desired, the particular purpose for which it is intended to be used, that it is not intended to be used as a beverage, nor to be sold nor given away, and that it is intended only for his own use for the purpose specified; and that the applicant is over twenty-one years of age and is not of intemperate habits, and that no one has forbidden anyone to sell or furnish to him, the applicant, any kind of liquor, as provided in this article; and which affidavit shall be executed in duplicate. Every retail druggist holding a permit as provided in this article is hereby authorized to administer oaths for the purpose of this article, and no such affidavit shall be received by any such retail druggist until it shows upon its face that it has been fully filled out and properly subscribed with pen and ink or indelible pencil, and sworn to by the applicant; provided, that no retail druggist holding a permit as provided in this article shall sell, either upon a physician's or a veterinary's prescription or upon an affidavit as provided in this article or otherwise, any pure grain or ethyl alcohol for any of the purposes mentioned in this article, or for any other purpose, to any minor, nor to any intoxicated person, nor to any person in the habit of getting intoxicated, nor to any person when forbidden in writing

so to do by the husband, wife, parent, child, guardian or employer of such person, nor to any person when such retail druggist knows or has good reason to believe that the applicant desires the same for any purpose other than as stated in such prescription or affidavit, and no such liquors shall be sold or delivered to any person other than the person making application and signing the affidavit therefor, and only one sale shall be made on each affidavit.

For the purpose of this act the term "scientific purpose" is hereby defined to be a purpose to promote or develop science.

Any person who shall use pure grain or ethyl alcohol for any other purpose than the one stated for scientific purposes shall be guilty of a misdemeanor and shall be punished by a fine of not less than two hundred fifty dollars nor more than one thousand dollars and by imprisonment in the county jail for not less than thirty days nor more than six months. (Id. § 10257.)

200. Affidavit.—The affidavits provided for in the preceding section shall be upon properly printed blanks, which shall be furnished by the State Sheriff, through the respective county auditors, at actual cost. Such blanks shall be bound in book form and shall be furnished in series, one series for each month in the year. Each series and each affidavit shall be numbered or otherwise designated in such manner as the State Sheriff shall determine. Such books of blanks shall be made up so that a duplicate carbon copy of each affidavit can be made at the same time the original affidavit is filled out and executed, and in such manner that such carbon copy can be removed from such book without mutilating the same, and whenever any such affidavit is made out it shall be the duty of the retail druggists taking the same to have a corresponding carbon copy of the same made. And each original affidavit blank shall have the words "original affidavit" printed in large plain letters on the face and at the top of the same and each duplicate affidavit blank shall have the words "duplicate affidavit" printed in large plain letters on the face and at the top of the same, and such original affidavit shall be printed on pure white paper, and the duplicate affidavit shall be printed on paper of some other color. It shall be the duty of the county auditor to indorse each of such books with the date of delivery of such blank affidavits and to whom made, to sign such indorsement and attest the same with his official seal, and to keep two exact printed copies, except as to the numbers of the blanks of each series and the number of each series, of such blanks furnished to each druggist. The county auditor shall also keep a detailed record of all such blank affidavits furnished by him to each of such retail druggists. (R. C. 1919, Title 6, Part 22, c. 4, art. 1, § 10258.)

201. Return of Affidavits.—Every retail druggist holding a permit as provided in this article, who shall sell any pure grain or ethyl alcohol as specified in this article, shall carefully preserve all prescriptions, and all affidavits and carbon copies thereof, upon which any such liquor shall be sold; such affidavits and carbon copies thereof shall be preserved in the original book form, and on or before the fifth day of each month such druggist shall file such prescriptions, affidavits and carbon copies thereof in the original book form, filled or used during the preceding calendar month, in the office of the county auditor of his county. Such druggist shall file with such prescriptions, affidavits and carbon copies an affidavit of his own, and a carbon copy thereof, setting forth that the liquors mentioned in such prescriptions and affidavits are all the intoxicating liquors of any kind sold by him during the preceding calendar month; and the amount and kind of intoxicating liquors which such druggist or the partnership or corporation of which he is a member or stockholder has on hand the day such affidavit is made, the amounts and kinds of such liquors he had on hand at the date of his last preceding report, as well as the amounts and kinds of pure grain or ethyl alcohol he has purchased or procured during the preceding calendar month, and the name or names of the persons, companies or corporations, and their place of doing business, from whom and the dates on which such liquors were purchased or procured, and the amount of pure grain or ethyl alcohol used in compounding medicines during the preceding calendar month. Immediately upon the filing of such prescriptions and affidavits the county auditor shall carefully compare such prescriptions with the carbon copies thereof filed by the physicians or veterinaries issuing the same as provided in this article, and such affidavits with the carbon copies thereof and with the blanks retained in his office and ascertain whether such druggist has returned and filed all affidavits furnished to him in blank by such county auditor and whether such druggist has filed correct carbon copies of all such affidavits upon which he shall have sold any of such liquor, and whether or not carbon copies of all physicians' and veterinaries' prescriptions filed by the physicians and veterinaries as provided in this article. Upon the filing of such prescriptions, affidavits and copies of the same as required in this article, such county auditor shall forthwith remove from the books of affidavits the carbon copies of all such

affidavits, and shall fasten them together in proper order and shall send to the State Sheriff such carbon copies of affidavits together with all carbon copies of all prescriptions filed in his office, and one copy of the affidavit of the retail druggist filed with such prescriptions and affidavits, and one copy of the affidavit of each physician or veterinary filing copies of precriptions together with a carbon copy of the physicians' and veterinaries' record, and one copy of the blank affidavits retained in his office. But before sending the same, such county auditor shall attach thereto his certificate, stating the name, post office address and place of business, giving particular descriptions, of the retail druggist whose report he is transmitting; also the number of blank affidavit books delivered by him to such registered pharmacist and the dates of such delivery; and that all of such blank books together with all of the blanks therein contained have been returned and filed in his office, giving the date of such filing, and that such carbon copies are true copies of all the original prescriptions and affidavits filed in such county auditor's office by such retail druggist; and in case the carbon copies of prescriptions or affidavits do not correspond with the original, such county auditor shall give an explanation of the same as far as possible. All of such papers and records, not sent to the State Sheriff, shall be safely kept and preserved by the county auditor in his office for a period of three years after the filing of the same, and such records and papers shall be open to the inspection of the public during all business hours, but they shall not be removed from such office during such three years, except when needed as evidence or for reference in the trial of an action or proceeding in court. (Id. § 10259, as amended L. 1919, c. 246.)

202. **Druggist's Record Book.**—Any retail druggist holding a permit as provided in this article, who shall sell pure grain or ethyl alcohol for the purposes specified in this article, shall keep in his pharmacy or drug store a separate record book kept for that purpose wherein he shall record daily the amount of liquor used for compounding purposes under section 10264, all sales of such liquors, and such record shall state the name and residence of the purchaser, the kind and quantity of liquor purchased, the particular purpose for which it was purchased, the date and number of the prescription or affidavit as the case may be, and the date of the sale, and if the sale of liquor is for medicinal purposes on a physician's or veterinary's prescription such record in addition to the foregoing shall state the name of the physician or veterinary issuing the same, the number of his permit, the disease or ailment prescribed for, and the number of prescriptions for liquor issued by such physician or veterinary to such purchaser for the preceding three months, and which record shall be signed by the purchaser before receiving such liquor. Such record shall during business hours be open to the inspection of all State, county and municipal officers who shall be charged with any duty relating to the provisions of this article. (Id. § 10260.)

203. **Sale by Wholesale Druggist.**—It shall be lawful for any wholesale druggist, who is a regular registered pharmacist holding a permit as provided in this article, to import and sell pure grain or ethyl alcohol to retail druggists for use by such druggists in compounding bona fide nonpotable medicines, toilet articles, extracts, tinctures, preparations and similar compounds containing alcohol, or for resale for the purposes specified in this article, and it shall be unlawful for any such wholesale druggist to sell any such liquors to retail druggists in this State for any other purposes than is specified in this section or in any other manner than as provided in this article; it shall also be lawful for any wholesale druggist who has secured a permit as herein provided, to sell vinous liquors to religious organizations or associations for sacramental purposes upon written order of the State Sheriff. Such order shall be executed by the State Sheriff in duplicate, one to be filed in his office and the other forwarded to the wholesale druggist from whom the liquor is to be purchased. Such order shall be issued only upon the written affidavit of the purchaser stating the name and address of the applicant, that he is a regularly ordained minister of the gospel, the amount of vinous liquors required, that such vinous liquors are desired for such religious organization for sacramental purposes only and that it is not intended to be used for a beverage, nor to sell nor to give away, and that the applicant is over the age of twenty-one years and not [of] intemperate habits and which affidavit shall be executed in duplicate. It shall be lawful for such wholesale druggist to sell to, and for a hospital incorporated under the laws of this State to buy, and have in its possession pure grain or ethyl alcohol for medicinal purposes only, and to any university, State educational institution, college or high school for use in the chemical laboratories thereof for scientific purposes only as herein provided, upon the written order of the State Sheriff executed as above provided in case of sale for sacramental purposes, which orders shall be issued only upon the affidavit of the purchaser filed in the office of the State Sheriff stating all the facts required in the affidavit provided for in section 10257. The State Sheriff is authorized to refuse the orders herein

referred to upon proof to his satisfaction that the applicant for such order is or has been using the liquor so obtained for other than the purposes herein specified, and such order shall never be issued for more than eight gallons of vinous liquors for sacramental purposes in any one year to any regularly ordained minister of the gospel, and it shall be unlawful for any wholesale druggist to sell any kind of intoxicating liquors other than as provided in this article to any person or for any purpose whatever in this State. (Id. § 10261.)

204. Wholesale Permit.—Whenever any wholesale druggist shall desire to secure a permit for the importation and sale of pure grain or ethyl alcohol or vinous liquors for the purposes specified in the preceding section, such applicant shall present his verified petition in writing to the State Sheriff, setting out as far as applicable substantially the same facts as are required of a retail druggist by section 10250, and if such wholesale druggist is a member of a partnership, such petition shall state the names, addresses, and respective interest in such business or partnership, and if such wholesale druggist is a stockholder in a corporation such petition shall state that fact, the name of the corporation, the amount of capital stock for which it is capitalized, the total amount of the capital stock outstanding, and the names and addresses of the officers of such corporation; and such applicant shall also state the total value of his stock of drugs, medicines and druggists' sundries, exclusive of fixtures and liquors, kept by him or by such partnership or corporation, as the case may be, and used in his wholesale business, that he has been engaged as such wholesale druggist in this State for at least one year prior to the date of such petition, and that he will, if granted a permit, agree to sell pure grain or ethyl alcohol to the retail druggists, universities, State educational institutions, colleges or high schools in this State for the purposes specified in this article, and vinous liquors to a regularly ordained minister of the gospel for sacramental purposes only, at a price not to exceed fifteen per cent above the cost of such liquors to him at his place of business. Upon the filing of such petition, the State Sheriff shall make such investigation concerning such applicant and the statements contained in such petition as he shall deem necessary, and if he shall be satisfied that the statements contained in such petition are true and that the applicant can safely be intrusted with the privilege of importing and selling such liquors at wholesale, he may, in his discretion, grant to such applicant a permit to engage in such business at wholesale, which permit shall be in force and effect for two years from and after the date of its issuance. Such permit so issued may be revoked for the same causes and in the same manner as provided in this article for the revocation of retail druggist's permit. An appeal from any decision of the State Sheriff relating to the granting or revocation of such permit may be taken to the same board and in the same manner as provided in this article for appeals from decisions concerning retail druggists' permits, and the decision on such appeal shall be conclusive and final; provided, that no such permit shall ever be granted to any person, partnership, or corporation who does not have and use in his business as a wholesale druggist a stock of drugs and druggists' sundries, exclusive of fixtures and intoxicating liquors, of the value of fifty thousand dollars and who has not been engaged in such wholesale drug business for at least one year prior to making application for such permit. For the purpose of defraying the expenses of such proceeding the petitioner, upon filing his petition, shall pay to the State Sheriff a fee of twenty-five dollars. (Id. § 10262.)

205. Purchase by Retailer.—It shall be unlawful for any retail druggist doing business in this State to purchase, accept or receive any pure grain or ethyl alcohol, or for any regularly ordained minister of the gospel to purchase, accept or receive any vinous liquors from any person, partnership or corporation other than a wholesale druggist holding a permit in this State; provided, that in case there shall be no such wholesale druggist holding a permit doing business in this State or such wholesale druggist shall be unable to supply the required liquors, or for any other reason any retail druggist or regularly ordained minister of the gospel cannot purchase such liquors from any wholesale druggist within this State, the State Sheriff, Governor and Attorney-General may, upon proper application and good cause shown, designate some person, partnership or corporation engaged in the business of selling such liquor at wholesale outside of the State from whom such liquors may be purchased under such rules and regulations as the State Sheriff, Governor and Attorney-General may prescribe, and it shall thereupon be lawful for the retail druggist or regularly ordained minister of the gospel to purchase such liquors from such person, partnership or corporation so designated. (Id. § 10263.)

206. Orders for Purchase.—All purchases by retail druggists of any pure grain or ethyl alcohol for the purpose of compounding bona fide nonpotable medicines, toilet articles, extracts, tinctures, preparations or similar compounds containing alcohol, or for resale for medicinal or scientific purposes as provided in this article, shall be made upon written or printed orders, and such orders shall be made upon blanks furnished for that purpose by the State Sheriff.

Such orders shall be made out in triplicate and shall be countersigned and sealed by the county auditor of the county where the druggist giving such order conducts his pharmacy or drug store; one copy of such order shall be filed with such auditor at the time it is executed, one copy shall be sent to the person, partnership or corporation from whom the liquor is ordered and one copy shall be retained by the retail druggist giving such order, and upon receiving such liquors from the express company, railroad company or other common carrier he shall surrender such copy of such order to such common carrier as provided in this article. (Id. § 10264.)

207. Affidavit for Order.—Before a wholesale druggist may sell and a retail druggist may purchase any spirituous or vinous liquors for any of the purposes specified in section 10264, a permit for same shall be secured by such retail druggist from the State Sheriff. Such permit may be in force for a period not to exceed ninety days from the date of issuance, and may be issued by the State Sheriff upon filing in his office a certified copy of a permit to purchase such liquor issued by the Commissioner of Internal Revenue of the United States under the provisions of an act passed by the 66th Congress of the United States on the 27th day of October, 1919, and known as the "National Prohibition Act": Provided, that any permit so issued by the State Sheriff may be revoked by him for cause at any time. (Id. § 10265, as amended L. 1921, c. 271.)

208. Sale on Countersigned Order.—Upon receiving the order and affidavit provided for in the two preceding sections it shall be lawful for the wholesale druggist to sell to the retail druggist, giving such order, the quantity and kind of pure grain or ethyl alcohol ordered. Such wholesale druggist shall carefully file and preserve such order and affidavit, and on or before the fifth day of each month he shall file all such orders and affidavits received by him for the preceding calendar month with the State Sheriff, together with an affidavit that such orders and affidavits were all the orders and affidavits for pure grain or ethyl alcohol received and filled by him from any person in this State during such calendar month. (R. C. 1919, Title 6, Part 22, c. 4, art. 1, § 10266, as amended L. 1919, c. 246.)

209. Delivery by Carrier.—It shall be unlawful for any retail druggist in this State to receive or accept delivery, from any express company, railroad company, transportation company or other common carrier, of any pure grain or ethyl alcohol purchased or ordered by him contrary to the provisions of the six preceding sections, without first delivering to such common carrier the copy of the order for such liquors retained by him as provided in section 10264, and it shall be unlawful for any common carrier to deliver any such liquors to any retail druggist without first having received from such druggist the copy of such order. Every common carrier shall carefully preserve all such orders so delivered and on or before the fifth day of each month such common carrier shall file all of such orders in the office of the county auditor of the county wherein such liquors were delivered and the county auditor shall compare the same with the copies of such orders originally filed in his office and shall thereupon forward such copies, so filed by the common carrier, to the State Sheriff with such other information concerning the same as he may have or be called upon to furnish. Any common carrier, or servant, agent or employee thereof who shall violate any of the provisions of this section shall be punished as provided in section 10279. (Id. § 10267.)

210. Monthly Reports by Retailer.—On or before the fifth day of each month every retail druggist doing business in this State shall file, in the office of the State Sheriff, verified reports in duplicate setting forth the amount and kind of intoxicating liquors he had on hand at the beginning of the preceding calendar month, the amount and kind of such liquors he has purchased during such month, the names and addresses of the persons, partnerships or corporations from whom he has purchased such liquors, the time of purchase and quantity purchased from each, the amount used in compounding medicines, extracts, and other preparations, the kind and quantity of such liquors sold, the purpose for which such liquors were sold, and the kind and quantity of intoxicating liquors on hand at the end of such preceding calendar month. Immediately upon the filing of such report, the State Sheriff shall transmit one copy of the same to the county auditor of the county from which such report is made. Provided, that any retail druggist doing business in the State of South Dakota who shall file an affidavit with the State Sheriff stating that he has no spirituous or vinous liquors on hand and that he has no intention of securing and will not secure any such spirituous or vinous liquors without first notifying the State Sheriff in writing, need not make a monthly report as required by this article until such time as he may desire to handle such spirituous or vinous liquors. (R. C. 1919, Title 6, Part 22, c. 4, art. 1, § 10268, as amended L. 1921, c. 271.)

211. **Monthly Reports by Wholesaler.**—Every wholesale druggist doing business in this State shall on or before the fifth day of each month make and file with the State Sheriff a detailed and verified report, showing the kind and amount of intoxicating liquors he had on hand at the beginning of the preceding calendar month, the kind and amount sold during such month, giving in detail the name and addresses of the persons to whom sold, and the kind and quantity of liquors sold to each of such persons, the kind and quantity purchased during such month and the kind and amount of liquors on hand at the close of such month. (R. C. 1919, Title 6, Part 22, c. 4, art. 1, § 10269.)

212. **Power to Visit and Inspection.**—The State Sheriff shall have the right and he is hereby authorized at such times as he shall see fit, to visit and inspect all retail and wholesale drug stores or pharmacies for the purpose of ascertaining the kind and quantity of liquors carried by such drug stores or pharmacies, and to compare the same with the report filed with the State Sheriff and to ascertain, if possible, whether any of the provisions of this article are being violated. (Id. § 10270.)

213. **Violation by Druggist; Penalty.**—Every retail or wholesale druggist who shall in any manner violate any of the provisions of this article, or who shall fail, neglect or refuse to perform or to comply fully with any of the terms, conditions, provisions and requirements of this article or who shall import, purchase, sell, barter, trade or give away any intoxicating liquor in violation of any of the provisions of this article, or in any manner or for any purpose other than as herein provided, shall for the first offense be deemed guilty of a misdemeanor, and upon conviction thereof, shall be punished by a fine of not less than two hundred and fifty dollars nor more than one thousand dollars or by imprisonment in the county jail for not less than thirty days nor more than six months, or by both such fine and imprisonment; and if such retail or wholesale druggist, so convicted, shall be the holder of a permit to sell spirituous or vinous liquors for sacramental, medicinal or scientific purposes as provided in this article, then, in addition to the penalty prescribed by this section such permit shall be canceled or revoked, and it shall be the duty of the court to include such cancellation or revocation in every sentence or judgment rendered for such offense. Immediately upon the entry of such judgment, the clerk of the court wherein the same was entered shall file a certified copy of such judgment, with the county auditor of the county wherein such conviction is had and the county auditor shall thereupon file such certified copy of such judgment in his office and make a notation of the cancellation and revocation of such permit on his record and forthwith report the same to the State Sheriff. For every second or subsequent offense, such retail or wholesale druggist shall be deemed guilty of a felony and upon conviction thereof, shall be punished by imprisonment in the State Penitentiary for not less than six months nor more than two years, and in addition thereto his license or certificate as a registered pharmacist in this State shall be forfeited, canceled and revoked, and it is hereby made the duty of the court to include such forfeiture, cancellation and revocation of such license or certificate in every sentence or judgment rendered for such offense, and such person after the rendition of such judgment shall have no right or authority to practice as a registered pharmacist or retail or wholesale druggist in this State. Immediately upon the entry of any such judgment, it shall be the duty of the clerk of the court wherein such judgment is rendered to mail a certified copy of such judgment to the Secretary of the State Board of Pharmacy, or other board or body having jurisdiction over the registration and licensing of registered pharmacists in this State, and such secretary shall forthwith strike from the list of licensed or registered pharmacists of this State the name of the person named in such judgment, and such board shall not have any power or authority to relicense or register such person as a registered pharmacist to practice the profession of pharmacy for a period of five years from the date of such judgment, and after the expiration of such five years from the date of such judgment, such board shall have authority to relicense or reregister such person as a registered pharmacist only upon a regular examination as required of new applicants for such license or registration. (Id. § 10271.)

214. **Physician's and Veterinary's Prescription Unlawful, When.**—It shall be unlawful for any physician or veterinary to write, sell, give away or furnish to any person any prescription for any intoxicating liquors except as provided in this article. (Id. § 10272, as amended L. 1919, c. 246.)

215. **Physician's and Veterinary's Permit.**—Any physician or veterinarian in the active practice of his profession, who shall be of good moral character and who can safely be intrusted with the privileges and responsibility of writing prescriptions for pure grain or ethyl alcohol for medicinal purposes, may secure a permit to write

prescriptions for pure grain or ethyl alcohol by filing a verified petition with the State Sheriff, setting forth his true name and residence, that he is in the active practice of his profession and that he is a man of good moral character and not of intemperate habits, that he will sell, write or furnish prescriptions for liquor only in strict compliance with the provisions of this article, and that he will not prescribe such liquor to any person whom he has good reason to believe will use it for a beverage or for any purpose prohibited by law, and that he has not violated any law controlling the traffic in intoxicating liquors, and that he can safely be intrusted with the privilege of writing prescriptions for pure grain or ethyl alcohol, and that he desires a permit for the same. The State Sheriff upon the receipt of such petition shall make such investigation into the matter as he shall deem necessary and if satisfied that the statements contained in such petition are true, such sheriff may, in his discretion, grant such applicant a permit for such purpose which permit shall be numbered and shall be in force until revoked and cancelled. A copy of such permit shall be filed in the office of the county auditor of the county wherein such permit holder is practicing. The physician or veterinary shall pay a fee of one dollar with every application for a permit. Such permit may be revoked by the State Sheriff at any time he shall be satisfied that it is not safe longer to intrust the permit holder to continue to write such prescriptions or whenever the sheriff shall be satisfied that the physician or veterinary holding the same has been guilty of violation of any of the provisions of this article. The proceedings for the revocation of such permit shall be as nearly practicable as the same as provided in this article for the revocation of a retail druggist's permit. Appeals from the decision of the State Sheriff upon the question of granting or revoking such permits may be taken to the same board and in the same manner as provided in this article for appeals from the decision of such sheriff on the question of granting and revoking retail druggists' permits. (Id. § 10273.)

216. Prescriptions—Preparations and Return.—It shall be lawful for any practicing physician holding a permit as provided in this article to sell, write, furnish or give away prescriptions for pure grain eythl alcohol to be used for medicinal purposes only in cases of actual sickness, and no more liquor shall be prescribed than necessary for such sickness, and no physician shall ever write, furnish, sell or give away such prescription to any person who is not a bona fide patient of such physician, and such prescription shall be sold or furnished only after a careful personal examination of such patient by such physician, and when such patient shall be afflicted with some disease or ailment which requires the use or administration of such liquor. It shall be lawful for any practicing veterinary holding a permit as provided in this article to sell, write, furnish or give away prescriptions for pure grain or ethyl alcohol to be used for medicinal purposes in the treatment of domestic animals and only in case of actual ailment after a personal examination of the animals requiring such treatment, and no more liquor shall be prescribed than necessary in such treatment, nor shall any such prescription be written or furnished to any person except for the treatment of an ailment of domestic animals which requires the use or administration of such liquors. Every prescription for pure grain or ethyl alcohol, unless such liquors shall be rendered incapable for use as a beverage by the addition of other ingredients, shall be written in ink or indelible pencil, in a plain legible hand or by typewriter, and shall be signed by the physician or veterinary issuing the same and shall have on it the number of the physician's or veterinary's permit, and shall state the date upon which it is issued, the name of the person to whom it is given, that it is needed or prescribed for actual sickness, the name of the ailments or diseases for which it is prescribed, the kind and quantity of liquor required, and the times and amounts and the manner in which the same shall be taken or administered, the number of prescriptions for liquor written by such physician or veterinary for such person and the total amount prescribed by him for such person or for the treatment of an ailment of domestic animals during the three months next preceding the date of such prescription. The physician or veterinary issuing such prescription shall make a duplicate carbon copy of such prescription so issued, which carbon copy shall be retained by him. The physician or veterinary issuing such prescription shall stamp on the face of the original prescription in large plain letters the word "original" and on the carbon copy he shall stamp on the face thereof in large plain letters the word "copy;" and he shall number each of such prescriptions so given and issued by him for pure grain or ethyl alcohol in numerical order, and he shall number the carbon copy of such prescription with the same number as the original of such prescription; provided, that no physician or veterinary shall ever write, furnish, sell or give away any such prescription for pure grain or ethyl alcohol to any minor or to any intoxicated person or to any person in the habit of getting intoxicated or to any person when forbidden in writing to do so by the wife, husband, parent, child, guardian or employer of such person, or by the mayor of the city, supervisor of the township, or

county commissioners of the county where such applicant resides. Nor shall any physician or veterinary write, furnish, sell or give away more than one such prescription to the same person in the same day.

Every physician or veterinary who shall write, furnish, sell or give away any prescription for pure grain or ethyl alcohol, as provided in this article, shall keep a separate record of each of such prescriptions so issued and sold and such record shall contain the following facts. The true name and residence of the person to whom the prescription is issued, the date when such prescription is issued, the date when it is filled, the kind and quantity of liquor prescribed, the number of the prescription, the disease or ailment for which it was prescribed, the number of prescriptions for pure grain or ethyl alcohol issued by such physician or veterinary for such person, and the total amount of such liquors prescribed by him for such person, or for the treatment of an ailment of domestic animals during the three months next preceding the date of such prescription; and such record shall during business hours be open to the inspection of any township, town, city, county or State officer who shall be charged with any duties relating to the enforcement of any of the provisions of this article. On or before the fifth day of each month every physician or veterinary holding a permit to prescribe pure grain or ethyl alcohol for medicinal purposes shall file in the office of the county auditor of the county, duplicate copies of the record required to be kept by him and all the carbon copies of prescriptions sold, written and issued by him for pure grain or ethyl alcohol during the preceding calendar month, together with an affidavit in duplicate to the effect that the copies of such record so filed are true, full and correct copies of such record, that such record contains a full, true and correct statement of all the prescriptions sold and issued by him for intoxicating liquors of all kinds during such month, and that the carbon copies so filed are copies of all such prescriptions sold and issued by him during such month. Such auditor shall file one copy of such record and affidavit in his office, and shall forward one copy of the same together with the carbon copies of such prescriptions to the State Sheriff. (Id. § 10274.)

217. Violation by Physician; Penalty.—Any physician who shall in any manner violate any of the provisions of the three preceding sections, or who shall fail, neglect or refuse to perform or to comply with any of the provisions, terms, conditions and requirements of this article shall be deemed guilty of a misdemeanor and shall, upon conviction thereof, for the first offense be punished by a fine of not less than two hundred dollars nor more than five hundred dollars or by imprisonment in the county jail for not less than thirty days nor more than ninety days, or by both such fine and imprisonment, and in addition thereto, if he holds a permit as provided in this article, by a revocation of his permit; and upon conviction for a second and each subsequent offense, he shall be punished by a fine of not less than five hundred dollars nor more than one thousand dollars, or by imprisonment in the county jail for not less than three months nor more than one year, or by both such fine and imprisonment, and in addition thereto his license to practice medicine or surgery as a physician and surgeon or veterinary in this State shall be revoked, and it shall be the duty of the court to include such revocation in every sentence or judgment imposed upon every second or subsequent conviction, and no court shall have any power to suspend any portion of the sentence or judgment provided for in this section. The right and authority of any physician and surgeon or veterinary to practice as such in this State shall cease upon the date of the rendition and entry of any judgment revoking his license as such physician and surgeon or veterinary, as provided in this article. Immediately upon the entry of any such judgment it shall be the duty of the clerk of the court wherein such judgment is rendered to mail a certified copy of such judgment to the Secretary of the State Board of Health, or other body or board having jurisdiction over the licensing of physicians or veterinaries in this State, and upon the receipt of such certified copy of such judgment the secretary of such board shall forthwith cancel and strike from the record of such board and the list of licensed physicians or veterinaries in this State the name of the physician or veterinary named in such judgment, and such board or boards shall not have the authority to reissue a license to such person to practice any of the branches of his profession in this State for a period of five years from the date of such judgment, and from and after the expiration of such five years such board or boards shall have authority to reissue such license to such person only upon a regular examination as required of all new applicants for such license. (Id. § 10275.)

218. Preparations Unlawful.—It shall be unlawful to sell, deliver or possess any powder, tablet, liquid or other preparation from which beer or other intoxicating liquor is made. Every violation of the provisions of this section shall be punished by a fine of not less than two hundred dollars nor more than one thousand dollars or by imprisonment in the county jail for not less than thirty days nor

more than six months, or by both such fine and imprisonment. (R. C. 1919, Title 6, Part 22, c. 4, art. 1, § 10304.)

219. General Penalties.—Any person who, by himself or by his clerk, servant, agent or employee, shall violate any of the provisions of this article, for which violation a specific penalty is not provided, shall for the first offense be deemed guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not less than two hundred fifty dollars nor more than one thousand dollars or by imprisonment in the county jail for not less than thirty days nor more than six months, and for the second and every subsequent offense so committed, whether in the same or any other county in the State, he shall be deemed guilty of a felony and shall upon conviction thereof be punished by imprisonment in the State Penitentiary for a term of not less than six months nor more than two years, and in addition thereto the court may impose a fine not to exceed the sum of one thousand dollars. (Id. § 10311, as amended L. 1919, c. 246.)

220. Denatured Alcohol.—Nothing in this article shall be construed to prohibit the manufacture of wood or denatured alcohol, or the importation or sale of wood or denatured alcohol for art, scientific, industrial or mechanical purposes. (R. C. 1919, Title 6, Part 22, c. 4, art. 1, § 10327.)

221. Medicines, Toilet Articles, Extracts.—Nothing in this article shall be construed or shall operate to prohibit or regulate the manufacture, importation, sale or keeping for sale for other than beverage purposes, by any person, partnership or corporation, of any bona fide medicines, toilet articles, extracts, tinctures, preparations or similar compounds containing alcohol; provided, that such medicines, toilet articles, extracts, tinctures, preparations, or similar compounds are unsuitable for use as a beverage.

There is hereby created a commission which shall be known as the Alcoholic Preparations Commission, consisting of the State Food and Drug Commissioner,* State Sheriff, and Chairman of the State Board of Pharmacy, of which the State Food and Drug Commissioner shall be chairman and the State Sheriff secretary. This commission shall hold meetings at the State Capitol or at such other places as may be agreed upon when called by the secretary or at the request of two of the members. A majority of said commission shall constitute a quorum for the transaction of business. The actual and necessary traveling expenses of the members of said commission shall be paid from the expense funds of the several departments represented upon the commission.

It shall be the duty of the Alcoholic Preparations Commission, and it is hereby given power and authority, to summon witnesses, administer oaths, and to cause such witnesses to testify under oath as it may deem necessary, and to examine and analyze or to cause to be examined and analyzed all such bona fide medicines, toilet articles, extracts, tinctures, preparations or similar compounds containing alcohol as may be manufactured, imported, sold, kept, kept for sale or offered for sale in this State, sufficiently to determine which, if any, of such preparations are in fact bona fide medicines, toilet articles, extracts, tinctures, preparations or similar compounds within the meaning of this section, and to compile a list of all such preparations containing alcohol which are found to be suitable for use as a beverage, or which, being imported, or manufactured, or kept, or offered as bona fide medicines, toilet articles, extracts, tinctures, preparations or similar compounds within the protection of this section, are not found to be such in fact.

Notices of the findings of such commission shall be published every three months and as much oftener as the commission shall deem necessary in the same manner as the lists of adulterated or misbranded foods are now required to be published by the State Food and Drug Commissioner; and after such publication every person, who either by himself, clerk, servant, agent or employee, shall manufacture, import, sell or keep for sale in this State any of the preparations so listed and published shall be deemed guilty of the intentional violation of the provisions of this article; provided, that nothing contained in this section shall be construed to prevent the prosecution of any person for making, importing, selling, keeping for sale, offering for sale, or keeping for beverage purposes any alleged medicines, toilet articles, extracts, tinctures, preparations or similar compounds containing alcohol, although such medicines, toilet articles, extracts, tinctures, preparations or similar compounds may not be upon the proscribed lists hereinbefore provided for.

Any person violating the provisions of this section shall be punished, in case of a registered pharmacist, as provided in section 10271, and in all other cases as

*See No. 25 et seq.

provided in section 10246 of the South Dakota Revised Code of 1919. (Id. § 10328, as amended L. 1921, c. 269.)

221a. **Unlawful Sale of Intoxicating Liquors; Penalty.**—Any person who unlawfully sells or furnishes to another intoxicating liquor, which is actually consumed by such other person and death results therefrom, is in all cases, where the act would not constitute murder or manslaughter in the first degree under existing laws, guilty of manslaughter in the second degree. (L. 1925, c. 205.)

222. **Sale of Vinous Liquors by Druggists for Sacramental Purposes Regulated.**—Wholesale and retail druggists who have secured a permit as now provided by law may sell vinous liquors to any priest or minister regularly employed by any religious organization or association within the State of South Dakota for sacramental purposes upon the written order of the State Sheriff. Such order shall be executed by the State Sheriff in duplicate, one shall be filed in his office and the other shall be forwarded to the person, firm or corporation from whom such vinous liquors are to be purchased. Such order shall be issued only to the priest or minister regularly employed by any religious organization or association within the State of South Dakota for whom it is purchased, upon his written affidavit. Such affidavit shall State the name and address of the affiant; the name and address of the religious organization or association for which the vinous liquors are being secured; that affiant is a regularly ordained priest or minister regularly employed by such religious organization or association within the State of South Dakota and is over twenty-one years of age; that such vinous liquors are desired for sacramental purposes only and that they are not intended to be used as a beverage nor for sale or gift, and the name and address of the person, firm or corporation from whom it is desired to purchase such vinous liquors. The State Sheriff is authorized to refuse to issue such orders herein provided for upon proof to his satisfaction that the applicant for such order is or has been using or intends to use the vinous liquors so obtained for other than sacramental purposes and such order shall never be issued for more than twelve gallons in any one calendar year to each priest or minister. And provided, that if any regularly ordained priest or minister regularly employed by any religious organization or association within the State of South Dakota shall make an application accompanied by an affidavit, which affidavit shall have the written approval of the highest executive officer of the religious orgnization or association having jurisdiction in the State, stating that any portion (giving the amount) of the vinous liquors ordered for sacramental purposes has been lost, or destroyed in transit and has not been received by the applicant, the State Sheriff may in his discretion issue an order to any wholesale or retail druggist holding a permit under the laws of South Dakota or to any person, firm or corporation outside of the State as provided for in this article authorizing him during the calendar year in which such liquors were lost or destroyed to sell and ship to such priest or minister regularly employed by any religious organization or association within the State of South Dakota an additional quantity of such vinous liquors equal to the amount so lost or destroyed. (L. 1921, c. 272, § 1.)

223. **Vinous Liquors for Sacramental Purposes May be Purchased From Persons Other Than Druggists.**—Instead of purchasing such vinous liquors from wholesale or retail druggists holding a permit under the laws of South Dakota, any priest or minister regularly employed by any religious organization or association within the State of South Dakota may purchase vinous liquors for sacramental purposes only of firms, persons, or corporations outside of the State and cause the same to be shipped into the State by first procuring an order therefor from the State Sheriff as provided in section 1 hereof, and it shall be unlawful for any priest or minister of any religious organization or association to purchase vinous liquors for sacramental purposes, or to ship or cause to be shipped into the State any such vinous liquors without first complying with the provisions of this act. (Id. § 2.)

224. **Shipment of Vinous Liquors for Sacramental Purposes Regulated.**—Whenever it is desired to ship or transport any such vinous liquors for sacramental purposes, the State Sheriff shall, at the time of issuing the order for the purchase of such vinous liquors, also issue a permit to the common carrier designated to transport or carry said vinous liquors, which permit shall bear the signature of the State Sheriff and the seal of his office, giving permission to such common carrier to ship, carry and transport such liquors from the place therein named to the person and place therein designated and such permit, with the printing and writing and such seal thereon in plain sight, shall be securely fastened to the outside of the container of such liquors, and it shall be unlawful for any common carrier to accept for shipment, to have in its possession, or to ship, transport or carry or

deliver to any person in the State of South Dakota, any such vinous liquors which shall not have securely fastened to the outside of the container of such liquors, the permit with the printing and writing and seal thereon in plain sight as herein provided, and it shall be unlawful for any person to accept or receive from any common carrier any such vinous liquors which shall not have such permit upon the container as herein provided. (Id. § 3.)

225. When Vinous Liquors May be Kept for Sacramental Purposes.—It shall be lawful for any priest or minister regularly employed by any religious organization or association within the State of South Dakota to keep and have in his possession and to carry with him any vinous liquors for sacramental purposes only which have been procured in the manner herein provided. (Id. § 4.)

226. Penalties.—Any person, common carrier, agent or employee of any person or common carrier who shall violate any of the provisions of this act shall for the first offense be punished by a fine of not less than $250 and not more than $1,000 or by imprisonment in the county jail for not less than three months or by both such fine and imprisonment and for each violation of any of the provisions of this act subsequent to the first one, he shall be punished by a fine of $1,000 or imprisonment in the State Penitentiary for not more than two years or by both such fine and imprisonment. (Id. § 5.)

PART IV.

Miscellaneous Laws.

False Advertising.

227. False and Misleading Advertisement.—If any person, or his employee, in a newspaper, circular, form letter or other publication published, distributed or circulated in this State, or by any billboard, sign, card, label or other advertising medium displayed on, in or near a street, electric car, show case, store or other place in this State, knowingly makes or disseminates or causes to be made or disseminated any statement or assertion of fact concerning the quantity, the quality, the method of production or manufacture, the cost of production, the cost to the advertiser, the present or former price, or the reason for the price of the merchandise of such person, or concerning the manner or source of purchase of such merchandise, or the possession of rewards, prizes or distinctions conferred on account of such merchandise, which statement or assertion has the appearance of an offer advantageous to the purchaser and is untrue or calculated to mislead, the person causing such statement or assertion to be made or disseminated, also the employee making or disseminating such statement or assertion, shall be guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not less than ten nor more than one hundred dollars. (R. C. 1919, Title 4, Part 4, c. 7, § 4257.)

Flag Desecration.

228. Definition.—The words flag, standard, color, ensign or shield, as used in this act, shall include any flag, standard, color, ensign or shield, or copy, picture or representation thereof, made of any substance or represented or produced thereon, and of any size, evidently purporting to be such flag, standard, color, ensign or shield of the United States or of this State, or a copy, picture or representation thereof. (L. 1923, c. 294, § 1.)

229. Desecration.—No person shall, in any manner, for exhibition or display: (a) place or cause to be placed any word, figure, mark, picture, design, drawing or advertisement of any nature upon any flag, standard, color, ensign or shield of the United States or of this State, or authorized by any law of the United States or of this State; or (b) expose to public view any such flag, standard, color, ensign or shield upon which shall have been printed, painted or otherwise produced, or to which shall have been attached, appended, affixed or annexed any such word, figure, mark, picture, design, drawing or advertisement; or (c) expose

to public view for sale, manufacture, or otherwise, or to sell, give or have in possession for sale, for gift or for use for any purpose, any substance, being an article of merchandise, or receptacle, or thing for holding or carrying merchandise, upon or to which shall have been produced or attached any such flag, standard, color, ensign or shield, in order to advertise, call attention to, decorate, mark or distinguish such article or substance. (Id. § 2.)

229a. Mutilation.—No person shall publicly mutilate, deface, defile, defy, trample upon or by word or act cast contempt upon any such flag, standard, color, ensign or shield. (Id. § 3.)

230. Exceptions.—This statute shall not apply to any act permitted by the statutes of the United States (or of this State), or by the United States Army and Navy regulations, nor shall it apply to any printed or written document or production, stationery, ornament, picture or jewelry whereon shall be depicted said flag, standard, color, ensign or shield with no design or words thereon and disconnected with any advertisement. (Id. § 4.)

231. Penalty.—Any violation of sections 2 and 3 of this act shall be a misdemeanor. (Id. § 5.)

232. Interpretation.—This act shall be so construed as to effectuate its general purpose and to make uniform the laws of the States which enact it. (Id. § 7.)

233. Name of Act.—This act may be cited as the Uniform Flag Law. (Id. § 8.)

233a. Desecration of the Flag.—Any person who shall willfully and maliciously deface, injure or destroy any United States flag; or who shall willfully trail it in the dust with intent to dishonor the same; or who shall affix thereto or thereon any label, stamp, advertisement, brand, imprint or portrait, printed or painted, or any emblem, motto or design not authorized by the laws of Congress and the United States army regulations, and expose the same to public view, shall be deemed guilty of a misdemeanor. (R. C. 1919, Title 4, Part 4, c. 16, § 4351.)

Tobacco—Tobacco Products.

234. Sale, When Unlawful.—It shall be unlawful for any person by himself, clerk, servant, employee or agent, or any clerk, servant, employee or agent of any person, directly or indirectly, upon any pretense or by any device, to sell, exchange, barter, dispose of or give away to any person under the age of twenty-one years any cigarette, cigarette paper, or cigarette wrapper prepared or designed to be used for filling with tobacco for smoking. Any person violating any provision of this section shall be guilty of a misdemeanor and upon conviction thereof shall for the first offense be punished by a fine of not less than ten dollars nor more than twenty-five dollars; and for the second and each subsequent offense by a fine of not more than one hundred dollars or by imprisonment in the county jail not to exceed thirty days, or both. (R. C. 1919, Title 4, Part 2, c. 4, art. 1, § 3960.)

235. Minor Smoking, Penalty.—Every person under twenty-one years of age who shall be found smoking cigarettes in any form, or who shall be found using or smoking tobacco inclosed in cigarette papers or cigarette wrappers or paper of any kind, within or upon any public school premises, upon any public street, in any public building, store, office, place of business, or place where the public is accustomed or invited to come, is punishable, upon conviction, by a fine of ten dollars. (Id. § 3961.)

236. Permitting Smoking by Minor.—Any person who is in charge or control of any place mentioned in the preceding section, who shall harbor in such place any person under the age of twenty-one years while using or smoking a cigarette or tobacco inclosed in a cigarette paper or wrapper, or paper of any kind, or who shall grant to such person the privilege of indulging in the use of the same in such place, shall be guilty of a misdemeanor, and shall be punishable upon conviction thereof as provided in the second preceding section. (Id. § 3962.)

237. Furnishing Tobacco.—It shall be unlawful for any person to sell, give or furnish to any child under sixteen years of age any cigars or tobacco in any form. (R. C. 1919, Title 4, Part 3, c. 14, § 4114.)

238. Punishment.—Any person who shall be convicted of violating any provision of the two preceding sections shall be fined not to exceed one hundred dollars, or be imprisoned in the county jail not to exceed thirty days, or both, in the discretion of the court; and upon conviction for a second and subsequent offense shall be fined not to exceed two hundred dollars or be imprisoned in the county jail not to exceed six months. (Id. § 4115.)

239. Cigarettes; Sale Upon License.—No person, firm or corporation shall sell cigarettes, cigarette papers or wrappers or tubes in the State of South Dakota without first obtaining a license therefor. Every such license shall be granted and issued by the State Food and Drug Commissioner and shall expire on the thirtieth day of June following date of issue unless sooner revoked. Licenses shall be granted only to the person, firm or corporation operating and conducting the business carried on in the premises from which sales are to be made, and shall be transferable under such regulations as such commissioner shall prescribe. Each license shall have a number and show the residence and place of business of the holder, and shall be posted in a conspicuous place in the holder's place of business in which place cigarettes, cigarette papers and wrappers and tubes are to be sold. The State Food and Drug Commissioner shall have authority to revoke the license of any person who has violated any of the provisions of this act or who shall violate or fail to comply with any rule or regulation made pursuant to the provisions of this act, and no license shall be issued to such person or for his benefit directly or indirectly for a period of one year thereafter. Written notice of revocation shall be sent by registered mail and the receipt thereof through the post office shall be prima facie evidence of the receipt of such notice of revocation. The said commissioner shall immediately notify the State Treasurer of the issuance or revocation of any license hereunder. (L. 1925, c. 113, § 1.)

240. Same; Tax.—No license shall be issued until the applicant shall have paid to the State Food and Drug Commissioner a license tax which tax shall be graduated in amount according to location as follows: In inland stores and in unincorporated communities, $5.00; in incorporated towns and in premises outside of, but not more than three miles from the limits of, any city or incorporated town, $10.00; in cities organized under special territorial charter, $10.00; in cities of the second class, $15.00, and in cities of the first class, $20.00; provided, that for each license granted between the dates of January 1 and June 30 in any year the license tax shall be one-half the respective amounts above set forth; provided further, that nothing in this act shall be construed as prohibiting the commissioner from granting licenses to sell cigarettes and cigarette papers on railway passenger trains, the tax for such licenses to be $10.00; and provided further, that the State Food and Drug Commissioner shall have authority to grant temporary licenses in any place upon receipt of application in proper form and the payment of a license tax of $5.00, such temporary license to be in force not to exceed thirty days. Such commissioner shall receipt for such payments and shall forthwith pay over all moneys received to the State Treasurer. (Id. § 2.)

241. Same; Payment of Tax.—Every person, firm or corporation carrying on the business of selling or keeping for sale cigarettes, cigarette papers or wrappers or tubes, or maintaining a place where such commodities are kept with intent to sell, shall pay the license tax provided for in section 2 hereof, payable on the first day of July in each year. (Id. § 3.)

242. Same; Penalty.—Any person, firm or corporation that shall sell cigarettes, cigarette papers or wrappers or tubes without first having paid the license tax and obtained a license so to do as required in sections 1, 2 and 3 of this act, or who shall sell to consumers or keep in his possession for sale to consumers any cigarettes, cigarette papers or wrappers or tubes, after having received written notice from the State Food and Drug Commissioner of the revocation of his license, or who shall violate any regulation authorized by this act shall be guilty of a misdemeanor and upon conviction of such offense shall be fined not less than fifty dollars nor more than one hundred dollars, or be confined in the county jail not more than thirty days. (Id. § 4.)

243. Same; Stamp Tax.—From and after the taking effect of this act there is hereby levied and assessed and shall be collected and paid to the State Treasurer upon all cigarettes and cigarette papers or wrappers and tubes sold in South Dakota to consumers, the following taxes, to be paid prior to or at the time of sale and delivery to the consumer:

Class A. On cigarettes weighing not more than three pounds per thousand, one and one-half mills on each such cigarette;

Class B. On cigarettes weighing more than three pounds per thousand, four mills on each such cigarette;

Class C. On cigarette papers or wrappers, or any papers made or prepared for the purpose of making cigarettes made up in packages, books or sets; on each such package, book or set containing not more than fifty papers, one-half cent; containing more than fifty papers but not more than one hundred papers, one cent; containing more than one hundred papers, one-half cent for each fifty papers or fractional part thereof.

Class D. On tubes, one cent for each fifty tubes or fractional part thereof.

All cigarettes sold in this State shall be put up in packages containing 5, 8, 10, 12, 15, 16, 20, 25, 40, 50, 80, or 100 cigarettes each. Before being delivered to the consumer or offered or exposed or kept for sale in opened cartons or removed from such cartons, each package of cigarettes and each package, book or set of papers, wrappers or tubes shall have securely affixed thereto suitable stamp or stamps denoting the tax thereon; and the display or possession by any dealer of any package of cigarettes or any books or sets of papers or tubes, except in original unopened cartons or other containers, which do not bear the required stamp or stamps shall constitute prima facie evidence of the guilt of such dealer of violation of this section. Said stamps shall be properly affixed and canceled prior to such display or removal for consumption, under such regulations as the State Treasurer shall prescribe; provided, that when cigarettes are sold, by a retail dealer, to consumers in cartons or other original unopened container, said stamps, properly canceled, may be affixed to each such original unopened carton or container and not to each package contained therein.

Whoever violates any of the foregoing provisions of this section shall be guilty of a misdemeanor and on conviction shall be punished by a fine of not less than fifty dollars or more than one hundred dollars and be committed to the county jail until such fine is paid, but not exceeding thirty days; and all cigarettes, cigarette papers and wrappers in his possession or in his place of business shall be confiscated and forfeited to the State, and the State Food and Drug Commissioner shall sell such confiscated property to a licensed dealer to the best advantage for the State. The proceeds from such sale shall be forthwith remitted to the State Treasurer as part of the income from the enforcement of this law. (Id. § 5.)

244. Same; Forging Stamps Prohibited.—It shall be unlawful for any person not authorized hereby, with intent to defraud the State, to make, alter, forge, or counterfeit any license or stamp provided for in this act or have in possession any forged, counterfeited, spurious or altered license or stamp, knowing the same to be forged, counterfeited, spurious, or altered; or to knowingly or willfully cheat, defraud or deprive the State of any tax or revenue imposed by this act, and whoever is found guilty of any violation of the provisions of this section shall be fined not more than one thousand ($1,000.00) dollars and be imprisoned in the State Penitentiary not more than three years. (Id. § 6.)

245. Same; Auditor to Prepare Stamps.—The State Auditor shall prepare and have suitable stamps for use on each kind of package prescribed in section 5 of this act. Upon requisition from the State Treasurer, the State Auditor shall deliver to his order the stamps designated in such requisition, and shall charge the Treasurer of the State with the stamps thus delivered, and shall keep an accurate record of all stamps coming into and leaving his hands. The State Treasurer shall sell the stamps herein provided for only to dealers holding permits issued as provided in this act. (Id. § 7.)

246. Same; Enforcement.—In the enforcement of this act, the State Food and Drug Commissioner* and the State Treasurer may call to their aid the Attorney-General and States Attorney, or any peace officer. The State Treasurer is further authorized to appoint such assistants as may be needed to carry out the provisions of this act. The duties imposed herein upon the State Food and Drug Commissioner shall be performed contemporaneously with the performance of the other duties of such commissioner. (Id. § 8.)

Trade-Marks, Etc.

247. Good Will.—The good will of a business is the expectation of continued public patronage, but it does not include a right to use the name of any person from whom it was acquired. (R. C. 1919, Title 1, Division 3, Part 3, c. 5, § 491.)

247a. Good Will Transferable.—The good will of a business is property, transferable like any other. (Id. § 492.)

248. Trade-Marks.—One who produces or deals in a particular thing, or conducts a particular business, may appropriate to his exclusive use, as a trademark, any form, symbol or name which has not been so appropriated by another, to designate the origin or ownership thereof; but he cannot exclusively appropriate any designation, or part of a designation, which relates only to the name, quality or description of the thing or business, or the place where the thing is produced or the business is carried on. (Id. § 490.)

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*See No. 25 et seq.

249. Trade-Mark.—One who sells or agrees to sell any article to which there is affixed or attached a trade-mark, thereby warrants that mark to be genuine and lawfully used. (R. C. 1919, Title 1, Division 4, Part 2, c. 4, art. 4, § 948.)*

250. Counterfeiting Trade-Mark.—Every person who willfully forges, counterfeits or procures to be forged or counterfeited any trade-mark usually affixed by any person to any goods of such person, with intent to pass off any goods to which such forged or counterfeit trade-mark is affixed, or intended to be affixed, as the goods of such person, is guilty of a misdemeanor. (R. C. 1919, Title 4, Part 3, c. 18, § 4129.)

251. Keeping Dies of Trade-Marks.—Every person who, with intent to defraud, has in his possession any die, plate, or brand, or any imitation of the trade-mark of any person, for the purpose of making any counterfeit or imitation of any description of such trade-mark, or of selling same when made, or affixing the same to any goods and selling or offering the same for sale or disposal as the original goods of any other person, and every person who so uses or sells the same, or who fraudulently uses the genuine trade-mark of another with intent to sell, or offer for sale or disposal, any goods not to be goods of the person to whom such trade-mark properly belongs, as genuine and original, is guilty of a misdemeanor. (Id. § 4130.)

252. Selling Goods Bearing Counterfeit Trade-Mark.—Every person who sells or keeps for sale any goods upon which any counterfeited trade-mark has been affixed, intended to represent such goods as the genuine goods of another, knowing the same to be counterfeited, is guilty of a misdemanor. (Id. § 4131.)

253. Imitations, Partial.—Every person who, with intent to defraud, affixes or causes to be affixed to any goods, or to any bottle, case, box or other package containing any goods, any label, stamp, brand, imprint, printed wrapper, ticket or mark, which designates such goods by any word or token which is wholly or in part the same to the eye, or to the ear, as the word or any of the words or tokens used by any other person as his trade-mark, and every person who knowingly sells, or keeps or offers for sale, any such bottle, case, box or other package, with any such label, stamp, brand, imprint, printed wrapper, ticket or mark affixed to or upon it, in case the person affixing or causing to be affixed such mark, or so selling, exposing or offering for sale such bottle, case, box or other package, was not the first to employ or use such words as his trade-mark, is guilty of a misdemeanor, and in addition to the punishment prescribed therefor is liable to the party aggrieved in the penal sum of one hundred dollars for each and every offense, to be recovered by him in a civil action. (Id. § 4132.)

254. Trade-Mark Defined.—The word "trade-mark," as used in the sections preceding includes every description of word, letter, device, emblem, stamp, imprint, brand, printed ticket, label or wrapper, usually affixed by any mechanic, manufacturer, druggist, merchant or tradesman to denote any goods to be goods imported, manufactured, produced, compounded or sold by him, other than any name, word or expression generally denoting any goods to be of some particular class or description. (Id. § 4133.)

255. Goods Defined.—The word "goods" as used in the sections preceding, includes every kind of goods, wares, merchandise, compound or preparation, which may be lawfully kept or offered for sale. (Id. § 4134.)

256. Affixing Defined.—The offense of affixing a false trade-mark to goods is equally complete within the meaning of sections 4129, 4131 and 4132, whether such mark is affixed to the goods themselves, or to any box, bale, barrel, bottle, case, cask, wrapper or other package or vessel, or any cover or stopper thereof, in which such goods are put up. (Id. § 4135.)

257. Refilling and Selling Bottles.—Whenever any person engaged in manufacturing, bottling or selling in bottle, soda, mineral water, cider or other non-alcoholic beverage, has filed and published in the manner authorized by law, a description of a name, mark or label usually stamped by him in the bottles containing such beverage, every other person who, without the written consent of such manufacturer or dealer, refills with any beverage, whether genuine or otherwise, with the intent to sell the same, any bottles stamped with such name, mark or label, and every person who sells, disposes of, purchases or traffics in such bottles, is liable to a penalty of fifty cents for each and every bottle so filled, sold, bought, disposed of or trafficked in, for the first offense, and five dollars for each and every bottle so filled, bought, disposed of or trafficked in, for every subsequent offense. (Id. § 4136.)

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*See the uniform sales act, Chapter 355, Laws of 1921.

258. **Keeping Bottles With Intent to Refill.**—Every person who keeps any bottles such as are designated in the preceding section, without the written consent of the manufacturer so to do, with intent to refill or use or sell them in violation of such section, is liable to the penalty therein prescribed. (Id. § 4137.)

259. **Complaint, Search, Penalty for Keeping and Refilling Bottles.**—Whenever any manufacturer or dealer designated by the second preceding section, or his agent, shall make oath or affirmation before any magistrate that he has reason to believe and does believe, that any of his bottles stampd and registered as mentioned in said section are being unlawfully used by any person selling or manufacturing mineral water or other non-alcoholic beverage, or that any junk dealer or vendor of bottles has any such bottles secreted in any place, such magistrate shall thereupon issue a search warrant to discover and obtain the same under the provisions of the law upon search warrants; and the magistrate may summarily bring or cause to be brought before him the person in whose possession the bottles are found, to examine into the circumstances of his possession, and if such magistrate on summary examination finds that such person has been guilty of a violation of the second preceding section, such magistrate shall proceed to impose the fine therein prescribed, and, if the same be not paid, to commit such person to prison for a term not exceeding fifteen days. (Id. § 4138.)

260. **Trade-Marks and Labels Authorized.**—It shall be lawful for a person, corporation, association, or union of working men to adopt for his, its or their protection a trade-mark, label, term, design, device or form of advertisement for the purpose of designating, making known or distinguishing any goods, wares, merchandise or other product of labor as having been made, manufactured, produced, prepared, packed, or put on sale by such person, corporation association or union of working men, or by a member or members of such association or union. (R. C. 1919, Title 6, Part 22, c. 10, § 10411, as amended L. 1919, c. 348.)

261. **Unlawful Use; Penalty.**—Any person who shall use any such trade-mark, label, term, design, device or form of advertisement of any person, corporation, association or union of working men, after same shall have been lawfully filed as provided in this chapter, whether same shall be exactly like that of any such person, corporation, association or union or not, if likely to deceive, or used with intent to deceive the public, shall be deemed guilty of a misdemeanor. (Id. § 10412.)

262. **Use of Counterfeit; Penalty.**—Every person who shall use any trade-mark, label, term, design, device or form of advertisement which is a counterfeit of that owned or used by any such person, corporation, association or union, after having been notified that the same is a counterfeit, shall be deemed guilty of a misdemeanor. (Id. § 10413.)

263. **Record.**—Every person, corporation, association or union of working men adopting a trade-mark, label, term, design, device or form of advertisement of the kind specified in section 10411, shall file the same in the office of the Secretary of State by leaving two copies thereof with such secretary, who shall file same as a record of his office and issue to the person, corporation, association or union filing same a certificate of filing. The fee of the Secretary of State for filing same and issuing such certificate shall be five ($5.00) dollars. Such trade-mark, label, term, design, device or form of advertisement shall not infringe upon that of any other person, corporation, association or union of working men and the applicant for filing same must be the lawful owner of same or lawfully authorized to use same. The application shall state the name and business address of the applicant and a description of the business, and shall set forth the facts showing the right to use and file the trade-mark, label, term, design, device or form of advertisement. Such application shall be verified and any person or persons making any false or fraudulent representations to procure the filing of same shall be guilty of a misdemeanor. (Id. § 10414.)

264. **Injunction.**—Any such person, corporation, association, or union, or authorized person on its behalf, may maintain an action in any court of competent jurisdiction to enjoin the unauthorized use of his, their or its trade-mark, label, term, design, device or form of advertisement so filed of record, or any unlawful counterfeit or imitation thereof, and in any such action the plaintiff shall be entitled to an injunction perpetually restraining such unauthorized or unlawful use, and to recover such damages as shall have resulted from such unauthorized or unlawful use, including the profits if any derived therefrom by the defendant; and the court shall order all counterfeit or imitation trade-marks, labels, terms, designs, devices or forms of advertisement in the possession or under the control of the defendant to be delivered to an officer of the court to be destroyed. This act shall not be construed to lessen, impair or abridge any rights or remedies that have

heretofore existed or may exist in favor of anyone owning or rightfully claiming a trade-mark, label, term, design, device or form of advertisement. (Id. § 10415.)

265. **Marks and Brand on Containers.**—It shall be the duty of the register of deeds, on the application of any person domiciled within his county or any corporation organized under the laws of this State, engaged in the manufacture, bottling or selling of soda water, mineral water, aerated waters, unfermented cider, milk, cream or other nonintoxicating beverages in casks, kegs, barrels, jugs, bottles, boxes or other containers, to record in a book suitable for the purpose a description of the names, brands or trade-marks used by such person or corporation for marking any container in which any such beverages are sold or kept for sale, which book shall be and remain a public record in his office. It shall thereupon be unlawful for any person, without the written consent of the owner, to fill any such container for the purpose of sale, or to sell, dispose of, buy or traffic in, or wantonly destroy the same, whether filled or not; and any person who shall violate the provisions of this section shall be deemed guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not less than five nor more than one hundred dollars. And the use by any person other than the rightful owner, without such owner's consent, of any such container, or the possession thereof by any junk dealer or dealer in any such container, the same being marked or stamped and registered as required in this section, shall be prima facie evidence that such use, sale or possession is unlawful, and a search warrant may be procured for the discovery and seizure thereof. (R. C. 1919, Title 6, Part 22, c. 10, § 10416.)

266. **Destroying; Penalty.**—If any person shall unlawfully and maliciously obliterate, injure, or destroy the names, marks or brands affixed to any cask, keg, barrel, jug, bottle, box or other container used or intended to be used for the purpose specified in this chapter, and not his property, the person so offending shall be deemed guilty of a misdemeanor and upon conviction thereof shall be punished by a fine not exceeding one hundred dollars or by imprisonment in the county jail not exceeding sixty days, or by both such fine and imprisonment. (Id. § 10418.)

267. **Foreign Corporation.**—Any person residing out of the State, or any corporation organized under the laws of any other State or Territory, engaged in the business mentioned in the third preceding section, shall be entitled to the privilege and protection of this chapter; provided, that he or it shall cause the record to be made as provided in such section, in the office of the register of deeds of the county or counties where he or it or his or its duly authorized agents have their place of business within this State. (Id. § 10419.)

NOTE: See also No. 52.

Weights and Measures.

268. **False Mark or Stamp; Penalty.**—Every person who knowingly marks or stamps false or short weight, or false tare, on any cask or package, or knowingly sells or offers for sale any cask or package so marked, shall be deemed guilty of a misdemeanor. (R. C. 1919, Title 6, Part 22, c. 8, art. 1, § 10376, as re-enacted L. 1925, c. 115.)

269. **Increasing Weight of Package—Penalty.**—Every person who in putting up in any bag, bale, box, barrel or other package, any hops, cotton, hay or other goods usually sold in bags, bales, boxes, barrels or packages, by weight, puts in or conceals therein anything whatever for the purpose of increasing the weight of such bag, bale, box, barrel or package, shall be deemed guilty of a misdemeanor. (Id. § 10377.)

270. **Contracts, Etc., Construed.**—All contracts, sales, purchases or any other transaction having for its purpose the exchange of commodities or work to be done by weight or measure, shall be taken and construed according to the standard of weights and measures hereby adopted as the standard of this State, and it shall be unlawful to make contracts, sales or purchases or engage in any such transaction contrary to the provisions of this act. (L. 1919, c. 358, § 1, as re-enacted L. 1925, c. 115.)

271. **Standards of Weights and Measures.**—The weights and measures received from the United States under a resolution of Congress approved June 14, 1836, and such new weights and measures as shall be received from the United States as standard weights and measures in addition thereto or in renewal thereof, and such as shall be supplied by the State in conformity therewith and certified to by the National Bureau of Standards shall be the State standards of weight and measure. Nothing in this act shall prohibit the use of standard metric measures. (Id. § 2.)

272. **Duties of State Treasurer in Relation to Weights and Measures.**—The State Treasurer shall take charge of the standards adopted by this act as the standards of the State, and cause them to be kept in a fireproof building belonging to the State, and from which they shall not be removed except for repairs or for certification, and he shall take all other necessary precautions for their safekeeping. He shall maintain the State standards in good order and shall submit them at least once in ten years to the National Bureau of Standards for certification. He shall keep a complete record of the standards, balances and other apparatus belonging to the State [and] take a receipt for same from his successor in office. Such standards shall be used only for testing any duplicate standards that may be required in the enforcement of this act. (Id. § 3.)

273. **Units of Weight.**—The units or standards of weight, from which all other weights shall be derived and ascertained, shall be the standard weights designated in this act. The hundredweight consists of one hundred avoirdupois pounds and twenty hundredweight are a ton. Whenever, hereafter, in this act the word "pound" is used it shall mean the avoirdupois pound unless otherwise distinctly specified. (Id. § 5.)

274. **Number of Pounds to the Bushel.**—Whenever any of the articles or commodities mentioned in this section shall be bought, sold or dealt in by the bushel or fractional part thereof the measure thereof shall be determined by avoirdupois weight, and a bushel of each of the respective articles mentioned in this section shall mean the amount of weight of each article herein specified, as follows:

Apples	48 pounds	Apples, dried	24 pounds
Alfalfa seed	60 pounds	Barley	48 pounds
Beans, green, unshelled	50 pounds	Beans, dried	60 pounds
Beans, Lima, dried	56 pounds	Beets	56 pounds
Blue grass seed	14 pounds	Broom corn seed	50 pounds
Bromus inermis	14 pounds	Carrots	50 pounds
Buckwheat	48 pounds	Corn on cob (field)	70 pounds
Castor beans, shelled	50 pounds	Corn meal	50 pounds
Clover seed	60 pounds	Flax seed	56 pounds
Corn, shelled (field)	56 pounds	Hemp seed	44 pounds
Cucumbers	48 pounds	Hungarian grass seed	50 pounds
Grapes, with stems	40 pounds	Lime	80 pounds
Hickory nuts, hulled	50 pounds	Oats	32 pounds
Kaffir corn	56 pounds	Onion top sets	30 pounds
Millet seed	50 pounds	Orchard grass seed	14 pounds
Onions	52 pounds	Parsnips	48 pounds
Onion bottom sets	32 pounds	Peaches	48 pounds
Osage orange seed	32 pounds	Peanuts	20 pounds
Peaches, dried	33 pounds	Peas, dried	60 pounds
Pears	45 pounds	Popcorn, on the ear	70 pounds
Peas, green, unshelled	56 pounds	Potatoes	60 pounds
Plums	48 pounds	Radish seed	50 pounds
Popcorn, shelled	56 pounds	Rape seed	50 pounds
Quinces	48 pounds	Rutabagas	50 pounds
Red top seed	14 pounds	Salt, coarse	80 pounds
Rye	56 pounds	Sand	130 pounds
Sorghum seed	50 pounds	Sweet corn	50 pounds
Spelts	45 pounds	Sweet potatoes	54 pounds
Timothy seed	45 pounds	Tomatoes	50 pounds
Turnips	55 pounds	Walnuts, black hulled	50 pounds
Wheat	60 pounds	All root crops not specified above	50 pounds

It shall be unlawful in buying to take any greater number of pounds or in selling to give any less number of pounds to the bushel, than is in this section allowed and provided, and no test for moisture shall be used to change the standards herein provided. If any of the foregoing articles or commodities are bought, sold or dealt in by the one-half bushel, peck, half-peck, quarter-peck, quart or pint, the one-half bushel, peck, half-peck, quarter-peck, quart or pint shall be by weight and shall be derived from the weights per bushel as prescribed for such articles or commodities in this section, and shall be determined by successively dividing such weight by two. (Id. § 6.)

275. **Method of Sale of Certain Articles.**—When, in the purchase, sale or delivery of any grain, seed or any other agricultural product, excepting corn on

cob (field), a dockage or discount is taken for dirt, foul seed or any other substance or mixture, such dockage must be according to the per cent of such dirt, foul seed, or other substance or mixture present in the grain, seed or other agricultural product, which per cent must be determined by the careful sifting and grading of a truly representative sample of said grain, seed or other agricultural product. No greater dockage shall be taken than the proportion of dirt, foul seed or other substance or mixture which shall be found by such careful sifting and grading. When in the purchase, sale or delivery of corn on cob (field) dockage or discount for excess cob is taken it shall only be taken when the standard bushel contains more than fourteen pounds of cob. Said dockage shall be computed in terms of pounds to the standard bushel and be determined by careful shelling of a weighed standard bushel, or an amount of like proportion. (Id. § 7.)

276. **Miscellaneous Standard Weights.**—1. A barrel for liquids shall contain thirty-one and one-half gallons, and a hogshead two barrels;

2. A liquid gallon shall contain two hundred and thirty-one cubic inches;

3. A barrel of flour measured by weight shall contain one hundred ninety-six pounds, one-half barrel ninety-eight pounds, one-quarter barrel forty-nine pounds, one-eighth barrel twenty-four and one-half pounds and one-sixteenth barrel twelve and one-fourth pounds.

4. A barrel of potatoes or other vegetables shall be the same as the standard barrel for apples or pears or other fruit as provided in subsection 6 of this section.

5. A barrel of unslaked lime shall contain two hundred pounds.

6. The standard barrel for apples or pears or other fruit unless otherwise specifically defined, shall have an interior capacity of seven thousand and fifty-six cubic inches, and shall not be less than twenty-six inches between the heads inside; the diameter of the heads shall be seventeen and one-eighth inches, including the beveled edge; the outside bulge or circumference shall be not less than sixty-four inches, the thickness of the staves being four-tenths of an inch; provided, however, that any barrel of different form, having the same distance between heads and a capacity of seven thousand and fifty-six cubic inches, shall be a legal barrel. (Id. § 8.)

277. **Capacity of Bottles for Milk or Cream.**—Bottles used for the sale of milk or cream shall be of the capacity of half-gallon, three pints, one quart, one pint, one-half pint, one gill, filled full to the bottom of the lip or cap ring. The following variations on individual bottles or jars may be allowed, but the average contents of not less than twenty-five bottles selected at random from at least four times the number tested must not be in error by more than one-quarter of the tolerances herein provided; six drams above and six drams below on the half gallon; five drams above and five drams below on the three pint; four drams above and four drams below on the quart; three drams above and three drams below on the pint; two drams above and two drams below on the half pint; two drams above and two drams below on the gill. Bottles or jars used for the sale of milk shall have clearly blown or otherwise permanently marked in the side of the bottle the name, initial or the trade-mark of the manufacturer, and the capacity of the bottle or jar. (Id. § 10.)

278. **Unlawful to Sell Butter or Oleomargarine Other Than by Weight.**—It shall be unlawful for any person to sell, or offer to sell any butter, or renovated or process butter, or oleomargarine in any other manner than by weight. (Id. § 12.)

279. **Berries and Small Fruit to be Sold by Weight.**—It shall be unlawful to sell or offer to sell any berries or small fruit in any other manner than by weight, dry measure, or in the containers described in this section. It shall be unlawful to procure or keep for the purpose of sale, offer or expose for sale, sell or give away baskets or other open containers for berries or small fruits, holding one quart or less, or to procure or keep for the purpose of sale, offer or expose for sale or sell berries or small fruits in baskets or other open containers holding one quart or less of any other than the following capacities when level full: One quart, one pint, one-half pint, standard dry measure. (Id. § 13.)

280. **Net Weight of Commodity to Govern Sale Thereof; Construction of Contracts.**—Whenever any commodity is sold on the basis of weight, it shall be unlawful to employ any other weight in such sale than the net weight of the commodity; and all contracts concerning goods sold on a basis of weight shall be understood and construed accordingly. Whenever the weight of a commodity is mentioned in this act, it shall be understood and construed to mean the net weight of the commodity. (Id. § 14.)

281. **Certain Words Construed.**—The word "person" as used in this act shall be construed to import both the plural and singular, as the case demands and shall include corporations, companies, societies and associations. The words "weights," "measures," "weighing devices" and "measuring devices" as used in this

act, shall be construed to include all weights, scales, beams, measures of every kind, instruments and mechanical devices for weighing or measuring, and any appliances and accessories connected with any or all such instruments. The words "sell" or "sale" as used in this act, shall be construed to include barter and exchange. (Id. § 15.)

282. **Violation; Penalty.**—Any person violating the provisions of this act shall be deemed guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not less than ten nor more than one hundred dollars or by imprisonment in the county jail not exceeding thirty days, or by both such fine and imprisonment. (Id. § 16.)

283. **Enforcement of Act.**—The State Food and Drug Commissioner* is hereby made Ex Officio Inspector and Sealer of Weights and Measures and is hereby charged with the duty of carrying into force and effect the provisions of this act. The duties devolving upon him under the provisions of this act shall be performed with the assistance of the inspectors and other employees of the State Food and Drug Department in connection with the performance or other duties devolving upon them as employees of such department. (L. 1919, c. 359, § 1, as re-enacted L. 1925, c. 115.)

284. **Duplicate Standards of Weights and Measures; Duties of Food and Drug Commissioner.**—In addition to the State standards of weights and measures provided for by law, there shall be supplied by the State at least one complete set of duplicate standards, to be kept at all times in the office of the State Food and Drug Commissioner and to be known as the office standards; and such other weights, measures, and apparatus as may be found necessary to carry out the provisions of this act, to be known as working standards. Such weights, measures, and apparatus shall be verified by the State Food and Drug Commissioner or his assistants at his direction, upon their initial receipt and at least once in each year thereafter, the office standards by direct comparison with the State standards, the working standards by comparison with the office standards. When found accurate upon these tests the office and working standards shall be sealed by stamping on them the letters "S. D." and the last two figures of the year with seals which the State Food and Drug Commissioner shall have and keep for that purpose. The office standards shall be used in making all comparisons of weights and measures and weighing and measuring devices submitted for test in the office of the State Food and Drug Commissioner. (Id. § 2.)

285. **Food and Drug Commissioner May Make Reports, Etc.**—The State Food and Drug Commissioner may from time to time make, and he is hereby authorized to make, reports in printed bulletins, of the work undertaken and accomplished under this act, together with other information relative to weights and measures as may be deemed suitable. (Id. § 3.)

286. **Food and Drug Commissioner to Have Supervision of Weights and Measures; to be Tested Once Annually.**—Except as provided for in section 9765 and in sections 9581 to 9586 inclusive, of the Revised Code of 1919, the State Food and Drug Commissioner shall have and keep a general supervision of the weights, measures and weighing or measuring devices, offered for sale, sold, or in use in the State. He, or his assistants at his direction, shall at least once annually test all scales, weights, and measures used in checking the receipts and disbursements of supplies in every institution for the maintenance of which moneys are appropriated by the Legislature, and he shall report in writing his findings to the supervisory board and to the executive officer of the institution concerned, and, at the request of such board, or executive officer, he shall appoint in writing one or more employees then in the actual service of the institution who shall act as special deputies for the purpose of checking the receipts or disbursements of supplies. It is hereby made the duty of the department of physics of the State University of South Dakota, upon request of the Food and Drug Commissioner to assist him or his assistants in all such matters as may require the facilities of the laboratory of that department or technical knowledge relating to physical measurements. (Id. § 4.)

287. **Food and Drug Commissioner to Inspect and Test Weights and Measures for Correctness.**—When not otherwise provided by law the State Food and Drug Commissioner shall have the power, and it shall be his duty to inspect, test, try and ascertain if they are correct, all weights, measures and weighing and measuring devices kept, offered, or exposed for sale, sold or used or employed by any proprietor, agent, lessee, or employee in proving or ascertaining the size, quantity, extent, area, or measurement of quantities, things, produce or articles of distribution or consumption purchased or offered or submitted by such person or

*See No. 25 et seq.

persons for sale, hire or award; and he shall have the power to, and shall, from time to time, weigh or measure and inspect packages or amounts of commodities of whatsoever kind kept for the purpose of sale, offered or exposed for sale, sold or in the process of delivery, in order to determine whether the same contain the amounts represented, and whether they be offered for sale or sold in a manner in accordance with law. He may for the purposes above mentioned, and in the general performance of his official duties, enter and go into or upon, without formal warrant, any stand, place, building or premises, or stop any vendor, peddler, junk dealer, coal wagon, ice wagon, delivery wagon, or any dealer whatsoever, and require him, if necessary, to proceed to some place which the State Food and Drug Commissioner may specify, for the purpose of making proper tests. Whenever the State Food and Drug Commissioner finds a violation of the statutes relating to weights and measures, he shall cause the violator to be prosecuted. (Id. § 5.)

288. **Correct Weights and Measures to be Appropriately Marked.**—Whenever the State Food and Drug Commissioner compares weights, measures, or weighing or measuring devices and finds that they correspond or causes them to correspond with the standards in his possession, he shall seal or mark such weights, measures or weighing or measuring devices with appropriate seals or marks. (Id. § 6.)

289. **Incorrect Weights and Measures May be Seized and Destroyed or Condemned for Repairs; Confiscation.**—The State Food and Drug Commissioner shall condemn and seize and may destroy incorrect weights, measures, or weighing or measuring devices which in his best judgment, are not susceptible to satisfactory repair; but such as are incorrect and yet may be repaired, he shall mark or tag as "Condemned for repairs." The owners or users of any weights, measures, or weighing or measuring devices of which such disposition is made shall have the same repaired or corrected within sixty days, and they may neither use nor dispose of the same in any way, nor remove or deface any such "Condemned for repairs" tag or other mark or tag affixed by the Food and Drug Commissioner until they shall have received from the Food and Drug Commissioner written permisssion to do so. Any weights, measures or weighing or measuring devices which have been "Condemned for repairs," and have not been repaired as required above, shall be confiscated by the Food and Drug Commissioner. (Id. § 7.)

290. **Penalty for Interfering With Food and Drug Commissioner.**—Except as in this act otherwise provided any person, firm or corporation preventing or attempting to prevent, or in any way interfering with the Food and Drug Commissioner or any of his inspectors or agents in entering the premises where a weighing or measuring device may be kept, for inspecting or testing the same, or knowingly failing or neglecting to observe any reasonable rule or regulation of the said Food and Drug Commissioner adopted for the enforcement of this act, shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined not to exceed one hundred dollars for each offense. (Id. § 8.)

291. **Powers of Food and Drug Commissioner Given to His Deputy and Inspectors.**—The powers and duties given to and imposed on the State Food and Drug Commissioner by sections 5, 6 and 7 of this act are hereby given to and imposed upon his deputy and inspectors also, when acting under his instructions and at his direction. (Id. § 9.)

292. **Food and Drug Commissioner, His Deputy and Inspectors Made Special Policemen.**—The State Food and Drug Commissioner, his deputy and inspectors, are hereby made special policemen, and are authorized and empowered to arrest any violator of the statutes in relation to weights and measures, to enter complaint before any court of competent jurisdiction, and to seize and use as evidence, without formal warrant, any false or unsealed weight, measure, or weighing or measuring device or package or amount of commodities found to be used, retained, or offered or exposed for sale or sold in violation of law. (Id. § 10.)

293. **Penalty for Impersonating Food and Drug Commissioner.**—Any person who shall impersonate in any way the Food and Drug Commissioner as Inspector of Weights and Measures, his deputy, or inspectors, in the performance of his or their official duties shall be guilty of a felony, and upon conviction thereof in any court of competent jurisdiction shall be punished by a fine not exceeding one thousand dollars, or by imprisonment in the State Penitentiary for not more than one year. (Id. § 11.)

294. **Penalty for Hindering Food and Drug Commissioner.**—Any person who shall hinder or obstruct in any way the Food and Drug Commissioner, his deputy or inspectors, in the performance of his or their official duties shall be guilty of a misdemeanor, and upon conviction thereof in any court of competent jurisdiction shall be punished by a fine of not less than $20 or more than $100

or by imprisonment in the county jail for not more than thirty days or by both such fine and imprisonment. (Id. § 12.)

295. **Penalty for Using Jars or Bottles for Milk or Cream That do Not Comply With Requirements of Law; Jars or Bottles to be Tested.**—Any dealer or person who uses for the purpose of selling milk or cream, jars or bottles that do not comply with the requirements of the law as to marking and capacity shall be deemed guilty of giving false or insufficient measure. Any manufacturer, person, firm or corporation, who sells milk or cream bottles to be used in this State that do not comply with the law as to size and marking shall suffer the penalty of one hundred dollars, to be recovered by the Attorney-General in an action to be brought in the name of the people of the State.

The State Food and Drug Commissioner shall, from time to time, make tests on individual jars or bottles used by the various firms in the State for milk or cream in order to ascertain whether the above provisions are being complied with. (Id. § 13.)

296. **False Weights and Measures to be Inspected.**—Whenever complaint shall be made to the State Food and Drug Commissioner that any false or incorrect scales, weights or measures are being made use of by any person, firm or corporation in the purchase or sale of merchandise or other commodities or in weighing any article or commodity, the piece price for which is determined by weight or measure it shall be his duty to cause the same to be inspected as soon as the duties of his office will permit, and he shall make such other inspections of the weights and measures as in his judgment is necessary or proper to be made. (Id. § 14.)

297. **General Prohibitions and Penalties.**—Any person who, by himself, or by his servant or agent or as the servant or agent of another person, shall offer or expose for sale, sell, use in buying or selling of any commodity or thing or for hire, or award, or retain in his possession a false weight or measure or measuring or weighing device, or any weight or measure or weighing or measuring device which has not been sealed by the State Food and Drug Commissioner within one year, or shall dispose of any condemned weight, measure, or weighing or measuring device contrary to law, or remove any tag placed thereon by the State Food and Drug Commissioner, or his assistants at his direction; or who shall sell or offer or expose for sale less than the quantity he represents, or shall take or attempt to take more than the quantity he represents, when as the buyer, he furnishes the weight, measure, or weighing or measuring device by means of which the amount of the commodity is determined; or who shall keep for the purpose of sale, offer or expose for sale or sell any commodity in a manner contrary to law; or who shall violate any provision of this act for which a specific penalty has not been provided; or who shall sell or offer to sell or use or have in his possession for the purpose of selling or using any device or instrument to be used, or calculated to falsify any weight or measure; shall be guilty of a misdemeanor, and shall be punished by a fine of not less than $20.00 or more than $100.00 or by imprisonment for not more than thirty days, or by both such fine and imprisonment, upon the first conviction in any court of competent jurisdiction and upon a second or subsequent conviction in any court of competent jurisdiction, he shall be punished by a fine of not less than $50 or more than $500 or by imprisonment in the county jail for not more than one year, or by both such fine and imprisonment. (Id. § 15.)

298. **Duty of State's Attorney.**—The State's Attorney of each county in the State is hereby authorized and required upon complaint on oath of the State Food and Drug Commissioner or other person, to prosecute before any court of competent jurisdiction in the name of the State of South Dakota a proper action or proceeding against any person or persons violating the provisions of this act. (Id. § 16.)

299. **Public Weigher and Measurer; Appointment.**—There shall be appointed in each municipal corporation, in April of each year, at least one public weigher and measurer, who shall hold his office for one year and until his successor is appointed and qualified. (R. C. 1919, Title 6, Part 22, c. 8, art. 3, § 10385.)

300. **Oath and Bond.**—Such public weigher and measurer, before entering upon the duties of his office, shall take the usual official oath and shall execute to the municipal corporation a bond in the sum of five hundred dollars, conditioned for the faithful performance of his duties. (Id. § 10386.)

301. **Standard Weights and Measures to be Furnished.**—Every municipal corporation shall furnish to each public weigher and measurer, so appointed, a set of weights and measures of the United States standard to be under his exclusive control. (Id. § 10387.)

302. **Municipal Scales.**—Each municipal corporation shall procure for each public weigher and measurer therein appointed a set of true and exact scales hav-

ing a capacity to weigh five tons at one time, and shall cause such scales to be set up and properly arranged for weighing in a convenient place in such municipal corporation, to be selected by the governing body thereof, and such scales shall be under the control and management of the public weigher and measurer. (Id. § 10388.)

303. Duty of Weigher.—It shall be the duty of the public weigher and measurer appointed under the provisions of this article to immediately and correctly weigh all articles, loads or animals brought for that purpose to the scales over which he has control. (Id. § 10389.)

304. Certificate.—Such public weigher and measurer shall give to every person for whom he does any weighing a certificate showing the gross amount thereof, and shall keep in his office a true and correct copy of the certificate so given, which certificate or copy shall be prima facie evidence of the weight of the article, animal or load so weighed. (Id. § 10391.)

305. Fees.—Such public weigher and measurer shall receive for each weight so made by him the sum of ten cents, and for each scale so tested by him the sum of twenty-five cents, and for each measure tested by him the sum of twenty-five cents, to be paid by the person for whom such weight or test is made. (Id. § 10392.)

306. Scales Must be Accurate.—It shall be the duty of the public weigher and measurer to keep the scales over which he has control, by virtue of his office, in condition to make true and exact weighing. (Id. § 10393.)

307. False Certificate; Penalty.—Any weigher and measurer mentioned in this article who shall make any false or fraudulent certificate of any weighing or measuring done by him, or shall be guilty of any collusion with any other person for the purpose of deceiving any person in regard to the correctness of any scales, weights or measures, shall be punished for each offense by a fine of one hundred dollars or by imprisonment in the county jail for ninety days, or by both such fine and imprisonment. (Id. § 10394.)

308. Standards of Weight and Measure; Providing for Inspection of Weights and Measures.—Chapters 358 and 359 of the Session Laws of 1919, providing standards of weights and measures and for the inspection of weights and measures and weighing and measuring devices, are hereby expressly retained in force; provided, that wherever in such chapters, as so amended either of the following expressions "State Food and Drug Commissioner," "Food and Drug Commissioner" or "Commissioner" shall appear, there shall be substituted therefor the expression "Secretary of Agriculture" or "Secretary," and the Secretary of Agriculture shall enforce, through the Division of Inspections, the provisions of said chapters. Sections 10371 to 10377, inclusive, of the Revised Code of 1919, relating to standards and methods of measurements, are hereby expressly retained in force. Section 9573 and sections 4272 to 4276, inclusive, of the Revised Code of 1919, are hereby repealed. And sections 9765, 9581, 9582, 9584, 9585 and 9586 of the Revised Code of 1919 and section 9583 of the Revised Code of 1919 as amended by chapter 344 of the Laws of 1921, are expressly retained in force; provided, that wherever in such sections reference is made to the State Board of Railroad Commissioners, it shall be construed to mean the Secretary of Agriculture. (L. 1925, c. 115, sub. c. III, art. V, § 13.)

NOTE: See also Nos. 15, 25 et seq., 35 et seq., 42 et seq., and 106 et seq.

PART V.

Cases.

1. General Food and Drug Law.

Application to Druggist: Ex parte Brown, 21 S. D. 515, 114 N. W. 303 (1907).

Dairy and Stock Food Fund—Payment Therefrom: *State ex rel. Longstaff v. Anderson, 33 S. D. 574, 146 N. W. 703 (1914).

Laws of 1925, Chapter 115—Constitutional: *Kirby v. Berdahl, 209 N. W. 545 (1926).

Unreasonable Interference With Interstate Commerce: *Jewett Bros. & Jewett v. Smail, 20 S. D. 232, 105 N. W. 738 (1905).

2. Special Food Laws.

Meat—Diseased—Federal Inspection: See Wess et al. v. South Dakota Packing & Shipping Co., 43 S. D. 467, 180 N. W. 510 (1920).
Meat—Slaughtering: State v. Devers, 32 S. D. 473, 143 N. W. 364 (1913).
Oleomargarine: *State v. Manley, 34 S. D. 634, 150 N. W. 291 (1914).

3. Special Drug Laws.

Medicinal Stock Food: *State v. Slattery, 207 N. W. 484 (1926).
Narcotics: See Moberg v. Scott, 38 S. D. 422, 161 N. W. 998, L. R. A. 1917 D, 732 (1917).

4. Civil Action to Recover Damages for Injury Alleged to Have Been Caused by Consumption or Use of Product.

Food: See Wess et al. v. South Dakota Packing & Shipping Co., 43 S. D. 467, 180 N. W. 510 (1920).
Narcotics—Inducing Habit in Husband—Action in Seduction by Wife: Moberg v. Scott, 38 S. D. 422, 161 N. W. 998, L. R. A. 1917 D, 732 (1917); Same, 42 S. D. 372, 175 N. W. 559 (1919).
Serum for Hogs: Murphy v. Sioux Falls Serum Co., 44 S. D. 421, 184 N. W. 252 (1921); Same, 47 S. D. 44, 195 N. W. 835 (1923).

5. Miscellaneous.

Linseed Oil: *American Linseed Oil Co. v. Wheaton, 25 S. D. 60, 125 N. W. 127 (1910).
Trade-Marks: Bidwell et al. v. Collins et al., 39 S. D. 395, 164 N. W. 969 (1917); Zweck v. Aberdeen Laundry & Dry Cleaning Co. et al., 44 S. D. 176, 183 N. W. 118 (1921).

TENNESSEE.*

PART I.

General Food and Drug Law.

1. Violation of This Law is a Misdemeanor Punishable by Fine and Imprisonment—Inquisitorial Power and Special Charge.—It shall be unlawful for any person within this State to manufacture for sale, produce for sale, expose for sale, have in possession with intent to sell, or sell or give away, any article of food or drugs which is adulterated or misbranded within the meaning of this chapter, and any person who shall violate the provisions of this chapter shall be deemed guilty of a misdmeanor, and for the first offense shall, upon conviction thereof, be fined not less than ten nor more than one hundred dollars, or be sentenced to not more than ninety days' imprisonment in the county jail, or to both such fine and imprisonment, and for each subsequent offense, upon conviction thereof, shall be fined not less than one hundred nor more than one thousand dollars, or imprisoned in the county jail not more than eleven months and twenty-nine days, or both such fine and imprisonment. Provided, that no article of food or drugs shall be deemed misbranded or adulterated within the provisions of this chapter, when intended for shipment to any other State or country, when such article is not adulterated or misbranded in conflict with the laws of the United States; but if said article shall be, in fact sold or offered for sale for domestic use or consumption within this State, then this provision shall not exempt said article from the operation of any other provisions of this chapter.

The grand juries of the several counties of the State shall have inquisitorial power over said offenses, and the judges of the several criminal courts and circuit courts having criminal jurisdiction shall especially charge this law to the grand juries of the several counties of the State. (Code 1917, § 3473a24.)

2. Term "Drug" Includes What.—The term "drug" as used in this chapter, shall include all medicines and preparations recognized in the United States Pharmacopœia or National Formulary, for internal or external use, and any substance or mixture of substances intended to be used for the cure, mitigation or prevention of disease of either man or other animals. (Id. § 3473a25.)

3. Term "Food" Includes What.—The term "food" as used herein, shall include all articles used for food, drink, confectionery, or condiment by man or other animals, whether simple, mixed or compound. (Id. § 3473a26.)

4. Articles are Adulterated, When.—For the purpose of this chapter an article shall be deemed to be adulterated: In the case of drugs:

1. If when a drug is sold under or by a name recognized in the United States Pharmacopœia, or National Formulary, it differs from the standard of strength, quality, or purity as determined by the test lead [laid] down in the United States Pharmacopœia, or National Formulary, official at the time of the investigation; provided, no drug defined in the United States Pharmacopœia, or National Formulary, shall be deemed to be adulterated under this provision if the standard of strength, quality or purity be plainly stated upon the bottle, box, or other container thereof, although the standard may differ from that determined by the test laid down in the United States Pharmacopœia, or National Formulary; provided, further, that no tincture of iron or preparation of opium, iodine, camphor, ginger or peppermint, as defined in the United States Pharmacopœia, or National Formulary, shall in strength differ from the standards therein laid down.

2. If its strength or purity fall below the professed standard or quality under which it is sold.

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*CITATIONS: "Code 1917" refers to Shannon's Annotated Code of Tennessee, 1917, in 4 volumes, published by the Tennessee Law Book Publishing Company. "Code 1918" refers to Volume 5 of said Code, issued in 1918. "Code Supp. 1926" refers to the 1926 supplement to said Code. "L." refers to the session laws of the year cited.

In case of confectionery:

1. If it contain terra alba, barytes, talc, chrome yellow, or other mineral substances, or poisonous color or flavor or other ingredient deleterious or detrimental to health, or any vinous, malt, or spirituous liquor, or compound or narcotic drug.

In case of food:

1. If any substance has been mixed and packed with it, so as to reduce or lower or injuriously affect its quality or strength.

2. If any substance has been substituted, wholly or in part, for the article.

3. If any valuable constituent of the article has been wholly or in part abstracted.

4. If it be mixed, colored, powdered, coated or stained in a manner whereby damage or inferiority is concealed; provided, that burned sugar or any other coloring matter whatever used in the manufacture of vinegar or cider shall be deemed an adulteration.

5. If it contain any added poisonous or other added deleterious ingredient which may render such article injurious to health; provided, that when in the preparation of food products for shipment they are preserved by an external application applied in such manner that the preservative is necessarily removed mechanically or by maceration in water or otherwise, and directions for the removal of said preservative shall be printed on the covering or [of] the package, the provisions of this chapter shall be construed as applying only when said products are ready for consumption.

6. If it consists in whole or in part of a filthy, decomposed, or putrid animal or vegetable substance, or any portion of animal unfit for food, whether manufactured or not; or if it is the product of a diseased animal or one that has died otherwise than by slaughter. (Id. § 3473a27.)

5. Term "Misbranded" Applies to What.—The term "misbranded," as used herein, shall apply to all drugs or articles of food, or articles which enter into the composition of food, the package or label of which shall bear any statement, design or device regarding such article, or the ingredients or substances contained therein, which shall be false or misleading in any particular, and to any food or drug product which is falsely branded as to the State, Territory or country in which it is manufactured or produced. (Id. § 3473a28.)

6. Articles are Misbranded When.—For the purpose of this chapter, an article shall be deemed to be misbranded:

In case of drugs:

1. If it be an imitation of or offered for sale under the name of another article.

2. If the contents of a package as originally put up shall have been removed in whole or in part and other contents shall have been placed in such package or if the package fail to bear a statement on the label of the quantity or proportion of any alcohol, morphine, opium, cocaine, heroin, alpha, or beta eucaine, chloroform, cannabis indica, chloral hydrate or acetanilide, anti-pyrine or acetphenitidin, or any derivative or preparation of any such substances contained therein; provided, that no part of this section shall be construed as applying to the prescriptions of regularly licensed physicians, dentists and veterinary surgeons when said prescriptions are filled or dispensed for the person for whom originally written, nor to such drugs as are regularly recognized in the United States Pharmacopœia and which are sold under the brand by which they are so recognized.

3. If its package or label shall bear or contain any statement, design, or device, regarding the purity or therapeutic effect of such article or any of the ingredients or substances contained therein, which is false.

In case of food:

1. If it be an imitation of or offered for sale under the distinctive name of another article.

2. If it be labeled or branded so as to deceive or mislead the purchaser, or purport to be a foreign product when not so, or if the contents of the package as originally put up shall have been removed in whole or in part and other contents shall have been placed in such package, or if it fail to bear a statement on the label of the quantity or proportion of any morphine, opium, cocaine, heroin, alpha or beta eucaine, chloroform, cannabis indica, chloral hydrate or acetanilide, antipyrine or acetphenitidin or any derivative or preparation of any such substances contained therein.

3. If in package form, the quantity of the contents be not conspiciously, plainly, and correctly marked on the outside of the package in terms of weight, measure, or numerical count; provided, that reasonable variations shall be permitted, and tolerances and also exemptions as to small packages shall be established by rules

and regulations to be promulgated by the State Pure Food and Drug Inspectors;* provided further, that said tolerances and exemptions as to small packages shall be made uniform with like tolerances and exemptions established by the United States Department of Agriculture whenever said Department shall establish same; and provided, further, that no penalty or fine or imprisonment for violation of this sub-section shall be imposed for goods packed prior to September 25, 1914.

4. If the package containing it or its label shall bear any statement, design or device, regarding the ingredients or the substance contained therein, which statement, design or device shall be false or misleading in any particular; provided, that an article of food which does not contain any added poisonous or deleterious ingredient shall not be deemed to be adulterated or misbranded if, in the case of articles labeled, branded or tagged so as to plainly indicate that they are compounds, imitations or blends, the word "compound," "imitation," or "blend," as the case may be, is plainly stated on the package in which it is offered for sale; provided, further, that the term "blend," as used herein, shall be construed to mean a mixture of like substances, not excluding harmless coloring or flavoring ingredients used for the purpose of coloring or flavoring only; and, provided, further, that nothing in this chapter shall be construed as requiring or compelling proprietors or manufacturers of proprietary foods, which contain no unwholesome added ingredients, to disclose their trade formulas, except in so far as the provisions of this chapter may require to secure freedom from adulteration or misbranding. (Id. § 3473a29.)

7. Guaranty Under National Pure Food and Drug Act Protects from Prosecution Under This Law, When and When Not.—No dealer shall be prosecuted under the provisions of this chapter when he can establish a guaranty in accordance with the provisions of the National Pure Food and Drugs Act, June 30, 1906, or a guaranty signed by the wholesaler, jobber, manufacturer, or other parties residing in this State from whom he purchases such articles, to the effect that same is not adulterated or misbranded within the meaning of this chapter designating it. Said guaranty, to afford protection, shall contain the name and address of the party or parties making the sales of such articles to such dealer, and in such case said party or parties shall be amenable to the prosecutions, fines, and other penalties which would attach in due course to the dealer under the provisions of this chapter; provided that a guaranty shall not exempt any dealer from prosecution if such dealer shall continue to sell any article (1) after having received written notice from the Pure Food and Drug Inspector* that the article in question is adulterated or misbranded within the meaning of this chapter; or (2) if he shall continue to sell such article ten days after advertisement regarding it, as provided in section 3473a31. (Id. § 3473a30.)

8. Terms "Territory" and "Person" are Defined.—The term "Territory," as used in this chapter shall include the insular possessions of the United States. The word "person," as used in this chapter, shall be construed to import the plural or the singular, as the case demands, and shall include firms, corporations, companies, societies, and associations. (Id. § 3473a31.)

9. Act, Omission, or Failure of any Officer or Agent of a Corporation Shall be Deemed That of the Corporation and the Person.—When construing and enforcing the provisions of this chapter, the act, omission, or failure of any officer, agent, or other person acting for or employed by any corporation, company, society or association, within the scope of his employment or office, shall in every case be also deemed to be the act, omission, or failure of such corporation, company, society or association as well as that of the person. (Id. § 3473a32.)

10. Exception as to Goods on Hand at Passage of Law.—Nothing in the last two sections shall apply to goods, wares, and merchandise in the bonds [hands] of the wholesales [wholesalers] or retails [retailers] at the date of the passage of this Act [April 9, 1907], when the date of receipt of said goods can be satisfactorily established by invoice or otherwise. (Id. § 3473a33.)

11. Pure Food and Drug Inspector to be Appointed—Term and Salary.—To more fully enforce the provisions of this chapter there shall be appointed by the Governor a person who shall be a chemist of established reputation and ability, who shall be known as "Pure Food and Drug Inspector," and who shall hold office for a term of two years from the 15th day of January of the year of his appointment.* The salary of said inspector shall be twenty-five hundred dollars per annum, payable monthly out of the treasury of the State, as are paid the salaries of other State officials. (Id. § 3473a34.)

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*See Nos. 30-30b.

12. **Inspector Shall Establish Office and Laboratories Under Direction of State Board of Health.**—Said inspector* shall establish and maintain an office and laboratory in the Capitol or elsewhere in Nashville, and sub-laboratories in other place or places as may be deemed advisable or necessary by the State Board of Health,† and said laboratory or laboratories shall be equipped by said inspector for proper inspection and analysis of all food and drugs mentioned in this chapter, said office and laboratory to be established, equipped and conducted under the supervisions of the State Board of Health. (Id. § 3473a35.)

13. **Duty of Inspector to Inform Himself, Etc.—Prosecutions by State Board of Health—Appropriation for Equipment of Office and Laboratories.**—It shall be the duty of said inspector* to keep himself informed as to the various food and drug products manufactured or sold in this State, and from time to time inspect and analyze the same, and in case of any violation of this law, said State Board of Health,† or its duly authorized representative, shall act as prosecutor in the court having criminal jurisdiction of said offense; provided, however, that in case of the first charge or finding by the Pure Food and Drug Inspector the manufacturer or dealer shall be notified of the findings and be given a hearing within fifteen days after sending out notice thereof, and prosecution in such case shall not be brought before such hearing is had. The sum of one thousand dollars, or as much thereof as may be necessary, is hereby appropriated for the equipment of the office and laboratory or laboratories provided in this section. (Id. § 3473a36.)

14. **Inspector Shall Obtain Samples and Inspect and Analyze Same—Records to be Kept—Expenses to be Paid, How.**—Said Pure Food and Drug Inspector* shall be required to obtain, through purchase or otherwise, samples of all food and drugs manufactured or sold in this State and inspect and analyze the same; and he shall keep a complete record in his office of all such inspections and analyses, together with all expenses attached thereto. He shall certify such expenses to the Comptroller of the State, and the same shall be paid as other expenses of the State are paid out of the treasury; but such expenses shall not exceed one hundred dollars for any one month during the year. (Id. § 3473a37.)

15. **Inspector Shall Report to State Board of Health and Governor.**—Said Inspector* shall make such reports to the State Board of Health† as they may from time to time require. He shall also make an annual report to the Governor, showing the expenses of the office, the number and character of inspections, and the results accomplished by said office. (Id. § 3473a38.)

16. **Violations of This Law to be Advertised—Bulletins to be Issued—Disposition of Fines.**—At least twice in each year and as much oftener as he shall deem necessary, the Pure Food and Drug Inspector* may cause to be advertised all such violations of this chapter discovered by him as in his opinion appear to be a menace to the public health. Such advertising shall be done in newspapers of general circulation, one in each grand division of the State, and shall cover the period of six months immediately preceding date of publication or the period preceding said date and subsequent to date of last publication. Such advertisement shall include the name of the offender, the place where inspections were made, and as far as possible, the name of the manufacturers, and any other information which may be of interest to the consumers of food and drug products and dealers therein. Said publications may also include the results of the enforcement of other laws with the execution of which his office is now or may hereafter be charged, and there is hereby appropriated for the purpose of said publications a sum not exceeding the amount of fines collected under the provisions of this chapter. Said fines shall be paid into the State treasury and paid out for the purpose aforesaid by warrant of the State Comptroller upon certified bills filed by the Pure Food and Drug Inspector; provided, however, that any residue from fines shall be applied to aid in the issuance of bulletins from time to time. Such bulletins shall give the results of the inspections as provided above, the results of the operation of other laws with the execution of which the office of the Pure Food and Drug Inspector is charged, and any other information pertaining to or connected with the work of said office which may be of interest to consumers or dealers, or of value and benefit to the people of the State. If after such advertising and publication of bulletins there be any residue left from fines, it shall be covered into the State treasury; provided, however, that if such income from fines be not sufficient for the issuance of bulletins, then said bulletins may be paid for from the other funds of the office; provided, further, that before such publication is made, the manufacturer of the article and the dealer shall be furnished a true copy of the facts to be published regarding the article at least thirty days before the

*See Nos. 30-30b.
†See No. 30c.

publication, and a hearing before the inspector given the dealer and manufacturer, and the explanation of the dealer or manufacturer shall be included by the inspector in the same place and along with the publication made regarding the article. (Id. §3473a39.)

16a. Unlawful to Substitute Other Brands for Those Demanded Without Expressly Advising Proposed Purchaser of Such Substitution; Applicable Only to Bottled Soft Drinks, When.—Whenever a vendee, or proposed vendee, of such food (which term "food" is used in this amendment with the same meaning as defined in said original act) shall specifically demand of the vendor or proposed vendor, the food of any certain specified make, brand, person, producer, or manufacturer, whether such demand be made by patent name, trade name, or otherwise, it shall be unlawful for such vendor or proposed vendor, willfully and knowingly, to substitute, or offer to substitute, the food of another brand, make, person, producer, or manufacturer for the food thus demanded of such vendor, or proposed vendor, by such vendee, or proposed vendee, without expressly advising such vendee, or proposed vendee, of such substitution, or proposed substitution, that the provisions of this act shall apply only to bottled soft drinks when sold over the counter with the crown removed. (Code Supp. 1926, § 3473a39b1.)

16b. Violation is a Misdemeanor; Fine or Imprisonment, or Both.—A willful violaion of the provisions of this amendment of this act is hereby declared to be a misdemeanor punishable by a fine of not less than five dollars nor more than fifty dollars, or by imprisonment in the county jail or workhouse for a period of not less than ten days nor more than sixty days, or both, in the discretion of the court. (Id. § 3473a39b2.)

Miscellaneous General Provisions.*

17. Misdemeanor.—It shall be a misdemeanor:

1. To Sell Unwholesome Provisions.—For any person knowingly to sell any kind of diseased, corrupt, or unwholesome provisions, whether for meat or drink, without making the same fully known to the buyer.

2. To Adulterate Food or Drink.—For any person fraudulently to adulterate, for the purpose of sale, any substance intended for food, or any wine, spirituous or malt liquor, or other liquor intended for drinking.

3. Or Any Drug or Medicine.—For any person to adulterate, for the purpose of sale, any drug or medicine, in such manner as to lessen the efficacy or change the operation of such drug or medicine, or to make them injurious to health, or sell them knowing that they are thus adulterated; and such adulterated drugs and medicines shall be forfeited and destroyed.

4. Tainted Meats, Sour Bread, or Drugged Wines, Etc.—For any person to sell, offer or expose for sale, or suffer or permit his servants or other persons for him, to sell or expose for sale any tainted, putrid, or unwholesome fish or flesh, or the flesh of any animal dying otherwise than by slaughter, or slaughtered when diseased, or any bread made from sour or unwholesome flour, or any drugged or manufactured wines, or adulterated spirituous liquors; and, in addition, he shall forfeit ten dollars to any person who will sue therefor, before a justice of the peace, for a violation of this sub-section.

5. Selling Liquors Without Oath and Bond.—For any person to sell any spirituous or alcoholic liquors without complying with section 994 and, upon conviction thereof, shall be fined not less than fifty nor more than five hundred dollars.

6. To Adulterate Candy.—To manufacture for sale or knowingly sell, or knowingly offer for sale, any candy adulterated by the admixture of terra alba, barytes, talc, or other mineral substance or poisonous colors or flavors or other ingredients deleterious or detrimental to health; and, upon conviction thereof, the manufacturer or seller shall be fined not exceeding five hundred dollars, and the candy so adulterated shall be confiscated and destroyed under the direction of the court before whom the offender is tried. (Code 1918, § 6743.)

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*Following sections 6744a9-6744a10, Code 1918, quoted in Nos. 156-157, is this editorial note:

"Question whether sections 6744a9 and 6744a10 repeal sections 6744a1 to 6744a8. —Said Acts 1903, ch. 98, in its caption, purports to amend said Acts 1897, ch. 45, with a proper recitation of its title, and 'to make the law especially applicable to millers, manufacturers of flour, and all persons dealing in or selling flour in this State.' By the first section of the body of the act it is enacted that 'Chapter 45 of the Acts of 1897, passed March 19, 1897, be so amended as to read.' Then follows the matter as above compiled in sections 6744a9 and 6744a10. The question raised

18. Sale of Adulterated or Misbranded Food Prohibited—Violation is a Misdemeanor.—The manufacture, importation, or sale, or offering for sale of any article of food or drink, which is adulterated or misbranded, within the meaning of sections 6744a4 to 6744a6, is hereby prohibited in Tennessee, and any company or individual who shall knowingly receive from without the State or who, having so received, shall deliver for pay or otherwise, or offer to deliver or sell or trade any such article so adulterated or misbranded, within the meaning of sections 6744a4 to 6744a6, shall be guilty of a misdemeanor, and for such offense shall be fined not less than twenty-five nor more than one hundred dollars for the first offense, and for each subsequent offense, not less than two hundred dollars, or be imprisoned in the county jail not exceeding one year, or both, in the discretion of the court. (Id. § 6744a1.)

19. Duty of State Board of Health as to Examination of Food and Drink—Bulletins of Information and of Convicted Violators—Violations to be Reported to District Attorney.—The State Board of Health† is hereby authorized and directed to establish, under such rules and regulations as it may think best, a properly organized and fully equipped chemical and biological laboratory, in which, with such expert assistance as they may elect, shall be made such examinations of food and drink, offered for sale in Tennessee, as may be collected, from time to time, under such rules and regulations as said board may prescribe, and results of such analyses or examinations, they shall publish in bulletins for the information of the people. But the names of the manufacturers or vendors of such foods or drink analyzed shall in no case be published, as hereinbefore indicated, until after conviction in the courts of violation of sections 6744a1 to 6744a7. If it shall appear from such examination that any of the provisions of said sections have been violated, the State Board of Health shall at once cause a report of the fact to be made to the district attorney for the district in which such violation occurred, with a copy of the results of the analysis, duly authenticated by the expert making the examination under oath. (Id. § 6744a2.)

20. District Attorneys to Prosecute.—It shall be the duty of every district attorney, to whom said State Board of Health† shall report any violation of sections 6744a1 to 6744a7, to cause proceedings to be commenced and prosecuted, without delay for the fines and penalties in such cases provided, unless upon inquiry and examination, said district attorney shall decide that such proceedings cannot probably be sustained; in which case said attorney shall so report back to said State Board of Health. (Id. § 6744a3.)

21. Definition of Terms Used.—The terms "food and drink," as used herein, shall include all articles used for food or drink by man, whether simple, mixed or

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is whether this statute operates to repeal the said Acts of 1897, ch. 45. The body of this statute does literally repeal the said act of 1897. But it is evident from the caption of this statute, that the legislature did not intend to repeal the said former act. The intention of the legislature as expressed in the caption, was to make the said act of 1897 especially applicable to millers, manufacturers of flour, and dealers therein; and, to give effect to this intention, the body of the statute must be construed to mean that said act of 1897 be so amended that the amendment shall read as therein set out; or that the said act of 1897 be so amended as to read, in addition thereto, as therein set out, thus interpolating the words 'in addition thereto.' This would not be a strained construction of the statute, and would evidently be giving effect to the intention of the legislature as gathered from the act itself. The specific and determinative question is whether or not the intention so gathered from the act itself shall prevail over the literalism of its terms. It is thought that the intention so clearly evident will prevail over the literalism of the statute. The said act of 1897 is comprehensive, and embraces a large subject-matter, with great detail of particularity, and providing for its enforcement, which it was desired to make especially applicable to millers, manufacturers of flour, and dealers therein, as stated in the caption of the said act of 1903. This strongly strengthens the idea that there was no legislative intention to repeal the said Act of 1897 by the said Act of 1903. The legislature recognized said Act of 1897 as being in force, and as not repealed or superseded by said Act of 1903, by its express amendment thereof by Acts 1905, ch. 508, as shown in section 6744a2. While such recognition is not conclusive, yet it is at least persuasive, as showing the legislative intention not to repeal said Act of 1897, by said Act of 1903, passed at the next preceding session to the session passing said amendment in Acts 1905, ch. 508. See Rose v. Wortham, 11 Pickle, 505, 509, 510, and citations; Const., p. 616, note 41; Code, note 5 under sec. 64a, pp. 28-30."

In further comment upon section 6743 et seq.: it is also a question whether or to what extent they are repealed by the subsequent law quoted in No. 1 et seq.

†See No. 30c.

compound. The term "misbranded," as used herein, shall include all articles of food or drink (or which enter into the composition of such articles of food or drink), the package or label of which shall bear any statement purporting to name any ingredient or substance as not being contained in such article, which statement shall be false in any particular, or any statement purporting to name the substance of which such article is made, which statement shall not fully give the names of all the substances contained in such article in any measurable quantities. (Id. § 6744a4.)

22. Adulterated Articles, What Are.—For the purposes of sections 6744a1 to 6744a8, an article shall be deemed adulterated, in case of food or drink:

1. If any substance or substances has or have been mixed and packed with it so as to reduce or lower or injuriously affect its quality or strength, so that such product, when offered for sale, shall be calculated and shall tend to deceive the purchaser.

2. If any inferior substance or substances has or have been substituted, wholly or in part, for the article so that the product, when sold, shall tend to deceive the purchaser.

3. If any valuable constituent of the article has been wholly or in part abstracted so that the product, when sold, shall tend to deceive the purchaser.

4. If it be an imitation of and sold under the specific name of another article.

5. If it be mixed, colored, powdered, or stained in a manner whereby danger is concealed, so that such product when sold, shall tend to deceive the purchaser.

6. If it contain any added poisonous ingredient, or any ingredient which may render such article injurious to the health of the person consuming it.

7. If it consist of the whole or any part of a diseased, filthy, decomposed, or putrid animal or vegetable substance, or any portion of an animal unfit for food, whether manufactured or not, or if it is the product of a diseased animal, or of an animal that has died otherwise than by slaughter. (Id. § 6744a5.)

23. Articles Not Deemed to be Adulterated.—An article of food or drink, which does not contain any added poisonous ingredient, shall not be deemed to be adulterated in the following cases:

1. In the case of mixtures or compounds, which may be now, or from time to time hereafter, known as articles of food or drink under their own distinctive names, and not included in definition fourth of the preceding section.

2. In the case of articles labeled, branded, or tagged, so as plainly to indicate that they are mixtures, compounds, combinations, or blinds [blends].

3. When any matter or ingredient has been added to the food or drink because the same is required for the production or preparation thereof, or an article of commerce in a state fit for carriage or consumption, and not fraudulently to increase the bulk, weight, or measure of the food or drink, or conceal the inferior quality thereof; provided, that the same shall be labeled, branded, or tagged, as prescribed by the State Board of Health,* so as to show them to be compounds and the exact character thereof.

4. Where the food or drink is unavoidably mixed with some extraneous matter in the process of collection and preparation. (Id. § 6744a6.)

24. Samples to be Furnished—Analysis.—Every person who manufactures or offers for sale, or delivers to a purchaser, any article of food or drink, shall furnish upon demand a sample of such article of food or drink to any person duly authorized by the State Board of Health* to receive the same, and who shall apply to such manufacturer, or vendor, or person delivering to any purchaser such article of food or drink, for such sample, for such use, in sufficient quantity for the analysis of any such article or articles, in his or her possession. And in the presence of such dealer, and an authorized agent of the said State Board of Health,* if so desired by either party, said sample shall be divided into three parts, and each part shall be sealed by the seal of the State Board of Health. One part shall be left with the dealer, one delivered to the State Board of Health, and one deposited with the district attorney for the district in which the sample is taken. Said manufacturer or dealer may have the sample left with him analyzed at his own expense, and if the results of said analysis differ from those of the State Board of Health, the sample in the hands of the district attorney shall be analyzed by a third chemist or expert, who shall be chosen and agreed upon by the said dealer and the State Board of Health, and the whole evidence shall be laid before the court. (Id. § 6744a7.)

*See No. 30c.

25. **Refusal to Comply With the Law is a Misdemeanor—Fine and Imprisonment—Fine for Costs and Expenses in Inspecting and Analyzing, When.**—Whosoever refuses to comply, upon demand, with the requirements of the preceding section shall be guilty of a misdemeanor, and upon conviction shall be fined not exceeding one hundred dollars, nor less than ten dollars, or imprisonment not exceeding three months nor less than thirty days, or both. And any person found guilty of the manufacturing or knowingly offering for sale, or selling an adulterated, impure, or misbranded article of food or drink, in violation of the provisions of sections 6744a1 to 6744a7, shall be adjudged to pay, in addition to the penalties heretofore provided for, all the necessary costs and expenses incurred in inspecting and analyzing such adulterated articles which said person may have been found guilty of manufacturing, selling, or offering for sale. (Id. § 6744a8.)

26. **Misdemeanor.**—It shall be a misdemeanor:

(1) To alter brands.—For any person, with intent to defraud, falsely to alter any stamp, brand, or mark on any cask, package, box, or bale containing merchandise or produce, made by a public officer appointed for that purpose, in order to denote the quality, weight, or quantity of the contents thereof.

(2) To counterfeit brands.—For any person to counterfeit any mark, stamp, or brand of such officer, or of another, or falsely to mark any cask, package, box, or bale, as to quality or quantity, with intent to defraud. . . . (Id. § 6736.)

27. **Fraudulent Packing.**—Any person who fraudulently packs or bales any cotton, wool, hemp, tobacco, or other article of trade or produce, shall be fined not less than fifty nor more than five hundred dollars, and may be imprisoned not more than six months. (Id. § 6737.)

28. **Fraudulent Samples.**—Any person who fraudulently exhibits any false sample of any cotton, wool, hemp, tobacco, or other article of trade or produce, by means whereof any person is injured, shall on conviction, be punished as in the last section. (Id. § 6738.)

29. **Opening Packages.**—Any person who willfully cuts, tears, or otherwise opens any packs or bales of articles mentioned in the last two sections, without the direction or consent of the owner, agent, or consignee, shall be punished as provided in said sections. (Id. § 6739.)

30. **Power of Department to do What.**—The Department of Agriculture shall have power: . . .

(6) Food and Drug Inspector.—To exercise all the rights, powers, and duties vested by law in the Food and Drug Inspector (except the inspection of hotels), his deputies, inspectors, and employees. . . . (Code Supp. 1926, § 373a71.)

30a. **Department Organized Into Five Divisions.**—The Department of Agriculture shall be organized into five divisions, as follows: . . .

(3) The division of foods, fertilizers, and dairies, the head of which shall be the Superintendent of Foods, Fertilizers and Dairies. . . . (Id. § 373a72.)

30b. **Departments, Bureaus, Officers, Boards, Commissions, and Agencies Abolished.**—From and after the day upon which this act shall become effective, the following departments, bureaus, officers, boards, commissions, and agencies of the State government heretofore created by law shall be and are hereby abolished: . . .

(9) Bureau of Agriculture, Statistics, and Mines
(10) Commissioner of Agriculture, Statistics, and Mines
(11) Food and Drug Inspector . . .
(15) State Dairy Commissioner . . .
(23) Workshop and Factory Inspection Bureau
(24) Workshop and Factory Inspector . . .
(28) State Board of Health
(29) Secretary of State Board of Health . . .
(49) State Superintendent of Weights and Measures. (Id. § 373a124.)

30c. **Commissioner of Agriculture to be Substituted.**—Wherever in the Food and Drugs law . . . reference is made to the "State Board of Health," there shall be substituted in lieu thereof the words "Commissioner of Agriculture." (L. 1925, c. 110, § 1.)

PART II.

Special Food Laws.

Beverages.

31. Pure Food and Drug Inspector* to Enforce This Law.—It shall be the duty of the pure food and drug inspector of the State and his duly authorized deputies and assistants to enforce the provisions of this chapter. (Code 1917, § 3079a318.)

32. "Soft Drinks" and "Soft Drink Stands" Are Defined.—The words "soft drinks" as used in this chapter shall cover and include all liquids sold by retail or wholesale for use as a drink, food, refreshment, beverage, or stimulant; that the words "soft drink stands" as used in this chapter shall cover and include all drug stores, storehouses, shops, houses, buildings, stands or places of whatever character or kind where soft drinks are kept for sale by retail or wholesale. (Id. § 3079a319.)

33. Sale of Soft Drinks Containing Over One-Half of One Per Cent of Alcohol is a Public Nuisance—Its Abatement.—It shall be unlawful for any person, firm, or corporation to sell any soft drink which contains more than one-half of one per cent of alcohol and the conducting, maintaining, carrying on, or engaging in the sale of soft drinks containing more than one-half of one per cent. of alcohol, in any soft drink stand, as herein defined, and all means, appliances, fixtures, appurtenances, materials, supplies, and instrumentalities used for the purpose of carrying on, maintaining, or conducting such unlawful business, is hereby declared to be a public nuisance, and may be abated under the provisions of this chapter. (Id. § 3079a320.)

34. Power to Enter Building, Etc., and to Take Samples, Upon Paying for Same—Refusing Sample is a Misdemeanor.—The pure food and drug inspector of the State and his duly authorized assistants shall have full power at all times to enter every building, room, basement, or cellar used or suspected of being used for the conducting or maintaining of a soft drink stand, and to take samples of soft drinks therein kept for sale upon paying or offering to pay to the person in charge of said soft drink stand, the regular market price of the sample so taken; and it shall be unlawful for any person in charge of such establishment or any clerk or other employee thereof to refuse to turn over the sample required to or in any manner interfere with the pure food and drug inspector or his duly authorized assistants, and any person so refusing or interfering with the pure food and drug inspector or his assistants, shall be guilty of a misdemeanor. (Id. § 3079a321.)

35. Samples to be Sealed and Analyzed—Certificate of Analysis is Prima Facie Evidence.—All samples taken as provided herein shall be at once sealed and marked with the private mark of the person so taking them, and transmitted to the pure food and drug inspector* for an immediate analysis; and the certificate of analysis of such samples duly sworn to by the pure food and drug inspector, or by one of his duly appointed chemists, shall be prima facie evidence of the per cent of alcohol in such soft drink. (Id. § 3079a322.)

36. Jurisdiction, and by Whom and How Suits to Abate Such Nuisances Shall be Brought.—Jurisdiction is hereby conferred upon the chancery, circuit, and criminal courts of this State to abate the public nuisances defined in this chapter, upon petition in the name of the State of Tennessee, upon relation of the pure food and drug inspector.* It is hereby made the duty of the Attorney-General and the district attorney of the State in the district where said violation is alleged to have occurred to file said petition upon the request and demand of the pure food and drug inspector accompanied by a sworn analysis of the samples taken as required herein. (Id. § 3079a323.)

37. Inspector to Notify State's Attorney of Violations, and Furnish Analysis—Petition for Abatement of Nuisance.—It shall be the duty of the pure food and drug inspector, upon the discovery of any violation of this chapter, to immediately notify the Attorney-General of the State or the district attorney of the State in the district, where violation of this chapter has been committed, of said violation, and to turn over to him the sample analyzed together with a sworn statement of the analysis thereof; and it is hereby made the duty of said Attorney-

*See Nos. 30-30b.

General or said district attorney of the State to immediately prepare and file a petition for the abatement of the nuisance as herein provided. (Id. § 3079a324.)

38. Petition for Abatement Filed by Whom and Against Whom—No cost Bond Required.—Whenever a public nuisance as defined in this chapter is kept, maintained, carried on, or exists in any county in this State, a petition may be filed in the chancery, circuit or criminal court of such county, in the name of the State of Tennessee, on the relation of the pure food and drug inspector, against the person or persons, keeping, maintaining, or carrying on such nuisance, and all aiders and abettors therein, and the owners, proprietors, or agents or persons or corporations in charge or control of the soft drink stand, wherein such nuisance exists, for the purpose of having such nuisance abated and permanently discontinued. Whenever such petition is filed, no bond or other security for costs shall be required of the State. (Id. § 3079a325.)

39. Injunction Forthwith or Upon Notice, Closing Soft Drink Stand—Violation is a Contempt of Court.—In such proceedings, the court or a judge or chancellor, in vacation, shall, upon presentation of a petition therefore, alleging that the nuisance complained of exists, award a temporary writ of injunction, without the execution of bond by the State, if it shall be made to appear to the satisfaction of the court, judge, or Chancellor, by the averments of the petition under oath, and from the certificate of analysis, showing a violation of this chapter duly verified and attached to the petition, that the allegations of such petition are true, enjoining and restraining the further continuance of such nuisance and the closing of the soft drink stand, wherein the same is conducted until the further order of the court judge or Chancellor. Such court judge or Chancellor may, in its or their discretion, issue the injunction forthwith or upon notice; and when such injunction shall have been granted, it shall be binding upon the defendant or defendants throughout the county until modified or set aside by the court judge or Chancellor having cognizance of the case; and any violation thereof by the defendant or defendants or upon their procurement shall be a contempt of court, and punished as hereinafter provided. (Id. § 3079a326.)

40. Chancery Procedure and Jurisdiction—Trial Term.—The proceedings under this chapter, whether in the chancery, circuit, or criminal court, shall be conducted in accordance with the procedure of courts of chancery where not otherwise expressly provided herein; and all of said courts having cognizance of such proceedings are hereby given the full jurisdiction and powers of courts of equity with respect to such proceedings. Such proceedings shall be triable at the term instituted, after due notice or service of process and shall be given precedence over all other cases. (Id. § 3079a327.)

41. General Reputation of Soft Drink Stand is Admissible as Evidence.—Upon the trial thereof, evidence of the general reputation of the soft drink stand where the nuisance is alleged to exist shall be admissible for the purpose of proving or tending to prove the existence of such nuisance. (Id. § 3079a328.)

42. Payment of Internal Revenue Special Tax is Prima Facie Evidence—Certified Copy of Record.—The fact that the defendant has paid the internal revenue special tax as a retail liquor dealer or is in possession of an internal revenue tax stamp as such dealer shall be prima facie evidence that he is engaged in the sale of soft drinks containing more than one-half of one per cent of alcohol and copies of the records of the office of the internal revenue collector of the United States for the district of Tennessee showing that the defendant has paid the internal revenue special tax stamp shall be admissible in the evidence of such proceedings when such copies are certified to be full, and complete by the district internal revenue collector. (Id. § 3079a329.)

43. No Dismissal of Suit, Except When.—No such proceedings shall be voluntarily dismissed except on the written sworn statement of the pure food and drug inspector of the reasons for such dismissal; and if such reasons are not satisfactory to the court, or the court shall be of the opinion that the proceedings should not be dismissed, it may order the same to proceed. (Id. § 3079a330.)

44. Abatement of a Nuisance, and Injunction Against its Continuance—Sale or Destruction of Fixtures, Etc.—If upon the trial, the existence of such nuisance be established by a preponderance of evidence heard by the court, an order of abatement shall be entered as a part of the judgment or decree of the court, which order shall direct the removal from the soft drink stand where such nuisance exists or is maintained, of all means, appliances, fixtures, appurtenances, materials, supplies, and instrumentalities used for the purpose of conducting, maintaining, or carrying on the lawful [unlawful] business constituting such nuisance; and shall direct the sale thereof, or of such portion thereof as may be lawfully sold, upon such terms as the court may order, and the payment of the proceeds into

court to be applied to costs or paid over to the owner and the destruction of such portion thereof, if any, as cannot be lawfully sold within this State; and the judgment or decree shall perpetually enjoin the defendant or defendants from engaging in, conducting, continuing, or maintaining such nuisance, directly or indirectly, by themselves or by their agents or representatives, and perpetually forbidding the owner of the building from permitting or suffering same to be done in such building. (Id. § 3079a331.)

45. Imprisonment and Fine for Violation of Injunction.—If any person shall violate or refuse to obey any temporary injunction granted under this chapter, or shall break into or enter, or use any building or place while closed under a preliminary injunction granted under this chapter, or shall violate any permanent injunction granted under this chapter, he shall be guilty of a contempt of court, and upon conviction thereof, shall be imprisoned in the county jail or workhouse not less than thirty days, nor more than six months, and be fined not exceeding fifty dollars. (Id. § 3079a332.)

46. Felony—To Adulterate Liquors—To Sell Adulterated Liquors.—It shall be a felony:

(1) To adulterate spirituous or vinous liquors by the use of strychnine or poisonous liquids or ingredients.

(2) To sell by wholesale or retail any spirituous or vinous liquors, knowing the same to be adulterated by or with strychnine or poisonous liquids or ingredients; and any person convicted thereof shall be imprisoned in the penitentiary not less than one nor more than five years; and the grand jury may have power to send for persons or papers in cases where they may be of opinion that any person or persons have been guilty of violating any of the provisions of this article. (Code 1918, § 6744.)

NOTE: See also Nos. 16a, 17, 267 et seq., 400, and 401.

Bread—Bakeries.

See Nos. 17, 164 et seq., and 175 et seq.

Canneries.

See No. 175 et seq.

Cider.

See No. 4.

Cold Storage.

47. Terms Defined.—For the purpose of this act, "cold storage" shall mean the storage or keeping of articles of food at or below a temperature above zero of 45 degrees Fahrenheit in a cold storage warehouse; "cold storage warehouse" shall mean any place artificially cooled to or below a temperature above zero of 45 degrees Fahrenheit in which articles of food are placed and held for thirty days or more; "articles of food" shall mean fresh meat and fresh meat products and all fish, game, poultry, eggs and butter. (Code Supp. 1926, § 3473a93.)

48. License Application—Examination of Warehouse—Fee of $10.—No person, firm, or corporation shall maintain or operate a cold storage warehouse, without a license so to do, issued by the superintendent of foods, fertilizers, and dairies.

Any person, firm, or corporation desiring such a license shall make written application to the said superintendent for that purpose, stating the location of the warehouse. The said superintendent thereupon shall cause an examination to be made of said warehouse and, if it be found by him to be in a proper sanitary condition and otherwise properly equipped for its intended use, he shall issue a license authorizing the applicant to operate the same as a cold storage warehouse during one year.

The license shall be issued upon payment by the applicant of a licensee fee of ten dollars to the treasurer of the State. (Id. § 3473a94.)

49. License Revoked for Unsanitary Condition or Improper Equipment.—In case any cold storage warehouse or any part thereof shall at any time be deemed by the said superintendent to be in an unsanitary condition, or not properly equipped for its intended use, he shall notify the licensee of such condition, and upon the failure of the licensee to put such cold storage warehouse in a sanitary condition

or to properly equip the same for its intended use within a time to be designated by the said superintendent, he shall revoke such license. (Id. § 3473a95.)

50. Records of Food Received and Withdrawn—Monthly Reports—Summary Reports Prepared and Open to Public Inspection.—Every such licensee shall keep accurate records of the articles of food received in and of the articles of food withdrawn from his cold storage warehouse, and the said superintendent shall have free access to such records at any time. Every such licensee shall submit a monthly report to the said superintendent, setting forth in itemized particulars the quantities and kinds of articles of food in his cold storage warehouse. Such monthly reports shall be filed on or before the fifth day of each month, and the reports so rendered shall show the conditions existing on the last day of the preceding month reported, and a summary of such reports shall be prepared by the said superintendent and shall be open to public inspection on or before the tenth of each month. (Id. § 3473a96.)

51. Inspection and Supervision—Access—Appointee to Make Inspection.—The said superintendent shall inspect and supervise all cold storage warehouses and make such inspection of articles of food therein as he may deem necessary to secure the proper enforcement of this act, and he shall have access to all cold storage warehouses at all reasonable times. The said superintendent may appoint such persons as he deems qualified to make any inspection under this act. (Id. § 3473a97.)

52. Diseased or Tainted Food Not to be Stored.—No article of food intended for human consumption shall be placed, knowingly received or kept in any cold storage warehouse, if diseased, tainted, [or] otherwise unfit for human consumption or in such condition that it will not keep wholesome for human consumption. No article of food, for use other than for human consumption, shall be placed, received, or kept in any cold storage warehouse unless previously marked in accordance with forms to be prescribed by the said superintendent, in such a way as to indicate plainly the fact that such article of food is not to be sold or used for human food. (Id. § 3473a98.)

53. Food Articles to be Stamped with Dates Received and Withdrawn—Prima Facie Evidence.—No person, firm or corporation shall place, receive or keep in any cold storage warehouse in this State articles of food, unless the same shall be plainly marked, stamped or tagged, either upon the container in which they are packed or upon the article of food itself, with the date where [when] placed therein, and no person, firm or corporation shall remove, or allow to be removed, such article of food from any cold storage warehouse unless the same shall be plainly marked, stamped or tagged either on the container in which it is enclosed, or upon the article of food itself with the date of such removal, and such marks, stamps and tags shall be prima facie evidence of such receipt and removal and of the dates thereof. All articles of food in any cold storage warehouse at the time this act goes into effect shall before being removed therefrom, be plainly marked, stamped, or tagged with the date when this act goes into effect and the date of removal therefrom. (Id. § 3473a99).

54. Storage Limited to Twelve Months—Extension for Sixty Days—Second Extension Not Exceeding Sixty Days.—No person, firm, or corporation shall hereafter keep or permit to remain in any cold storage warehouse any article of food which has been held in cold storage, either within or without the State, for a longer aggregate period than twelve months, except with the consent of the said superintendent as hereinafter provided. The said superintendent shall, upon application during the twelth month, extend the period of storage beyond twelve months for any particular article of food, provided the same is found upon examination to be in proper condition for further cold storage. The length of time for which such further storage is allowed shall be specified in the order granting the permission. A report on each case in which such extension of storage may be permitted including information relating to the reason for the action of the said superintendent, the kinds and amounts of the articles of food for which the storage period was extended, and the length of time for which this continuance was granted, shall be filed, open to public inspection, in the office of the said superintendent, and shall be included in his annual report. Such extension shall be not more than sixty days; a second extension of not more than sixty days may be granted upon a re-examination, but the entire extended period shall be not more than one hundred and twenty days in all. (Id. § 3473a100.)

55. Cold Storage Food to be Placarded as Such, and Not Sold as Fresh, When.—It shall be unlawful to sell or to offer for sale, any article of food which has been held for a period of thirty days or over in cold storage, either within or without the State, without notifying the person purchasing, or intending to purchase the

same, that it has been so held by the display of a placard plainly and conspicuously marked "Cold Storage Goods" on the bulk, mass, or articles of food; and it shall be unlawful to represent or advertise as fresh any article of food which has been held in cold storage for a period of thirty days or over. (Id. § 3473a101.)

56. Unlawful to Return Cold Storage Food, or to Transfer to Another Cold Storage Warehouse, When.—It shall be unlawful to return to any cold storage warehouse any article of food which has been once released from storage for the purpose of placing it on the market for sale. It shall be unlawful to transfer any article of food from one cold storage warehouse to another if such transfer is made for the purpose of avoiding any provision of this act, and such transfer shall be unlawful unless all prior stampings, markings, and taggings upon such article shall remain thereon. (Id. § 3473a102.)

57. Rules and Regulations, When to Become Effective.—The said superintendent may make all necessary rules and regulations to carry this act into effect. Such rules and regulations shall be filed in the said superintendent's office and shall not take effect until thirty days after such filing. (Id. § 3473a103.)

58. Violation is a Misdemeanor—Punishment for the First Offense, and Subsequent Offenses.—Any person, firm or corporation violating any provision of this act shall be guilty of a misdemeanor and shall upon conviction, be punished for the first offense by a fine not exceeding one hundred dollars and for the second or any subsequent offense by a fine not exceeding five hundred dollars or by imprisonment of not more than six months, or by both such fine and imprisonment in the discretion of the court. (Id. § 3473a104.)

59. Construction to Make Uniform This Law; Not Applicable to Ice Boxes and Refrigerators.—This act shall be so interpreted and construed as to effect its general purpose to make uniform the law of those States which enact it. Provided further, the provisions of this act shall not apply to the ice boxes or refrigerators maintained by wholesale and retail grocers. (Id. § 3473a105.)

60. Short Title.—This act shall be cited as the Uniform Cold Storage Act. (Id. § 3473a106.)

Confectionery.

See Nos. 4, 17 and 175 et seq.

Dairy Products—Substitutes for Dairy Products.

61. The Making of Fraudulent Butter and Cheese.—Whoever manufactures, sells, or offers for sale, or causes the same to be done, any substance purporting to be butter or cheese, which substance is not wholly from pure cream or pure milk, unless the same be manufactured under its true and appropriate name, and unless each package, roll, or parcel of such substance, and each vessel containing one or more packages of such substance, have distinctly and durably printed, stamped, or marked thereon the true and appropriate name of such substance, in ordinary bold-face capital letters, not less than five lines pica, shall be punished as provided in section 3468. (Code 1917, § 3466.)

62. The Sale Thereof.—Whoever shall sell any such substance to consumers, or cause the same to be done, without delivering with each package, roll, or parcel so sold, a label on which is plainly and legibly printed in Roman letters, the true and appropriate name of such substance, shall be punished as is provided in section 3468. (Id. § 3467.)

63. Punishment.—Whoever knowingly violates either of the foregoing sections of this chapter shall be fined any sum not less than ten nor more than three hundred dollars, or imprisoned in the county jail not more than ninety nor less than ten days, or both, at the discretion of the court; but nothing contained herein shall be construed to prevent the use of skim milk, salt, or rennet, or harmless coloring matter in the manufacture of butter and cheese. (Id. § 3468.)

64. Sale of Impure or Adulterated Milk is Prohibited—Sale of Modified Etc., Milk, When so Labeled.—No person, either by himself, his servant or agent, shall sell, or have in his possession with intent to sell, or expose, or offer for sale, adulterated milk, or milk to which water or any foreign substance has been added, or milk produced by sick or diseased cows, or milk from which the cream or a part thereof has been removed, or milk which is not of standard quality, or milk collected and kept or handled under conditions which are not cleanly and sanitary, or milk which contains visible dirt, or milk which contains less than eight and one-half per cent of milk solids (exclusive of fat and three

and one-half per cent of milk fat), or milk which contains any added color or preservative; or sell, offer for sale, or have in possession with intent to sell as above provided pasteurized milk which has not been subjected to a temperature of 145 degrees Fahrenheit for thirty minutes or 165 degrees Fahrenheit for thirty seconds; provided, however, that this section shall not be construed to prohibit the sale of modified milk, skimmed milk, buttermilk, or fermented milk, or cultured milk beverages, when such materials are sold under their own names and so labeled. (Id. § 3468a1.)

65. **Violation of This Law is a Misdemeanor—Punishment.**—Any person, firm, or corporation violating any of the provisions of this chapter,* shall be deemed guilty of a misdemeanor, and, upon conviction, shall be fined not less than $10 nor more than $50 for the first offense, and for each subsequent offense not less than $50 nor more than $100, or shall be confined in the county jail not more than ninety days, or both such fine and imprisonment. (Id. § 3468a2.)

66. **Food and Drug Inspector to Enforce this Law.**—It is hereby made the duty of the State Pure Food and Drug Inspector† and his deputies to specially enforce this law. (Id. § 3468a3.)

67. **Selling Adulterated Milk is a Crime—Officers to Arrest Violators and Report Them to Grand Jury.**—It shall be a crime to sell, to offer to sell, or to have in possession for sale, or delivery, sweet (cow's) milk which has in any manner been adulterated. The State, county, and municipal milk or dairy inspectors are hereby specially charged in common with all officers of the law with authority of making arrests and reporting violations of this statute to the grand juries of their respective counties. (Code Supp. 1926, § 3468a4.)

68. **Owners of Adulterated Milk and Other Parties are Guilty of a Crime, When and When Not.**—Not only the owner of the adulterated milk, but parties having same in their possession for delivery or sale, who willfully and knowingly adulterated the same or who willfully and knowingly procured the same to be adulterated, are guilty of a crime and shall be fined on first conviction two hundred and fifty dollars, and on second conviction shall be fined five hundred dollars, and be punished by confinement in the penitentiary for a period of one year; provided, that no owner or proprietor of a dairy shall be deemed guilty or within the provisions of this act‡ whose agent, employees or servant had adulterated said milk without the knowledge or consent of said owner or proprietor. (Id. § 3468a5.)

69. **Inquisitorial Power—Special Charge.**—The grand juries of this State shall have inquisitorial power for the violations of this act, and all criminal and circuit judges shall charge the same to the grand juries of the State. (Id. § 3468a6.)

70. **Term "Person" Defined.**—Whenever used in this act,¶ the term "person" includes an individual, firm, partnership, corporation, or association. (Id. § 3468a7.)

71. **Term "Filled Milk" is Defined.**—The term "filled milk" means any milk, cream, or skimmed milk, whether or not condensed, evaporated, concentrated, powdered, dried, or desiccated, to which has been added, or which has been blended or compounded with any fat or oil other than milk fat, so that the resulting product is in imitation or semblance of milk, cream, or skimmed milk, whether or not condensed, evaporated, concentrated, powered, dried, or desiccated. This definition shall not include any distinctive proprietary food compound, not readily mistaken for milk or cream or for evaporated, condensed, or powdered milk or cream, provided that such compound (1) is prepared and designed for feeding infants and young children and customarily used on the orders of physicians; (2) is packed in individual cans containing not more than 16½ ounces and bearing a label in bold type that the content is to be used only for said purpose, and (3) is sold or disposed of exclusively by physicians, druggists, orphan asylums, child welfare associations, hospitals and similar institutions. (Id. § 3468a8.)

72. **Filled Milk is an Adulterated Article.**—It is hereby declared that filled milk, as herein defined, is an adulterated article of food, injurious to the public health, and its sale constitutes a fraud upon the public. (Id. § 3468a9.)

73. **Unlawful to Manufacture, Sell or Exchange, or Possess for That Purpose, Any Filled Milk, Regardless of Name.**—It shall be unlawful for any person, by himself, his servant, agent, or as the servant or agent of another, to manufacture, sell or exchange, or have in possession with intent to sell or exchange, any filled milk as defined in this act,¶ whether the same is sold or exchanged, or

*Nos. 64-66.
†See Nos. 30-30b.
‡Nos. 67-69.
¶Nos. 70-75.

held in possession with intent to sell or exchange, under the name of filled milk or any other name. (Id. § 3468a10.)

74. Violation is a Misdemeanor—Fine or Imprisonment, or Both.—Any violation of any provision of this act* is hereby declared to be a misdemeanor, and any person, whether individually or as a member or agent of a firm, partnership, corporation or association, who shall be convicted of such violation shall be punished by a fine of not less than $50 nor more than $100, or by imprisonment in the county jail for not less than 30 days nor more than 60 days, or by both fine and imprisonment. (Id. § 3468a11.)

75. Who is Charged With the Execution of This Act.—The State Commissioner of Agriculture, by himself or by his assistants, chemists, inspectors, deputies, or agents, shall be charged with the execution of this act.* (Id. § 3468a12.)

76. Imitations to be Distinctly Labeled as Such.—Whoever, in person or by agent, sells, exposes for sale, or has in possession with interest [intent] to sell, any article, substance, or compound made in imitation or semblance of butter, or as a substitute for butter, and not made exclusively and wholly of milk or cream, or containing fats, oils, or grease not produced from milk or cream, shall have the words "Imitation Butter," or, if such substitute is the compound known as oleomargarine, then the word "Oleomargarine;" or, if it is known as butterine, then the word "Butterine"; or, if it be known by any other word, name, or term as a substitute for butter, stamped, labeled, or marked in a straight line, in printed letters of plain, uncondensed Roman type not less than one-half inch in length and one-quarter inch in width, so that said words, name, or term cannot be easily defaced, upon the top, side, and bottom of every tub, firkin, box, or package containing any of said article, substance, or compound. The stamps or label or mark shall contain no other words. (Code 1917, § 3469.)

77. Same When Not in Original Packages.—Whoever, in person or by agent, exposes or offers for sale any of the said article, substance, or compound, not in the original package, shall attach to said article, substance, or compound, in a conspicuous place, a label bearing the words, "Imitation Butter," "Oleomargarine," "Butterine," or other name, word, or term, as the article may be, in printed letters of plain Roman type, as provided for in section 3469. (Id. § 3470.)

78. Label With Package in Retail Sales.—In cases of retail sales of any said article, substance, or compound not in original package, the seller shall, in person or by agent, attach to each package so sold, and deliver therewith to the purchaser a label or wrapper, bearing in a conspicuous place upon the outside of the package, the words provided for in the two preceding sections, and no other, in printed letters, in a straight line, of plain Roman type, such as provided for in said sections. (Id. § 3471.)

79. Imitations of Yellow Butter.—No person, by himself or his agent or servants, shall render or manufacture, sell, offer for sale, expose for sale, or have in his possession with intent to sell, any article, product or compound, made wholly or partly out of any fat, oil, or oleaginous substance or compound thereof, not produced directly and at the time of manufacture, from unadulterated milk, or cream from the same, which shall be in imitation of yellow butter produced from pure unadulterated milk, or cream from the same; but nothing in this chapter† shall be construed to prohibit the manufacture or sale of oleomargarine, butterine, or imitation butter, in a separate and distinct form, and in such manner as will advise the consumer of its real character, free from coloration or ingredient that causes it to look like butter. (Id. § 3472.)

80. Misdemeanor and Fine for Violation.—Whosoever shall fail or refuse to comply with the provisions of this chapter† shall be guilty of a misdemeanor and shall, for the first offense, be fined fifty dollars, and [for] each subsequent offense shall be fined one hundred dollars. (Id. § 3473.)

81. Inquisitorial Power and Special Charge.—The grand juries of this State are given inquisitorial power as to this offense, and the circuit and criminal judges of this State shall give this offense in charge especially to the grand juries at each term of their court. (Id. § 3473a1.)

82. Definition of Terms.—For the purpose of this act,‡ the word "person" shall be construed to mean a singular or plural as the case demands, and shall include firms, corporations, companies, societies, and associations. The words "Babcock test" shall be construed to mean the test for determining the percentage of

*Nos. 70-75.
†Nos. 76-81.
‡Nos. 82-100.

butter fat in milk, cream or other dairy products as invented by Dr. S. M. Babcock, using sulphuric acid and a centrifugal machine and now in general use in the purchase and sale of milk and cream. The word "butterfat" will be construed to mean the fat of milk or cream. The word "milktester" shall be construed to mean any person who operates the Babcock test for determining the percentage of butter fat in milk, cream, or other dairy products where such test is to be used as a basis for payment. (Code Supp. 1926, § 325a89.)

83. Licensed Milk Tester is Required When—License and Fee—Revocation—a Second License, When.—Every person receiving or buying milk or cream on the basis of its butter fat content, shall be or have in his employ a licensed milk tester to manipulate the Babcock test, and no person not holding such license shall be allowed to manipulate the Babcock test in any creamery, cheese factory, milk depot, milk plant, ice cream factory, cream station, milk condensary, or similar plant where milk or cream is bought or received on a basis of its butter fat content, or both its weight and butter fat content. Application to become a licensed milk tester shall be made to the State Dairy Commissioner* upon such forms as he may prescribe. All licenses shall expire on the next succeeding May 1st, and the fee shall be $2.00 except when the application is made after November 1st, in which case it shall be $1.00. The required fee shall accompany the application, and, if the applicant shall be found upon examination to be qualified and competent, the State Dairy Commissioner shall issue to him a license, and pending such examination may issue to him a temporary permit. If the applicant does not qualify, his license fee shall be refunded, and the temporary permit issued to him shall become void. Licenses and permits thus issued shall be posted conspicuously in the tester's place of business. In event of the tester's illness or necessary absence he may appoint a substitute for a period of not to exceed fifteen days, provided he gives immediate written notice thereof to the commissioner at Nashville; and he shall be responsible for the acts and defaults of such substitute. The State Dairy Commissioner shall have the right to revoke any license for licensee's violation of any dairy law or failure to comply with the rules and regulations herein authorized; and a second license may be issued, at the discretion of the State Dairy Commissioner, to a tester whose license has been revoked, provided such license was not revoked because of fraudulent manipulation of the test or records. The provisions of this section shall not apply to individuals, hotels, restaurants and boarding houses buying milk or cream for private use. (Id. § 325a90.)

84. Standard Scales, Weights, Measures, and Babcock Test—Unlawful to Sell Without Inspection and Approval.—Every person or agent for any person buying milk or cream on the basis of its weight and butter fat content as determined by the Babcock test, shall use only such standard scales and measures as approved by the State Dairy Commissioner and only such standard weights and Babcock test bottles and pipettes as have been inspected and approved by the State Dairy Commissioner; and it shall be unlawful for any person to sell such articles to any one to be used for the above purpose unless they have been approved or inspected, as required above, by the State Dairy Commissioner. (Id. § 325a91.)

85. Unlawful to Manipulate the Babcock Test Contrary to Rules and Regulations, or to Falsify the Records Thereof.—It shall be unlawful for any person buying and paying for milk or cream on the basis of the butter fat content, or any agent thereof, to manipulate the Babcock test in any way other than as prescribed in the rules and regulations of the State Dairy Commissioner, as provided for in sections 325a98-325a102, or to falsify the records thereof. (Id. § 325a92.)

86. Unlawful to Fraudulently Manipulate Weights or Samples or to Take Samples Contrary to Rules, Etc.—It shall be unlawful for any person buying or receiving milk or cream by weight or butter fat content, or by both weight and butter fat content, or any agent of such person, to fraudulently manipulate the weight or weights of milk or cream of any person, or to take a sample or samples for testing in any manner not approved by the rules and regulations of the State Dairy Commissioner as provided for in sections 325a98-325a102, or to fraudulently manipulate such sample or samples. (Id. § 325a93.)

87. Fees for Inspection and Approving Scales, Measures and Apparatus.—The fee to be charged by the State Dairy Commissioner, or his duly appointed deputy, for inspecting and approving the scales, measures and apparatus as provided for in this act shall be three cents for each piece of apparatus or glassware so inspected and approved. (Id. § 325a94.)

88. Office of State Dairy Commissioner is Created—Appointment of Commissioner and Deputies.—The office of the State Dairy Commissioner,* is here-

*See Nos. 30-30b.

by created, and the State Commissioner of Agriculture is hereby authorized to appoint a State Dairy Commissioner, and such deputies as in his judgment may be necessary to carry out the provisions of this act. (Id. § 325a95.)

89. Appointments Nonpolitical—Qualifications of Commissioner and Deputies.—Such appointments shall be nonpolitical, and the State Dairy Commissioner and his deputies shall be men of executive ability and shall have a practical knowledge of and experience in the manufacture of dairy products, the production of dairy products on the farm, and the feeding and handling of dairy cows (Id. § 325a96.)

90. State Dairy Commissioner and Deputy to Act Under Commissioner of Agriculture, and Report to Him, and Have Headquarters in His Office, and be Subject to Removal by Him.—Said State Dairy Commissioner and his deputies shall act under the general control and direction of the Commissioner of Agriculture, and shall be subject to removal by him. The State Dairy Commissioner and his deputies shall report to the Commissioner of Agriculture. The official headquarters of the State Dairy Commissioner and his deputies shall be at the office of the Commissioner of Agriculture. (Id. § 325a97.)

91. Rules and Regulations, Approval of.—It shall be the duty of the State Dairy Commissioner to formulate such rules and regulations as may be necessary in the proper execution of this act, such rules and regulations to be made with the approval of the Commissioner of Agriculture, and the dean of the College of Agriculture, University of Tennessee, or their duly appointed agents. (Id. § 325a98.)

92. Examination of Testers—Inspection of Babcock Testers—Destruction of Apparatus.—He shall have authority to enforce the provisions of this act, by giving examinations to applicants for positions as testers; by inspecting all Babcock testers, glassware and scales as provided for in this act, and he shall have the authority to destroy all apparatus not found accurate. (Id. § 325a99.)

93. License of Testers—Certified Apparatus.—He shall issue testers' license to applicants as provided for in section 325a90, he shall certify to the accuracy of apparatus by inscribing thereon the initials "T. D. C." (Tennessee Dairy Commissioner) in an indelible manner and shall either destroy or properly label all glassware and other apparatus found inaccurate. (Id. § 325a100.)

94. Inspection of Babcock Testers, Scales, and Other Apparatus Every Three Months—"Destroy" Not to Mean "Destruction," When.—He shall visit all creameries, cheese factories, milk depots, milk plants, ice cream factories, cream stations, cream routes, milk condensaries, and similar plants in the State at least once every three months for the purpose of inspecting the Babcock testers, scales, and other apparatus used in the test and for inspecting of such plants with regard to the execution of this act. Provided that the word "destroy" in sections 325a99 and 325a100 shall not mean the destruction of any apparatus that is found inaccurate where same can be repaired. (Id. § 325a102.)

95. Commissioner to Co-operate in Holding Meetings and to Strive for the Best Interest of the Dairy Industry.—He shall co-operate with the College of Agriculture and Division of Extension, University of Tennessee, in the holding of agricultural meetings and special dairy meetings in so far as it will not conflict with the performance of his official duties, and in general strive for the promotion of the best interests of the dairy industry throughout the State. (Id. § 325a103.)

96. To Enforce Laws and to Preserve Correspondence, Etc.—He shall have authority to enforce all laws of the State pertaining to dairying, the enforcement of which by some public official is not otherwise provided for. He shall preserve in his office all correspondence, records, documents and property of the State pertaining thereto, and shall turn over same to his successor. (Id. § 325a104.)

97. Authority of Dairy Commissioner and Deputies to Enforce This Law.—In the performance of their official duties the State Dairy Commissioner and his deputies are hereby authorized and empowered to enter during business hours all creameries, cheese factories, milk depots, milk plants, ice cream factories, milk condensaries and similar plants for the purpose of executing the provisions of this act. (Id. § 325a105.)

98. Tests to Settle Disputes Between Buyers and Sellers—Such Tests Regarded as Prima Facie Correct.—They are further authorized and empowered to make such tests as are necessary to settle disputes, when called on by either buyer or seller of milk, cream or other dairy products where such disputes arise over dissatisfaction, regarding weights or tests of dairy products. Such test made by the State Dairy Commissioner or his deputies shall be regarded as prima facie, correct, and shall be taken as a basis of settlement in such disputes. (Id. § 325a106.)

99. Duties and Powers of Deputies.—The duties of the deputies to the State Dairy Commissioner shall be the same as those of the Dairy Commissioner,

and they are hereby empowered with the same authority as is vested in the State Dairy Commissioner, except that only the State Dairy Commissioner is authorized to formulate the rules and regulations as hereinbefore provided for and to issue license to testers as hereinbefore provided for. (Id. § 325a107.)

100. Hindering Commissioner or Deputies, or Violating This Act, is a Misdemeanor—Fine for First Offense, and Fine or Imprisonment, or Both for Subsequent Offenses—Fines and Fees to be Paid Into State Treasury.—Every person hindering or obstructing the State Dairy Commissioner or his appointed deputies in the discharge of the authority or duty imposed on him or them by any provision of this act,* or any person violating any provision of this act shall be guilty of a misdemeanor, and upon conviction thereof shall be fined not less than ten dollars nor more than fifty dollars for the first offense, and not less than fifty dollars nor more than two hundred dollars for each subsequent offense, or be imprisoned in the county jail for not less than sixty days, nor more than twelve months, or by both fine and imprisonment. All fines and fees collected under the provisions of this act shall be turned into the State Treasurer [Treasury]. (Id. § 325a108.)

101. Terms "Person" and "Commissioner" are Defined.—The term "person" in this act shall be understood to include indiivduals, firms, partnerships, associations and corporations, both foreign and domestic, and the term "commissioner" to refer to the State Dairy Commissioner.† (Id. § 3465a1.)

102. Ice Cream is Defined for the Purposes of This Act.—For the purpose of this act‡ ice cream is hereby standardized and defined as the frozen compound, made from milk, cream, or milk products not deleterious to health, and sugar, with or without harmless coloring or flavoring matter and with or without the addition of pure gelatine or vegetable gums, and that the percentage of milk fat shall be not less than 8% and the percentage of total milk solids not less than 18%, except that when ice cream contain eggs, fruits, fruit juices, cakes, confections, cocoa or chocolate, or nuts, the percentage of milk fat shall be not less than 6% and the percentage of total milk solids not less than 16%. (Id. § 3465a2.)

103. Ice Cream is Deemed Adulterated for the Purpose of This Act, When.—For the purpose of this act ice cream shall be deemed adulterated:

First—If in quality or grade it is lower than the standard set forth for ice cream in this act.

Second—If it contains any poisonous or deleterious ingredients which may render such ice cream injurious to health.

Third—If it contains any rancid or renovated or process butter, or any fat or oil other than milk fat and the fat or oil of contained eggs and nuts, and the fat or oil of harmless substances used for flavoring.

Fourth—If it contains, in whole or in part any filthy or decomposed substance which may render such ice cream injurious to health. (Id. § 3465a3.)

104. Unlawful to Sell Ice Cream Made From Unpasteurized Milk.—It shall be unlawful to sell or offer for sale any ice cream made from milk, cream or other dairy products that have not either been pasteurized at a temperature of 145 degrees F. for twenty-five minutes or 150 degrees F. for twenty minutes, or else that have not been heated to 170 degrees F. or have been brought momentarily to the boiling point. (Id. § 3465a4.)

105. Ice Cream Maker Must Have License—Application—Fee—Temporary License—Revocation.—Any person making ice cream for sale shall be required to procure from the commissioner an annual license, provided that no license shall be required of persons who make and sell ice cream for charitable and religious purposes, to be used after inspection and approval by him of the sanitary conditions of the plant. Application for such license shall be made on forms prescribed by the commissioner and shall be accompanied by the annual fee of $10.00, except when the business is started after November 1st, in which case it shall be $5, and such license shall expire on the succeeding May 1st. If it should be impossible to make the sanitary inspection at once, the commissioner may when the application (and if a renewal, the report prescribed in section 3465a7 hereof) shows the plant to be in a sanitary condition, issue a temporary license, which however may be revoked by him at any time for cause, and without return of the fee, and which shall expire upon the issuance or denial of a permanent license. (Id. § 3465a5.)

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*Nos. 82-100.

†See Nos. 30-30b.

‡Nos. 101-113.

106. License for Purchase of Milk for Sale or Manufacture—Application—Temporary License—Fees.—Every person buying or receiving from another milk or cream for sale or manufacture on the basis of the butter fat content therein shall be required to procure from the commissioner an annual license (which in the case of an ice cream manufacturer shall be in addition to the license provided for in the preceding section, to be issued upon the applicant complying with the provisons of sections 1 to 7, inclusive, of chapter 30 of the acts of 1917 as amended in chapter 58 of the acts of 1925 (compiled in sections 325a89-325a97 herein).* Application for such license shall be made on forms prescribed by the commissioner and shall be accompanied by the annual fee of $6, and shall expire on the succeeding May 1st, provided that in the case of a business which is begun after May 1st of any year, the charge for the license shall be at the rate of 50 cents for each month or part thereof until the succeeding May 1st; provided, further, that the license fee for a person actually manufacturing or distributing the dairy product shall be $10 in lieu of the $6 fee, as set forth above, except when the business is started after November 1st, in which case it shall be $5 and shall expire the succeeding May 1st. (Id. § 3465a6.)

107. Persons Subject to License Must Report to Commissioner, When and What.—Every person subject to a license under this act shall within thirty days after commencement of business and annually on the first day of February thereafter, report to the commissioner on blanks furnished by him the location of such business and description of the premises, the name of the owner and manager, the amounts of fluid milk and of the different dairy products manufactured or distributed by such person during the year ending December 31st preceding, and such other reasonable information as the commissioner shall prescribe. (Id. § 3465a7.)

108. Revocation of License for What—Procedure and Hearing—Another License, When.—The Superintendent of Foods, Fertilizers and Dairies shall have the right to revoke any license issued under this act for the repeated nonobservance by licensee of any dairy law of the State, or because licensee's plant is in an unduly unsanitary condition; provided, however, that five days' written notice, specifying the complaints, shall be given licensee to appear before the Superintendent of Foods, Fertilizers and Dairies and show cause why his license should not be revoked. If after revocation of his license, the licensee should comply with the requirements of the laws and make manifest in writing his intention to observe them in the future, the commissioner may, on recommendation of the Superintendent of Foods, Fertilizers and Dairies, issue to him another license upon his paying the required fee therefor. (Id. § 3465a8.)

109. Discriminations Forbidden—Defined—Competition and Freight Considered—Violation is a Misdemeanor—Fine or Imprisonment, or Both.—Any person doing business in the State and engaged in the sale of any dairy product, who shall discriminate between different localities of the State, by selling such commodity at a lower rate or price in one locality than in any other locality, after making due allowance for the difference, if any, in grade or quality, and in the actual cost of the transportation from the point of production or purchase of the product to the place of sale, the effect of which would be to injure or destroy the business of a competitor shall be guilty of unfair discrimination, which is hereby prohibited and declared unlawful; provided, however, that prices fairly made to meet competition in any locality shall not be in violation of this act; and that any person doing business in this State and engaged in the business of purchasing any dairy product for manufacture, storage, sale, or distribution, who shall discriminate between different localities in the State by purchasing such commodity at a higher rate or price in one locality than in any other locality, after making due allowance for the difference, if any, in grade or quality, and in the actual cost of transportation from point of purchase to point of manufacture, storage, sale or distribution, shall be guilty of unfair discrimination, which is hereby prohibited, and declared unlawful; provided, however, that prices fairly made to meet competition in any locality shall not be in violation of this act; and any person convicted of a violation of this section shall be guilty of a misdemeanor and upon conviction thereof, shall be fined not less than one hundred dollars, nor more than one thousand dollars, or be imprisoned in jail for not more than twelve months, or shall suffer both fine and imprisonment. (Id. § 3465a9.)

110. Violation of This Law is a Misdemeanor—Fine or Imprisonment, or Both—First and Subsequent Offenses.—Any person violating any of the provisions of this act, except as provided for in the preceding section, shall be guilty of a misdemeanor; and, upon conviction thereof, shall for the first offense be fined

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not less than ten dollars nor more than fifty dollars, and for each subsequent offense be fined not less than fifty dollars nor more than two hundred dollars, or be imprisoned in the county jail for not more than twelve months nor less than sixty days, or shall suffer both fine and imprisonment. (Id. § 3465a10.)

111. Forms, Rules and Regulations to be Made by Commissioner to be Approved by Whom—Notice to Whom.—The commissioner shall prescribe such forms, rules, and regulations as may be proper or necessary in the proper execution of this act, such rules and regulations to be made with the approval of the Commissioner of Agriculture and the Dairy Specialist of the Agricultural Extension Service of the University of Tennessee; provided, however, that such forms, rules, and regulations shall not become effective until after written notice has been sent to the Tennessee State Dairymen's Association, the Tennessee State Creamery Association, the Tennessee Ice Cream Manufacturers' Association, and other interests interested in the dairy industry, requesting such notice and an opportunity given them during ten days, to be heard with reference thereto. (Id. § 3465a11.)

112. Prosecuting Attorneys—Violations of This Law.—It shall be the duty of prosecuting attorneys, to whom the commissioner shall report any violation of the provisions of this act or of any law pertaining to dairying over which the commissioner has jurisdiction, to investigate such report; and, if it appears that there has been a violation, to institute and prosecute proceedings against such delinquent person. (Id. § 3465a12.)

113. Fees and Fines Go to State Treasury.—All fees and fines collected under the provisions of this act shall be turned into the State treasury. (Id. § 3465a14.)

NOTE: See also Nos. 47 et seq., 175 et seq., and 395-397.

Eggs.

114. Eggs Unfit for Human Food Not to be Sold, But May be Sold for Commercial Purposes, When.—No person, firm or corporation engaged in the buying and selling of eggs, shall sell, offer or expose for sale, or traffic in, any eggs for human consumption which are unfit for human food. Such eggs, however, which are unfit for human food may be sold for commercial purposes when the same are broken in shell and denatured so that the same cannot be used for human food.

For the purpose of this act, an egg shall be deemed unfit for human food if it be addled or moldy, has a black rot, a white rot, or a blood ring, or if it has an adherent yolk, or a bloody or green white, or if it be incubated beyond the blood ring stage; or if it be composed, in whole or in part, of a filthy, decomposed or putrid substance. (Code Supp. 1926, § 6744a11.)

115. Eggs to be Candled in What Season, Provisions as to.—Between May 15 and December 31, of each and every year, no person, firm or corporation engaged in the buying and selling of eggs shall buy or sell eggs without candling them, whether payment for the eggs be made in cash or merchandise.

No person, firm or corporation shall, in buying or selling eggs, take or give a greater or less loss off for eggs unfit for human food, as defined in the preceding section, than the actual loss off resulting after careful candling of the eggs so purchased.

Eggs candled in the presence of seller, when found unfit for food, shall be returned to the seller upon his request. No purchaser shall be allowed to buy, or offer to buy, eggs shown to be unfit for human food, at any price except as provided in the preceding section. (Id. § 6744a12.)

116. "Candled" Means What.—The term "candled" as used herein, shall be construed to mean the careful examination of the whole egg, in a partially dark room or place suitable for the purpose. The forms of apparatus and methods to be employed in the candling of eggs may be home-made or bought. (Id. § 6744a13.)

117. Violation is a Misdemeanor—Fine.—Any person, firm or corporation failing to comply with the requirements, or violating any of the provisions of this act, shall be guilty of a misdemeanor, and, upon conviction, be fined not less than $10 nor more than $50 for each offense. (Id. § 6744a14.)

NOTE: See also No. 47 et seq.

Feeding Stuffs.

118. Printed Certificate on Packages of Feed Stuffs Must Specify What.—Every lot or parcel of concentrated commercial feeding stuff sold, offered or exposed for sale within this State shall have affixed thereto or printed thereon, in

a conspicuous place on the outside thereof, a legible and plainly printed statement, in the English language, clearly and truly certifying the weight of the package (provided, that all concentrated commercial feeding stuffs shall be in standard weight bags or packages of 5, 8⅓, 10, 25, 50, 75, 100, 125, 150, 175 or 200 pounds); the name, brand, or trade-mark under which the article is sold; the name and address of the manufacturer, jobber, or importer; the names of each and all ingredients of which the article is composed; a statement of the maximum percentage it contains of crude fibre, and the percentage of crude fat, and the percentage of crude protein, and the percentage of carbohydrates allowing 1 per cent of nitrogen to equal 6¼ per cent of protein, all four constituents to be determined by the methods in use at the time by the Association of Official Agricultural Chemists of the United States. (Code 1917, § 325a41.)

119. **"Concentrated Commercial Feeding Stuffs" Defined.**—The term "concentrated commercial feeding stuffs" shall be held to include all feeds used for live stock and poultry, except whole hays, straws, and corn stover, when the same are not mixed with other materials; nor shall it apply to the unmixed whole seeds or grains of cereals, when not mixed with other materials. (Id. § 325a42.)

120. **Copy of Certificate and Sample of Feed Stuffs to be Deposited With Commissioner of Agriculture.**—Each and every manufacturer, importer, jobber, agent, or seller, before selling, offering, or exposing for sale in this State any concentrated commercial feeding stuff, shall, for each and every feeding stuff bearing a distinguishing name or trade-mark, file for registration with the Commissioner of Agriculture a copy of the statement required in section 325a28,* and accompany said statement, on request, by a sealed glass jar or bottle containing at least one pound of such feeding stuff to be sold, exposed, or offered for sale, which sample shall correspond within reasonable limits to the feeding stuff which it represents in the percentages of crude protein, crude fat, crude fibre, and carbohydrates which it contains. (Id. § 325a43.)

121. **Certificate is Not Required of Agents or Dealers Where Manufacturer, Importer, or Jobber Files One.**—Whenever a manufacturer, importer, or jobber of any concentrated commercial feeding stuffs shall have filed a statement as required by section 325a43, no agent or seller of such manufacturer, importer, or jobber shall be required to file such statement. (Id. § 325a44.)

122. **Registration of Feed Stuffs Under Misleading Name May be Refused —Cancellation of Registration.**—The Commissioner of Agriculture shall have the power to refuse the registration of any concentrated commercial feeding stuff under a name which would be misleading as to the materials of which it is composed, or when the names of each and all ingredients of which it is composed are not stated. Should any concentrated commercial feeding stuffs be registered, and it is afterwards discovered that they are in violation of any of the provisions of this article, the Commissioner of Agriculture shall have the power to cancel such registration. (Id. § 325a45.)

123. **Inspection Fees—Stamps to be Attached Showing Payment—Exceptions and Provisos—Sales in Bulk—Redemption of Unused Stamps.**—Each and every manufacturer, importer, jobber, agent, or seller of any concentrated commercial feeding stuff, as defined in section 325a42, shall pay to the Commissioner of Agriculture an inspection tax of 20 cents per ton for each ton of such commercial feeding stuff sold, offered or exposed for sale or distributed in this State, and shall affix to or accompany each car shipped in bulk and to each bag, barrel or other package of such concentrated commercial feeding stuff a stamp to be furnished by the Commissioner of Agriculture, stating that all charges specified in this section have been paid; provided, that the inspection fees herein provided shall not apply to unadulterated wheat, corn, rye, and buckwheat bran; nor to unadulterated wheat, corn, rye and buckwheat middlings; nor to unadulterated wheat, corn, rye and buckwheat shorts; and, provided, whenever any concentrated commercial feeding stuff, as defined in section 325a42, is kept for sale in bulk, stored in bins or otherwise, the manufacturer, dealer, jobber, or importer keeping the same for sale shall keep on hand cards of proper size upon which the statement or statements in section 325a41 is or are plainly printed; and if the feeding stuff is sold at retail in bulk, or if it is put up in packages belonging to the purchaser, the manufacturer, dealer, jobber, or importer shall furnish the purchaser with one of said cards upon which is or are printed the statement or statements described in this section, together with sufficient tax stamps to cover same; provided, that inspection tax of 20 cents per ton shall not apply to whole seeds and grains when not mixed with other whole seeds or materials. It is further provided that, upon demand, said inspection stamp

*The reference should be to § 325a41.

shall be redeemed by the department issuing said stamps upon surrender of same, accompanied by an affidavit that the same have not been used; provided, that nothing in this article shall be construed to restrict or prohibit the sale of concentrated commercial feeding stuff in bulk to each other by importers, manufacturers, or manipulators who mix concentrated commercial feeding stuff for sale, but importers, manufacturers, and manipulators shall attach to such feeding stuffs a tag, stating that is to be used for mixing purposes only, and this tag shall give the number of pounds in bulk or package, the name of the manufacturer, the name of the stuff, and its analysis showing crude protein, crude fat, crude fibre, and carbohydrates, and a duplicate of said tag shall be sent to the Commissioner of Agriculture, together with a request for inspection. The Commissioner of Agriculture is hereby empowered to prescribe the form of such tax stamps. (Id. § 325a46.)

124. **Sales in Violation of This Article—Seizure and Forfeiture—Sale of Condemned Stuffs—Place of Sale—Advertisement—Release Upon Compliance With Law.**—Any manufacturer, importer, jobber, agent, or dealer who shall sell, offer, or expose for sale or distribution in this State any concentrated commercial feeding stuff, as defined in section 325a42, without complying with the requirements of the preceding sections of this article,* or who shall sell or offer or expose for sale or distribution any concentrated commercial feeding stuffs which contain substantially a smaller percentage of crude protein or crude fat or carbohydrates or a larger percentage of crude fibre than certified to be contained, or who shall mix or adulterate any concentrated commercial feeding stuff with foreign, mineral, or other substance or substances, such as rice, chaff, or hulls, ground or crushed corncobs, oat hulls, or similar materials of little or no feeding value, or with substances injurious to the health of domestic animals, or who shall sell, offer, or expose for sale any concentrated commercial feeding stuffs so mixed or adulterated, shall be guilty of a violation of this article, and the lot of feeding stuffs in question shall be seized and condemned, sold, or destroyed by the Commissioner of Agriculture or his duly authorized representative, and the proceeds from said sales shall be covered into the State treasury for the use of the department executing the provisions of this article. Such seizure and sale shall be made by the Commissioner of Agriculture or under the direction of an officer of his appointment. The sale shall be made at the courthouse door in the county in which the seizure is made; provided, that whenever, for sufficient reasons appearing to the Commissioner of Agriculture or his representative aforesaid, another place of sale is more convenient and more desirable, such place of sale may be selected. The sale shall be advertised for thirty days in a newspaper published in the county in which the seizure is made, or, if no newspaper be published in such county, then it shall be advertised in a newspaper published in the nearest county thereto having a newspaper. The advertisement shall state the brand or name of the goods, the quantity, and why seized and offered for sale, and must show the time and place of sale.

The Commissioner of Agriculture, however, may in his discretion release the feeding stuffs so withdrawn when the requirements of the provisions of this article have been complied with and upon payment of all the costs or expenses incurred in any proceeding connected with such seizure and withdrawal. And for the purpose of this act any concentrated commercial feed stuffs which live stock will not eat is hereby declared to be adulterated. In such cases the Commissioner of Agriculture is directed to hold or cause to be held a fair feeding test of such feeds and upon finding that the live stock will not eat the feed, he is directed to deal with it as adulterated feed, as provided for by this law as amended. (Id. § 325a47; Code Supp. 1926, § 325a47.)

125. **Crushed or Ground Ear Corn May be Sold by Itself, But Not to be Mixed With Other Stuff—Violations are Punishable.**—It shall be unlawful and shall be punished as other violations of this article, to sell, offer, or expose for sale any mixed or compounded commercial feeding stuff containing as an ingredient crushed or ground ear corn; provided, that nothing herein shall prevent the sale of crushed or ground ear corn by itself and not mixed with another substance, but the crushed or ground ear corn when sold by itself is a concentrated commercial feeding stuff defined in section 325a42, and the sale thereof within this State shall be governed by the provisions of this article and the rules and regulations prescribed by the Commissioner of Agriculture. (Code 1917, § 325a48.)

126. **Suspension of Sale Pending Analysis—Proceedings Where Law is Not Complied With.**—If at any time the Commissioner of Agriculture or his

*Nos. 118-136.

duly authorized representative shall have reason to believe that any feeding stuff offered or exposed for sale in this State does not comply with the requirements of this article as to the ingredients or substances of the same, it shall be his duty by written order to suspend the sale of the same until he shall have satisfied himself, or shall be satisfied by an analysis or otherwise, that such feeding stuff is made up or compounded as required by this article. If he shall find that the same does not comply with the law then he is authorized to proceed with regard to the same as provided in section 325a47. (Id. § 325a49.)

127. **Powers and Duties of Commissioner of Agriculture and Deputies—Samples to be Taken and Paid For—Analysis—Notice Before Publication of Results of Analysis.**—The Commissioner of Agriculture, together with his deputies, agents, and assistants, shall have free access to all places of business, mills, buildings, vehicles, cars, vessels, and packages of whatsoever kind used in the manufacture, importation, or sale of any concentrated commercial feeding stuff, and shall have power and authority to open any package containing or supposed to contain any concentrated commercial feeding stuff, and upon tender and full payment of the selling price of said samples, take therefrom, in the manner hereinafter prescribed, samples for analysis; and he shall annually cause to be analyzed at least one sample so taken of every concentrated commercial feeding stuff that is found, sold, or offered or exposed for sale in this State under the provisions of this article. Said samples, not less than one pound in weight, shall be taken from not less than ten bags or packages, or if there be less then ten bags or packages, then the samples shall be taken from each bag or package, if it be in bag or package form, or if such feeding stuff be in bulk, then it shall be taken from ten different places of the lot.

The Commissioner of Agriculture is hereby authorized to publish from time to time in reports or bulletins the results of the analysis of such sample or samples, together with such additional information as circumstances advise; provided, however, that if such sample or samples as analyzed by the Commissioner of Agriculture differ from the statement prescribed in section 325a41, then, at least thirty days before publishing the results of such analysis, the Commissioner of Agriculture shall give written notice of such results to the manufacturer, importer, agent, or jobber of such stock, if the name and address of such manufacturer, jobber, or importer be known; provided, further, that if the analysis of any such sample does not differ substantially from the statement prescribed in section 325a41, appearing upon the goods, the manufacturer shall be considered as having complied with the requirements of this article. (Id. § 325a50.)

128. **Rules and Regulations to be Prescribed and Published.**—The Commissioner of Agriculture shall from time to time prescribe anl publish rules and regulations for carrying out the provisions of this article. (Id. § 325a51.)

129. **Rules and Regulations for Grading Feed Stuffs.**—The Commissioner of Agriculture is also authorized to prescribe rules and regulations governing the grading of any and all concentrated commercial feeding stuffs, defined in section 325a42. (Id. § 325a52.)

130. **Sale Without Tax Stamps, or Use Thereof a Second Time, or Use of Counterfeits, is a Violation of This Law.**—Any manufacturer, importer, jobber, agent, or dealer who shall sell, offer or expose for sale or distribute in this State any concentrated commercial feeding stuff without having attached thereto or furnished therewith such tax stamps as required by the provisions of this article, or who shall use the required tax stamps a second time to avoid the payment of the tonnage tax, or any manufacturer, importer, jobber, agent, or dealer who shall counterfeit or use a counterfeit of such tax stamps shall be guilty of a violation of the provisions of this article. (Id. § 325a53.)

131. **Refusal to Comply With Law, or Obstructing Officers in Their Duty, is a Violation of This Law.**—Any manufacturer, importer, jobber, agent, or dealer who refuses to comply with the requirements of the provisions of this article, or any manufacturer, importer, jobber, agent, or dealer or person who shall impede, obstruct, hinder, or otherwise prevent or attempt to prevent any chemist, inspector, or other authorized agent in the performance of his duty in connection with the provisions of this article shall be guilty of a violation of the provisions of this article. (Id. § 325a54.)

132. **Violation of This Law is a Finable Misdemeanor—Disposition of Fines.**—Any manufacturer, importer, jobber, agent, or dealer who shall violate any of the provisions of this article or the regulations adopted by the commissioner of agriculture, upon conviction thereof, shall be fined not exceeding fifty dollars for the first offense nor more than two hundred dollars for each subsequent offense, and the proceeds from such fines shall be covered into the State treasury for use of the department executing the provisions of this article. (Id. § 325a55.)

133. **Notice to Violator—Prosecution for Violation.**—Whenever the Commissioner of Agriculture or his duly authorized representative becomes cognizant of any violation of the provisions of this article, he shall immediately notify in writing the manufacturer, importer, jobber, or dealer, if same be known. (Id. § 325-a56; Code Supp. 1926, § 325a56.)

134. **Certificate of Analyst Sworn to Shall be Prima Facie Evidence.**—In all prosecutions in the courts of this State arising under this article, and the rules and regulations made in accordance therewith, the certificate of the analyst or other officer making the analysis or examination, when duly sworn to and subscribed by such analyst or officer, shall be prima facie evidence of the facts therein certified. (Code 1917, § 325a57.)

135. **Appropriation of Fees and Fines for Expenses—Fees to be Paid Into State Treasury—Bills of Expenses by Commissioner of Agriculture.**—There is hereby appropriated for the purpose of enforcing the provisions of this article a sum not exceeding the amount of fees and fines collected and moneys or proceeds derived from the seizure and sale of feeding stuffs under its provisions. Such expense shall be paid by warrant of the State Comptroller upon bills filed by the Commissioner of Agriculture. All fees collected under the provisions of this article shall be paid into the State treasury. (Id. § 325a58.)

136. **Appointment of Analyst, Chemist and Inspectors—Tennessee Experiment Station to Act as Analysts and Chemists, When.**—The Commissioner of Agriculture shall appoint such analysts, chemists, and inspectors as may be required to carry out the provisions of this article, and any part of the labor of the analysts and chemists upon request of the Commissioner of Agriculture shall be performed by the Tennessee Experiment Station, with such compensation therefor as may be approved by the said Commissioner of Agriculture. (Id. § 325a59.)

137. **Chemical Laboratory for Examination and Analysis of Fertilizers, Feed Stuffs, and Field and Garden Seeds Offered for Sale.**—The Commissioner of Agriculture is hereby authorized and directed to establish a properly organized and fully equipped laboratory, in which shall be made such examinations and analyses of commercial fertilizer, commercial feeding stuffs and field and garden seeds offered for sale in Tennessee, and which may be collected from time to time, under such rules and regulations as are prescribed, or may be prescribed, by the Commissioner of Agriculture in the administration of the laws governing the sale of such fertilizers, feeds, and seeds in this State. (Id. § 325a82.)

138. **Commissioner of Agriculture Shall Appoint State Chemist—Term—Salary.**—The Commissioner of Agriculture shall appoint, as soon as practicable after the passage of this law, a chemist of established reputation and ability who shall be known as "State Chemist," and who shall hold office for a term of two years from the date of his appointment. The salary of said chemist shall be eighteen hundred dollars per annum, payable monthly out of the treasury of the State as are paid the salaries of other State officials. (Id. § 325a83.)

139. **Office of Chemist—Equipment of Laboratory for Analysis of Fertilizers, Feed Stuffs, Seeds and Soils.**—Said chemist shall have and maintain his office in quarters provided by the superintendent of the Capitol in the Capitol, or elsewhere in the city of Nashville, as may be deemed advisable or necessary; and said laboratory shall be equipped by said chemist for proper inspection and analyses of all commercial fertilizers, commercial feeding stuffs, and field and garden seeds which may be submitted for inspection and analyses to him by the Department of Agriculture, and shall also be prepared to furnish analyses of soils from samples submitted to him by or through the Department of Agriculture, or by any citizen of Tennessee owning real estate or who is engaged in agriculture may send soil or seed to the State Chemist and have it analyzed. (Id. § 325a84.)

140. **Chemist's Record of Inspection and Analysis, and Annual Report.**—Said State Chemist shall be required to keep a complete record in his office of all such inspections and analyses, and shall make an annual report of his work to the Commissioner of Agriculture. (Id. § 325a85.)

141. **Chemist May Employ Assistant Chemist, When.**—Said State Chemist shall be empowered to employ an assistant at such times as may be necessary; provided that assistant shall not be employed for more than four months in any one year. (Id. § 325a86.)

142. **Appropriation to Carry Out Provisions of This Law.**—For the purpose of carrying out the provisions of this article, there is hereby appropriated from the State treasury, out of such moneys as are not otherwise appropriated, the sum of thirty-five hundred dollars per annum for two years or so much thereof as may be necessary, from the nineteenth of March, 1913, same to be included in the general appropriation bill. (Id. § 325a87.)

143. Expenses to be Paid on Vouchers of Commissioner of Agriculture.—All the expenses of the office and laboratory of the State Chemist shall be paid out of the appropriation hereinbefore provided for on vouchers issued by the Commissioner of Agriculture. (Id. § 325a88.)

144. Weight of Stock Food to be Marked on Sack or Package.—It shall be unlawful for any corporation, firm, or person, to pack for sale, sell, or offer for sale in this State any stock food without plainly marking upon the sack or package in letters and figures not less than two inches in size, the actual weight of each sack or package of such food. (Id. § 3378a5.)

145. Ingredients to be Marked on Package.—No corporation, firm, or person shall pack for sale, sell, or offer for sale in this State any stock food which contains any other substance than the product of the ground grain of corn, wheat, oats, rye, or peas, or cottonseed products, without plainly marking on the package in letters of not less than two inches in size, the ingredients of which the food is composed and the relative proportions thereof. (Id. § 3378a6.)

146. Violation is a Misdemeanor—Fine.—A violation of the last two sections is hereby declared to be a misdemeanor; and, upon conviction, the offender shall be fined not less than ten dollars nor more than twenty-five dollars for each sack or package sold or offered for sale in violation of the last two sections. (Id. § 3378a7.)

Fish.

See Nos. 17, 47 et seq., and 402-403.

Flavoring Extracts.

See Nos. 271 and 290-291.

Flour, Meal, Grits.

147. Contents of Flour Barrel.—Every packer of flour or kiln-dried meal shall put into a barrel the full quantity of one hundred and ninety-six pounds of flour, and into every half barrel the full quantity of ninety-eight pounds of flour. (Code 1917, § 3374.)

148. Flour and Meal, How Manufactured.—All wheat flour or kiln-dried meal shall be made by the miller or manufacturer of due fineness, shall be well bolted, not mixed with other or coarser flour or meal, and in all respects merchantable. (Id. § 3375.)

149. Brands on Barrel Heads.—Every miller or bolter of flour, made or intended for exportation, shall provide and use distinguishable brands or marks; and before the flour is removed, shall impress on the head of each barrel the name of the miller or bolter by whom it was manufactured, and the quality of flour contained in each particular barrel, by branding or marking thereon, at full length, the words "family," "superfine," "fine," "middling," as the case may be. (Id. § 3376.)

150. Exporting Flour Not Branded, Etc.—Forfeiture—Qui Tam Actions.—If any person shall export any flour without branding on the barrel the name of the miller or bolter by whom it was manufactured together with the proper quality of the flour so exported; or shall mix the flour with corn meal, or any other ingredient, whereby its value shall be impaired; or shall pack such flour in barrels not made of the lawful material or size, or shall pack less than the lawful quantity in any barrel or half barrel, he shall forfeit and pay the sum of ten dollars for each barrel, to be recovered before any justice of the peace, to the use of the person who will sue for the same. (Id. § 3377.)

151. Misdemeanor to Brand Cask After Removal from Mill, Etc.—Penalty and Qui Tam Action.—If any person impress or brand the mark "family," "superfine," "fine," or "middling," or the semblance thereof, upon any barrel or cask of flour, after the same has been removed from the mill or place where it was manufactured or bolted, or, at any time or place, impress or brand on any barrel or cask of flour the name of any other person than the proper name of the miller or bolter by whom it was manufactured or bolted, he shall be guilty of a misdemeanor, and shall be imprisoned not less than three nor more than twenty days, and be fined in the sum of fifty dollars, one-half to the use of the person who will sue for the same, the other half to the use of the county. (Id. § 3378.)

152. Barrels and Packages to be Well Made and Branded, How.—All flour, grits or corn meal packed in barrels or half barrels, made of any material, or any

packages made of wood or metal in which flour, grit, or corn meal are offered for sale, shall be well made and of good material, and shall have the net weight of flour plainly marked on the head, top, or side of the barrel or package with a stencil or paper label or pencil, with letters and figures not less than one inch in length and the tare marked on the reverse end or side of the barrel or package in like manner. (Id. § 3378a1.)

153. Weights in Barrels and Sacks to be Branded.—Every miller, bolter, blender, or mixer, or other person who manufactures or who buys flour, grits, or corn meal for the purpose of repacking, shall put into each barrel the full quantity and weight of one hundred and ninety-six pounds of flour, grits, or corn meal, and shall put into each half barrel the quantity and weight of ninety-eight pounds of flour, grits, or corn meal. When flour, grits, or corn meal is packed in sacks, the gross weight shall be as follows: Half barrel sacks, 96 pounds; quarter-barrel sacks, 48 pounds; eighth-barrel sacks, 24 pounds; sixteenth-barrel sacks, 12 pounds; thirty-second barrel sacks, 6 pounds; and may be packed in any other size package, but whatever the size of the package, the gross weight of each package shall be stamped, stenciled, or printed on each package. (Id. § 3378a2.)

154. Variations Allowed.—From the weights above specified, variations from inaccuracies will be allowed as follows: On all packages weighing 90 pounds or over, an allowance of one-fourth of one per cent, and on all packages smaller than 90 pounds, an allowance of one-half of one per cent less than the weight specified in section 3378a2. (Id. § 3378a3.)

155. Violation is a Misdemeanor—Fine.—Any violation of sections 3378a1 to 3378a3 shall be a misdemeanor; and, upon conviction the offender shall be fined not less than fifty dollars nor more than five hundred dollars. (Id. § 3378a4.)

156. Unlawful to Adulterate or Mix Flour.—It shall be unlawful for any miller, manufacturer of or dealer in flour, or any other firm, to mix or adulterate the flour manufactured, sold, or offered for sale by him or them with borite [boride], corn meal, cornstarch, or any noxious, deleterious, or injurious substance whatever. (Code 1918, 6744a9.)

157. Violation is a Misdemeanor—Fine and Imprisonment.—The violation of the preceding section shall be and the same is hereby declared to be a misdemeanor, and the violation of the same shall be punishable by a fine of not less than fifty dollars nor more than one hundred dollars, and by imprisonment at the discretion of the court. (Id. § 6744a10.)

158. Owner's Name to be Branded on Sacks, Etc., or Miller Not Responsible for Loss.—No miller in this State shall be liable or responsible for any sack, bag, or grist of grain, meal, or flour, taken, removed, or mislaid from his or her mill, without the name of the person so losing the same be plainly branded by the owner upon said sack or bag; but in all cases when any sack, or grist of grain, meal, or flour, is carried, sent, or left at the mill of any miller in this State, and the same is plainly branded by the owner with the name of the same, and while at said mill, under the care and control of the miller, the same is lost or mislaid, the miller shall be liable to the owner in the full value of the same. (Code 1917, § 3454.)

159. Changing Customer's Grain or Flour—Penalty—Qui Tam Action.—Any miller in this State who shall swap or change the grain, meal, or flour of any person or persons, except by and with the advice and consent of the owner thereof, shall be fined ten dollars, to be recovered before any justice of the peace, one-half to go to the common school fund of the county, and the other half to go to the person complaining to said justice of the peace. (Id. § 3455.)

NOTE: See also Nos. 395-398, 402, 411 and 428-429.

Fruits and Vegetables.

159a. Growers and Shippers of Fruits and Vegetables to Place Their Names on All Packages; Failure is a Misdemeanor; Fine.—Any person or persons, firms or corporations, selling or offering for sale or consignment any barrel, crate, box, or other receptacle containing any berries, fruits, melons, potatoes, vegetables, truck, or produce of any kind whatsoever, without the true name of the grower or packer, either written, printed, stamped, or otherwise placed thereon, in distinct legible characters, shall be guilty of a misdemeanor and fined not exceeding twenty-five dollars. (Code 1918, § 6742a7.)

NOTE: See also No. 402.

Grits.

See No. 147 et seq.

Meal.

See Nos. 147 et seq., 395-398, 402, 404, 411, and 428-429.

Meat—Meat Products.

See Nos. 17, 47 et seq., 175 et seq., and 395-397.

Molasses.

See No. 161 et seq.

Salt and Sugar.

160. **Salt and Sugar, Selling by Marks, Etc., Forfeiture, and Qui Tam Action.**—Any person selling salt or sugar by the barrel, sack, or bag, purporting by the marks or brands to contain a certain number of pounds or bushels, when in fact the quantity falls short of the amount designated, shall forfeit ten cents for each and every pound or deficiency, to any person who will sue therefor; but nothing in this section shall be construed to prevent the sale of salt or sugar by the mark or brand, if the purchaser is willing to buy by such mark or brand. (Code 1917, § 3465.)

Syrups, Molasses, Etc.

161. **Gauging Syrups and Liquors.**—The inspector of oils and fluids shall be ex-officio gauger of liquors, molasses, and syrups, and other liquids. (Code 1917, § 3432.)

162. **Instrument.**—In the performance of his duties, he shall use the standard instrument in use for that purpose, and he shall brand or mark all barrels or casks gauged by him with his name, official character, and the capacity of the package. (Id. § 3433.)

163. **Fees.**—He shall be entitled to demand and receive the following fees, to be paid by the party for whom the services are rendered:

For gauging (including proving when necessary) whisky, oils, molasses, or syrups, or [each] barrel or cask [in lots]	$0.07½
For a single barrel of each	.15
For gauging varnishes and turpentine, each barrel, pipe, or half pipe	.15
For ullaging separate from gauging, each barrel	.05
For proving without gauging, each barrel	.05
For gauging any liquid not named, the inspector shall receive the same fees as for gauging whiskey. (Ib.)	
For removing the bungs from barrels of oils, the products of coal, petroleum, or other bituminous substances, and replacing with new bungs, each barrel or cask	.05

But the owner may remove and replace bungs without any charge by the inspector. (Id. § 3434.)

Vinegar.

See No. 4.

Sanitation.

164. **Inspector to be Appointed—Term—Removal.**—The Governor, with the consent and advice of the Senate, shall appoint an officer to be known as a Shop and Factory Inspector,* who shall hold office for a term of two years, or

*The Department of Labor now exercises the rights, powers and duties vested by law in the Workshop and Factory Inspector, his deputies, assistants and employees. See Code Supp. 1926, §§ 373a118 (2) and 373a124.

until his successor shall be appointed and qualified; provided, that he may be removed at any time by the Governor for cause. (Code 1917, § 3079a30.)*

165. To Inspect Every Six Months—Authority—Annual Reports, Printed—Expense—Monthly Reports.—It shall be the duty of the Shop and Factory Inspector to inspect all workshops, bakeries, and factories where machinery is used at least once every six months, and he shall have authority to enter such workshops, bakeries, or factories at all proper times for the purpose of such inspection. He shall on or before the first day of January of each year, make a report to the Governor of the condition as respects safety to life and health of workshops, bakeries, and factories visited by him, and said report shall be printed for the use of the General Assembly at its regular sessions. The expense of printing said report shall be paid out of the general appropriation for printing the reports of State offices [officers].

Said inspector, in addition to the annual reports required of him, shall make additional monthly reports to the Governor of the inspections made by him, and other official duties performed during the preceding month. (Id. § 3079a31.)

166. Shops to be Kept Clean—Machinery Guarded.—All workshops, bakeries, and factories where machinery is used shall be well ventilated and kept as clean as the nature of the business will permit. The belting, shafting, gearing, machinery, and drums of all workshops, bakeries, and factories where machinery is used, when so placed as in the opinion of the shop and factory inspector to be dangerous to persons employed therein while engaged in their ordinary duties, shall, as far as practicable, be securely guarded. (Id. § 3079a32.)

167. Hatchways, Holes, Etc., to be Protected by Good Trapdoors, Etc.—The shop and factory inspector may order the opening of all hatchways, elevator wells, and wheel holes, upon every floor of any workshop, bakery, or factory where machinery is used, to be protected by good trapdoors, self-closing hatches, or safety catches or other safeguards such as will insure the safety of the employees in such workshop, bakery, or factory when engaged in their ordinary duties. (Id. § 3079a33.)

168. Water-Closets Separate for Males and Females.—Every person, firm, or corporation running or operating any workshop, bakery, or factory where fifteen or more persons are employed at labor, shall provide separate water-closets for males and females, and keep the same in good sanitary condition. (Id. § 3079a34.)

169. Inspector to Enforce Law—Notice to Owner—Complaint to Attorney-General.—It shall be the duty of the Shop and Factory Inspector to enforce the provisions of this chapter† by giving proper notices to the person, firm, or corporation operating or running workshops, bakeries, or factories inspected by him, and also to make complaint to the Attorneys-General of the respective districts of all violations of this chapter. (Id. 3079a35.)

170. Violation—Fine—Notice.—Any person, firm, or corporation operating or running any workshop, bakery, or factory where machinery is used, upon conviction of a violation of this chapter,† shall be fined not less than twenty-five dollars ($25) nor more than one hundred dollars for each offense; provided, no action shall be taken until after four weeks' notice shall have been given by the shop and factory inspector to any firm, person, or corporation operating or running a workshop, bakery, or factory of the changes necessary to be made, and not then if in the meantime said changes have been made. (Id. § 3079a36.)

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*To the law quoted in Nos. 164-174 is the following editorial note in the Code:

"Acts compiled in this chapter were probably repealed or suspended by construction or implication.—The statutes (Acts 1899, ch. 401, amended by Acts 1901, ch. 67; Acts 1905, ch. 159; Acts 1909, ch. 124; and Acts 1911, ch. 30, as compiled in sections 3079a30 to 3079a40, both inclusive, of this Code, providing for a shop and factory inspector for the inspection of workshops, bakeries and factories, were, as to the inspection of bakeries, probably repealed or suspended, by construction or implication, by Acts 1909, ch. 473, amended by Acts 1913, 1st ex. ses., ch. 15, as compiled in sections 3473a40 to 3473a60, both inclusive, of this Code, and were, as to the inspection of workshops and factories, probably repealed or suspended, by construction or implication, by Acts 1913, ch. 11, compiled in sections 3079a41 to 3079a53. However, inasmuch as such implied repeals or suspensions are matters of construction, the compilation of said statutes in said sections 3079a30 to 3079a40, prepared before the enactment of said act of 1913, will be allowed to stand. Such compilation will be convenient in considering the question of such constructive or implied repeal or suspension of the acts compiled in this chapter."

†Nos. 164-174.

171. Notice to be Given and Served, How.—The orders or notices given by the Shop and Factory Inspector shall be written or printed, and signed by him officially, and served by himself or by leaving an attested copy thereof at the usual place of business of the person upon whom service is to be made, and a copy of the same shall be filed in the office of the county court clerk of the county in which the workshop, bakery, or factory is located, and such copy shall be prima facie evidence that notice was given. (Id. § 3079a37.)

172. Salary and Expenses of Inspector.—The salary of said inspector shall be fifteen hundred dollars per annum, payable monthly on the warant of the Comptroller, as other salaries are paid, and the sum of five hundred dollars per annum, or as much thereof as may be necessary, is hereby appropriated for the expenses of said inspector incurred in the actual performance of his official duties, said expenses to be itemized, evidenced by vouchers, and sworn to. (Id. § 3079a38.)

173. Word "Workshop" Includes Bakeries.—The word "workshop," whenever the same shall appear in this chapter, includes bakeries, whether the same be run by machinery or not. (Id. § 3079a39.)

174. Police Power Conferred Upon Factory Inspector—Power to Enforce Labor Laws.—Police powers and authority are hereby conferred upon and vested in the factory inspector, and he shall have full power and authority to enforce all the labor laws of the State, with the exception of the mining laws, by making arrests for the violation of such laws in the same manner as officers of the State empowered by law to make arrests for violation of the laws of the State now have and possess. (Id. § 3079a40.)

175. Buildings for Preparation, Manufacture, Packing, Storage, Sale or Distribution of Food Shall be Properly Lighted, Drained, Plumbed and Ventilated.—Every building, room, basement, or cellar occupied or used as a bakery, confectionery, cannery, packing house, slaughterhouse, dairy, creamery, cheese factory, restaurant, hotel, grocery, meat market, or other place or apartment used for the preparation for sale, manufacture, packing, storage, sale, or distribution of any food shall be properly lighted, drained, plumbed, and ventilated and conducted with strict regard to the influence of such condition upon the health of the operatives, employees, clerks, or other persons therein employed and the purity and wholesomeness of the food therein produced. (Id. § 3473a40.)

176. Term "Food" Includes What.—For the purpose of this chapter,* the term "food," as used herein, shall include all articles used for food, drink, confectionery, or condiment, whether simple, mixed, or compound, and all substances or ingredients used in the preparation thereof. (Id. § 3473a41.)

177. Unclean, Unhealthful and Unsanitary Conditions are Prohibited.—The floors, side walks [side walls], ceilings, furniture, receptacles, implements, and machinery of every establishment or place where food is manufactured, packed, stored, sold, or distributed, and all cars, trucks, and vehicles, used in the transportation of food products, shall at no time be kept in an unclean, unhealthful, and unsanitary condition. (Id. 3473a42.)

178. "Unclean, Unhealthful and Unsanitary Condition" is Defined.—For the purpose of this chapter "unclean, unhealthful, and unsanitary condition" shall be deemed to exist if food in the process of manufacture, preparation, packing, storing, sale, distribution or transportation, is not securely protected from flies, dust, dirt, and, as far as may be necessary, by all reasonable means, from all other foreign or injurious contamination; and, if the refuse, dirt, and the waste products subject to decomposition and fermentation incident to the manufacture, preparation, packing, storing, selling, distributing and transporting of food are not removed daily; and if all trucks, trays, boxes, baskets, buckets, and other receptacles, chutes, platforms, racks, tables, shelves, and all knives, saws, cleavers, and other utensils and machinery used in moving, handling, cutting, chopping, mixing, canning, and all other processes are not thoroughly cleaned daily, and if the clothing of the operatives, employees, clerks, or other persons therein employed is unclean. (Id. § 3473a43.)

179. Interior of Buildings Shall be Oil Painted or Lime Washed and Kept Washed Clean.—The side walls and ceilings of every bakery, confectionery, creamery, cheese factory, hotel, and restaurant kitchen shall be well plastered, wainscoted, or ceiled with metal or lumber, and shall be oil painted or kept well limewashed, and all interior woodwork in every bakery, confectionery, creamery, cheese factory, hotel and restaurant kitchen shall be kept washed clean with soap and water. (Id. § 3473a44.)

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*Nos. 175-195.

180. **What Kind of Floors Shall be in Buildings.**—Every building, room, basement or cellar occupied or used for the preparation, manufacture, packing, storage, sale or distribution of food shall have an impermeable floor made of cement, or tile laid in cement, brick, wood, or other suitable non-absorbent material which can be flushed and washed clean with water. (Id. § 3473a45.)

181. **Screens to be in Doors and Windows During Fly Season.**—The doors, windows and other openings of every food-producing or distributing establishment during the fly season shall be fitted with self-closing screen doors and wire window screens of not coarser than 14-mesh wire gauze. (Id. § 3473a46.)

182. **Toilet Rooms, Lavatories and Wash Rooms to be Provided, Kept and Furnished, How.**—Every building, room, basement, or cellar occupied or used for the preparation, manufacture, packing, canning, sale or distribution of food, shall have convenient toilet or toilet rooms separate and apart from the room or rooms where the process of production, manufacture, packing, canning, selling or distributing is conducted. The floors of such toilet rooms shall be of cement, tile, wood, brick, or any other non-absorbent material, and shall be washed and scoured daily. Such toilet or toilets shall be furnished with separate ventilating flues or pipes discharging into soil pipes, or on the outside of the building in which they are situated. Lavatories and wash rooms shall be adjacent to toilet rooms and shall be supplied with soap, running water, and towels, and shall be maintained in a sanitary condition. (Id. § 3473a47.)

183. **Operatives, Clerks and Employees Shall Wash Their Hands and Arms.**—Operatives, clerks and all persons who handle the material from which food is prepared, or the finished product, before beginning work or after visiting toilet or toilets, shall wash their hands and arms thoroughly in clean water. (Id. § 3473a48.)

184. **Cuspidors to be Furnished and Kept, How.**—Cuspidors for the use of operatives, employees, clerks or other persons shall be provided whenever necessary, and each cuspidor shall be thoroughly emptied and washed out daily with disinfectant solution, and five ounces of such solution shall be left in each cuspidor while it is in use. (Id. § 3473a49.)

185. **Expectoration on Floors, Etc., is Prohibited.**—No operative, employee, or other person shall expectorate on floors or side walls of any building, room, basement, or cellar where the production, manufacture, packing, storing, preparation, or sale of any food is conducted. (Id. § 3473a50.)

186. **No Sleeping in Places Where Food is Prepared for Sale, Served or Sold.**—No person or persons shall be allowed to live or sleep in any room of a bakeshop, kitchen, dining-room, confectionery, creamery, cheese factory, or place where food is prepared for sale, served, or sold. (Id. § 3473a51.)

187. **Employees Must Not be Affected With Any Infectious or Contagious Diseases.**—No employer shall require, permit or suffer any person to work, nor shall any person work in a building, room, basement, cellar, or vehicle occupied or used for the production, preparation, manufacture, packing, storage, sale, distribution, and transportation of food who is affected with any venereal disease, smallpox, diphtheria, scarlet fever, yellow fever, tuberculosis (or consumption), Bubonic plague, Asiatic cholera, leprosy, trachoma, typhoid fever, epidemic dysentery, measles, mumps, German measles, whooping cough, chickenpox, or any other infectious or contagious disease. (Id. § 3473a52.)

188. **Power of Pure Food and Drug Inspector or Other Legal Agent of State Board of Health to Enter and Inspect.***—The Pure Food and Drug Inspector or other legal agent of the State Board of Health shall have full power at all times to enter every building, room, basement, or cellar occupied or used or suspected of being used for the production for sale, manufacture for sale, storage, sale, distribution, or transportation of food, and to inspect the premises and all utensils, fixtures, furniture, and machinery used as aforesaid. (Id. § 3473a53.)

189. **Conditions Violating This Law to be Reported and Ordered Abated.**—If, upon inspection, any food-producing or distributing establishment, conveyance, employer, operative, employee, clerk, driver, or other person is found to be violating any of the provisions of this chapter, or if the production, preparation, manufacture, packing, storing, sale, distribution, or transportation is being conducted in a manner detrimental to the health of the employees and operatives or to the character or quality of the food therein being produced, manufactured, packed, stored, sold, distributed, or conveyed, the officer or inspector making the examination or inspection shall report such conditions and violations to the Pure Food and Drug Inspector, who shall issue an order to the person or persons in authority at

*See Nos. 30-30c.

the aforesaid establishment to abate the condition or violation or make such improvements as may be necessary to abate them, within the period of five days or such reasonable time as may be required in which to abate them. (Id. § 3473a54.)

190. Order for Abatement or Improvement to be in Writing—Reasons Against Same.—Such order shall be in writing, and the person receiving the order may, within five days from the issuance of the order, appear in person or by attorney before the Pure Food and Drug Inspector to give reason why such instruction should not be obeyed. (Id. § 3473a55.)

191. Misdemeanor to Violate This Law or to Refuse to Comply With Orders of Inspector.—Any person who violates any of the provisions of this chapter* or who refuses to comply with any lawful orders or requirements of the State Pure Food and Drug Inspector, duly made in writing, as provided in sections 3473a54 and 3473a55, shall be guilty of a misdemeanor, and, upon conviction shall be punished by a fine of not less than $10, nor more than $50. (Id. § 3473a56.)

192. Each Day's Refusal to Comply With Inspector's Order Constitutes a Distinct Offense.—Each day after the expiration of the time limit for abating unsanitary conditions and completing improvements to abate such conditions as ordered by the State Pure Food and Drug Inspector shall constitute a distinct and separate offense. (Id. § 3473a57.)

193. Prosecution Before Justice for Violation of This Law to be Instituted by Food and Drug Inspector.—It shall be the duty of the State Pure Food and Drug Inspector† or his duly appointed deputy inspectors or agents upon learning of the violation of any provision of this chapter to institute a prosecution in the name of the State against the person violating the chapter, by procuring a warrant for the arrest of such person from a justice of the peace of the county where the offense is allegd to have been committed; and it shall be the duty of the officer making the arrest under such warrant to take the person so arrested without delay, before some justice of the peace of the civil district where the offense is alleged to have been committed; and it shall be the duty of such justice of the peace to hear the evidence and decide the case regardless of whether the grand jury be in session at that time; and if the person or persons so tried shall be found guilty, then such justice of the peace shall impose the fine fixed by the provisions of this chapter. (Id. § 3473a58.)

194. Defendant Convicted and Fined May Appeal to Circuit Court and Have a Trial De Novo.—Any person so convicted and fined shall, however, have the right of appeal to the Circuit Court of the county in which such offense is committed, upon giving bond and security for the amount of the fine imposed and costs, or upon taking the pauper's oath and giving an appearance bond; and upon appeal to the Circuit Court trial therein shall be de novo upon the warrant and according to the practice of said court in cases of appeals from justices of the peace. (Id. § 3473a59.)

195. Continued Operation in Violation of Law is Declared a Nuisance, and May be Enjoined and Abated—Provisions as to Suit—Injunction is a Cumulative Remedy.—The continued operation of any food-producing or food-handling establishment in violation of this chapter, after legal notice in writing has been given by the State Pure Food and Drug Inspector to the person in authority at said establishment or to his agent on the premises, is hereby declared to be a nuisance; and whenever knowledge of such continued operation, after receiving lawful orders, shall come to the pure food and drug inspector, it shall be his duty to apply to a court of competent jurisdiction, through a district attorney-general of the State in the district where the violation of this chapter has been committed, whose duty it shall be to forthwith commence proceedings to cause to be issued an injunction restraining the person, firm, or corporation so conducting a business from further continuance therein, and abating the same as a nuisance. Such court may, in its discretion, issue the injunction forthwith or upon notice, and such proceedings shall be in the name of the State of Tennessee on the relation of the State Pure Food and Drug Inspector, and no bond or other security for costs shall be required of the State in such cases; and it is hereby expressly provided that this remedy by injunction and proceedings to abate the nuisance shall not be exclusive of any other remedy herein provided, but each remedy herein provided shall be considered cumulative of and additional to all other remedies. (Id. § 3473a60.)

NOTE: See also Nos. 47 et seq. and 61 et seq.

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*Nos. 175-195.

†See Nos. 30-30b.

PART III.

Special Drug Laws.

Insecticides and Fungicides.

196. **Manufacturers, Etc., to File What Information With Commissioner of Agriculture.**—All manufacturers, jobbers and manipulators of insecticides and fungicides and all materials and chemicals used in the manufacture of same, who may desire to sell or offer for sale in the State of Tennessee such insecticides and fungicides and materials and chemicals used in the manufacture of same shall first file with the Commissioner of Agriculture of the State of Tennessee, upon forms furnished by said commissioner either by themselves or their agents, together with the name and address of the manufacturer or manipulator, the name of each brand of the insecticide or fungicide or materials or chemicals used for the purpose of controlling insect pests, fungous, or bacterial diseases within the State, and also the guaranteed analysis thereof, giving the valuable constituents in minimum percentage only. And the following items shall be printed, branded or labeled on the package: net weight, brand, name or trade-mark, guaranteed analysis, retail price and the name and address of the manufacturer. (Code Supp. 1926, § 3473a107.)

197. **Terms "Insecticide" and "Fungicide" are Defined.**—The term "insecticide" as used in this act shall include any substance or mixture of substances intended to be used for preventing, destroying, repelling or mitigating the effect of any insects which may infest vegetation, man, animals, or households or be present in any environment whatever. The term "fungicide" as used in this act shall include any substance or mixture of substance intended to be used for preventing, destroying, repelling or mitigating the effects of any and all fungi or bacteria that may infest vegetation or be present in any environment whatsoever, and these terms shall include arsenate of lead, Paris green, lime sulphides, miscible combinations of mineral or vegetable oils, Bordeaux mixture, acids singly or in combination, or any essential material or chemical used in the manufacture of any insecticide or fungicide. (Id. § 3473a108.)

198. **Inspection Stamps to be Placed on Packages.**—Before any insecticide or fungicide is sold or offered for sale in this State, there shall be placed upon the package besides the items required in section 3473a107, an inspection stamp, the printing of which by the Department of Agriculture of the State of Tennessee is hereby authorized, of the value of one-half of one per cent of the retail price printed on the package. Said stamps shall be bought by the manufacturer and placed thereon before said package is sold or offered for sale within this State. (Id. § 3473a109.)

199. **Certificates Withheld, Suspended or Revoked, When.**—It shall be unlawful for any person, firm or corporation, to manufacture, sell or offer for sale in this State any insecticide or fungicide as described in section 3473a108, which is adulterated or misbranded within the meaning of this act or which is of questionable value, and whenever the Commissioner of the Department of Agriculture is satisfied that any such insecticide or fungicide is of such doubtful value for purpose claimed, he is hereby authorized and directed to withhold, suspend or revoke such certificates until such time as he is satisfied that such insecticide and fungicide is brought up to the value for which it is claimed. (Id. § 3473a110.)

200. **Deficiency Under Guaranteed Value Assessed and Collected—Remedies.**—Whenever the Commissioner of Agriculture shall be satisfied that any insecticide or fungicide is below the guaranteed value, it shall be his duty to assess said deficiency against the manufacturer of same, and require that the value of a deficiency be made good to all persons who shall present convincing evidence to the commissioner of having purchased the said deficient insecticide or fungicide; and the commissioner may seize any insecticide or fungicide belonging to the said company if the deficiency shall not be paid within thirty days after notice to the company. If the commissioner shall be satisfied that the deficiency was due to the intention or fraud of the manufacturer, seller, or agent, then the commissioner shall assess and collect from the manufacturer, seller, or agent twice the amount of the deficiency, and pay over the same to the parties who purchased said insecticide or fungicide; if the manufacturer, seller, or agent shall resist such collection

or payments, the commissioner shall immediately publish the analysis and the facts in the bulletin and in such newspapers in the State as he may deem necessary. (Id. § 3473a111.)

201. **Guaranteed Analysis Shall Contain What.**—The guaranteed analysis of any insecticide or fungicide as is defined in section 3473a108, which is required to be placed on such packages in section 3473a107, shall contain in the case of solids, the net weight of such solids, or in the case of paste, the net weight on a fifty per centum water basis or in the case of liquid the net liquid measure of same. (Id. § 3473a112.)

202. **Inspection Stamps to be Redeemed, When.**—All manufacturers, jobbers and manipulators, or agents representing them, who have registered their brands in compliance with section 3473a107 who shall have any inspection stamps in their possession when the fiscal year shall close, shall redeem said stamps within sixty days after the close of the department's fiscal year, which is comprised between the dates of June 1, inclusive. The color of said stamps must be changed each fiscal year and the date of the year. The stamps to be used must be printed thereon, and no such stamps shall be affixed for any other reason than that for which it is printed, provided that nothing in this section shall affect packages already stamped and carried over. (Id. § 3473a113.)

203. **Unlawful to Sell Unregistered Insecticide or Fungicide—Purchaser's Waiver of Inspection and Analysis is no Protection.**—It shall not be lawful for any manufacturer, jobber, or manipulator or agents representing them to sell or offer for sale in this State any insecticide or fungicide, as described in section 3473a108, that has not been registered with the Commissioner of Agriculture as required by this act. The fact that the purchaser waives the inspection and analysis thereof, shall be no protection to said party selling or offering the same for sale. (Id. § 3473a114.)

204. **Guaranteed Analysis for Fiscal Year—Changed When.**—The guaranteed analysis of each and every brand of insecticide and fungicide registered with the Commissioner of Agriculture under this act must, without exception, remain uniform throughout the fiscal year for which it is registered; and in no case, even at subsequent registration, unless the desirability is evidenced and approved by the Commissioner of Agriculture, shall the grade be lowered, although the proportions may be changed so that the decrease of one constituent may be compensated for in value by the increase of the other or others. Such proposed change must first receive approval of the Commissioner of Agriculture. (Id. § 3473a115.)

205. **Brand Name or Trade-Mark—Registration and Priority.**—A brand name [and] or trade-mark registered by one manufacturer shall not be entitled to registry by another, and the manufacturer having first registered and used the same brand name [and] or trade-mark shall be entitled to it, even should said brand name [and] trade-mark not be offered for current registration at the time; provided nothing in this section is to be construed as debarring the right of any manufacturer to establish his ownership in, and prior right of registration of any brand name (and) or trade-mark, whether said brand name (and) or trade-mark has been previously registered or not. (Id. § 3473a116.)

206. **Annual Analysis—Published in Bulletins.**—The Commissioner of Agriculture shall annually analyze or cause to be analyzed at least one sample of every insecticide or fungicide sold or offered for sale under the provisions of this act; and he shall publish in one or more bulletins the analysis made during the year, and the analysis guaranteed by the manufacturer. Said Commissioner of Agriculture shall also make and publish in every such bulletin a price list of the retail value of such insecticide or fungicide. Said bulletin shall be furnished free to any manufacturer or dealer in said insecticide or fungicide and to any customer of same within the State of Tennessee, who may apply for said bulletin. (Id. § 3473a117.)

207. **Manufacturer to Notify Commissioner of Shipments Into This State, When.**—To facilitate inspection and analysis of any insecticide or fungicide, within the meaning of this act, the Commissioner of Agriculture is authorized to require all manufacturers making shipment into or within the State, to notify him of the kinds, amount, dates, destination and consignees and of all such shipments. (Id. § 3473a118.)

208. **Fund for Experiments—If Fraudulent or Valueless, Reported to Commissioner—Published in Bulletins.**—After all expenses of carrying out the provisions of this act are paid ten per cent of the remainder shall be spent by the State Entomologist for experimental and research work to determine the resulting value of any insecticide or fungicide within the meaning of this act, and the said State Entomologist is hereby authorized and required to report to the Commissioner of Agriculture any insecticide, fungicide chemical or material, as it comes within

the meaning of this act that is either fraudulent or of no value for the purposes for which they are claimed by the manufacturer and the Commissioner of Agriculture is required to publish the results of said investigations in a bulletin published by him. (Id. § 3473a119.)

209. **Deputies Only Employed—Income From Sale of Stamps Applied to Expenses and Ten Per Cent and Balance to Agricultural Fund.**—The Commissioner of Agriculture, for the purpose of this act, is required to employ only the services of such of his deputies as are already provided for. From the income derived from the sale of inspection stamps under this act, he shall pay the proportionate expenses borne in the provisions of collection, inspection, and analysis of insecticides and fungicides under the meaning of this act, and the balance of said funds, less than ten per cent of the remainder already provided for in the preceding section shall be turned over to the State Treasurer, the same to be credited to the agricultural fund. (Id. § 3473a120.)

210. **Rules and Regulations.**—The Commissioner of Agriculture shall have authority to establish such rules and regulations in regard to inspection, analysis, and sale of such insecticides and fungicides as come within the meaning of section 3473a108, as shall not be inconsistent with the provisions of this act, and as in his judgment will best carry out the requirements hereof. (Id. § 3473a121.)

211. **Violation is a Misdemeanor—Fine.**—Any person selling or offering for sale, any insecticide or fungicide, chemical or material, coming within the meaning of section 3473a108, without first having complied with the provisions of this act, shall be guilty of a misdemeanor, and on conviction there [thereof] shall be fined not less than fifty dollars nor more than five hundred dollars. (Id. § 3473a122.)

Pharmacy, Poisons and Narcotics.

212. **Only Registered Pharmacists to Sell Drugs—Exceptions.**—It shall be unlawful for any person, not a registered pharmacist within the meaning of this chapter, to open or conduct any pharmacy, or any retail drug or chemical store as the proprietor thereof, unless he shall have in his employ and place in charge of such pharmacy, retail drug or chemical store a registered pharmacist within the meaning of this chapter, who shall have the supervision of that part of the business requiring a pharmaceutical skill and knowledge, or to engage in the occupation of compounding or dispensing medicines on prescriptions of physicians, dentists, or veterinarians, or for selling at retail, for medical purposes, any drugs, chemicals, poisons, or pharmaceutical preparations within this State until he has complied with the provisions of this chapter; provided, that nothing in this section shall apply to or in any manner interfere with the business of any physician, dentist, or veterinarian, or prevent him supplying to his patients such as may seem to him proper, or with the selling by any store of copperas, camphor, borax, blue stone, saltpetre, brimstone, licorice, sage, quinine, juniper berries, senna leaves, castor oil, spirits of turpentine, sweet oil, glycerine, Glauber salts, Epsom salts, cream of tartar, bicarbonate of sodium, and of such domestic remedies as essence of peppermint, essence of cinnamon, hive syrup, syrup of ipecac, tincture of arnica, syrup of tolu, syrup of squills, spirits of camphor, number six, sweet spirits of niter, compound, cathartic pills, and other similar preparations and carbolic acid and tincture of iodine when compounded by a regular pharmacist and put up in boxes and bottles bearing the label of such pharmacist or wholesale druggist, with the name of the article and the directions for its use on each box or bottle. Nothing in this chapter shall be construed to prevent the sale of patent medicine or proprietary medicine or preparations by any merchant, druggist or dealer. (Code Supp. 1926, § 3635; amended L. 1927, c. 51.)

213. **Board to be Appointed by the Governor—Qualifications—Terms.**—There shall exist and be maintained within the State a State Board of Pharmacy with duties and powers, as hereinafter defined and provided. The State Board of Pharmacy shall consist of five members, and the now existing State Board of Pharmacy heretofore appointed, shall continue in office and act as the State Board of Pharmacy with all the duties, and powers, as herein provided until the terms of its present members, respectively expire, the vacancies as they annually occur to be filled in keeping with the requirements of this act. Hereafter, in making appointments to the State Board of Pharmacy, the appointees shall have been registered pharmacists under this or some other law of the State, for a period of at least ten years, and they, at the time of their appointment shall be engaged in conducting a retail pharmacy. Appointments shall be made so that at least three members of the board shall be graduates of a recognized school or college of pharmacy. Members of the Board of Pharmacy to be appointed under this act, shall be

appointed by the Governor and shall serve for a term of five years, or until their successors are appointed and have duly qualified. No member of the board shall serve for more than one full term. (Code Supp. 1926, § 3636.)

214. Oath of Office of Members of Board—Removal from Office—Vacancies.—Appointees to the Board of Pharmacy shall within ten days after their appointment, take and subscribe an oath or affirmation before a properly qualified officer, that they will faithfully and impartially perform the duties of their office, which oath or affirmation shall be filed with the Secretary of State. The officers of the existing board shall continue to so act until their terms, for which they have been elected, expire. Any member of the board guilty of misconduct may be removed by the Governor upon the recommendation of the remaining members of the board. Vacancies occurring in the board other than by expiration of term, shall be filled for the unexpired term only, by the Governor from the four remaining nominees of the current year. (Id. § 3637.)

215. Meetings of Board to Transact Business.—The State Board of Pharmacy shall hold one regular meeting each year at Nashville, and such additional meetings at such times and places as may be determined upon by said board, at each of which meetings it shall transact such business as is required by law. (Id. § 3638.)

216. Rules, By-Laws and Regulations—Reports—Accounts.—Said board shall make such rules, by-laws, and regulations as may be necessary for the proper discharge of its duties; and shall make a report of proceedings, including an itemized account of all moneys received and expended by said board, pursuant to this act, to the Secretary of State on or before the 15th day of November, 1919, and annually thereafter, and shall also make such report to the State Pharmaceutical Association, including a list of the names of all the pharmacists duly registered under this act. (Id. § 3639.)

217. Officers of the Board—Qualifications.—The Board of Pharmacists [Pharmacy] shall have a president, vice president, and secretary and treasurer, all of whom shall be elected annually from among their number, except the secretary and treasurer. The secretary and treasurer shall have been a resident pharmacist under this or some other law of the State for a period of at least ten years, and he at the time of his appointment shall be engaged in conducting a retail pharmacy. (Id. § 3639a1.)

218. Provisions as to Registration.—Said board shall keep a book of registration open at some place in Nashville in which the name and place of business of every person duly qualified under this act, to conduct all engaged in the business mentioned in section 3635, shall be registered. (Id. § 3640.)

219. Registration Fees to be Applied to Expenses.—The board shall demand and receive from each person registered as a pharmacist a fee of not exceeding two dollars and from each person registered as an assistant pharmacist or drug dealer a fee of not exceeding one dollar to be applied to the payment of expenses arising under the provisions of this act. (Id. § 3640a1.)

220. Pharmacists, Assistant Pharmacists and Drug Dealers to Renew Registration—Fees—Penalties for Failure—Renewals.—Every registered pharmacist, assistant pharmacist, and drug dealer who desires to continue the practice of his profession shall annually thereafter, on or before the 30th day of June during the time he shall continue in such practice, pay to the secretary and treasurer of the board a registration fee to be fixed by the board, but which shall in no case exceed, if a registered pharmacist, two dollars, if an assistant pharmacist or drug dealer, one dollar, for which he shall receive a renewal of said registration. If any person shall fail or neglect to procure this renewal registration or permit, as herein specified notice of such failure having been mailed to his post office address, after the expiration of his thirty days following the issuance of said notice, a penalty of twenty-five cents shall attach for such failure to renew, and an additional penalty of twenty-five cents for each thirty days thereafter; provided, such failure to renew does not exceed five years; in the event said renewal is not procured within five years from the date of the issuance of the last certificate of registration, the said board shall refuse to issue said renewal registration certificate, and in order to regain registration it shall be necessary for such person to make application and pass examination as provided in section 3652a8. (Id. § 3641.)

221. Certificate to be Conspicuously Displayed in the Store—Violation is a Misdemeanor—Fine.—All certificates as pharmacists, assistant pharmacists and drug dealers, shall be at all times conspicuously displayed in the drug or chemical store to which it applies, or in which the registrant is engaged. Any registrant violating the provisions of this section shall be guilty of a misdemeanor, and,

upon conviction thereof shall be fined in any sum not less than fifteen dollars or more than fifty dollars. (Id. § 3642.)

222. **Salary and Expenses of Secretary and Treasurer—Per Diem and Expenses of Members.**—The secretary and treasurer of said board shall receive a salary which shall be fixed by the board. He shall also receive his traveling and other expenses incurred in the performance of his official business. The other members of the board shall receive the sum of ten dollars for each day actually engaged in the service thereof and all legitimate and necessary expenses incurred in attending the meeting of said board. Said secretary and treasurer's salary, members' per diem, and other expenses shall be paid after an itemized statement of the same has been rendered and provided by the board, from fees and penalties received by said board under the provisions of this act. (Id. § 3643.)

223. **Excess Held for Expenses—Bond.**—All moneys received in excess of said per diem, said secretary and treasurer's salary and other expenses above provided for shall be held by the secretary and treasurer as a special fund for meeting the expenses of said board, he giving such bond as said board may from time to time direct. (Id. § 3644.)

224. **Board to Turn Over to State Pharmaceutical Association What Money for What Purpose—Registered Pharmacists to Become Members.**—The Board of Pharmacy shall each year turn over to the State Pharmaceutical Association for the advancement of the art and science of pharmacy out of the annual fees collected by it, such as it may deem advisable, but not to exceed one dollar for each registered pharmacist who shall have paid his renewal fee during such year. This payment to the State Pharmaceutical Association automatically making [makes] each registered pharmacist in the State a dues-paid members [member] of the State Pharmaceutical Association. (Id. § 3644a1.)

225. **Change of Location of Pharmacist, Assistant Pharmacist and Drug Dealer—Duty to Give Notice.**—It shall be the duty of every registered pharmacist, assistant pharmacist and drug dealer, upon changing his place of business from one town to another, or upon leaving the State, forthwith to notify by letter the secretary and treasurer of the board the change of location. (Id. § 3645.)

226. **Violation of Section 3635 is a Misdemeanor—Fine—Each Week is a Separate Offense—Fines to Meet Expenses—Right to Civil Action is Not Affected.**—Any person owning a pharmacy, retail drug or chemical store, who in violation of section 3635, leaves the same in charge, or causes or permits the same to be conducted by a person not a registered pharmacist, shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be fined in any sum not less than twenty dollars or [nor] more than one hundred dollars, and that each week he shall cause or permit such pharmacy, retail drug or chemical store to be so conducted shall constitute a separate and distinct offense, and shall render him subject to a separate prosecution therefor. All fines assessed for the violation of any of the provisions of this act shall be placed in the hands of the secretary and treasurer of the Board of Pharmacy to meet the necessary and legitimate expenses of said Board of Pharmacy, provided, that nothing in this section shall be construed to in any way affect the right of any person to bring civil action against any person referred to in this act, or for any act or acts for which civil action may now be brought. (Id. § 3651.)

227. **Conditions of Sales of Poisons.**—It shall not be lawful for any person to retail any poisons enumerated in schedules A and B appended to this act, as appears in sections 3652a4 and 3652a5, unless on inquiry, it is found that the purchaser is aware of its poisonous character, and that it is to be used for a legitimate purpose; nor to sell poisons to any person under the age of sixteen years, except upon the written order of some responsible adult person. (Id. § 3652a1.)

228. **Poisons to be Labeled—Record of Sales to be Kept—Exceptions.**—Nor shall it be lawful for any person to manufacture or compound for sale or delivery to a consumer, or to sell at retail, any of the poisons enumerated in said schedules A and B without first labeling the box, bottle or package containing such articles with the common name of the poison and with the name "poison" and antidote for said poison, and the name and place of the manufacturer, compounder and retailer. Nor shall it be lawful for any person to sell any of the poisons enumerated in schedule A [section 3652a4], without, before delivering the same to the purchaser, causing an entry to be made in a book kept for that purpose, which book shall be open to the proper authorities, stating date of sale, name and address of purchaser, name and quantity of poison sold, and the name of the dispenser; but they are hereby exempted from the registration of the sale of such articles, when sold at wholesale, or to a registered pharmacist, or to a registered assistant pharmacist; but the provisions of this section shall not apply to the dis-

pensing of poisons on the prescription of physicians, dentists, or veterinarians, put up by registered pharmacist [pharmacists], assistant pharmacists, or dispensed by a physician, dentist, or veterinarian in his regular practice. (Id. § 3652a2; amended L. 1927, c. 51.)

229. Violation is a Misdemeanor—Fine or Imprisonment or Both.—Any person violating the provisions of sections 3652a1-3652a5, both inclusive, shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be fined in any sum not less than twenty-five dollars or [nor] more than one hundred dollars, and, in the discretion of the court, may be imprisoned not less than one month, and not more than six months, in addition to said fine. (Code Supp. 1926, § 3652a3.)

230. Schedule "A." Contains What Medicines.—Arsenic, atrophine, corrosive sublimate, potassium cyanide, chloral hydrate, hydrocyanic acid, belladonna, strychnia and its salts, phosphorus, oil bitter almond, cotton root and its preparations, ergot and its preparations, oil tansy, oil savan [savin], cantharides and its tincture, aconite. (Id. § 3652a4.)

231. Schedule "B." Contains What Medicines.—Carbolic acid, tincture of iodine, oxalic acid, the mineral acids digitalis and its preparations, calchicum, nux vomica, croton oil, hellebore, henbane, strophanus, conicum and all other deadly poisons. (Id. § 3652a5.)

232. Board of Pharmacy May Grant Permits in Small Towns and Rural Districts—Cancellation of Permits.—The State Board of Pharmacy, may in their discretion issue a permit to persons, to be known as a drug dealer, engaged in the business of the retailing drugs, chemicals or medicinal preparations upon the prescriptions of physicians in small towns or rural districts in this State having a population of five hundred inhabitants or under computed by the last Federal census, in which the conditions, in the judgment of said board do not justify the employment of a registered pharmacist, and said permit shall authorize the person named therein to carry on such business in said small towns or rural districts, named in said permit, but not elsewhere under such regulations and restrictions as said board may adopt. Said permits may be canceled at any time in the discretion of the board. (Id. § 3652a6.)

233. Compounding, Manufacture, Sale and Distribution of Potent and Poisonous Drugs at Retail by Whom—Dentists, Physicians and Veterinarians.—The compounding, manufacture, sale and distribution of drugs and medicines at retail when of potent or poisonous character shall be limited exclusively to persons who are registered for that purpose under the provisions of this act; provided, that all persons heretofore and now registered in this State as pharmacists, assistant pharmacists, and drug dealers, shall have all the rights which are granted to pharmacists, assistant pharmacists, and drug dealers under this act when complying with the requirements as hereinafter set out; and, provided further, that nothing contained in this act shall be construed to prevent the personal administration of drugs and medicines carried or kept for emergencies, by licensed dentists, physicians, and veterinarians, in order to supply the immediate needs of their patients while in their presence. For the purpose of this act there shall be and are hereby made provisions for the registration of pharmacists, assistant pharmacists, and drug dealers, each having the rights as hereinafter provided and being subject to the limitations and restrictions as respectively made.

(a) A pharmacist shall have the right to conduct a pharmacy, retail drug or chemical store for the compounding of medicines upon physicians' prescriptions, and for the manufacture, sale and distribution of drugs, medicines and poisons.

(b) Drug dealers shall have the right to conduct a pharmacy under the provisions and restrictions as specified in section 3652a6, the permit issued to each drug dealer shall authorize the person named therein to distribute and sell potent drugs, medicines and poisons, as compounded and prepared under the name of a registered pharmacist, known wholesale dealer or manufacturer of drugs and chemicals.

(c) Drug dealers shall have the right to conduct a pharmacy under the provisions and restrictions as specified in section 3652a6. The permit issued to such drug dealers shall authorize the person named therein to distribute and sell potent drugs, medicines and poisons, as compounded and prepared under the name of a registered pharmacist, known wholesale dealer or manufacturer of drugs and chemicals. (Id. § 3652a7.)

234. Applicants for Registration as Pharmacists, Assistant Pharmacists and Drug Dealers Must Meet What Preliminary Requirements.—Applicants for registration as pharmacists, assistant pharmacists, or drug dealers, shall before being admitted to examination meet the following preliminary requirements proof of which

must first be filed with the secretary and treasurer of the board under rules and regulations adopted by it:

(a) Applicants for registration as pharmacists shall not be less than twenty-one years of age, they shall have had at least four years' practical experience in a drug store or pharmacy where physicians' prescriptions are compounded; they shall have to give proof of a preliminary general education equal to fourteen units as given in a high school of the State.

(b) Applicants for registration as assistant pharmacist shall not be less than eighteen years of age, and shall have had at least two years of practical experience in a drug store or pharmacy where physicians' prescriptions are compounded, provided, that a credit of one years [year] in meeting such requirements may be given for attendance of not less than one full school year at a recognized school or college of pharmacy; they shall have to give proof of a preliminary general education equal to fourteen units as given in a high school of the State.

(c) Applicants for registration as drug dealers shall be not less than twenty-one years of age, and shall give proof of having attained at least a common school education. (Id. § 3652a8.)

235. Unlawful to Impersonate any Applicant for Registration—Violation is a Misdemeanor—Fine or Imprisonment or Both.—It shall be unlawful for any person to impersonate any applicant before the State Board of Pharmacy applying for registration under the provisions of this act. Any person violating the provisions of this section shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be fined in any sum not less than fifty dollars, or not more than one hundred dollars, or be imprisoned for not more than six months, or both, in the discretion of the court. (Id. § 3652a9.)

236. Examination of Applicants for Registration as Pharmacists, Assistant Pharmacists and Drug Dealers—Assistant Pharmacists and Physicians May be Registered as Regular Pharmacists, When.—Applicants for registration as pharmacist, and assistant pharmacist, shall, to prove their respective requisite knowledge, be examined to a proper varying degree in the subject of chemistry, botany, materia medica, toxicology, and the theory and practice of pharmacy. Applicants for registration as drug dealers shall be examined to a proper degree in such subjects as the Board of Pharmacy shall prescribe. Provided, however, that nothing in this act shall prohibit or restrain all registered assistant pharmacists on the date of the passage of this act from being registered as a full registered pharmacist at the expiration of five years' experience from the date of his or her registration as such assistant pharmacist without examination; provided, that the provision of this act shall not apply to clerks who have had three years' experience and are now employed as drug clerks. Provided, further, that any regular graduate licensed practicing physician who has practiced his or her profession for five or more consecutive years in the State of Tennessee as a regular registered assistant pharmacist be registered as a regular pharmacist without examination. (Id. § 3652a10.)

237. Pharmacists Registered in Some Other State May Become Registered Here, When—Reciprocal Registration.—The State Board of Pharmacy may in its discretion grant certificates of registration as pharmacists to persons who furnish proof that they have been registered as such by examination in some other State, and that they are of good moral character, provided, that such other State in its examination requires the same general degree of fitness as is required by examination in this State, and that the applicants qualify in all other respects as is required for examination in this State for registration, excepting that such persons who have become registered by examination in other States, prior to the time that this act takes effect, and who continuously thereafter have been engaged in pharmacy, shall be required to meet only the requirements which existed in this State at the time when they became registered in such other State, and, provided further, that such other State or States in like manner grant reciprocal registration to pharmacists of this State. (Id. § 3652a11.)

238. Board to be Advised as to Progress of Pharmacy Throughout the Country—Expense.—The State Board of Pharmacy, in order to be informed and to determine the status of Boards of Pharmacy of other States desiring reciprocal registration, and in order also to be advised regarding the progress of pharmacy throughout the country, may annually select one or more of its members to meet with like representatives of other Boards of Pharmacy at the expense of the board, to be allowed out of the funds held by the secretary and treasurer to meet the necessary expenses of the board. (Id. § 3652a12.)

239. Examination Fees to be Paid by Applicants for Registration as Pharmacists, Assistant Pharmacists, Drug Dealers—and Reciprocal Registration—

Certificates of Registration.—Applicants for registration as pharmacists shall pay an examination fee of ten dollars; applicants for registration as assistants and as drug dealers shall pay an examination fee of five dollars. Applicants for reciprocal registration as pharmacists shall pay a fee of fifteen dollars, and a fee of one dollar for the expense for the certification of grades. All fees shall be paid to the secretary and treasurer of the State Board of Pharmacy, upon successfully passing said examination; certificates of registration shall be issued as provided in section 3652a6. (Id. § 3652a13.)

240. Registration May be Suspended or Revoked for What Causes, and Upon Notice—What Procedure—Appeal Suspends Decision of Board—Registrant Reinstated, When.—The registration of any pharmacist, assistant pharmacist or drug dealer, may be suspended or revoked by the Board of Pharmacy, when the registration is proved to the board to have been obtained by fraudulent means, or when the registrant has been convicted of a felony, or is found by the board to be guilty of gross misconduct, or to be addicted to the liquor or drug habit to such a degree as to render him unfit to compound, sell or distribute drugs and medicines. Suspension or revocation of certificate shall be only after due notice and hearing, and for the purpose of such hearing the board or any member hereof is authorized to summon and examine witnesses under oaths and to take oaths or affirmations, and to reduce the testimony given in any such case to writing, within thirty days after revocation or suspension of a certificate of registration; the registrant may take an appeal to any court of record in the State of competent jurisdiction, and pending such appeal the decision of the board shall be suspended until the court renders judgment which shall be final in the case. And if the decision of the board is not sustained, the registrant shall be reinstated. (Id. § 3652a14.)

241. United States Pharmacopœia and National Formulary to be Kept—Violation is a Misdemeanor—Fine—Each Week is Separate Offense.—There shall be kept in every pharmacy, retail drug store or chemical store a copy of the latest revision of the United States Pharmacopœia and the latest revision of the National Formulary, which book must be open to the inspection of the Board of Pharmacy, and their properly authorized agents. Any person violating this section shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be fined in any sum not less than fifteen dollars, nor more than twenty dollars, and each week such pharmacy, retail drug or chemical store is conducted without complying with the provisions of this section shall constitute a separate and distinct offense, and render such person subject to a separate prosecution therefor. (Id .§ 3652a15.)

242. Report—Fee—Certificate of Registration to be Conspicuously Displayed With All Licenses—Violation is a Misdemeanor—Fine—Each Week is a Separate Offense.—Every person, partnership, firm or corporation doing business as the proprietor or proprietors of a pharmacy, retail drug or chemical store shall, on or before the 30th day of June, 1919, report under oath to the board any facts required by the board, shall pay a registration fee of one dollar and shall receive a certificate of registration that must be conspicuously displayed at all times in the pharmacy, retail drug or chemical store, with all licenses. The proprietor that opens a pharmacy, retail drug or chemical store subsequent to the 30th day of June, 1919, shall within thirty days of such opening, make this report, pay the fee and display the certificate. Any person violating the provisions of this section shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be fined in any sum not less than fifteen dollars, or more than fifty dollars, and that each week he shall permit such pharmacy retail drug or chemical store to be conducted without complying with the provisions of this section shall constitute a separate and distinct offense, and render him subject to a separate prosecution therefor, (Id. § 3652a16.)

243. Unlawful to do What—Violation is a Misdemeanor—Fine.—It shall be unlawful for—

(1) Any person to procure or attempt to procure a license or certificate of registration for himself, or for any other person, by making or causing to be made any false representations.

(2) Any unlicensed person to prepare or dispense a medical preparation or physicians' prescription, or to dispense or sell poison medicines except under the immediate personal supervision of a pharmacist or assistant pharmacist. But this provision shall not be construed as prohibiting the sale of carbolic acid and tincture of iodine, as provided in section 1 of this act, when sold in amber-colored bottle, with red rubber cork and labeled with skull and cross-bone poison label with antidote printed in red ink and with name and address of the registered Tennessee pharmacist responsible for the purity of the contents of said package.

(3) Any pharmacist to permit the compounding or dispensing of prescriptions of medical practitioners, the selling and dispensing of poisons and medicines in his pharmacy, retail drug or chemical store by an unlicensed person or persons, except in the presence of and under the immediate personal supervision of a pharmacist or assistant pharmacist.

(4) Any person to fraudulently represent himself to be licensed.

(5) Any person to intentionally prevent or knowingly refuse to enter a pharmacy, retail drug or chemical store for the purpose of lawful inspection.

(6) Any person or persons who open and conduct a pharmacy, retail drug or chemical store to permit or allow the registration certificate of any pharmacist, assistant pharmacist or drug dealer to be displayed in such store unless such pharmacist, assistant pharmacist or drug dealer is actively employed in such store.

(7) Any pharmacist, assistant pharmacist or drug dealer to permit or allow his registration certificate to be displayed in any pharmacy, retail drug or chemical store in which such pharmacist, assistant pharmacist, or drug dealer is not actively employed.

(8) The proprietor or proprietors of any general store, or any store selling and dealing in patent and proprietary medicines, and such medicines enumerated in section 3635, not requiring the supervision of a registered pharmacist, to designate, to advertise, or represent such store to the public as a pharmacy, retail drug or chemical store.

(9) Any person whose license or certificate has been revoked to refuse to deliver the license or certificate to the Board of Pharmacy or to a qualified representative or employee of such board.

Any person violating any of the provisions of this section shall be deemed guilty of a misdemeanor, and upon conviction, thereof, shall be fined in any sum not less than twenty dollars, or [nor] more than one hundred dollars. (Id. § 3652a17; amended L. 1927, c. 51.)

244. Enforcement of This Law by the Board, through its Officials and Employees.—It shall be the duty of the State Board of Pharmacy, through officials and employees appointed by it, or under its supervision for that purpose, to enforce all laws of the State now or hereafter enacted, which pertain to the practice of pharmacy, manufactured product, sales or distribution of drugs, chemicals and poisons. (Code Supp. 1926, § 3652a18.)

245. Poisonous Substance to be Labeled "Poison."—Any person who sells and delivers any poisonous liquid or substance without having the word "poison" written or printed on the label attached to the vial, box, or parcel in which the same is sold, shall, on conviction, be fined not less than twenty nor more than one hundred dollars. (Code 1918, § 6745.)

246. Seller to Record Name, Etc., of Purchaser.—Any person who sells or delivers any poisonous liquid or substance, in addition to having the word "poison" printed or written on the label thereof, as required by law, shall note in a book kept by such person for that purpose, the name of the person to whom such poison was delivered, the date of delivery and the kind and amount of such poison so delivered, and shall keep such book open for public inspection. (Id. § 6746.)

247. Penalty.—Any person violating the provisions of the last section, shall, on conviction, be fined not less than twenty nor more than one hundred dollars. This and the last section shall not apply to the prescriptions of regular practicing physicians. (Id. § 6747.)

248. Common Name of Medicine to be Labeled on Package.—Any person, except a practicing physician in prescribing for a patient, who sells and delivers any tartar emetic, laudanum, morphine, or other drug or medicine, without having the common name thereof written or printed on a label attached to the vial, box, or parcel containing the same, shall, on conviction, be punished as provided in section 6745. (Id. § 6748.)

249. Poisonous Substance Not to be Sold to Child Without Order.—Any person who sells to any child under ten years of age, any poisonous liquid or drug, without an order, in writing, from the parent, guardian, or other person having the legal care of such child, designating such drug either by its name or its effects, shall, on conviction, be punished as provided in section 6745, and may also be imprisoned in the county jail not more than three months. (Id. § 6749.)

250. Unlawful to Substitute any Drug in Filling Prescription of Physician.—It shall be unlawful for any corporation, firm, or person, or any combination or association of corporations, firms, or persons engaged in the business of buying, compounding, and selling drugs and medicines, to substitute any drug or medicine

in lieu or stead of that given to the patient by the physician on the face of his prescription. (Id. § 6749a1.)

251. Same as to Agents or Employees.—It shall be unlawful for any agent or employee of such person, firm, or corporation, association, or combination of persons, firms, or corporations, engaged in the business of buying and selling drugs in this State, to substitute any medicine for the specific medicine mentioned in the physician's prescription. (Id. § 6749a2.)

252. Violation is a Misdemeanor—Fine.—Any person, firm or corporation, violating the provisions of the preceding two sections, or aiding or abetting the violations of the same, shall be guilty of a misdemeanor, and upon conviction, shall be fined not less than $25, nor more than $100 for each and every offense. (Id. § 6749a3.)

253. Unlawful to Sell, Barter, or Give Away—Exception of Druggists, When.—It shall be unlawful for any one to sell, barter, or give away cocaine, or any compound thereof, in this State; provided, however, that this shall not apply to the sale of cocaine or compound thereof by a druggist upon prescription of physician; provided, that no prescription calling for cocaine or compound thereof shall be filled more than one time; provided, that the provisions of this article, shall not apply to wholesale druggists in supplying the trade, or retail druggists supplying dentists or physicians. (Id. § 6888a34.)*

254. Violation—Punishment by Fine and Imprisonment.—The violation of this article shall, upon conviction, be punished by fine of not less than $100, and not more than $500, or punishment by imprisonment in the county jail or workhouse for a period of time not less than thirty days, nor more than six months, or both, in the discretion of the court. (Id. § 6888a35.)*

255. Inquisitorial Powers.—The grand jury shall have inquisitorial power to investigate violations of this article. (Id. § 6888a36.)*

256. Unlawful to Sell or Barter any Opium or Cocoa Leaves—Exceptions.—On and after the taking effect of this act, it shall be unlawful for any person in the State of Tennessee to sell or barter any opium or coca leaves, or any compound, manufacture, salt, derivative or preparations thereof; provided, that this act shall not apply:

(a) Not applicable to physicians, dentists, or veterinary surgeons.—To the dispensing, prescribing or distributing of any of the aforesaid drugs to any patient by a physician, dentist, or veterinary surgeon registered in the State of Tennessee under the provisions of the several acts regulating the practice of their profession.

(b) Not applicable to pharmacists, when.—To the sale, dispensing or distributing of the aforesaid drugs by a pharmacist registered under the laws of the State of Tennessee governing the practice of the profession of pharmacy to a consumer under and in pursuance of a written prescription issued to such a consumer by a physician, dentist or veterinary surgeon registered in the State of Tennessee under the provisions of the several acts regulating the practice of their profession.

(c) Not applicable to wholesale druggists, to retailers, physicians, etc.—To the sale or distribution of any of the aforesaid drugs by any wholesale druggist, dealer, manufacturer, producer, or compounder with[in] the State, or to each other, or to a retailer, or to a physician, dentist, or veterinary surgeon registered in the State of Tennessee, under the provisions of the several acts regulating the practice of their profession. (Code Supp. 1926, § 3473a76b1.)

257. Unlawful to Possess Opium or Cocoa Leaves, Etc., Except.—It shall be unlawful for any person in the State of Tennessee to have in his possession or under his control any opium or coca leaves, or any compound, manufacture, salt, derivative or preparation thereof; provided, that nothing in this section shall apply:

(a) To any physician, dentist, or veterinary surgeon registered in the State of Tennessee under the provisions of the several acts regulating the practice of their profession.

(b) To any retail dealer or pharmacist registered under the laws of the State of Tennessee governing the profession of the practice of pharmacy.

(c) To any wholesale dealer, wholesale druggist, manufacturer, producer or compounder engaged in business as such under and by virtue, of the laws of the State of Tennessee.

(d) Inapplicable to possessor under prescription, when.—To any person having in his possession or under his control any of the aforesaid drugs which has or have been prescribed or dispensed by a physician, dentist, or veterinary surgeon registered in the State of Tennessee, under the provisions of the several acts regulating the practice of their profession.

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*But see the later law in No. 256 et seq.

(e) Inapplicable to possessor in his lawful employment or occupation.—To any person having in his possession any of the aforesaid drugs by virtue of his lawful employment or occupation and not on his own account.

(f) Inapplicable to possessor in official duties, when.—To any United States, State, county, municipal, district, territory, or insular officer who has possession of any of the aforesaid drugs by reason of his official duties.

(g) To any warehouseman holding possession of any of the aforesaid drugs for a person exempted under the provisions of this act.

(h) To any common carrier engaged in transporting any of the aforesaid drugs. (Id. § 3473a76b2.)

258. Preparations and Remedies Exempted from Provisions of This Act.—The provisions of this act shall not be construed to apply to the sale, distribution, giving away or dispensing of preparations and remedies by any person exempted under this act, which do not contain more than two grains of opium, or more than one-fourth of a grain of morphine, or more than one-eighth of a grain of heroin, or more than one grain of codein or any salt or derivative of any of them in one fluid ounce, or if a solid or semi-solid preparation in one avoirdupois ounce; or to liniments, ointments, or other preparations which are prepared for external use only, except liniments, ointments, and other preparations which contain cocaine or any of its salts or alpha or beta eucaine, or any of their salts or any synthetic substitute for them.

And providing further, that the provisions of this act shall not apply to the sale, distribution, or furnishing of paregoric, Godfrey's cordial, Bateman drops, Castoria and such other medicines, compounds, and proprietary medicines, the sale and distribution of which have not heretofore been prohibited by law. (Id. § 3473a76b3.)

259. Exemptions Need Not be Negatived—Burden on Defendant to Show Exemption.—It shall not be necessary to negative any of the aforesaid exemptions in any complaint, information, indictment, or other writ of [or] proceedings laid or brought under this act; and that the burden or [of] proof of any such exemption shall be upon the defendant. (Id. § 3473a76b4.)

260. Violation is a Felony—Punishment—Special Charge—Inquisitorial Power—Prosecutor Not Required.—Any person violating the provisions of section 3473a76b1 shall be guilty of a felony; and, on conviction thereof, shall be punished by a fine of not less than one hundred dollars nor more than five thousand dollars, and imprisonment in the penitentiary for not less than three years nor more than fifteen years; and any person violating the provisions of section 3473a76b2 shall be guilty of a felony; and, on conviction thereof, shall be punished by a fine of not less than one hundred dollars nor more than two thousand dollars, and imprisoned in the penitentiary for not less than one year and not more than five years. It shall be the duty of the Circuit and Criminal Court judges in the State to give the provisions of this act in special charge to the grand jury and the grand jury shall have and exercise inquisitorial power over any violation of this act, and no prosecutor shall be required for an indictment against a person for violating the provisions of this act. (Id. § 3473a76b5.)

260a. Registrar Not to be Affiliated With What Schools.—The Registrar of Professions and Trades in the Department of Education shall not be affiliated with any college or school of medicine, pharmacy, dentistry, nursing, optometry, osteopathy, or embalming, either as a teacher, officer, or stockholder. (Id. § 373a92.)

261. Records of What Examining Boards to be Kept.—The division of professional registration in the Department of Education shall bring together and keep all records relating to the following professional examining boards: . . .

(10) Board of Pharmacy. . . . (Id. § 373a93.)

261a. Functions of Boards; Officers.—These boards shall continue to exercise their functions as heretofore, but they shall not maintain offices independently of the Division of Professional Registration. (Id. § 373a94.)

262. Itinerant Physicians and Vendors Shall not Sell and Apply, Nor Profess to Cure—Violation is a Misdemeanor—Fine.—It shall be unlawful for any itinerant physician or vendor of any drug, nostrum, ointment, or application of any kind, intended for the treatment of disease or injury, to sell or [and] apply the same or for such itinerant physician or vendor by writing, printing, or other methods, to profess to cure or treat diseases or deformity by any drug, nostrum, manipulation, or other expedient in this State, and whoever shall violate the provisions of this section shall be guilty of a misdemeanor, and upon conviction thereof before a court of competent jurisdiction, shall be fined in any sum not less than $100 and not exceeding $400. (Code 1917, § 3609a31.)

262a. Institutions May be Maintained for Compensation.—An individual, association, or corporation may establish and maintain a private institution for the custody, care and treatment of the insane, inebriates, dipsomaniacs, and drug habitues for compensation according to the provisions of this chapter. (Id. § 2677a1.)

262b. Character of Buildings.—Suitable hygienic buildings shall be provided, whose arrangement and structure shall be such as to furnish proper restraint and protection for the inmates thereof. (Id. § 2677a2.)

262c. Institution to be Under Control of Reputable Physician.—Such institutions shall be under the direct control and management of a physician in charge, who shall maintain his residence therein, and who shall be a reputable and licensed physician, a graduate of a recognized medical school, and who shall have had at least five years' experience in treating insanity or drug and alcoholic addictions. (Id. § 2677a3.)

262d. License Required; Oath as to Qualifications of Physician; Oath as to Cure of Drug or Alcoholic Habitues.—No person, firm, or corporation shall operate any such institution nor receive and treat patients therein without a license from the clerk of the County Court wherein such institution is located. Nor shall such County Court clerk grant and issue such license until the applicant deliver to the said clerk a sworn statement of the proposed physician in charge, showing that such physician in charge is qualified as provided in the last section; and showing, further, if the institution be for treating persons addicted to drug or alcoholic habits, that of the patients so affected and treated at such institution from and after the passage of this act (May 1, 1909), not less than ninety per cent of same have been cured of the particular addiction of which they were affected when discharged as cured by said institution. (Id. § 2677a4.)

262e. Commitment and Detention of Insane Persons.—Upon commitment according to the provisions of this chapter, such institution shall be empowered to receive, restrain, and detain insane persons in the manner provided by the general laws of the State of Tennessee relating to the care and custody of insane persons in the State and county hospitals and asylums of the State. (Id. § 2677a5.)

262f. Manner of Commitment.—An insane person may be committed to such private institution in the same manner as is provided by the general laws relating to the commitment of insane persons to the State or county asylums or hospitals for the insane. (Id. § 2677a6.)

262g. Another Mode of Commitment.—Insane persons may be committed to such institution in the following manner: Upon a petition to the Chancery or County Court made by the husband, wife, child, parent, brother or sister, or guardian, or in the absence of all such, the next of kin of the alleged insane person, or by the person at whose house the alleged insane person resides, a certificate of lunacy made by two reputable physicians who shall have had at least two years' experience in the practice of medicine, and upon the order of a judge of said court. (Id. § 2677a7.)

262h. Requisites of Petition for Commitment.—Such petition shall contain a sworn statement setting forth the degree of relationship of the alleged insane person, the color, sex, age, civil condition, occupation, place of residence, and the duration of the insanity of the alleged insane person, the facts indicating the insanity of that person, and the name of the institution to which it is desired to have such person committed. (Id. § 2677a8.)

262i. Requisites of Certificate of Lunacy.—The certificate of lunacy shall contain the sworn statements of two reputable licensed physicians of at least two years' experience in the practice of medicine, stating their belief that the alleged insane person is insane and is a proper subject for confinement in an institution for the insane, and setting forth the facts as to what the patient said or did in their presence, and facts communicated to them by others, upon which is founded their belief that the alleged insane person is insane. (Id. § 2677a9.)

262j. Physicians' Joint Examination; Date of Certificates of Lunacy.—Such physicians shall jointly make a final examination of the alleged insane person within ten days next before the granting of the order of commitment. The date of the certificates of lunacy shall be the date of such joint examination. (Id. § 2677a10.)

262k. Physician Shall Not be Related to the Parties, Nor Interested in the Institution.—Neither of such physicians shall be a relative of the person applying for the order or of the alleged insane person, or be an officer of or be in any way pecuniarily interested in the institution to which it is sought to have the alleged insane person committed. (Id. § 2677a11.)

262l. Notice of Application for Commitment.—Personal notice of the application for his commitment shall be served upon the alleged insane person at least one day before the granting of the order; but the judge to whom application is made may, in his discretion, dispense with such personal services upon the affidavit of the examining physicians that such service would be detrimental to the patient as unduly

exciting him, or impeding his recovery, or as tending to increase the intensity of his mental disorder. (Id. § 2677a12.)

262m. Question of Insanity to be Determined Upon What; Commitment; Admission in Five Days.—The petition and certificate of lunacy, together with such other proof as the court may deem necessary, being presented to the court, he may forthwith proceed to determine the question of insanity; and if satisfied that the alleged insane person is insane, may at once issue an order committing the said insane person to the custody of the institution named in the petition.

A period not longer than five days shall elapse between the date of the issue of this order and the admission of the patient upon such order. (Id. § 2677a13.)

262n. Immediate Commitment Upon Petition and Certificates of Lunacy for Five Days.—When the condition of an alleged insane person is such as to render it necessary that he be immediately confined in an institution for the insane, either for his own safety and welfare or for the protection of others, such private institution may receive such person upon the petition and certificates of lunacy for a period of time not exceeding five days, and before the expiration of such period of five days an order shall be secured for his commitment in compliance with the requirements of this chapter. In such a case, the medical examiners shall certify that in their opinion such person should be immediately confined in an institution for the insane, because of the fact that such person is incapable of properly caring for himself, or would be dangerous to himself or others, or his mental disorder increased if longer allowed to be at liberty, and the facts whereupon such opinion is based. (Id. § 2677a14.)

262o. Transfers From State or County Asylum to Private Institution, or Vice Versa.—An insane person may be transferred from the custody of a State or county asylum or hospital to the custody of such private institution, or vice versa, upon a certified copy of the original order of commitment. Such certification shall be made by the superintendent or physician in charge of the institution from whence the patient is transferred. (Id. § 2677a15.)

262p. Patients May be Discharged, When.—The physician in charge may at any time discharge any patient committed to such institution as insane when, in his opinion, such patient has recovered, or whose condition is such that said patient would not be dangerous to himself or others if at liberty, or to the custody of such person as by the provisions of this chapter is authorized to make the petition. (Id. § 2677a16.)

262q. Parole for Thirty Days, and Recommitment; Discharged if Not Recommitted.—The physician in charge may parole a committed insane person to the custody of a responsible relative or friend for a period not exceeding thirty days. If such patient be returned to the institution before the expiration of this thirty days, he or she may be readmitted upon the original order of commitment if, in the opinion of the physician in charge, his or her mental condition is such as to warrant their further detention. Before the expiration of this period of thirty days, he or she may in like manner be admitted to any State or county hospital or asylum or other licensed private institution for the insane upon a certified copy of the original order of commitment. If not returned to the custody of the institution or admitted to some other upon this original order, he or she shall be discharged at the expiration of his or her period of parole. (Id. § 2677a17.)

262r. Commitment of Inebriates, Dipsomaniacs, and Drug Habitues.—Inebriates, dipsomaniacs, or drug habitues may be committed to such private institution in accordance with the proceedings under the general laws of the State relating to the commitment of persons of unsound mind to institutions for their detention for treatment. (Id. § 2677a18.)

262s. Another Mode of Commitment of Inebriates, Dipsomaniacs, and Drug Habitues.—They may also be committed, in the following manner: When at [it] appears to the husband or wife, son or daughter, father or mother, brother or sister, or next of kin, or the person with whom the alleged inebriate, dipsomaniac, or drug habitue may reside that he or she has become so addicted to the use of alcohol or harmful drugs as to be unable to exercise self-control with regard to their use, they may make a petition to a judge or justice of a Chancery or County Court for the district where the person sought to be committed resides for the purpose of committing the said alleged inebriate, dipsomaniac, or drug habitue to a private institution licensed in accordance with this chapter. (Id. § 2677a19.)

262t. Trial and Commitment; Control of Institution.—The justice or judge to whom such petition is made may summon the alleged inebriate, dipsomaniac, or drug habitue before him with such witnesses as he may deem necessary, together with such witnesses as the alleged inebriate, dipsomaniac, or drug habitue may desire, and if, after careful examination, he is satisfied that the alleged inebriate, dipsomaniac, or drug habitue, is an inebriate, dipsomaniac, or drug

habitue, and unable to control himself in the use of alcohol or harmful drugs, he may commit the said person to the care, custody, and control of such private institution for treatment for such period of time as to him seems necessary, not exceeding two years. The institution to which such a person is so committed shall have full authority to exercise over that person such restraint and control as is necessary for his detention, treatment, and the keeping from him alcohol or such drugs to the use of which he may be addicted. (Id. § 2677a20.)

262u. Reception and Detention of Inebriate, Dipsomaniac, and Drug Habitue Before Commitment, When.—In order that the necessary time may be had to secure a judicial order for his commitment, in case of emergency, such institution may receive or detain an inebriate, dipsomaniac, or drug habitue and exercise over him or her full custody and restraint for a period not exceeding three days when, in the opinion of the physician in charge, the condition of that person is such that his or her safety and welfare or the safety of others demand that he or she be so confined or restrained. In such a case the physician in charge, nor the institution, shall not be guilty or in any way pecuniarily liable for such detention and restraint. (Id. § 2677a21.)

262v. Estate Liable for Maintenance and Treatment.—In the case of an inebriate, dipsomaniac, or drug habitue, committed to an institution for a specified time, [by] judicial authority or by voluntary commitment, his estate shall be held liable for the necessary charges for his maintenance and treatment. (Id. § 2677a22.)

262w. Discharge of Patients, When.—Such a person shall be discharged from custody and restraint at the expiration of the period for which he was committed, or when, in the opinion of the physician in charge, such patient has recovered. (Id. § 2677a23.)

262x. Reception of Voluntary Patients.—Nothing in the foregoing sections shall be construed as prohibiting such institution from receiving as voluntary patients those mental [mentally] affected or otherwise when the mental condition of such person is such that he is able to intelligently decide the matter for himself. (Id. § 2677a24.)

262y. Jury Trials, and Appeals From Order of Commitment.—Demands for a personal hearing in court or trial by jury or appeals from any order of commitment shall be in the manner provided by the general law relating to the commitment of insane persons to State and county hospitals or asylums. (Id. § 2677a25.)

262z. Violation of this Chapter is a Misdemeanor.—Any violation of the provisions of this chapter is declared a misdemeanor. (Id. § 2677a26.)

Serum, Etc.

263. Unlawful to Distribute, Sell, or Use Virulent Blood from Cholera Infected Hogs, Without Written Permission from State Veterinarian.—It shall be unlawful for any person, firm, or corporation to distribute, sell, or use, in the State of Tennessee, virulent blood from hog cholera infected hogs, for virus, unless and until, they have obtained written permission from the State Veterinarian for such distribution, sale, or use. (Code 1917, § 2839a3.)

264. Violation of Preceding Section is a Misdemeanor, With Prescribed Punishment, and Creates Civil Liability for Damages.—Any person, firm, or corporation guilty of violating the provision of this article, or failing or refusing to comply with the requirements hereof, shall be fined not less than fifty nor more than one hundred dollars for each offense, and may be imprisoned, in the discretion of the court, not less than ten nor more than thirty days, and shall be liable to any person injured on account of such violation to the full amount of the damages and all costs. (Id. § 2839a4.)*

265. Unlawful to Distribute, Sell or Use Serum, Etc., Prepared at Certain Places.—It shall be unlawful for any person, firm or corporation to distribute, sell, or use in the State of Tennessee, any serum, virus, or other biological products intended to be used for the treatment or prevention of infectious or communicable diseases among swine unless such serum, virus, or other biological products are prepared or manufactured in establishments located at least eight hundred feet from any public stockyards, garbage disposal, or rendering plant to which garbage or dead animals are hauled over the public streets or highways. (Code 1918. § 6800a13.)

266. Violation is a Misdemeanor—Fine and Imprisonment—Damages.—

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*The State's antihog-cholera plant authorized to be established by Acts 1913, 1st ex. ses., ch. 19, sec. 1, pp. 443, 446, was authorized to be disposed of by Acts 1917, ch. 52. (Code Supp. 1926.)

Any person, firm, or corporation guilty of violating the provisions of the preceding section, or failing or refusing to comply with the requirements thereof, shall be fined not less than fifty, nor more than one hundred dollars for each offense, and may be imprisoned in the discretion of the court, not less than ten nor more than thirty days, and shall be liable to any person injured on account of such violation to the full amount of damages, and all costs. (Id. § 6800a14.)

Intoxicating Liquors.

267. Unlawful to Receive Intoxicating Liquors.—It shall be unlawful for any person, firm or corporation to receive, directly or indirectly, intoxicating liquors including wine, ale, and beer, in this State, whether intended for personal use, or otherwise, and whether interstate or intrastate shipments or transportation. (Code 1918, § 6798a8; Code Supp. 1926, § 6798a8.)

268. Unlawful to Possess Intoxicating Liquors.—It shall be unlawful for any person, firm or corporation to possess intoxicating liquors, including wine, ale, and beer, hereafter received, directly or indirectly, in this State, whether intended for personal use or otherwise, and whether interstate or intrastate shipments or transportation. (Id. § 6798a9.)

269. Transportation Into, or From Place to Place, in This State, is Unlawful.—It shall be unlawful for any express company, railroad company, or any common carrier or person to ship or transport into this State, or from one place to another within this State, intoxicating liquors, including wine, ale, and beer, for any person, firm or corporation, whether in original packages or otherwise and whether intended for personal use or otherwise. Provided that if the intoxicating liquor so shipped or transported be in the quantity of one gallon or more, such shipment or transportation shall be a felony, punishable by confinement in the penitentiary for a term of not less than one year and one day nor more than five years. (Id. § 6798a10.)

270. Such Personal Transportation is Unlawful.—It shall be unlawful for any person to personally transport into this State, or from one point to another within this State, even when intended for personal use, intoxicating liquors, including wine, ale, and beer, in any quantity whatever. Provided that if the intoxicating liquor so transported shall be in the quantity of one gallon or more, the offense shall be a felony punishable by imprisonment in the penitentiary for a term of not less than one year and one day and not more than five years. (Id. § 6798a11.)

271. What Acts Shall Not be Unlawful.—Nothing in this article, shall make it unlawful:

(1) Shipments to priests or ministers for sacramental purposes.—For any priest or minister of any religious denomination or sect to receive and possess wines for sacramental purposes, or for any common, or other carrier, to ship or transport wine for said purposes to any priest or minister of any religious denomination or sect.

(2) Reception and possession by druggists, hospitals, and manufacturers, for certain specified purposes.—For druggists to receive and possess alcohol and other intoxicating liquors and such preparations as may be sold by druggists for the special purposes and in the manner as now or hereafter provided by law, for manufacturers of medicines that conform to the provisions of the pure food and drugs act of June 30, 1906, or for bona fide hosptials, or for manufacturers of flavoring extracts, or for manufacturers of perfumery and toilet articles to receive and possess alcohol for use of bona fide patients of such hospitals, or in the manufacturing of such medicines, or flavoring extracts, or perfumery and toilet articles, or for any common or other carrier to ship or transport such liquor or alcohol for said purposes to such druggists or hospitals, or manufacturers of medicines, or of flavoring extracts, or of perfumery or of toilet articles in this State.

(5) Manufacturers of thermostatic devices or temperature regulators.—For any person, firm or corporation engaged in the manufacture of thermostatic devices or temperature regulators to import alcohol into this State for use in the manufacture and charging of said devices and regulators.

(6) Scientific and therapeutical purposes for educational institutions.—For bona fide educational institutions to receive and possess alcohol for scientific and therapeutical purposes, or for any common, or other carrier, to ship or transport such alcohol for said purposes to such bona fide educational institutions. (Code 1918, § 6798a12.)

272. Violation is a Misdemeanor—Fine and Imprisonment.—Any person, firm or corporation violating any of the provisions of this article, shall, upon con-

viction, be fined not less than fifty dollars nor more than five hundred dollars, and in the discretion of the court may be imprisoned in the county jail or workhouse for a period of time not exceeding six months. (Id. § 6798a13.)

273. Minimum Fine of One Hundred Dollars—Other Punishments Not Affected.—Hereafter, in all convictions for the violation of the laws prohibiting the manufacture, sale, importation, transportation, or possession of intoxicating liquors in this State, a minimum fine of one hundred dollars shall be assessed; provided, that nothing in this act shall be so construed as to otherwise affect the punishment for such violations or decrease any fine for the violation of such laws where the same is now in excess of one hundred dollars. (Code Supp. 1926, § 6798a13b1.)

274. Soliciting Orders for Purchase of Liquors is Forbidden.—No person shall within this State at any place where the sale of intoxicating liquors as a beverage is forbidden by law solicit, in person, orders for intoxicating liquors as a beverage, whether said intoxicating liquors be situated in this or some other State. (Code 1918, § 6798a20.)

275. Violation is a Misdemeanor—Fine and Imprisonment.—Any person violating the preceding section shall be guilty of a misdemeanor, punishable by a fine of not less than fifty nor more than five hundred dollars, or imprisonment in the county jail for any term not more than six months, or both, in the discretion of the court. (Id. § 6798a21.)

276. Manufacture of Intoxicants is a Misdemeanor—Fine and Imprisonment—Exception of Alcohol 188 Proof for Certain Purposes.—It shall not be lawful for any person or persons to manufacture in this State any intoxicating liquor, including all vinous, spirituous, or malt liquors; and any one violating the provisions of this section shall be guilty of a misdemeanor, and, upon conviction, shall be punished by a fine, for each offense, of not less than $250 nor more than $1,000 and imprisonment for a period of not less than ninety days nor more than twelve months; provided, this section shall not be so construed as to prohibit the manufacture of alcohol of not less than 188 proof for chemical, pharmaceutical, medical and bacteriological purposes. Provided, this act shall apply only to the manufacture or attempt to manufacture whisky and brandy. (Id. § 6798a24; Code Supp. 1926, § 6798a24.)

277. Such Offense is Deemed to Have Been Committed by Doing What Acts.—The offense described in the preceding section shall be deemed to have been committed by any person who shall attempt to manufacture intoxicating liquor in this State, either by assembling the necessary apparatus for the purpose of manufacturing intoxicating liquor, or by doing any act preparatory to such manufacture; and any such attempt shall be punished as described in the preceding section. (Code Supp. 1926, § 6798a24b1.)

278. Unlawful to Keep Intoxicating Liquors in Stock for Sale as a Beverage.—It shall be unlawful for any person, firm or corporation to have or keep in stock, in any warehouse or place of business or other place within the State of Tennessee, any intoxicating liquors including wine, ale, or beer, intended for present or future sale as a beverage, either wholesale or retail and whether intended to be sold for delivery at the place of sale or to be shipped or otherwise transported for delivery at another place. (Code 1918, § 6798a26.)

279. Violation is a Misdemeanor—Fine and Imprisonment.—Any person who, either for himself or as an officer or agent of any corporation, shall violate the provisions of this article shall be deemed guilty of a misdemeanor and shall, upon conviction, be fined not less than one hundred dollars nor more than five hundred dollars, and imprisoned in the county jail or workhouse, for a period of not less than thirty days nor more than six months. (Id. § 6798a27.)

280. Corporation Officer Consenting or Permitting Violation is Guilty.—Any officer of any corporation consenting to or knowingly permitting the violation of the provisions of this article by any one on behalf of such corporation, shall likewise be guilty of a misdemeanor and shall, upon conviction, be punished in the same manner. (Id. § 6798a28.)

281. Second Violation is a Felony—Penitentiary Imprisonment.—A record [second] or subsequent violation of any of the provisions of this article shall be deemed a felony and the punishment therefor, upon conviction, shall be imprisoned in the State Penitentiary for not less than one year nor more than five years. (Id. § 6798a29.)

282. Liquor Containing More Than One-Half of One Per Cent of Alcohol Not to be Kept.—It shall be unlawful for any person, club, lodge or association, directly or indirectly, to keep or maintain by himself, itself, or by association with others, or in any manner to aid, abet, or assist in keeping or maintaining any club-

house or lodge in which any liquor, containing more than one-half of one per cent of alcohol, is received or kept by the person in his own name or otherwise, or by the club, lodge or association, for the purpose of use, or gift, as a beverage, or for distribution or division among the members of any club, lodge or association in this State; and no person, club, lodge or association within this State shall use, or give away, or assist in using, distributing, or giving away any liquor, containing more than one-half of one per cent of alcohol so received and kept on the premises of any club, lodge or association. (Id. § 6798a34.)

283. Violation is a Misdemeanor—Fine and Imprisonment.—Any person violating the provisions of this article shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not less than $50 nor more than $500, and imprisonment for a period of not less than thirty days nor more than six months. (Id. § 6798a35.)

284. Word "Druggist" is Defined.—The word "druggist" as used in this act shall be taken to mean and include any person engaged in the business of conducting any wholesale or retail drug or chemical store, or in the occupation of compounding or dispensing medicine in pursuance to a prescription of physicians, or selling at retail for medicinal purposes any drugs, chemicals, poisons, or pharmaceutical preparations under the laws of this State. (Code Supp. 1926, § 3079a-317b1.)

285. Word "Physician" is Defined.—The word "physician," as used in this act, shall be taken to mean and include only physicians registered in the State of Tennessee under the provisions of the several acts regulating the practice of their profession. (Id. § 3079a317b2.)

286. Word "Person" is Defined.—The word "person" as used in this act, shall be construed to import the singular or plural as the case demands and shall include firms and corporations. (Id. § 3079a317b3.)

287. Word "Alcohol" is Defined.—The word "alcohol" as used in this act, shall be taken to mean and include absolute alcohol, and alcohol which conforms to the United States Pharmacopedia [Pharmacopœia], 190 proof. (Id. § 3079a317b4.)

288. Unlawful for Druggists to Sell, Dispense or Keep Intoxicating Liquors, Except as Provided—Intoxicating Liquor is Defined.—It shall hereafter be unlawful for any person engaged in the sale of drugs to sell, dispense or keep in his possession or store as medicine or beverage or for any other purpose, any intoxicating liquor, except as hereinafter provided; and for the purpose of this act intoxicating liquor shall be defined as any medicine or beverage containing over one-half of one per cent of alcohol that is not sufficiently medicated so as to prevent its use as beverage or its use for its internal alcoholic effect; provided that this section shall not apply to medicines containing only a sufficient percentage of alcohol to extract and preserve the medicinal property thereof. (Id. § 3079a-317b5.)

289. What Sales May be Made by Druggists Upon What Written Orders —Register of Sales to be Made and Kept Open to Inspection.—The provisions of this act shall not be construed to prevent the sale of alcohol and wine in quantities of not less than one quart by wholesale druggist to retail druggists or to physicians, and legally licensed and duly registered dentists, to be used by them in their practice, or to bona fide manufacturers and institutions using alcohol and wine for mechanical, scientific, sacramental or pharmaceutical purposes in connection with their business, in pursunce of a written order from the purchaser on special order blanks prescribed for that purpose by the Pure Food and Drug Inspector and the Attorney-General of the State, provided that a register be kept showing in true, complete and correct form, each sale, the quantity of alcohol or wine, the date of sale, the person to whom sold, the address to which delivered, the date and method of delivery and in a file readily accessible the original order upon which such delivery was made and all such registers and files shall be open to inspection of all officers charged with the enforcement of this act, and they shall likewise keep a register which shall show all purchases of alcohol and wine made by them, the amount purchased, the date purchased, and from whom purchased. (Id. § 3079a317b6.)

290. Druggists to Sell or Dispense Alcohol Upon Prescriptions of Physicians—Regulations as to Prescriptions.—It shall be unlawful for any person engaged in the drug business to store alcohol for his use in making and compounding medicines, flavoring extracts or perfumes, and to sell or dispense alcohol for medicinal purposes only upon the written prescription of a physician in good standing in his profession, and actually engaged in the practice of his profession and not of intemperate habits and not addicted to the use of narcotic drugs. Such prescription shall not be filled when presented more than three days after its date

and unless it contains the name of the person for whom prescribed with his correct address, directions for the use of such alcohol and is duly signed by such physician or when such prescription prescribes more than one pint of alcohol; provided, that such prescription shall be filled but once only and shall show on its face the purpose for which such alcohol is prescribed. (Id. § 3079a317b7.)

291. Register of Purchasers of Alcohol, Disposition in Compounding, and Sales on Prescriptions, With Detailed Information.—Every druggist using or selling alcohol for the purpose prescribed in the preceding section shall keep a register showing in true, complete and correct form all purchases of such alcohol, the date purchased, from whom purchased, the amount purchased, the date of the receipt thereof, the name of the common carrier or other carrier delivering the same, the disposition of all such alcohol used in compounding and making of medicines, flavoring extracts and perfumes including the name and quantity of each article so compounded in detail and the quantity of alcohol used in each, together with the date of compounding each such article and the amount of alcohol in stock, and when the sale is for medicinal purposes, he shall enter in such register the date of the sale, the name of the purchaser, his place of residence, stating street and house number (if there be such), the quantity of such alcohol and the name of the physician issuing the prescription therefor. (Id. § 3079a317b8.)

292. Prescriptions Filled to be Filed and Marked "Canceled."—Whenever any druggist fills a prescription for alcohol he shall cancel the same by writing across the face thereof, in ink, the words "canceled" with the date on which it was presented and filed, and shall keep the same on file separate from other prescriptions and such register and all prescriptions shall be open to the inspection of the officers charged with the enforcement of this act. (Id. § 3079a317b9.)

293. Unlawful Acts of Druggists as to Prescriptions.—It shall be unlawful for any druggist to fail to keep such record or to destroy or in any way alter such record or entry therein of any prescription filled or to refuse inspection thereof to any person entitled to such inspection or fail or neglect to cancel any prescription or to refill any prescription or to sell alcohol except on a written prescription of a registered physician. (Id. § 3079a317b10.)

294. Suspension for First Violation and Conviction and Forfeiture of License for Second Violation and Conviction.—A druggist who has been convicted of the violation of this act shall not, within two years thereafter, sell alcohol or wine for any purpose; and upon a second conviction for the violation of any provision of this act, such druggist shall forfeit his license to engage in the business of a druggist and no other license to engage in the business of a druggist shall issue to him within two years from the date of his conviction. (Id. § 3079a317b11.)

295. Unlawful for Physician to Issue Prescription, Except for What and How.—It shall be unlawful for any physician to issue a prescription for alcohol except in writing and in triplicate, or in any case, unless he has reason to believe that the person for whom it is issued is actually sick and that the alcohol is required as a medicine, and to a patient to whom he shall personally attend. (Id. § 3079a317b12.)

296. Prescription Shall Contain What—Copies—Mailed—Records Open to Inspection.—Every such prescription shall contain the name and address of the physician, the quantity of alcohol prescribed, which shall in no case exceed one pint, the name of the person for whom prescribed, the date on which the prescription is written, and directions for the use of the alcohol so prescribed, and such physician shall keep one copy of all such prescriptions on file for a period of two years and on or before the 8th day of each month he shall mail to the Pure Food and Drug Department of the State one copy of all such prescriptions issued by him during the previous calendar month, and his records and files shall be open to the inspection of all officers charged with the enforcement of this act. (Id. § 3079-a317b13.)

297. Physician Convicted of First Violation Cannot Prescribe Alcohol for Two Years, and for Second Conviction he Shall Forfeit his License.—Any physician who has been convicted of a violation of any provision of this act shall not within two years thereafter prescribe alcohol for any purpose, and upon the conviction a second time for the violation of any provision of this act such physician shall be deprived of his license to practice his profession for a term of two years from the date of his conviction, and it shall be the duty of the clerk of the court wherein such physician is convicted a second time to send a copy of the judgment of the court to the Board of Medical Examiners of this State, who, upon receipt thereof, shall revoke the license of such physician to practice his profession for a period of two years. (Id. § 3079a317b14.)

298. Sales for Sacramental Purposes.—It shall be lawful for retail druggists to store and sell to ordained ministers, or to elders of a church having authority from said church, wine for sacramental purposes provided that such minister or elder shall make and subscribe to an oath in writing that he is a minister, elder or priest, and that he needs the wine for sacramental purposes, giving his correct address, and that said wine will not be used for any purpose other than sacramental purposes. And it shall be the duty of every druggist selling wine for sacramental purposes to keep the same kind of record of all purchases and sales of wine made by him, as he is hereinabove required to keep in the case of purchases and sales of alcohol made by him. (Id. § 3079a317b15.)

299. Unlawful to Keep More Than Limited Quantity.—It shall be unlawful for any druggist to have in his possession at any one time, an amount of alcohol or wine, or both combined, which is greater than one per cent of the amount of the stock of merchandise of such druggist last returned for taxation. (Id. § 3079a317b16.)

300. Violation is a Misdemeanor—Punishment for First Conviction, and for Second Conviction.—Any person violating any of the provisions of this act, shall be guilty of a misdemeanor, and on conviction thereof, shall for the first offense be punished by a fine of not less than fifty dollars, nor more than one hundred dollars, and in the discretion of the court may be confined not more than six months, in the county jail or workhouse; and for the second offense not less than one hundred dollars nor more than five hundred dollars and by imprisonment of not less than three nor more than six months in the county jail. (Id. § 3079a317b17.)

301. Whose Duty to Enforce This Law—Rules and Regulations.—It is hereby made the special duty of the Pure Food and Drug Inspector* and his duly appointed assistant inspectors and chemists and of all city, county, and State officials whose duty it is to enforce any law or municipal ordinance relating to the sale, dispensing, keeping, or storing of intoxicating liquors to specially enforce the provisions of this act and rules and regulations for its enforcement shall be made by the said Pure Food and Drug Inspector and the Attorney-General of the State. (Id. § 3079a317b20.)

PART IV.

Miscellaneous Laws.

False Advertising.

302. Fraudulent Advertising to Induce the Purchase of Personal Property, Services, Etc., is a Misdemeanor—Fine and Imprisonment.—Any person, firm, corporation or association, who, with intent to sell or in anywise dispose of merchandise, securities, service or anything offered by such person, firm, corporation or association, directly or indirectly, to the public for sale or distribution, or with intent to increase the consumption thereof, or to induce the public in any manner to enter into any obligations relating thereto, or to acquire title thereto, or an interest therein, knowingly makes, publishes, disseminates, circulates, or places before the public, or causes, directly or indirectly, to be made, published, disseminated, circulated, or placed before the public in this State, in a newspaper or other publication or in the form of a book, notice, handbill, poster, bill, circular, pamphlet, or letter, or in any other way, an advertisement of any sort regarding merchandise, securities, service, or anything so offered to the public, which advertisement contains any assertion, representation or statement of fact which is untrue, deceptive or misleading, shall be guilty of a misdemeanor, and on conviction thereof shall be punished by a fine of not less than twenty-five dollars nor more than one hundred dollars, or by imprisonment in the county jail not exceeding six months, or by both said fine and imprisonment. (Code 1918, § 6742a5.)

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*See Nos. 30-30b.

Flag Desecration.

303. Description of Flag, Etc.—The word flag, standard, color, ensign, or shield, or copy, picture, or representation thereof, made of any substance or represented or produced thereon, and of any size, evidently purporting to be such flag, standard, color, ensign, or shield of the United States, or of this State, or a copy, picture or representation thereof. (Code Supp. 1926, § 6888a60.)

304. Advertisement on or With.—No person shall, in any manner, for exhibition or display:

(a) Place or cause to be placed any word, figure, mark, picture, design, drawing or advertisement of any nature upon any flag, standard, color, ensign or shield of the United States or of this State, or authorized by any law of the United States or of this State; or

(b) Expose to public view any such flag, standard, color, ensign, or shield upon which shall have been printed, painted or otherwise produced, or to which shall have been attached, appended, affixed or annexed any such word, figure, mark, picture, design, drawing or advertisement; or

(c) Expose to public view for sale, manufacture, or otherwise, or to sell, give or have in possession for sale, or gift or for use for any purpose, any substance, being an article of merchandise, or receptacle, or thing for holding or carrying merchandise, upon or to which shall have been produced or attached any such flag, standard, color, ensign, or shield, in order to advertise, call attention to, decorate, mark or distinguish such article or substance. (Id. § 6888a61.)

305. Flag Not to be Mutilated, Etc., Nor Contempt Cast Upon it.—No person shall publicly mutilate, deface, defile, defy, trample upon, or by word or act cast contempt upon any such flag, standard, color, ensign or shield. (Id. § 6888a62.)

306. Statute is Inapplicable, When.—This statute shall not apply to any act permitted by the statutes of the United States (or of this State), or by the United States army and navy regulations, nor shall it apply to any printed or written, document or production, stationery, ornament, picture, or jewelry whereon shall be depicted said flag, standard, color, ensign or shield with no design or words thereon and disconnected with any advertisement. (Id. § 6888a63.)

307. Violation is a Misdemeanor—Punishment.—Any violation of section 6888a61 shall be a misdemeanor and punishable by a fine of not more than $100. Any violation of section 6888a62 shall be punishable by a fine of not more than $200, or by imprisonment of not more than sixty days, or by both fine and imprisonment, in the discretion of the court. (Id. § 6888a64.)

308. Construction—Uniformity.—This act shall be so construed as to effectuate its general purpose and to make uniform the laws of the States which enact it. (Id. § 6888a66.)

309. Citation of Act.—This act may be cited as the Uniform Flag Act. (Id. § 6888a67.)

Tobacco—Tobacco Products.

310. Unlawful to Sell or Furnish or to Procure for Any Minor Under Eighteen, Tobacco in Any Form, Cigarettes, or Cigarette Papers.—It shall hereafter be unlawful for any individual, firm or corporation, their employees, agents or servants, or any one for them knowingly, to sell, give, furnish to or procure for any minor under eighteen years of age, tobacco, smoking tobacco, leaf tobacco, cigars, cigarettes or cigarette papers or tobacco manufactured in any form. (Code Supp. 1926, § 6793a1.)

311. Violation is a Misdemeanor—Fine.—Any individual, firm or corporation violating the preceding section, shall be guilty of a misdemeanor, and on conviction therefor, shall be punishable by a fine of not less than $25 and not more than $100, and by imprisonment in the county jail for a period of not less than thirty days nor more than sixty days, in the discretion of the court. Each violation of this act shall be a separate and distinct offense. (Id. § 6793a2.)

312. Revocation of License for Twelve Months, Upon Conviction.—Upon the conviction of any individual, firm or corporation under this act, the license issued to such individual, firm, or corporation to engage in such business shall be revoked for a period of twelve months from the date of conviction. (Id. § 6793a3.)

313. Special Charge.—The several criminal judges of the State having criminal jurisdiction shall give this act in charge to the grand juries of their counties. (Id. § 6793a4.)

314. Inquisitorial Power.—Grand juries are hereby given inquisitorial powers over all offenses committed under this act. (Id. § 6793a5.)

315. Warehouses.—Any citizen may open a warehouse for the inspection and sale of tobacco under the rules, regulations, and restrictions of this article. (Code 1917, § 3379.)

316. Proof of Sufficiency of Warehouse Required.—Every person so doing shall prove to the clerk, by the testimony of two impartial witnesses known to him to be well qualified, from knowledge and experience, as judges in the matter, that he is the proprietor of a good and sufficient warehouse, situated so as to be exposed to no extraordinary risk from fire or flood, and furnished, besides with all the implements necessary to the accurate weighing and inspection of tobacco. (Id. § 3380.)

317. Bond of Tobacco Warehousemen.—He shall also enter into bond, with good and sufficient security, to be approved by the judge or chairman of the county court, and payable to the State, in the sum of five thousand dollars, conditioned to keep his warehouse in good condition and repair, so as effectually to protect the tobacco stored therein; that he will not sell any tobacco that has been bought by him, or on his account, or purchase on his own account any tobacco stored in his warehouse, either directly or indirectly; and that he will perform faithfully all the duties of warehouse keeper as prescribed by law. (Id. § 3381.)

318. Failing to Give Bond, not to Collect Fees—Penalty—Qui Tam Action.—Should said proprietor fail to execute said bond for five thousand dollars, then he shall not be entitled to collect any fees on tobacco stored in his warehouse, under a penalty of one hundred dollars for each offense, to be recovered in the name of the State, one-half to go to the informer. (Id. § 3382.)

319. Who May Sue, Bond.—Any planter or person aggrieved may sue on this bond for a breach thereof, in the name of the State, until the penalty is exhausted. (Id. § 3383.)

320. Warehouses to be Floored and Kept in Repair—Forfeiture, and Liability on Bond.—The proprietor shall fit up his house with plank floors or skids upon which to place the tobacco, so that the hogshead may be at least four inches from the earth; and any proprietor who fails to keep his warehouse in good repair, or to furnish it as in this section provided, shall forfeit two hundred dollars to the State; and is also liable upon his bond to an action for damages, at the instance of any planter or owner whose tobacco is injured. (Id. § 3384.)

321. Scales to be Kept and Tested.—The proprietor shall keep good and sufficient scales for weighing tobacco, which shall be tested at the beginning of each tobacco year, and every three months, thereafter, by the keeper and sealer of weights for the county, and at any time when written application is made by two or more planters or burghers. (Id. § 3385.)

322. Breaking Irons for Inspection and Screws for Cooperage.—He shall also keep the necessary breaking irons for the proper inspection of tobacco, and screws for the proper cooperage and return of loose tobacco to the hogshead after inspection. (Id. § 3386.)

323. Attention to Duty—Delivery for Shipment.—He or his clerks shall be constant and prompt in their attendance at the warehouse for the reception and storage of tobacco, and to promptly deliver same to the planter or burgher entitled thereto, upon order, for shpment. (Id. § 3387.)

324. Warehouse Proprietor May be Inspector, and May Appoint Deputy Inspectors—Oath—Bond.—The proprietor of a warehouse, regularly licensed [authorized (?) 1877, ch. 109] under this article, shall be, and is hereby, created an inspector of tobacco, with power to appoint deputy inspectors; but, before any warehouse keeper who may personally act as inspector, or any deputy who may act as inspector for such warehouse keeper, shall enter upon the duties of an inspector, he shall go before the county court clerk, and take and subscribe the following oath: "I, A B, do solemnly swear [or affirm] that I will carefully and diligently perform all the duties of an inspector of tobacco, according to law and to the best of my skill and judgment, without fear, favor, affection, malice, or partiality and that I will not buy nor sell any tobacco inspected and sampled by me, nor accept any interest or profit in or from the purchase or sale of any tobacco inspected and sampled by me. So help me God." And shall enter into bond, with good and sufficient security, to be approved by the judge or chairman of the county court, and payable to the State, in the sum of five thousand dollars, conditioned to faithfully and honestly discharge the duties of his office; and that he will not buy nor sell any tobacco inspected and sampled by him, nor accept any interest or profit in or from the purchase or sale of any tobacco inspected or sampled by him. (Id. § 3388.)

325. Duties of Proprietor or Deputy.—It is the duty of the proprietor or one of his regular deputies:

(1) To Examine and Classify.—To inspect the uncasing and breaking of any tobacco for inspection, and to examine and classify same according to law and his oath of office.

(2) To Break Hogsheads, and to Take Samples, How.—To break each hogshead for inspection, in at least four different places, drawing from each break at least four bundles or hands of tobacco, from different courses or layers, so as to get a fair and just representation of the quality and condition of the tobacco.

(3) To Seal and Mark Samples.—To place these bundles together in one sample, to stamp with the following seal: "State Tobacco Inspection;" and mark with ink upon the label of the sample the name of the warehouse, the planter's name, the warehouse number of the hogshead and its approximate gross weight, the date of inspection, and the name of the sampler drawing the sample.

(4) To Mark "Admitted"; "Refused."—He shall mark "A," or "Admitted," all sound, clear, well assorted leaf tobacco, clear, of lugs or trash, in good keeping order; and shall mark "R," or "Refused," all lugs or trash, or leaf mixed with lugs or trash, or clean leaf tobacco, if not in good keeping order.

(5) To Mark Hogshead "Cask Condemned," When.—To condemn all hogsheads or casks that are insecure, or made of green or unsound timber, and mark upon the label of the sample, "Cask Condemned"; the cost of putting such hogshead in proper merchantable order shall be charged to the owner of the tobacco.

(6) To Mark Hogshead "Damaged," When.—He shall refuse to classify, and shall mark as "Damaged," expressing on the label the probable amount of damage, every hogshead so damaged that the sample drawn will not show the character and extent of damage.

(7) Hogshead Fraudulently Packed Shall be Marked "Condemned," Etc.—He shall refuse to classify, and shall mark "Condemned" any hogshead of tobacco that is falsely and fraudulently packed with intent to deceive, and shall give the full information to the grand jury about such hogshead, from his books, when called upon to furnish same.

(8) To Superintend Coopering, Reweighing, and to Mark Correct Weights.—To superintend the coopering and reweighing; to see that each cask is replaced over the same tobacco from which it was taken; to mark the hogshead on both heads with distinct figures, specifying the correct weights.

(9) To Register Inspection.—To carefully enter in a book, to be provided and kept for that purpose alone, an account of every hogshead of tobacco inspected, stating the planter's name, warehouse number, the gross weight, the tare, the net weight, the price at which it sold, the purchaser's name, and its quality, whether "admitted" or "refused."

(10) Personally to Make Inspections and to Pay Reclamations for Improper Sampling.—The inspector of tobacco shall be personally present, and witness the breaking of any tobacco for inspection, and personally attach his seal to the sample drawn, and to pay all just reclamations on tobacco improperly sampled by him. (Id. § 3389; Code Supp. 1926, § 3389.)

326. Reinspection, When Made.—Should any planter, or his agent representing him, claim that the sample drawn from his tobacco by an inspector does not represent fairly the hogshead from which it was taken, he may demand that such hogshead be reinspected, and the tobacco board of trade shall appoint a committee, consisting of two warehousemen, and one buyer, who shall resample said tobacco, so as to show, as nearly as may be, the average condition and quality of the hogshead; and upon said sample so drawn by said committee, and the said sample so drawn by the inspector, the said board of trade shall proceed to adjudge, in the same manner and in all respects as reclamations in favor of the buyer are determined, the amount, if anything, said hogshead has been under-sampled by the said inspector, and the amount so adjudged shall be paid by said inspector to said planter. But nothing herein contained shall be so construed as to prevent any planter from guaranteeing his tobacco to come up to the sample drawn by any inspector. (Code 1917, § 3389a.)

327. Responsibility of Keeper.—After the tobacco is inspected, coopered, weighed, and numbered, the warehouse keeper becomes responsible to the planter or owner for the weights and proper keeping of the tobacco. (Id. § 3390.)

328. Conversion of Samples, or Plucking Leaves Therefrom is Prohibited—Forfeiture—Qui Tam Action.—No warehouse keeper, nor anyone in his employment, shall take or convert to his own use, or dispose of, any sample of tobacco, but the same shall be delivered to the purchaser, and all loose tobacco shall be neatly returned to the hogshead from which it came, before coopering and weighing.

No person shall willfully or wantonly pluck any leaf or leaves from any sample of tobacco to which the inspector has attached his seal, either before or after sale. Any person violating this section shall forfeit fifty dollars for each offense, one-half to State, the other to the informer. (Id. § 3390a.)

329. Erasure or Counterfeiting is Misdemeanor.—If any person erase, or in any way alter or deface, any letter, mark, number, or figure put upon any hogshead by an inspector, or counterfeit the same, previous to the delivery to the purchaser, he is guilty of a misdemeanor. (Id. § 3391.)

330. Keeper Not to Sell Tobacco Until Inspection—Penalty—Qui Tam Action.—No warehouse keeper shall sell publicly any sample of tobacco which has not been regularly inspected under the provisions of this article, under a penalty of five dollars for each hogshead so sold, to be recovered by any person suing therefor. (Id. § 3392.)

331. Copy of Sample Cards—"Inspected" to be Written Thereon.—When any warehouse keeper is called upon to inspect a lot of tobacco, he shall make a copy of the original sample card, and write on it, in plain letters, "Inspected," adding the date. (Id. § 3393.)

332. Warehouseman Not to Sell or Buy—Forfeiture—Qui Tam Action.—The proprietor of no warehouse shall sell any tobacco that has been directly or indirectly bought by him, or on his account, nor directly or indirectly purchase on his own account any tobacco stored in his warehouse. But this section is not to be construed as referring to the sale of crops of tobacco raised by the proprietor or any of his agents or employees. The proprietor of no warehouse, nor any deputy of such proprietor, who shall act as inspector of tobacco, shall buy nor sell any tobacco inspected and sampled by him, nor accept any interest or profit in or from the purchase or sale of any tobacco inspected and sampled by him. Any person violating this section shall forfeit fifty dollars for each hogshead so purchased or sold, or in which such interest or profit was accepted, one-half to the State, the other to the informer. (Id. § 3394.)

333. Accepting Gratuity or Reward—Penalty and Office Forfeiture and Misdemeanor.—If any warehouse keeper accepts, directly or indirectly, any gratuity or reward for anything by him done in the discharge of his official duties, he shall forfeit two hundred dollars to the State, and be, moreover, guilty of a misdemeanor, and punishable by fine. He shall also forfeit his office, and be forever after disqualified from holding the office of "tobacco inspector." (Id. § 3395.)

334. Derelictions to be Reported to County Court Clerk.—Any planter or person shall inform the clerk of the county court of any dereliction of duty on the part of the warehouse keeper. (Id. § 3396.)

335. Fraudulent Packing or "Nesting" is a Misdemeanor.—Any person who fraudulently packs or "nests" a hogshead of tobacco with intent to deceive, and obtain thereby more than its true value, is guilty of a misdemeanor, and shall be fined not less than fifty dollars nor more than five hundred dollars, and be imprisoned not more than six months. (Id. § 3397.)

336. Description, Etc., of Best Hogshead to be Posted in Warehouse.—The warehouse keeper shall keep posted up in some conspicuous place in his warehouse a description of the hogshead or casks, length, measurement, etc., best suited to contain tobacco for market. (Id. § 3398.)

337. Fees, Commissions, Etc., of Warehousemen.—The compensation of warehouse keepers for receiving, storing, inspecting, coopering and selling tobacco shall be as follows, to wit: To be paid by the seller, $2.50, and one per cent commission on proceeds of sale; to be paid by buyer, $1.50, and for storage after sale, after the first thirty days, for each month or part thereof, twenty-five cents. (Id. § 3399.)

338. Both Misdemeanor and Penalty for Extortion.—Any warehouse keeper who shall charge more than is allowed in the preceding section, is guilty of a misdemeanor, and is also liable to a penalty of ten dollars to the planter or person overcharged, recoverable before any justice of the peace. (Id. § 3400.)

339. Auction Bid May be Refused by Paying Fees.—Any planter, or other owner of tobacco sold at auction, may, by paying the fees, refuse at the time to take the price at which it was cried off. (Id. § 3401.)

340. Warehouseman's Lien for Fees and Charges.—A lien is hereby given to the proprietor of the warehouse on all tobacco and proceeds for fees and charges on same. (Id. § 3402.)

341. Selling or Shipping Without Inspection is Not Prohibited.—No planter or person is prohibited from selling his tobacco at private sale, with or without inspection, if he chooses so to do, nor compelled to have his tobacco, though stored

in a public or authorized warehouse, inspected; but he may sell or ship it without inspection. (Id. § 3403.)

342. Prosecution for Penalties—Duties of County Court Clerk and District Attorney—Their Fees.—The clerk of the county court shall attend to all prosecutions for penalties under the provisions of this article, for the use of the State, for which he shall receive ten per cent on the sums collected and paid into the State treasury. He may also, when necessary, call on the district attorney to give professional attention to such prosecutions, for which service said attorney shall be allowed ten dollars, to be taxed in the bill of costs, and when collected, shall be paid into the State treasury at the same time and in the same manner as other State revenue is by law required to be paid. (Id. § 3404.)

343. Judges to Give This Article in Charge.—The judges of the several Circuit Courts of this State shall be, and they are hereby, required, at all the courts which they hold in counties where tobacco inspection is established, to give this article in charge to the grand jury, and direct said jury to make diligent inquiry in regard to any breaches hereof, and particularly in regard to the conduct of inspectors. (Id. § 3405.)

344. "Tobacco Commercial Year."—The "tobacco commercial year" commences and ends on the first day of November of each year. (Id. § 3406.)

345. Private Warehouses.—Nothing in this article contained shall prevent any person from establishing a private warehouse for the storage of tobacco. (Id. § 3407.)

NOTE: See also Nos. 27-29, 356 et seq., and 425 et seq.

Trade-Marks, Etc.

346. Definition of Trade-Marks.—Within the meaning of this chapter, a trade-mark shall be construed to be any seal, label, term, design, device, or form of advertisement used for the purpose of designating, making known, or distinguishing any goods, wares, merchandise, or other product of labor, as having been made, manufactured, produced, prepared, packed, or put on sale by any person, firm, corporation, association, or union of working men, or by any member or members of such association or union. (Code 1917, § 3473a15.)

347. Counterfeiting or Imitating Trade-Mark is Unlawful.—Whenever any person, firm, or corporation or any association or union of working men has heretofore adopted or used or shall hereafter adopt or use any trade-mark it shall be unlawful to counterfeit or imitate the same; or to use, sell, or to offer for sale, or in any way utter or circulate any counterfeit or imitation of any such trade-mark provided such trade-mark has been filed and recorded in the office of the Secretary of State, as provided in section 3473a18. (Id. § 3473a16.)

348. Fine and Imprisonment for Counterfeiting Trade-Marks, or Circulating Counterfeit Trade-Marks, or Keeping or Selling Goods Branded With Counterfeit Trade-Marks, Etc.—Whoever knowingly counterfeits any such trade-marks, or knowing said trade-mark to be counterfeit, sells, offers for sale, or in any way utters or circulates any counterfeit or imitation of such trade-mark, or knowing such trade-mark to be counterfeit, keeps, or has in his possession, with the intent that the same shall be sold or disposed of, any goods, wares, merchandise, or other product of labor to which or on which any such counterfeit or imitation is printed, painted, stamped, or impressed; or knowing said trade-mark so printed, painted, stamped, or impressed thereon, sells or disposes of such goods, wares, merchandise, or other products of labor contained in any box, case, can or package, to which or on which any such counterfeit or imitation is attached, fixed, printed, painted, stamped or impressed, or knowing such trade-mark to be counterfeit, keeps or has [in] his possession with the intent that the same shall be sold or disposed of, any goods, wares, merchandise, or other product of labor, in any box, case, can, or package to which or on which any such counterfeit or imitation is attached, affixed, printed, painted, stamped, or impressed, shall be punished by a fine of not more than one hundred dollars, or by imprisonment for not more than three months; provided that any person, firm, or corporation buying, selling, or disposing of any goods, wares, merchandise bearing said counterfeit trade-mark, not knowing the same to be counterfeit, shall not be deemed guilty under the provision of this chapter. (Id. § 3473a17.)

349. Right to Use Trade-Mark May be Acquired, How—Fees to be Paid Therefor and for Certificates.—Every person, firm, corporation, or association, or union of working men that has heretofore adopted or used, or shall hereafter adopt or use, any trade-mark mentioned and provided in section 3473a15 may file

the same for record in the office of the Secretary of State by leaving two copies, counterparts, or facsimiles thereof with said secretary, and by filing therewith a sworn application, specifying the name or names of the person, firm, corporation, association, or union, on whose behalf such trade-mark shall be filed, the class of merchandise and a description of the goods to which it has been, or is intended to be appropriated, stating that the party so filing, or on whose behalf such trade-mark shall have been filed, has the right to use the same, that no other person, firm, corporation, association, or union has the right to such use, either in the identical form or in any such near resemblance thereto as may be calculated to deceive, and that the facsimile or counterparts filed therewith are true and correct. There shall be paid for such filing and recording a fee of five dollars, said secretary shall deliver to such person, firm, corporation, association, or union so filing, or causing to be filed, any such trade-mark, so many duly attested certificates of the recording of the same as such person, firm, corporation, association, or union may apply for, each of which certificates said secretary shall receive a fee of one dollar. Any such certificates of record shall in all suits and prosecutions under this chapter be prima facie evidence of the adoption of such trade-mark. Said Secretary of State shall not record for any person, firm, or corporation, association, or union any trade-mark heretofore filed by or on behalf of any other person, firm, corporation, association, or union. (Id. § 3473a18.)

350. Damages and Fine or Imprisonment for Fraudulently Procuring the Filing of a Trade-Mark.—Any person who shall for himself, on behalf of any other person, firm, corporation, association, or union, procure the filing of any trade-mark in the office of the Secretary of State, under the provisions of this chapter, by knowingly making any false, or fraudulent representation or declaration verbally or in writing, or by any means known to be fraudulent, shall be liable to pay any damages sustained in consequence of such filing, to be recovered by or on behalf of the party injured thereby, in any court having jurisdiction and shall be punished by a fine not exceeding one hundred dollars or by imprisonment not exceeding three months. (Id. § 3473a19.)

351. Injunction Against Counterfeits or Imitations of Trade-Mark—Account for Profits.—Every such person, firm, corporation, association, or union, adopting or using a trade-mark, may proceed by suit to enjoin the manufacture, use, display, or sale of any counterfeits or imitations thereof, and all courts of competent jurisdiction shall grant injunctions to restrain such manufacture, use, display or sale, and may award the complainant in any such suit, the court having jurisdiction, such damages resulting from such fraudulent manufacture, use, display, or sale as may be by the court or jury deemed just and reasonable; and shall require the defendants to pay to such person, firm, corporation, association, or union all profits derived from such wrongful manufacture, use, display, or sale, and such court shall also order that all such counterfeit or imitations in the possession or under the control of any defendant in such case be delivered to an officer of the court or to the complaint, to be destroyed. (Id. § 3473a20.)

352. Misdemeanor to Use or Display Genuine Trade-Mark for the Purpose of Fraud.—Every person who shall use or display the genuine trade-mark for the purpose of fraud of any such person, firm, corporation, association, or union, in any manner not being authorized so to do by such person, firm, corporation, association, or union, shall be deemed guilty of a misdemeanor, and shall be punished by imprisonment for not less than three months, or by a fine of not more than one hundred dollars. (Id. § 3473a21.)

353. Officer or Member of Unincorporated Association or Union May Prosecute Suits.—In all cases where such association or union is not incorporated, suits under this chapter may be commenced and prosecuted by an officer or member of such association or union, in behalf of and for the use of such association or union. (Id. § 3473a22.)

354. This Law Does Not Affect or Apply to Those Acting in Good Faith as to Counterfeit Trade-Marks, When.—None of the provisions of this chapter shall affect or apply to persons, firms or corporations who shall in good faith buy or come into possession of goods with a counterfeit trade-mark thereon, when such person, firm, or corporation did not know at the time he or they obtained possession of such goods that the same were stamped with a counterfeit trade-mark; provided, such person, firm, or corporation does not knowingly misrepresent the facts regarding the trade-mark at the time he offers such goods for sale. **(Id. § 3473a23.)**

NOTE: **See also No. 26.**

Trading Stamps.

355. Privilege Taxes, and the Rate Thereof, Payable to the County Court Clerk.—Each vocation, occupation, and business, hereinafter named in this section, is hereby declared to be a privilege, and the rate of taxes on such privilege shall be as hereinafter fixed, which privilege tax shall be paid to the county court clerk, as provided by law for the collection of such revenue: . . .

Each trading stamp company or agency doing business by the sale or giving away of trading stamps or like devices in any county of this State, shall pay per annum, in each county in which said company or agency does business, a privilege tax of $200.00.

Each company or agency of trading stamps, coupons, or like devices, located and doing business in the State of Tennessee, shall pay, per annum, a privilege tax of $200.00.

Provided, the privilege tax imposed under this act shall apply alike to concerns incorporated and doing business under the laws of the State of Tennessee, and all manufacturers or others, whether they be incorporated in Tennessee, or not, who do any kind of a coupon or trading stamp business within the State, but this shall be in no way construed to mean the retail or wholesale merchant who issues these coupons or trading stamps.

Provided, this shall in no wise apply to merchants or manufacturers who issue and redeem their own coupons.

Provided, these taxes shall be collected by the various county court clerks. . . . (Code Supp. 1926, § 712; re-enacted Revenue Act, 1927.)

Weights and Measures.

356. Tobacco and Cotton Weighers; Manner of Election.—The county court of any county in the State (a majority of its members favoring the same) may, on the first Monday of July of every year, elect cotton and tobacco weighers for such county, whose duty it shall be to weigh all cotton and tobacco that parties may agree to have weighed by him. The said election shall be by ballot, and the party getting the highest number (provided it be a majority of the votes cast), shall be declared elected. (Code 1917, § 3485.)

357. Equipments and Qualifications.—Before entering upon the duties of his office, said cotton and tobacco weigher shall provide himself with balances or scales, duly tested according to the laws of Tennessee, and shall take an oath faithfully and impartially to discharge the duties of said office, and shall give bond in such penalty as the court may prescribe, conditioned as set forth in said affidavit, and said officer shall hold his office twelve months, or until his successor is elected and qualified. (Id. § 3486.)

357a. Exact Weights.—It shall be the duty of said cotton and tobacco weighers to give and declare exact and just weights, regardless of the condition of the cotton and tobacco. (Id. § 3487.)

357b. Violation of this Law is a Felony Punishable in the Penitentiary.—Any cotton weigher elected according to the provisions of this chapter, who shall give or declare any unjust weights, or who shall willfully violate the previous sections of this chapter, shall be guilty of a felony, and, upon conviction of the same, shall be confined in the State Penitentiary not less than one nor more than three years. (Id. § 3488.)

357c. Compensation.—The court may prescribe the compensation for said cotton and tobacco weigher, which shall not be over ten cents a bale, and twenty-five cents a hogshead, to be paid by the party selling the cotton and tobacco. (Id. § 3489.)

358. Standards for State, Counties, and Cities Are Defined.—The weights and measures received from the United States, under a resolution of Congress, approved June 14, 1836, and additions thereto and renewals thereof, certified by the United States Bureau of Standards, and such other weights, measures, balances, and apparatus as are now the property of the State or may hereafter added by the State Sealer of Weights and Measures, hereinafter provided for, which are in conformity therewith and certified by the National Bureau of Standards, shall be the State standards by which all State, county, and municipal standards of weights and measures shall be tried, proved, and sealed. (Id. § 305a1.)

359. State Superintendent—General Duties—Custody.—The State Pure Food and Drug Inspector* shall be, and is, hereby made ex-officio the State Superintendent

*See Nos. 30-30b.

of Weights and Measures, hereinafter referred to as the State Superintendent. He shall have and keep a general supervision of the weights, measures, weighing devices, and measuring devices offered for sale, sold or used within the State; shall enforce all laws regarding them; and shall, in conjunction with the State Sealer of Weights and Measures hereinafter provided for, have the care and custody of all weights, measures, balances, and other apparatus mentioned in the preceding section. (Id. § 305a2.)

360. Assistant Sealers, and Their Powers.—He and the duly appointed assistant and deputy pure food and drug inspectors under him are hereby made assistant sealers, and shall have the same power and authority as the county and city sealers hereinafter provided for. (Id. § 305a3.)

361. Weights, Measures, Balances, and Apparatus to be Proved.—The State Superintendent shall procure at the expense of the State, the necessary working sets of weights, measures, balances, and apparatus for the use of said inspectors, and shall cause same to be tried and proved by the State Sealer. (Id. § 305a4.)

362. Weights, Etc., When Sealed Shall be Competent Evidence.—Such weights, measures, balances, and other apparatus provided for such inspectors, when sealed by the State Sealer, shall be competent evidence in all the courts of the State in criminal or civil actions. (Id. § 305a5.)

363. Inspection Once in Two Years; Annual Report to Governor.—The State Superintendent, or his deputies or assistants, by his direction, shall at least once in two years visit the various cities and counties of the State in order to inspect the work of the county and city sealers hereinafter provided for; and in the performance of such duties he or they may inspect the weights, measures, balances, or any other weighing or measuring apparatus of any person, firm, or corporation, and shall have the same power as said county and city sealers of weights and measures. The State Superintendent shall likewise annually, during the first two weeks in January, make to the Governor a report of the work done by his office. (Id. § 305a6.)

364. State Sealer—Custody of Standards, Etc.—Receipt From Successor.—The president of the University of Tennessee shall be, and the same is, hereby made ex-officio State Sealer of Weights and Measures, hereinafter referred to as the State Sealer. He shall, in conjunction with the State Superintendent, have the care and custody of all standard weights, measures, balances, and other apparatus mentioned in section 305a1; shall cause them to be kept in a suitable building belonging to the University of Tennessee, from which they shall not be removed except for repairs or for certification; and shall take all other necessary precautions for their safe-keeping. He shall keep complete records of the standards, balances, and other apparatus belonging to the State, and take receipt for same from his successor. (Id. § 305a7.)

365. State Sealer to Procure Certification of Standards—Seal—Correction and Sealing of City and County Standards.—He shall maintain the State standards in good order, and shall, in conjunction with the State Superintendent, submit them, on passage of this act, and thereafter at least once in ten years, to the National Bureau of Standards for certification. He shall keep a seal, which shall be so formed as to impress the letters "T. N." and the last two figures of the year in which comparison has been made upon all weights, measures, and balances sealed by him; and he, or his deputies, by his direction, shall correct the standards of the several cities and counties when submitted to him by comparing the same with those in his possession, and shall seal the same when tried and proved to be in conformity with the State standards. (Id. § 305a8.)

366. State Sealer Shall Test Standards at Request of Individuals, Etc.; Fees Therefor Go Into State Treasury.—He shall, further, upon the written request of any citizen, firm, corporation, or educational institution of the State, in person or by his deputies, test or calibrate weights, measures, weighing devices, or measuring devices and instruments and apparatus used for standards in the State, and for such testing for citizens, firms, or corporations may collect fees to be fixed by the State Superintendent and State Sealer. Fees so collected shall be turned over to the State Treasurer for the use of the State. (Id. § 305a9.)

367. State Sealer Shall Test Standards, Etc., at Request of State Superintendent.—He shall, at the request of the State Superintendent, test and seal, when found correct, all measures, weights, balances, weighing devices, or measuring devices for the use of the State Superintendent and his deputy or assistant inspectors. (Id. § 305a10.)

368. Rules and Regulations.—He shall likewise, in conjunction with the State Superintendent, establish rules and regulations for the enforcement of this article and for the guidance of all city and county sealers, and these regulations

shall govern the procedure to be followed by said officials in the discharge of their duties. (Id. § 305a11.)

369. Deputy State Sealer.—He may appoint a Deputy State Sealer, who shall be a member of the faculty of the University of Tennessee, and who shall not receive any additional compensation for his services. (Id. § 305a12.)

370. State Sealer's Report to Governor.—He shall likewise annually, during the first two weeks in January, make to the Governor a report of the work done by his office. (Id. § 305a13.)

371. Tests for State Institutions—Report—Special Deputies for Such Institutions.—The State Superintendent, or his deputies or inspectors, by his direction, shall at least once annually test all scales, weights, and measures used in checking the receipt or disbursement of supplies in each institution under the direction and ownership of the State, and shall report in writing his findings to the board having such institution under its control or to the executive officer of the institution concerned; and at the written request of such board or officer, the State Superintendent shall appoint in writing one or more employees then in actual service of such institution, who shall act as special deputies for the purpose of checking the receipt or disbursement of supplies. (Id. § 305a14.)

372. County Sealer and Deputies—Appointment—Term—Salary—No Fees.—Any county may establish a department of inspection of weights and measures, and shall have power to appoint a sealer and deputies. Such sealer (and deputies, if provided for) shall be appointed by the county court for a term of five years, and shall be paid a salary to be determined by the county court, said county sealer's salary to be not less than six hundred dollars per annum; and no fee shall be charged by him or by the county for the inspection, testing, or sealing of weights, measures, or weighing or measuring devices. (Id. § 305a15.)

373. County Sealer's Power of Inspection of Weights, Etc., for Sale and for Weighing, Etc.—When not otherwise provided by law, the county sealer shall have the power within his county to inspect, try, and ascertain if they are correct, all weights, scales, beams, measures of every kind, instruments, or mechanical devices for measuring, and tools, appliances, or accessories connected with any and all such instruments or measures kept, offered, or exposed for sale, sold, or used or employed within the county by any person in proving the size, quantities, things, produce, articles for distribution or consumption offered or submitted for sale, hire, or reward. (Id. § 305a16.)

374. County Sealer May Weigh, Etc., Package For Sale or Sold, Etc.—He shall have the power to, and shall from time to time weigh or measure, packages or amounts of commodities of any kind kept with intent to sell, sold, or in the process of delivery, in order to determine whether same contain the amounts represented or are sold in a manner in accordance with law. (Id. § 305a17.)

375. County Sealer Shall Test Weights, Etc., When—Power of Entry, Etc.—He shall at least once in each year, and as much oftener as he may deem necessary, see that the weights, measures, and all apparatus used in the county are correct, and may for this purpose and in the general performance of his official duties enter and go into or upon and without formal warrant any place, building, or premises, or stop any vendor, peddler, junk dealer, or any dealer whatsoever, and require him, if necessary, to proceed to some place which the sealer may specify for the purpose of making proper tests. (Id. § 305a18.)

376. County Sealer to Prosecute Violators of This Law.—Whenever he finds a violation of any statute relating to weights and measures, he shall cause the violator to be prosecuted. (Id. § 305a19.)

377. Correct Weights, Etc., to be Sealed.—Whenever the county sealer compares weights, measures, weighing devices, or measuring devices, and finds that they correspond or causes them to correspond with the standards in his possession, he shall seal or mark such weights, measures, weighing devices, or measuring devices with a seal to be approved by the State Superintendent. (Id. § 305a20.)

378. Incorrect Weights, Etc., to be Destroyed or Condemned for Repairs.—He shall condemn and seize and may destroy incorrect weights, measures, weighing devices, or measuring devices which, in his best judgment, are not susceptible of satisfactory repair; but such as are incorrect and yet may be repaired he shall mark or tag as "Condemned for Repairs" in a manner prescribed by the State Superintendent. (Id. § 305a21.)

379. Weights, Etc., Condemned for Repairs Must be Repaired, When, or be Confiscated.—The owners or users of apparatus so condemned shall have same corrected or repaired within ten days, and may neither use nor dispose of same in any manner without permission from the county sealer. Any apparatus which has

been "Condemned for Repairs' and has not been repaired as required above shall be confiscated by the sealer. (Id. § 305a22.)

380. County Sealer to Record Official Acts, and Report to County Court and State Superintendent.—The county sealer shall keep a complete record of all his official acts, and shall make an annual report to the county court and an annual report, duly sworn to, on the first day of December of each year to the State Superintendent on blanks to be furnished by the superintendent. (Id. § 305a23.)

381. County to Provide Sealer With Suitable Quarters and Standards.—When a county shall establish such a department of weights and measures, it shall provide the sealer with suitable quarters, a set of standards to be approved by the State Sealer and State Superintendent, and all other equipment for the proper performance of his duties. (Id. § 305a24.)

382. County Standards to be Proved and Sealed, and Verified, When.—All county standards shall be tried, proved, and sealed under the direction of the State Sealer, and shall be returned to him for verification at least once in every five years. (Id. § 305a25.)

383. Combination by Counties, and Power of Sealer of Combined Counties.—Nothing in the above shall be construed to prevent two or more counties combining the whole or any part of their districts, as may be agreed upon by the county courts thereof, with one set of standards and one sealer, upon the written consent of the State Superintendent. A sealer appointed in pursuance of any agreement for such combination shall, subject to the terms of his appointment, have the same authority, jurisdiction, and duties as if he had been appointed by each of the parties to the agreement. (Id. § 305a26.)

384. City Sealer and Deputies—Ordinances—Suitable Quarters and Standards.—Any city or municipality in the State may establish a department of inspection of weights and measures, and shall have power to appoint a sealer and deputies and fix their compensation, and pass such ordinances not in conflict with the State laws as may be deemed necessary; and if a city or municipality shall establish such a department, it shall provide the sealer with suitable quarters and a set of standards to be approved by the State Sealer and State Superintendent, and all other equipment for the proper performance of his duties. (Id. § 305a27.)

385. City Standards to be Proved and Sealed, and Verified, When.—All city and municipal standards shall be tried, proved, and sealed under the direction of the State Sealer, and shall be returned to him for verification at least once in every five years. (Id. § 305a28.)

386. City Sealer's Duties and Powers.—The city sealer shall perform in such city the duties and have like powers as the county sealer in the county. (Id. § 305a29.)

387. If No City Sealer, County Sealer Acts.—In those cities in which no sealer is appointed the county sealer of the county shall perform in said cities the duties and have like powers as in the county. (Id. § 305a30.)

388. Combination by County and City.—Nothing in the above shall be construed to prevent any county and any city situated therein from combining the whole or any part of their districts, as may be agreed upon, with one sealer, subject to the written approval of the State Superintendent. (Id. § 305a31.)

389. Powers and Duties of Combination County and City Sealer.—A sealer appointed in such agreement or combination shall, subject to the terms of his appointment, have the same authority, jurisdiction, and duties as if he had been appointed by each of the parties to the agreement. (Id. § 305a32.)

390. Misdemeanor to Seal or Condemn Weights, Etc., Before Test—Removal From Office.—Any State, county, or city sealer, or deputy, or assistant sealer who shall seal any weight, measure, or balance, weighing device, or measuring device before testing and making the same to conform to the authorized standards, or who shall condemn, seize, or destroy any weight, measure, or balance, or weighing device, or measuring device, without first testing the same, shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be subject to a fine of not less than $25 nor more than $100, and shall be forthwith removed from office by the State Superintendent, or other person or persons having authority to make such removal. (Id. § 305a33.)

391. Said Officers Are Special Policemen, and May Arrest Violators, and Seize Weights, Etc., or Commodities, as Evidence.—The State Superintendent, his deputies and inspectors, the State Sealer, and the county and city sealers of weights and measures are hereby made special policemen, and are authorized and empowered to arrest, without formal warrant, any violator of any statute in relation to weights and measures, and to seize for use as evidence, and without

formal warrant, any false or unsealed weight, measure, weighing device, or measuring device, or packages, or amounts of commodities offered or exposed for sale or sold in violation of law. (Id. § 305a34.)

392. Misdemeanor to Interfere With Said Officers, or to Fail to Produce Weights, Etc.; Punishment.—Any person who shall hinder, obstruct, or interfere in any way with the State Superintendent, State Sealer, any deputy or Assistant State Sealer, or any county or city sealer while in the performance of his official duties, or who shall fail to produce, upon demand by any authorized sealer or inspector of weights and measures, any weights, measures, balances, weighing devices or measuring devices in or upon his premises, place of business, or in his possession for use in manufacture or trade, shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be subject to a fine of not less than $10, nor more than $50, or to imprisonment for not more than ninety days, or to both such fine and imprisonment. (Id. § 305a35.)

393. Appropriations to Make This Law Effective.—For the purpose of correcting, supplementing, and unifying the standards now owned by the State, as directed in sections 305a7 to 305a10, the sum of $600, or so much thereof as may be necessary, is hereby appropriated; for the purpose of caring for said standards the sum of $200 per annum, or so much thereof as may be necessary, is hereby appropriated; for the purpose of carrying out the provisions of this article, the sum of $1,000 per annum, or as much thereof as may be necessary, is hereby appropriated. Said sum shall be paid out of the State treasury on sworn vouchers of the State Superintendent, approved by the Governor. (Id. § 305a36.)

394. State Superintendent and Sealer Shall Jointly Fix Variations, and Give Publicity Thereto.—The State Superintendent of Weights and Measures and the State Sealer of Weights and Measures shall jointly fix and determine reasonable variations for all classes of commodities; and they shall give the reasonable variations so established all possible publicity through the public press and through bulletins of their offices. (Id. § 305a37.)

395. Coopers, Restriction On.—No cooper or other person furnishing casks shall expose to sale any barrel or half-barrel for holding butter, lard, flour, or kiln-dried meal, but such as are herein directed to be made for that use. (Id. § 3370.)

396. Casks, How to be Made.—All casks intended for the purpose of containing butter or lard for exportation shall be made of well-seasoned timber, the staves not less than half an inch thick, and the heads not less than three-quarters of an inch thick when wrought, the heading well dowelled, the cask to have twelve good and substantial hoops, securely nailed or pinned, and to be perfectly tight, and capable of holding said articles in a liquid state. (Id. § 3371.)

397. Barrels and Half Barrels.—Each barrel shall contain not more than thirty gallons, and each half-barrel fifteen gallons. (Id. § 3372.)

398. Flour Barrels, How to be Made.—Casks intended to contain flour or meal for exportation shall be made of good seasoned materials, tightened with ten hoops, sufficiently nailed with four nails in each chine hoop, and three nails in each bilge hoop, and shall be of the following dimensions: The staves of the barrel shall be twenty-seven inches long and the heads seventeen inches in diameter; and the half-barrel shall be one-half the capacity of the barrel. (Id. § 3373.)

399. Fees of Sealer.—The Sealer of Weights and Measures is entitled to demand and receive, for sealing, fifteen cents. (Code 1918, § 6417.)

400. For Other Services.—The fees of a standard keeper and sealer of weights and measures shall be as follows:

(1) For proving and sealing each balance beam, patent balance, platform scales, steelyards or other weighing apparatus requiring less than one hundred pounds to test	$ .10
(2) For such as require from one hundred to five hundred to test	.25
(3) For such as require five hundred pounds or more to test	.50
(4) For proving and sealing each yard measure	.05
(5) For proving and sealing each capacity measure of less than one gallon	.05
(6) Of one gallon or more	.10
(7) For proving or sealing each weight or poise of less than ten pounds	.05
(8) Of ten pounds or more	.10

(Id. § 6418.)

400a. Correcting Weights and Measures.—He may also charge a reasonable compensation for labor and materials employed in making or attempting to make such weights, measures, or balances as are not correct, conform to the standards; and he may retain such weights and measures as are brought to him for adjustment until his fees are paid. (Id. § 6419.)

400b. Leaving Office.—He shall also have a reasonable compensation for leaving his office to prove, seal, or adjust weights or measures not brought there for that purpose, said compensation to be fixed by the quarterly court of each county. (Id. § 6420.)

401. Standard of Weights and Measures.—The standards of weights and measures in this State shall be the same as those adopted by the government of the United States, in accordance with the joint resolution of Congress, approved June 24, 1836, copies of which are in the care of the Superintendent of Weights and Measures, in the Capitol; that is to say:

(1) The standard of length, a copy of a brass scale in the office of weights and measures at Washington, one yard or thirty-six inches in length, at the temperature of sixty-two degrees of Fahrenheit.

(2) The standard of liquid measures, a gallon containing two hundred and thirty-one cubic inches, such as are shown on the sub-division of the yard.

(3) The standard of dry measure, a bushel containing two thousand one hundred and fifty and forty-two hundredths of such cubic inches.

(4) The standard of weights for the precious metals, jewels, etc., a copy of the troy pound of the United States mint, containing five thousand seven hundred and sixty grains; the standard of commercial weights, the avoirdupois pound containing seven thousand of such grains. (Code 1917, § 3474.)

402. Table of Weights and Measures.—The following shall be the legal and uniform standard of weights and measures in this State for the sale and purchase of the following named products of the farm, orchard, and garden, and articles of merchandise, to wit:

Apples, green, shall be 2½ bush. per bbl.
Apples, green, shall be 50 lbs. per bush.
Apples, dried, shall be 24 lbs. per bush.
Apple seed shall be 40 lbs. per bush.
Barley shall be 48 lbs. per bush.
Beans, dried, shall be 60 lbs. per bush.
Beans, green, in pods, shall be 30 lbs. per bush.
Beans, green, in pods, shall be 2½ bush. per bbl.
Beans, castor, shall be 46 lbs. per bush.
Beef, net, shall be 200 lbs. per bbl.
Beets shall be 50 lbs. per bush.
Blackberries, dried, shall be 28 lbs. per bush.
Blackberries shall be 48 lbs. per bush.
Blue grass seed shall be 14 lbs. per bush.
Bran shall be 20 lbs. per bush.
Broom corn seed shall be 42 lbs. per bush.
Buckwheat shall be 50 lbs. per bush.
Cabbage shall be 50 lbs. per bush.
Canary seed shall be 60 lbs. per bush.
Carrots shall be 50 lbs. per bush.
Cement shall be 80 lbs. per bush.
Charcoal shall be 22 lbs. per bush.
Cherries, with stems, shall be 56 lbs. per bush.
Cherries, without stems, shall be 64 lbs. per bush.
Chestnuts shall be 50 lbs. per bush.
Clover seed, red and white, shall be 60 lbs. per bush.
Coal, stone, shall be 80 lbs. per bush.
Coke shall be 40 lbs. per bush.
Corn, shelled, shall be 56 lbs. per bush.
Corn, in ear, shucked, shall be 70 lbs. per bush.
Corn, in ear, with shucks, shall be 74 lbs. per bush.
Corn, green, with shucks, shall be 100 lbs. per bush.
Corn, green with shucks, shall be 2½ bush. per bbl.
Corn, matured, with shucks, shall be 5 bush. per bbl.
Corn, pop, shall be 70 lbs. per bush.
Corn meal, whether bolted or unbolted, shall be 48 lbs. per bush.
Cotton seed shall be 28 lbs. per bush.
Cucumbers shall be 48 lbs. per bush.
Fish shall be 200 lbs. per bbl.
Flax seed shall be 56 lbs. per bush.
Flour shall be 196 lbs. per bbl.
Gooseberies shall be 48 lbs. per bush.
Grapes, with stems, shall be 48 lbs. per bush.
Grapes, without stems, shall be 60 lbs. per bush.
Hair, plastering, shall be 8 lbs. per [bush.]
Hemp seed shall be 44 lbs. per bush.
Hickory nuts shall be 50 lbs. per bush.
Hominy shall be 62 lbs. per bush.
Horseradish shall be 50 lbs. per bush.
Hungarian seed shall be 48 lbs. per bush.
Land plaster shall be 100 lbs. per bush.
Lime, unslaked, shall be 80 lbs. per bush.
Lime, slaked, shall be 40 lbs. per bush.
Liquids shall be 42 gals. per bbl.
Melon, cantaloupe, shall be 50 lbs per bush
Melon, cantaloupe, shall be 2½ bush. per bbl.
Millet, German, seed, shall be 50 lbs. per bush.
Millet, Missouri, shall be 50 lbs. per bush.
Millet, Tennessee, shall be 50 lbs. per bush.
Oats seed shall be 32 lbs. per bush.
Onions, button sets, shall be 32 lbs. per bush.

Onions, matured, shall be 56 lbs per bush.
Onions, top button, shall be 28 lbs. per bush.
Orchard grass seed shall be 14 lbs. per bush.
Osage orange seed shall be 33 lbs. per bush.
Parsnips shall be 50 lbs. per bush.
Peaches, matured, shall be 50 lbs. per bush.
Peaches, dried, shall be 26 lbs. per bush.
Pears, matured, shall be 56 lbs. per bush.
Pears, dry, shall be 26 lbs. per bush.
Peanuts shall be 23 lbs. per bush.
Peas dry, shall be 60 lbs. per bush.
Peas, green, in hull, shall be 30 lbs. per bush.
Peas, green, in hull, shall be 2½ bush. per bbl.
Pieplant shall be 50 lbs. per bush.
Plums shall be 64 lbs. per bush.
Pork, net, shall be 200 lbs. per bbl.
Potatoes, Irish, shall be 60 lbs. per bush.
Potatoes, Irish, shall be 2½ bush. per bbl.
Potatoes, sweet, shall be 2½ bush. per bbl.
Potatoes, sweet, shall be 50 lbs. per bush.
Quinces, matured, shall be 48 lbs. per bush.
Raspberries shall be 48 lbs. per bush.
Redtop seed shall be 14 lbs. per bush.
Rye seed shall be 56 lbs. per bush.
Rye grass (Italian) seed shall be 20 lbs. per bush.
Sage shall be 4 lbs. per bush.
Salads, turnips, kale, shall be 30 lbs. per bush.
Salads, mustard, spinach, shall be 30 lbs. per bush.
Salt shall be 50 lbs. per bush.
Sorghum molasses shall be 12 lbs. per gal.
Sorghum seed shall be 50 lbs. per bush.
Strawberries shall be 48 lbs. per bush.
Timothy seed shall be 45 lbs. per bush.
Tomatoes shall be 56 lbs. per bush.
Turnips shall be 2½ bush. per bbl.
Turnips shall be 50 lbs. per bush.
Velvet grass seed shall be 7 lbs. per bush.
Walnuts shall be 50 lbs. per bush.
Wheat shall be 60 lbs. per bush.
(Id. § 3475.)

403. Violation a Misdemeanor—Penalty.—It shall be unlawful to buy or sell any of the products of the farm, orchard, or garden, or articles of merchandise, mentioned in section 3475, except in strict accordance with the standard of weights and measures provided therein; and it shall be unlawful to dock any of the articles mentioned in said section, delivered in good condition and marketable form, on account of keg or barrel, without allowing value of same. Any person violating this section, or any part thereof, shall be guilty of a misdemeanor, and shall be fined not less than five dollars nor more than fifty dollars for each offense. (Id. § 3476.)

404. Standard Bushel of Cornmeal.—The standard weight of a bushel of cornmeal, whether bolted or unbolted, shall be forty-eight pounds. (Id. § 3476a1.)

405. Standard Half Bushel Measure to be Used in Measuring Wheat.—It shall be unlawful for any person, commission merchant, miller, dealer, grain inspector, corporation, company, firm, or association, either by himself, itself, officer, agent, or employee, when purchasing wheat from the owner, his agent, or employee, to use for the purpose of testing or determining the weight, grade, milling, or market value of wheat, any measure other than the standard half bushel measure furnished this State by the United States; and the use of any fractional part of said standard half bushel measure for such purpose will be a violation of this section. (Id. § 3476a4.)

406. Straight Leveling Sticks to be Used.—It shall be unlawful to use anything other than a straight stick, with the edges square, for leveling the wheat in said half bushel measure for the purpose of testing the weight, grade, milling, or market value of wheat. (Id. § 3476a5.)

407. Violation is a Misdemeanor—Fine.—Any person violating the provisions of the last two sections shall be guilty of a misdemeanor, and on conviction shall be fined not less than ten dollars nor more than fifty dollars for each offense. (Id. § 3476a6.)

408. Unlawful to Sell Food Commodities by Dry Capacity Measure, Which Must be Sold by Weight as Provided in Section 3475 of the Code—Sale in Original Packages.—It shall be unlawful for any person, firm or corporation in this State to sell or offer for sale any food commodity by dry capacity measure [which] shall hereafter be sold by weight only. Provided, however, that this act shall not be construed to prohibit the sale of dry food commodities in terms of the denominations of dry measure when such articles are weighed and sold in accordance with standards fixed by section 3475 of the Code. And, provided, further, this shall not apply to dry food commodities shipped into the State when sold in the original package. (Code Supp. 1926, § 3476a7.)

409. Who is Charged With the Enforcement of This Law—Rules and Regulations.—The State Superintendent of Weights and Measures, his duly

authorized assistants and deputies and all county and city sealers of weights and measures, are hereby charged with the enforcement of this act, and the said Superintendent of Weights and Measures, and the State Sealer of Weights and Measures, are hereby authorized and empowered jointly to make all reasonable rules and regulations necessary for the enforcement of this act. (Id. § 3476a8.)

410. Violation is a Misdemeanor—Fine.—Any person, firm, or corporation, who shall violate any of the provisions of this act, or the reasonable rules and regulations made in pursuance thereto, shall be deemed guilty of a misdemeanor; and, upon the conviction thereof, shall be fined not less than ten dollars nor more than fifty dollars for each offense. (Id. § 3476a9.)

411. Apparatus to be Proved and Sealed Yearly.—Every person keeping any store, grocery, warehouse, merchant mill, commission house, railroad depot, or any scales or apparatus for weighing or measuring for the public, shall, once in each year, have the weights, measures, and other apparatus used by him proved and sealed. (Code 1917, § 3477.)

412. Penalty for Neglect—Qui Tam Action.—For every neglect to comply with this provision, the delinquent shall be liable to a penalty of five dollars, to be recovered before a justice of the peace, one-half to the use of the town or county, the other half to the person who sues therefor. (Id. § 3478.)

413. Unsealed Apparatus Prohibited.—Every person not enumerated in section 3477, who shall use weights, measures, or other apparatus in buying or selling which have not been once sealed as required by law, shall be subject to a penalty of one dollar and costs, recoverable as above. (Id. § 3479.)

414. Treble Damages and Costs.—If any person uses such weights, measures, and apparatus which have not been sealed according to law, or which have been altered after being sealed, whereby any person shall be defrauded, he shall be subject to an action at law, in which the person defrauded shall recover three times the amount of damages and costs. (Id. § 3480.)

415. Metric System Was Legalized by Act of Congress.—It shall be lawful throughout the United States of America to employ the weights and measures of the metric system, and no contract or dealing or pleading in any court shall be deemed invalid or liable to objection because the weights and measures expressed or referred to therein are weights or measures of the metric system. (Id. § 3482.)

416. Tables of Metric Weights and Measures Adopted by Congress.—The tables in the schedule hereto annexed shall be recognized in the construction of contracts, and in all legal proceedings, as establishing, in terms of the weights and measures now in use in the United States, the equivalents of the weights and measures expressed therein in terms of the metric system; and said tables may be lawfully used for computing, determining, and expressing, in customary weights and measures, the weights and measures of the metric system.

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MEASURES OF CAPACITY.

Metric Denominations and Values.			Equivalents in Denominations in Use.	
Names.	No. Liters.	Cubic Measure.	Dry Measure.	Liquid or Wine Measure.
Kiloliter, or stere	1,000	1 cubic meter	.308 cubic yards	264.1700 gals.
Hectoliter	100	1/10 of a cubic meter	2 bush. 3.35 pecks	26.4170 gals.
Dekaliter	10	10 cubic decimeters	908 quarts	2.6417 gals.
Liter	1	1 cubic decimeter	0.908 quarts	1.0567 qts.
Deciliter	1/10	1/10 of a cubic decimeter	6.1022 cubic in.	0.8450 gills
Centiliter	1/100	10 cubic centimeters	0.6102 cubic in.	0.3380 fld. oz.
Milliliter	1/1000	1 cubic centimeter	0.0610 cubic in.	0.2700 fld. dr.

WEIGHTS.

Metric Denominations and Values.			Equivalents in Denominations in Use.
Names.	No. of Grams.	Weight or What Quantity of Water at Maximum Density.	Avoirdupois Weight.
Millier or Tonneau	1,000,000	1 cubic meter	2,204.6000 pounds.
Quintal	100,000	1 hectoliter	220.4600 pounds.
Myriagram	10,000	10 liters	22.0460 pounds.
Kilogram or kilo	1,000	1 liter	2.2046 pounds.
Hectogram	100	1 deciliter	3.5274 ounces.
Dekagram	10	10 cubic centimeters	0.3527 ounces.
Gram	1	1 cubic centimeter	15.4320 grains.
Decigram	1/10	1/10 of a cubic centimeter	1.5432 grains.
Centigram	1/100	10 cubic millimeters	0.1543 grains.
Milligram	1/1000	1 cubic millimeter	0.0154 grains.

(Id. § 3483.)

417. Metric System Furnished States.—The Secretary of the Treasury shall furnish each State, to be delivered to the Governor thereof, one set of the standard weights and measures of the metric system for the use of the States respectively. (Id. § 3484.)

418. False Balance, Weight, or Measure.—If any person, with intent ot defraud, have in his possession, or use, any false balance, weight, or measure in any business, trade, or transaction, it shall be a misdemeanor. (Code 1918, § 6734.)

419. Forfeited.—The magistrate granting the warrant of arrest for the offense described in the last section, shall also direct the seizure of the false weights, balances, or measures; and if they are found to be false, they shall be forfeited to the county, and, after being made of the standard weight or measure may be sold and the money paid into the county treasury. (Id. § 6735.)

420. Misdemeanor to Sell, Use, or Possess False, Unsealed, or Condemned Weights and Measures or Devices—Fine and Imprisonment.—Any person who, by himself or by his servant or agent, or as the servant or agent of another, shall offer or expose for sale, sell or retain in his possession, a false weight or measure or weighing or measuring device or any weight, measure, weighing device, or measuring device which has not been sealed by a State, county, or city sealer of weights and measures, within one year, or use same in the buying or selling of any commodity or thing or for hire or reward, or shall dispose of any condemned weight, measure, weighing device, or measuring device, contrary to law, or remove any tag placed thereon by any sealer of weights and measures; or shall, by himself or by his servant or agent, or as the servant or agent of another, offer or expose for sale, or have in his possession for the purpose of selling, any device or instrument to be used to or calculated to falsify any weight or measure, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be punished by a fine of not less than $10 nor more than $50 for the first offense, and for subsequent offenses by a fine of not less than $50 nor more than $100, or by imprisonment in the county jail for not more than ninety days, or by both such fines and imprisonment. (Id. § 6735a1.)

421. Sale by False Weight, Measure, or Numerical Count is a Misdemeanor —Fine and Imprisonment—Variations to be Fixed and Allowed.—Any person who, by himself or by his servant or agent, shall sell, offer, or expose for sale any quantity of any commodity which is by weight, measure, or numerical count less than the quantity which he represents same to be, shall be guilty of a misdemeanor, and, upon conviction, shall be fined not less than $10 nor more than $50 for the first offense, and for subsequent offenses not less than $50 nor more than $100, or shall be imprisoned in the county jail not more than ninety days, or both such fine and imprisonment; provided that the State Superintendent of Weights and Measures and the State Sealer of Weights and Measures shall jointly fix and determine reasonable variations for all classes of commodities; and no penalties for violation of this section shall be imposed when the variation in weight, measure, or numerical count does not exceed the reasonable variation so fixed; provided, further,

that the said State Superintendent and State Sealer shall give the reasonable variations so established all possible publicity through the public press and through bulletins of their offices. (Id. § 6735a2.)

422. Inquisitorial Power—Special Charge.—The grand juries of the several counties of the State shall have inquisitorial power over said offenses, and the judges of the seevral criminal courts and circuit courts having criminal jurisdiction shall especially charge this law to the grand juries of the several counties of the State. (Id. § 6735a3.)

423. Unlawful for Merchants or Manufacturers to Sell Commodities Under False Representation as to Quantity.—It shall be unlawful for any merchant or manufacturer or any person to sell within this State any package or quantity of any commodity marked to contain or represented to contain a certain number of pounds or ounces or fractions thereof when, as a matter of fact, it contains a less quantity. (Id. § 6735a4.)

424. Violation is a Misdemeanor—Fine and Imprisonment.—Every violation of the preceding section, where the shortage in weight is as much as one per cent of the marked or represented weight, is declared to be and shall be a misdemeanor, and shall be punished by fine of not less than ten dollars nor more than five hundred dollars, or by imprisonment in the county workhouse for not more than six months, or by both, in the discretion of the court. (Id. § 6735a5.)

425. Penalty for Concealing Iron, Stone, Etc., in Bales of Cotton or Packages of Tobacco.—If the owner or superintendent of cotton gin or tobacco establishments of any kind in Tennessee, shall place any wood, iron, rocks, dirt, or other substance, into any bale of cotton, hogshead or package of tobacco, when packed or baled, for the purpose of adding to the weight thereof, or shall cause the same to be done by others, such person or persons so offending shall be deemed guilty of a felony, and subject to indictment as in other cases of felony, and, upon conviction thereof, shall suffer imprisonment in the penitentiary of the State, for a period not less than two nor more than five years, and shall also pay a fine of five hundred dollars, to be paid into the treasury of the State. (Id. § 6740.)

426. Same if Done Outside of the State.—If any person from an adjoining State shall sell in this State any cotton or tobacco so fraudulently packed, as described in the last section, knowing the same to be so packed, such person shall be subject to the penalties of said section. (Id. § 6741.)

427. Civil Remedy Against Owner of Gin.—If any person shall sell or otherwise dispose of cotton or tobacco fraudulently packed, as described in section 6740, the person at whose gin or establishment the same was put up, shall be deemed guilty of negligence, and shall, upon suit, on behalf of any subsequent purchaser of said cotton or tobacco, pay double the value of the same as damages, and also the cost of reshipping the same from the market where the fraud was detected. (Id. § 6742.)*

428. Measures and Toll Dishes.—Millers shall keep in their mills the following sealed measures: One-half bushel, one peck, and proper toll dishes for each measure. (Code 1917, § 3452.)

429. Forfeiture for Keeping False Toll Dishes.—Every owner keeping a mill, either by himself, servant, or lessee, who shall be convicted of keeping false toll dishes, shall forfeit and pay to the party injured ten dollars, to be recovered before any justice of the peace of the county. (Id. § 3453.)

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*Following sections 6740-6742, Code 1918, quoted in Nos. 425-427, is this editorial note:

"Sections 6740-6742 are probably unconstitutional.—In the case of Inman v. State, as the owner, and in the case of Davis v. State as superintendent, both indicted for fraudulently packing bales of cotton with cotton seed and water so as to increase the weight, it was held that the statute was unconstitutional and void, upon the ground that it is arbitrary and unreasonable class legislation, in making the offense a felony against the owner or superintendent of cotton gin or tobacco establishment to do the prohibited thing, but excluding all other persons guilty of a like offense. However, it was held that the defendant might be tried and convicted as for a misdemeanor under another statute, evidently referring to section 6737; and for this purpose, both cases were remanded for trial on the charge of a misdemeanor. This decision was rendered by the Supreme Court, at Jackson, June 16, 1917, by an opinion delivered by Mr. Justice Buchanan, according to a newspaper report thereof, which stated that the opinion was filed; but the Supreme Court clerk states that no written opinion was filed. The newspaper report does not state that these sections were involved, but the statement of the decision clearly indicates that these sections were the ones involved. The decision seems to be clearly sound and well reasoned; and it seems that said sections are clearly unconstitutional upon the ground stated."

430. County Standard Keeper and Sealer.—There shall be a standard keeper and sealer of weights and measures in each county in the State, who shall be appointed by the county court, and hold his office during the pleasure of the court. (Id. § 575.)

431. Where to Reside.—He shall live at the county town, or as near thereto as a person well qualified can be secured. (Id. § 576.)

432. Oath.—He shall take the following oath:

"I, ..., do solemnly swear that I will not stamp or seal any weights or measures but such as shall, as near as possible, agree with the standards in my keeping; and that I will, in all things, duly and faithfully discharge the trust reposed in me, to the best of my skill and judgment. So help me God." (Id. § 577.)

433. Corporation Standard Keeper.—The corporate authorities of any city or town may appoint a standard keeper and sealer of weights and measures for such city or town, procuring and having verified suitable standards, at the expense of such corporation; and said officer shall have the same power and authority as the county standard keeper and sealer. (Id. § 578.)

434. Duties—To Preserve Standards—Use of Standards—Adjust Substitutes or Copies—Adjust and Verify Weights and Measures—Brand or Mark Weights and Measures—Prove Balances and Scales—Advertise—Turn Over Standards and Apparatus.—It shall be his duty:

(1) To take charge, and use every precaution for the perfect preservation of the standards furnished by the State, so as to avoid touching them with the hand, and any soiling, abrasion, or other injury thereto.

(2) To use the standards to adjust and verify the substitutes or copies furnished him, and for no other purpose.

(3) To adjust the substitutes or copies at least once a year.

(4) To adjust and verify all weights, measures, and other apparatus used for weighing and measuring, that may be brought to him for the purpose, by and in conformity with the said substitutes.

(5) To brand or mark, with the letter T and the current year, such weights, measures, balances, and other apparatus, as, upon trial or adjustment, shall be found correct.

(6) To prove patent balances, steelyards, platform scales, and other balances having poises, with correct weights, up to five hundred pounds.

(7) To advertise each year, at the courthouse door, where he may be found with his apparatus for proving and sealing.

(8) On vacating his office, to deliver to his successor, or to the presiding officer of the county court, or chief officer of the city or town, as the case may be, all the standards and apparatus of his office. (Id. § 579.)

435. On Death, Standards to be Delivered to Whom.—On the death of a standard keeper and sealer, his personal representative, or other person into whose hands the standards and apparatus of his office may come, shall deliver the same to his successor, or to the presiding officer of the county court, or chief magistrate of the city or town. (Id. § 580.)

436. Exclusively to Use Seals, Etc.—No person except the standard keeper and sealer, shall use a seal, brand, or mark, such as is above directed, for marking or sealing. (Id. § 581.)

437. Weighing Apparatus, When Not Sealed.—No apparatus used for weighing shall be sealed which will not weigh accurately within one-fourth of a pound in one hundred. (Id. § 582.)

NOTE: See also Nos. 6, 26 et seq., 61 et seq., 71, 118, 147 et seq., 161 et seq., and 315 et seq.

PART V.

Cases.

1. General Food and Drug Law.

Food—Unwholesomeness: Hunter v. State, 38 Tenn. 160, 73 Am. Dec. 164 (1858).

2. Special Food Laws.

Beverages—Alcoholic—Non-Intoxicating—Tax: *Diehl & Lord v. Hailey, 139 Tenn. 466, 201 S. W. 773 (1917).

Beverages—Regulation of Sale: *Aizenshtatt v. Mayor and Aldermen of City of Jackson, 1 Higgins 805 (1911).

Beverages—Soft Drinks—Labeling Bottles: *Calloway et al. v. Lenoir City et al., 3 Higgins 658 (1913).

Beverages—Soft Drinks—License: Chero-Cola Bottling Co. v. McDaniel et al., 145 Tenn. 615, 237 S. W. 1101 (1921).

Beverages—Tinctures, Essences, Etc.: The Druggist Cases, 85 Tenn. 449, 3 S. W. 490 (1887).

Dairymen—Permit: See *Milk.*

Fruits, Vegetables, Etc.—Hawkers and Peddlers: *Dutton et al. v. Mayor and Aldermen of Knoxville, 121 Tenn. 25, 113 S. W. 381, 130 Am. St. Rep. 748 (1908).

Groceries—Traveling Stores—License: *H. G. Hill Co. v. Whitice et al., McMillan v. Same, 149 Tenn. 168, 258 S. W. 407 (1923).

Markets: *City of Nashville v. Hager, 5 Higgins 192 (1914). See also: *Fruits, Vegetables, Etc.*

Meat—License: *Vosse et al. v. City of Memphis, 77 Tenn. 295 (1882); Eastman v. Jackson & Scott, 78 Tenn. 162 (1882). See also: *Markets.*

Meat—Inspection and Slaughtering: *Noe et al. v. Mayor and Aldermen of Town of Morristown, 128 Tenn. 350, 161 S. W. 485, Ann. Cas. 1915 C, 241 (1913).

Milk—Sanitation—Permit: *State ex rel. Lowry v. Davis, 1 Higgins 550 (1910).

3. Special Drug Laws.

Narcotics: *Hyde v. State, 131 Tenn. 208, 174 S. W. 1127 (1914); Friedman v. State, 141 Tenn. 553, 213 S. W. 418 (1919).

Pharmacy: Villines v. State, 96 Tenn. 141, 33 S. W. 922 (1896).

Pharmacy—Itinerant Vendors: *Kirk v. State, 126 Tenn. 7, 150 S. W. 83, Ann. Cas. 1913 D, 1239 (1911).

Poisons: See Wise & Co. v. Morgan, 101 Tenn. 273, 48 S. W. 971, 44 L. R. A. 548 (1898).

4. Civil Action to Recover Damages for Injury Alleged to Have Been Caused by Consumption or Use of Product.

Chewing Tobacco: Liggett & Myers Tobacco Co. v. Cannon, 132 Tenn. 419, 178 S. W. 1009, L. R. A. 1916 A, 940, Ann. Cas. 1917 A, 179 (1915).

Drugs: Wise & Co. v. Morgan, 101 Tenn. 273, 48 S. W. 971, 44 L. R. A. 548 (1898).

Food: Boyd v. Coca-Cola Bottling Works, 132 Tenn. 23, 177 S. W. 80 (1914); Crigger v. Coca-Cola Bottling Co., 132 Tenn. 545, 179 S. W. 155, L. R. A. 1916 B, 877, Ann. Cas. 1917 B, 572 (1915); John B. Thompson Co. v. Smith, 8 Higgins 95 (1919). See also: Goad v. Johnson, 53 Tenn. 340 (1871); Swift & Co. v. Rogers & Wife, 6 Higgins 124 (1917).

5. Miscellaneous.

Cigarettes: *Austin v. State, 101 Tenn. 563, 48 S. W. 305, 50 L. R. A. 478, 70 Am. St. Rep. 703 (1898), affirmed in *Austin v. Tennessee, 179 U. S. 343, 21 S.

Ct. 132, 45 L. Ed. 224 (1900); *Blaufield v. State, 103 Tenn. 593, 53 S. W. 1090 (1899). *Sawrie v. State of Tennessee, 82 Fed. 615 (1897).

Gift Enterprise: Bell v. State, 37 Tenn. 507 (1858); Eubanks v. State, 50 Tenn. 488 (1872); State v. McTeer, 129 Tenn 535, 167 S. W. 121 (1913).

Seeds: *State v. McKay et al., 137 Tenn. 280, 193 S. W. 99, Ann. Cas. 1917 E, 158 (1916).

Trade-Marks: Filley v. Rosenbaum et al., 3 Shannon's Cases 395 (1875); C. F. Simmons Medicine Co. v. Mansfield Drug Co., 93 Tenn. 84, 23 S. W. 165 (1893); Robinson v. Storm, 103 Tenn. 40, 52 S. W. 880 (1899); *State v. Bradt, 103 Tenn. 584, 53 S. W. 942 (1899); F. W. Cook Brewing Co. v. Karchner Bros., 3 Higgins 226 (1913). See also: Ex parte Walker et al., 1 Tenn. Chancery 97 (1873); Benevolent and Protective Order of Elks of the U. S. A. et al. v. Improved Benevolent and Protective Order of Elks of the World, 122 Tenn. 141, 118 S. W. 389 (1909); Supreme Lodge Knights of Pythias v. Grand Lodge Knights of Pythias et al., 2 Higgins 429 (1911); Sanford-Day Iron Works v. Enterprise Foundry & Machine Works et al., 130 Tenn. 669, 172 S. W. 537 (1914); M. M. Newcomer Co. v. Newcomer's New Store et al., 142 Tenn. 108, 217 S. W. 822 (1919).

Trading Stamps: *Trading Stamps Co. v. Memphis, 101 Tenn. 181, 47 S. W. 136 (1898).

Weights and Measures: Kirby v. Rice, 16 Tenn. 442 (1835); Mays v. Jennings, 23 Tenn. 102 (1843); State v. Woodson, 24 Tenn. 55 (1844); *State v. Co-operative Store Co. and State v. W. M. Ausmus Mill Co., 123 Tenn. 399, 131 S. W. 867, Ann. Cas. 1912 C, 248 (1910); Toledo Scale Co. v. Hill, 151 Tenn. 312, 269 S. W. 25 (1924). See also: Gass & Vestal v. Corporation of Greenville, 36 Tenn. 62 (1856); Rugg v. State, 141 Tenn. 362, 210 S. W. 630 (1918).

TEXAS.*

PART I.

General Food and Drug Law.

1. **Director.**—The State Health Officer shall biennially appoint a suitable person to be known as the Chief Director of the Food and Drug Division of the State Board of Health, hereinafter called the director, who shall hold office for a term of two years. He shall take the official oath and give bond in the sum of ten thousand dollars, payable to and to be approved by the Governor, conditioned for the faithful performance of his duties. The State Health Officer may remove said director at any time for cause and appoint a successor. (Rev. Civ. Stats. 1925, Art. 4465.)

2. **Duties.**—The director shall:

1. Keep his office and laboratory in Austin.

2. Make, publish and enforce rules consistent with this law, and adopt standards for foods, food products, beverages, drugs, etc., and the modern methods of analysis authorized as official by the Federal Department of Agriculture. .

3. Inquire into the quality of the foods and drug products manufactured or sold or exposed for sale, or offered for sale in this State, and for such purpose he may enter any creamery, factory, store, salesroom, drug store or laboratory or place where he has reason to believe foods or drugs are made, prepared, sold or offered for sale or exchange, and open any cask, tub, jar, bottle or package containing or supposed to contain any article of food or drug and examine or cause to be examined the contents thereof, and he shall take samples therefrom and make analysis thereof. When making such inspection he shall seal and mark such sample and tender to the vendor or person having custody of same the value thereof, and a written statement stating the reason for taking such sample.

4. Make complaint and institute proceedings against any manufacturer or person who violates any provisions of the food and drug laws of this State. He need not give security for costs in proceedings so instituted.

5. Report to the Governor on or before the 31st day of August of each year, showing the entire work of his office for the preceding year, the number of factories and other places inspected and by whom, the number of specimens of food and drug articles analyzed, and the number of complaints entered for violations of such laws, the number of convictions had, and the amount of fines imposed therefor, together with recommendations relative to the laws in force. Such report shall be published at the expense of the State. (Id. Art. 4466.)

3. **Administration and Expenses.**—The director may appoint two inspectors who shall make inspections and perform such duties as he may require. With the consent of the State Health Officer he may appoint two assistant chemists, who shall each enter into bond in the sum of five thousand dollars, payable, approved and conditioned as the director's bond. The director may appoint one stenographer, and such additional inspectors, chemists, clerks and other assistants as he deems necessary. The actual and necessary expenses of the director and his assistants and deputies shall be paid by the State, the amounts thereof to be audited by the Comptroller. (Id. Art. 4467.)

4. **Bulletins.**—The director may issue bulletins quarterly, or as often as he deems advisable, showing the work of his division. (Id. Art. 4468.)

5. **Registration.**—All manufacturers of foods and drugs doing business in Texas, or all such persons as shall bring into and offer for sale in this State any article of food or drug, shall annually register with the director and pay him a fee of one dollar for such registration on or before the first day of each September. The

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*CITATIONS: "Rev. Civ. Stats. 1925" refers to the Revised Civil Statutes of the State of Texas, 1925, published by authority of the legislature. "Rev. Crim. Stats. 1925" refers to the Penal Code of the State of Texas, 1925, published by authority of the legislature. "Code Crim. Pro. 1925" refers to the Code of Criminal Procedure of the State of Texas, 1925, published by authority of the legislature. (Included in the Revised Criminal Statutes' volume.) "L." refers to the session laws of the year cited.

director shall promptly remit such fees as collected to the State Treasurer. (Id. Art. 4469.)

6. Condemnation.—Any article of food or drug that is adulterated or misbranded within the meaning of this law shall be liable to be condemned, confiscated and forfeited by a suit to be brought in the District Court of the county where said article of food or drug is located, in the name of the State of Texas as plaintiff, and in the name of the owner thereof as defendant, if said owner be known; if he be unknown, then in the name of said article of food or drug, and service shall be obtained as in civil cases. Upon a trial of said case, if it be determined by the court or jury trying said case that said article of food or drug is misbranded or adulterated, or of a poisonous or deleterious character within the meaning of this law, the same shall be disposed of by destruction or sale in accordance with the judgment of the court, and the proceeds thereof, if sold, less the legal cost and charges, shall be paid into the State treasury. District and county attorneys shall file forfeiture and condemnation suits under this law at the request of the director. Said attorney shall be entitled to a fee of $15.00, to be paid out of the proceeds arising from the sale of the property condemned, said fee to be in addition to all other fees allowed by law, and shall be over and above the fees allowed under the General Fee Act of this State. Upon payment of the costs of such forfeiture or condemnation proceeding by the owner of the property proceeded against and by his executing and delivering a good and sufficient bond in double the value of the goods proceeded against, payable to the State of Texas, conditioned that said articles shall not be sold or otherwise disposed of contrary to the provisions of this law, the court may by order direct that said goods be delivered to the owner thereof. In all proceedings begun under this article, either party may demand trial by jury, of any issue of fact joined in any such case. (Id. Art. 4470.)

7. Adulterated or Misbranded Food or Drug.—No person, firm or corporation, shall within this State manufacture for sale, have in his possession with the intent to sell, offer or expose for sale or sell or exchange any article of food or drug which is adulterated or misbranded within the meaning of this chapter. The term "food" shall include all articles used by man for food, drink, flavoring, confectionery or condiment, whether simple, mixed or compounded. The term "drug" shall include all medicines and preparations for internal or external use recognized in the United States Pharmacopœia or National Formulary, and any substance or mixture of substances intended to be used for the cure, mitigation or prevention of disease of either man or animal. (Id. Art. 4471; Rev. Crim. Stats. 1925, Art. 706.)

8. Definitions.—The terms "adulterated" and "misbranded," as used in this chapter, shall be held to have the same meaning as is given those terms in chapter two of Title 12 of the Penal Code.* (Rev. Civ. Stats. 1925, Art. 4472.)

9. "Adulterated."—For the purposes of this chapter an article shall be deemed to be adulterated:

(a) In the case of drugs:

(1) If, when sold under or by a name, recognized in the eighth decennial revision of the United States Pharmacopœia or in such United States Pharmacopœia as was official at the time of labeling it, or in the National Formulary, it differs from the standard strength, quality or purity laid down therein;

(2) If, when sold under or by a name not recognized in the eighth decennial revision of the United States Pharmacopœia, but which is found in some other pharmacopœia or other standard work on materia medica, it differs materially from the standard of strength, quality or purity laid down in such work;

(3) If its strength, quality or purity falls below the professed standard under which it was sold.

(b) In the case of confectionery; if it contains terra alba, barytes, talc, chrome yellow, or other mineral substances or poisonous color or flavor, or other ingredients deleterious or detrimental to health, or any vinous, malt or spirituous liquor or compound, or narcotic drug.

(c) In the case of food:

(1) If any substance has been mixed and packed with it so as to reduce or lower or injuriously affect its quality or strength;

(2) If any substance has been substituted wholly or in part for the article;

(3) If any valuable constituent of the article has been wholly or in part abstracted, or if the product be below that standard of quality, quantity, strength or purity represented to the purchaser or consumer;

(4) If it be mixed, colored or powdered, coated or stained in a manner whereby damage or inferiority is concealed;

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*See Nos. 9-10.

(5) If it contains any added poisonous or other added deleterious ingredient which may render such article injurious to health, provided, that when in the preparation of food products for shipment they are preserved by any external application applied in such manner that the preservative is necessarily removed mechanically, or by maceration in water or otherwise, and directions for the removal of said preservative shall be printed on the covering of the package, the provisions of this act shall be construed as applying only when said products are ready for consumption;

(6) If it consists in whole or in part of a filthy, decomposed or putrid animal or vegetable substance, or any portion of an animal or vegetable unfit for food, whether manufactured or not, or if it is the product of a diseased animal, or one that has died otherwise than by slaughter.

"Filthy" defined.—The term "filthy" shall be deemed to apply to food not securely protected from flies, dust, dirt, and as far as may be necessary by all reasonable means, from all foreign or injurious contaminations. (Rev. Crim. Stats. 1925, Art. 707.)

10. **"Misbranded."**—The term "misbranded," as used herein, shall apply to all drugs or articles of food or articles which enter into the composition of food, the package or label of which shall bear any statement, design or device regarding such article or the ingredients or substances contained therein which shall be false or misleading in any particular.

An article shall also be deemed to be misbranded:

(a) In the case of drugs:

(1) If it be an imitation of or offered for sale under the name of another article;

(2) If the contents of the package as originally put up shall have been removed in whole or in part and other contents shall have been placed in such package, or if the package fail to bear a statement on the label of the quantity or proportion of any morphine, phenocetice, opium, cocaine, heroin, alpha or beta eucaine, chloroform, cannabis indicia, chloral hydrate, or acetanelid, or any derivative or preparation of any such substances contained therein;

(b) In the case of food:

(1) If it be an imitation of or offered for sale under the distinctive name of another article;

(2) If it be labeled or branded so as to deceive or mislead the purchaser or purport to be a foreign product when not so, or if the contents of the package as originally put up shall have been removed in whole or in part and other contents shall have been placed in such package, or if it fails to bear a statement on the label of the quantity or proportion of any morphine, opium, cocaine, heroin, alpha or beta eucaine, phenacetin, chloroform, cannabis indicia, chloral hydrate or acetanelid, or any derivative or preparation of any of such substances contained therein;

(3) If in package form and the contents are stated in terms of weight or measure, they are not plainly and correctly stated on the outside of the package;

(4) If the package containing it or its labels bear any statement, design or device regarding the ingredients or the substances contained therein, which statement, design or device shall be false or misleading in any particular, provided that an article of food which does not contain any added poisonous or deleterious ingredient shall not be deemed to be adulterated or misbranded in the following cases: First, in case of mixtures or compounds which may be now or from time to time hereafter known as articles of food, under their own distinctive names, and not an imitation of or offered for sale under the distinctive name of another article, if the name be accompanied on the same label or brand with a statement of the place where said article has been manufactured or produced; second, in the case of articles labeled, branded, or tagged so as to plainly indicate that they are compounds, imitations or blends. The term "blend," as used herein, shall be held to mean a mixture of like substances, not excluding harmless coloring or flavoring ingredients used for the purpose of coloring and flavoring only. Nothing in this law shall be construed as requiring proprietors or manufacturers of proprietary foods which contain no unwholesome added ingredients to disclose their trade formulas except in so far as the provisions of this law require to secure freedom from adulteration or misbranding. (Id. Art. 708.)

11. **Preservatives Added.**—No person shall manufacture, sell, offer or expose for sale or exchange any article of food to which has been added formaldehyde, boric acid or borates, benzoic acid or benzoate, sulphurous acids or sulphites, salicylic acid, or salicylates, abrastal, beta naphthal, fluorine compounds, dulcin, glucin, cocaine, sulphuric acid or other mineral acid except phosphoric acid, any preparation of lead or copper or other ingredient injurious to health. Nothing herein shall be construed as prohibiting the sale of catsups, sauces, concentrated fruits, fruit juices, and like substances preserved with one-tenth of one per cent of benzoate of soda, or the

equivalent benzoic acid, when a statement of such fact is plainly indicated upon the label. The oxides of sulphur may be used for bleaching, clarifying and refining food products. (Rev. Civ. Stats. 1925, Art. 4473; Rev. Crim. Stats. 1925, Art. 709.)

12. Dealer Not to be Prosecuted, When.—No dealer shall be prosecuted under this chapter when he can establish a guaranty signed by the wholesaler, manufacturer, or other party residing in the United States from whom he purchased such article, to the effect that the same is not adulterated or misbranded within the meaning of this act, designating it. Said guaranty, to afford protection, shall contain the name and address of the party making the sale of such article to such dealer, and in such case said party shall be amenable to the fines and other penalties which would attach in due course to the dealer under the provisions of this chapter. (Rev. Crim. Stats. 1925, Art. 714.)

13. Certificates of Purity.—The State Health Department or any employee thereof shall not furnish to any individual, firm or corporation any certificate as to the purity or excellence of any article manufactured or sold to or by them to be used as food or drug or in the preparation of food or drugs. (Id. Art. 715.)

14. Obstruction of Officers.—No person shall willfully hinder or obstruct the director of the food and drug division of the State Board of Health, or his inspector or other person duly authorized by him, in the exercise of the powers conferred upon him by the laws of this State. (Id. Art. 716.)

15. Penalty for Violating Pure Food Laws.—Whoever shall do any act or thing prohibited, or neglect or refuse to do any act or thing enjoined by the preceding articles of this chapter, or in any way violate any provision thereof, shall be fined not less than twenty-five nor more than two hundred dollars. It shall not be necessary for the indictment to allege or for the State to prove that the act or omission was knowingly done or omitted. (Id. Art. 717.)

Miscellaneous General Provisions.

16. Shipping Articles Without Inspection.—Whoever shall export from this State, or ship for the purpose of exportation to any one of the United States or to any foreign port, any article of commerce which by any law of this State may be required to be inspected by a public inspector without having caused said inspection to be made according to law, shall be fined not exceeding one hundred dollars. (Rev. Crim. Stats. 1925, Art. 1112.)

17. Altering Mark.—Whoever shall counterfeit or alter the mark, brand, or stamp directed by any law of this State to be put on any article of commerce, or on the box, cask or package containing the same, shall be fined not exceeding one thousand dollars or imprisoned in jail not exceeding one year. (Id. Art. 1113.)

18. Unwholesome Food.—After conviction for selling unwholesome food or adulterated medicine, the court shall enter and issue an order to the sheriff or other proper officer to seize and destroy such as remains in the hands of the defendant. (Code Crim. Pro. 1925, Art. 109.)

19. Duties.—The duties of the Commissioner [of Agriculture] shall be as follows:

1. He shall cause to be executed all laws in relation to agriculture. . . . (Rev. Civ. Stats. 1925, Art. 51.)

20. To Establish Agencies.—The Commissioner [of Markets and Warehouses]* shall establish agencies for the sale of farm, orchard, and ranch products, wherever it may be deemed advisable, in which event he is empowered to prescribe all regulations for the conduct of such agencies as may be found necessary. (Id. Art. 5567.)

21. Office of Commissioner of Markets and Warehouses Abolished.—The office of Commissioner of Markets and Warehouses of the State of Texas is hereby abolished, and the authority, duties, powers, functions, rights, and liabilities, heretofore vesting in said commissioner, shall hereafter vest in and be had and performed by the Commissioner of Agriculture. The Markets and Warehouse Department and the Weights and Measures Department of the State of Texas are hereby abolished, and the duties and functions of the same shall hereafter vest in the Commissoner of Agriculture. (Id. Art. 5611, § 1; L. 1925, c. 13, § 1.)

22. Appropriations.—All appropriations heretofore made for the Markets and Warehouse Department and the Weights and Measure Department shall hereafter be available to the Commissioner of Agriculture to expend, as provided by law, in the execution of the work and the performance of the duties herein transferred; provided that the Commissioner of Agriculture shall be authorized to reapportion and re-

*Now Commissioner of Agriculture. See No. 21.

arrange the duties of the office and of the employees and fix the salaries of said employees, where not fixed by law, and shall be authorized to discontinue any duties, work, or employees, in order to prevent a duplication of work already being performed, or authorized to be performed by the Department of Agriculture. (Id. Art. 5611, § 6; L. 1925, c. 13, § 6.)

NOTE: See also Nos. 104, 214-215.

PART II.

Special Food Laws.

Bakeries—Bakery Products.

23. Bakeries and Bakers.—Whoever violates any provision of this article shall be fined not less than twenty-five nor more than two hundred dollars:

Rule 1. Bakery Building.—Any building occupied or used as a bakery wherein is carried on the business of the production, preparation, storage or display of bread, cakes, pies, and other bakery products intended for sale for human consumption, shall be clean, properly lighted, drained and ventilated. Every such bakery shall be provided with adequate plumbing and drainage facilities including suitable wash sinks, toilets and water closets. All toilets and water-closets shall be separated and apart from the rooms in which the bakery products are produced or handled. All wash sinks, toilets and water closets shall be kept in a clean and sanitary condition, and shall be in well-lighted and ventilated rooms. The floors, walls and ceilings of the rooms in which the dough is mixed and handled, or the pastry prepared for baking, or in which the bakery products or ingredients of such products are otherwise handled or stored, shall be kept and maintained in a clean, wholesome and sanitary condition. All openings into such rooms, including windows and doors, shall be kept properly screened or otherwise protected to exclude flies. No working rooms shall be used for purposes other than those directly connected with the preparing, baking, storage and handling of food, and shall not be used as washing, sleeping, or living rooms, and shall, at all times, be separated and closed from the living and sleeping rooms. Rooms shall be provided for the changing and hanging of wearing apparel apart and separate from such workrooms and such rooms as to be provided for the changing and hanging of wearing apparel shall be kept clean at all times.

Rule 2. Sanitation.—No employee or other person shall sit or lie upon any table, bench, trough or shelf which is intended for the dough or bakery products. No animals or fowls shall be kept or allowed in any bakery or other place where bread or other bakery products are produced or stored. Before beginning the work of preparing, mixing and handling the ingredients used in baking, every person engaged in the preparation or handling of bakery products shall wash his hands and arms thoroughly, and for this purpose sufficient wash basins and soap and clean towels shall be provided. No employee or other person shall use tobacco in any form in any room where bakery products are manufactured, wrapped or prepared for sale. No master baker, person or any employee who is affected with any contagious or infectious disease shall be permitted to work in any bakery or be permitted to handle any product therein, or delivered therefrom.

Rule 3. Clean Condition.—The wagons, boxes, baskets and other receptacles in which bread, cake, pies or other bakery products are transported, shall be kept in a clean condition at all times and free from dust, flies and other contamination. All show cases, shelves or other places where bakery products are sold, shall be kept well covered, properly ventilated, well protected from dust and flies, and shall be kept in a clean and wholesome condition at all times. Boxes or other receptacles for the storing or receiving of bread and other bakery products, before and after the retail stores and selling places are open, shall be constructed and placed so as to be free from the contamination of streets, alleys and sidewalks, and shall be raised at least ten inches from the sidewalk or street, and shall be kept clean and sanitary, and no bread shall be placed in any box along with any other articles of food than bakery products. All such boxes shall be provided with private locks and shall be locked at all times except when open to receive or remove bread or other bakery products and when being cleaned.

Rule 4. Ingredients Must be Good.—All material used in the production or preparation of bakery products shall be stored, handled and kept in a way to protect them from spoiling and contamination, and no material shall be used which is spoiled or

contaminated, or which may render the bread or other bakery products unwholesome or unfit for food. The ingredients used in the production of bread and other bakery products and the sale or offering for sale of bread and other bakery products shall comply with the provisions of the laws against adulteration and misbranding. No ingredients shall be used which may render the bread or other bakery products injurious to health.

Rule 5. Weight of Bread.—Bread to be sold by the loaf made by bakers engaged in the business of wholesaling and retailing bread, shall be sold based upon any of the following standards of weight and no other, namely: a loaf weighing one pound or 16 ounces, a loaf weighing 24 ounces or a pound and a half, and loaves weighing two pounds or 32 ounces, and loaves weighing three pounds, or some other multiple of one pound or 16 ounces. These shall be the standard of weight for bread to be sold by the loaf. Variations, or tolerance, shall not exceed one ounce per pound over or under the said standard within a period of 24 hours after baking. (Rev. Crim. Stats. 1925, Art. 719.)

NOTE: See also No. 77 et seq.

Baking Powder.

24. Baking Powder Compound to be Labeled.—Whoever manufactures for sale within this State, or offers or exposes for sale or exchange or sells any baking powder or compound intended for use as a baking powder under any name or title whatsoever shall securely affix or cause to be securely affixed to the outside of every box, can or package containing such baking powder or like mixture or compound a label distinctly printed in plain capital letters in the English language, containing the name and residence of the manufacturer or dealer, and the ingredients of the baking powder. Baking powder containing less than 10 per cent of available carbon dioxide shall be deemed to be adulterated. (Rev. Civ. Stats. 1925, Art. 4475; Rev. Crim. Stats. 1925, Art. 710.)*

Beverages.

See Nos. 11, 76, 77, 112 et seq., 159, 162 et seq., and 194.

Bread.

See No. 23.

Catsup.

See No. 11.

Cereals.

25. Mixed or Adulterated Cereals.—Whoever shall knowingly sell or exchange or offer for sale or exchange, whether in single packages or lots, any product composed of mixed cereals of any kind, or any cereal adulterated in any manner, unless the word "adulterated" is plainly marked, printed or stenciled diagonally across the other marks or brands, if any, on the hogshead, box, bale, cask, sack or package containing the same, or in case there are no marks thereon, then across such container in a conspicuous place in large legible letters and figures not less than two inches in size, shall be fined not less than twenty-five nor more than one thousand dollars. (Rev. Crim. Stats. 1925, Art. 718.)

Concentrated Fruits.

See No. 11

Confectionery.

See Nos. 9 and 78.

Dairy Products.

26. Milk.—No person either by himself or agent shall sell or expose for sale or exchange any unwholesome, watered, adulterated, or impure milk, or swill milk, or colostrum, or milk from cows kept upon garbage, swill, or any other substance in

*For penalty, see No. 15.

a state of putrefaction or other deleterious substances, or from sick or diseased cows, or from cows kept in connection with any family in which there are infectious diseases. Skim milk may be sold if on the container from which such milk is sold, the words "skim-milk" are distinctly printed* in letters not less than one inch in length. (Rev. Civ. Stats. 1925, Art. 4474; Rev. Crim. Stats. 1925, Arts. 712 and 713.)†

27. Trade-Mark for Dairymen.—Any person, firm or corporation engaged in the dairying business, or in the distribution or sale of milk requiring the use of bottles, may file in the office of the county clerk of the county in which it is expected such person, firm or corporation will sell or distribute milk, a facsimile or description of the name or names, trade name, mark or design used by such person, firm or corporation for advertising purposes, and cause such facsimile or description to be published in a public newspaper published in such county for three successive weeks and the act of filing and publication shall operate to secure to such dairyman, milk distributor or milk dealer, sole and exclusive right to use in said county or counties said name or names, trade name, mark or design. (Rev. Civ. Stats. 1925, Art. 844.)

28. Marks Not to be Similar.—No name or names, trade name, mark or design shall be filed by the county clerk as aforesaid that could probably be mistaken for a name or names, trade name, mark or design already of record. (Id. Art. 845.)

29. Injunction.—Any person, firm or corporation having adopted a name or names, trade name, mark or design, as provided herein, may proceed by suit to enjoin the use of said name, or names, trade name, mark or design by any other person, firm or corporation, and all courts having jurisdiction thereof shall grant injunction to restrain the unlawful use thereof. (Id. Art. 846.)

30. Prima Facie Evidence of Ownership.—Any person, firm or corporation engaged in the dairying business or the sale or distribution of milk, who shall have filed with the county clerk of the county in which they may be engaged in the distribution or sale of milk, a name or names, trade name, mark or design as herein provided, may cause to be engraved, etched, blown in or impressed or otherwise produced upon the bottles, owned by said person, firm or corporation such name or names, trade name, mark or design, and when such name or names, trade name, mark or design is so impressed upon a bottle, such bottle shall be prima facie the property of the person, firm or corporation which may appear upon the record of the office of the county clerk of such county to be the owner of such name or names, trade name, mark or design either as the original owner or transferee, as herein provided. (Id. Art. 847.)

31. Record for Dairymen.—Upon the filing with the county clerk of such facsimile or description, as herein provided, the county clerk shall record the same in a well-bound book and index the same under the name of each owner and also under the trade name, and shall furnish to such owner a certificate containing a description of same, which said certificate shall be prima facie evidence that the person or persons therein named is the owner of said name or names, trade name, mark or design. The clerk shall be paid a fee of one dollar for recording such trade-mark or name. (Id. Art. 848.)

32. May Assign.—Any owner of a name or names, trade name, mark or design recorded as herein provided who desires to convey or assign same shall do so by written assignment duly acknowledged, and filed with said county clerk, which said assignment shall refer to the book and page where said original is recorded and the clerk shall upon the filing of said assignment, record and index same as an original and note on the margin the fact of the assignment and refer to the book and page where such assignment is recorded, and furnish to such assignee a certificate of ownership. The clerk shall receive for recording such transfer, such fees as are now provided by law for similar services. (Id. Art. 849.)

33. Filling or Not Returning Container.—Whoever shall, other than the lawful owner, for any purpose whatever, fill with milk, cream, butter or ice cream any milk can, milk bottle, milk jar, butter box, ice cream can or ice cream tub or mutilate or destroy without the consent of the owner of the same, or willfully refuse to reutrn or deliver to such owner, upon demand, any such milk can, milk bottle, milk jar, butter box, ice cream can, or ice cream tub branded or stamped with the name or trademark of such owner, or bearing any private mark in common use by such owner or from which such brand or stamp or private mark, or marks have been removed, cut off or defaced, shall be fined not less than ten nor more than one hundred dollars. (Rev. Crim Stats. 1925, Art. 1063.)

34. Injuring Milk Containers, Etc.—Whoever shall remove, cut off, deface or obliterate the stamp or brand or private mark of any owner of any milk bottle, milk jar, butter box, milk can, ice cream can or ice cream tub, or stamp or place other

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*Reads "painted" in Article 713.

†For penalty, see No. 15.

than brands or stamps or private mark on any such milk bottle, milk jar, milk can, butterbox, ice cream can or ice cream tub, without the written permission of such owner, shall be fined not less than ten nor more than one hundred dollars. (Id. Art. 1064.)

35. **Ownership of Milk Containers, Etc.**—Any person, firm or corporation, or joint stock association owning or using milk cans, milk bottles, milk jars, butter boxes, ice cream cans or ice cream tubs in his, her or their name or names, or private mark or marks in common use branded or stamped or placed on the same shall be considered the owner thereof. (Id. Art. 1065.)

36. **Dairy Trade-Mark.**—Any person, firm or corporation engaged in the dairying business or in the distribution or sale of milk requiring the use of bottles may file in the office of the county clerk of the county in which such person, firm or corporation expects to sell or distribute milk, a facsimile or description of the name, trade name, mark or design used by such person, firm or corporation for advertising purposes, and cause such facsimile or description to be published in a public newspaper published in such county for three successive weeks, and the act of filing and publication shall operate to secure to such dairyman, milk distributor or milk dealer, the exclusive right to use in said county said name, trade name, mark or design, and the same may be impressed upon the bottles of the owner of such name, mark or design, and such impression upon such a bottle is prima facie proof that the owner of such name, mark or design is the owner of such bottle, either as the original owner or transferee as provided by law. Whoever sells or offers for sale a bottle upon which such name, mark or design appears shall, unless he be the owner thereof, be fined not less than ten nor more than fifty dollars. Any dairyman, milk distributor or milk dealer who shall deliver or sell milk in a bottle bearing the name, mark or design recorded as herein provided without the consent of the owner of said name, mark or design, shall be fined not less than one nor more than fifty dollars. (Id. Art. 1066.)

NOTE: See also Nos. 2 and 78 et seq.

Feeding Stuffs.

37. **Tag and Certificate.**—Every lot or parcel of feeding stuff, used for feeding farm live stock, sold, offered or exposed for sale in this State, for use within the State, shall have attached a tag, described in Article 3875,* carrying a plainly printed statement clearly and truly certifying the number of net pounds of feeding stuff in the package, stating the name or names of materials of which such weight is composed where the contents are of mixed nature, the name, brand or trade-mark under which the article is sold, the name and address of the manufacturer or importer, the place of manufacture, such information as is required by Article 3879,† if any, and a chemical analysis stating the minimum percentage it contains of crude protein, allowing one per cent of nitrogen to equal six and one-quarter per cent of protein, of crude fat, of nitrogen-free extract, and the maximum percentage it contains of crude fiber; these constituents to be determined by the methods adopted at the time by the Association of Official Agricultural Chemists of North America. (Rev. Civ. Stats. 1925, Art. 3872, as amended L. 1927, c. 14; Rev. Crim. Stats. 1925, Art. 1489.)

38. **"Feeding Stuff."**—The term "feeding stuff," as used in this title,‡ is defined to mean and include wheat bran, wheat shorts, linseed meal, cottonseed meals, pea meals, cocoanut meals, gluten meals, gluten feeds, maize feeds, starch feeds, sugar feeds, dried brewer's grains, malt sprouts, hominy feeds, cerealine feeds, rice meals, rice bran, rice polish, oat feeds, corn and oat chops, corn chops, ground beef or mixed fish feeds, and all other materials of similar nature, but shall not include hay or straw, the whole seed or grains of wheat, rye, barley, oats, Indian corn, rice, buckwheat or broomcorn, or any other whole or unground grains or seed. (Rev. Civ. Stats. 1925, Art. 3873; Rev. Crim. Stats. 1925, Art. 1490.)

39. **To File Statement and Deposit Samples.**—Before any feeding stuff is so offered or exposed for sale, the importer, manufacturer or party who causes it to be sold, or offered for sale within this State for use within the State, shall, for each feeding stuff bearing a distinguishing name or¶ trade-mark, file with the director of the Texas Agricultural Experiment Station a certified copy of the statement named in Article 3872,‖ and shall also deposit with said director a sealed glass jar or bottle

*Reads "Article 1492" in Article 1489.
†Reads "Article 1497" in Article 1489.
‡Reads "chapter" in Article 1490.
¶Reads "and" in Article 1491.
‖Reads "Article 1489" in Article 1491.

containing not less than one pound of the feeding stuff to be sold or offered for sale, accompanied by an affidavit that it is a fair average sample thereof, and corresponds within reasonable limits to the feeding stuff which it represents in the percentage of protein, fat and crude fiber, and nitrogen-free extract which it contains. This does not apply to farmers who grind their own feeding stuff and who do not adulterate same. (Id. Art. 3874; Id. Art. 1491.)

40. Inspection Tax Tag.—The manufacturer, importer, agent or seller of each feeding stuff shall, before the article is offered for sale, pay to the director of the Texas Agricultural Experiment Station an inspection tax of ten cents for each ton of such feeding stuff sold, or offered for sale, in this State for use within the State, and shall affix to each lot shipped in bulk, and to each bag, barrel or other package of such feeding stuff, a tag to be furnished by said director, stating that all charges specified in this article have been paid. The director of said experiment station is hereby empowered to prescribe the form of such tags, and adopt such regulations as may be necessary for the enforcement of this law. Whenever the manufacturer or importer or shipper of a feeding stuff shall have filed a statement made as provided for in Article 3872,* and paid the inspection tax, no agent or seller of said manufacturer, importer or shipper shall be required to file such statement or pay such tax. The amount of the inspection tax and penalties received by said director shall be paid into the State treasury. So much of the inspection tax and penalties collected under this title shall be paid by the State Treasurer to the treasurer of the Texas Agricultural and Mechanical College as the Director of the Texas Agricultural Experiment Station may show by his bills has been expended in performing the duties required by this title, but in no case to exceed the amount of the inspection tax and penalties received by the State Treasurer under this title. (Id. Art. 3875; Id. Art. 1492.)†

41. Failure to Affix Tag or Label.—Any manufacturer, importer, or agent, selling, offering or exposing for sale, any feeding stuff, without the statement required by Article 1489, and the tax tag required by the preceding article, or with a label stating that said feeding stuff contains a larger percentage of protein, fat or nitrogen-free extract, or a smaller percentage of crude fiber, than is contained therein, shall be fined not less than one hundred nor more than five hundred dollars. (Rev. Crim. Stats. 1925, Art. 1493.)

42. Counterfeiting Tag.—Whoever shall counterfeit or knowingly use a counterfeit of the tag or tags mentioned in the two preceding articles,‡ or shall use them a second time after the said tags shall have been once attached, shall be fined not exceeding five hundred dollars, one-half of which shall be paid to the informer. (Id. Art. 1494.)

43. To Furnish List of Names or Trade-Marks.—All manufacturers and importers of feeding stuff, or dealers in same, shall, on request, furnish the Director of the Texas Experiment Station with a complete list of names or trade-marks of such feeding stuff. (Rev. Civ. Stats. 1925, Art. 3876.)

44. Analysis.—The Director of the Texas Agricultural Experiment Station shall cause one analysis or more to be made annually of each feeding stuff sold or offered for sale under any provision of this title. Said director is hereby authorized in person or by deputy to take a sample not exceeding two pounds in weight for analysis from any lot or package of feeding stuff which may be in the possession of any manufacturer, importer, agent, dealer or buyer in this State; but said sample shall be drawn or taken in the presence of said party or parties in interest, or their representatives, and shall be taken from a parcel, lot or number of parcels which shall not be less than five per cent of the whole lot inspected, and shall be thoroughly mixed and, if requested, divided into two samples, and placed in glass or metal vessels carefully sealed, and a label placed on each, stating the name or brand of the feeding stuff, or material sampled, the name of the party from whose stock the sample was drawn, and the date and place of taking such sample. Said label shall be signed by the director or his deputy and the party or parties at interest, or their representative present at the taking and sealing of said sample. Where the party or parties at interest refuse to be present and take part in the sampling of the said feeding stuff, the director or his deputy may take said samples in the presence of two disinterested witnesses, one of said duplicate samples shall be retained by the director, and the other shall be left with the party whose stock was sampled. The sample or samples retained by the director shall be for comparison with the certified statements made as provided for in this title. The result of the analysis of the sample or samples so prescribed, together with such additional information as circumstances advise shall

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*Reads "Article 1489" in Article 1492.

†The last two sentences are omitted from Article 1492.

‡Reference is to Rev. Crim. Stats. 1925, Articles 1492-1493.

be published in reports or bulletins by the Texas Agricultural and Mechanical College from time to time. (Id. Art. 3877.)

45. **"Importer."**—The term "importer" means all persons who shall bring into or offer for sale within this State feeding stuff manufactured without this State. (Id. Art. 3878; Rev. Crim. Stats. 1925, Art. 1495.)

46. **Adulterated Feeding Stuff.**—A feeding stuff shall be deemed to be adulterated if it contains any sawdust, dirt, damaged feed, or any foreign matter whatever, or if it is in any respect not what it is represented to be, or if any rice hulls or chaff, peanut shells, corncobs, oat hulls, or other similar substances of little or no feeding value are admixed therewith. No wholesome mixture of feeding stuff shall be deemed to be adulterated if the true percentage of constituents thereof is plainly and clearly stated on the package and made known to the buyer at the time of the sale. It shall be the duty of the director of the experiment station to examine, or have examined for adulteration all suspicious samples of feeding stuff, and such other samples as may be desirable. (Rev. Civ. Stats. 1925, Art. 3879; Rev. Crim. Stats. 1925, Arts, 1496-1497.)*

47. **Manufacture or Sale of Adulterated Feeding Stuff.**—Every person who shall directly or for another or for any corporation, association of persons, or for a firm, or through or by any agent, manufacture, sell or offer for sale any adulterated feeding stuff within this State shall be fined not less than twenty-five nor more than two hundred dollars, or be imprisoned in jail not less than thirty nor more than sixty days, or both. (Rev. Crim. Stats. 1925, Art. 1498.)

48. **Director of Experiment Station.**—The director of said experiment station is empowered to adopt standards or definitions for feeding stuff, and such other regulations as may be necessary for the enforcement of any provision of this title. Said director shall have the power to refuse the registration of any feeding stuff, under a name which would be misleading as to materials of which it is made up, or which does not conform to the standards or definitions aforesaid. Should any said feeding stuffs be registered and it is afterwards discovered that they are in violation of the above provisions, said director shall have the power to cancel the registration ten days after notice. (Rev. Civ. Stats. 1925, Art. 3880.)

49. **Weights.**—Feeding stuff shall have the following standard net weights per sack or container; one hundred pounds, or the following fractions thereof, three-fourths, one-half, one-fourth, one-sixth, one-eighth, one-tenth, one-twelfth, one-sixteenth, and one-twentieth; and rice bran may also be sold in sacks of one hundred and forty-three pounds. No tax tags shall be issued for any feeding stuff which does not conform to the weights herein prescribed. (Id. Art. 3881.)

NOTE: See also No. 169.

Fish—Oysters.

50. **Oversize or Undersize Fish for Sale.**—It shall be unlawful for any person to sell, or offer for sale, or to have in his possesion, or to have on board any boat or to have in any mercantile business establishment, or in any market where merchandise is disposed of, any redfish or channel bass of greater length than thirty-two inches, or less than fourteen inches; any salt water or speckled sea trout of less length than twelve inches; any sheephead of less than nine inches in length; any flounder of less than twelve inches in length; any pompano of less than nine inches in length; any mackerel of less than fourteen inches in length, and any salt water gaff-topsail of less than eleven inches in length.

The place of sale or offering for sale or possession shall for the purpose of this chapter to establish venue, be either the place from which such fish are shipped, or where the fish are found, or offered for sale. It shall be unlawful in selling or offering for sale any fish mentioned in this article to sever the head from the body, except in case of the redfish and catfish in which case the head shall only be severed through the gill cavity and the gill fins shall remain on the body of such redfish or catfish. Such headless body of a redfish shall not measure more than twenty-seven inches in length, and such headless body of a catfish shall not measure less than eight inches in length; and all fish marketed or sold as mentioned in this article, must be weighed and sold with the head attached, except redfish and catfish as mentioned herein.

Any person violating any of the provisions of this article shall be deemed guilty of a misdemeanor and upon conviction shall be fined a sum not less than ten ($10.00) dollars nor more than fifty ($50.00) dollars. (Rev. Crim. Stats. 1925, Art. 929.)

51. **Venue for Under or Oversize Fish.**—A prosecution for a sale of fish of unlawful size may be begun and carried on either in the county where such fish

*The last sentence is omitted from the Revised Criminal Statutes.

were shipped or in the county where they were received or offered for sale, or in any county through which such shipments may pass. (Id. Art. 930.)

52. License to Fish for Market.—Whoever fishes in the public waters of this State for oysters, fish, shrimp, turtle, terrapin, crabs, clams or other marine life for market or sells such product of such waters without first procuring a license to do so, as provided by law, shall be fined not less than ten nor more than fifty dollars. (Id. Art. 934.)

53. Refusal to Show License.—Any person fishing for market or for the sale of marine life and having a license therefor who refuses to show it to the commissioner, or his deputy when requested to do so, shall be fined not less than five nor more than twenty-five dollars. (Id. Art. 935.)

54. Wholesale Dealer's License.—Any individual, firm or corporation engaged in, or who may engage in the business of a wholesale dealer in fish and oysters shall secure from the Game, Fish and Oyster Commissioner, or one of his deputies, a license granting such individual, firm or corporation, permission to engage in said occupation for one year. For the purpose of obtaining this license, the applicant desiring same must make written application to the Game, Fish and Oyster Commissioner, or one of his deputies, in which he (the applicant) shall set forth under oath, if required, that he is a citizen of the United States by birth, or not being so, shall state that he has been granted, full naturalization papers, and by what court and at what time they were granted. Where a corporation applying for permit to conduct a wholesale business in fish, oysters, or other marine products as mentioned, contains foreigners, it shall conform to the foregoing provision as applied to individual applicants. He shall also agree that because of the privilege which he applied for from the State of Texas, that all products handled by him shall, at all times, be subject to the inspection of the Game, Fish and Oyster Commissioner, or any of his deputies; and in said application he shall authorize said commissioner or any of his deputies to enter his place of business, or any place where he may have such products stored, and inspect same. He shall agree to keep correct record of all fish, oysters, shrimp and other taxed marine life handled by him under this law, in a book to be furnished by the Game, Fish and Oyster Commissioner; and further, that failure on his part to keep a correct record shall be grounds for the forfeiture of his license granted him under the application aforesaid. This application, having been duly executed and delivered to the Game, Fish and Oyster Commissioner, or any of his deputies, together with a fee of ten ($10.00) dollars for same, it shall be the duty of the Game, Fish and Oyster Commissioner, or his deputy to issue to the applicant a license to engage in the business set forth in the application. Said license must be signed by the Game, Fish and Oyster Commissioner, or one of his deputies, stamped with the seal of his office, and state the name of the licensee, place of business and the kind of license applied for, and shall be good for twelve months following the date of issuance. For such license, the applicant shall pay one ($1.00) dollar for each one thousand pounds of fish, shrimp and crabs handled by him, and a tax of one cent per barrel on oysters handled by him, which tax shall be paid monthly, the tax to be paid on the first of each month, which may be due upon said product handled during the preceding month, as shown by the record books, hereinbefore mentioned. And any person, firm, or corporation, or association of persons, or any officer, agent, or employee of any company, corporation or association of persons who shall engage in the business of a wholesale dealer in fish and oysters or either, without procuring a license to follow said business, or without paying the tax and fee required by this article, shall be guilty of a misdemeanor, and upon conviction shall be punished by a fine of not less than fifty ($50.00) dollars, nor more than two hundred ($200.00) dollars; and each day such business may be engaged in violation of this article, shall constitute a separate offense, and upon conviction of pursuing said occupation without payment of the tax and fee required by law, or for any other violation of the game, fish and oyster law, the license of such dealer shall be forfeited. A wholesale dealer, in the meaning and definition of this chapter, is any person, corporation or firm or partnership engaged in the business of buying and selling or handling for shipment, fish, oysters, shrimp, turtle, terrapin, crabs, clams, lobsters or other commercial marine life, in quantities of ten pounds or more to any customer during the same day, or whose daily sales, or whose sales for any one day, amount to more than the aggregate of one hundred pounds of above mentioned marine products. (Id. Art. 936.)

55. "Barrel of Oysters," Tax.—There shall be and is hereby levied a tax of not less than one-fifth of one cent per pound on all fish, crabs and shrimp, whether from private or public waters, taken and sold or offered for sale in this State, and not less than two cents a barrel on all oysters, sold or offered for sale in this State whether from private or public beds, and offered for sale or shipment, and not less than one-half a cent per pound on all turtles, and not less than twenty-five cents on each terrapin offered for sale and shipment. Such tax shall be paid under such rules

and regulations as the Game, Fish and Oyster Commissioner shall prescribe. For all purposes mentioned in this title or section, a barrel of oysters shall be deemed and taken to consist of three boxes of oysters in the shell; said boxes to be the following dimensions: ten inches wide by twenty inches long, and thirteen and one-half inches in depth. In filling such boxes for measurement, such oysters shall not be placed or deposited in such box in a way that will make them fill the box more than two and one-half inches in the center above the height of the box. Provided, that two gallons of shucked oysters without their shells shall be considered and deemed by this act as equal to one barrel of oysters in the shell. It is hereby specially provided that the title to the shells, from which oysters are taken shall remain in the State and the Game, Fish and Oyster Commissioner is directed to handle, control or sell same as he may see fit. Provided such oyster shells shall not be sold for a lower price than twenty-five cents the cubic yard. All moneys and royalties collected under and by the provisions of this article shall be deposited by the Game, Fish and Oyster Commissioner to the credit of the fish and oyster fund, hereinafter provided for. (Id. Art. 937, as amended L. 1925, c. 178.)

56. Measurement of Oysters.—Whoever shall use any measurement other than that established in Article 937 for the measurement of oysters in the purchase and sale of oysters, shall be fined not less than ten nor more than twenty-five dollars and any person who shall fill the measuring box in the buying and selling of oysters higher than two and one-half inches in the center of such box, shall be fined not less than ten nor more than twenty-five dollars. (Rev. Crim. Stats. 1925, Art. 938.)

57. Failure to Pay Tax.—Any person who shall not pay or who shall refuse to pay the tax imposed on the taking and sale of fish, oysters, turtle, terrapin and shrimp, as imposed in Article 10 of this act, or who shall not pay or shall refuse to pay the taxes established and fixed by the Game, Fish and Oyster Commissioner in Article 10* of this act shall be deemed guilty of a misdemeanor and on conviction shall be fined in a sum not less than fifty ($50.00) dollars nor more than one hundred ($100.00) dollars and if such person shall be a licensed fish dealer or fisherman or oysterman, his license as a fish dealer or fisherman shall be cancelled and not reissued for a period not to exceed three years. (Id. Art. 939, as amended L. 1925, c. 178.)

58. Refusing to Pay Tax.—If any person shall refuse to pay any tax provided in this chapter, on any fish, oyster, shrimp, turtle, terrapin, clam, crabs, or other marine life, which he has sold, he shall be deemed guilty of a misdemeanor, and upon conviction shall be fined in a sum of not less than fifty ($50.00) [dollars] nor more than two hundred ($200.00) dollars. (Rev. Crim. Stats. 1925, Art. 940.)

59. Underweight Turtle or Terrapin.—Whoever sells or ships any green turtle of less than twelve pounds in weight or terrapin of less than six inches in length of under shell shall be fined not less than ten nor more than two hundred dollars. (Id. Art. 958.)

60. Oysters From Insanitary Reef.—It shall be unlawful to ship, sell or possess for the purpose of sale any fish or oysters taken from insanitary or polluted reefs or beds. Any reef or bed of oysters which has been declared by the State Health Department as insanitary or polluted is within the meaning of this article insanitary and polluted. Whoever sells or has in his possession for the purpose of sale fish or oysters taken from such insanitary or polluted reef or bed shall be fined not less than twenty-five nor more than two hundred dollars. (Id. Art. 965.)

61. Cargo of Young Oysters.—Any person offering for sale, or who shall sell, any cargo of oysters which shall contain more than five per cent young oysters shall be fined not less than ten nor more than two hundred dollars. Any oyster that measures less than three and one-half inches from hinge to mouth shall be deemed a young oyster for the purpose of this chapter. The commissioner is authorized to permit the taking of oysters of less size than three and one-half inches from any reef he may designate but it shall be unlawful to take any oysters from reefs other than those designated by such commissioner, and any one taking such oysters smaller in measurement than three and one-half inches from hinge to mouth from other than such reefs as designated by such commissioner shall be fined not less than twenty-five nor more than two hundred dollars. (Id. Art. 971.)

62. Using Insanitary Container.—Any receptacle for oysters which has not been thoroughly cleaned before oysters are placed in it, is hereby declared to be insanitary. Whoever sells oysters from such receptacle, or ships oysters in such receptacle shall be fined not less than twenty-five nor more than one hundred dollars. (Id. Art. 972.)

63. Floating or Bloating Oysters.—No person, firm or corporation shall ship into or in this State, sell or have in his possession for the purpose of sale, any oyster

*See No. 55.

or shellfish in which any formaldehyde or other preservative has been placed or any oysters or other shellfish which have been subjected to "floating," "drinking," or "bloating" in water containing less salt than in which they are grown, or oysters or other shellfish to which water has been added either directly or indirectly or in the form of melted ice. Unpolluted salt cold or ice water may be used in washing shucked or shelled oysters or other shellfish, if the washing does not continue any longer than the minimum time necessary for chilling, and whoever engages in "floating," "drinking," or "bloating" oysters in this State, or who ships into or in this State such oysters, or who has in his possession, sells or offers to sell any such oyster, shall be fined not less than twenty nor more than two hundred dollars. (Id. Art. 973.)

Flavoring Extracts.

See Nos. 120 and 121.

Flour.

See Nos. 75, 196 and 210.

Fruit Juices.

See No. 11.

Fruits and Vegetables.

64. Standards of Containers.—The following standards of containers for the shipment of fruits and vegetables in this State are hereby established and adopted as State standards.

1. Standard Bushel Basket. The standard bushel basket shall contain not less than 2150.4 cubic inches in the basket proper, regardless of the manner in which the lid is made.

2. Standard Four-Basket Crate. The basket in said crates shall hold not less than three quarts dry measure, and the dimensions of such baskets shall be 5x8 inches at the bottom, 6x10 inches at the top, and 4 inches deep, and shall contain not less than 201.6 cubic inches. The heads of the crates holding said baskets shall be 4½ inches wide by 11 inches at the bottom, and 13 inches at the top in length and not less than 7/16 of an inch thick. The veneer or boards for the bottoms, sides and tops shall be not less than 4½, 4 and 5½ inches wide respectively, and not less than 1/7 of an inch thick and 22 inches long. Both crates and baskets shall be made of good, substantial material, sufficiently strong to withstand the ordinary strain incident to transportation and handling.

3. Standard Six-Basket Crate. Each basket of a six-basket crate shall contain not less than 268.8 cubic inches.

4. Standard Folding Onion Crate. The standard folding onion crate shall not be less than 19⅝ inches long, $11^{3}/_{16}$ wide and $9^{13}/_{16}$ inches deep, inside measurements, containing not less than 2154.4 cubic inches.

5. Standard Orange Box. The dimensions of the standard orange box shall be 12x12x12 inches for each one-half of box, inside measurement, and the dimensions of a one-half (or strap box) shall be 12x12x6 inches for each one-half box, inside measurement.

6. Standard Berry Box or Crate. The standard quart berry box or crate shall contain not less than 24 quart baskets containing 67.2 cubic inches each, dry measure; and the standard pint berry box or crate shall hold not less than 24 pint baskets, containing not less than 33.6 cubic inches, dry measure. (Rev. Civ. Stats. 1925, Art. 109.)

65. Grades and Packs.—The following "grades and packs" are hereby established as State standards for the State of Texas:

(a) Standard Peach Grades and Packs. Standard peach grades are three in number; namely, Fancy, Choice or No. 1, and No. 2.

Fancy peaches shall be medium to large size, good color for the variety named, firm and sound, or [of] proper maturity for shipment to distant markets, carefully picked and closely packed in bushel baskets or crates of four or six basket capacity.

Choice or No. 1 peaches shall be of average size and color for the variety named, sound, firm, practically free from blemishes and defects, of proper maturity for shipment to distant markets, carefully picked and closely packed in bushel baskets or crates of four or six baskets capacity.

No. 2 peaches shall be all such sound fruit as is not good enough for No. 1's, such as small, slightly uneven surface, greens, ripes or slight defects of whatever kind, but suitable for market purposes and for reasonably distant shipments. Each and every package of fruits and vegetables offered for sale or shipment shall have

plainly stamped on it the grade of such fruits or vegetables and the name and post office address of the person shipping the same, provided that this shall apply only to shipments of such fruits and vegetables as have grades established by law.

Culls. Any and all peaches that are too small in size, ill-shaped and poor in general quality to measure up to any of the above grades shall be known as culls, unfit for market purposes, and shall not be shipped unless branded "Culls" and shipped in a separate consignment.

Texas Standard Peach Packs. The standard peach packs for six-basket crate shall be eight in number; namely 72's, 96's, 138's, 162's, 180's, 216's, 270's and 324's.

To pack 72's (begin at end of basket). Place 1 and 2 alternately in 4 rows, two layers high, 6 to the layer on end, blossom end up.

To pack 96's. Place 2 and 2 alternately in 4 rows, 2 layers high, 8 to the layer on end, blossom end up.

To pack 138's. Place 2 and 1 alternately in 5 rows, 3 layers high, 8 and 7 alternately to the layer, flat.

To pack 162's. Place 2 and 1 alternately in 6 rows, 3 layers high, 9 to the layer, flat.

To pack 180's. Place 2 and 2 alternately in 5 rows, 3 layers high, 10 to the layer, flat.

To pack 216's. Place 2 and 2 alternately in 6 rows, 3 layers high, 12 to the layer, flat.

To pack 270's. Place 3 and 3 alternately in 5 rows, 3 layers high, 15 to the layer, flat.

To pack 324's. Place 3 and 3 alternately in 6 rows, 3 layers high, 18 to the layer, flat.

All packages must be filled tight, in all layers from bottom to top, and extend approximately 1 inch above the top rim or edge of the package, whether it be a bushel basket, crate basket, or box. All peaches in the same crate or package shall be as nearly as possible of a uniform degree of ripeness.

(b) Texas Standard Tomato Grades and Packs. Texas standard tomato grades may be two in number; namely, Fancy and Choice. Texas standard tomato packs shall be seven (7) in number for the six-basket crate, and nine (9) in number for the four-basket crate, and the manner in which tomatoes are packed will partly determine their grade.

Texas Standard Six-Basket Crate. Fancy. To pack 72's. Place 2 and 2 alternately in 3 rows, 2 layers high, 6 to layer, blossom end up, 12 to the basket.

To pack 84's. Place 2 and 2 alternately in 4 rows on edge, 8 to the layer for first layer, and 2 and 2 alternately in 3 rows, flat, blossom end up, 6 to the layer, for first layer, and 3 and 3 alternately in 3 rows, on edge, blossom end out; 9 to the layer for the second or last layer; 15 to the basket.

To pack 108's. Place 3 and 3 alternately in 3 rows, on edge 9 to the layer for the first layer, and 3 and 3 alternately in 3 rows on edge, blossom end out, 9 to the layer for the second or last layer, 18 to the basket.

Choice: To pack 120's. Place 2 and 2 alternately in 4 rows, on edge, 8 to the layer for the first layer, and 3 and 3 alternately in 4 rows, on edge, blossom end out, 12 to the layer for the second or last layer, 20 to the basket.

To pack 144's. Place 3 and 3 alternately in 4 rows, on edge, 12 to the layer for the first layer, and 3 and 3 in 4 rows, on edge, blossom end out, 12 to the layer for the second or last layer, 24 to the basket.

To pack 180's. Place 3 and 3 alternately in 5 rows, on edge, blossom end out, 15 to the layer for the second or last layer, 30 to the basket.

Texas Standard Four-Basket Crate: Fancy:

To pack 48's. Place 2 and 2 alternately in 3 rows, flat, blossom end up, 6 to the layer for the first layer, and 2 and 2 alternately in 3 rows, flat, blossom end up, 6 to the layer for the second or last layer, 12 to the basket.

To pack 56's. Place 2 and 2 alternately in 4 rows, on edge, 8 to the layer for the first layer, and 2 and 2 alternately in 3 rows, flat, blossom end up, 6 to the layer for the second or last layer, 14 to the basket.

To pack 60's. Place 2 and 2 alternately in 3 rows, flat, blossom end up, 6 to the layer for the first layer, and 3 and 3 alternately in 3 rows, on edge, blossom end out, 9 to the layer for the second or last layer, 15 to the basket.

To pack 64's. Place 2 and 2 alternately in 3 rows, flat, blossom end up, 6 to the layer for the first layer, and 1 and 2 alternately in 7 rows, on edge, blossom end out, 10 to the layer, 16 to the basket.

To pack 72's. Place 3 and 3 alternately in 3 rows, on edge, 9 to the layer, for the first layer, and 3 and 3 alternately in 3 rows, on edge, blossom end out, 9 to the layer for the second or last layer, 18 to the basket.

Choice:

To pack 84's. Place 3 and 3 alternately in 3 rows, on edge, 9 to the layer for the first layer, and 3 and 3 alternately in 4 rows, on edge, blossom end out, 12 to the layer for the second or last layer, 21 to the basket.

To pack 88's. Place 3 and 3 alternately in 3 rows, on edge, 9 to the layer for the first layer and 1 and 2 alternately in 9 rows, on edge, blossom end out, 18 to the layer, 22 to the basket.

To pack 96's. Place 3 and 3 alternately in 4 rows, on edge, 12 to the layer for the first layer, and 3 and 3 alternately in 4 rows, on edge, blossom end out, 12 to the layer for the second or last layer, 24 to the basket.

To pack 104's. Place 1 and 2 alternately in 9 rows, on edge, 13 to the layer for the first layer, and 1 and 2 alternately in 9 rows, on edge, 13 to the layer, blossom end out, for the second or last layer, 26 to the basket. All tomatoes in the same crate or package shall be as nearly as possible of a uniform degree of ripeness.

All fruit for both fancy and choice grades must be sound and free from undesirable scars, "cat faces," and damage from insects or other causes.

(c) Texas Standard Orange Grades.

Texas orange, satsuma, tangerine and grape fruit grades may be four in number, namely: Fancy Bright, Bright, Fancy Russet and Russet.

Fancy Brights shall be bright color, shapely form, practically free from any skin defects or blemishes, fine texture, reasonably thin, heavy, juicy and free from frost damage.

Brights shall be fairly bright color, texture not as fine or smooth as Fancy Brights, skin thicker, and may have other reasonable skin defects that do not affect the merchantable quality of the fruit.

Fancy Russets shall be of same general quality as Fancy Brights, except in color which shall be "golden" russet.

Russets shall be same general quality as Brights, except in color, which may be rusty brown, not "golden" enough for Fancy Russets.

Texas Standard Orange Packs. The standard orange packs shall be 8 in number, namely: 96's, 126's, 150's, 176's, 200's, 216's, 252's, and 288's.

To pack 96's. Put 3 and 3 alternately in 4 rows, 4 layers high, 12 to layer.

To pack 126's. Put 3 and 2 alternately in 5 rows, 5 layers high, 13 and 12 alternately to layer.

To pack 150's. Put 3 and 3 alternately in 5 rows, 5 layers high, 15 to the layer.

To pack 176's. Put 4 and 3 alternately in 5 rows, 5 layers high, 18 and 17 alternately to the layer.

To pack 200's. Put 4 and 4 alternately in 5 rows, 5 layers high, 20 to the layer.

To pack 216's. Put 3 and 3 alternately in 6 rows, 6 layers high, 18 to the layer.

To pack 252's. Put 4 and 3 alternately in 6 rows, 6 layers high, 21 to the layer.

To pack 288's. Put 4 and 4 alternately in 6 rows, 6 layers high, 24 to the layer.

The standard satsuma and tangerine packs shall be 7 in number, namely: 90's, 106's, 120's, 168's, 196's, 216's and 224's.

To pack 90's. Put 3 and 3 alternately in 5 rows, 3 layers high, 15 to the layer.

To pack 106's. Put 4 and 3 alternately in 5 rows, 3 layers high, 18 and 17 alternately to the layer.

To pack 120's. Put 4 and 4 alternately in 5 rows, 3 layers high, 20 to the layer.

To pack 168's. Put 4 and 3 alternately in 6 rows, 4 layers high, 21 to the layer.

To pack 196's. Put 4 and 3 alternately in 7 rows, 4 layers high, 25 and 24 alternately to the layer.

To pack 216's. Put 5 and 4 alternately in 6 rows, 4 layers high, 27 to the layer.

To pack 224's. Put 4 and 4 alternately in 7 rows, 4 layers high, 28 to the layer.

All oranges, satsumas and tangerines to conform to this standard must be packed "stem-in, twist" with blossom end down in first layer and stem end down in all other layers.

The standard grape fruit packs shall be 7 in number; namely, 28's, 36's, 46's, 54's, 64's, 80's, 96's.

To pack 28's. Put 2 and 1 alternately in 3 rows, 3 layers high, 5 and 4 alternately to the layer.

To pack 36's. Put 2 and 2 alternately in 3 rows, 3 layers high, 6 to the layer.

To pack 46's. Put 3 and 2 alternately in 3 rows, 3 layers high, 8 and 7 alternately to the layer.

To pack 54's. Put 3 and 3 alternately in 3 rows, 3 layers high, 9 to the layer.

To pack 64's. Put 2 and 2 alternately in 4 rows, 4 layers high, 8 to the layer.

To pack 80's. Put 2 and 2 alternately in 4 rows, 5 layers high, 8 to the layer.

To pack 96's. Put 3 and 3 alternately in 4 rows, 4 layers high, 12 to the layer.

All grape fruit to conform to this standard must be packed on edge, except the 80 pack, which should be packed flat in the same manner as oranges.

In the enforcement of the above standards of grade and pack, an allowance may be made of not exceeding ten per cent difference in size between the fruit on top and in the interior of the package. A variation of not more than three per cent of actual count may be made in the number of any kind of fruit prescribed for each particular pack. (Id. Art. 110.)

66. Culls.—Any and all fruits and vegetables for which standard grades and packs are established in this chapter or for which standard grades and packs may be hereafter promulgated by the Commissioner of Agriculture under the authority of this law, that are too small in size, ill-shaped, and too poor in general quality to measure up to the grades herein established, shall be classed as "culls," and shall not be shipped, unless branded "culls" and shipped in a separate consignment. (Id. Art. 111.)

67. Texas Bermuda Onion Grades.—Grade No. 1. This grade shall consist of onions which are sound, mature, bright, well-shaped, of one variety, free from doubles, splits, bottle necks, and seed stems, and practically free from damage caused by dirt or other foreign matter, moisture, sunburn, cuts, disease, insects, or mechanical means. The minimum diameter shall be two inches. In order to allow for variation incident to commercial grading and handling, six per centum, by weight, of any lot need not meet the foregoing requirements of this grade. In the case of yellow onions, not more than five per centum, by weight of any lot may be noticeably pink.

If any lot which meets the requirements of this grade contains more than ten per centum, by weight, of onions with a minimum diameter of three and one-half inches, the grade shall be "Grade No. 1, Large."

Boiler Grade.—This grade shall consist of onions which are sound, mature, bright, well-shaped, of one variety, free from doubles, splits, bottle necks, and seed stems, and practically free from damages caused by dirt or other foreign matter, moisture, sunburn, cuts, disease, insects, or mechanical means. The minimum diameter shall be one inch and the maximum diameter shall be two inches. In order to allow for variations incident to commercial grading and handling, six per centum, by weight, of any lot need not meet the foregoing requirements of this grade. In the case of yellow onions, not more than five per centum, by weight, of any lot may be noticeably pink.

Grade No. 2. This grade shall consist of onions not meeting the requirements of Grade No. 1, which are sound, of one variety, free from doubles, splits, bottle necks and seed stems, and practically free from damage caused by moisture, sunburn, cuts, disease, insects, or mechanical means. The minimum diameter shall be two inches. In order to allow for variations incident to commercial grading and handling, ten per centum by weight, of any lot need not meet the requirements of this grade. If any lot which meets the requirements of this grade contains more than ten per centum, by weight, of onions, with a minimum diameter of three and one-half inches, the grade shall be "Grade No. 2, Large."

Grade No. 3. This grade shall consist of onions not meeting the requirements of any of the foregoing grades, which are sound, free from doubles, splits, bottle necks, and seed stems, and practically free from damage caused by moisture, sunburn, cuts, disease, insects, or mechanical means. The minimum diameter shall be one inch. In order to allow for variations incident to commercial grading and handling ten per centum, by weight, of any lot need not meet the foregoing requirements of this grade.

Culls. Culls shall consist of doubles, splits, bottle necks, and seed stems, or other onions which do not meet the requirements of any of the foregoing grades.

Terms defined. "Sound" means free from water-soaked, decayed, sprouted, or otherwise unsound onions.

"Mature" means having reached a stage of development at which the onions are firm—not soft or spongy.

"Bright" means having the normal, attractive, pearly luster of Bermuda onions.

"Well-shaped" means the general appearance of being round—not three, four, or five-sided, or badly pinched by dry, hard soil, or thick-necked, but need not be of the exact, typical, flat Bermuda shape.

"One variety" means one variety of type, such as the Crystal Wax (white), or White Bermuda (yellow), or Red Bermuda (red), and not a mixture of different varieties or types.

"Practically free from damage" means that the appearance shall not be injured to an extent readily apparent upon casual examination.

"Sunburn" means discoloration due to exposure to the sun, but does not mean the green color running down the "veins" in the Crystal Wax (white) variety, unless such green color covers the surface between the veins.

"Diameter" means the greatest dimension at right angles to a straight line running from the stem to the root.

"Noticeable pink" means the pink color often found in the White Bermuda (yellow) variety which is to be readily apparent upon casual examination. (Id. Art. 112.)

68. Texas Cabbage Grades.—Grade No. 1. This grade shall consist of sound, green colored, partially trimmed, and reasonably hard heads, weighing not less than one and one-half pounds nor more than eight pounds each; which are free from cracked or over-ripe heads, stem rot and other diseases, and practically free from dirt, worm holes and lice.

In order to allow for variations incident to commercial grading and handling, five per centum by weight, of any lot, may be under the prescribed size, and in addition, three per centum, by weight, of any such lot, may be below the remaining requirements of this grade.

Grade No. 2. This grade shall consist of sound cabbage not meeting the requirements of Grade No. 1.

Terms Defined. "Over-ripe" means such cabbage as show signs of going to seed and turning white from age.

"Partially trimmed" means that not more than three outside leaves shall be left on the head. (Id. Art. 113.)

69. Snap Beans.—Grade No. 1. This grade shall consist of sound, bright, clean beans of one variety and color, from one-half to full grown; which are free from leaves, stems, spots, insect damage, rust, or other diseases, and over-ripe pods.

In order to allow for variation incident to commercial grading and handling three per centum by weight, may be of another variety of the same color.

Grade No. 2. Any beans not meeting the above requirements shall be classed as No. 2.

All beans are to be packed in hamper weighing, when packed, not less than 17 pounds net weight for one-half bushel hamper, and 34 pounds net weight for one bushel.

Terms Defined. "Over-ripe" are such pods as will not snap on being broken, and where there is an absence of abundant juice (water) in the pods; also, when the beans in the pod show evidence of maturing. (Id. Art. 114.)

70. Texas Bartlett Pear Grades.—Extra Fancy. Shall consist of Bartlett pears clean, bright, natural color and shape, sound, free from worms, specks, blemishes, bruises or limb scarred fruit.

Fancy. Shall be the same as "Extra Fancy," except it may contain ten per cent slightly scarred fruit and slight blemishes, that do not injure texture of the skin or its keeping qualities.

Choice. Shall be the same as "Fancy," except as it may contain ten per cent of fruit that is misshapen and with worm strings that have healed over.

Culls. Any pears not measuring up to the above specifications, shall be branded as "Culls."

Packing. Fruit shall be tightly packed in clean standard boxes, one end stamped with the grade, number of pears, name of and post office of packer.

Packs Defined. "Four Tier" shall be packed in four layers. Minimum pack 120 pears to box.

"Five Tier" shall be packed in six layers. Minimum pack 135, maximum pack 180 pears to box.

"Six Tier" shall be packed in six layers, containing 216 pears to the box, or in five layers containing 195 or 210 to the box, but will be considered "six tier." (Id. Art. 115.)

71. Texas Irish Potato Grades.—Grade No. 1. This grade shall consist of sound potatoes of similar varietal characteristics, which are practically free from dirt or foreign matter, frost injury, sunburn, second growth, cuts, scab, blight, dry rot, and damage caused by disease, insects, or mechanical means. The minimum diameter shall be one and three-fourths inches. In order to allow for variation incident to commercial grading and handling, five per centum, by weight of any lot may be under the prescribed size, and, in addition, three per centum by weight of any such lot may be below the remaining requirements for quality of this grade.

Grade No. 2. This grade shall consist of potatoes of similar varietal characteristics, which are practically free from frost injury and decay, and which are free from serious damage caused by dirt or other foreign matter, sunburn, second growth, cuts, scab, blight, dry rot, or other disease, insects, or mechanical means. The minimum diameter shall be one and one-half inches. In order to allow for variations incident to commercial grading and handling, five per centum, by weight, of any lot may be under the prescribed size, and, in addition, five per centum, by weight, of any such lot, may be below the remaining requirements for quality of this grade.

Culls. Any potatoes that do not measure up to the requirements for size and general quality in the grades number one and two shall be classed as "Culls," and

shall not be shipped unless branded or marked "Culls" and shipped in separate consignments.

Three per centum by weight, shall be allowed on all Texas grown new potatoes, for natural shrinkage. In instances where dirt adheres to the potatoes a fair and reasonable estimate by weight, of such dirt, shall be made and deducted from the gross weight of the potatoes and dirt, which estimate may be made by removing and weighing the dirt from three or more samples of not less than fifty pounds each, that, when taken together, represents the average conditions of the potatoes.

All potato containers must have some mark or brand showing the name and post office address of the grower or shipper.

Terms Defined. "Practically free" means the appearance shall not be injured to an extent readily apparent upon casual examination, and that any damage from the causes mentioned can be removed by the ordinary process of paring without appreciable increase in waste over that which would occur if the potato were perfect. Loss of the outer skin (epidermis) only, shall not be considered as an injury to the appearance.

"Diameter" means the greatest dimensions at right angles to the longitudinal axis.

"Free from serious damage" means the appearance shall not be injured to the extent of more than twenty per centum of the surface and that any damages from the causes mentioned can be removed by the ordinary processes or paring without increase in waste of more than ten per centum, by weight, over that which would occur if the potato were perfect. (Id. Art. 116.)

72. Inspectors.—The Commissioner of Agriculture shall appoint inspectors to inspect fruits and vegetables at the different shipping or loading stations in this State, when called upon by the growers, shippers or shippers' agents representing the growers, and the expenses of such inspectors shall be paid by said growers, shippers or shippers' agents. Where two or more shipping agents are operating at the same shipping point, and one of them requests a State Inspector and such inspector is appointed by the Commissioner of Agriculture, each shipping agency at said shipping point shall be required to come under the State Inspector and each shall pay his pro rata share of the expense of inspection.

In the grading, packing and inspection of onions, only those shippers who desire State inspection shall be required to have their onions inspected under State authority, and all railway and express companies may accept and ship onions not inspected by State Inspectors, provided that graded and non-graded onions shall not be shipped in the same car, except in less than carload lots.

The commissioner shall furnish a blank form of certificate to all State Inspectors, to be filled out by them to accompany each carload of fruits and vegetables, where State inspection is enforced. Said certificate shall contain the name and number of the car, the kind and grade of fruits or vegetables and number of the car, the kind and grade of fruits or vegetables, the number of packages contained, the date of shipment and name of inspector, together with the words, "Graded and Packed Under State Inspection." (Id. Art. 117.)

73. Commissioner of Agriculture.—The Commissioner of Agriculture is hereby authorized and empowered to enforce each provision of this chapter, and he shall promulgate and publish all necessary rules and regulations for the enforcement of this law, and such other information as will aid fruit and truck growers and the manufacturers of containers in complying with the provisions of this chapter. (Id. Art. 118.)

NOTE: See also Nos. 11, 16-17, 20-22, 196, 211-212, and 232.

Meat—Meat Products.

74. Butchers to Register.—Before engaging in the business of slaughter and sale of animals for market, every person so desiring must first register his name with the county clerk indicating his purpose to engage in such business. Upon failure to so first register his name, he shall be fined not less than five nor more than twenty-five dollars. Nothing herein applies to slaughterhouses in this State slaughtering as many as three hundred cattle per day. (Rev. Crim. Stats. 1925, Art. 1450.)

NOTE: See also No. 77 et seq.

Mill Products.

See No. 210.

Sauces.

See No. 11.

Self-Rising Flour.

75. Self-Rising Flour.—Whoever manufactures for sale within this State, or offers or exposes for sale or exchange, or sells any self-rising flour, or compound intended for use as a self-rising flour, under any name or title whatsoever shall securely affix or cause to be securely affixed to the outside of every box, can, sack or package containing such self-rising flour or like mixture or compound, a label distinctly printed in plain capital letters in the English language containing the name and domicile of the manufacturer or dealer, and the percentage by weight of each of the chemical leavening ingredients of the contents thereof. Such self-rising flour or any compound so termed or styled, when sold for use shall produce not less than one-half of one per cent by weight of available carbon dioxide gas, and there shall not be contained in such self-rising flour more than three and one-half per cent of chemical leavening ingredients, otherwise such flour or compound shall be deemed adulterated.

Self-rising flour is defined to be a combination of flour, salt and chemical leavening ingredients. The flour shall be of the grade of "straight" or better, and the chemical leavening ingredients shall be bicarbonate of soda, and either calcium acid phosphate, sodium aluminum sulphate, cream of tartar, tartaric acid or combinations of the same. (Rev. Civ. Stats. 1925, Art. 4476; Rev. Crim. Stats. 1925, Art. 711.)*

Water.

76. Pure Drinking Water.—The authorities of all cities and towns and villages having a population of five thousand inhabitants or less and all other companies, persons, corporations or receivers, who are supplying drinking water through a water works system to the public, shall, before supplying the same to the public use for drinking water, first cause the supply of water to be chemically tested for any contaminated infusion of sand, dirt or filth, or dangerous bacteria or disease-bearing germs. This test shall be made according to the direction of the county or city health officers, or both such health officers. Said water as above supplied shall be subject to such test at any time, and the county and city health officer where such water supply is furnished shall make such tests at least once a year and oftener where there is an outbreak of any disease that might be induced through use of impure or unclean water. All authorities of any such city or town or persons, firms, or the officers and agents of all incorporated companies or receivers supplying water for such public use, in such cities or towns, shall provide proper strainers for all wells and all other sources of supply so that sand and dirt shall not be carried into the water for such public use, and cause all of the conduits and drain pipes conveying said water to be thoroughly washed out and flushed so as to clean the same at least one time every ninety days. Any such authorities, persons, firms or receivers or their agents, when any such drinking water as furnished is pronounced unfit or infectious or impregnated with sand, or dirt, or filth, or unclean and dangerous to the public use by the health officers of any such city or county as the case may be, shall immediately take steps to purify, clean or sanitize the same. In any case where the authorities of any city, or town, or village, or any person or officer, agent or receiver of any firm, or corporation or company furnishing drinking water to such cities or towns or villages shall fail or refuse to carry out the provisions of this article and shall furnish for public use, drinking water that is contaminated, impure and unclean, he shall be fined not to exceed $500.00 for any such offense. (Rev. Crim. Stats. 1925, Art. 699.)

Sanitation.

77. Sterilizing Dishes.—No person, firm, or corporation operating, managing, or conducting a hotel, cafe, restaurant, dining car, or any other public eating place, or any drug store, soda water fountain, drink stand, or any bakery or meat market, shall furnish to any patron or customer any dish, or any other receptacle or utensil used in eating, drinking, or conveying food, until such dish, receptacle, or other utensil has been thoroughly cleaned and sterilized by heat or in boiling water subsequent to being used by any other person, or any dish, or receptacle or utensil used in eating, drinking or conveying food if the same is broken or cracked in such a manner as to render its sterilization impossible or doubtful, or so furnish for use any napkin after being used once and not laundered. Whoever violates any provision of

*For penalty, see No. 15.

this article shall be fined not less than five nor more than one hundred dollars. (Rev. Crim. Stats. 1925, Art. 700.)

78. Sanitary Employees.—No person, firm, corporation or common carrier, operating or conducting any hotel, cafe, restaurant, dining car or other public eating place, or operating any bakery or meat market, public dairy or candy factory in this State, shall work, employ or keep in their employ in or about any said place any person infected with or affected by any infectious or contagious disease, or work or employ any person to work in or about any said place who, at the time of his employment had not in his possession a certificate from some reputable physician of the county where said person is to be employed, attesting the fact that the bearer has been examined by such physician within one week prior to the time of employment, and that such examination discloses the fact that such person to be employed was free from any infectious or contagious disease; or fail to institute and have made a medical examination of all their employees at intervals of time not to exceed six months and after such examination promptly discharge from their employment in or about any said place any person found to be infected with or affected by any infectious or contagious disease. Whoever violates any provision of this article shall be fined not less than five nor more than one hundred dollars. (Id. Art. 705.)

79. May Enter and Inspect.—The members of the State Board of Health or any person duly authorized by them, upon presentation of proper authority in writing, are hereby empowered, whenever they may deem it necessary in pursuance of their duties, to enter into, examine, investigate, inspect and view any ground, public building, factory, slaughterhouse, packing house, abattoir, dairy, bakery, manufactory, hotel, restaurant and any other public place and public building where they deem it proper to enter for the discovery and suppression of disease and for the enforcement of the rules of the sanitary code for Texas and of any health law, sanitary law or quarantine regulation of this State. (Rev. Civ. Stats. 1925, Art. 4420.)

80. Sanitary Code.—The following rules are hereby enacted as the "Sanitary Code for Texas," adopted for the promotion and protection of the public health and for the general amelioration of the sanitary and hygienic condition within this State, for the suppression and prevention of infectious and contagious diseases, and for the proper enforcement of quarantine, isolation and control of such diseases, to wit: . . .

Rule 24. Employees with reportable diseases. No person who resides in a house in which there exists a case of smallpox, scarlet fever, diphtheria, or typhoid fever, shall work or be permitted in or about any dairy, or any establishment for the manufacture of food products, until the local health authority has given such a person a written certificate to the effect that no danger to the public will result from his or her employment or presence in such establishment. . . .

Rule 64. Parlor, buffet and dining cars. Parlor, buffet and dining cars must be cleaned at cleaning terminals, as set forth in the article* relating to day coaches. Carpets and draperies to be removed, dusted, sunned and aired. Food boxes, refrigerators, closets, drawers and cupboards to be cleaned, scalded and treated with a solution containing 2 per cent formaldehyde or other approved disinfectant. . . . (Id. Art. 4477.)

81. Sanitary Code.—Whoever shall violate any provision of the Sanitary Code of this State, other than those relating to vital statistics, shall be fined not less than ten nor more than one thousand dollars. (Rev. Crim. Stats. 1925, Art. 782.)

NOTE: See also Nos. 9, 23, 26, and 50 et seq.

PART III.

Special Drug Laws.

Pharmacy, Poisons and Narcotics.

82. Appointment of Board.—The Governor shall biennially on or before September 1st after his inauguration appoint five persons to constitute a board to be styled "The Texas State Board of Pharmacy," hereinafter referred to as the board. Any member of said board may be removed by the Governor for good cause shown. Each member of said board shall be a licensed pharmacist and shall have been actively engaged in the practice of pharmacy in this State at the time of his appointment and for the five years immediately preceding such appointment. No one who is con-

*Omitted herein.

nected in any way with any school or college of pharmacy shall be appointed as a member of said board. No two members of the board shall reside in the same county. (Rev. Civ. Stats. 1925, Art. 4529.)

83. Organization of Board.—The board shall within thirty days after their appointment and annually thereafter, meet and organize by the election of a president, secretary and a treasurer, who shall hold office for one year from the date of their election. The president and the treasurer shall be members of the board, but the secretary need not be a member. The secretary shall receive such salary as the board may prescribe, and his necessary expense while engaged in the performance of his official duties. The treasurer and the secretary shall give bond, payable to the Governor, in such sum as the board may determine, conditioned for the faithful performance of all duties imposed by law or by order of the board, which at no time shall be for less amount than the sum handled by them annually. The board shall pay the expense of making such bonds. The secretary shall collect all money due the board from all sources, and pay the same over to the treasurer within ten days, taking his receipt therefor. The board shall prescribe the pay of the members thereof, but at no time shall the amount exceed five dollars per day for each member, to be paid to them for such days during which they are actually engaged in the discharge of their official duties, and shall pay them the amounts they actually incur for expenses in the discharge of their duties for mileage, hotel bills, stamps and stationery. No bill either of services or expense of such member shall be paid until an itemized statement of such service and each item of expense has been made out and duly sworn to by such member of such board, and such account has been filed with and approved by said board. The State shall never be liable for the salary and expense of any member of said board. (Id. Art. 4530.)

84. Duty of Board.—The board shall adopt such by-laws and regulations not inconsistent with the provisions of this law as they deem necessary to carry out such provisions, and shall examine all applications for registration of such persons as may be entitled to the same under the provisions of this law. It shall make an annual report to the Governor, a copy of which shall be furnished to the Texas State Pharmaceutical Association, upon the condition of pharmacy in Texas; which report shall embrace all the proceedings of the board, and give an itemized account of all money received and disbursed by said board, and shall show to whom paid and for what purpose it was paid, and also show the names of all pharmacists duly registered under this law. The board shall deliver all money on hand at the end of the term of each board, after all outstanding debts have been paid, over to their successors in office. (Id. Art. 4531.)

85. Meetings for Examination.—The board shall hold meetings for the examination of applicants for registration, and for the transaction of such other business as may legally come before it, at least once in four months, and such additional meetings as may be necessary. Said regular meetings shall be held on the third Tuesday of January, May and September of each year, in such places as the board may select, or places as shall be deemed most convenient for applicants. Due notice of such meetings thirty days in advance thereof, shall be given by publication in such papers as the board may select. (Id. Art. 4532.)

86. Application for License.—Every person who desires to be licensed as a pharmacist, shall file with the Secretary of the Board of Pharmacy an application upon blanks furnished by the Board of Pharmacy for that purpose, duly verified under oath, setting forth the name and age of the applicant, the place or places at which and the time spent in the study of the science and art of pharmacy, the experience in compounding physicians' prescriptions which the applicant has had under the direction of a legally licensed pharmacist, and shall appear at a time and place designated by the Board of Pharmacy, and submit to an examination as to his or her qualifications for registration as a licensed pharmacist or assistant pharmacist. If any applicant should fail to pass a satisfactory examination, he or she may at any subsequent meeting of the Board of Pharmacy, within six months, be permitted to be reexamined without cost. (Id. Art. 4533.)

87. Qualifications of Applicants.—In order to be licensed as a pharmacist, each applicant shall be not less than twenty-one years of age, and shall have been licensed as an assistant pharmacist for not less than two years prior to his application for license as a pharmacist, or he shall present to the board satisfactory evidence that he is a graduate of a reputable school or college of pharmacy, or that he has had four years practical experience in pharmacy under the instruction of a pharmacist; and he shall also pass a satisfactory examination by or under the direction of a Board of Pharmacy. In order to be licensed as an assistant pharmacist, an applicant shall not be less than eighteen years of age and shall have a sufficient preliminary general education, and shall have had not less than two years experience in pharmacy, and shall pass a satisfactory examination by or under the direction of the Board of

Pharmacy. In the case of persons who have attended a reputable school or college of pharmacy, the actual time of attendance at school or college of pharmacy may be deducted from the time of experience required of a pharmacist and assistant pharmacist, but in no case shall less than two years experience be required for registration as a licensed pharmacist. (Id. Art. 4534.)

88. Board to Issue License.—If the applicant for license as a pharmacist or assistant pharmacist has complied with each requirement of this law, the board shall enroll his name upon the register of pharmacists or assistant pharmacists, and issue to him a license which shall entitle him to practice as pharmacist or assistant pharmacist for a period of two years from the date of said license. The board may refuse to grant a license to any person who has been convicted of a felony or who has been guilty of gross immorality, or who is addicted to the use of alcoholic liquors or narcotic drugs to such extent as to render him unfit to practice. The board, after due notice, may revoke a license for like cause, or may revoke any license which has been procured by fraud. (Id. Art. 4535.)

89. Temporary Certificate.—Upon satisfactory proof that the applicant is competent, any member of the board may issue a temporary certificate which shall be null and void after the first meeting of the board next after granting said certificate. Only one such certificate shall be granted to any one person. (Id. Art. 4536.)

90. Renewal of License.—Every licensed pharmacist or assistant pharmacist who desires to continue in the practice of his profession shall within thirty days next preceding the expiration of his license or permit, file with the board an application for the renewal thereof, accompanied by the fee hereinafter prescribed. If the board shall find that the applicant has been legally licensed in this State and is entitled to renewal of license, or to a renewal of such permit, it shall issue to him a certificate attesting the fact. If any pharmacist or assistant pharmacist shall fail, for a period of sixty days after the expiration of his license, to make application to the board for its renewal, his name shall be erased from the register of licensed pharmacist or assistant pharmacist; and such person, in order to become registered as a licensed pharmacist or assistant pharmacist, shall be required to pay the same fee as in the case of original registration. (Id. Art. 4537.)

91. Applicant Registered in Foreign Country.—The board may issue license to practice as pharmacist or assistant pharmacist in this State, without examination, to such persons as have been legally registered or licensed as pharmacists or assistant pharmacists in other States, or foreign countries; provided, the applicant for such license shall present satisfactory evidence of qualifications equal to those required from licentiates in this State, and that he was registered or licensed by examination in such other State, or foreign country, and that the standard of competency required in such other State, or foreign country, accords similar recognition to the licentiates of this State. Applicants for license under this article shall, with their application, forward to the secretary of the board the same fees as are required of other candidates for license. (Id. Art. 4538.)

92. License to be Posted.—Every certificate of license to practice as pharmacist or assistant pharmacist, and every license to any proprietor or employee to conduct a drug store in towns of not more than one thousand inhabitants and every renewal of such license shall be conspicuously exposed in the pharmacy, drug store or place of business of which the pharmacist or assistant pharmacist or other person to whom it is issued is the owner or manager, or in which he is employed. (Id. Art. 4539.)

93. License and Renewal Posted.—Every certificate of license to practice as pharmacist or assistant pharmacist, and every license to any proprietor or employee to conduct a drug store in towns of not more than one thousand inhabitants, and every renewal of such license shall be conspicuously exposed in the place of business of which the pharmacist or assistant pharmacist or other person to whom it is issued is the owner or manager, or in which he is employed. Every licensed pharmacist or assistant pharmacist who desires to continue in the practice of his profession shall within thirty days next preceding the expiration of his license or permit, file with the board an application for the renewal thereof. If any pharmacist or assistant pharmacist shall fail for a period of sixty days after the expiration of his license, to make application to the board for its renewal, his name shall be erased from the register of licensed pharmacist or assistant pharmacist. The name of the responsible manager of every pharmacy, drug store or apothecary shop, shall be conspicuously displayed outside of such place of business. (Rev. Crim. Stats. 1925, Art. 757.)

94. Pharmacists to be Licensed.—No person not licensed as a pharmacist, within the meaning of this law, shall conduct or manage any pharmacy, drug or chemical store, apothecary shop, or other place of business, for the retailing, compounding or dispensing of any drug, chemical or poison, or for the compounding of physicians' prescriptions, or keep exposed for sale at retail any drug, chemical or

poisons, except as hereinafter provided. No person not licensed as a pharmacist or assistant pharmacist, within the meaning of this law, shall compound, dispense or sell at retail any drug, chemical, poison, or pharmaceutical preparation upon the prescription of a physician or otherwise, or compound physicians' prescriptions, except as an aid to or under the supervision of a person licensed as a pharmacist under this law. No owner or manager of a pharmacy or drug store, or other place of business, shall cause or permit any other than a person licensed as a pharmacist or assistant pharmacist to compound, dispense, or sell at retail any medicine or poison, except as an aid to or under the supervision of a person licensed as a pharmacist. Nothing in this article shall be construed to prevent any person from engaging in the business herein described as proprietor and owner thereof, provided such proprietor or owner shall have employed in his business to conduct same some one qualified under this chapter, nor to interfere with any legally registered practitioner of medicine or dentistry in the compounding of his prescriptions, or to prevent him from supplying his patients such medicine as he may deem proper, nor with exclusively wholesale business of any dealer who shall be licensed as a pharmacist, or who shall keep in his employ at least one person who is licensed as a pharmacist, nor with the selling at retail of non-poisonous domestic remedies, nor with the sale of patent or proprietary preparations, when sold in unbroken packages, nor with the sale of poisonous substances which are sold exclusively for use in the arts, or for use as insecticides, when such substances are sold in unbroken packages bearing a label having plainly printed upon it the name of the contents, the word "poison" and the names of at least two readily obtainable antidotes. (Rev. Civ. Stats. 1925, Art. 4540.)

95. Unlicensed Pharmacy.—No person not licensed as a pharmacist, within the meaning of this law, shall conduct or manage any pharmacy, drug or chemical store, apothecary shop or other place of business for the retailing, compounding or dispensing of any drug, chemical or poison, or for the compounding of physicians' prescriptions, or keep exposed for sale at retail any drug, chemicals or poisons, except as hereinafter provided. No person not licensed as a pharmacist or assistant pharmacist, shall compound, dispense or sell at retail any drug, chemical, poison, or pharmaceutical preparation upon the prescription of a physician, or otherwise, or compound physicians' prescriptions except as an aid to, or under the supervision of a person licensed as a pharmacist under this law. No owner, or manager of a pharmacy, or drug store, or other place of business, shall cause or permit any other than a person licensed as a pharmacist or assistant pharmacist to compound, dispense or sell at retail any medicine or poison, except as an aid to or under the supervision of a person licensed as a pharmacist. (Rev. Crim. Stats. 1925, Art. 755.)

96. Exceptions.—The preceding article shall not be construed to prevent any person from engaging in such business as proprietor or owner thereof, provided such proprietor or owner shall have employed to conduct same some one qualified under this law, nor to interfere with any legally registered practitioner of medicine or dentistry in the compounding of his prescriptions, or to prevent him from supplying his patients such medicine as he may deem proper; nor with exclusively wholesale business of any dealer who shall be licensed as a pharmacist, or who shall keep in his employ at least one person who is licensed as a pharmacist; nor with the selling at retail of non-poisonous domestic remedies, nor with the sale of patent or proprietary preparations, when sold in unbroken packages, nor with the sale of poisonous substances which are sold exclusively for use in the arts or for use as insecticides, when such substances are sold in unbroken packages bearing a label having plainly printed upon it the name of the contents, the word "poison" and the names of at least two readily obtainable antidotes. (Id. Art. 756.)

97. Record and Register.—The board shall keep a record of its proceedings and a register of all persons to whom certificates or licenses as pharmacist or assistant pharmacist and permits have been issued, and all renewals thereof. The books and register of the board, or a copy of any part thereof certified by the secretary, shall be accepted as competent evidence in all the courts. (Rev. Civ. Stats. 1925, Art. 4541.)

98. Fees of Board.—The board shall be entitled to charge the following fees: For the examination of an applicant for license as a pharmacist, five dollars; for the examination of an applicant for license as an assistant pharmacist, two dollars and fifty cents. Every registered pharmacist and every registered assistant pharmacist in the meaning of this law, who desires to continue in the pursuit of pharmacy in this State shall annually, after the expiration of the first year of registration and on or before the first day of January of each year, pay to the secretary of the board a renewal fee to be fixed by the board which shall not exceed three dollars, in return for which a renewal of registration shall be issued. The board shall each year turn over to the State Pharmaceutical Association for the advancement of the science and arts of pharmacy out of the annual fees collected by it, such sum as it may deem

advisable, not to exceed two dollars for each pharmacist and assistant pharmacist who shall have paid his renewal fee during such year. Those holding a certificate of pharmacy and not engaged in the active practice of pharmacy, shall be issued a renewal certificate upon payment of an annual fee of one dollar. Said association shall report annually to said board on the condition of pharmacy in the State. (Id. Art. 4542.)

99. Offenses and Penalty.—Whoever, not being licensed as a pharmacist, shall conduct or manage any drug store or other place of business for the compounding, dispensing or sale at retail of any drugs, medicine or poisons, or for the compounding of physicians' prescriptions contrary to any provision of the three preceding articles shall be fined not less than twenty-five nor more than one hundred dollars. Each week such drug store or pharmacy or other place of business is so unlawfully conducted shall be a separate offense. Whoever not being licensed as a pharmacist or assistant pharmacist shall compound, dispense or sell at retail any drugs, medicine, poison or pharmaceutical preparation even upon a physician's prescription or otherwise, and whoever being the owner or manager of the drug store, pharmacy or other place of business, shall cause or permit any one not licensed as a pharmacist or assistant pharmacist to dispense, sell at retail or compound any drug, medicine, poison or physician's prescription, contrary to any provision of the three preceding articles, shall be fined not less than ten nor more than one hundred dollars. Any license or permit or renewal thereof, obtained through fraud, or by any false or fraudulent representations, shall be void and of no effect in law. Any person who shall make any false or fraudulent representations for the purpose of procuring a license or renewal thereof, either for himself or for another, shall be fined not less than twenty-five nor more than one hundred dollars. Whoever being the holder of any license or permit granted under this law, shall fail to expose such license or permit, or any renewal thereof, in a conspicuous position in the place of business to which such license or permit relates, or in which the holder thereof is employed, contrary to the provisions of Article 757* shall be fined not less than five nor more than twenty-five dollars, and each week that such license, permit or renewal shall not be exposed, shall be a separate offense, and whoever being the holder of any license or permit granted under this law shall, after the expiration of such license or permit, and without renewing the same, continue to carry on the business for which such license or permit was granted, contrary to the provisions of Article 757 shall be fined not less than five nor more than twenty-five dollars. (Rev. Crim. Stats. 1925, Art. 758.)

100. Sale Without Prescription.—No person, firm or corporation shall sell, furnish, or give away cocaine, derivations of cocaine, preparations containing cocaine or derivatives of cocaine, morphine, derivations of morphine, preparations containing morphine or derivatives of morphine, opium, preparations containing opium, chloral hydrate or preparations containing chloral hydrate, canabis indica, canabis sativa or preparations thereof or any drug or preparation from any canabis variety, or any preparation known as marijuana. (Id. Art. 720.)

101. Prescriptions.—The preceding article shall not apply when such sale, furnishing or gift is upon the original written order or prescription of a lawfully authorized practitioner of medicine, dentistry, or veterinary medicine, which order or prescription shall be dated and shall contain the name of the person for whom prescribed, or if ordered by a veterinarian shall state the kind of animal for which ordered, and shall be signed by the person giving the prescription or order. Such written order or prescription shall be permanently retained on file by the person, firm or corporation who shall compound or dispense the article ordered or prescribed, and it shall not be compounded or dispensed a second time except upon the written order of the original prescriber for each and every subsequent compounding or dispensing. No copy or duplicate of such written order or prescription shall be made or delivered to any person, but the original shall at all times be open to inspection by properly authorized officers of the law. (Id. Art. 721.)

102. Exceptions.—The provisions of the first article† of this chapter shall not apply to preparations containing not more than two grains of opium or not more than one-eighth grain of morphine, or not more than two grains of chloral hydrate, or not more than one-sixteenth grain of cocaine in one fluid ounce, or if a solid preparation in one avoirdupois ounce, nor to preparations containing not more than one grain per ounce of solid extract of canabis indica, canabis sativa or preparations thereof or any drug or preparation from any canabis variety, nor to sales by wholesale jobbers, wholesalers and manufacturers to retail druggists, nor to sales at retail by retail druggists to regular practitioners of medicine, dentistry, or veterinary medicine, nor to

*See No. 93.

†See No. 100.

sales made to manufacturers of proprietary or pharmaceutical preparations for use in the manufacture of such preparations, nor to sales to hospitals, colleges, scientific or public institutions. (Id. Art. 722.)

103. Furnishing Habitual User.—No practitioner of medicine, dentistry, or veterinary medicine shall furnish to or prescribe for the use of an habitual user of the same, any cocaine or morphine or any derivative or compound of cocaine or morphine or any preparation containing cocaine or morphine or their derivatives, or any opium or chloral hydrate or any preparation containing opium or chloral hydrate, or canabis or any preparation thereof, for the use of any person not under his treatment in the regular practice of his profession. No practitioner of veterinary medicine shall prescribe any of the foregoing substances for the use of any human being. (Id. Art. 723.)

104. False Labels.—It shall be unlawful to manufacture for sale, sell or exchange any drugs, medicine, or device advocated for the cure of diseases, if the package or label or any representation pertaining to same shall bear or contain any statement, design or device regarding the curative or therapeutic effect of such article or any of the ingredients or substances contained therein, which is misleading, false or fraudulent. (Id. Art. 724.)

105. Penalty.—Whoever violates any provision of the preceding articles of this chapter shall be fined not less than twenty-five nor more than two hundred dollars or be imprisoned in jail for not less than one month nor more than one year, or both. (Id. Art. 725.)

106. Sale of Poisons.—The following poisons are included with the provisions of this article: arsenic, cyanide of potassium, hydrocyanic acid, cocaine, morphine, strychnia and all other poisonous vegetable alkaloids and their salts, oil of bitter almonds, containing hydrocyanic acid, opium and its preparations, except paregoric and such others as contain less than two grains of opium to the ounce, aconite, belladonna, cantharides, colchicum, conium, cottonroot, digitalis, ergot, hellebore, henbane, phytolacca, strophanthus, oil of tansy, veratrum viride and their pharmaceutical preparations, arsenical solutions, carbolic acid, chloral hydrate, chloroform, corrosive sublimate, creosote, croton oil, mineral acids, oxalic acid, Paris green, salts of lead, salts of zinc, white hellebore or any drug, chemical or preparation which, according to standard works on medicine or materia medica, is liable to be destructive to adult human life in quantities of sixty grains or less.

Every person, firm or corporation who sells any poison shall place on each package and container of poison sold a label containing the word "poison" printed in red ink in a conspicuous place thereon; and keep a well-bound book which shall at all times be open to the inspection of any officer charged with the enforcement of law, in which shall be recorded at the time of the sale the name and quantity of the poison purchased and the purpose for which the same is to be used, and the name and address of the purchaser, if known to the seller, and if unknown the sale shall not be made until the purchaser is identified by one known to the seller. The seller shall also record the name and address of the identifier.

Any person who shall for himself or as the agent or employee of another person, firm or corporation, sell, give away or deliver any of said poisons to another without having complied with any provision of this article shall be fined not less than twenty-five nor more than one hundred dollars and be confined in jail for not less than twenty days nor more than six months. (Id. Art. 726.)

107. Destruction of Animals by Poison.—1. May buy poison.—The Commissioners Court of each county may purchase the necessary poisons and accessories required by the citizens of such county for the purpose of destroying prairie dogs, wild cats, gophers, ground squirrels, wolves, coyotes, rats, English sparrows and ravens, and pay for the same out of the general fund of the county, and may furnish the same at cost or free to such citizens. If the court shall elect to sell the same, the proceeds, shall be turned into the treasury to the credit of the general fund. . . .

3. Commissioner of Agriculture.—The Commissioner of Agriculture shall furnish said court with formulas and instructions for preparing the poisons and plans for using the same, and shall, upon the request of any such court, as soon as practicable after receiving such request, demonstrate and give instructions how to prepare the poison and when and how to apply the same. . . . (Rev. Civ. Stats. 1925, Art. 190.)

Serum, Etc.

108. Sale of Biological Products.—It is hereby provided that the Live Stock Sanitary Commission of Texas shall have the power to control the sale and distribution of all veterinary biological products within this State, and it is hereby made its duty, subject to the limitations herein prescribed, to destroy and eradicate the

fever-carrying tick; also to eradicate and eliminate the scabies, sheep scab, hog cholera, glanders, and all other malignant, contagious, infectious and other communicable disease of live stock. For this purpose it is empowered and directed to establish special quarantine districts where such disease or infections of such diseases are known to exist, and notice of the establishment of such special quarantine districts shall be given as provided in Article 7314,* Revised Civil Statutes, and in Section 3 of this act.* Said commission shall have the power to quarantine premises or pastures located in said special quarantine districts and the domestic live stock thereon situated in such quarantine districts or elsewhere when such pasture or quarantined premises or live stock located thereon are infected with or have been exposed to malignant, contagious, infectious or communicable disease or infection thereof; and no live stock shall be moved to or from such special quarantined district or from any pastures or premises located in such special quarantined district in a manner, method or condition other than those prescribed by the Live Stock Sanitary Commission and by this act. It shall be the duty of the Live Stock Sanitary Commission to prescribe methods for dipping live stock or otherwise treating or disinfecting said premises and the live stock thereon, as in their opinion are necessary and adequate for the eradication of the disease or the infection of the disease for which they are quarantined. (Rev. Civ. Stats. 1925, Art. 7013.)

Venereal Disease Drugs.

109. Private Disease Posters.—Any person who shall publish, deliver or distribute, or cause to be published, delivered or distributed in any manner, or who shall permit, placards or posters to be or remain on buildings, outhouses or premises controlled by him, containing an advertisement concerning a venereal disease, lost manhood, lost vitality, impotency, sexual weakness or emissions, varicocele, self-abuse or excessive sexual indulgence and calling attention to a medicine, article or preparation that may be used therefor or to a person from whom or place at which information, treatment or condition may be obtained shall be fined not more than two hundred dollars. (Rev. Crim. Stats. 1925, Art. 702.)

110. Exceptions.—The preceding article shall not apply to didactic or scientific treatises which do not advertise or call attention to any person from whom or any place at which information, treatment or advice may be obtained, nor to advertisements or notices issued by a municipal or county department of health or by the State Board of Health. (Id. Art. 703.)

111. Venereal Diseases.—Whoever violates any provision of this article shall be fined not less than five nor more than fifty dollars:

1. No person infected with a venereal disease shall knowingly expose another to infection with any venereal disease, or perform an act which exposes another person to infection with such disease.

2. No local health officer, employee, inspector, physician, nurse, or superintendent of a clinic or hospital shall fail to perform any duty required of him by the laws of this State relating to venereal diseases and requiring reports in such cases.

3. Whoever sells any drug or preparation of any kind used for or believed by the seller to be intended to be used for the treatment of syphillis, gonorrhea, or chancroid shall keep a record of the name and address of such purchaser and mail a copy of such record each week to the local health officer. (Id. Art. 704.)

Intoxicating Liquors.

112. Sale of Intoxicating Liquors, Etc.—It shall be unlawful for any person, directly or indirectly, to possess or receive for the purpose of sale, or to manufacture, sell, barter, exchange, transport, export, deliver, take orders for or furnish spiritous [spirituous], vinous or malt liquors or medicated bitters capable of producing intoxication, or any other intoxicant whatever, or to possess, receive, manufacture or knowingly sell, barter, exchange, transport, export, deliver, take orders for or furnish any equipment, still, mash, material, supplies, device or other thing for manufacturing, selling, bartering, exchanging, transporting, exporting, delivering, taking orders for, or furnishing any such liquors, intoxicants or beverages. (Rev. Civ. Stats. 1925, Art. 5075; Rev. Crim. Stats. 1925, Art. 666.)

113. Liquor More Than One Per Cent.—It shall be unlawful for any person, directly or indirectly, to possess or receive for the purpose of sale, or to manufacture, sell, barter, exchange, transport, export, deliver, take orders for, or furnish spirituous,

*Omitted herein.

vinous or malt liquors or medicated bitters, or any potable liquor, mixture or preparation containing in excess of one per cent of alcohol by volume, or to possess, receive, manufacture, or knowingly sell, barter, exchange, transport, export, deliver, take orders for, or furnish any equipment still, mash, material, supplies, device, or other thing for manufacturing, selling, bartering, exchanging, transporting, exporting, delivering, taking orders for, or furnishing any such liquors, intoxicants or beverages. (Id. Art. 5076; Id. Art. 667.)

114. Exceptions as to Intoxicating Liquor.—It shall not be unlawful for any person to manufacture, sell, barter, exchange, transport, export, deliver, take orders for, furnish, possess or receive for the purpose of sale, barter, exchange, transport, export, or deliver spirituous, vinous, or malt liquors or medicated bitters for medicinal, mechanical, scientific, or sacramental purposes. (Id. Art. 5077; Id. Art. 668.)

115. Exceptions as to Other Liquor.—The manufacture, sale, barter, exchange, transportation, exporting, taking orders for, furnishing, and possessing of any of the liquors mentioned in this title, if done for medicinal, mechanical, scientific, or sacramental purposes, shall not be punishable under the terms of this title. (Id. Art. 5078; Id. Art. 669.)

116. Not an Accomplice Witness.—Upon a trial for a violation of any provision of this title, the purchaser, transporter, or possessor of any of the liquors prohibited herein shall not be held in law or in fact to be an accomplice, when a witness in any such trial. (Id. Art. 5079; Id. Art. 670.)

117. Possession Prima Facie Evidence.—Whenever* possession or receipt, or possession or receipt for the purpose of sale, is made unlawful by law, proof of possession of mash, or of a still or any device for manufacturing intoxicating liquors, or proof of the possession of more than one quart of intoxicating liquors, shall be prima facie evidence of guilt; but the defendant shall have the right to introduce evidence showing the legality of such possession. (Id. Art. 5080; Id. Art. 671.)

118. "Intoxicating Liquors" Defined.—The words "intoxicating liquors," or "liquors" hereafter used in this title shall be held to include and comprehend all liquors referred to in the first and second articles of this chapter, and the said liquors prohibited by said articles will hereafter be referred to herein for convenience as "intoxicating liquors." (Id. Art. 5081; Id. Art. 672.)

119. Liquors Included.—The various liquors described in the first two articles of this title shall be construed to include all distilled, malt, spirituous, vinous, fermented or alcoholic liquors and all alcoholic liquids and compounds, whether medicated, proprietary, patented or not, and by whatever name called, which require a Federal tax as a beverage, or which contain more alcohol than is necessary to extract the medical† properties of the drug contained in such preparation and to hold the medicinal agents in solution and preserve the same. (Id. Art. 5082; Id. Art. 673.)

120. Lawful Use.—The provisions of this title shall not prohibit the possession of intoxicating liquor for beverage purposes for use by the owner and members of his family, or bona fide guests, in a bona fide residence, if such liquors were purchased and deposited in such residence before this law goes into effect. Nothing in this title shall prohibit the manufacture, transportation, storage, and sale of denatured or pure ethyl alcohol, or denatured rum for use only in the industrial or mechanical arts or for scientific purposes or in chemical laboratories or hospitals, or to prevent the manufacture, transportation, sale and keeping and storing for sale any medical‡ preparations manufactured in accordance with formulas prescribed by the United States Pharmacopœia or National Formulary or American Institute of Homeopathy, or of alcoholic, patent or proprietary medicines which do not require the payment of the Federal tax as a beverage and which contain no more alcohol than is necessary to extract the medicinal properties of the drug contained in such preparation, and to hold the medicinal agents in solution, and to preserve the same and which are manufactured and sold for legitimate and lawful purposes and not as beverages, or to prevent the manufacture and sale of bona fide alcohol toilet, or antiseptic preparations and solutions or flavoring extracts which do not require the payment of Federal tax as a beverage and which contain no more alcohol than is necessary for the extraction, solution and preservation of the agents contained therein, and which are manufactured and sold for legitimate and lawful purposes and not as beverages, and upon the outside of the bottle or package of each is printed in English conspicuously and legibly and clearly the quantity by volume of alcohol in such preparation. The manufacturer of flavoring extracts or toilet, medicinal, antiseptic preparations or solutions, patent or proprietary medicines, or preparations permitted to be manufactured by this law shall

*Article 671 reads "wherever."
†Article 673 reads "medicinal."
‡Article 674 reads "medicinal."

be permitted to purchase, possess, transport and store alcohol necessary for the manufacture of said article, but not to be sold or given away.* Such manufacturer shall secure a permit from the Comptroller and shall make a monthly report to be filed with the Comptroller on or before the 10th day of each month, showing the name and quantity of every such preparation, solution, or medicine so manufactured, and the percentage of alcohol contained in each such preparation, solution or medicine. Said manufacturer shall, upon request of the Attorney-General,† the Comptroller, or the district or county attorney of the county in which the such manufacturer has his place of business, furnish the officer making such request any information called for by such officer with reference to the manufacture, storage, or sale of any such alcoholic preparation, solution or medicine, and any information with reference to the quantities and dates of sale and transportation of any such preparation, solution or medicine to any person or persons designated in such request. Any of the officers herein above named shall have the right at any reasonable time within business hours to examine the books and records and all data in the possession of such manufacturer with reference to the manufacture, storage, or sale of such alcoholic preparations. Nothing herein shall prevent the storage in United States bonded warehouses in the custody of a United States collector of internal revenue of all liquors manufactured prior to the taking effect of this law or to prevent the transportation of such liquors for purposes not inhibited by law. (Id. Art. 5083; Id. Art. 674.)

121. Permit to Sell or Make.—Alcohol for non-beverage purposes and wine for sacramental purposes may be manufactured and sold as follows:

The Comptroller may issue permits to persons, to manufacture and sell equipment for the manufacture of liquor not prohibited herein; to manufacture alcohol and wine; to manufacture alcoholic, patent or proprietary medicine, flavoring extracts and culinary preparations and other non-beverage alcoholic preparation; to wholesale and retail druggists or pharmacists and to persons permitted to possess alcohol and wine for authorized purposes. Such permits shall not be in conflict with the prohibitions contained herein. (Rev. Civ. Stats. 1925, Art. 5084.)

122. Bond.—A permit shall not be issued by the Comptroller to any person who has, within two years next preceding the issuing of the same, been adjudged guilty of violating any provision of this Act, or of any permit, or of any law of this State, or of the United States, prohibiting or regulating the liquor traffic; nor shall a permit be issued for the purpose of selling such liquor at retail, unless such sale be made by a pharmacist designated in the permit and duly licensed by the State Board of Pharmacy, nor until a bond shall be given and approved and the applicant has filed written application therefor setting forth the qualifications and the purposes for which the permit will be used, together with such other information as the Comptroller may require. The bond herein required of a retailer shall be made payable to the Governor of this State at Austin, in Travis county, shall be in the sum of one thousand dollars conditioned for the faithful observance of this act; the bond shall be upon such form as may be drawn and prescribed by the Attorney-General and for any breach of the same, suit may be brought in the District Court of Travis county to recover the entire amount of same as a penalty for such violation of the law and breach of the bond. Said bond, if signed by personal sureties, must be signed by two solvent sureties, or, if by a surety company, then by a surety company authorized to transact business in the State of Texas. The bond shall be subject to the approval of the Comptroller and shall be filed in his office. The Attorney-General shall bring all actions for breach of said bond in the name of the State. (Id. Art. 5085.)

123. No Permit for Sacramental Wine.—Such permit when issued shall contain date of issue, shall be in writing, signed by the Comptroller, shall name and give the address of the person to whom issued, give location where such liquors, equipment or material is to be manufactured, kept, stored or sold, and fix the maximum quantity of such liquor permitted to be kept or stored and specifically designate and limit the acts permitted, give the name and address of all individuals authorized to do the permitted acts; provided, the name and address of the agents, employees and servants of common carriers may be omitted by the Comptroller from such permit, and such permit shall expire on the 31st day of December next succeeding the date of issue thereof. Nothing herein shall be construed as requiring any priest, rabbi or minister of any religious denomination or sect to have a permit in order to purchase or receive shipments of wine for sacramental purposes; and nothing in this title shall make it unlawful for any priest, rabbi or minister or any religious denomination or sect to purchase, order or receive, wine for sacramental purposes or for any common carrier to ship, transport, carry or deliver same to any priest, rabbi or minister of any religious de-

*Article 674 reads, "given away, provided that such manufacturer . . ."
†Article 674 reads, "Attorney-General of the State, . . ."

nomination or sect for sacramental purposes only. Where such shipment or purchase is made a record thereof shall be made and kept and the priest, rabbi or minister making such purchase or shipment shall be identified. Such quantities of wine may be purchased and kept on hand for sacramental purposes as may be necessary for the particular church or religious institution for the use and service of which same is purchased or shipped. (Id. Art. 5086.)

124. Attach Label to Container.—All persons manufacturing alcohol or wine, or either, shall securely and permanently attach to any container of such liquor as the same is manufactured, and thereafter, persons possessiong such liquor in wholesale quantities shall securely keep and maintain thereon, a manufacturer's label, stating name of manufacturer, kind and quantity of liquor contained therein, with a copy of the permit authorizing the manufacture thereof. Every person having in his possession any intoxicating liquor, purchased after this law becomes effective, for permitted purposes, shall have pasted on or permanently attached to the container a copy of the prescription or affidavit as the case may be, upon which authority it was purchased as is provided for in this title. (Id. Art. 5087; Rev. Crim. Stats. 1925, Art. 675.)

125. Record of Manufacturer.—All persons authorized to manufacture alcohol shall keep a separate record of such liquors manufactured or sold, giving the date and quantity of such liquor manufactured and sold, the quantity of such liquor on hand, name and address of persons to whom such liquor was sold, the name and address of all agents in any way connected with such manufacture, sale, or purchase, or the keeping, storing, delivering, consigning, and distribution of such liquor, the name and address of all common, or other carriers, receiving, transporting, and delivering said liquor, and a copy of the application on which the purchase or sale of such liquor was made, and a detailed account of the disposition of such liquor. A copy of such record shall be sent to the Comptroller every third month* by the 10th of the month for the quarter preceding. (Id. Art. 5088; Id. Art. 676.)

126. Sale by Wholesale Druggists.—It shall be unlawful for a wholesale druggist to sell alcohol or wine, except in wholesale quantities, to persons having permits to purchase in such quantities. Such wholesale druggist shall keep an accurate record of all sales and label the containers of such liquor, setting forth the kind of liquor contained therein, by whom manufactured, and the person to whom sold. A copy of such record shall be sent to the Comptroller every third month by the 10th of the month for the quarter preceding. It shall be unlawful for a retail druggist or pharmacist to sell any liquor except alcohol for non-beverage purposes or wine for sacramental purposes. Such druggist or pharmacist shall keep a record giving the name of the doctor issuing the prescriptions containing alcohol, the amount, date of sales, the name and signature of the purchaser, the person making the sale, and a copy of the prescription. (Id. Art. 5089; Id. Art. 677.)

127. Duty of Physician Prescribing.—Every physician who issues a prescription for ethyl alcohol, or any alcoholic liquor, shall first secure a permit from the Comptroller, except as herein provided, shall keep a record, alphabetically arranged in a separate book provided by the Comptroller which shall show: Date, amount, to whom issued, directions for use (stating the amount and frequency of dose), and the druggist to whom addressed. Such physician shall send a copy of such record to the Comptroller not later than the fifth day of the month for the quarter preceding. (Id. Art. 5090; Id. Art. 678.)

128. Physician to Obey Law.—A physician who issues prescriptions must be in active practice, in good standing with his profession, not addicted to the use of any narcotic drug, and have a permit as provided herein for issuing prescriptions. Such physician before issuing any prescriptions must make a careful personal, physical examination of the person to whom the alcohol is prescribed, and in no case issue such prescription to any person whom he has reason to believe will use alcohol for beverage purposes, nor prescribe more than a pint of alcohol to any person at a time. Nor shall such prescriptions be filled at any pharmacy or drug store in which the physician has any financial interest. For any shift or device by which intoxicating liquors may be improperly prescribed, or for any violation of this article, in addition to the penalty prescribed, for the first offense under this title, the Comptroller may suspend the permit of such physician to issue prescriptions for alcohol for a period of one year, and for the second offense, in addition to the punishment prescribed herein, the permit of such physician shall be deemed revoked forthwith. The revocation of such permit, if revoked by the court, shall be sent to the authority granting the permit and

*The words "every third month," are omitted from Article 676.

shall act as a ban to the granting of any further permit to such physician to issue prescriptions. (Id. Art. 5091; Id. Art. 679.)*

129. **Comptroller to Furnish Form.**—The Comptroller shall have printed forms of records, affidavits, and prescriptions, as provided herein, and shall furnish the same at cost to only such persons as are authorized by law to sell, transport, purchase, manufacture or use alcohol. The affidavits or prescriptions to be filed with the druggist shall be printed in book form, numbering such affidavit with a consecutive serial number from one to one hundred. Each book shall be given a number, and a stub in each book shall carry the same number as the affidavit or prescription, showing the copy of the record of such sale. The book containing such stub shall be returned to the Comptroller when the affidavits or prescriptions are used, or not later than six months from the date that such books or affidavits and prescriptions were delivered to such druggist or physician. All unused, mutilated, or defaced blanks shall be returned with the book. No druggist or physician shall make such sale or issue such prescriptions, except on blanks herein provided. The form of such record shall be prescribed by the Comptroller. The Comptroller shall charge a fee of five dollars for each and every character of permit issued by him under this title. (Rev. Civ. Stats. 1925, Art. 5095.)

130. **Pharmacist Cited for Violation.**—If at any time there shall be filed with the Comptroller a complaint under oath setting forth that any pharmacist, who has a permit to sell alcohol for medical, mechanical, or scientific purposes, or wine for sacramental purposes, is not in good faith conforming to the provisions of this chapter, or is guilty of violating this law, the Comptroller or his agent shall immediately issue an order citing such pharmacist to appear at a place in the State where he resides before the Comptroller, on a day named not more than thirty days, nor fewer than fifteen days, from the issuing of such order, at which time the question of the cancellation of such permit shall be heard. If it be found that such pharmacist is guilty of violating any provision of this law, such permit shall be revoked and no permit shall be granted to such person, firm, or corporation for two years thereafter. (Id. Art. 5096.)

131. **Fixing Place of Sale—Venue.**—In case of a sale where a shipment or delivery of such intoxicating liquor is made by a common or other carrier the sale or delivery thereof shall be deemed to be made in the county wherein the delivery is made by such carrier to the consignee, his agent, or employees. A prosecution for such sale or delivery may likewise be had in the county wherein the sale is made or from which the shipment is made, or in any county through which the shipment is made. (Id. Art. 5097.)

132. **Advertising Liquor.**—It shall be unlawful to advertise anywhere, on land or water, by any means or method, intoxicating liquors, or to advertise the manufacture, method of manufacture, sale, keeping for sale or furnishing of the same, or where, how, from whom and at what price the same may be obtained. The manufacturer of alcohol or wine and wholesale druggists having a permit under this chapter shall be allowed to send price lists to those to whom they are permitted to sell alcohol or wine under this law; it shall also be unlawful to permit any sign or billboard, containing such prohibited advertisement to remain upon one's premises or to circulate any prohibited price list, order blank or other matter designed to induce or secure orders for such intoxicating liquors. The officers charged with the enforcement of this law are authorized to remove, paint over or otherwise obliterate any such advertisement from any sign, billboard, or other place when it comes to his notice, and shall do so upon the demand of any citizen who has first requested the person in charge of such advertisement, or the owner of the property on which it is located to remove the same and such person fails to remove such advertisement as required by law. Any advertisement or notice containing the picture of a brewery, distillery, bottle, keg, barrel, or box or other receptacle represented as containing intoxicating liquors, or designed to serve as an advertisement thereof, shall be within the inhibition of this article. It shall be unlawful for any newspaper or periodical to print in its columns statement concerning the manufacture or distribution of alcoholic liquors directly or indirectly, for which the said newspaper or periodical receives compensation of any kind, without printing at the beginning and at the close of said statement in type of the same size used in the body of the said article the following statement: "Printed as paid advertising." (Id. Art. 5098.)

133. **Advertising Liquor.**—It shall be unlawful to advertise anywhere, on land or water, by any means or method, intoxicating liquors, or to advertise the manufacture, method of manufacture, sale, keeping for sale or furnishing of the same, or where, how, from whom and at what price the same may be obtained. The manufacturer of alcohol or wine and wholesale druggists having a permit under this law shall

*The last two sentences are omitted from Article 679.

be allowed to send price lists to those to whom they are lawfully permitted to sell alcohol or wine. It shall also be unlawful to permit any sign or billboard containing such prohibited advertisement to remain upon one's premises or to circulate any prohibited price list, order blank or other matter designed to induce or secure orders for such intoxicating liquors. Any advertisement or notice containing the picture of a brewery, distillery, bottle, keg, barrel, or box or other receptacle represented as containing intoxicating liquors, or designed to serve as an advertisement thereof, shall be within the inhibition of this article. It shall be unlawful for any newspaper or periodical to print in its columns statement concerning the manufacture or distribution of alcoholic liquors directly or indirectly, for which the said newspaper or periodical receives compensation of any kind, without printing at the beginning and at the close of said statement in type of the same size used in the body of the said article the following statement: "Printed as paid advertising." (Rev. Crim. Stats. 1925, Art. 680.)

134. Liquor Places to Clean Up.—Every person except licensed pharmacists, wholesale druggists, manufacturing chemists, or hospitals or other places provided for herein to legally possess liquor, shall remove, or cause to be removed, all intoxicating liquors in his possession for prohibited purposes, and failure to do so shall be evidence that such liquor is kept therein for the purpose of being sold, bartered, exchanged, given away, furnished or otherwise disposed of in violation of the provisions of this title. All screens, stained glass, or other obstructions which prevent a clear view of the interior of any room or place where intoxicating liquors were sold as a beverage within one year before this act becomes operative shall be removed or changed so as to give a permanent unobstructed view of the interior of said room or place, if beverages of any kind are sold therein. (Rev. Civ. Stats. 1925, Art. 5099; Rev. Crim. Stats. 1925, Art. 681.)

135. Recipe or Formula.—It shall be unlawful to advertise, sell, deliver or possess any preparation, compound, or table from which intoxicating liquor as a beverage is made, or any formula, directions, or recipes for making intoxicating liquors for beverage purposes. (Id. Art. 5100; Id. Art. 682.)

136. Concealing Nature of Shipment.—No person shall use or induce any railroad company, express company, or any other carrier, or any servant or employee thereof, or any person or persons to carry, transport, or ship any package or receptacle containing liquors without notifying the carrier, its servant or agent, or any person who carries the same, of the true nature and character of the shipment. Failure to notify such carrier shall be no defense for illegal transportation. (Id. Art. 5101; Id. Art. 683.)

137. Soliciting or Giving Information.—No person shall solicit, or receive from any person for the purpose of forwarding for the person from whom received, any orders for intoxicating liquors from any person, or give any information how such prohibited liquors may be received, or where such liquors are, or send for such liquors, except for the purposes permitted by this title. (Id. Art. 5102; Id. Art. 684.)

138. Information on Shipped Container.—No person shall transport liquor or receive or possess any liquor from a common or other carrier unless there appears on the outside of the package containing such liquors the following information: Name and address of the consignor or seller, name and address of the consignee or persons receiving the liquor; kind and quantity of liquor contained therein and number of permit. Any consignee accepting or receiving any package containing any such liquors upon which appears a false statement, or any person consigning, shipping, transporting, or delivering any such package, knowing that such statement appearing on the outside is false, shall be deemed guilty of violating the provisions of this title. (Id. Art. 5104; Id. Art. 686.)

139. No Property Right in Liquor.—No property rights of any kind shall exist in any intoxicating liquors manufactured or sold or kept for sale for beverage purposes in violation of law, and in all such cases the same may be searched for, seized and ordered to be destroyed. (Rev. Civ. Stats. 1925, Art. 5105.)

140. Penal Article.—Any corporation violating any provision of this title shall be subject to a penalty in favor of the State of Texas, which shall be recoverable in an action in the name of the State to be brought by the Attorney-General in any District Court of Travis county, or such action may be brought in the District Court of any county where the offense is committed, by the Attorney-General or by the county or district attorney of such county with the consent and approval of the Attorney-General. In any such action for penalties, the State shall recover the sum of five hundred dollars for any violation of the law, provided that each separate violation of the law shall be considered a separate offense within the terms of this article, or where the offense is of a continuing charater, then each day shall be considered a separate infraction of the law, for which the penalty may be recovered. The officers, agents or servants of any corporation against which any such penalty

suit may be brought shall not be excused from testifying on the ground that their testimony might incriminate them, but where they are called upon by the State to testify and do testify they shall not be prosecuted for their participation in those acts about which they have testified. (Id. Art. 5109.)

141. Penal Article.—Any person who violates any provision of the preceding articles of this chapter shall be confined in the penitentiary for not less than one nor more than five years. No person over twenty-five years of age convicted under any provision of the preceding articles of this chapter shall have the benefit of the Suspended Sentence Law. (Rev. Crim. Stats. 1925, Art. 689.)

142. Violating Injunction.—In addition to all other remedies now provided by law and provided in this act, the Attorney-General is hereby authorized to enjoin the violation of any article of this title, and suit therefor may be maintained in the name of the State of Texas in any District Court in Travis county. The district or county attorney of any county, wherein any of the provisions of this act, are violated, is authorized to institute and maintain, in the District Court of any such county, a suit in the name of the State to enjoin and prevent the violation of any aricle of this title. This remedy by an injunction given in this article shall be cumulative of and in addition to the other provisions of this act providing penalties or creating and defining crimes and punishments, and may be maintained with or without prosecutions or penalty suits herein otherwise provided for. Any person violating the terms of any injunction issued under the provisions of this article shall be punished for contempt by fine of not less than one hundred nor more than five hundred dollars, and by imprisonment in jail for not less than thirty days, nor more than six months. (Rev. Civ. Stats. 1925, Art. 5110.)

143. Witness Shall Testify.—No person shall be excused from testifying against persons who have violated any provisions of this title for the reason that such testimony will tend to incriminate him, but no person required to so testify shall be punished for acts disclosed by such testimony. (Id. Art. 5111; Rev. Crim. Stats. 1925, Art. 694.)

144. "Person" Includes Corporation.—The word "person" as used in this act shall be held to include both natural persons and corporations. Where the offense is committed by a corporation, the corporation shall be subject to the penalties prescribed in this title. (Rev. Civ. Stats. 1925, Art. 5113.)

PART IV.

Miscellaneous Laws.

Convict-Made Goods.

145. Labeling.—No sale of prison-made goods in intrastate commerce in this State shall ever be valid, and no action shall be brought in this State to enforce the collection or payment of any money or other thing of value pursuant to any such sale, unless at the time of such sale there is attached to the container or package thereof and upon each and every individual garment or article of such goods so sold, a plain and distinct label printed in the English language, containing the printed words "PRISON-MADE MERCHANDISE," which printed words shall be printed in type not less than one-fourth of an inch in height and shall be plainly legible. (L. 1927, c. 251, § 1.)

146. Definition.—The words "PRISON-MADE GOODS" as used in this act mean any goods, wares, merchandise or articles manufactured, produced or made, in whole or in part, in any penitentary or reformatory or penal institution or by any convicts or prisoners or persons serving sentences in a reformatory or penal institution of any kind. (Id. § 2.)

False Advertising.

147. Untrue Advertisement.—Whoever with intent to sell or in any way dispose of merchandise, securities, service, or anything offered by such person, or by any firm, corporation or association which he owns, or of which he has control directly or indirectly, to the public for sale or distribution, or with intent to increase the consumption thereof, or to induce the public in any manner to enter into any obligation relating thereto, or to acquire title thereto, or any interest therein, makes,

publishes, disseminates, circulates or places before the public or causes to be made, published, disseminated, circulated or placed before the public in a newspaper, or other publication, or in the form of a book, notice, handbill, window display card or price tag, poster, bill, circular, pamphlet or letter, or in any other way, an advertisement of any sort regarding merchandise, as to its character or cost, securities, service, or anything so offered to the public, which advertisement contains any assertion, representation or statement of fact which is known by said person or could have been known by use of reasonable diligence or inquiry to be untrue, deceptive or misleading in any material particular as to such matters or things so advertised, shall be fined not less than ten nor more than two hundred dollars. In prosecutions under this article such statement, trade name or trade-mark, with the name, signature, mark or identification of the person, firm, corporation, partnership, association, shall be considered prima facie evidence of the publication of such statement, trade name or trade-mark by the person, firm, corporation, partnership, association, referred to therein. (Rev. Crim. Stats. 1925, Art. 1554.)

Flag Desecration.

148. Protecting the Flag.—Whoever shall in any manner, for exhibition or display, place or cause to be placed, any word, figure, mark, picture, design, drawing or any advertisement of any nature upon any flag of the United States of America or State flag of this State, or shall expose or cause to be exposed to public view any such flag upon which, after this law takes effect shall have been printed, painted or otherwise placed, or to which shall be attached, appended, affixed or annexed any word, figure, mark, picture, design or drawing, or any advertisement of any nature, or who shall, after this law takes effect, expose to public view, manufacture, sell, expose for sale, give away, or have in possession for sale, or to give away, or for use for any purpose, any article or substance being an article of merchandise, or receptacle of merchandise or article or thing for carrying or transporting merchandise, upon which, after this law takes effect, shall have been printed, painted, attached or otherwise placed, a representation of any such flag to advertise, call attention to, decorate, mark or distinguish the article or substance on which so placed, or who shall publicly mutilate, deface, defy, or defile, trample upon or cast contempt, either by words or act, upon such flag, shall forfeit a penalty of fifty dollars for each such offense. Such penalty shall be recovered with costs in a civil suit brought by and in the name of any citizen of this State. Such penalty when collected, less the reasonable cost and expense of suit and recovery, to be certified by the county attorney of the county in which the offense is committed, shall be paid into the State treasury. Two or more penalties may be sued for and recovered in the same suit. (Rev. Civ. Stats. 1925, Art. 6139.)

149. Definition.—The word "flag," as used in this title, shall include any flag, standard, color, ensign or any picture or representation of either made of any substance or represented on any substance, and of any size, evidently purporting to be either of, said flag, standard, color or ensign of the United States of America, or a picture or representation, of either upon which shall be shown the colors, the stars and stripes in any number of either, or by which the person seeing the same without deliberation may believe the same to represent the flag, colors, standard or ensign of the United States of America. (Id. Art. 6140.)

150. Prima Facie Evidence.—The possession by one, other than a public officer, as such, of any such flag on which shall be anything made unlawful at any time, by this title, or of any article or substance or thing on which shall be anything made unlawful at any time by this title, shall be presumptive evidence that the same is in violation of this law. (Id. Art. 6141.)

151. Exceptions.—The preceding article shall not apply to any act permitted by the statutes of the United States, or by the United States Army and Navy regulations, nor to any newspaper, periodical, book, pamphlet, circular, certificate, diploma, warrant or commission of appointment to office, ornamental picture, article of jewelry, or stationery for use in correspondence, on any of which shall be printed, painted, or placed said flag, disconnected from any advertisement. (Id. Art. 6142.)

152. Protecting the Flag.—Whoever shall in any manner, for exhibition or display, place or cause to be placed, any word, figure, mark, picture, design, drawing or any advertisement of any nature upon any flag, standard, color or ensign of the United States of America, or State flag of this State, or ensign, or shall expose or cause to be exposed to public view any such flag, standard, color or ensign, upon which, after this act takes effect, shall have been printed, painted or otherwise placed, or to which shall be attached, appended, affixed or annexed any word, figure, mark, picture, design or drawing, or any advertisement of any nature, or who shall after this act takes effect, expose to public view, manufacture, sell, expose for sale, give away, or have in possession for sale, or to give away, or for use for any purpose, any article or sub-

stance being an article of merchandise, or receptacle of merchandise or article or thing for carrying or transporting merchandise, upon which after this act takes effect, shall have been printed, painted, attached or otherwise placed a representation of any such flag or flags, standard, color or ensign to advertise, call attention to, decorate, mark or distinguish the article or substance on which so placed, or who shall publicly mutilate, deface, defy, or defile, trample upon or case contempt either by words or act, upon any Texas flag, standard, color or ensign, shall be fined not exceeding one hundred dollars or be imprisoned in jail for not more than thirty days, or both. The words flag, standard, color or ensign as used in this article shall include any flag, standard, color, ensign or any picture or representation of either, made of or represented on any substance, and of any size purporting to be, either of, said flag, standard, color or ensign of the United States of America, or a picture or representation, of either upon which shall be shown the colors, the stars and the stripes in any number of either or by which one seeing the same without deliberation may believe the same to represent the flag, colors, standard or ensign of the United States of America. The possession by one other than a public officer, as such, of any such flag, standard, color or ensign, on which shall be anything made unlawful at any time by this article, or of any article or substance or thing on which shall be anything made unlawful at any time by this article, shall be presumptive evidence that the same is in violation of this article, and was made, done or created after this act takes effect, and that such did not exist when this law took effect. (Rev. Crim. Stats. 1925, Art. 148.)

153. Exceptions.—The preceding article shall not apply to any act permitted by the statutes of the United States of America, or by the United States Army and Navy regulations, nor shall it be construed to apply to a newspaper, periodical, book, pamphlet, circular, certificate, diploma, warrant or commission of appointment to office, ornamental picture, article of jewelry or stationery for use in correspondence on any of which shall be printed, or placed said flag, disconnected from any advertisement. (Id. Art. 149.)

154. Using Texas Flag to Advertise.—No person shall use any imitation, label, trade-mark, design, device, imprint or form of the flag of the State of Texas for the purpose of advertising or giving publicity to any goods, wares or merchandise, or any commercial undertaking, or for any trade or commercial purpose. Any person, whether in his individual capacity or as an officer, agent or receiver of any corporation, who shall violate this article shall be fined not less than fifty nor more than one hundred dollars, and each day is a separate offense. No provision of this article shall apply to any fraternal or patriotic organizations using the Texas flag for an emblem. (Id. Art. 150.)

155. Sale of Article With Flag Thereon.—No person shall offer or expose for sale any article or commodity of commerce bearing the imitation, design, imprint or form of the flag of the State of Texas. Any person whether in his individual capacity or as an officer, agent or receiver of any corporation who shall violate this article shall be fined not less than twenty-five nor more than fifty dollars. Each day shall be a separate offense. (Id. Art. 151.)

Prizes—Premiums.

156. Spectacles as Premiums.—It shall be unlawful for any person in this State to give, or cause to be given, delivered or cause to be delivered, in any manner whatsoever, any spectacles or eye glasses, separate or together, as a prize or premium, or as an inducement to sell any book, paper, magazine or any work of literature or art, or any item of merchandise whatsoever. (Rev. Civ. Stats. 1925; Art. 4565h.)

Tobacco—Tobacco Products.

157. Sale of Tobacco to Minor.—Whoever shall sell, give or barter, or cause to be sold, given or bartered, to any minor under the age of sixteen years, or knowingly sell to another for delivery to such minor, without the written consent of the parent or guardian of such minor, any cigarette or tobacco in any of its forms, shall be fined not less than ten nor more than one hundred dollars. (Rev. Crim. Stats. 1925, Art. 727.)

158. Contributing to Delinquency of Child.—In all cases where any child shall be a "delinquent child" or a "neglected or dependent child," as defined in the statutes of this State, the parent, guardian or person having the custody of, or the person responsible for such child who by any act encourages, causes or contributes to the delinquency or dependency of such child, or any other person who shall in any manner cause, encourage or contribute to the delinquency of such child shall be fined not

exceeding five hundred dollars or be imprisoned in jail not to exceed one year, or both. By the term "delinquency," as used herein, is also meant any act which tends to debase or injure the morals, health or welfare of such child, and includes the use of tobacco in any form, drinking intoxicating liquor, going into or remaining in any bawdy house, and any action which would constitute such child a "delinquent child." (Id. Art. 534.)

Trade-Marks, Etc.

159. Trade-Mark of Another.—All manufacturers or dealers in carbonated goods, mineral waters, soda water, or other beverage, or manufacturers of medicine or other compound requiring the use of kegs, casks, barrels, boxes, syphons, bottles, or any other vessels for containers, upon which the names, brands, marks, or trade-marks, or other designation of ownership or proprietorship, is stamped, engraved, etched, blown in, impressed, or otherwise produced upon such boxes, syphons, bottles, or any other vessels for containers, may file in the office of the county clerk of the county in which the principal place or office of business is situated, a facsimile or description of the name or names, marks or devices, so used by such manufacturer or dealer in such wares herein enumerated, and cause such description to be published in a public newspaper published in such county for three successive weeks; and the act of so filing and causing to be recorded by the county clerk, and publishing, shall operate as a trade-mark, securing to the said manufacturer the full protection of the law as a trade-mark, entitling the said manufacturer to the sole and exclusive use in Texas of said mark, name or device; for which services the clerk shall be allowed the sum of one dollar to be paid by the party having such brands, etc., recorded. It is hereby declared to be unlawful for any person or persons, corporate or otherwise, other than the proprietor, or by his written consent, to fill, for the purpose of traffic, or for sale, with any compound whatever, any box, syphon, bottle or other container so marked, recorded in the office of the county clerk, and published as provided in this article, or to deface, erase, obliterate, cover up or otherwise remove or cancel any such mark or device. (Rev. Civ. Stats. 1925, Art. 843.)

160. Infringement Enjoined.—Every person, association or union of workingmen, incorporated or unincorporated, having adopted a label, trade-mark, design, device, imprint or form of advertisement, as aforesaid, may proceed by suit to enjoin the wrongful manufacture, use, display or sale of any such label, trade-mark, design, device, imprint or form of advertisement, and the manufacture, use, display or sale of any such counterfeit or imitation; any court having jurisdiction thereof may grant an injunction to restrain such manufacture, use, display or sale; and shall award the plaintiff in such suit such damages resulting from such wrongful manufacture, use, display or sale as by him may have been sustained. Where such association or union is not incorporated, suits under this law may be commenced and prosecuted by any officer or member of such association or union in his own name, for himself and for the use and benefit of such association or union. (Id. Art. 850.)

161. Trade-Mark Filed, Etc.—Every person, association or union of workingmen, incorporated or unincorporated, that has heretofore or shall hereafter adopt a label, trade-mark, design, device, imprint or form of advertisement, shall file the same in the office of the Secretary of State by leaving two facsimile copies with the Secretary of State, and said secretary shall return to such person, association or union so filing the same, one of said facsimile copies along with and attached to a duly attested certificate of the filing of same, for which he shall receive a fee of one dollar. Such certificate of filing shall in all suits and prosecutions under this chapter be sufficient proof of the adoption of such label, trade-mark, design, device, imprint or form of advertisement, and of the right of such person, association or union to adopt the same. No label, trade-mark, design, device, imprint or form of advertisement shall be filed as aforesaid that would probably be mistaken for a label, trade-mark, design, device, imprint or form of advertisement already of record. No person, or association shall be permitted to register as a label, trade-mark, design, device, imprint or form of advertisement any emblem, design, or resemblance thereto that has been adopted or used by any charitable, benevolent or religious society or association, without their consent. (Id. Art. 851.)

162. Using Trade-Mark of Another.—Each manufacturer or dealer in carbonated goods, mineral waters, soda water or other beverage, and each manufacturer of medicine or other compound, requiring the use of kegs, casks, barrels, boxes, syphons, bottles, or any other vessels for containers, upon which the names, brands, marks, or trade-marks, or other designation of ownership or proprietorship, is stamped, engraved, etched, blown in, impressed, or otherwise produced upon such boxes, syhons, bottles, or any other vessels for containers, may file in the office of the county clerk of the county in which the principal place or office of business is situated, a facsimile

or description of the name or names, marks or devices, so used by such manufacturer or dealer in such wares herein enumerated, and cause such description to be published in a public newspaper published in such county for three successive weeks. The act of so filing and publishing shall operate as a trade-mark, securing to said manufacturer the full protection of the law as a trade-mark, entitling said manufacturer to the sole and exclusive use in Texas of said mark, name or device. No person, corporate or otherwise, other than the proprietor, or by his written consent shall fill for sale for the purpose of traffic with any compound whatever, any box, syphon, bottle or other container so marked, recorded and published as provided in this article, or deface, erase, obliterate, cover up or otherwise remove or cancel any such mark or device. (Rev. Crim. Stats. 1925, Art. 1058.)

163. Possession Prima Facie Evidence.—To willfully have in possession otherwise than by contract with the proprietor of the goods above enumerated, or with his duly accredited agents, any vessel in said articles enumerated, or to use, buy, sell or dispose of any such vessel, with or without contents of any kind, except by authority of the proprietor, or to willfully break, damage, or destroy any such vessel, is prima facie evidence of such unlawful use. (Id. Art. 1059.)

164. Penalties.—Whoever violates any provision of the two preceding articles shall be fined for such unlawful use of each and every box, five dollars; for each and every syphon, five dollars; for each and every bottle, five dollars; and for each and every other receptacle, except a fountain, five dollars; and for each fountain, twenty-five dollars; said fines to be the minimum in each case, the maximum not to exceed double the minimum. (Id. Art. 1060.)

165. Counterfeiting Trade-Mark, Etc.—Whenever any person, association, private corporations or union of workingmen, incorporated or unincorporated, have adopted, or shall hereafter adopt for their protection any label, trade-mark, design, device, imprint or form of advertisement, indicating that goods to which such label, trade-mark, design, device, imprint or form of advertisement shall be attached, were manufactured by such person, association, private corporations or union, or by a member or members of such association or union, it shall be unlawful for any person, inclusive of officers, agents, receiver or receivers of corporations, to counterfeit or imitate such label, trade-mark, design, device, imprint or form of advertisement or to use such counterfeit or imitation of such label, trade-mark, design, device, imprint, or form of advertisement, knowing the same to be counterfeit or imitation, or to aid, assist, countenance or knowingly permit such counterfeit or imitation or the use of such counterfeit or imitation for his own use or benefit, or for the use or benefit of any corporation of which he may then be an officer, agent or receiver. Every person, whether in his individual capacity or as an officer, agent or receiver of a corporation, violating this article, shall be fined not less than twenty-five nor more than one hundred dollars, and each day's violation shall be a separate offense. (Id. Art. 1061.)

166. Unlawfully Using or Displaying.—Every person, whether in his individual capacity or as the officer, agent or receiver of a corporation, who shall willfully use or display the genuine label, trade-mark, design, device, imprint, or form of advertisement, or name of any such person, association or union, incorporated or unincorporated, not being authorized to use or display the same, or shall aid, assist, countenance or knowingly permit the use of same, not being authorized to use the same, shall be fined not less than twenty-five nor more than one hundred dollars. (Id. Art. 1062.)

NOTE: See also Nos. 17, 27 et seq., and 33 et seq.

Weights and Measures.

167. Commissioner to Enforce Law.—The Commissioner of Markets and Warehouses* shall have power and authority to enforce, or cause to be enforced, any provision of this chapter. He shall appoint a chief deputy, who shall be known as Chief Deputy of Weights and Measures. In the absence or inability of the Commissioner, such deputy may perform any duty required by the provisions of this chapter. The commissioner shall also appoint such additional deputies from time to time to serve as sealers of weights and measures, as may be provided for by appropriation. He may also designate such inspectors, lecturers, or employees, serving under him as commissioner, as sealers of weights and measures. (Rev. Civ. Stats. 1925, Art. 5705.)

168. Expenses.—Such deputies, together with the chief deputy and the commissioner, shall be entitled to their actual traveling expenses when traveling on busi-

*Commissioner of Agriculture. See No. 21. This law is to be corrected accordingly.

ness for the State, and the legislature shall provide from time to time by appropriation other estimated expenses to fully carry out the provisions of this chapter. (Id. Art. 5706.)

169. Duty of Commissioner.—The commissioner shall investigate conditions throughout the State, and especially in all the cities and towns in the State, with respect to weights and measures, and the sale of goods, wares and merchandise, commodities, foodstuff and feed stuff sold in packages or containers, and also all kinds of feed, fuel or ice that is sold by weight or measure. The commissioner shall annually report to the Governor, and shall, prior to each regular session of the legislature, file a copy of such report made by him to the Governor, together with his recommendations, with the legislature of the State. (Id. Art. 5707.)

170. Rules and Regulations.—The commissioner shall issue instructions and make such rules and regulations for the government of all State sealers of weights and measures, deputy sealers, inspectors and local sealers, as he may see proper in order to carry out the purposes of this chapter. All such rules and regulations so issued by him shall have the same force and effect as if they were enacted into law. (Id. Art. 5708.)

171. Jurisdiction.—The jurisdiction of all State Sealers, deputy sealers and inspectors appointed by the commissioner shall be co-extensive with the limits of the State and they shall have the right to inspect weights and measures in any and all districts or localities designated by the commissioner. The jurisdiction of all local sealers of weights and measures appointed by the governing body of any city in this State shall be co-extensive with the limits of said city. (Id. Art. 5709.)

172. Same Power as Peace Officer.—The commissioner, his deputy, sealers or inspectors and all local sealers and their deputies in the performance of their official duties, shall have the same power as peace officers in this State. (Id. Art. 5710.)

173. Record of Acts and Reports.—The commissioner shall keep in his office a complete record of all acts done by him; of all inspections made throughout the State, and a record of all prosecutions for the violation of any provisions of this chapter. He shall keep an accurate record of the reports of all the various sealers of weights and measures, deputy sealers and inspectors appointed by him, or under his direction, as well as a record of the inspections of all local sealers of weights and measures appointed by the various cities of the State; such record shall always be open to the inspection of the public. Copies of such record may be had by application therefor, together with the necessary cost of making such copies. (Id. Art. 5711.)

174. Test of Standard.—The standard of weights and measures received from the United States under a resolution of Congress, approved June 14, 1836, and such new weights and measures as shall be received from the United States as standard weights and measures in addition thereto, or in renewal thereof, and such as shall be procured by the State in conformity therewith and certified by the Bureau of Standards, shall be the State's standards by which all State and municipal standards of weights and measures shall be tried, authenticated, proved and sealed. (Id. Art. 5712.)

175. To keep and maintain Standards.—The standards referred to in the preceding article shall be kept by the commissioner in a safe and suitable place in his office, from which they shall not be removed except for repairs or certification. He shall maintain such standards in good order and shall submit them, at least once in ten years to the National Bureau of Standards for certification. He shall purchase such apparatus as shall be found necessary to a proper prosecution of the work of the office. (Id. Art. 5713.)

176. Shall Establish Tolerances.—The commissioner shall establish tolerances and specifications for commercial weighing and measuring apparatus for use in this State, similar to the tolerances and specifications recommended by the National Bureau of Standards and he may establish a standard net weight or net count of any commodity, produce, or article, and prescribe such tolerances for same as he may in his best judgment deem necessary for the proper protection of the public. (Id. Art. 5714.)

177. Copies to Cities.—The commissioner shall, at the request of any city council, town council, city commission or any other such town or city body, furnish to them copies of the standard weights and measures of the State; such copies shall be furnished at the expense of any such city or town requesting the same. He shall, upon request of any such city council, town council, or city commission, test and accurately approve copies of the State's standards of weights and measures procured for the use of any such city or town, to be used by the sealer of weights and measures for such city or town. All copies furnished or copies tested and approved by the commissioner shall be true and correct; shall be sealed and certified by the commissioner and stamped with the letter "C." Such copies need not be of the same material or construction as the standards of the State and such copies may be furnished in any suitable materials or construction that the city or town requiring the

same may specify, subject, however, to the approval of the commissioner. (Id. Art. 5715.)

178. **Correcting Standards of Cities.**—The commissioner shall inspect and correct the standards used by any incorporated city or town in this State at least once every two years and compare the same with others in his possession, and keep a record of the state of inspection and character of weights and measures so compared. (Id. Art. 5716.)

179. **Sale of False Devices.**—The commissioner shall have general supervision over all weights and measures and weighing and measuring devices sold or offered for sale in this State. If any false weights or measures are being sold, offered for sale, or about to be sold, he shall have full authority to condemn same and prohibit the sale and distribution of such false weights and measures, or weighing and measuring devices in this State. (Id. Art. 5717.)

180. **Certified Standard.**—All sealers of weights and measures, or deputy sealers of weights and measures appointed under the terms and provisions of this law are prohibited from using for the purpose of comparison or verification in any official capacity any weights or measures, unless same have been certified to by the commissioner. All expenses incurred in certifying to the correctness of the weights and measures or copies of the same used by any incorporated city or town in this State shall be paid by such city or town for whom the comparison or test is made. (Id. Art. 5718.)

181. **Copies of Original Standard.**—In addition to the standards heretofore referred to, and required to be kept by the State, the State shall also have a complete set of copies of such original standards of weights and measures adopted by this chapter, which shall be used for adjusting municipal standards by the commissioner or his deputy in the performance of their duties, and the original standards shall not be used, except for the adjustment of this set of copies and for certification purposes. Additional complete sets of copies for such original standards of weights and measures may be purchased by the commissioner when the same are necessary for use by any State Sealer of Weights and Measures, or Deputy State Sealer of Weights and Measures. In all instances where the State shall furnish true and correct copies of weights and measures for the use of any incorporated city or town in this State, such city or town shall reimburse the State for the actual cost thereof, plus such expenses as are necessary to pay the freight, express and cost of certification thereof. (Id. Art. 5719.)

182. **Tests for State Institutions.**—The commissioner or his deputy shall at least once annually, or oftener if requested so to do by the Board of Control, or Board of Supervisors, Regents or other governing body of any State institution or penitentiary commission or the governing body of any other penal institution of the State, test all scales, weights and measures used in checking the receipt and distribution of supplies of any such institution under the control of the State, and shall report his findings to the chairman of the board, or the superintendent of such institution. He shall also test all scales, weights and measures used for any other purpose by such institution. (Id. Art. 5720.)

183. **Charges Against City Sealer.**—The commissioner, if he finds that any sealer or deputy sealer of weights and measures appointed by any incorporated city or town in this State, by virtue of the authority given them under the law, is neglecting to perform the duties of his office, or has refused to accept the recommendations and instructions of the commissioner and be guided thereby, or is guilty of any malfeasance in office, or who is incompetent, he shall present to the governing body or officer who has control or supervision of such city sealer of weights and measures, or deputy sealer of weights and measures, a written charge and accusation based upon and clearly stating the offense of such sealer or deputy sealer and request such officer or governing body to hear and determine such accusation. Upon receipt of such charge and accusation, such officer or city commission with whom the same has been filed, shall make an order setting the same for a hearing at a time which shall be not less than ten nor more than twenty days from the date of filing of such charge and accusation and shall in such order fix the time and place for such hearing. A copy of such charge and accusation, together with a copy of such order, shall be served upon the accused at least seven days prior to the time fixed for such hearing. At such hearing the accused shall have the right to be represented by counsel and to produce evidence in his defense. If, upon such hearing, he shall be found guilty of malfeasance, or misfeasance in office, or adjudged to be incompetent to perform the duties of the office, the officer or governing body before whom such hearing is had must forthwith remove him from office. Whenever it shall become known to the commissioner or his deputy that any local sealer of weights and measures, for any city or town in this State, or deputy sealer of weights and measures, is guilty of accepting any bribe, gift or money from any one who is interested in procuring

false weights and measures, as soon as such fact shall become known, or be made known to the officer or governing body employing such sealer or deputy sealer, he or they shall immediately suspend such sealer from office. (Id. Art. 5721.)

184. To Supervise Local Sealers.—Every local sealer of weights and measures, or deputy sealer, appointed by any governing body of any town or city shall be under the supervision of the commissioner, and shall be required to report to him regularly and carry out all the instructions of the commissioner. Failure or refusal to do so shall be grounds for dismissal from the service. (Id. Art. 5722.)

185. Duty of Sealer and Inspector.—Each sealer of weights and measures, deputy sealer, inspector, or local sealer shall carefully preserve all copies of the standards of weights and measures used by him in his inspection work, and keep the same safe and in good order, when not in actual use. He shall keep a record of all work done by him showing the inspections made, for whom made, giving the name and post office address of each party for whom any measurement, test weight, inspection, condemnation or prosecution is made; such record shall be preserved by him, from which he shall compile his reports at regular intervals to the commissioner when required to make a report. He shall keep a careful record of all violations of the weights and measures law and report in detail to the commissioner. (Id. Art. 5723.)

186. Sealing and Marking.—Every person, firm or corporation, or association of persons, using or keeping for use, or having or offering for sale, weights, scales, beams or measures of any kind, instruments or mechanical devices for weighing or measuring, and tools, appliances and accessories connected with any or all of such instruments or measurements within this State, shall cause the same to be sealed and marked by the sealer of weights and measures as to their correctness, and no instrument shall be sold for the purpose of weighing or measuring unless it shall bear the seal of the inspector of weights and measures as to its correctness. (Id. Art. 5724.)

187. Subject to Inspection.—When any weight, scale, beam, measure of any kind, instrument or mechanical device for weighing or measuring; also all tools and appliances necessary or connected with any such instruments of measure have been tested and found correct by any sealer appointed under the provisions of this chapter, the same may be used, kept for use, offered for sale, sold or kept for sale anywhere within this State for one year without being further tested. Any weight, scale, beam, measures of every kind, instruments or mechanical devices for weighing or measuring, or appliances and accessories connected with any or all of such instruments or measure, which have been tested and sealed and certified as correct by the National Bureau of Standards may be kept for sale, sold or offered for sale without being tested and sealed by a sealer under the provisions of this chapter, but all such weights, scales, beams, measures or any kind, instruments or mechanical devices for weighing or measuring; also all tools and appliances necessary connected with any or all of such instruments or measures shall always be subject to inspection and testing as herein provided, notwithstanding that the same have been tested and sealed, either by a sealer appointed under the provisions of this chapter, or by the National Bureau of Standards. Any scale, beam or mechanical device for weighing or measuring which after being sold, and before being used for weighing and measuring, is found necessary to assemble and set up, may be sold, kept for sale or offered for sale without first being tested and sealed, but such scale, beam or measuring device for weighing or measuring, before being used for weighing or measuring, without the consent of the commissioner, must be tested and sealed as provided in this chapter. (Id. Art. 5725.)

188. Testing Weights and Devices.—All sealers, deputy sealers, inspectors, and local sealers shall inspect, try and test all weights, scales, beams, measures of any kind, instruments or mechanical devices for weighing or measuring and all tools, appliances and accessories connected with any or all such instruments or measures kept for the purpose of sale, sold or used by any proprietor, agent, lessee or employee in proving the size, quantity, extent, area, weight or measurement of quantities, things, produce, articles for distribution or consumption, purchased or offered or submitted by such person or persons for sale, hire, or award, and ascertain if the same are correct, and he shall have the power to and shall from time to time weigh or measure packages or amounts of commodities of whatsoever kind kept for the purpose of sale, offered for sale or sold, or in the process of delivery, in order to determine whether the same contains the quantity or amount represented and whether they are being offered for sale or sold in accordance with law and may seize for use as evidence such amounts of commodities or packages which shall be found to contain a less amount than that represented. He shall at least once each year, or as much oftener as may be found necessary, and directed by the commissioner, see that the weights, measures and all weighing and measuring apparatus, used in any locality to which he is assigned for the purpose of inspection, are correct. All local sealers of weights and measures shall test at least once each year all scales, weights and measures of every kind and device within any such city to which they are appointed, and oftener, if required so to do. Any sealer, or deputy sealer, or inspector for the pur-

poses above mentioned, and in the general performance of his duty may, without warrant, enter, go into or upon any stand, place, building or premises, or stop any vendor, peddler, junk dealer, driver of a coal wagon, ice wagon or delivery wagon or the driver of any wagon containing commodities for sale or delivery, and if necessary require him to proceed to some place which the sealer may specify for the purpose of making the proper tests. (Id. Art. 5726.)

189. Marking and Tagging.—Whenever a sealer, deputy sealer, or inspector of weights and measures compares weights and measures, or weighing or measuring instruments and finds that they correspond, or causes them to correspond to the standards, he shall seal or mark under his name such weight or measure or weighing or measuring instrument with an appropriate device showing that the weight or measure, or weighing or measuring instrument is correct, and the date of the inspection, which device shall be placed so as to be easily seen. He shall condemn and seize and may destroy incorrect weights and measures and weighing and measuring instruments, which in his best judgment are not susceptible of repair; but any weights and measures, or weighing or measuring instruments which shall be found to be incorrect, but which, in his best judgment are susceptible of repair, he shall cause to be marked with a tag or other suitable device with the words "Out of Order." The owner or user of any weights or measures, or weighing or measuring instruments, which have been marked "Out of Order," as in this article provided, may have the same repaired or corrected within thirty days, but until the same have been repaired or corrected and tested as herein provided, the owner or user thereof must neither use nor dispose of the same in any way, but shall hold the same at the disposal of the commissioner or any deputy or local sealer. When the same have been repaired or corrected, the owner or user thereof shall notify the commissioner or his deputy or local sealer and they shall again be tested for the purpose of proving the weight, measure or weighing or measuring instrument which had been found to be incorrect and marked as in this article, and until such weight, measure or weighing or measuring instrument has been re-inspected by the sealer and found correct, the same shall not be used or in any way disposed of by the owner. When any weight, measure or weighing or measuring instrument has been repaired and corrected, and has been re-inspected and found correct by the sealer of weights and measures, the sealer of weights and measures shall remove the tag or device with the words "Out of Order" and shall mark such weight, measure or weighing or measuring instrument in the manner provided for the marking of the same where upon inspection they were found to be correct. (Id. Art. 5727.)

190. Fees.—The commissioner shall have the right and power to fix and collect a nominal fee for testing all weights, scales, beams and any kind of instruments or mechanical devices for weighing or measuring; all tools, appliances and accessories connected with all such instruments before they are offered for sale; such fee, however, to be reasonable and to be graduated according to the cost of such instrument, and it shall be unlawful for anyone to sell any weights, scales, beams, measuring instruments or mechanical devices for weighing or measuring, or to lease or rent same, unless such instruments have been duly inspected, tested and approved by the commissioner, or one of his duly accredited deputies. All moneys collected by the commissioner shall be paid into the State treasury. (Id. Art. 5728.)

191. Definitions.—The word "person," whenever used in this chapter, shall be deemed to include person, firm or corporation and all officers, directors and managers of corporations shall comply with the provisions of this chapter on behalf of their respective corporations. (Id. Art. 5729.)

192. Legal Standards.—The standard of weights and measures adopted and used by the Government of the United States is hereby declared the legal standard of weights and measures of this State; provided, that as to commodities for which the Congress of the United States provided no standard of weights or measures, the standards adopted by this State shall be the standards of weights and measures for such commodities. The unit of standard of length and surface, from which all the other measures of extension, whether lineal, superficial or solid, shall be derived and ascertained, is the standard yard designated in this chapter, which is divided into three equal parts called feet, and each foot into twelve equal parts called inches. For measures of cloth, and other commodities commonly sold by the yard, it may be divided into halves, quarters, eighths, and sixteenths. The rod, pole or perch contains five and one-half yards; the mile one thousand seven hundred and sixty yards. The Spanish vara, thirty-three and one-third inches.

Where land is measured by the English rule, the chain for measuring land shall be twenty-two yards long and divided into one hundred equal parts called links. The acre for land measure shall be measured horizontally and shall contain forty-eight hundred and forty square yards; six hundred and forty acres shall constitute a square mile. (Id. Art. 5730.)

193. Standard of Avoirdupois and Troy Weights.—The units or standards of weight from which all the other weights shall be derived and ascertained shall

be the standard of avoirdupois and troy weights designated in this chapter, and avoirdupois pounds shall bear to the troy pounds the ratio of seven thousand to five thousand seven hundred and sixty grains, and the avoirdupois pound shall be divided into sixteen equal parts called ounces. The hundred weight shall consist of one hundred avoirdupois pounds, and twenty hundred weight shall constitute a ton. The troy ounce shall be one twelfth of a troy pound. (Id. Art. 5731.)

194. Standard for Liquids.—The units or standards of measure of capacity for liquids from which all other measures shall be derived and ascertained, shall be the standard gallon and its parts designated in this chapter. The barrel shall constitute thirty-one and one-half gallons and two barrels shall make a hogshead. All other measures of capacity for liquids shall be derived from the liquid gallon by continual division by the number two, so as to make half-gallons, quarts, pints, half-pints and gills. (Id. Art. 5732.)

195. Standard for Solids.—The unit or standard measure of capacity for substance not liquids, from which all measures of such substance shall be derived and ascertained, is the standard half-bushel mentioned in this chapter. The peck, half-peck, quarter-peck, quart and pint measure for measuring commodities which are not liquid shall be derived from the half-bushel by successively dividing that measure by two. The standard bushel measure shall constitute two thousand one hundred fifty and forty-two one hundredths cubic inches; the standard half-bushel measure shall contain ten hundred and seventy-five and twenty one-hundredths cubic inches; the standard gallon shall contain two hundred and thirty-one cubic inches. All measures for measuring dry commodities shall not be heaped but shall be stricken with a straight stick or roller. (Id. Art. 5733.)

196. Weight Per Bushel, Barrel or Ton.—Whenever any of the following articles shall be contracted for, sold or delivered, the weight per bushel or barrel or divisible merchantable quantities of a bushel or barrel shall be as follows: Wheat flour, per barrel 200 pounds; half-barrel sack, 100 pounds; quarter-barrel sack, 50 pounds; eighth barrel sack, 25 pounds. Corn meal, per bushel sack 50 pounds; half-bushel sack 25 pounds; quarter-bushel sack 12½ pounds. Alfalfa seed, per bushel 60 pounds. Apples, green, per bushel 50 pounds; dried, per bushel 28 pounds. Barley, per bushel 48 pounds. Beans, green or string, per bushel 24 pounds; wax, per bushel 24 pounds; white, per bushel 60 pounds; castor, per bushel 46 pounds. Beets, per bushel 60 pounds. Blue grass seed, per bushel 14 pounds. Bran, per bushel 20 pounds by the 100 pounds in 100 pound bags. Buckwheat, per bushel 52 pounds. Carrots, per bushel 50 pounds. Charcoal, per bushel 22 pounds. Clover seed, per bushel 60 pounds. Coal, anthracite, per bushel 80 pounds. Coke, per bushel 40 pounds. Broom corn, seed, per bushel 48 pounds. Corn meal, unbolted, per bushel 48 pounds. Corn, in the ear, per bushel 70 pounds, after December 1st; new crop, before December 1st, 72 pounds; corn shelled, per bushel 56 pounds; Kaffir corn, per bushel 50 pounds. Cotton seed, per bushel 32 pounds; by the ton, 2000 pounds. Cranberries, per bushel 33 pounds. Cucumbers, per bushel 48 pounds. Flax seed, per bushel 56 pounds. Gooseberries, per bushel 40 pounds. Hair, plastering, unwashed, per bushel 8 pounds; washed, per bushel 4 pounds. Hemp seed, per bushel 44 pounds. Hickory nuts, per bushel 50 pounds. Hungarian grass seed, per bushel 48 pounds. Indian corn or maize, per bushel 56 pounds. Lime, unslacked, per barrel 180 pounds net; hydrated, per sack 100 pounds net; hydrated per bag 40 pounds net; agricultural, per sack 100 pounds net; agricultural, per bag 50 pounds net. Milo maize, per bushel 50 pounds. Millet, per bushel 50 pounds; Japanese barnyard, per bushel 35 pounds. Oats, per bushel 32 pounds. Onions, per bushel 57 pounds. Onion sets, top, per bushel 30 pounds; bottom, per bushel 32 pounds. Orchard grass seed, per bushel 14 pounds. Parsnips, per bushel 50 pounds. Peaches, per bushel 50 pounds; dried, per bushel 28 pounds. Peanuts, green, per bushel 22 pounds, Georgia or Virginia; Spanish, per bushel 24 pounds; roasted, per bushel 20 pounds. Pears, per bushel 58 pounds. Peas, dried, per bushel 60 pounds; green, in pod, per bushel 32 pounds. Popcorn, in ear, per bushel 70 pounds; shelled, per bushel 56 pounds. Potatoes, Irish, per bushel 60 pounds; sweet per bushel 50 pounds. Quinces, per bushel 48 pounds. Rape seed, per bushel 50 pounds. Red top seed, per bushel 14 pounds. Rice bran, per sack 143 pounds; rice polish, per sack 200 pounds; rough rice, per bushel 45 pounds. Rutabagas, per bushel 50 pounds. Rye meal, per bushel 50 pounds. Rye, per bushel 56 pounds. Salt, coarse, per bushel 55 pounds; fine, per bushel 50 pounds. Shorts, per bushel 20 pounds; by 100 pounds in 100-pound bags. Sorghum seed, per bushel 50 pounds. Sudan grass seed, No. 1, per bushel 32 pounds; No. 2, per bushel 30 pounds. Sudan grass seed, No. 3, per bushel 28 pounds. Spinach, per bushel 12 pounds. Sweet clover seed, unhulled, per bushel 23 pounds. Timothy seed, per bushel 45 pounds. Tomatoes, per bushel 56 pounds. Turnips, per bushel 55 pounds. Walnuts, per bushel 50 pounds. Wheat, per bushel 60 pounds.

Whenever any commodity is sold by the cord it shall mean 128 cubic feet, or the contents of a space eight feet long, four feet wide and four feet high. Whenever

anything is sold by the ton, it shall mean two thousand pounds avoirdupois. Whenever any of the following articles are sold by the cubic yard, and the same are weighed, the following weights shall govern: Torpedo sand or gravel, 3,000 pounds equal one cubic yard, and 2,500 pounds of bank sand equals one cubic yard. (Id. Art. 5734.)

197. **Failure to Regard Unit of Measure.**—Whoever in buying any of the articles mentioned in the preceding article shall take any greater number of pounds thereof to the bushel, barrel or cubic yard, or divisible, merchantable quantity of bushel, barrel, cubic yard, or lineal yard, or in selling any of said articles shall give any less number of pounds thereof to the bushel, barrel, cubic or lineal yard than is allowed by the laws of this State, with intent to gain an advantage thereby, shall be liable to the party injured in double the amount of the property wrongfully taken, or not given. This article does not apply to cases where the buyer or seller is expressly authorized by special contract or agreement to take more or give less of such articles. (Id. Art. 5735.)

198. **This Law to Govern Contracts.**—All contracts hereafter to be executed and made within this State for any work to be done, or for anything to be sold, delivered, done or agreed for, by weight or measure, shall be construed to be made according to the standard weight and measure ascertained as hereinbefore provided, unless there is an express contract to the contrary. In making any adjustment of weights or measures under the laws of this State, the standard given in this chapter shall be taken as the guide for making such adjustment. (Id. Art. 5736.)

199. **Standards of Weights and Measures.**—The standards of weights and measures of this State shall be the standards of weights and measures used under the terms and provisions of this chapter.* It shall be the duty of the Commissioner [of Markets and Warehouses]† to establish standards of classifications of cotton, corn, and other farm and ranch products, of whatever kind and character, which may be subject to classification, and originals of such standards, so established shall be maintained, subject to public inspection, in the office of the commissioner at all reasonable times; and duplicates of such standards as well as the standards of weights and measures, shall be furnished by the commissioner to all persons who may apply therefor, under the payment of the necessary cost thereof. It shall be the duty of each public warehouse company to keep a duplicate of said standards, as well as the standards of weights and measures, at its warehouse, subject to inspection and comparison of grades and classification by persons storing products therein; provided, that the standards of classification shall always be the standards established by the Government of the United States, or of this State. (Id. Art. 5602.)

200. **Measurement of Flowing Water.**—A cubic foot of water per second of time shall be the standard unit for the measurement of flowing water for the purpose of distributing water for beneficial uses. (Id. Art. 7538.)

201. **Duty of Local Sealer.**—Each local or deputy sealer of weights and measures appointed by any city or town council or commission, shall be under the supervision of the Commissioner of Agriculture and shall be required to report to him regularly and carry out all of his instructions, and on failure or refusal to do so shall be fined not less than ten nor more than two hundred dollars. (Rev. Crim. Stats. 1925, Art. 1035.)

202. **Removing Tag of Sealer.**—Whoever removes or obliterates any tag or device placed by any authorized sealer, deputy sealer or inspector upon any weight or measure, or weighing or measuring instrument, shall be fined not less than ten nor more than two hundred dollars. (Id. Art. 1036.)

203. **False Weights and Measures.**—Any person, who, by himself or his employee or agent, or as the employee or agent of another, shall use, in the buying or selling of any commodity, or retain in his possession, a false weight or measure, or weighing or measuring instrument, or shall offer or expose for sale, or sell, except as specifically allowed by law, or use or retain in his possession any weight or measure or weighing or measuring instrument contrary to law, or any person, who, by himself, or his employee or agent, or as the employee or agent of another, shall sell or offer or expose for sale, or use or have in his possession for the purpose of selling or using, any device or instrument to be used to, or calculated to, falsify any weight or measure, shall be fined not less than ten nor more than two hundred dollars. Possession of such false weights or measures or instruments shall be prima facie evidence of the fact that they were intended to be used in the violation of law. (Id. Art. 1037.)

204. **Hindering Sealers.**—Whoever hinders or obstructs in any way the Commissioner of Agriculture, or his deputy, inspector or sealer or any local sealer, in the performance of their duties, shall be fined not less than ten nor more than two hundred dollars. (Id. Art. 1038.)

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*Chapter 3, entitled "Markets and Warehouse Corporations."

†Now Commissioner of Agriculture. See No. 21.

205. Refusing to Permit Test of Weight.—Any person neglecting or refusing to exhibit any weight, measure, or weighing or measuring instrument of any kind, or appliances and accessories connected with any of such instruments or measures which are in his possession or under his control to the commissioner, his deputy, inspector or to any local inspector or sealer, for the purpose of allowing the same to be inspected and examined as provided for by law, shall be fined not less than ten nor more than two hundred dollars. (Id. Art. 1039.)

206. Refusing to Permit Test of Article.—Any person, who, by himself, or his employee or agent, or as the proprietor or manager, shall refuse to exhibit any article, commodity, produce or anything being sold or offered for sale at a given weight or quantity, or ordinarily so sold, to the commissioner or to his deputy or to a sealer or his deputy or to an inspector or local sealer, for the purpose of allowing same to be tested and proved as to the quantity contained therein, shall be fined not less than ten nor more than two hundred dollars. (Id. Art. 1040.)

207. Unlawfully Sealing.—Any sealer, deputy sealer, inspector or local sealer appointed under the provisions of law, or discharging the duties of a sealer of weights and measures in this State, who shall seal any weight, measure, balance or apparatus before testing and making the same conform with the standards of the State or who shall condemn any weight, measure, balance or apparatus without first testing the same, shall be fined not less than twenty-five nor more than two hundred dollars, and shall be immediately suspended from office. (Id. Art. 1041.)

208. Failure to Regard Unit of Measure.—Whoever in buying any commodity or article of property, merchandise or produce, the standard weight of which per bushel or barrel, or divisible merchantable quantities of a bushel or barrel, or by the cord or ton or cubic yard, has been fixed by the laws of this State, shall take any greater number of pounds thereof to the bushel, barrel or cubic yard, or divisible merchantable quantity of bushel, barrel, cubic yard or lineal yard, or in selling any of the same, shall give any less number of pounds thereof to the bushel, barrel, cubic or lineal yard, or divisible merchantable quantity of bushel, barrel, cubic or lineal yard than is allowed by the laws of this State, with intent to gain an advantage thereby, shall be fined not less than twenty nor more than two hundred dollars. (Id. Art. 1042.)

209. Parties May Contract.—The preceding article does not apply where the buyer or seller is expressly authorized by special contract or agreement to take more or give less of such article. (Id. Art. 1043.)

210. Receptacle Containing Mill Product.—Any one engaged in the manufacture of mill products of any character who shall use any bag, box, barrel or any other receptacle into which to put such product other than the one bearing the name of such mill manufacturing the same, shall be fined not less than one hundred nor more than one thousand dollars or be confined in jail for thirty days, or both. (Id. Art. 1044.)

211. Containers for Fruit or Vegetables.—Whoever shall make, sell, or offer to sell containers for the shipment of fruit or vegetables, which containers are of different size or dimensions from the standards of such containers established by the laws of this State, shall be fined not to exceed one thousand dollars. (Id. Art. 1045.)

212. Inspection of Fruits and Vegetables.—Any grower, shipper's agent, packer, or any agent, receiver or representative of any common carrier or transportation company, who shall violate any provision of the laws of this State relating to standards of grades and pack of fruit and vegetables, or who shall refuse to submit any such fruit or vegetables packed or ready for shipment to inspection by any inspector appointed, as authorized by law, by the Commissioner of Agriculture and empowered by such commissioner to make such inspection, shall be fined not to exceed one hundred dollars. (Id. Art. 1046.)

213. Shipping at False Weight.—Whoever ships to any one in this State anything in which the weight is necessary to be given at any weight other than the true weight properly certified to shall be fined not less than one hundred nor more than five hundred dollars and may be imprisoned in jail for not more than twelve months, or both so fined and imprisoned. (Id. Art. 1053.)

214. False Packing.—Whoever with intent to defraud shall put into any hogshead, barrel, cask or keg or into any bale, box or package containing merchandise or other commodity usually sold by weight, any article whatever of less value than the merchandise or commodity with which such container is apparently filled, or with intent to defraud shall sell or barter, give in payment or expose for sale or ship for exportation any such container with any such article of inferior value concealed therein, shall be confined in the county jail not exceeding one year or be fined not exceeding one thousand dollars. (Id. Art. 1114.)

215. False Packing With Inferior Quality.—Whoever with intent to deceive and defraud shall conceal within any hogshead, cask, barrel, box, bale, keg or package containing merchandise or other commodity, any merchandise or commodity of a

quality inferior to that with which such container is apparently filled, shall be fined not exceeding five hundred dollars. (Id. Art. 1115.)

216. **"Public Weigher" Defined.**—Any person engaged in the business of public weighing for hire, or any person, who shall weigh or measure any commodity, produce or article, and issue therefor a weight certificate or weight sheet, which shall be accepted as the accurate weight upon which the purchase or sale of such commodity, produce or article is based, shall be known as a public weigher, and shall comply with the provisions of this chapter. The provisions of this article shall not apply to the owners, managers, agents or employees of any compress or any public warehouse in their operation as a warehouseman. This exemption shall not apply in any manner to any Texas port. (Rev. Civ. Stats. 1925, Art. 5680.)

217. **Appointment.**—The Governor is authorized and required to appoint five persons as public weighers in every city which receives annually one hundred thousand bales of cotton on sale or for shipment. In all cities and towns which receive as much as fifty thousand bales of cotton, twenty-five thousand tons of cottonseed; one hundred thousand bushels of grain or rice, one hundred thousand pounds of wool; five thousand barrels of sugar, or any other commodity in large quantities, it shall be lawful for the Governor to appoint a sufficient number of public weighers for such city or town to carefully and accurately weigh all produce tendered for the purpose of weighing for shipment. (Id. Art. 5681.)

218. **Recommendation for Apointment.**—No man shall be appointed as such weigher unless he shall receive the endorsement of the senator and a majority of the representatives from the senatorial district where such appointee would hold such office. (Id. Art. 5682.)

219. **Election.**—In all counties in which there are no city or cities in which the Governor is authorized to appoint public weighers, there shall be elected at each general election a public weigher for each justice precinct in the manner and form governing the election of other precinct officers. The Commissioner's Court at the regular February term preceding the election may unite two or more justice precincts for the purpose of electing such public weighers. (Id. Art. 5683.)

220. **Office—In Cities Not Less Than 25,600 Population.**—In and for all counties in this State having a population, according to the United States census of 1920, of not less than 25,600 people and not more than 25,700 people, there is created the office of public weigher, whose official headquarters shall be at the county seat of such county and who shall discharge and perform at the county seat only, all the duties required by law of any public weigher, and whose qualifications shall be the same as required by law of public weighers elected in precincts, and who shall appoint a sufficient number of deputies to enable him to discharge his duties.

2. Such public weigher shall take the oath required by the Constitution of public officers, and shall give a bond in the sum of $2,500.00, payable, conditioned and to be approved as required in cases of bonds of precinct public weighers, and shall procure a like certificate of authority from the Commissioner of Markets and Warehouses. The deputies of such public weigher shall take such oath and give bond in like manner, which bond, however, shall in the case of such deputies be in the sum of $1,000.00.

3. At the first regular term of the Commissioners' Court of such counties, following the passage of this act, such Commissioners' Court shall appoint a public weigher for its county, who shall serve until the next general election when his successor shall be elected.

4. This act shall not be construed to suspend the operation of the present law, providing for the election of precinct public weighers, in the counties affected by this law. (Id. Art. 5683a.)

221. **Office—In Cities Not Less Than 55,700 Population.**—In and for all counties in this State having a population according to the United States census of 1920 not less than 55,700 and not more than 55,800 people, there is created in the office of public weigher to be filled by two officers of equal rank, whose official headquarters shall be in the county seat of such county and who shall discharge and perform at the county seat only, all the duties required by law of any public weigher and whose qualifications shall be the same as required by law of public weighers elected in precincts, and who shall appoint a sufficient number of deputies to enable them to discharge their duties.

Sec. 2. Each of said public weighers shall take the oath required by the Constitution of public weighers and give a bond in the sum of $2,500 payable, conditioned and to be approved as required in cases of bonds of precinct public weighers and shall procure a like certificate of authority from the Commissioner of Markets and Warehouses.

Sec. 3. Such public weighers shall be elected by popular vote of the entire county as other county officers. One of said weighers shall fill a place called Place No. 1 and the other shall fill the place called Place No. 2.

Sec. 4. This act shall not be construed to suspend the operations of the present law providing for the election of precinct public weighers in the counties affected by this law, except the precinct in which the county seat is located, and it shall not disturb the present public weighers, but shall take effect and be in force on and after January 1, A. D. 1927. (Id. Art. 5683b.)*

222. **Qualifications of Weigher.**—No person shall be appointed or elected public weigher unless he is a qualified voter in the city or precinct for which he is appointed or elected and is of a good moral character and unquestioned integrity. He shall have a fair education and be able to keep an accurate set of books as required by this law. No person shall be appointed or elected public weigher, or deputy public weigher who is interested in the buying or sale of cotton, wool, sugar or grain to be weighed, either as principal, agent, factor, commission merchant or employee. (Id. Art. 5684.)

223. **Term and Removal.**—All public weighers appointed by the Governor or elected for any precinct shall hold their office for the term of two years. (Id. Art. 5685.)

224. **Abolishing Elective Office.**—When the people of any sub-division of a county that has an elective weigher may wish to abolish said office of public weigher, the Commissioners' Court of said county shall, upon petition to abolish said office signed by qualified voters at least one-third in number of the whole vote cast for Governor at the last preceding election in the weigher's precinct, order an election to decide whether such office of public weigher of the sub-division named in the petition shall be abolished or not. Said election shall be held in the same manner as other elections. If a majority of the votes of the sub-division of the county ordering said election shall be cast in favor of abolishing any office of public weigher, the Commissioners' Court shall declare such office to be abolished within thirty days after the election; and another election for this purpose shall not be held for two years. (Id. Art. 5686.)

225. **Bond of Appointed Weigher.**—Every public weigher appointed by the Governor, shall file a bond payable to the State of Texas in the sum of five thousand dollars, conditioned that he will accurately weigh, or measure all produce tendered to him for weighing or measuring, and that all certificates of weights issued by him shall represent a true and accurate weight of the produce so weighed and that he will comply with the laws governing public weighers, and that he will not permit any one to molest, mutilate or destroy any article, produce or commodity while in his possession. Such bond shall not be void on first recovery, but may be sued on by any person injured by such public weigher. All bonds given by such public weighers or their deputies shall be subject to approval by the Commissioner of Markets and Warehouses. (Id. Art. 5687.)

226. **Bond of Elective Weigher.**—Each public weigher elected for a precinct shall execute a bond payable to the county judge in the sum of five thousand dollars to be approved by the Commissioners' Court, conditioned upon the faithful and impartial performance of the duties of his office. The bond of weigher for a precinct where not over five thousand bales of cotton are received for sale or shipment shall be two thousand five hundred dollars. (Id. Art. 5688.)

227. **Filing Bond and Oath of Office.**—Each public weigher, whether elected or appointed, before entering upon his duties as such, shall take and subscribe to the official oath and file said oath and his bond with the county clerk of the county in which he resides. (Id. Art. 5689.)

228. **Certificate of Authority.**—All public weighers or deputy public weighers, appointed or elected shall obtain from the Commissioner of Markets and Warehouses a certificate of authority to carry on the business of public weigher or deputy public weigher within the city, town, precinct or shipping point for which he was elected or appointed. (Id. Art. 5690.)

229. **Deputy Weighers.**—Each public weigher, appointed or elected, shall have the right, and it shall be his duty to appoint a sufficient number of deputies in each precinct, to weigh all produce tendered for the purpose of weighing, at any and all points within such precinct. He shall require of each of said deputies to file a bond in the penal sum of one thousand dollars, under the same terms and conditions as the bond which he filed with the Commissioners' Court of the county in which he resides, before he shall be permitted to engage in the business of deputy public weigher; such bond so filed, shall be payable to the State of Texas, and shall be subject to the approval of the Commissioners' Court of the county in which he resides, and certified to the Commissioner of Markets and Warehouses, before such deputy public weigher shall be entitled to engage in the business of public weighing. Such public weigher shall have the right to appoint a sufficient number of deputies to serve

*Section 4 of this article reads as amended by Chapter 14 of the Laws of 1926.

at will of the public weigher, to aid him in weighing or measuring any commodity that is tendered to him for weighing. (Id. Art. 5691.)

230. **Special Weighers.**—In all counties of this State in which there are two or more cities, towns or shipping points that receive as much as fifty thousand bales of cotton, or twenty-five tons of cotton seed, or one hundred thousand bushels of grain, or two hundred thousand bushels of rice, or one hundred thousand pounds of wool, or five thousand barrels of sugar, or any other commodity in large quantities, it shall be lawful for the Governor to appoint a sufficient number of weighers for such county to carefully and accurately weigh all commodities tendered for the purpose of weighing for shipment, sale or purchase. This article shall not apply to Galveston and Nueces counties. All such appointments shall be made by the Governor on the recommendation of the Senator from whose senatorial district such appointment is made, together with a majority of the representatives in the legislature from such senatorial district. No man shall be appointed unless he shall receive the endorsement of the Senator and a majority of the representatives from such district. Every public weigher so appointed shall file a bond payable to the State of Texas, in the sum of five thousand dollars, conditioned that he will accurately weigh or measure, all commodities tendered to him in said county for weighing or measuring, and that all certificates of weight issued by him shall represent a true and accurate weight of such produce so weighed, and otherwise complying with the law governing the conditions of bonds required of public weighers. Such bond so given shall not be void upon first recovery but may be sued on successively by any and all persons who are injured by such public weigher. Such public weigher shall have the right to appoint a sufficient number of deputies to aid him in weighing or measuring any commodity that is tendered to him for weighing. All bonds given by such public weighers or their deputies shall be subject to the approval of the Commissioner of Markets and Warehouses, and all bonds and oaths of such public weighers or their deputies shall be filed with said commissioner. (Id. Art. 5692.)

231. **Must Comply With Law.**—No one shall be allowed to pursue the business of weighing for the public or grant a certificate or weight sheet upon which a purchase or sale is made unless he comply with the provisions of this chapter. (Id. Art. 5693.)

232. **Commissioner to Supervise.**—All public weighers in this State as provided for in this chapter, shall be under the supervision of the Commissioner of Markets and Warehouses and all weights made by them shall be subject to his approval. In any case where any discrepancy arises as to weights or measures of cotton or other farm products, made between public weighers in different sections of this State, or between public and private weighers, the difference shall be subject to review by the commissioner; and any party who may be dissatisfied with the weights and measures of any public or private weigher, may appeal to the commissioner, and have such cotton or other farm products reweighed or remeasured, for the purpose of ascertaining and deciding the correct weight and measure thereof. The scales of all public and private weighers weighing cotton and other products shall at all reasonable times be subject to inspection by the commissioner, or his duly authorized representative. Compliance with this article shall be absolute prerequisite to the right to institute and maintain any action concerning the subject matter hereof, in any court of this State. The authority herein conferred upon the commissioner, to review the weights, shall not be construed as in any manner affecting the selection of public weighers or of affixing the charge to the public of such public weighers. (Id. Art. 5694.)

233. **Duty of Commissioner.**—The Commsisioner of Markets and Warehouses shall issue a certificate of authority to all persons engaged in the business of weighing for the public; carefully and accurately test all scales, weights, beams and measures, used by such public weighers at least once every twelve months, and charge such public weigher a fee of five dollars for such inspection, which fee shall be paid, by the commissioner into the State treasury; such inspection fee to be collected at the time of the certificate of authority is issued to any public weigher or deputy public weigher in this State, and such fee shall be collected annually thereafter from all persons engaged in the business of public weigher. (Id. Art. 5695.)

234. **Weight Certificates.**—The commissioner shall prescribe the form of weight certificate to be used by all public weighers in this State, which certificate shall be known as a State certificate of weights and measures. Such certificate shall state thereon the kind of produce; the number of same, the date of the receipt of the produce, the owner, agent, or consignee, the total weight of the produce, the vessel, railroad, or other means by which the produce was received, and any trade or other mark thereon; and such other information as may be necessary to distinguish or identify the produce from a like kind. No certificate other than the one herein prescribed shall be used by any public weigher in this State, and such certificate when so made and properly signed, shall be prima facie evidence of such weight. All certificates of weights and measures of weight sheets as provided for in this chapter

shall contain the accurate and correct weight of any and all commodities weighed when issued by public weighers. (Id. Art. 5696.)

235. Seal.—Every public weigher in this State shall provide himself with a seal, consisting of a star of five points, and shall have inscribed on the outer margin thereof the words, "Public Weigher, Precinct No. ...., ...County, Texas" or "Public Weigher, ... City, Texas" which seal shall be impressed upon each weight certificate issued by such public weigher, or deputy public weigher, on all weight sheets made out by them. (Id. Art. 5697.)

236. Record of Weights.—All public weighers shall keep and preserve in a well bound book a correct and accurate record of all weights by them, as provided in this chapter, which record shall at all times be open for inspection to the public and to the Commissioner of Markets and Warehouses, his deputies or inspectors. Such record shall be uniform throughout the State, and the form of such record shall be prescribed by the Commissioner. **(Id. Art. 5698.)**

237. Piled or Stored Separately.—All amounts, lots, or shipments or consignments of produce, after having been weighed, shall be piled or stored separately as nearly as can be, in order that amounts, lots, shipments or consignments, may be distinguished from other lots, shipments, or consignments of like kind. (Id. Art. 5699.)

238. To Tag or Mark Article.—All public weighers in weighing any commodity, produce, or article, shall immediately tag or mark such commodity, produce or article that has been weighed by him so as to distinguish same from that which has not been weighed. (Id. Art. 5700.)

239. Reweighing.—When any doubt or difference arises as to the correctness of the net or gross weight of any amount, or a part of a commodity, produce or article, for which a certificate of weight or measure has been issued, as provided in this State, by the public weigher, the owner, agent or consignee, may, upon complaint to the Commissioner of Markets and Warehouses, have said amount, or part of any commodity, produce or article reweighed by the commissioner, or his deputy, or by a public weigher designated by the commissioner, by depositing with the commissioner sufficient money to defray the cost of reweighing such article or commodity. If on reweighing it is discovered that fraud or carelessness, or any faulty weighing apparatus was the cause of a discrepancy in weights, the cost of reweighing shall, in all instances, be borne by the public weigher who issued the weight sheet or weight certificate. (Id. Art. 5701.)

240. Suspension or Dismissal.—Whenever any public weigher, or deputy public weigher appointed or elected under the provisions of this chapter shall be guilty of malfeasance in office, or who is grossly incompetent in the performance of his duties, he shall be subject to suspension or dismissal from office by the Commissioners' Court of the county in which he resides, or by the Governor, should he be appointed by the Governor. In all cases it shall be the duty of the Commissioner of Markets and Warehouses, to file with the Commissioners' Court or the Governor the specific charges alleging malfeasance, misfeasance, dishonesty or incompetency or other cause. Such case may be set down for hearing not less than ten nor more than thirty days from the filing of such charges. The accused shall be furnished a copy of such charges and be notified of the date set for hearing of his case. He shall have the right to be represented by an attorney, to introduce evidence in his own behalf, and to have compulsory process for witnesses and the production of records. If he is found guilty the Commissioners' Court or Governor shall immediately discharge him as a public weigher, provided, he may have the right of appeal to the District Court of his county or to the District Court of Travis county. (Id. Art. 5702.)

241. Factor or Commission Merchant.—It shall not be lawful for any factor, commission merchant, or other person or persons, to employ any other than a public weigher, or his deputies to weigh cotton, wool, sugar, hay, or grain, or other produce, sold or offered for sale in any city or justice precinct having a public weigher duly qualified. Whoever violates any provision of this article shall be liable at the suit of the public weigher to damages in any sum not less than five dollars for each bale of cotton, bale or sack of wool, ton of hay, or ton of grain, so unlawfully weighed. (Id. Art. 5703.)

242. Owner May Weigh, Etc.—Nothing in this chapter shall prevent any person, firm or corporation from weighing his own cotton, wool, sugar, hay, grain or pecans in person. In places where there are no public weighers appointed or elected, any person who shall weigh cotton, wool, sugar, grain, hay, or pecans for compensation shall be required before weighing such produce to enter into a bond for twenty-five hundred dollars approved and payable as in case of public weighers referred to in this chapter, and conditioned that he will faithfully perform the duties of his office and turn over all property weighed by him on demand of the owner. This article shall not apply to merchant flouring mills. (Id. Art. 5704.)

243. Public Weigher.—All persons engaged in the business of public weighing for hire, or any person who shall weigh or measure any commodity, produce or article, and issue therefor a weight certificate or weight sheet, which shall be accepted as the accurate weight upon which the purchase or sale of such commodity, produce, or article is based, shall be known as a public weigher, and shall comply with the provisions of the law regulating public weighers, provided the provisions of this article shall not apply to any owner, manager, agent or employee of any compress or any public or private warehouse in their operations as a warehouseman. This law shall not apply in any manner to any Texas port. (Rev. Crim. Stats. 1925, Art. 1047.)

244. Weight Certificate.—The Commissioner of Agriculture shall prescribe the form of weight certificate to be used by all public weighers in this State, which certificate shall be known as a State certificate of weights and measures; such certificate shall state thereon the kind of produce; the number of the same, the date of the receipt of the produce, the owner, agent or consignee, the total weight of the produce, the vessel, railroad, or other means by which the produce was received, and any trade-mark or other mark thereon; and such other information as may be necessary to distinguish or identify the produce from a like kind. No certificate other than the one herein prescribed shall be used by any public weigher in this State, and such certificate when so made and properly signed, shall be prima facie evidence of such weight. (Id. Art. 1048.)

245. Record of Weights.—All public weighers, within this State, shall keep and preserve a correct and accurate record of all weights made by them, which record shall be open for the inspection of the Commissioner of Agriculture, his deputies or inspectors, and the public at any and all times. Such record shall be uniform throughout the State, and the form of such record shall be prescribed by said commissioner. (Id. Art. 1049.)

246. Issuing False Certificate.—All certificates of weights and measures or weight sheets as provided for in this chapter shall contain the accurate and correct weight of any and all commodities weighed when issued by public weighers. Any public weigher, or deputy public weigher, who shall issue any certificate of weights and measures or weight sheet giving false weights or measures of any article, or commodity weighed or measured by him, or his representative or deputy, to any person, firm or corporation, shall be fined not less than twenty-five nor more than two hundred and fifty dollars, and may be imprisoned in jail for not less than thirty days nor more than six months, and in addition thereto, he shall be suspended from office and not permitted to continue the business of public weighing any longer. (Id. Art. 1050.)

247. Requesting False Certificate.—Whoever shall request a public weigher, deputy public weigher or any person employed by him, or pay to him any money, or give him anything to weigh any produce, commodity or article, falsely or incorrectly, or who shall request a false or incorrect certificate of weights or measures, or weight sheet, shall be fined not less than twenty-five nor more than two hundred dollars, and in addition thereto may be imprisoned in jail for not less than thirty days nor more than six months. (Id. Art. 1051.)

248. Weigher to Comply With Law.—Any person, or agent or representative of any corporation, who shall engage in the business of weighing for the public, or who shall grant or issue a certificate or weight sheet, upon which a purchase or sale is made without complying with the terms of the statutes regulating public weighers, shall be fined not less than twenty-five nor more than two hundred dollars. Each certificate so granted, or weight sheet issued by him is a separate offense. (Id. Art. 1052.)

NOTE: See also Nos. 10, 21-22, 23, 49, 50 et seq., and 64 et seq.

PART V.

Cases.

1. General Food and Drug Law.

Adulteration of Food—Definition re Product of An Animal That Has Died Otherwise Than by Slaughter—Construed: *Carzine v. State, 88 Tex. Crim. Rep. 468, 227 S. W. 1102 (1921).

Adulteration of Food—Information Sufficient: Sanchez v. State, 27 Tex. Crim. Rep. 14, 10 S. W. 756 (1889).

Adulteration of Food—What Information or Indictment Should Allege: *Dorsey v. State, 38 Tex. Crim. Rep. 527, 44 S. W. 514, 40 L. R. A. 201, 70 Am. St. Rep. 762 (1898).

Butter—Adulterated With Water—Information Charged an Offense: *Ex parte Drane, 80 Tex. Crim. Rep. 543, 191 S. W. 1156 (1917).

Coffee Adulterant—Destruction: State v. Acme Coffee Co., 219 S. W. 509 (1920).

Constitutional Law—Definition of Adulterated Food re Product of An Animal That Has Died Otherwise Than by Slaughter—Valid: *Carzine v. State, 88 Tex. Crim. Rep. 468, 227 S. W. 1102 (1921).

Constitutional Law—Food Law is Within Police Power: *Ex parte Vaughan, 93 Tex. Crim. Rep. 112, 246 S. W. 373 (1922).

Constitutional Law—Food Law (Article 432 of Penal Code) is Invalid: *Dorsey v. State, 38 Tex. Crim. Rep. 527, 44 S. W. 514, 40 L. R. A. 201, 70 Am. St. Rep. 762 (1898).

Constitutional Law—Food Law (Articles 699 and 700 of Penal Code) is Valid: *Ex parte Drane, 80 Tex. Crim. Rep. 543, 191 S. W. 1156 (1917).

Constitutional Law—Legislature Cannot Make Criminal the Mixing of Wholesome Articles of Food or Prohibit the Sale of the Mixture: *Dorsey v. State, 38 Tex. Crim. Rep. 527, 44 S. W. 514, 40 L. R. A. 201, 70 Am. St. Rep. 762 (1898).

Constitutional Law—Legislature Can Require Food Mixtures to be Labeled to Disclose Their Component Ingredients: *Dorsey v. State, 38 Tex. Crim. Rep. 527, 44 S. W. 514, 40 L. R. A. 201, 70 Am. St. Rep. 762 (1898).

Constitutional Law—Legislature Can Require Food to be Labeled to Disclose Its Adulteration: *Dorsey v. State, 38 Tex. Crim. Rep. 527, 44 S. W. 514, 40 L. R. A. 201, 70 Am. St. Rep. 762 (1898).

Constitutional Law—Title of Food Law is Sufficient: *Focke v. State, 65 Tex. Crim. Rep. 353, 144 S. W. 267 (1912); *Green v. State 66 Tex. Crim. Rep. 664, 148 S. W. 311 (1912).

Flour—Adulterated With Corn Meal: *Dorsey v. State, 38 Tex. Crim. Rep. 527, 44 S. W. 514, 40 L. R. A. 201, 70 Am. St. Rep. 762 (1898).

Food—Addition of Poison With Intent to Kill or Injure: Harkey v. State, 90 Tex. Crim. Rep. 212, 234 S. W. 221, 17 A. L. R. 1276 (1921).

Food—Includes Coffee Grounds for Use in Preparing Coffee for Another Meal: Harkey v. State, 90 Tex. Crim. Rep. 212, 234 S. W. 221, 17 A. L. R. 1276 (1921).

Food Law—Criminal Knowledge is Element of Offense: Sanchez v. State, 27 Tex. Crim. Rep. 14, 10 S. W. 756 (1889); Cantee v. State, 10 S. W. 757 (1889); Vaughn v. State, 86 Tex. Crim. Rep. 255, 219 S. W. 206 (1919).

Fruit—Unsanitary Exposure: *Green v. State, 66 Tex. Crim. Rep. 664, 148 S. W. 311 (1912).

Interstate Commerce: See Maury-Cole Co. v. Lockhart Grocery Co., 173 S. W. 262 (1915).

Meat—Adulterated Because Product of Animal That Has Died Otherwise Than by Slaughter—Proof That it Was Not Unwholesome, No Defense: Cozine v. State, 87 Tex. Crim. Rep. 92, 220 S. W. 102 (1920). See also: Carzine v. State, 88 Tex. Crim. Rep. 468, 227 S. W. 1102 (1921).

Meat—Unsanitary Exposure: *Focke v. State, 65 Tex. Crim. Rep. 353, 144 S. W. 267 (1912).

Milk—Adulterated: Sanchez v. State, 27 Tex. Crim. Rep. 14, 10 S. W. 756 (1889); Cantee v. State, 10 S. W. 757 (1889).

Milk—Adulteration—Conflict of Municipal Ordinance With State Law: Mantel v. State, 55 Tex. Crim. Rep. 456, 117 S. W. 855, 131 Am. St. Rep. 818 (1909); Sue Lung v. State, 117 S. W. 857 (1909).

Municipal Ordinance—Conflict With State Law: Mantel v. State, 55 Tex. Crim. Rep. 456, 117 S. W. 855, 131 Am. St. Rep. 818 (1909); Sue Lung v. State, 117 S. W. 857 (1909).

Sausage—Adulterated by Addition of Sulphite: Vaughn v. State, 86 Tex. Crim. Rep. 255, 219 S. W. 206 (1919).

2. Special Food Laws.

Beans—Net Weight Law: *Ex parte Lysaght, 97 Tex. Crim. Rep. 244, 260 S. W. 860 (1924).

Beverages—Jamaica Ginger: Ex parte Olson, 111 Tex. 601, 243 S. W. 773 (1922); Davis v. State, 292 S. W. 1109 (1927).

Beverages—Tincture of Ginger: Arbuthnot v. State, 56 Tex. Crim. Rep. 517, 120 S. W. 478 (1909).

Bread—Weight: *Carlson v. State, 89 Tex. Crim. Rep. 556, 232 S. W. 807 (1921); *Same, 232 S. W. 808 (1921).

Feeding Stuffs: *Guild v. State, 79 Tex. Crim. Rep. 603, 187 S. W. 215 (1916); Sogdell [Cogdell] v. State, 81 Tex. Crim. Rep. 66, 193 S. W. 675 (1917); Meisner v. State, 89 Tex. Crim. Rep. 547, 232 S. W. 841 (1921).

Fish—Markets: City of Brenham v. Becker, 1 Court of Appeals Civil Cases, § 1244 (1881).

Fish—Wholesale License: *Poon v. Miller, 234 S. W. 573 (1921). *Gulf Fisheries Co. v. Darrouzet, 17 Fed. (2d) 374 (1926).

Fish and Oyster Dealer—License: Adams Fish Market v. Sterrett, 106 Tex. 562, 172 S. W. 1109 (1915).

Flour—Net Weight Law: *Ex parte Humphrey, 92 Tex. Crim. Rep. 501, 244 S. W. 822 (1922); Same, 244 S. W. 824 (1922); *Overt v. State, 97 Tex. Crim. Rep. 202, 260 S. W. 856 (1924).

Grocery Store—Municipality Powerless to Prevent Erection in Residential District: City of Dallas v. Burns, 250 S. W. 717 (1923).

Ice—Manufacturer Not a Dealer—Tax: Egan v. State, 68 S. W. 273 (1902).

Markets: City of Palestine v. Barnes et al., 50 Tex. 538 (1878); City of Houston v. Feeser, 76 Tex. 365, 13 S. W. 266 (1890); Newson v. City of Galveston, 76 Tex. 559, 13 S. W. 368, 7 L. R. A. 797 (1890); City of San Antonio v. Royal, 16 S. W. 1101 (1891); *Bruce v. City of Gainesville, 183 S. W. 41 (1916). See also: *Fish—Markets; Meat—Markets.*

Meat—Action for Libel: Young et al. v. Kuhn, 71 Tex. 645, 9 S. W. 860 (1888).

Meat—Butchers: Schutze v. State, 30 Tex. 508 (1867); *State v. Deitz, 30 Tex. 511 (1867); Gill v. State, 30 Tex. 514 (1867); Bergstrom v. State, 36 Tex. 336 (1871-72); Monroe et al. v. State, 3 Tex. Crim. Rep. 341 (1877); Dreyer v. State, 10 Tex. Crim. Rep. 97 (1881); Kinney v. State, 21 Tex. Crim. Rep. 348, 17 S. W. 423 (1886); *Aston v. State, 27 Tex. Crim. Rep. 574, 11 S. W. 637 (1889); Hunt v. State, 33 Tex. Crim. Rep. 93, 25 S. W. 127 (1894); Bruns & Kunkel v. State, 33 Tex. Crim. Rep. 415, 26 S. W. 722 (1894); Braun v. State, 40 Tex. Crim. Rep. 236, 49 S. W. 620 (1899); Grable v. State, 62 Tex. Crim. Rep. 108, 136 S. W. 775 (1911).

Meat—Diseased Meat: Teague v. State, 25 Tex. Crim. Rep. 577, 8 S. W. 677 (1888); Marxen v. State, 44 Tex. Crim. Rep. 41, 68 S. W. 277 (1902).

Meat—Inspection Before Slaughter—Fees: Limburger v. Barker, 17 Tex. Civ. Rep. 602, 43 S. W. 616 (1897), application for writ of error dismissed in Same, 93 Tex. 712 (1900).

Meat—License: City of Houston v. Feeser, 76 Tex. 365, 13 S. W. 266 (1890); *Hoefling & Son v. City of San Antonio, 85 Tex. 228, 20 S. W. 85, 16 L. R. A. 608 (1892); *Ex parte Wade, 66 Tex. Crim. Rep. 181, 146 S. W. 179 (1912).

Meat—Markets: City of Brenham v. Becker, 1 Court of Appeals Civil Cases, § 1244 (1881); Newson v. City of Galveston, 76 Tex. 559, 13 S. W. 368, 7 L. R. A. 797 (1890); City of Laredo v. Loury, 4 Court of Appeals Civil Cases, § 320, 20 S. W. 89 (1892); Altgelt v. Gerbic, 149 S. W. 233 (1912), writ of error denied in Same, 106 Tex. 611 (1912); Dickson et al. v. Barr et al., 235 S. W. 977 (1921).

Meat Market—Prohibited in Certain Area: *Tomassi v. City of San Antonio et al., 268 S. W. 273 (1925).

Meat—Slaughterhouse: Moore v. State, 81 Tex. Crim. Rep. 302, 194 S. W. 1112 (1917); *City of Wichita Falls v. Robertson, 283 S. W. 870 (1926).

Milk—Adulteration—Evidence Sufficient: Quaternick v. State, 84 Tex. Crim. Rep. 40, 204 S. W. 328 (1918).

Milk—Adulteration—Recognizance—Jurisdiction of Court: Eaton v. State, 85 Tex. Crim. Rep. 610, 215 S. W. 99 (1919); Same, 85 Tex. Crim. Rep. 611, 215 S. W. 101 (1919); Same, 85 Tex. Crim. Rep. 612, 215 S. W. 100 (1919).

Milk—In Prosecution for Selling Milk Adulterated With Water, it is Not Necessary to Negative Sale of Skimmed Milk or to Allege Purchaser's Name: Quaternick v. State, 84 Tex. Crim. Rep. 40, 204 S. W. 328 (1918).

Milk—Suit to Restrain Interference With Sales: City of Dallas v. Cluck & Murphy, 234 S. W. 582 (1921).

Peddlers: *Ex parte Hogg, 70 Tex. Crim. Rep. 161, 156 S. W. 931 (1913).

"Restaurant" Defined: *Debenham v. Short et al., 199 S. W. 1147 (1917).

Sanitation—Medical Examination: *Ex parte Vaughan, 93 Tex. Crim. Rep. 112, 246 S. W. 373 (1922); *Langley et al. v. City of Dallas, 252 S. W. 203 (1923). See also: *Hanzal et al. v. City of San Antonio et al., 221 S. W. 237 (1920).

Sunday Law—Sale of Milk Chocolate: Saleh v. State, 91 Tex. Crim. Rep. 316, 239 S. W. 207 (1922).

Tallow Factory: Allen et al. v. State, 34 Tex.. 230 (1870-71.)

3. Special Drug Laws.

Drug Store—Municipality Powerless to Prevent Erection in Residential District: City of Dallas v. Burns, 250 S. W. 717 (1923).

Drug Store—Not Nuisance per se: Dickson et al. v. Barr et al., 235 S. W. 977 (1921).

Itinerant Vendors: Love v. State, 31 Tex. Crim. Rep. 469, 20 S. W. 978 (1893); Yellowstone Kit v. Wood, 18 Tex. Civ. Rep. 683, 43 S. W. 1068 (1897); *Turner v. State, 41 Tex. Crim. Rep. 545, 55 S. W. 834 (1900); *Needham v. State, 51 Tex. Crim. Rep. 248, 103 S. W. 857 (1907); *Huffman v. State, 55 Tex. Crim. Rep. 144, 115 S. W. 578 (1909); People v. State, 68 Tex. Crim. Rep. 631, 152 S. W. 168 (1912); *Shed v. State, 70 Tex. Crim. Rep. 10, 155 S. W. 524 (1913); *South v. State, 72 Tex. Crim. Rep. 381, 162 S. W. 510 (1913); Collins v. State, 78 Tex. Crim. Rep. 478, 182 S. W. 327 (1916).

Manufacturer of Medicine—Permit: W. T. Rawleigh Co. v. Marshall et al., 220 S. W. 1111 (1920); Caddell et al. v. J. R. Watkins Medical Co., 227 S. W. 226 (1921).

Medicine—Damages for Delay in Delivery: Pacific Express Co. v. Black, 8 Tex. Civ. Rep. 363, 27 S. W. 830 (1894).

Narcotics: Blair v. State, 50 Tex. Crim. Rep. 225, 96 S. W. 23 (1906); Same, 97 S. W. 89 (1906); Brown v. State, 74 Tex. Crim. Rep. 498, 168 S. W. 861 (1914); Fyke v. State, 79 Tex. Crim. Rep. 247, 184 S. W. 197 (1916); Lowery v. State, 79 Tex. Crim. Rep. 382, 185 S. W. 7 (1916).

Pharmacy: Watson v. State, 45 Tex. Crim. Rep. 509, 78 S. W. 504 (1904); *Green v. State, 49 Tex. Crim. Rep. 380, 92 S. W. 847 (1906).

Prescriptions—Right of Druggist to: R. C. Stuart Drug Co. v. Hirsch, 50 S. W. 583 (1899).

4. Civil Action to Recover Damages for Injury Alleged to Have Been Caused by Consumption or Use of Product.

Ammonia—Bottle Improperly Filled and Insecurely Corked: Texas Drug Co. v. Cadwell, 237 S. W. 968 (1922).

Antiseptic Tablets: Dunlap v. Oak Cliff Pharmacy Co., 288 S. W. 236 (1926).

Bottle—Explosion: Dullnig v. G. A. Duerler Mfg. Co., 87 S. W. 332 (1905), affirming G. A. Duerler Mfg. Co. v. Dullnig, 83 S. W. 889 (1904).

Drugs: L. N. Brunswig & Co. v. White, 70 Tex. 504, 8 S. W. 85 (1888); Hargrave v. Vaughn & Cummings et al., 82 Tex. 347, 18 S. W. 695 (1891); Winter et al. v. Terrill, 42 Tex. Civ. Rep. 598, 95 S. W. 761 (1906); French v. De Moss, 180 S. W. 1105 (1915), writ of error denied in Same, 188 S. W. XVI (1916); Guinn v. Texas Drug Co., 219 S. W. 507 (1920); Texas Drug Co. v. Cadwell, 237 S. W. 968 (1922); Dunlap v. Oak Cliff Pharmacy Co., 288 S. W. 236 (1926); Peavy v. Hardin et al., 288 S. W. 588 (1926). See also: *Paris Green.*

Feeding Stuffs: Houston Cotton Oil Co. v. Trammell, 96 Tex. 598, 74 S. W. 899 (1903), reversing Same, 72 S. W. 244 (1903); Houk v. Berg et al., 105 S. W. 1176 (1907); Kincannon & Gaines v. Independent Cotton Oil Co., 196 S. W. 878 (1917); W. T. Wilson Grain Co. v. Fitch, 208 S. W. 556 (1919). See also: F. A. Piper Co. v. Oppenheimer et al., 158 S. W. 777 (1913)

Food: See Needham v. Dial, 4 Tex. Civ. Rep. 141, 23 S. W. 240 (1893); Battaglia v. Thomas, 5 Tex. Civ. Rep. 563, 23 S. W. 385, 1118 (1893).

Medicine—Damages for Delay in Delivery: Pacific Express Co. v. Black, 8 Tex. Civ. Rep. 363, 27 S. W. 830 (1894).

Oysters—Accident Insurance: Maryland Casualty Co. v. Hudgins, 97 Tex. 124, 76 S. W. 745, 104 Am. St. Rep. 857 (1903).

Paris Green: Jones v. George, 56 Tex. 149, 42 Am. Rep. 689 (1882); Same, 61 Tex. 345, 48 Am. Rep. 280 (1884).

Poison—Explosion: Pullman Co. v. Caviness, 53 Tex. Civ. Rep. 540, 116 S. W. 410 (1909).

Scales: Detroit Automatic Scale Co. v. G. B. R. Smith Milling Co., 217 S. W. 198 (1919).

Soap: Armstrong Packing Co. v. Clem, 151 S. W. 576 (1912), writ of error refused in Same, 106 Tex. 612, 154 S. W. XIX (1913).

Water: Trinity & B. V. Ry. Co. v. Smith, 155 S. W. 361 (1913).

Water—Failure to Furnish: Waco Artesian Water Co. v. Cauble, 19 Tex. Civ. Rep. 417, 47 S. W. 538 (1898).

Water—Injury to Live Stock—Carrier's Liability: Chicago, R. I. & P. Ry. Co. et al. v. Mitchell, 85 S. W. 286 (1905).

5. Miscellaneous.

Gift Enterprise: *Randle v. State, 42 Tex. 580 (1895); Forrest Photographic Co. v. Hutchinson Grocery Co., 108 S. W. 768 (1908); American Copying Co. v. Thompson, 110 S. W. 777 (1908); Grant & Terry v. State, 54 Tex. Crim. Rep. 403, 112 S. W. 1068, 130 Am. St. Rep. 897, 21 L. R. A. (N. S.) 876 (1908); American Mfg. Co. v. Skidmore Drug & Furniture Co., (Civ. Rep.) 170 S. W. 128 (1914); Queen v. State, 93 Tex. Crim. Rep. 173, 246 S. W. 384 (1922).

Gift Enterprise—Prize Packages: Holoman v. State, 2 Tex. Crim. Rep. 610, 28 Am. Rep. 439 (1877).

Trade-Marks: Alff & Co. v. Radam, 77 Tex. 530, 14 S. W. 164, 9 L. R. A. 145, 19 Am. St. Rep. 792 (1890); Radam v. Capital Microbe Destroyer Co. et al., 81 Tex. 122, 16 S. W. 990, 26 Am. St. Rep. 783 (1891); Goodman v. Bohls, 3 Tex. Civ. Rep. 183, 22 S. W. 11 (1893); Mayer, Kahn & Freiberg v. Flanagan, 12 Tex. Civ. Rep. 405, 34 S. W. 785 (1896), writ of error refused in Same, 93 Tex. 646 (1900); Duke v. E. P. Cleaver & Co., 19 Tex. Civ. Rep. 218, 46 S. W. 1128 (1898), application for writ of error dismissed in Same, 93 Tex. 658 (1899-1900); Caffarelli Brothers v. Western Grocer Co., 102 Tex. 104, 127 S. W. 1018 (1908), reversing Western Grocer Co. v. Caffarelli Brothers, 108 S. W. 413 (1908); Scanlan & Bartell v. Williams, 53 Tex. Civ. Rep. 28, 114 S. W. 862 (1908); Hughes et al. v. Howe Grain and Mercantile Co., 162 S. W. 1187 (1914); Aultz et al. v. Zucht et al., 209 S. W. 475 (1919); Coco-Cola Co. et al. v. State, 225 S. W. 791 (1920); Dallas Plumbing Co. v. Dallas County Plumbing Co., 253 S. W. 308 (1923); A. B. C. Stores, Inc., et al. v. T. S. Richey & Co., 280 S. W. 177 (1926), reversing Same, 266 S. W. 551 (1924); *Burrell et al. v. Michaux et al., 273 S. W. 874 (1925), affirmed in Same, 286 S. W. 176 (1926), writ of certiorari granted in Ancient Egyptian Arabic Order Nobles of the Mystic Shrine, Etc., et al. v. Michaux et al., 71 L. Ed. 545, 45 S. Ct. 472 (1927).

Trading Stamps: Forrest Photographic Co. v. Hutchinson Grocery Co., 108 S. W. 768 (1908); American Copying Co. v. Thompson, 110 S. W. 777 (1908). See also: American Mfg. Co. v. Skidmore Drug & Furniture Co., 170 S. W. 128 (1914).

Weights and Measures: Watts & Weidemeyer v. State ex rel. Jowers, 61 Tex. 184 (1884); Holden v. State, 18 Tex. Crim. Rep. 91 (1885); *Johnson v. Martin, Wise & Fitzhugh, 75 Tex. 33, 12 S. W. 321 (1889); *Martin, Wise & Fitzhugh et al. v. Johnson, 11 Tex. Civ. Rep. 628, 33 S. W. 306 (1895); Ex parte Hunter, 34 Tex. Crim. Rep. 114, 29 S. W. 482 (1895); Ruffin v. State, 36 Tex. Crim. Rep. 565, 38 S. W. 169 (1896); Smith et al. v. Wilson, 18 Tex. Civ. Rep. 24, 44 S. W. 556 (1898), application for writ of error dismissed in Same, 91 Tex. 503, 44 S. W. 672 (1898); Davidson et al. v. Sadler et al., 23 Tex. Civ. Rep. 600, 57 S. W. 54 (1900), writ of error dismissed in Same, 94 Tex. 699 (1900); Whitfield v. Terrell Compress Co., 26 Tex. Civ. Rep. 235, 62 S. W. 116 (1901), writ of error refused in Same, 94 Tex. 693 (1901); Galt v. Holder, 32 Tex. Civ. Rep. 564, 75 S. W. 568 (1903), writ of error refused in Same, 97 Tex. 633 (1904); Davis v. McInnis et al., 35 Tex. Civ. Rep. 594, 81 S. W. 75 (1904), writ of error refused in Same, 98 Tex. 614 (1904); Gray v. Eleazer et al., 43 Tex. Civ. Rep. 417, 94 S. W. 911 (1906); Jordan v. State, 60 Tex. Crim. Rep. 178, 131 S. W. 539 (1910); Hedgpeth v. Hamilton Warehouse Co., 104 Tex. 496, 140 S. W. 1084 (1911), affirming Same, 128 S. W. 709 (1910); Perry v. Carlisle et al., 151 S. W. 1155 (1912); Carlisle et al. v. Perry, 151 S. W. 1158 (1912); Paschal v. Inman, 106 Tex. 128, 157 S. W. 1158 (1913), affirming Same, 151 S. W. 569 (1912), writ of error having been granted in Same, 154 S. W. XX (1913); Ex parte Montgomery, 86 Tex. Crim. Rep. 636, 218 S. W. 1042 (1920); Troilo v. Gittinger, 230 S. W. 233 (1921); *Carlson v. State, 89 Tex. Crim. Rep. 556, 232 S. W. 807 (1921); *Same, 232 S. W. 808 (1921); Martin et al. v. Foy, 234 S. W. 698 (1921); *Ex parte Humphrey, 92 Tex. Crim. Rep. 501, 244 S. W. 822 (1922); *Same, 244 S. W. 824 (1922); Findley et al. v. Calloway, 246 S. W. 681 (1923); King v. State, 96 Tex. Crim. Rep. 195, 256 S. W. 924 (1923); *Overt v. State, 97 Tex. Crim. Rep. 202, 260 S. W. 856 (1924); *Ex parte Lysaght, 97 Tex.

Crim. Rep. 244, 260 S. W. 860 (1924). See also: Masterson v. Goodlett, 46 Tex. 402 (1877); Jones v. State, 22 Tex. Crim. Rep. 680, 3 S. W. 478 (1887); Lidtke v. State, 27 Tex. Crim. Rep. 500, 11 S. W. 629 (1889); Anderson v. State, 30 Tex. Crim. Rep. 699, 18 S. W. 866 (1892); Loeb v. Crow & Hickey, 15 Tex. Civ. Rep. 537, 40 S. W. 506 (1897), writ of error refused in Same, 93 Tex. 645 (1899-1900); Sacks v. State, 83 Tex. Crim. Rep. 560, 204 S. W. 430 (1918); Taliaferro et al. v. Brady National Bank, 209 S. W. 174 (1919); Detroit Automatic Scale Co. v. G. B. R. Smith Milling Co., 217 S. W. 198 (1919); Pope et al. v. Joschke, 228 S. W. 986 (1921); Taylor v. Hemphill et al., 238 S. W. 986 (1922); Bradford et al v. McCloskey et al., 244 S. W. 575 (1922).

UTAH.*

PART I.

General Food and Drug Law.

1. **Dairy and Food Commissioner—Commissioner of Agriculture.**—The office of Dairy and Food Commissioner is hereby created. The Commissioner of Agriculture shall be ex-officio the Dairy and Food Commissioner. He shall serve without salary other than that paid him as Commissioner of Agriculture. (C. L. 1917, § 1920, as amended L. 1921, c. 2, sub. c. 10, § 8.)

2. **Duty of Commissioner.**—It shall be the duty of the commissioner, and he is hereby invested with the powers, to enforce all laws that now exist or that may hereafter be enacted in this State, regarding the production, manufacture, or sale of dairy and creamery products, or the adulteration of any article of food, and regarding the use of skimmed or adulterated milk, and the feeding of unwholesome food to cattle, and the keeping of cattle having infectious or contagious diseases; and said commissioner shall personally, or by his deputy, inspect any article of food made, or offered for sale within this State, which he may suspect or have reason to believe is impure, unhealthy, adulterated, or counterfeit. He shall also visit and inspect the various dairies, cheese and butter factories of the State, and shall have power to enforce proper sanitary regulations in their management and surroundings. Said commissioner shall personally, or by his deputy, when complaint is made of the violation of any law relating to the feeding of any unwholesome food for cattle, or keeping upon the premises any cattle afflicted with any contagious or infectious diseases, immediately investigate said charge, and may prosecute any person, firm, or corporation violating any of the laws of this State, which it is the duty of said commissioner to enforce. (C. L. 1917, § 1921.)

3. **Powers of Commissioner—Deputy, Inspector, Etc.**—The said commissioner, deputy commissioner, and such inspectors, agents, chemists, and counsel as shall be duly authorized for the purpose, shall have access, ingress, and egress to and from all places of business, factories, farms, buildings, carriages, and cars used in the manufacture, transportation, or sale of any article of food as defined in this chapter, and also into restaurants, dining halls, cafes, hotels, and all rooms thereof and all other places where food is prepared, stored or served to patrons. They shall also have power and authority to open any package, can, or vessel, containing or supposed to contain any article manufactured, sold, or exposed for sale, or held in possession with intent to sell, in violation of the provisions of this chapter or other laws of this State, and may inspect the contents thereof, and may take samples therefrom for analysis. All dealers, clerks, bookkeepers, express agents, railroad officials, employees, or common carriers shall render to them all the assistance in their power, when so requested, in tracing, finding, or discovering the presence of any article prohibited by law, and in securing samples thereof as herein provided for. Any refusal or neglect on the part of such dealers, clerks, bookkeepers, express agents, railroad officials, employees, or common carriers to render such friendly aid or to furnish such sample for analysis as provided for in this section, shall be deemed a misdemeanor and shall be punished as hereinafter provided. (Id. § 1922.)

4. **Sample to be Marked or Sealed.**—The person taking such sample, as provided for in this chapter, shall mark or seal such sample with a paper seal or otherwise, and shall write his name thereon and number said sample, so as to properly identify the same, and shall tender to the manufacturer or vendor of such article or product, or the person in whose control or possession such article or product may be at the time the same is taken, the value thereof; but if the person from whom such sample is taken shall request him to do so, he shall at the same time and in the presence of the person from whom the same is taken, seal with proper seals or otherwise two samples, of the article taken, on each of which said

*CITATIONS: "C. L. 1917" refers to the Compiled Laws of the State of Utah, 1917, published by authority of Chapters 6 and 110, Laws of 1917, and adopted by Chapter 112, Laws of 1919. "L." refers to the session laws of the year cited.

samples, or on the seals placed thereon, shall be placed the name of the person taking said sample and also the number above provided for, the one of which samples, shall be delivered to the person from whom the same is taken, and the other shall be taken by the person so procuring the same to the State Chemist or other competent person appointed for the purpose of making examinations or analyses of sample so taken; provided, that the person procuring said sample may securely pack and box said sample and send the same to the State Chemist, or other competent person appointed hereunder for the purpose of making examinations or analyses of samples, and his testimony that he did procure the samples, and that he sealed and numbered the same as herein provided, and that he wrote his name thereon, and that he packed and boxed said sample and sent the same to the State Chemist or other competent person appointed hereunder to analyze such sample; and the testimony of the person to whom said sample is addressed that he received said box or package in apparent good order, that said sample was sealed, and that the number and name of the sender, as herein provided for, was on said sample and that the seal at the time the same was received was unbroken, shall be prima facie evidence that the sample so received is the sample that was sent, and that the contents thereof are the same and in the same condition as at the time the person so procuring said sample parted with the possession thereof, and the testimony of said two witnesses as above shall be sufficient to make such prima facie proof. (Id. § 1923.)

5. **Standard of Purity.**—The standards of quality, purity, and strength for foods, liquors and drinks that have been or shall be adopted by the United States Department of Agriculture are hereby declared to be the standards of purity, quality and strength of foods, liquors and drinks in the State of Utah, except where otherwise specified. (Id. § 1924.)

6. **Unlawful to Adulterate or Misbrand Foods, Drugs, Etc., Penalty.**—Every person who, by himself, his agent, or servant, or as agent or servant of any other person, shall manufacture for sale, sell, exchange, or deliver or offer to sell, exchange, or deliver, or have in his possession with intent to sell, exchange or deliver, any adulterated or misbranded article of food, drink, drug, or confectionery, or who shall adulterate or misbrand any article of food, drink, drug or confectionery, shall be guilty of a misdemeanor. (Id. § 1925.)

7. **Definition—Label Requirements.**—The term "food" as used in this chapter shall include all articles whether simple, mixed or compound, used for food, drink, confectionery or condiment by man or animal, and the name and address of the manufacturer or distributor shall appear upon the label of all food offered for sale in package form. (Id. § 1926, as amended L. 1919, c. 40.)

8. **Term "Drug" Defined—Adulteration.**—The term "drug," as used in the chapter shall include all medicines and preparations recognized in the United States Pharmacopœia or National Formulary for internal or external use for the cure, mitigation, or prevention of disease of either man or animals.

For the purpose of this chapter an article shall be deemed to be adulterated: In the case of drugs:

1. If, when a drug is sold under or by a name recognized in the United States Pharmacopœia or National Formulary, it differs from the standard of strength, quality, or purity, as determined by the test laid down in the United States Pharmacopœia or National Formulary official at the time of investigation; provided, that no drug defined in the United States Pharmacopœia or National Formulary shall be deemed to be adulterated under this provision if the standard of strength, quality, or purity be plainly stated upon the bottle, box, or other container thereof, although the standard may differ from that determined by the test laid down in the United States Pharmacopœia or National Formulary.

2. If its strength fall below the professed standard or quality under which it is sold.

In the case of confectionery:

If it contain terra alba, barytes, talc, chrome yellow, paraffine, or other mineral substance or poisonous flavor or color, or other ingredient deleterious or detrimental to health, or any vinous, malt, or spirituous liquor or compound or narcotic drug:

In the case of foods:

1. If any substance has been mixed or packed with it so as to reduce or lower or injuriously affect its quality or strength;

2. If any substance has been substituted wholly or in part, for the article;

3. If any valuable constituent of the article has been wholly or in part abstracted;

4. If it is mixed, colored, powdered, coated or stained in a manner whereby damage or inferiority is concealed;

5. If it contain any added poisonous or other added deleterious ingredients which may render such article injurious to health;

6. If it contain any added antiseptic or preservative substance except common salt, saltpeter, cane or beet sugar, vinegar, spices, or wood smoke; provided, that when, in the preparation of food products for shipment, they are preserved by any external application applied in such a manner that the preservative is necessarily removed mechanically or by maceration in water or otherwise and directions for removal of said preservative shall be printed on the package, the provisions of this chapter shall be construed as applying only when said products are ready for consumption. And, furthermore, the provisions of this chapter shall not apply to the addition of benzoate of soda in those foods in which generally heretofore it has been used; provided, that each container or package is plainly labeled to show the presence and amount of benzoate of soda;

7. If it consist in whole or in part of a filthy, decomposed, or putrid animal or vegetable substance, or any portion of any animal unfit for food, whether manufactured or not, or if it is a product of a diseased animal, or one that has died otherwise than by slaughter;

8. If it contain saccharine or any other artificial sweetening agent. (C. L. 1917, § 1927.)

9. **Term "Misbranded" Defined—How Applied.**—The term "misbranded," as used herein, shall apply to all drugs or articles of food, or articles which enter into the composition of food, the package or label of which shall bear any statement, design, or device, regarding such article, or the ingredients or substances contained therein, which shall be false or fraudulent in any particular, and to any food or drug product which is falsely branded as to the State, Territory or country in which it is manufactured or produced. For the purpose of this chapter an article shall also be deemed to be misbranded: In the case of drugs:

1. If it be an imitation of or offered for sale under the name of another article;

2. If the contents of the package as originally put up shall have been removed in whole or in part, and other contents shall have been placed in such package or if the package fail to bear a statement on the label of the quantity or proportion of any alcohol, wood alcohol, denatured alcohol, morphine, opium, cocaine, heroin, alpha or beta eucaine, chloroform, cannabis indica, chloral hydrate, or acetanilide or any derivative or preparation of any of such substances contained therein; provided, that wood or denatured alcohol be not allowed in any article of food or medicine intended for internal use;

3. If its package or label bear or contain any statement, design or device regarding the curative or therapeutic effect of such article or any of the ingredients or substances contained therein, which is false and fraudulent.

In case of foods:

1. If it be an imitation of or offered for sale under the distinctive name of another article;

2. If it be labeled or branded so as to deceive or mislead the purchaser, or purport to be a foreign product when not so, or if the contents of the package as originally put up shall have been removed in whole or in part and other contents shall have been placed in such package, or if it fail to bear a statement on the label of the quantity of any morphine, opium, cocaine, heroin, alpha or beta eucaine, chloroform, cannabis indica, chloral hydrate, or acetanilide, or any derivative or preparation of any such substances contained therein;

3. If in package form, the net quantity of the contents be not plainly and conspicuously marked on the outside of the package in terms of weight, measure, or numerical count; provided, that reasonable variations and tolerations shall be permitted by rules and regulations made in accordance with this chapter by the State Dairy and Food Bureau;

4. If the package containing it, or its label, shall bear any statement, design, or device regarding the ingredients, or the substances contained therein, which statement, design, or device shall be false or misleading in any particular; provided, that an article of food that does not contain any added poisonous or deleterious ingredients shall not be deemed to be misbranded or adulterated in the following cases:

First. In the case of mixtures or compounds which may be now or from time to time hereafter known as articles of food under their own distinctive names, and not an imitation of, or offered for sale under the distinctive name of another article, if the name be accompanied on the same label or brand with a statement of the place where said article has been manufactured or produced.

Second. In case of articles labeled, branded, or tagged so as to plainly indicate that they are compounds, imitations, or blends, and the word "compound,"

"imitation," or "blend," as the case may be, is plainly stated on the package in which it is offered for sale; provided, that the term "blend" as used herein, shall be construed to mean a mixture of like substances, not excluding harmless coloring or flavoring ingredients used for the purpose of coloring or flavoring only; and, provided, further, that nothing in this chapter shall be construed as requiring manufacturers or proprietors of proprietary foods which shall contain no unwholesome added ingredient, to disclose trade formulas except in so far as the provisions of this chapter may be required to secure freedom from adulteration or misbranding. (Id. § 1928.)

9a. Articles of Food Manufactured From Unwholesome Milk Prohibited.—No person, firm, or corporation shall manufacture from unclean, impure, unhealthful, or unwholesome milk, or from cream from the same, any article of food. (Id. § 1942.)

10. Search Warrant.—When complaint shall be made, on oath to any magistrate authorized to issue warrants in criminal cases, that any article of food, drug, or confectionery that is adulterated or misbranded, within the meaning of this chapter, is in the possession or under the control of any person, persons, firm or corporation, contrary to the provisions of the laws of this State, and that the complainant believes that such article of food, drug, or confectionery is concealed in any particular warehouse, store, or refrigerator for mercantile purposes, the magistrate, if he be satisfied that there be cause for such belief, shall issue a warrant for such property. (Id. § 1949.)

11. Id. Seizure.—All such warrants shall describe and designate the place and property to be searched for and shall be directed to the sheriff of the county or his deputy, or to any constable of the county, commanding such officer to search the house, building, store, or other place where any such article of food, drug, or confectionery, and for which he is required to search, is believed to be concealed, and to bring such property, when found, and the person or persons in whose possession the same shall be found, before the magistrate who issued the warrant, or before some other magistrate or court, having cognizance of the case. (Id. § 1950.)

12. Id. Confiscation—Analysis—Evidence—Procedure.—When any officer in the execution of a search warrant, under the provisions of §§ 1949-1950, shall find any article of food, drug, or confectionery that is adulterated or misbranded, within the meaning of this chapter and for which a search has been allowed, all the property so seized shall be safely kept by the direction of the court or magistrate so long as shall be necessary for the purpose of being produced as evidence on any trial. And if, upon a trial on any such complaint, any article of food, drug, or confectionery be found to be adulterated or misbranded, within the meaning of this chapter, and if it further be found that the same, at the time of such seizure, was in the possession or under the control of any person, persons, firm, or corporation contrary to any of the provisions or requirements of the laws of this State, then, and in such case, the property so seized shall be confiscated under the direction of the court or magistrate; otherwise the said property shall be forthwith returned to the person or persons from whom it was taken and no costs shall be charged to such person or persons.

Chapter 56, title 120, of the code of criminal procedure (§§ 9368-9389),* entitled Search Warrants, is hereby made applicable for the procedure under this section, in so far as legal procedure may not be prescribed in this chapter; and if at any stage of the proceedings before any court or magistrate it shall appear that the matter will exceed the jurisdiction of such court or magistrate, the case or proceeding shall be forthwith certified to the District Court of the proper county, and thereupon such District Court shall assume jurisdiction and proceed and determine the matter in accordance with the law. (Id. § 1951.)

13. Who Shall Prosecute.—It shall be the duty of the Attorney-General, the district attorney, or county attorney, or any other State prosecuting attorney, when called upon by the State Dairy and Food Commissioner or any of his deputies, to render any legal assistance in their power to execute laws and prosecute cases arising under the provisions of the dairy and food laws. All fines, fees, and costs collected under prosecutions for violations of this chapter shall be paid into the State treasury. (Id. § 1955.)

14. Report.—Said commissioner shall make a biennial report to the Governor, which shall contain an itemized account of all expenses incurred and fines collected, with such statistics and other information as he may regard of value. (Id. § 1956.)

15. Defacing Marks or Labels.—Whoever shall deface, change, erase, or remove any mark, label, or brand provided for by this chapter, with intent to mislead,

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*Omitted herein.

deceive, or to violate any of the provisions of this chapter, shall be held liable to the penalties of this chapter. (Id. § 1957.)

16. Penalty for Violations.—Every person or corporation who shall violate any of the provisions of this chapter shall be guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine in any sum less than $300.00, or by imprisonment in the county jail not exceeding six months, or by both such fine and imprisonment. And any article found in his or its possession in violation of this chapter shall be subject to confiscation and may be destroyed by the State Dairy and Food Commissioner or his deputies. (Id. § 1958.)

17. False Statements or Misrepresentations—Penalty.—Every person, firm, or corporation, foreign or domestic, that shall make or use any false or fraudulent statements or representations in advertising any article of food, drink, drug, or confectionery mentioned, referred to, or included in this chapter, in any pamphlet, newspaper, periodical, or advertisement shall be guilty of a misdemeanor and punished as provided in section 1958 hereof. (Id. § 1959.)

18. Form of Complaint.—In every action arising under any of the provisions of this chapter, it shall be sufficient to charge the offense in the language of the statute without further particularity, and every exception or proviso, no matter where the same may occur, shall be deemed matter to be pleaded and proved in defense. The certificate of the State Chemist, over his signature, certifying his findings in any analysis or examination of any article mentioned or referred to in this chapter, shall be admissible in any court as prima facie evidence of the facts set forth in such certificate. (Id. § 1960.)

19. Not Liable to Prosecution, When.—No dealer of food or drink products shall be held liable to prosecution if he can establish that the goods, were sold under a guaranty by a wholesaler, manufacturer, jobber, dealer, or other party residing in the United States from whom purchased. (Id. § 1961.)

Miscellaneous General Provisions.

20. Tainted, Decayed, or Spoiled Food.—It shall be unlawful for any person to sell, or offer for sale or have in his possession with intent to sell, any article of food that has become tainted, decayed, spoiled or is otherwise unwholesome or unfit to be eaten or drunk. (C. L. 1917, § 1962.)*

21. Use of Dyes Prohibited—Exception.—The use of any dye, harmless or otherwise, to color, or stain the food in a manner whereby damage or inferiority is concealed is specifically prohibited. The use in food for any purpose of any mineral dye or any coal tar dye, except the coal tar dyes, hereinafter listed, shall be grounds for prosecution. The coal tar dyes, hereinafter named, made specifically for use in foods, and which bear a guaranty from the manufacturer that they are made from subsidiary products and represent the actual substance, the name of which they bear, may be used in foods. In every case a certificate that the dye in question has been tested by competent experts and found to be free from harmful constituents must be filed with the State Dairy and Food Commissioner and approved by him.

The following coal tar dyes which may be used in this manner are given numbers, the numbers preceding the names referring to the number of the dyes in question as listed in A. G. Green's edition of the Shultz-Julius Systematic Survey of the Organic Coloring Matters, published in 1904.

The list is as follows:

Red Shades—107, Amaranth; 56, Ponceau 3R.; 517, Erythrosin.

Yellow shade—4, Nepthol yellow S.

Orange shade—85, orange 1.

Green shade—435, light green S. F. yellowish.

Blue shade—693, Indigo disulfo acid.

Each of these colors shall be free from any coloring matter other than the one specified, and shall not contain any contamination due to imperfect or incomplete manufacture. (Id. § 1973.)†

22. False Branding of Goods.—It shall be unlawful for any person, firm, association of persons, or corporation, or any officer, agent, servant, or employee thereof, to sell, offer for sale, brand, advertise, circulate or display any goods, wares or merchandise, of any kind or character whatsoever, as having been made, produced or manufactured within this State, when in truth and in fact the same was not made, produced or manufactured within this State. (L. 1921, c. 113, § 1.)

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*For penalty see No. 16.

†For penalty see No. 68.

23. Penalty.—Any person, firm, association of persons, or corporation, or any officer, agent, servant or employee thereof, violating any of the provisions of this act shall, upon conviction therefor, be punished by a fine of not more than $250.00 or by imprisonment in the county jail for a period of not exceeding sixty (60) days. (Id. § 2.)

24. Powers—Agriculture, Horticulture, Crops, Pests, Etc.—Live Stock—Weights and Measures—Feeds and Fertilizers—Diseases—Standards—Factories, Mills, Stores, Hotel, Dairies, Etc.—Inspection—Report—Funds.—The State Board of Agriculture shall have the following powers:

1. To execute and enforce all laws of the State relating to agriculture, including horticulture, crops and pests and related subjects, livestock, including sheep, swine, poultry and bees and related subjects; weights and measures, commercial feeding stuffs and commercial fertilizers.

2. To encourage and promote, in every practicable manner, the interests of agriculture, including horticulture, the live stock industry, including swine, poultry, bee keeping; forestry, the production of wool, and all other allied industries.

3. To promote methods of conducting these several industries with a view to increasing the production and facilitate the distribution thereof at the least cost.

4. To inquire into causes of contagious, infectious and communicable diseases among domestic animals, and the means for the prevention and cure of the same.

5. To establish standards and grades of vegetables, fruits, hay, grain, seeds and live stock products.

6. To make rules regulating the sale of commercial fertilizers and to require any person, firm or corporation who shall sell or offer for sale within the State any commercial fertilizer to furnish to the purchaser thereof a written or printed statement giving the percentage of all the materials used as ingredients of such fertilizer and to furnish such other information as the board may deem necessary.

7. It shall be the duty of the State Board of Agriculture to formulate and prescribe such rules and regulations for the operation of creameries, butter and cheese factories, dairies, slaughterhouses, confectionaries, bakeries, hotels, fruit and vegetable canneries, flour mills, farm dairies, or any other factory, establishment, store or house where dairy or food products of any nature are bought, sold, manufactured, prepared, stored, or exposed for sale for public use, as shall be deemed necessary by such board to fully carry out the provisions of chapter 10* of this act and all laws now in force or that may be enacted relative to dairy and food products, and for the promotion and maintenance of sanitary conditions in connection therewith, and for prevention of false grades, weights and measures, and also for advancing the value of Utah food and dairy products. Such rules and regulations shall conform as near as may be to the rules and regulations that have been or shall be promulgated by the Agricultural Department of the United States under and by the authority of a law known as the pure food and drug act, of June 30, 1906, as well as an act of Congress, approved June 30, 1906, governing meat inspection. The Dairy and Food Commissioner shall execute the rules and regulations of the board made under the authority of this subdivision.

8. To appoint all State inspectors, and other employees necessary to carry out the provisions of this act and fix their salaries, subject to the approval of the State Board of Examiners.

9. To divide the State into as many agricultural districts as the board may deem desirable for the purpose of effectively and economically carrying out the provisions of this act, and to appoint an agricultural inspector for each district. The inspectors so appointed shall have jurisdiction and full power and authority to operate in any district in the State when so directed by the board and deemed necessary to carry out the provisions of this act. The compensation of such inspectors shall be fixed by the board subject to the approval of the State Board of Examiners and shall be paid out of the State treasury.

10. The State Board of Agriculture shall make a report biennially to the Governor by the first day of December preceding the meeting of the State Legislature, and the Secretary of State shall cause the same to be published in a pamphlet or book form for distribution as other State publications.

11. To make and enter into co-operative agreements with the Federal Government, States, counties, municipalities, firms, corporations or individuals for the promotion of the welfare of agriculture and industries connected therewith.

12. The State Board of Agriculture is hereby authorized to receive gifts, donations, or bequests of money or property for the promotion and protection of agricultural interests of Utah, to deposit the same with the State Treasurer and to

*L. 1921, c. 2, sub. c. 10, contained in Nos. 1 and 28a.

disburse the same upon the warrants of the State Auditor, which said warrants shall be drawn only upon the order of a majority of the State board and for the purpose named in this chapter.

13. All sums of money collected under the provisions of paragraph 12 of this act shall be turned into the State treasury to be placed to the credit of contingent fund of the board. (C. L. 1917, § 172, as amended L. 1921, c. 2, sub. c. 1 and L. 1923, c. 79.)

25. **Bureau Created—Membership—Terms—Expenses — Report.** — There is hereby created a State Dairy and Food Bureau, which shall consist of five resident citizens of the State. The State Chemist and the State Dairy and Food Commissioner shall be members of the said board; and three members shall be appointed by the Governor on or before the first day of April, 1909, as follows: One member of this bureau shall be a practical manufacturer of dairy food products; one member shall be a merchant engaged in the sale of food products, and one member shall be a nonproducer of food products. Members of this bureau shall hold office for the period of four years and until their successors are appointed and qualified; provided, that the first members appointed under this section shall be appointed for terms, so that their terms shall expire in one, two, and three years respectively. Any vacancy shall be filled by appointment by the Governor for the unexpired term. The members of said bureau shall serve without compensation, but shall receive their actual and necessary traveling expenses, and within twenty days after their appointment shall take the oath of office as required by the Constitution; and they shall thereupon meet and organize by electing a chairman, a secretary, and a treasurer. Any one of them may be removed by the Governor for neglect or violation of duty. They shall make report in detail to the Legislature not later than the first day of December next preceding the meeting thereof. (C. L. 1917, § 1917.)‡

26. **Duties.**—It shall be the duty of the State Dairy and Food Bureau to formulate and prescribe such rules and regulations for the operation of creameries, butter and cheese factories, dairies, slaughterhouses, confectioneries, bakeries, hotels, fruit and vegetable canneries, flour mills, farm dairies, or any other factory, establishment, store, or house where dairy or food products of whatsoever nature are bought, sold, manufactured, prepared, stored, or exposed for sale for public use, as shall be deemed necessary by such bureau to fully carry out the provisions of this chapter,* and all laws now in force that may be enacted relative to dairy and food products, and for the promotion and maintenance of the public health and safety, and for prevention of false grades, weights, and measures, and also for advancing the value of Utah food and dairy products. Such rules and regulations shall conform as near as may be to the rules and regulations that have been or shall be promulgated by the Agricultural Department of the United States under and by the authority of a law known as the pure food and drug act of June 30, 1906, as well as an act of Congress, approved June 30, 1906, governing meat inspection. The Dairy and Food Commissioner shall execute the rules and regulations of the bureau, and the bureau shall provide him with deputies, agents, and such assistants, as may be deemed necessary from time to time, it being the object of this law to protect the consumer of food products against fraudulent, unwholesome, and adulterated food, and for the promotion and maintenance of the public health and safety; and it shall be the duty of this bureau to promote improvements in dairy and food products, and educate the producer in the care of all dairy and food products and their economical production. (Id. § 1918.)‡

27. **Penalty.**—Any person violating any provisions of this chapter* or any rule or regulation of the Dairy and Food Bureau shall be guilty of a misdemeanor, and upon conviction therof shall be fined in any sum not less than $25 nor more than $200. (Id. § 1919.)‡

28. **Duties of State Chemist.**—It shall be the duty of the chemist to analyze all articles of food and drink manufactured, sold, and used within this State, when submitted to him by the State Dairy and Food Commissioner, or the State Board of Health, and to make a biennial report to the Dairy and Food Commissioner and the State Board of Health, which report shall contain a record of all analyses made by him, and such other information as he may consider of value and interest. (Id. § 5753.)

28a. **Penalty for Violations.**—Any person, firm or corporation violating any rule of the State Board of Agriculture, when no other penalty is provided in this act, shall be guilty of a misdemeanor. (L. 1921, c. 2, sub. c. 10, § 9.)†

NOTE: See also Nos. 156 and 242.

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*Included in Nos. 25-27.

†Sub-chapter 10 consists of section 8, amending section 1920 of the Compiled Laws of 1917, quoted in No. 1, and section 9, supra.

‡But see the subsequent law in Nos. 1 and 24.

PART II.

Special Food Laws.

Bakeries—Bread.

See Nos. 24, 26, 119 and 244.

Baking Powder.

29. **Baking Powder Standard.**—Every person, who, by himself, his agent or servant, or as the agent, or servant of any other person, shall make or manufacture any baking powder or any other mixture or compound intended for use as baking powder; or sell, exchange, deliver, or offer to sell, exchange, or deliver, or have in his possession, with intent to sell, exchange or deliver any baking powder or any mixture or compound for use as baking powder which shall contain less than ten per cent of available carbon dioxide; or without the names of all ingredients thereof printed on the package containing the same, shall be guilty of a misdemeanor.

The acid-reacting materials in baking powder are: (1) Tartaric acid or its acid salts. (2) Acid salts of phosphoric acid. (3) Compounds of aluminium, or (4) any combinations in substantial proportions to the foregoing. (C. L. 1917, § 1932, as amended L. 1923, c. 95.)*

Beverages.

30. **Spirituous, Fermented, or Malt Liquors.**—No person shall, within this State, by himself, his servant, or agent, or as a servant or agent of any other person or corporation, manufacture, brew, distill, have, or offer for sale, or sell any spirituous or fermented or malt liquor, containing any drug, substance, or ingredient not healthful or not normally existing in said spirituous, fermented, or malt liquor, or which may be deleterious or detrimental to health, when such liquors are used as a beverage, and the following drugs, substances, or ingredients shall be deemed to be not healthful, or not normally existing in spirituous, fermented, or malt liquor, and shall be deemed to be deleterious or detrimental to health, when contained in such liquors, to wit:

Cocculus indicus, chloride of sodium, copperas, opium, cayenne pepper, picric acid, Indian hemp, strychnine, arsenic, tobacco, darnel seed, extract of logwood; salts of zinc, copper, or lead; alum, methyl alcohol and its derivatives, and any extract or compound of any of the above drugs, substances, or ingredients. And any person violating any of the provisions of this section shall be deemed guilty of a misdemeanor. (C. L. 1917, § 1931.)*

NOTE: See also Nos. 119, 180 et seq., 205 et seq., 212 et seq., and 245.

Canneries.

See Nos. 24, 26, 101 et seq., 110, and 119-120.

Cider.

See No. 187.

Cold Storage.

31. **Terms Defined.**—For the purpose of this title, "Cold Storage" shall mean the storage or keeping of articles of food at or below a temperature above zero of 45 degrees Fahrenheit in a cold storage warehouse; "cold storage warehouse" shall mean any place artificially cooled to or below a temperature above zero of 45 degrees Fahrenheit, in which articles of food are placed and held for thirty days or more; "article of food" shall mean fresh meat and fresh meat products and all fish, game, poultry, eggs, and butter. (C. L. 1917, § 840.)

32. **Warehouse License—Application—Inspection—Fee.**—No person, firm or corporation shall maintain or operate a cold storage warehouse without a

*For penalty see No. 16.

license so to do issued by the State Dairy and Food Commissioner. Any person, firm, or corporation desiring such a license shall make written application to the State Dairy and Food Commissioner for that purpose, stating the location of the warehouse. The State Dairy and Food Commissioner thereupon shall cause an examination to be made of said warehouse, and, if it be found by him to be in a proper sanitary condition and otherwise properly equipped for its intended use, he shall issue a license authorizing the applicant to operate the same as a cold storage warehouse during one year. The license shall be issued upon payment by the applicant of a license fee of $10 to the Treasurer of the State. (Id. § 841.)

33. Revocation of License.—In case any cold storage warehouse, or any part thereof, shall at any time be found by the State Dairy and Food Commissioner to be in an insanitary condition, or not properly equipped for its intended use, he shall notify the licensee of such condition and upon the failure of the licensee to put such cold storage warehouse in a sanitary condition or to properly equip the same for its intended use, within a time to be designated by the State Dairy and Food Commissioner, he shall revoke such license. (Id. § 842.)

34. Records of Storage—Reports—Access.—Every such licensee shall keep accurate records of the articles of food received in and of the articles of food withdrawn from his cold storage warehouse, and the State Dairy and Food Commissioner shall have free access to such records at any time. Every such licensee shall submit a monthly report to the State Dairy and Food Commissioner, setting forth in itemized particulars the quantities and kinds of articles of food in his cold storage warehouse. Such monthly report shall be filed on or before the fifth day of each month, and the reports so rendered shall show the conditions existing on the last day of the preceding month and a summary of such reports shall be prepared by the State Dairy and Food Commissioner, and shall be open to public inspection on or before the 10th day of each month. (Id. § 843.)

35. Supervision by State Dairy and Food Commissioner.—The State Dairy and Food Commissioner shall inspect and supervise all cold storage warehouses and make such inspection of articles of food therein as he may deem necessary to secure the proper enforcement of this title, and he shall have access to all cold storage warehouses at all reasonable times. The State Dairy and Food Commissioner may appoint such person as he deems qualified to make any inspection under this title. (Id. § 844.)

36. Articles Not Subject to Storage.—No article of food intended for human consumption shall be placed, received, or kept in any cold storage warehouse, if diseased, tainted, otherwise unfit for human consumption, or in such condition that it will not keep wholesome for human consumption. No article of food, for use other than for human consumption, shall be placed, received, or kept in any cold storage warehouse unless previously marked, in accordance with forms to be prescribed by the State Dairy and Food Commissioner, in such a way as to indicate plainly the fact that such article of food is not to be sold or used for human food. (Id. § 845.)

37. Deposits—Markings—Removals.—No person, firm, or corporation shall place, receive, or keep in any cold storage warehouse in this State articles of food unless the same shall be plainly marked, stamped. or tagged, either upon the container in which they are packed, or upon the article of food itself, with the date when placed therein; and no person, firm, or corporation shall remove, or allow to be removed, such article of food from any cold storage warehouse unless the same shall be plainly marked, stamped, or tagged, either on the container in which it is enclosed or upon the article of food itself, with the date of such removal, and such marks, stamps, and tags shall be prima facie evidence of such receipt and removal and of the dates thereof. All articles of food in any cold storage warehouse at the time this title goes into effect shall, before being removed therefrom, be plainly marked, stamped, or tagged with the date when this title goes into effect and the date of removal therefrom. (Id. § 846.)

38. Period of Storage—Extension—Reports—Limitations.—No person, firm, or corporation shall hereafter keep or permit to remain in any cold storage warehouse any article of food which has been held in cold storage either within or without the State, for a longer aggregate period than twelve months, except with the consent of the State Dairy and Food Commissioner, as hereinafter provided. The State Dairy and Food Commissioner shall, upon application during the twelfth month, extend the period of storage beyond twelve months for any particular article of food, provided the same is found upon examination to be in proper condition for further cold storage. The length of time for which such further storage is allowed shall be specified in the order granting the permission. A report on each case in which such extension of storage may be permitted, including information relating to the reason for the action of the State Dairy and Food Commissioner, the kinds and amounts of the articles of food for which the storage period

was extended, and the length of time for which this continuance was granted, shall be filed, open to public inspection, in the office of the State Dairy and Food Commissioner, and shall be included in his annual report. Such extension shall be not more than sixty days; a second extension of not more than sixty days may be granted upon a re-examination, but the entire extended period shall be not more than one hundred and twenty days in all. (Id. § 847.)

39. Restorage—Change of Warehouses—Conditions.—It shall be unlawful to return to any cold storage warehouse any article of food which has been once released from storage for the purpose of placing it on the market for sale. It shall be unlawful to transfer any article of food from one cold storage warehouse to another if such transfer is made for the purpose of avoiding any provision of this title, and such transfer shall be unlawful unless all prior stampings, markings, and taggings upon such article shall remain thereon. (Id. § 849.)

40. Rules and Regulations.—The State Dairy and Food Commissioner may make all necessary rules and regulations to carry this title into effect. Such rules and regulations shall be filed in the Commissioner's office, and shall take effect five days after such filing. (Id. § 850.)

41. Punishments.—Any person, firm, or corporation violating any provisions of this title shall be guilty of a misdemeanor and shall upon conviction be punished for the first offense by a fine not exceeding $100.00, and for the second or any subsequent offense by a fine of not exceeding $299.00, or by imprisonment of not more than six months, or by both such fine and imprisonment in the discretion of the court. (Id. § 851.)

42. Construction.—This title shall be so interpreted and construed as to effect its general purpose to make uniform the law of those States which enact it. (Id. § 852.)

43. Citation.—This title may be cited as the Uniform Cold Storage Act. (Id. § 853.)

NOTE: See also Nos. 24, 26, 69, 74 and 119.

Confectionery.

See Nos. 8, 24 and 119.

Dairy Products—Substitutes for Dairy Products.

44. Milk Standard, Skimmed Milk.—Every person who, by himself, his agent or servant, or as the agent or servant of any other person, shall sell, exchange, deliver, or offer to sell, exchange, or deliver, or have in his possession with intent to sell, exchange, or deliver any milk which is not whole milk or which contains less than 3.2 per cent butter fat, or less than 12 per cent solids; or any milk from which any cream has been removed which is not labeled or sold as "skimmed milk," or any milk which contains any coloring matter or preservatives, or which is impure, unwholesome, or adulterated; or any milk from any cow, which is diseased or fed upon any food which is in a state of putrefaction or is deleterious to health, shall be guilty of a misdemeanor; provided, that the above standard of butter fat shall not apply to milk sold to creameries or condensed milk factories. (C. L. 1917, § 1933.)*

45. Id. Diluted, Evaporated Milk.—No person shall sell, exchange, deliver, or have in his custody or possession with intent to sell, exchange, or deliver milk from which the cream or any part thereof has been removed, unless in a conspicuous place, above the center, upon the outside of every vessel, can, or package from or in which milk is sold, the words "skimmed milk" are distinctly marked in uncondensed gothic letters, each not less than one inch in height. Such skimmed milk shall contain not less than nine per cent of milk solids, exclusive of fats. No person shall sell, exchange, or deliver, or have in his custody or possession with intent to sell, exchange, or deliver, any evaporated milk which has been diluted to represent the proportions of natural milk unless in a conspicuous place above the center, upon the outside of every vessel, can, or package from or in which such milk is sold, the words, "diluted, evaporated milk," are distinctly marked in extended gothic letters, each not less than one inch in height. (Id. § 1934.)

46. Tests to Determine Quality of Milk.—Proofs of adulterations and skimming may be made with such standard tests and lactometers as are used to determine the quality of milk, or by chemical analysis. Cream of standard purity, shall be cream produced from normal milk, free from all kinds of additions. There shall be recognized three standards of percentage of cream, known as first,

*For the penalty for violating sections 1933-1948, see No. 16.

second, and third grades. The minimum percentage of the first grade shall be not less than thirty per cent. The minimum percentage of the second grade shall be not less than twenty-four per cent. The minimum percentage of the third grade shall be not less than eighteen per cent; provided, that no person shall sell cream containing a less percentage of butter than is represented. The sale of cream other than in conformity with the foregoing standard is prohibited. (Id. § 1935.)

47. Sale of Adulterated Dairy Products Prohibited.—Every person who by himself, his agent, servant, or as the agent or servant of any other person, shall sell, exchange, deliver, or consign, or offer to sell, exchange, deliver, or consign, or have in his possession with intent to sell, exchange, deliver or consign, to any person any milk, cream, or other dairy product, or deliver to any creamery or factory to be manufactured into butter or cheese, any milk, cream, or other dairy product to which any boracic acid, formaldehyde, salicylic acid, viscogen, or other compound has been added, shall be guilty of a misdemeanor.

Every person who by himself, or by his agent, or servant, or as the agent or servant of any other person, shall sell, exchange, deliver, or consign, or offer to sell, exchange, deliver, or consign, or have in his possession with intent to sell, exchange, deliver, or consign, any butter not made wholly and exclusively from normal milk or cream, free from all additions, except salt and harmless coloring matter, as provided or permitted by law, or containing less than eighty per cent butter fat, or more than sixteen per cent moisture, or, if in package form, without the name and address of the manufacturer or distributor plainly and conspicuously printed upon the outside of the package, shall be guilty of a misdemeanor.

Every person who, as aforesaid, shall sell, exchange, deliver, or consign, or offer to sell, exchange, deliver, or consign, or have in his possession with intent to sell, exchange, deliver, or consign any cheese not made wholly and exclusively from normal milk or cream, salt, and rennet, with or without harmless coloring matter as provided and permitted by law, or containing less than thirty per cent butter fat, shall be guilty of a misdemeanor; provided, that cheese containing less than thirty per cent butter fat shall not be deemed a violation of this chapter if it shall be stamped with the words "skimmed milk cheese" with printed letters in plain gothic type, not less than one inch in length and so that the words cannot be easily erased, which label shall be placed upon the cheese and also upon the cloth covering the same and upon the top and side of every box or package containing such skimmed milk cheese. (Id. § 1936.)

48. Cattle Having Tuberculosis or Other Infectious or Contagious Diseases.—No person selling or exchanging, furnishing or delivering milk or dairy products shall have in his possession, at any place where milch cows are kept, any cattle having tuberculosis, or other infectious or contagious disease. It shall be the duty of the Dairy and Food Commissioner of this State, in case he shall find that cattle are kept in violation of the provisions of this chapter, to cause all such cattle having any contagious or infectious disease to be killed. (Id. § 1937.)

49. Premises, Etc., Shall be Kept in Clean and Sanitary Condition.—All premises, cans, bottles, and utensils employed or used in the production, transportation, sale, or delivery of milk or cream for consumption, or employed or used in the manufacture or sale of any food products, shall be kept in a clean and sanitary condition, and no person shall sell, offer for sale, or have in his possession with intent to sell, any milk, cream, or other food product not manufactured, transported, and offered for sale under such clean and sanitary conditions. The commissioner, or other person duly appointed by him, shall have power, when inspecting such cans, bottles, and utensils used in the production, transportation, manufacture, or sale of milk, cream, or other food products, to order the use of any such can, bottle, or other utensil, which is in an unclean or insanitary condition, discontinued until such can, bottle or other utensil be thoroughly cleaned and put in sanitary condition; and such person so inspecting such cans, bottles, and other utensils shall have power to brand, mark, or tag such can, bottle, or other utensil with the words, "This (can, bottle, or utensil) is unfit to contain (human food, milk or cream)" as the case may be; and any person who shall erase, change, remove, conceal, or obliterate any such brand, mark, or tag, except for the purpose of properly cleaning and putting such can, vessel, or utensil in a sanitary condition, shall be guilty of a misdemeanor, and be subject to the penalties hereinafter provided. (Id. § 1938.)

50. Bottles, Vessels, Etc., to be Cleaned.—Every person, firm, association, or corporation who receives any milk, cream, or ice cream, or other dairy product in any can, bottle, or vessel which has been transported over or is to be returned over any railroad, shall, immediately upon emptying such can, bottle, or vessel, cause the same to be thoroughly washed, cleansed, and aired, and every violation of this section shall be a misdemeanor. (Id. § 1939.)

51. Care of Cows—Milk From Unclean or Diseased Cows.—No person, firm, or corporation shall keep cows for the production of milk in a crowded condition, or in stables which are not properly ventilated, or which are filthy from an accumulation of animal refuse or from any other cause. Nor shall milk for food purposes be drawn from cows which are themselves in a condition of filth or uncleanliness, or from cows which are affected with tuberculosis, running sores, or any other form of disease, or from cows which are fed either wholly or in part upon distillery waste or brewery grains, or the waste of vinegar, or that of sugar factories not properly dried, or upon any other form of food which will produce milk which is unhealthful or unwholesome, or from cows within fifteen days before and five days after parturition; and all milk thus produced is hereby declared to be unclean, impure, unhealthful, and unwholesome milk; and any milk to which water or any other foreign substance has been added, or from which any part of the milk commonly known as strippings has been withheld, or which has been deprived, either wholly or in part, of any constituent naturally or normally contained in milk, is hereby declared to be adulterated milk. This section shall not be construed to prevent the feeding of ensilage from silos. The having in possession by any person, firm, or corporation producing milk for market, or for sale or exchange, or for manufacturing the same into articles of food, of distillery waste or brewery grains, or the waste of vinegar, or that of sugar factories not dried as aforesaid, or any other form of food which will produce milk which is unhealthful or unwholesome, shall be considered for the purpose of this chapter as prima facie evidence of an intent to use the same contrary to the provisions of this chapter. (Id. § 1940.)

52. Unlawful to Sell Milk, Etc., From Premises Where Contagious Disease Exists.—Every person, who, by himself, or his agent or servant, or as the agent or servant of any other person, shall sell, exchange, deliver, or offer to sell, exchange, deliver, or have in his possession with intent to sell, exchange, or deliver to any person any milk, cream, or any product thereof, from any cow kept upon any premises occupied by any family while any member of or person residing with such family may have any contagious disease; or before or until a permit shall have been issued by the proper health officer stating that the premises have been properly disinfected, shall be guilty of a misdemeanor. (Id. § 1941.)

53. Articles of Food Manufactured From Unwholesome Milk Prohibited.—No person, firm or corporation shall manufacture from unclean, impure, unhealthful, or unwholesome milk, or from cream from the same, any article of food. (Id. § 1942.)

54. Imitation Butter—Oleomargarine.—No person shall render or manufacture, sell, ship, consign, offer for sale, expose for sale, take orders for the future delivery of, or have in his possession with intent to sell, any article, product, or compound made wholly or partly out of any fat, oil, or oleaginous substance or compound thereof, not produced from unadulterated milk, or cream from the same, and without the admixture or addition of any fat foreign to said milk or cream, which shall be an imitation of yellow butter produced from pure, unadulterated milk or cream of the same with or without coloring matter; provided, that nothing in this title shall be construed to prohibit the manufacture or sale of oleomargarine in a separate and distinct form and in such manner as will advise the consumer of its real character, but it must be free from coloration or ingredients that cause it to look like butter, and free from any word, brand, or marking, either upon the package or upon any wrapper or upon the contents of the same, which would in any wise tend to deceive the purchaser or consumer. (Id. § 1943.)

55. Sale of Butter.—It shall be unlawful for any person to sell, or offer for sale, to any person who asks, sends, or inquires for butter, any oleomargarine, butterine, or any substance made in imitation or semblance of pure butter, and not made entirely from milk of cows, with or without coloring matter. (Id. § 1944.)

56. Oleomargarine—Butterine.—It shall be unlawful for any person to expose for sale oleomargarine, butterine, or any similar substance, not marked and distinguished on the outside of each tub, package, or parcel thereof by a placard with the words "oleomargarine," or "butterine," and not having also upon the exposed contents of every open tub, package, or parcel thereof a conspicuous placard with the word "oleomargarine," or "butterine," and not having also upon the exprinted in plain uncondensed gothic letters not less than one inch long, and to contain no other words thereon. (Id. § 1945.)

57. Id. Sale of.—It shall be the duty of every person who sells oleomargarine, butterine, or any similar substance, from any dwelling, store, office, or public market, to have conspicuously posted thereon the placard or sign in letters not

less than four inches in length, "oleomargarine sold here," or "butterine sold here." Such placard shall be approved by the Dairy and Food Commissioner. (Id. § 1946.)

58. **Id.**—It shall be unlawful for any person to peddle, sell, solicit orders for the future delivery of, or deliver from any vehicle, oleomargarine, butterine, or any other similar substance, without having on the outside of both sides of said vehicle the placard in uncondensed gothic letters not less than three inches in length, "oleomargarine" or "butterine." (Id. § 1947.)

59. **Oleomargarine, Etc., in Hotels.**—It shall be unlawful for any person to furnish, or cause to be furnished, in any hotel, boarding house, restaurant, or at any lunch counter, oleomargarine, butterine, or any similar substance, to any guest or patron of said hotel, boarding house, restaurant, or lunch counter, without first notifying each guest or patron that the substance so furnished is not butter. (Id. 1948.)

60. **Renovated Butter to be Branded—License for Sale of.**—No person or persons, firm or corporation, by themselves or their agents or employees, shall sell, offer for sale, or expose for sale or have in his or their possession for sale any renovated butter, unless the same shall have printed upon each and every package, roll, print, square or any container of such renovated butter the words, "Renovated Butter," in letters not less than one-half inch in height, or who shall not have secured from the State Dairy and Food Commissioner, now existing under the laws of this State, a license as provided hereinafter. (Id. § 1963.)

61. **Renovated Butter Defined.**—The term renovated butter, as used in this chapter,* is hereby defined to mean and include butter that has been reduced to a liquid state, by melting, and drawing off such liquid or butter oil and churning or otherwise manipulating it in connection with milk or any product thereof. (Id. § 1964.)

62. **License—Term—Amount of.**—Any person or persons, firms or corporations, desiring to manufacture or deal in renovated butter shall make application to the State Dairy and Food Commissioner for license, and upon payment of license fee of the amount mentioned herein, to the State Dairy and Food Commissioner, said State Dairy and Food Commissioner shall issue to the applicant a license. All such licenses shall expire December 31st of each year and may be issued in periods of one year or six months, upon payment of a proportionate part of the license fee. Manufacturers of renovated butter within this State shall pay an annual license fee of $1,000; wholesale dealers shall pay an annual license fee of $400; retail dealers in such renovated butter shall pay an annual license fee of $50; hotels, restaurants, boarding houses and all other places where meals are served and payment is received therefor, either immediately or by the day, week, or month, where such renovated butter is used shall pay an annual license fee of $25. The term wholesale dealers, as used herein, includes all persons, firms or corporations, who shall sell renovated butter in quantities of ten pounds or more. The term retailers includes all persons who sell in quantities of less than ten pounds. All licenses while in force shall be conspicuously displayed in the place of business of the party or parties to whom they have been issued. The State Dairy and Food Commissioner shall require all persons holding manufacturers' or wholesale licenses, as provided in this chapter,* to keep a record in a form separate from all other business, in which every sale of renovated butter shall be recorded, giving the quantity sold, the name and location of the buyer and the place to which it was shipped. Such record shall be accessible at all times to duly authorized representatives of the State Dairy and Food Commissioner. (Id. § 1965.)

63. **License to be Paid Into State Treasury.**—All license fees paid to the State Dairy and Food Commissioner under this chapter* shall be paid by said Dairy and Food Commissioner into the State treasury. (Id. § 1966.)

64. **Penalty.**—Whoever shall violate any of the provisions or sections of this chapter* shall be guilty of a misdemeanor, and shall, upon conviction thereof be punished for the first offense by a fine of not less than $25 nor more than $100, or by imprisonment in the county jail for not less than ten days and not exceeding thirty days; and for each subsequent offense by a fine of not less than $50, nor more than $200, or by imprisonment in the county jail for not less than twenty days nor more than 100 days, or both such fine and imprisonment, at the discretion of the court. (Id. § 1967.)

65. **County Attorney Must Prosecute—Fines, Where Paid.**—It shall be the duty of the county attorney of each and every county in the State, upon application, to attend to the prosecution in the name of the State of any action brought for the violation of any of the provisions of this chapter* within his district. All

*Included in Nos. 60-65.

of the fines imposed for the violation of any of the provisions of this chapter, shall be paid to the county in which the fine is imposed. (Id. § 1968.)

66. **Duties of State Dairy and Food Commissioner.**—It shall be the duty of the State Dairy and Food Commissioner or his deputies to visit, as frequently as they deem necessary, all creameries, cheese factories, condensed milk factories, dairies where milk and cream are bottled or prepared for sale and farm dairies in the State of Utah, and inspect and score the same according to the score cards authorized by the Bureau of Animal Industry of the United States Department of Agriculture. A copy of the score cards shall be left with the owner, and such information given as will assist the producer to improve the sanitary conditions or remedy such defects as the score card indicates. A copy of the score card shall be kept on file in the Commissioner's office. All creameries, cheese factories, condensed milk factories, and dairies where milk and cream are bottled or prepared for sale and farm dairies falling below fifty points in the rating as indicated by the score card are hereby declared to be in an insanitary condition, and the State Dairy and Food Commissioner shall immediately proceed against them according to law. (Id. § 1970.)

67. **Use of Babcock Test.**—In the use of the Babcock test, the standard milk measures or pipettes shall have a capacity of 17.6 cubic centimeters, and the standard test tubes or bottles for milk shall have a capacity of 2 cubic centimeters for each 10 per cent marked on the necks thereof; cream shall be tested by weight and the standard unit for testing shall be 18 grams, and it is hereby made a misdemeanor to use any other standards of milk or cream measure where milk or cream is purchased by or furnished to creameries or cheese factories and where the value of said milk or cream is determined by the percentage of butter fat contained in the same or wherever the value of milk or cream is determined by the percentage of butter fat contained in the same by the Babcock test. In sampling cream or milk from which composite tests are to be made to determine the percentage of butter fat contained therein, no such sample or sampling shall be lawful unless a sample be taken from each weighing and the quantity thus used shall be proportioned to the total weight of the cream or milk tested. Every person, corporation, or company operating a creamery when using the Babcock test as a standard to determine the value of any milk or cream received or brought by such person, corporation, or company to be manufactured into butter, shall, when paying for such milk or cream, include, in every statement or check issued to any patron in payment thereof, a statement of the number of pounds of butter fat for which payment is made. Any manufacturer, merchant, dealer, or agent in this State who shall offer for sale or sell a milk pipette or measure, test tube, or bottle, which is not correctly marked or graduated as herein provided, shall be guilty of a misdemeanor. It shall be unlawful for the owner, manager, agent, or any employee of a cheese factory, creamery, or condensed milk factory to falsely manipulate or under-read or over-read the Babcock test or any other contrivance used for determining the quality or value of milk or cream, or to make any false determination by said Babcock test or otherwise. (Id. § 1975.)

68. **Penalty.**—Whoever shall violate any of the provisions of this chapter* shall be guilty of a misdemeanor, and shall, upon conviction thereof, be punished by a fine of not less than $25 nor more than $200, or by imprisonment in the county jail for not less than ten days nor more than thirty days; or by both such fine and imprisonment, at the discretion of the court. (Id. § 1976.)

69. **Unfair Discrimination—Penalty.**—Any person, firm, company, association, or corporation, foreign or domestic, doing business in the State of Utah and engaged in the business of buying milk, cream or butter fat for the purpose of manufacture or sale, or of buying poultry or eggs for the purpose of sale or storage, that shall, for the purpose of creating a monopoly or destroying the business of a competitor, discriminate between different sections, communities, localities, cities or towns of this State by purchasing such commodity or commodities at a higher price or rate in one section, community, location, city, or town than is paid for the same commodity by said person, firm, company, association, or corporation in another section, community, locality, city, or town, after making due allowance for the difference, if any, in the grade or quality, and in the actual cost of transportation from the point of purchase to the point of manufacture, sale, or storage, shall be deemed guilty of unfair discrimination, which is hereby prohibited and declared to be unlawful; and any person, firm, company, association or corporation, or any officer, agent, receiver or member of such firm, company, association, or corporation, found guilty of unfair discrimination, as herein defined, shall be punished by a fine in any sum not more than $5,000, or by im-

*Nos. 66-68.

prisonment in the county jail not exceeding one year, or by both such fine and imprisonment. (Id. § 8336.)

70. Dairy Tuberculin Test.—Every person[,] firm or corporation owning or keeping one or more cattle for dairy purposes, shall, upon notice from the State Veterinarian or his representative, or the United States Bureau of Animal Industry, assemble such cattle at the time and place designated in such notice for the purpose of testing same for tuberculosis. Such notice shall be given to said owners of dairy cattle, provided, that the provisions of this chapter, shall not apply to what is known as range cattle or branded cattle raised in pasture or open range, or to cattle imported for exhibition purposes or resale on commission and provided further that such exception shall not apply for a longer time than the exhibition period or in case of resale on commission for a longer period than ten days and provided further that the State Board of Agriculture shall be notified of arrival by the importer as provided in the next preceding section. Any transportation company which shall accept shipment of any live stock without certificate of health accompanying the bill of lading as provided in section 196,* or any person violating any of the provisions of this chapter shall be deemed guilty of a misdemeanor. (Id. § 197, as amended L. 1927, c. 45.)

71. Imitation Milk Defined.—For the purposes of this act certain manufactured substances, certain mixtures and compounds shall be known and designated as "imitation milk," namely: (a) any mixture or compound composed of skim milk or condensed, evaporated or powdered skim milk and any edible oil or fat other than natural milk fat, whether with or without any other ingredient or ingredients; (b) any mixture or compound made in imitation or semblance, or having the appearance or semblance of milk or condensed or evaporated milk, or when so made or having such appearance or semblance calculated or intended, whether by intent of the compounder or other person, or by reason of the appearance or other characteristic of the mixture or compound; for use or disposition as or for milk, or as or for condensed or evaporated milk or to induce its purchase, or use as or for milk or condensed or evaporated milk. (L. 1921, c. 45, § 1.)

72. Labeling.—Each person, who by himself, or another, lawfully manufactures any imitation milk, or any substitute that may be used as and substituted for milk or condensed or evaporated milk, shall mark the same by printing, stamping or stenciling upon the sides or ends of each case, box, carton, or other package, in which that article or substance shall be packed and handled, in a clear manner, in the English language, the words, "imitation milk," in printed letters in plain Roman type, each of which shall not be less than one inch in height and one-half inch in width; and in addition to the above shall prepare a statement, printed in plain Roman type, of a size not smaller than pica, stating in the English language its name, and the name and address of the manufacturer or distributor and also the name and the actual percentages of the various ingredients used in the manufacture of such imitation milk; and shall place a copy of said statement within and upon the contents of each case, box, carton, or other package, and next to that portion of each case, box, carton, or other package as is commonly and most conveniently opened; and in addition thereto shall label each bottle, can, container, or other package containing imitation milk with the words, "imitation milk," printed in letters of plan Roman type, each of which shall be not less than one-fourth inch in height and one-eighth in width, and said words shall appear upon the main or principal label of said bottles, cans, containers, or other packages containing any imitation milk, and no wording thereon shall be more prominent, and in addition thereto said main or principal label shall contain or bear the words: "Do not use in place of milk for infants" in plain legible type. (Id. § 2.)

73. Adulterated.—Imitation milk, not condensed or evaporated, shall be deemed adulterated, within the meaning of this act if it contains less than three and two-tenths per cent of edible fats, or oils, 12 per cent solids, and imitation milk, if evaporated or condensed, shall be deemed adulterated within the meaning of this act if it contains less than seven and eight-tenths per cent of edible fats or oils, and 25 per cent solids. (Id. § 3.)

74. Licenses—Fees.—No person, firm or corporation shall engage in the business or occupation of manufacturing, selling, dealing, in or furnishing imitation milk, without first having applied for and obtained a license so to do as hereinafter provided. Any person, firm or corporation dealing in or engaged in the business or occupation of manufacturing, selling, dealing in or furnishing to his, its or their patrons, imitation milk, as in this act defined shall first make application each year to the State Dairy and Food Commissioner for a license, and upon payment of license fee of the amount mentioned herein to the State Dairy and Food Com-

*Relates to imported cattle. Omitted herein.

missioner, said commissioner shall issue to the applicant a license. All such licenses shall expire on December 31st, of each year, and may be issued in periods of one year or six months on payments of a proportionate part of the license fee; provided that no license shall be issued for a period of less than six months. The fee for issuing an annual license to manufacturers of any of the said substances within this State shall be one hundred dollars; for issuing to wholesale dealers in any of said substances the fee shall be ten dollars; for issuing to retail dealers in any of said substances the fee shall be one dollar. The term "wholesale dealer," as used in this section, includes all persons, firms, or corporations who sell any of said substances in quantities of one full case or more at a time or in the same transaction. The term "retail dealer" includes all persons who sell only in quantities of less than three cases. All licenses while in force shall be kept conspicuously displayed in the places of business of the party or parties to whom they have been issued. It shall be unlawful for any person, firm or corporation to manufacture, buy, sell, deal in or furnish to his, its or their patrons, or to have in their possession, for any purpose whatsoever other than for the consumption in his own family, or for transportation in case of a common carier, or for the purpose of storage in case of a warehouse or cold storage company, any imitation milk or similar substances designed to be used as a substitute for milk or for condensed or evaporated milk without having first applied for and obtained the license required by this act. (Id. § 4.)

75. Penalty.—Any person, firm or corporation found guilty of violating any of the provisions of this act shall be guilty of a misdemeanor, and any article found in his or its possession in violation of this act shall be subject to confiscation and may be destroyed by the State Food and Dairy Commissioner or his deputies. (Id. § 5.)

76. False Advertisement.—Every person, firm, or corporation, that shall make or use any false or fraudulent statements or representations in advertising imitation milk as defined in section 1, of this act; in any pamphlets, newspapers, periodical, or advertisement shall be guilty of a misdemeanor. (Id. § 6.)

77. Enforcement.—It shall be the duty of the State Dairy and Food Commissioner to enforce the provisions of this act; provided, that nothing in this act shall be construed to relieve any city or county or State Board of Health or other city or county official from enforcing the provisions of this act. (Id. § 7.)

78. Manufacturer for Sale to Report—Confidential Information.—Every person who manufactures for sale in quantities exceeding fifty pounds per week, butter, cheese, condensed milk or ice cream in this State shall report to the State Board of Agriculture annually at the end of each year as follows:

1. The name and address of the manufacturer.
2. Number of pounds of milk purchased.
3. Number of pounds of butter fat used in the manufacture of butter.
4. Number of pounds of butter fat used in the manufacture of cheese.
5. Number of pounds of butter fat used in the manufacture of ice cream and other products.
6. Number of pounds of cheese made.
7. Number of pounds of butter made.
8. Number of pounds of condensed milk manufactured; provided, that the amount of butter, cheese and condensed milk and ice cream made by any such person, firms or corporation shall be confidential information and shall not be exposed to public inspection without their consent. (L. 1925, c. 88, § 1.)

79. Testing by Licensed Testers—License—Issue—Fee.—The testing, and sampling of milk or cream or other dairy products purchased on the basis of the amount of butter fat contained therein shall be done by licensed testers, who shall be responsible for the operation of the Babcock test, or other test approved by the State Board of Agriculture in the testing of such dairy products, the licensed tester will, upon request, furnish seller and with the information that is secured from his test.

(1) The license shall be issued by the State Board of Agriculture upon application accompanied by a certificate of proficiency and the payment of an annual license fee of $2.50.

(2) The certificate of proficiency shall be issued by a duly authorized agent of the State Board of Agriculture upon satisfactory evidence of ability to accurately operate the Babcock or other test. Examination will be given at stated times and places to applicants for such license. Each license shall expire on December 31st, annually, but may be renewed without re-examination by the State Board of Agriculture.

(3) Application for such license shall be made upon blanks furnished by the State Board of Agriculture. No license or renewal shall be transferable. Each

license shall be subject to revocation by the State Board of Agriculture upon presentation of sufficient evidence that the licensee has violated any of the laws, rules or regulations prescribed by the State Board of Agriculture or has violated any of the laws of the State relating to milk or cream or other dairy products.

(4) With the approval of the Department of Agriculture any licensee may for valid reasons appoint a person to act for him, not to exceed a period of fourteen days. (Id. § 2.)

80. Penalty.—Any person, firm or corporation violating any of the provisions of this act shall be deemed guilty of a misdemeanor. (Id. § 3.)

NOTE: See also Nos. 1 et seq., 24, 31 et seq., 119, 205 et seq., and 243.

Eggs.

81. Eggs—Unfit for Food.—No person, firm or corporation shall sell, or offer, or expose for sale, or traffic in, any egg unfit for human food unless the same is broken in shell and then denatured so that it cannot be used for human food. For the purpose of this act an egg shall be deemed unfit for human food if it be addled or mouldy; if it contains black spot, black rot, white rot, or blood ring; or if it has an adherent yolk or a bloody or green white (albumen); or if it consist in whole or in part of a filthy, decomposed or putrid substance. (L. 1925, c. 85, § 1.)

82. Words and Phrases Defined.—Unless the context otherwise requires, the words and phrases employed in this act shall have the meanings hereinafter defined:

(a) "Addled" or "white rot," means putrid or rotten.

(b) "Mouldy" means that through improper care the egg has deteriorated so that mould spores have formed within it.

(c) "Black spot" means that mould or bacteria have developed in isolated areas inside the shell.

(d) "Black rot" means that the egg has deteriorated to such an extent that the whole interior presents a blackened appearance.

(e) "Blood ring" means that germs have developed to such a stage that blood is formed.

(f) "Adherent yolk" means that the yolk has settled to one side and becomes fastened to the shell.

(g) "Candling" as used herein means determination of the condition of any egg by holding it before a strong light in such a way that the rays of light will shine through the egg and reveal its contents to the operator by the use of an apparatus and method which shall be approved by the State Board of Health.

(h) "Standard size eggs" as used herein refers to eggs weighing twenty-two ounces or over to the dozen.

(i) "Pullet size eggs" as used herein refers to eggs weighing under twenty-two ounces to the dozen. (Id. § 2.)

83. Grades or Standards—Rules.—It shall be the duty of the State Board of Agriculture to establish forthwith, and from time to time, grades or standards of quality and size or weight governing the sale of eggs as permitted by this act, and to make suitable rules and regulations for otherwise carrying out its provisions. Such rules, regulations, and standards of quality and weight shall be filed in the office of the State Board of Agriculture and shall be in effect thirty days after such filing. (Id. § 3.)

84. Unlawful Sale of Eggs.—It shall be unlawful for any person, firm or corporation to sell or offer or expose for sale any eggs which are intended for human consumption without notifying by suitable signs or label the persons purchasing or intending to purchase the same of the exact grade or quality according to the standards prescribed by the State Board of Agriculture, and if these eggs are not standard sized eggs, they shall be labeled "pullet eggs." (Id. § 4.)

85. Records.—Every person, firm or corporation shall in selling, buying or exchange of eggs, keep such candling records as may be required by the rules and regulations of the State Board of Agriculture and all such records shall be open at all reasonable times for examination by accredited inspectors or representatives of the State Board of Agriculture. (Id. § 5.)

86. Effect of Guaranty.—No retailer shall be prosecuted under the provisions of this act when he can establish a guaranty from the person from whom any eggs are purchased, to the effect that said eggs at the time of such purchase conformed to the grade or quality and the size or weight as stated in the invoice, provided said eggs have been labeled by the retailer for resale in accordance with the purchase invoice, and provided, further, that said guaranty shall not exempt from prosecution any retailer who may have kept the eggs, covered by such guaranty, for

such time after their purchase or under such conditions as to cause said eggs to deteriorate into a lower grade or standard. (Id. § 6.)

87. **Penalty.**—Every person who violates any of the provisions of this act shall be guilty of a misdemeanor, and upon conviction shall be punished by a fine of not less than twenty-five dollars ($25.00) nor more than one hundred dollars ($100.00). (Id. § 7.)

NOTE: See also Nos. 31 et seq. and 69.

Feeding Stuffs.

88. **Commercial Feeding Stuffs.**—The term "commercial feeding stuffs" shall be held to include all feeding stuffs used for feeding live stock and poultry, except whole seeds or grains, the unmixed meals made directly from the entire grains of corn, wheat, rye, barley, oats, buckwheat, flaxseed, kaffir and milo; whole hays, straws, cotton seed hulls and corn stover when unmixed with other materials. (L. 1919, c. 39, § 1, as amended L. 1921, c. 2, sub. c. 9.)

89. **Certifying Label.**—Every lot or parcel of commercial feeding stuffs sold, offered or exposed for sale or distributed within this State shall have affixed thereto a tag or label in a conspicuous place on the outside thereof containing a legible and plainly printed statement in the English language, clearly and truly certifying:

(a) The net weight of the contents of the package, lot or parcel;
(b) The name, brand or trade-mark;
(c) The name and principal address of the manufacturer or distributor of the product;
(d) The minimum per centum of crude protein;
(e) The minimum per centum of crude fat;
(f) The maximum per centum of crude fiber;
(g) The crude protein, crude fat and crude fiber shall be determined by the methods in force at the time by the association of official agricultural chemists of the United States. (Id. § 2.)

90. **Statement by Manufacturer, Dealer, Etc., to be Filed.**—Before any manufacturer, importer, jobber, firm, association, corporation or person shall sell, offer or expose for sale or distribute in this State any commercial feeding stuffs, he or they shall file with the State Board of Agriculture a certified copy of the statement specified in section 2, for each brand of commercial feeding stuffs, said certified copy to be accompanied, when the State Board of Agriculture shall so request, by a sealed package containing at least one pound of the commercial feeding stuffs to be sold, offered or exposed for sale or distributed in this State, and the company or person furnishing said sample shall thereupon make affidavit that the said sample is representative of the commercial feeding stuffs offered for registration. (Id. § 3.)

91. **Statement on Cards.**—Whenever any commercial feeding stuffs as defined in section 1 is offered or exposed for sale in bulk or otherwise stored, the manufacturer, importer, jobber, firm, association, corporation or person keeping the same for sale shall keep on hand cards; said cards to be furnished by the manufacturer of the product, upon which shall be printed the statement required by the provisions of section 2, and when such feeding stuffs are sold at retail in bulk or in packages belonging to the purchaser, the manufacturer, importer, jobber, firm, association, corporation or person shall furnish the purchaser cards upon which appears the statement required by the provisions of section 2. (Id. § 4.)

92. **Deceptive Brand or Mark.**—The State Board of Agriculture shall have the power to refuse to register any commercial feeding stuffs under a name, brand or trade-mark which would be misleading or deceptive, or which would tend to mislead or deceive as to the materials of which it is composed, or when the specific name of each and all ingredients used in its manufacture are not stated. It shall also have the power to refuse to register more than one commercial feeding stuff, under the same name or brand when offered by the same manufacturer, importer, jobber, firm, association, corporation or person. Should any commercial feeding stuffs be registered in this State, and it is afterward discovered that such registration is in violation of any of the provisions of this chapter, the State Board of Agriculture shall have the power to cancel such registration. The State Board of Agriculture shall have the power to refuse to allow any manufacturer, importer, jobber, firm, association, corporation or person to lower the guaranteed analysis or change the ingredients of any brand of his or their commercial feeding stuffs during the term for which registered, unless satisfactory reasons are presented for making such change or changes. (Id. § 5.)

93. **One Statement Sufficient.**—Whenever a manufacturer, importer, jobber, firm, association, corporation or person manufacturing or selling a brand of com-

mercial feeding stuffs shall have filed the statement required by section 3, no other agent, importer, jobber, firm, association, corporation or person shall be required to file such statement. (Id. § 6.)

94. Access to Premises—Analysis of Samples.—The State Board of Agriculture is authorized in person or by deputy to have free access to all places of business, mills, buildings, carriages, cars, vessels, and parcel of whatsoever kind used in the manufacture, transportation, importation, sale or storage of any commercial feeding stuffs, and shall have the power and authority to open any parcel containing or supposed to contain any commercial feeding stuffs and to take therefrom such samples as he may deem necessary upon tender and full payment of the selling price of said samples, and said board shall cause to be analyzed as often as it may deem necessary at least one sample so taken of every commercial feeding stuffs that is found sold, offered or exposed for sale or distributed in this State. (Id. § 7.)

95. Certifying to Prosecuting Attorney—Prima Facie Evidence.—If it appears that any of the provisions of this chapter have been violated, the State Board shall certify the facts to the proper prosecuting attorney and furnish that officer with a copy of the results of the analysis or other examination of such feeding stuffs duly authenticated by the analyst or other officer making the determination, under the oath of such officer. In all prosecutions arising [under] the provisons of this chapter, certificates of the analyst or other officer making the examination or analysis, when duly sworn to by such officer, shall be prima facie evidence of the fact or facts therein certified. (Id. § 8.)

96. Penalty for Violations—Adulterations—Seizure—Release.—Any manufacturer, importer, jobber, firm, association, corporation or persons who shall sell, offer or expose for sale or distribute in this State, any commercial feeding stuffs without having attached thereto or furnished therewith such labels, or tags, as required by the provisions of this chapter, or who shall use the required labels or tags, a second time, or use a counterfeit of such labels or tags, or who shall impede, obstruct, hinder or otherwise prevent or attempt to prevent said State board or its authorized agent in the performance of his duty in connection with the provisions of this chapter or who shall sell, offer or expose for sale or distribute in this State any commercial feeding stuffs as defined in section 1, without complying with the requirements of the provisions of this chapter, or who shall sell, offer or expose for sale or distribute in this State any commercial feeding stuffs which contain a smaller per centum of crude protein or crude fat, or a larger per centum of crude fiber than is certified to be contained therein, or who shall fail to properly state the specific name of each and every ingredient used in its manufacture, shall be deemed guilty of a violation of the provisions of this chapter and upon conviction thereof shall be fined not more than one hundred dollars ($100.00) for the first violation and not less than one hundred dollars ($100.00) for each subsequent violation. Any manufacturer, importer, jobber, firm, association, corporation or person who shall mix or adulterate any feeding stuffs with any substance or substances injurious to the health of live stock or poultry shall be deemed guilty of a violation of the provisions of this chapter, and in addition to the penalty provided in this section, the lot of feeding stuffs shall be subject to seizure, condemnation and sale, as the court may direct; the proceeds from such sale to be covered into the State treasury. The court may in its discretion release the feeding stuffs so seized when the reqirements of the provisions of this chapter have been complied with, and upon payment of all costs and expenses incurred by the State in any proceedings connected with such seizure. (Id. § 9.)

97. Enforcement of Chapter—Tags, Etc.—Preventing Sales.—The State Board of Agriculture is hereby empowered to enforce the provisions of this chapter and to prescribe the form of tags, stamps or labels to be used and to prescribe and enforce such rules and regulations relating to the sale of commercial feeding stuffs as it may deem necessary to carry into effect the full intent and meaning of this chapter, and shall have power to prevent the sale within the State of any commercial feeding stuffs which may be made in whole or in part of any noxious weeds or seeds. (Id. § 10.)

98. Analyses by State Chemist.—It shall be the duty of the State Chemist to analyze all samples of commercial feeding stuffs which may be submitted by the State Board of Agriculture and report in detail the results of his findings to the State board. (Id. § 11.)

NOTE. See also No. 24.

Fish.

See No. 31 et seq.

Flavoring Extracts—Flavoring Syrups.

99. **"Extracts" Defined.**—A flavoring extract is a solution in ethyl alcohol proper strength of the sapid or odorous principles derived from an aromatic pl or parts of the plant, with or without its coloring matter, and must conform name to the plant used in its preparation.

The flavoring extracts herein described are intended solely for food purpo and are not to be confounded with a similar preparation described in the Ph macopœia for medicinal purposes. The term flavoring extract includes solutic sold for food purposes as flavors, flavorings, essences, and tinctures.

Lemon extract is a flavoring extract prepared from oil of lemon, or fr lemon peel, or both, and must contain not less than five per cent by volume lemon oil.

Vanilla extract is a flavoring extract prepared from vanilla beans, with or without sugar or glycerine, and must contain, in one hundred cubic centimeters, the soluble matters from not less than ten grams of the vanilla bean.

A double extract is, or represents, twice the strength of an ordinary extract. In other words, a double extract of lemon must contain ten per cent of the oil of lemon. A triple extract of lemon must contain fifteen per cent oil of lemon.

A double extract of vanilla would mean that it contains the soluble matter of not less than twenty grams of vanilla bean per hundred cubic centimeters of the extract.

All extracts artificially prepared, that is, not made from the natural fruit, berry, bean, or other part of the plant, must be labeled in letters similar in size and immediately preceding the name of the article, "imitation," "substitute," or "artificial," and if artificially colored it must in like manner be labeled "artificially colored."

The standards of other flavoring extracts, unless otherwise provided, shall be the standards adopted by the United States Department of Agriculture and all extracts must be labeled with the name and address of the manufacturer or distributor thereof. (C. L. 1917, § 1930.)*

100. **Flavoring Syrups to be Labeled.**—Soda fountain syrups flavored with imitation flavoring extracts must be plainly and correctly labeled. If the containers of such syrups are not displayed to the customer so that the label is readily seen, conspicuous signs must be attached to the fountain where they can be readily seen by the customer. Said signs must be printed with letters not less than one-half inch deep and read as follows: "Some of the products served at this fountain are artificially flavored and colored and contain a trace of benzoate of soda." (Id. § 1972.)†

NOTE: See also No. 187.

Flour.

See Nos. 24 and 26.

Fruit Jelly, Fruit Jam, and Fruit Butter.

See No. 109.

Fruits, Vegetables, Etc.

101. **Fruits and Vegetables Must be Cleaned Before Bottling or Canning.**—No person, firm or corporation shall bottle or can fruits or vegetables or their products and offer them for sale unless said fruits and vegetables have been previously washed in clean water and continuously changed preparatory to the canning or bottling. (C. L. 1917, § 1971.)†

102. **Infected Fruit—Disposal.**—It shall be unlawful to sell or offer for sale, or have in one's possession for sale or barter, any fruit which is or has been infected or infested with California peach blight, San Jose scale, or other scale insects, apple scab, codling moth larva or larvæ, peach twig borer, and the fact that such fruit bears mark of the above named pests shall be deemed conclusive evidence that such fruit is infected or infested within the meaning of this section, and it is hereby made the duty of the agricultural inspectors to prevent the sale of such infected or infested fruit and they are hereby given power to seize and destroy such infected or infested fruit whenever they shall find the same has been packed, sold, shipped, or offered for sale, or is being held in any warehouse, store, sales room,

*For penalty see No. 16.
†For penalty see No. 68.

or other place for the purpose of being sold, bartered, shipped or exposed for sale or barter. (Id. § 1900, as amended L. 1927, c. 47.)

103. Penalty.—Any person, firm or corporation violating any of the provisions of this chapter shall be deemed guilty of a misdemeanor. (C. L. 1917, § 1910, as amended L. 1921, c. 2, sub. c. 5.)

104. Closed Packages to be Branded—Definition.—It shall be unlawful to sell, ship, dispose of, or offer to sell or dispose of, or to have in one's possession for sale or shipment, any closed package of apples, pears, peaches, or apricots which is not marked in plain and legible manner with the name and address of the person, firm, or corporation in possession of the fruit at the time of packing; also the name of the variety or varieties of fruit, and the designation of grade of fruit, as prescribed by the State Horticultural Commission. The term "closed package," within the meaning of sections 8458-8461, shall refer to any box, barrel, basket, or other container, the contents of which cannot be seen or inspected without opening such package. (C. L. 1917, § 8458.)

105. Unlawful to Misbrand—Proviso.—It shall be unlawful to sell, or offer for sale, or have in one's possession for sale or shipment any package of fruit, whether closed or open, which is misbranded. A box, barrel, basket, or package of fruit shall be deemed misbranded within the meaning of sections 8458-8461 when it is marked in a plain legible manner with the name and address of any person, firm, or corporation other than in possession of the fruit at the time of packing; with any other than the correct variety name of the fruit, or any designation of grade which does not comply with the rules and regulations of the State Horticultural Commission; provided, that in case the correct variety name of the fruit is not known to the person, firm, or corporation responsible for the packing, the variety may be marked "unknown." (Id. § 8459.)

106. Inspector May Enter Premises.—Any person charged with the enforcement of sections 8458-8461 may enter upon any premises to make examination of any package of fruit suspected of being falsely marked. (Id. § 8460.)

107. Penalty.—Any person, firm, or corporation violating any of the provisions of the three next preceding sections shall be guilty of a misdemeanor. (Id. § 8461.)

108. Certification of Fruit, Farm Products.—The State Board of Agriculture or its duly authorized agents, inspectors or employees may investigate and certify to shippers or other interested parties the quality and condition of fruits, vegetables and other farm products under such rules and regulations as the board may prescribe, provided that certificates issued by said board or the duly authorized agents of the Board of Agriculture shall be received in all courts of the State of Utah as prima facie evidence of the truth of the statements therein contained. (L. 1925, c. 27, § 1.)

NOTE: See also Nos. 24, 26, 109, 181 and 245-246.

Jelly, Etc.

109. Articles to be Labeled "Imitation."—No person shall, by himself or another, either as principal, clerk or servant, directly or indirectly, manufacture for sale, have in his possession with intent to sell, offer or expose for sale, or sell as fruit jelly, jam or fruit butter, any imitation fruit jelly, jam or fruit butter, or other similar compound made or composed in whole or in part of glucose, dextrine, starch, or other substances under any name or designation whatever, unless the same shall be composed entirely of ingredients not injurious to health, and every can, pail, or package of such jelly, fruit jam, or fruit butter, sold, offered for sale, or kept for sale in this State, shall be distinctly and durably labeled in a conspicuous place immediately preceding the name of the article sold with the word "imitation" preceding the name of the fruit jelly, jam, or fruit butter the article is intended to imitate; provided, any fruit jelly, jam, or fruit butter containing no foreign ingredient other than glucose may be labeled and sold as "glucose" (or corn syrup) jelly, fruit jam, or fruit butter, as the case may be, to conform in name to the fruit or fruits used in its preparation. (C. L. 1917, § 1929.)*

Meat—Meat Products.

110. Inspection by Dairy and Food Commissioner—Meat to be Tagged—Unwholesome Meat to be Destroyed.—The State Dairy and Food Commissioner is hereby empowered to examine and inspect all cattle, sheep, swine, and goats be-

*For penalty see No. 16.

fore they enter into any slaughtering, packing, meat canning, rendering or similar establishment in which they are to be slaughtered and the meat and meat food products thereof are to be used or sold for human food; and all cattle, sheep, swine, and goats found on such inspection to show symptoms of disease shall be set apart and slaughtered separately from all other cattle, sheep, swine, or goats; and when so slaughtered, the carcasses of said cattle, sheep, swine, or goats shall be subject to a careful examination and inspection. The Dairy and Food Commissioner may also make a post mortem examination and inspection of the carcasses and parts thereof of all cattle, sheep, swine, and goats to be prepared for human food at any slaughtering, meat canning, salting, packing, rendering, or similar establishment in this State, and the carcasses and parts thereof of all such animals found to be sound, healthful, wholesome, and fit for human food shall be marked, stamped, tagged, or labeled as "inspected and passed"; and said inspectors shall mark, stamp, tag, or label "inspected and condemned" all carcasses and parts thereof of animals found to be unsound, unhealthful, unwholesome, or otherwise unfit for human food, and all carcasses and parts thereof thus inspected and condemned shall be destroyed for food purposes by the said establishment in the presence of the Dairy and Food Commissioner or his deputy. (C. L. 1917, § 1990.)

111. Sanitary Conditions—Rules and Regulations—Penalty.—All slaughtering and packing houses shall be maintained and conducted under sanitary conditions, and the State Dairy and Food Commissioner is hereby authorized and empowered to make rules and regulations to carry out the provisions of this chapter, and any person, firm, or corporation violating any of such rules shall be declared guilty of a misdemeanor. (Id. § 1991.)

112. Dairy and Food Commissioner May Co-operate With National Inspectors.—In establishments where animals are slaughtered for human food partly for consumption within this State and partly for interstate commerce, the Dairy and Food Commissioner may co-operate with the inspectors appointed by the National Government; and all inspections made by such inspectors under the provisions of such co-operation shall be deemed a compliance with the provisions of this chapter. (Id. § 1992.)

113. Provisions of This Chapter Not Applicable, When.—The provisions of this chapter shall not apply to any animals, or the carcasses or parts thereof, that are inspected and stamped by inspectors of the National Government. (Id. § 1993.)

114. Id.—The provisions of this chapter requiring the inspection of animals to be slaughtered shall not apply to animals slaughtered by any farmer for domestic use. (Id. § 1994.)

115. Id.—Any person who shall sell or offer for sale the carcasses or parts thereof of any animal enumerated in this chapter, which have been examined and condemned, shall be guilty of a misdemeanor. (Id. § 1995.)

NOTE: See also Nos. 24, 26, 31 et seq., 69, and 120.

Syrups.

See No. 100.

Vinegar.

116. Vinegar Standard—Penalty for Unlawful Action.—Every person, who, by himself, or by his agent or servant, or as the agent or servant of any other person, shall sell, deliver, exchange, or dispose of, or offer to sell, deliver, exchange or dispose of, or have in his possession with intent to sell, deliver, exchange, or dispose of, any vinegar without the name and address of the manufacturer or distributor in large letters in the English language upon the barrel or package containing such vinegar; or sell, deliver, exchange, or dispose of any distilled vinegar which contains less than five per cent, or more than five and one-half per cent, by weight, of absolute acetic acid, or dispose of any fermented vinegar which contains less than four per cent by weight of absolute acetic acid, or which contains any preparation of lead, copper, sulphuric acid, or any other mineral acid, vinegar eels, or ingredients injurious to health; or any vinegar made by fermentation or oxidation which is not branded on the barrel or package, "fermented vinegar," with the name of the fruit or substance from which such vinegar is made, or which is not free from foreign substance, or which contains less than one and three-fourths per cent, by weight, of solids contained in the fruit or grain from which such vinegar is fermented or less than two and one-half tenths of one per cent ash or mineral matter, the same being the product of the mineral from which such vinegar is manufactured; or any vinegar made wholly or in part from any distilled liquor which is not branded on the barrel or package "distilled vinegar" with the name of the material from which such liquor was made, and free from

harmful artificial coloring matter, shall be guilty of a misdemeanor. (C. L. 1917, § 1952, as amended L. 1925, c. 84.)*

117. Rectifier Only to Dilute.—No person or persons who sell vinegar, shall reduce by water or other mixtures the strength of vinegar purchased and sold by them, unless he is a licensed rectifier and mark in plain figures on said package or barrel, the strength of the vinegar still contained in the package. (Id. § 1953.)*

118. License for Rectifier.—No person shall be granted a license as a rectifier until he shall have made written application to the State Department of Agriculture, setting forth by affidavit that he is the age of 21 years or upwards, and until he shall have paid a license fee of the sum of $100.00 per year and until he shall have passed an examination satisfactory to the said State Department of Agriculture. (C. L. 1917, § 1953X, as added L. 1925, c. 84.)*

NOTE: See also Nos. 8 and 187.

Sanitation.

119. Insanitary Conditions in Hotels, Restaurants, Etc.—Every owner, proprietor, or person in charge of or operating or maintaining any restaurant, hotel, bakery, confectionery, or ice cream plant, or any store, place of storage, or plant where any article of food or drink is manufactured, stored, deposited, offered for sale or sold, who shall fail, neglect, or refuse to keep such place clean and in good sanitary condition; or who shall employ any person, who is afflicted with tuberculosis, syphilis, or any communicable disease in any such place, shall be guilty of a misdemeanor. The State Dairy and Food Commissioner, or any of his deputies, upon finding any violation of this section, may forthwith order such place to be made clean and sanitary; or, if he deems it necessary, may close or order such place closed, but failure to take any such action shall not relieve the offender from prosecution. (C. L. 1917, § 1954.)*

120. Slaughtering, Packing, and Similar Establishments to be Kept Sanitary.—All slaughtering, packing, meat canning, salting, rendering, or similar establishments shall be maintained and conducted under sanitary conditions, and shall be inspected under the following regulations by the State Dairy and Food Commissioner or his deputies:

1. All ceilings, walls, pillars, and the interior of each establishment, including partitions, shall be kept in a sanitary condition, and shall be whitewashed or painted once a year, or oftener if required. When floors or other parts of the building, or tables or other parts of the equipment are so old or in such poor condition that they cannot be readily made sanitary, they shall be removed and replaced by suitable materials. All establishments in which animals are slaughtered or meats and meat food products are prepared, cured, packed, stored, or handled shall be properly screened against flies and other vermin. Walks, platforms, or approaches leading into establishments shall be kept clean to prevent dirt being tracked into the same.

2. All tracks, trays and other receptacles, all chutes, platforms, racks, tables, and other appliances, and all knives, saws, cleavers and other tools and all utensils, machinery, and vehicles used in moving, handling, cutting, chopping, mixing, canning, or other processes shall be thoroughly cleaned before using.

3. The aprons, smocks, or other outer clothing worn by employees who handle meat or meat food products shall be of a material that is readily cleansed and made sanitary, and only clean garments shall be worn. Persons who handle meat or meat food products shall be required to keep their hands clean, and they shall be required also to pay particular attention to the cleanliness of their boots or shoes.

4. Persons affected with tuberculosis or any other communicable disease shall not be employed in any of the departments of establishments where carcasses are dressed, meat handled, or meat products are prepared. Any employee of such establishment who may be suspected of being so affected shall be reported by the inspector in charge to the manager of the establishment, and to the State Dairy and Food Commissioner, who in turn shall report such case to the Secretary of the State Board of Health.

5. Hogs must be kept at least one hundred feet from slaughtering houses and fed in clean troughs and pens. The offal of all slaughtered healthy animals, except hogs, may be fed to hogs; provided, that at least one-half of their daily rations consist of grain or vegetable matter. The offal of all hogs must be buried, burned, or tanked. The offal of animals that is not fed to hogs must be burned, buried or tanked.

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*For penalty see No. 16.

6. All yards, fences, pens, chutes, alleys, and other places belonging to the premises of such establishments, whether they are used or not, shall be maintained in a sanitary condition, and no nuisance shall be allowed in the establishment or on its premises.

7. The room or compartments in which meat or meat food products are prepared, cured, stored, packed, or otherwise handled shall be free from odors from toilet rooms, catch basins, casing departments, tank rooms, hide cellars or other similar places, and shall be kept free from flies and other vermin, by screening, or other methods. All rooms or compartments shall be provided with cuspidors of such shape as not readily to be upset and of such material and construction as to be readily disinfected, and employees who expectorate shall be required to use them.

8. Due care must be taken to prevent meat and meat food products from falling on the floor; and in the event of their having so fallen, they must be condemned or the soiled portions removed and condemned. When meat or meat products are being emptied into tanks some device, such as a metal funnel, must be used.

9. Only good, clean and wholesome water and ice shall be used in the preparation of carcasses, parts, meat or meat food products. Whenever there is any doubt regarding the sanitary condition of the water supply, notice shall be sent immediately to the State Dairy and Food Commissioner.

10. Wagons or cars in which meat or meat products are transported shall be kept in a clean and sanitary condition. All wholesalers and retailers conveying meat to the market are required to furnish ample and complete protection against contamination by flies, requiring covered and screened conveyances for this purpose. (Id. § 1974.)*

NOTE: See also Nos. 2-3, 24, 26, 31 et seq., 44 et seq., 101, and 110 et seq.

PART III.

Special Drug Laws.

Abortifacients.

120a. Indecent Exposure, Exhibiting, Writings, Etc.—Every person is guilty of a misdemeanor who willfully and lewdly, either: . . .

4. Writes, composes, or publishes any notice or advertisement of any such writing, paper, book, picture, print, or figure; or any notice or advertisement of any article, prescription, or preparation for producing or facilitating a miscarriage; . . . (C. L. 1917, § 8144.)

Insecticides and Fungicides.

121. Prohibitions.—It shall be unlawful for any person, firm or corporation to manufacture, import or sell, offer, keep or expose for sale or distribution within the State of Utah, any adulterated or misbranded insecticide or fungicide. (L. 1919, c. 82, § 1.)

122. Adulterations Defined—Classified.—For the purpose of this act an insecticide or fungicide shall be deemed to be adulterated: (a) In the case of Paris green: First, if it does not contain at least 50 per centum of arsenious oxide; second, if it contains arsenic in water-soluble forms equivalent to more than 3½ per centum of arsenious oxide; third, if any substance has been mixed and packed with it so as to reduce, or lower, or injuriously affect its quality or strength. (b) In the case of lead arsenate: First, if it contains more than 50 per centum of water; second, if it contains total arsenic equivalent to less than 12½ per centum of arsenic oxide (As_2O_5); third, if it contains arsenic in water-soluble forms equivalent to more than seventy-five one-hundredths of one per centum arsenic oxide (As_2O_5); fourth, if any substance has been mixed or packed with it so as to reduce, or lower, or injuriously affect its quality or strength. (c) In case of any insecticide or any fungicide other than Paris green and lead arsenate: First, if its strength or purity falls below the professed standard or quality under which it is sold; second, if any substance has been substituted wholly or in part for any

*For penalty see No. 68.

valuable constituent; third, if any valuable constituent has been wholly or in part abstracted; fourth, if it is intended for use on vegetation and contains any substance or substances injurious to vegetation. (Id. § 2.)

123. Misbranded—Labeling.—The term "misbranded" as used herein shall apply to all insecticides or fungicides (or articles which enter into the composition of insecticides or fungicides). For the purpose of this act an article shall be deemed to be misbranded: (a) In all cases: First, if the package or label shall bear any statement, design, or device regarding such article, or the ingredients, or substances contained therein which shall be false in any particular; second, if sold, offered or exposed for sale in package form and the quantity of the contents be not wholly and correctly marked on the outside of the package in terms of weight, measure or numerical count; third, if it be labeled or branded so as to deceive or mislead the purchaser; fourth, if it be an imitation or offered for sale under the name of another article; fifth, if the contents as originally put up shall have been removed in whole or in part and other contents shall have been placed in such package. (b) In the case of any insecticide or any fungicide other than Paris green, and lead arsenate: First, if it contains arsenic in any of its combinations or in the elemental form, and the total amount of the arsenic present, expressed as per centum of metallic arsenic, is not stated on the label; second if it contains arsenic in any of its combinations or in the elemental form and the amount of arsenic in water-soluble form, expressed as per centum of metallic arsenic, is not stated on the label; third, if it consists partly or completely of an inert substance or substances which do not effectively prevent, destroy, repel, or mitigate insects or fungi and does not have the name and percentage amount of each and every one of such inert ingredients and the fact that they are inert plainly and correctly stated on the label; provided, however, that in lieu of naming and stating the percentage amounts of each and every one of such ingredients the producer may at his discretion state plainly on the label the correct names and percentage amounts of each and every ingredient of the insecticide or fungicide, having insecticidal or fungicidal properties, and make no mention of the inert ingredients except in so far as to state the total percentage of inert ingredients present. (Id. § 3.)

124. Insecticides and Fungicides.—The term "insecticide" as used in this act shall include Paris green, lead arsenate and any other substance or mixture of substances intended to be used for preventing, destroying, repelling, or mitigating any and all insects or other animals, which may infest vegetation, or animals or households, or be present in any environment whatsoever. The term "Paris green" as used in this act shall include the product sold in commerce as Paris green and chemically known as aceto arsenite of copper. The term "lead arsenate" as used in this act shall include the product or products sold in commerce as lead arsenate and consisting chemically of products derived from arsenic acid (G_3AsO_4) by replacing one or more hydrogen atoms by lead. The term "fungicide" as used in this act shall include any substance or mixture of substances intended to be used for preventing, destroying, repelling, or mitigating any and all fungi or bacteria that may infest vegetation or be present in any environment whosoever. (Id. § 4.)

125. Labeling Spray Solutions.—All spray solution known as lime and sulphur liquid shall be conspicuously labeled as to the strength of the solution, showing a guaranteed strength of lime and sulphur combined in solution as sulphates and sulphides, of which solution not less than seventy per cent (70%) by weight, shall be sulphur, and such label or labels shall also contain directions, giving the proportion of water to be used in any mixture containing a four per cent (4%) solution by weight of lime and surphur combined as sulphates and sulphides, of which solution not less than seventy per cent (70%) by weight shall be sulphur. Every package of such compound or solution sold, offered or exposed for sale, shall be plainly labeled, stating the contents of the compound or solution and the gravity test thereof. (Id. § 5.)

126. Contents of Labels.—Every lot or package, of any insecticide or fungicide which is manufactured, sold, distributed, transported, offered or exposed for sale, within the State shall have affixed in a conspicuous place on the outside thereof a plainly printed or written statement in at least 8-point type clearly and truly stating the number of net ounces or pounds in the package, the name or trademark under which the substance is sold, the name and address of the manufacturer or shipper and a chemical analysis showing the names and percentages of the ingredients which make up the contents of such package. The label shall contain this information and nothing else. (Id. § 6.)

127. Enforcement of Chapter.—The State Board of Agriculture shall carry out and enforce the provisions of this chapter, shall make such rules and regulations as are necessary therefor, and shall collect for examination specimens of insecticides and fungicides manufactured or offered for sale within the State. (Id. § 7, as amended L. 1921, c. 2, sub. c. 8.)

128. Violation of Act—Penalty.—Any person, firm or corporation violating any of the provisions of this act shall be guilty of a misdemeanor, and upon conviction thereof, shall be punished as provided by law. (L. 1919, c. 82, § 8.)

Jamaica Ginger.

See No. 187.

Pharmacy, Poisons and Narcotics.

129. Statement Filed.—All persons, firms, copartnerships and corporations owning, conducting or carrying on a wholesale or retail pharmacy, drug store or business within the State of Utah, shall on or before the 1st day of June, 1919, file with the Secretary of the State Board of Pharmacy of the State of Utah, a statement, in form of affidavit setting forth the following facts: The name of the owner of the business or establishment and stating whether the owner is an individual, copartnership or corporation, and if a corporation the State of its incorporation; the location of the business or establishment, and the name under which the business or establishment is generally known or transacts business; provided, however, if an individual, copartnerhip or corporation owns or operates more than one store or establishment, either in the same city or town or in different cities or towns in the State of Utah, the owner or operator may include in one affidavit the statement of fact as to the several stores or establishments. (L. 1919, c. 81, § 1.)

130. Commencement of Business.—Hereafter, when any individual, firm, copartnership or corporation commences the operation and conduct of any wholesale or retail pharmacy, drug store or business within the State of Utah, it shall be the duty of the owner or operator, immediately upon the commencement of the actual transaction of business, to file with the Secretary of the State Board of Pharmacy the statement as required by section 1 of this act. (Id. § 2.)

131. Change of Name or Location.—Whenever there is any change in name, ownership or location of any wholesale or retail pharmacy, drug store or business which has been registered as required by the terms of this act, it shall be the duty of the owner or operator thereof within ten days after such change to file with the Secretary of the State Board of Pharmacy a statement, in form of affidavit, showing the new name, ownership or location of the pharmacy, drug store or business. (Id. § 3.)

132. Terms.—The terms "pharmacy" and "drug store or business" as used in this act shall mean a store or business wherein drugs, medicines and poisons are compounded. (Id. § 4.)

133. Fees.—The Secretary of the State Board of Pharmacy shall demand and collect upon the filing of each sworn statement, as in this act required, the sum of $1.00. (Id. § 5.)

134. Violation—Penalty.—Any person, firm, copartnership or corporation violating the terms of this act shall be guilty of a misdemeanor. (Id. § 6.)

135. Sale of Poisons—Exceptions.—It shall be unlawful for any person other than a registered pharmacist to compound or dispense drugs, medicines, or poisons, except insecticides, fungicides and other poisons intended for use in the destruction of animal and vegetable pests, or to open or conduct any pharmacy for compounding or dispensing drugs, medicines, or poisons, except as herein otherwise provided, unless such person shall be or shall employ and place in charge of his pharmacy or store a registered pharmacist within the meaning of this title.* Every place in which drugs, medicines, or poisons are compounded, retailed, except as hereinafter provided, or dispensed, or physicians' prescriptions compounded, shall be deemed to be a pharmacy or drug store. (C. L. 1917, § 4405, as amended L. 1919, c. 80.)

136. License—Conditions of Issuance—Qualifications for License—Convicts Excluded.—No person shall practice as a registered pharmacist without a license so to do. No person shall, except as otherwise provided in this act, be licensed to practice as a registered pharmacist until he shall pass a satisfactory examination in the Department of Registration.

Every applicant for examination shall:

1. Make application for examination on a blank form prepared and furnished by the Department of Registration.

2. Submit evidence verified under oath and satisfactory to the Department of Registration that:

(a) He is a citizen of the United States of America;

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*Included in Nos. 135-155.

(b) He is twenty-one years of age or over;
(c) He is of good moral character;
(d) He has had at least four years practical experience where drugs, medicines and poisons were dispensed and retailed and prescriptions compounded, in a pharmacy or a store in the United States of America under the personal supervision of a licensed pharmacist;
(d) He is a graduate of a high school requiring attendance through four school years and being equal to fifteen units, or its equivalent or has passed an examination showing qualifications equivalent to a high school education;
(e) After the first day of July, 1927, that he is a graduate of a school of pharmacy recognized by the Department of Registration, and provided that an applicant who has passed the examination and obtained a license as an assistant pharmacist prior to July 1st, 1927, may thereafter take the examination for a license to practice as a registered pharmacist without being a graduate of a school in pharmacy provided such examination is taken and license obtained prior to January 1st, 1928;
(f) The time taken in graduating from a two-year course in a recognized school of pharmacy shall be credited as experience required under subdivision "c"* of this paragraph. If the applicant has taken a four years' course in a recognized school of pharmacy he may be credited with three years experience;
(g) The Department of Registration may in its discretion grant certificates of registration to such persons as shall furnish with their applications satisfactory proof that they have been duly registered after examination in some other State of the United States, which State requires a degree of competency equal to that required by an applicant in this State. Every applicant for registration by reciprocity shall file with his application his photograph.

No person shall be licensed as a registered pharmacist who has been convicted of more than one violation of any State or Federal law governing the sale of narcotic drugs or intoxicating liquors. (C. L. 1917, § 4406, as amended L. 1925, c. 60.)

137. Assistant's Certificate—Limitations.—It shall be the duty of the Department of Registration to grant an assistant's certificate to such persons as have had three years' practical experience in drug stores where prescriptions of medicinal practitioners are compounded, and have passed a satisfactory examination under said department. The holders of said certificate shall have the right to act as clerk or salesman during the temporary absence of the owner or manager thereof. Temporary absence, within the meaning of this title, shall be held to be only those unavoidable absences which may occur during the day's work, not to exceed ten days, and when the registered pharmacist in charge shall be within immediate call, ready and able to assume direct supervision of said pharmacy. No registered assistant shall conduct the pharmacy. (C. L. 1917, § 4407, as amended L. 1921, c. 90.)

138. Assistant Pharmacist—Fee—Second Examination.—Every person applying for registration as assistant pharmacist shall, before certificate be granted, pay to the Department of Registration the sum of $5.00, and, every applicant for registration as registered pharmacist shall pay the sum of $15.00. In case of a failure of an applicant upon his or her first application to pass a satisfactory examination before the said department, a second examination shall be granted him or her without further payment of fee, if applied for within six months from the presentation of such first application for examination. (Id. § 4412.)

139. Pharmacist—Fee—Annual Registration.—Every registered pharmacist or assistant pharmacist, who desires to continue in the pursuit of pharmacy, shall annually, after the expiration of the first year of registration, on or before the 2d day of January of each year, pay the Department of Registration a renewal fee to be fixed by the department which shall not exceed $5.00 for registered pharmacists and $3.00 for assistant pharmacists, in return for which a renewal registration shall be issued. If any person shall fail or neglect to procure his annual registration as herein specified, notice of such failure having been mailed to his postoffice address, as obtained from the books of the secretary, the department may, after the expiration of one year, deprive him or her of his or her registration. In order for such persons to regain registration, it will be necessary for them to apply and pass the examination of an unlicensed applicant. (Id. § 4413.)

140. Acting Without Registration—Penalty.—Any person who is not a registered pharmacist, duly authorized under this title to do business on his own account, who shall keep a pharmacy, store or shop for dispensing and compounding of physicians' prescriptions, and shall not have in his employment in said pharmacy,

*The reference is apparently to first subdivision "d," supra.

store, or shop a registered pharmacist, authorized by the Department of Registration to manage a pharmacy, shall be guilty of a misdemeanor. (Id. § 4415.)

141. **Using Title Unlawfully—Penalty.**—Any person not registered under this title who shall take, use, or exhibit the title of registered pharmacist, or licentiate in pharmacy, shall be liable to a fine of $100 for each and every such offense; a like penalty shall attach to a licentiate in pharmacy who shall, without authority, take, use, or exhibit the title of registered pharmacist in this State. (C. L. 1917, § 4416.)

142. **Penalties, Generally.**—Any proprietor of a pharmacy or the person who shall permit the compounding or dispensing of physicians' prescriptions, except by a registered pharmacist or under the immediate supervision of one, or while continuing in pursuit of pharmacy in this State shall fail or neglect to procure his annual registration, and any person who shall willfully make any false representation to procure registration for himself or for another, or who shall violate any other provision of this title, shall, for each and every such offense, be liable to a penalty of $100. (Id. § 4417.)

143. **Proprietors Responsible for Quality of Drugs.**—The proprietors of all pharmacies shall be held responsible for the quality of all drugs and chemicals sold or dispensed at their respective places of business, except patent and proprietary preparations and articles sold in the original packages of the manufacturer. (Id. § 4418.)

144. **Standard for Preparations—Penalty for Adulterations.**—Unless otherwise prescribed for or specified by the customer, all pharmaceutical preparations sold or dispensed in a pharmacy, dispensary, store, or place shall be of the standard strength, quality and purity established by the latest edition of the United States Pharmacopœia and National Formulary. Any person who shall wilfully adulterate, or alter, or cause or permit to be adulterated or altered, any drug, medicine, or pharmaceutical preparation, or shall sell or offer for sale any such adulterated or altered article, and any person who shall substitute one material for another, with the intent to defraud or deceive the purchaser, shall be guilty of a misdemeanor. Every pharmacy, dispensary, store or place where any pharmaceutical preparations are manufactured, sold or dispensed shall provide itself with the latest edition of the United States Pharmacopœia and the National Formulary. (Id. § 4419, as amended L. 1921, c. 90.)

145. **Unlawful to Sell Certain Poisons Without Label—False Representations—Registry of Sales.**—It shall be unlawful for any person to vend, sell, give away, or furnish, either directly or indirectly, any poisons enumerated in schedules A and B in § 4431, without labeling the package, box, bottle or paper in which said poison is contained with the name of the article, the word "poison," and the name and place of business of the person furnishing the same. Said label shall be substantially in the form hereinafter provided. It shall be unlawful to sell or deliver any of the poisons named in schedule A or any other dangerously poisonous drug, chemical, or medicinal substance, which may from time to time be designated by the State Board of Pharmacy, unless on inquiry it is found that the person desiring the same is aware of its poisonous character, and it satisfactorily appears that it is to be used for a legitimate purpose. It shall be unlawful for any person to give a fictitious name or make any false representations to the seller or dealer when buying any of the poisons thus enumerated; provided, that this prohibition shall not apply to an officer or inspector of the State Board of Pharmacy in the performance of the duties enjoined by law upon said board, or to any person acting under authority of said board in the performance of said duties. Printed notice of all such additions to the schedule of poisons named and provided for in this section, and the antidote adopted by the Board of Pharmacy for such poison, shall be given to all registered pharmacists with the next following renewal of their certificates. It shall be unlawful to sell, or deliver any poison included in schedule A, or the additions thereto, without making or causing to be made an entry in a book kept solely for that purpose, stating the date and hour of sale, and the name, address, and signature of the purchaser, the name and quantity of the poison sold, the statement by the purchaser of the purpose for which it is required, and the name of the dispenser, who must be a duly registered pharmacist; provided, however, that said entry shall be made out in full, in ink, before said signature of the purchaser is made thereto, and that said entry shall be made by said dispenser himself, and not by any person who is not a duly registered pharmacist or duly registered assistant pharmacist. Said books shall be in form substantially as follows:

Date and Hour	Name of Purchaser	Residence	Kind and Quantity	Purpose of Use	Signature of Druggist	Signature of Purchaser

This book shall always be open for inspection by the proper authorities, and shall be preserved for at least five years after the date of the last entry therein. (C. L. 1917, § 4425.)

146. Form of Label—Sale to Minors Unlawful.—The label required by this title* to be placed on all packages of poison shall be printed upon red paper in distinct white letters, or in distinct red letters upon white paper, and shall contain the word "poison," the vignette representing the skull and cross-bones, and the name and address of the person or firm selling the same. The name of an antidote, if any there be, for the poison sold shall also be upon the package. No poison shall be sold or delivered to any person who is less than eighteen years of age. (Id. § 4426.)

147. Antidotes to Appear on Poison Labels—Duty of Pharmacy Board.—It shall be the duty of the State Board of Pharmacy to adopt a schedule of what in their judgment are the most suitable common antidotes for the various poisons usually sold. After the board has adopted the schedule of antidotes as herein provided for, they shall have the same printed and shall forward by mail one copy to each person registered upon their books, and to any other person applying for the same. The particular antidote adopted (and no other) shall appear on the poison label provided for in section 4426, or be attached to the package containing said poison. The board shall have power to revise and amend the list of antidotes from time to time, as to them may seem advisable. The entries in the poison book and the printed or written matter provided for in this title* shall be in the English language; provided, that the vendor of said poison may enter the same in any foreign language he may desire, in addition to said entry and label in English. (Id. § 4427.)

148. Restriction of Sale.—When, in the opinion of the State Board of Pharmacy, it is in the interest of the public health, they are hereby empowered to further restrict or prohibit the retail sale of any poison, by rules not inconsistent with the provisions of this title* by them to be adopted, and which rules must be applicable to all persons alike. It shall be the duty of the board, upon request, to furnish any dealer with a copy of the laws relating to articles, preparations, and compounds the sale of which is prohibited or regulated by this title. (Id. § 4428.)

149. Sale in Original Packages—Proviso.—Wholesale dealers and pharmacists shall affix or cause to be affixed to every bottle, box, parcel, or other enclosure of an original package containing any of the articles named in schedule A, the additions thereto, or in section 4432 and 4436, a suitable label or brand with the word "poison," but they are hereby exempted from the registration of the sale of such articles when sold at wholesale to a registered pharmacist, physician, dentist, or veterinary surgeon duly licensed to practice in the State; provided, that the provisions of this title shall not apply to the sale of such upon the prescriptions of practicing physicians, dentists, or veterinary surgeons who are duly licensed to practice in this State; and provided, further, that wholesale dealers are hereby exempted from the registration of the sales of the articles enumerated in schedule A of section 4431, where such sales are made for assaying, metallurgical, scientific, or industrial uses and purposes. (Id. § 4429.)

150. Enforcement of Provisions—Employment of Special Counsel.—The State Board of Pharmacy shall have power to employ special counsel to assist the county attorney or the district attorney in all actions and prosecutions instituted or prosecuted for the violation of any of the provisions of this title. (Id. § 4430.)

151. Penalty—Schedules Defined.—Any person violating any of the provisions of sections 4432-4433 shall, upon conviction, be guilty of a felony and be punished by a fine of not less than $100.00 and not to exceed $500.00 and by imprisonment for not less than one year and not exceeding five years in the State Prison.

The followinng is schedule A referred to in section 4425, viz: arsenic, its compounds and preparations; corrosive sublimate, and other poisons derivatives of mercury; corrosive sublimate tablets; antiseptic tablets containing corrosive sublimate; cyanide of potassium; strychnine; hydrocyanic acid; oils of croton, rue, tansy, pennyroyal, savin; ergot and cottonroot and their preparations; phosphorus and its poisonous derivatives and compounds; compound solution of cresol; lysol; strophanthus

*Included in Nos. 135-155.

or its preparations; aconite, belladonna, nux vomica, veratrum veride, their preparations, alkaloids, or derivatives, and poisons containing any of the poisons enumerated in this schedule; chloral hydrate; essential oil of bitter almonds, opium, or any of its preparations; any poisonous vegetable alkaloids and their salts; carbolic acid (phenol) containing more than ten per cent of said acid.

The following is schedule B: Hydrochloric or muriatic acid; nitric acid; oxalic acid; sulphuric acid; bromine; chloroform; cowhage, creosote; ether; solution of formaldehyde or formalin; cantharides, cocculus indicus, all their preparations; iodine or its tinctures; tartar emetic and other poisonous derivatives of antimony; sugar of lead; sulphate of zinc; wood alcohol, conium; hypscyamus; nitro-glycerine and its preparations; santonine; digitalis; solutions of carbolic acid (phenol) containing not over ten per cent of carbolic acid (phenol), and not less than ten per cent of ethyl alcohol. The container shall be labeled showing percentage of acid and alcohol. (Id. § 4431, as amended L. 1927, c. 66.)

152. **Possession and Use of Narcotic Drugs—Dispensing at Retail and Wholesale—Prescription by Physician, Dentist, and Veterinarians—Exceptions—Altering or Counterfeiting Prescriptions.**—It shall be unlawful for any person, firm, or corporation to sell, furnish, or give away, or offer to sell, furnish, or give away, or to have in possession, any cocaine, opium, morphine, codeine, heroin, peyote (mescal button), alpha eucaine, beta eucaine, nova caine, flowering tops and leaves, extracts, tinctures, and other narcotic preparations of hemp or loco weed, (cannabis sativa, Indian hemp), mariguana, or chloral hydrate, or any of the salts, derivatives, or compounds of the foregoing substances, or any preparation or compound containing any of the foregoing substances, or their salts, derivatives, or compounds, excepting upon the written order or prescription of a physician, dentist, or veterinary surgeon licensed to practice in this State, which order or prescription shall be dated and shall contain the name and address of the person for whom prescribed, written in by the person writing said prescription; or if ordered by a veterinary surgeon, it shall state the kind of animal for which ordered and shall be signed by the person giving the prescription or order; provided, however, that this exception shall not apply to anhalonium or peyote, the use whereof in any form whatsoever being hereby positively prohibited; and it is hereby further provided, that it shall be unlawful for any person, association, or corporation to carry or cause to be carried into or within this State any of said anhalonium or peyote, or any compound, manufacture, derivative, or preparation thereof. Such order or prescription shall be permanently retained on file by the person, firm, or corporation compounding or dispensing the articles ordered or prescribed, and no order or prescription shall be refilled. All such orders or prescriptions, after filing, shall be open to public inspection and shall be preserved for at least three years. The foregoing provisions of this section shall not apply to sales at wholesale by jobbers, wholesalers, and manufacturers to registered drug stores or pharmacies, or to registered pharmacists, or to licensed physicians, nor to the sale at retail by registered pharmacists to physicians, dentists, or veterinary surgeons duly licensed to practice. All wholesale jobbers, wholesalers, or manufacturers shall, before delivery of any of the articles in this section enumerated, make a [or] cause to be made, in a book kept for that purpose only, an entry of the sale of any such articles stating the date of such sale, and the quantity and the name of the article, and the form in which sold, the true name and true address of the purchaser, the name of the person by whom such entry or sale was made, also a statement showing how delivery was had, whether personally or by mail, express or by freight, which book shall always be open for inspection by any peace officer or any inspector authorized by the Director of the Department of Registration, and which book shall be preserved at least five years from the date of the last entry therein. The taking of any order, or making of any contract or agreement, by any traveling representative, or any employee, or any person, firm, or corporation for future delivery in this State of any of the articles or drugs mentioned in this section shall be deemed a sale of said articles or drugs by such traveling representative or employee, within the meaning of the provisions of this title, and all such orders, contracts, or agreements shall be recorded in the same book and in the same manner as in this section provided for the recording of sales by wholesale jobbers, wholesalers, or manufacturers. It shall be unlawful for any practitioner of medicine, dentistry, or veterinary medicine to furnish to or prescribe for the use of any habitual user of cocaine, opium, morphine, codeine, heroin, peyote, or chloral hydrate, or any salt, derivative, or compound containing any of the foregoing substances except that a duly licensed physician may prescribe any of such drugs as he may deem necessary in the treatment of a patient who may be an habitual user of any of such drugs. Such prescription or administration can only be given for the purpose of effecting a cure and not for the purpose of satisfying narcotic addiction as such, and can only be given when the patient for whom prescribed or administered is detained in a hospital, sanitarium

or jail and is so supervised that he cannot obtain any of such drugs except upon such prescription.

It shall be unlawful for any practitioner of medicine or dentistry to prescribe any of the foregoing drugs for any person not under his treatment in the regular practice of his profession, or for any veterinary surgeon to prescribe any of the foregoing drugs for the use of any human being. The above provisions of this section shall not apply to preparation or remedies sold or dispensed by a registered pharmacist, without a physician's prescription, which preparations or remedies contain not more than two grains of opium, or one-fourth grain of morphine, or one grain of codeine, or one-eighth grain of heroin, or one-half grain extract cannabis indica, or ten grains chloral hydrate, in one fluid ounce, or, if a solid preparation, in one ounce, avoirdupois; or to liniments, ointments, or other preparations which are prepared for external use only, except liniments, ointments, and other preparations which contain cocaine or any of its salts, or alpha or beta eucaine or any of their salts or any synthetic substitute for them; provided, that such remedies and preparations are sold, distributed, given away, dispensed, or possessed as medicines and not for the purpose of evading the intentions and provisions of this title. Such remedies and preparations must be registered as is required for schedule A poisons, and it shall be unlawful for any person to give a false or fictitious name or make any false representation to the seller or dealer when buying any of such remedies or preparations.

It shall be unlawful for any person to alter, forge or counterfeit any order or prescription executed by any duly licensed physician, dentist, veterinarian or other duly authorized person, for any of the narcotics or drugs enumerated in this section. (C. L. 1917, § 4432, as amended L. 1927, c. 65.)

153. Possession of Certain Pipes and Preparations Unlawful—Penalty.—The possession of a pipe or pipes, or other contrivances used for smoking opium (commonly known as opium pipes) or the usual attachment or the attachments thereof, or extracts, tinctures or other narcotic preparations of hemp, or loco weed, their preparations or compounds (except corn remedies containing not more than fifteen grains of the extract or fluid extract of hemp to the ounce, mixed with not less than five times its weight of salicylic acid combined with collodion), is hereby made a misdemeanor and upon conviction thereof shall be punishable by the penalties prescribed in section 4431. (C. L. 1917, § 4433.)

154. Search and Seizure—Disposition of Instruments and Narcotics Confiscated.—All narcotic drugs specified in § 4432 and also all pipes used for smoking opium (commonly known as opium pipes) or the usual attachments thereto, or extracts, tinctures, or other narcotic preparations of hemp, loco weed, their preparations or compounds (except corn remedies containing not more than fifteen grains of the extract or fluid extract of hemp to the ounce, mixed with not less than five times its weight of salicylic acid combined with collodion), may be seized by any peace officer, and in aid of such seizure a warrant or search warrant may be issued in the manner and form prescribed in chapter 56, title 120 of the code of criminal procedure (§ 9368-9389). All such narcotic drugs, pipes used for smoking opium (commonly known as opium pipes), or the usual attachments thereto, and all such hemp seized under the provisions of this title shall be ordered destroyed by the judge of the court in which final conviction was had. Said order of destruction shall contain the name of the party charged with the duty of destruction as herein required; provided, however, that the judge shall turn all such evidence over to the State Board of Pharmacy for such destruction; and, provided, further, that the Board of Pharmacy may dispose of all narcotics now on hand or hereafter coming into their possession (other than smoking opium), either by gift to the medical director of Utah State Prisons or State Hospitals or by sale to wholesale druggists, the funds received from such sales to be applied by the Board of Pharmacy to the carrying out of the provisions of this title or of the title creating such Utah State Board of Pharmacy. (Id. § 4434.)

155. Revoking License.—The Department of Registration may revoke the registration and license of any registered pharmacist or assistant pharmacist upon conviction of the second offense for violating any of the provisions of sections 4432-4433, and in such case said registration shall not be restored before the period of one year from the date of said revocation. (Id. § 4435, as amended L. 1921, c. 90.)

156. Omitting to Label or Mislabeling Drugs—Prescriptions.—Every apothecary, druggist or person carrying on business as a dealer in drugs or medicines, or person employed as a clerk or salesman by such person, who, in putting up drugs or medicines, or making up any prescription, or filling any order for drugs or medicines, wilfully, negligently, or ignorantly omits to label the same, or puts an untrue label, stamp, or other designation of contents, upon any box, bottle, or other package containing any drug or medicines, or substitutes

a different article for any article prescribed or ordered, or puts up a greater or less quantity of any article than that prescribed or ordered or otherwise deviates from the terms of the prescription or order which he undertakes to follow, in consequence of which human life or health is endangered, is guilty of a misdemeanor, or, if death ensues, is guilty of a felony. (C. L. 1917, § 8199.)

157. Keeping Opium Den—Selling Opium.—Any person who shall establish or keep a house wherein opium is smoked or chewed by others than the members of his family, and any person who shall sell or give to another, not a member of his family, in the house where his family shall live, any opium to be smoked or chewed, whether in a house kept or used for such purposes, or elsewhere, shall be deemed guilty of a misdemeanor. (Id. § 8439.)

158. Id. Renting House to be so Used.—Where a proprietor, landlord, or agent shall rent any house, knowing that it is intended to be used for any of the purposes mentioned in the next preceding section, and it shall be so used, such proprietor, landlord, or agent shall be deemed guilty of a misdemeanor. (Id. § 8440.)

159. Selling or Using Opium.—Any clerk, servant, or employee in any such house who may aid in such use of opium, and every person resorting thereto who shall use opium by smoking or chewing it, shall be deemed guilty of a misdemeanor. (Id. § 8441.)

160. Delivery of Poisons, Weapons, Etc., Prohibited—Penalty.—Every person who, without the consent of the warden of the Utah State Prison, shall deliver to any convict or person within the State Prison, or who shall give or deliver to any convict when outside of the State Prison, or leave, deposit, or place at or near any camp or other place where convicts are kept at work on public roads or otherwise, or who shall leave within the Utah State Prison grounds, or within any cell or cell house or buildings of any kind belonging to said State Prison, or who shall leave, deposit, or place at or near any such buildings, grounds, or premises any explosives or explosive substance of any kind or character, or any poison of any kind, or any opium, or any preparation of like character, or any preparation commonly called "dope," or any substitute therefor, or any deleterious drug of any kind, or any knife, dirk, or any weapon of any kind or character whatsoever, including firearms of all kinds, or any implement, instrument, or substance which can be used by any convict, or any person in said State Prison, as a means of injuring the warden, his deputy, or any guard, convict, or any person whomsoever, or which can be used as a means of escape from said State Prison by any such convict or person, shall be deemed guilty of a felony, and upon conviction shall be punished by imprisonment in the Utah State Prison at hard labor for a term of not more than ten years. (Id. § 7972.)

161. Copies of Section to be Posted.—The warden of the Utah State Prison shall cause to be posted and maintained in conspicuous places outside and within the buildings and upon the grounds of said State Prison, and at and near any camp where convicts are at work, copies of § 7972. (Id. § 7973.)

161a. Liquor, Etc., on Prison Grounds.—No spirituous or fermented liquor, drug, medicine, nor poison shall, on any pretense whatever, be sold or given away in the prison or in any building appurtenant thereto, or on the land granted to the State for the use and benefit of the prison; and no such liquors shall be given to, nor suffered to be used by, any convict or employee in the prison unless he be sick, and then only under the special direction of the prison physician. (Id. § 5486.)

162. Department of Registration.—There is hereby created a department of the State Government to be known as the "Department of Registration." (L. 1921, c. 130, § 1.)

163. Has Powers Vested in Other Boards—Issue Certificates and Licenses—Make Rules, Enforce Laws—Seal.—The Department of Registration shall have power:

(a) To exercise the rights, powers and duties heretofore exercised and vested by law in the following boards and commissions:

State Board of Accountancy,
State Board of Architecture,
Utah State Board of Examiners of Barbers,
State Board of Dental Examiners,
State Board of Medical examiners,
State Board of Examination and Registration of Hospital Trained and Graduate Nurses,
Utah State Board of Examiners in Optometry,
State Board of Pharmacy,
Utah State Board of Veterinary Medical Examiners, and all records, papers, documents and property belonging to or used by any of said boards or commissions shall be forthwith transferred to and thereafter kept by the Department of Registration.

(b) To issue certificates and licenses to any of the members of the professions, trades and occupations which are now, or hereafter may be, devolved upon the Department of Registration for administration; to collect for each certificate or license a fee not exceeding $50.00; to require the annual renewal of such certificates and licenses, and to collect for each such renewal a fee of not exceeding $5.00.

(c) To formulate and enforce rules and regulations when required in the administration of any of its duties or the performance of any of its functions.

(d) To adopt and keep an official seal.

(e) To keep at its office, in the State Capitol, open to public inspection during business hours, a complete indexed record of all licenses, commissions, authorities and renewals issued by the department, and such other records as the director may determine.

(f) To enforce the laws relating to the practice of the several professions, trades and occupations which are now, or hereafter may be, devolved upon the Department of Registration for administration. (Id. § 2.)

164. Examinations—Pass on Qualifications—Conduct Hearings—Designate Examiners—Per Diem—Order Rehearings.—The Department of Registration shall, whenever the several laws regulating professions, trades and occupations which are devolved upon the department for administration so require, exercise, in its name, but subject to the provisions of this act, the following powers:

(a) Conduct examinations to ascertain the qualifications and fitness of applicants to exercise the profession, trade or occupation for which an examination is held; and pass upon the qualifications of applicants for reciprocal licenses, certificates and authorities;

(b) Prescribe rules and regulations for a fair and wholly impartial method of examination of candidates to exercise the respective professions, trades or occupations;

(c) Prescribe rules and regulations defining, for the respective professions, trades and occupations, what shall constitute a school, college or university, or department of a university, or other institutions, reputable and in good standing and to determine the reputability and good standing of a school, college or university, or department of a university, or other institution, reference to a compliance with such rules and regulations;

(d) Adopt rules providing for and establishing a uniform and reasonable standard of maintenance, instruction and training to be observed by all schools for nurses which are to be deemed reputable and in good standing and to determine the reputability and good standing of such schools for nurses by reference to compliance with such rules and regulations;

(e) Establish a standard of preliminary education deemed requisite to admission to a school, college or university, and to require satisfactory proof of the enforcement of such standard by schools, colleges and universities;

(f) Conduct hearings on proceedings to revoke or refuse renewal of licenses, certificates or authorities of persons exercising the respective professions, trades or occupations, and to revoke or refuse to renew such licenses, certificates or authorities. Provided that appeal to the courts may be had.

None of the above enumerated functions and duties shall be exercised by the Department of Registration, except upon the action and report in writing of persons designated by the Director of Registration to take such action and to make such report, for the respective professions, trades and occupations as follows:

For the accountants, three competent and skilled public accountants, who shall have been in practice as such in this State for not less than three years; and who shall hold accountant's certificates issued under the laws of this State;

For the architects, three persons who shall be licensed architects residing in the State of Utah who have been engaged in the practice of architecture in said State for at least five years;

For the barbers, three persons citizens of the United States and barbers licensed under the laws of this State, who have practiced barbering for at least five years, and have resided in this State for at least one year; provided, that in the discretion of the director, one of such persons may be a licensed medical practitioner.

For the dentists, five persons, each one of whom shall be a licensed, reputable and ethical practicing dentist, and shall have been actively and legally engaged in the practice of dentistry in this State for at least five years; no such person shall be a member of the faculty of any dental college or dental department of any medical college or have any financial interest in any such college.

For the embalmers, three competent registered embalmers.

For chiropractic, which is defined as the science of palpating and adjusting the articulation of the spinal column by the hands only, five chiropractors engaged in the practice of chiropractic.

For the practitioners of medicine and surgery in all their branches, and for the practice of obstetrics only, five persons, each of whom shall be a licensed practitioner of medicine and surgery in this State, and a graduate of a ( ) regularly chartered medical ( ) college ( ) in good standing. ( ) For the osteopathic physician or the osteopathic physician and surgeon, three members each of whom shall be a graduate of a regularly chartered college of osteopathy in good standing and licensed in this State, for the practitioner of the treatment of human ailments without the use of medicine and surgery, except as otherwise provided, two of the number appointed to examine physicians and surgeons, to be designated by the director, and three persons from the particular school for treating human ailments for which the applicant desires a license to practice.

For the hospital trained and graduate nurses, five persons, each one of whom shall be a licensed trained nurse, at least twenty-three years of age, and a graduate of a training school connected with a hospital of recognized standing;

For the optometrists, three persons, each of whom shall be a resident of the State of Utah, a licensed optometrist under the laws thereof, and shall have been engaged in the actual practice of optometry in this State for at least five years;

For the pharmacists, five competent pharmacists each of whom shall have had ten years' experience as a dispensing pharmacist;

For the veterinary practitioners, three qualified licensed veterinarians, each of whom shall be a graduate of a college or university recognized by the Department of Agriculture, Washington, D. C., and who shall be of good standing in the profession.

All of the foregoing persons to be so designated shall receive $5.00 per diem for his services, provided, however, that each shall receive the necessary traveling and hotel expenses actually incurred in the discharge of his duties.

The action or report in writing of a majority of the persons designated for any given trade, occupation or profession, shall be sufficient authority upon which the Director of Registration may act.

In making the designation of persons to act for the several professions, trades and occupations, the director shall give due consideration to recommendations by members of the respective professions, trades and occupations, and by organizations therein, and the names of all persons so designated shall be submitted to the Governor for confirmation or rejection, if confirmed, they shall serve until removed by the director.

Whenever the director is satisfied that substantial justice has not been done either in an examination or in the revocation of or refusal to renew a license, certificate or authority, he may order re-examinations or rehearings by the same or other examiners.

The director shall assign to the several members of the respective committees the subjects on which the respective members will prepare questions and rate answers in the subjects included in each examination. (Id. § 3, as amended L. 1923, c. 49.)

165. Issue All Certificates, Licenses, Renewals, Etc.—All certificates, licenses, renewals and authorities shall be issued by the Department of Registration in the name of such department, with the seal thereof attached. (L. 1921, c. 130, § 4.)

166. Director of Registration—Salary—Witnesses—Clerical Aid.—The Department of Registration shall have an officer at its head who shall be known as the Director of Registration, and who shall exercise the powers and discharge the duties vested by law in that department. The Director of Registration shall be appointed by the Governor by and with the advice and consent of the Senate, and shall hold office for the term of four years and until his successor is appointed and qualified, provided, that the Director of Registration shall not be affiliated with any college or school of any of the professions, trades or occupations which are now, or hereafter may be, devolved upon the Department of Registration, for administration, either as teacher, officer, or stockholder, nor shall he hold a license, or certificate to exercise or practice any of such professions, trades or occupations, nor shall he at any time have been engaged in the practice of any such professions, trades or occupations. The Director of Registration shall receive an annual salary of three thousand dollars ($3,000.00) payable in equal quarter-annual installments.

The Director of Registration shall have such clerical, stenographic and other help as the director, with the written approval of the State Board of Examiners, may from time to time require to be appointed and relieved in the discretion of the director.

The Director of the Department of Registration shall have power to administer oaths, conduct hearings, and under the seal of the department, to subpœna witnesses.

The director may charge and receive for issuing a certificate to another State for a reciprocal license a fee equal to the annual renewal fee for the profession for which a reciprocal license is sought. (Id. § 5, as amended L. 1923, c. 49.)

167. Money to Go Into State Treasury—Payment of Expenses, Etc.—The gross amount of money received by the Department of Registration, during each month, shall be paid into the State treasury, to the credit of the general fund, not later than the second day of the following month, without any deduction on account of salaries, fees, costs, charges, expenses or claims of any description whatever, and the State Auditor is hereby authorized and directed to transfer to the State general fund any balances now remaining to the credit of any board or department enumerated in sub-section (a) of section 2 of this act; provided, that any claims against any of the said boards or departments which have heretofore been contracted and which are properly approved by the State Board of Examiners and filed with the State Auditor, may be paid from the State general fund. (L. 1921, c. 130, § 6.)

168. Practice Without License—Penalty.—Any person practicing or engaging in any of the professions, trades or occupations which are devolved upon the Department of Registration for administration, without having first procured from such department a license, certificate or authority so to do, and the required annual renewals thereof, shall be guilty of a misdemeanor and upon conviction thereof, shall, except in cases where some other penalty is specifically provided by law, be punished by a fine of not less than $50.00 nor more than $299.00, or by imprisonment, in the county jail, for not less than 30 days nor more than 6 months, or by both such fine and imprisonment. (Id. § 7.)

169. Present Licenses, Etc., Validated.—Nothing herein contained shall be construed to invalidate or cancel any certificate, license, or authority heretofore issued or given by any of the boards named in sub-section (a) of section 2 hereof and now unrevoked and in good standing; provided, however, that all such certificates, licenses and authorities shall be subject to the provisions of this act relating to annual registrations or renewals. (Id. § 8.)

170. Revoking License.—If any person who holds a license or certificate to practice any profession, trade or occupation which is devolved upon the Department of Registration for administration fails to pay the annual fee for renewing his license within the time fixed by law or rule of the department for paying the same, the department shall notify such person in writing by letter deposited in the post office with postage prepaid addressed to such person at his last address, as shown by the books of the department, of such default and that if such renewal fee is not paid on or before thirty days after the date of such notice the license of such person will be revoked; and if such payment is not made within said time then the department is authorized to revoke such license. (Id. § 11, as added L. 1923, c. 49.)

171. Reinstatement of License.—Any license revoked under the provisions of the preceding section may be reinstated at any time within three years after such revocation upon the payment of the annual renewal fee together with a sum equal to one annual renewal fee for the profession, trade or occupation for which the license was issued. If not reinstated within three years then the holder thereof in order to obtain a license or certificate must make an application and pass an examination as if he were applying for an original license. (Id. § 12.)

NOTE: See also Nos. 186-187, 196-196a, 201 et seq., 212 et seq., and 221.

Sanitation.

172. Sanitary Inspection of Medical Practitioners—Equipment, Etc.—The Secretary of the State Board of Health and his deputy or deputies shall each of them have the power to inspect, during business hours, the following named places and objects for the purpose of ascertaining if the same are maintained in a clean and sanitary condition, to wit:

(a) The offices, equipment, tools, instruments, laboratories, appliances, linen and supplies of all medical practitioners, dentists, barber shops and barber schools.

(b) All pharmacies, dispensaries, stores and places where drugs, medicines or poisons are compounded, dispensed or retailed. (L. 1921, c. 58 § 1.)

173. Inspectors Have Access.—It shall be the duty of every person owning, controlling, managing or possessing any of the above named objects of inspection to give to the said secretary and his deputies free access to the said objects under his, her or its ownership, control, management, or possession. (Id. § 2.)

174. Report Unsanitary Place—Revocation of License.—In cases where the Secretary of the State Board of Health, his deputy, or deputies, on such inspection shall determine that any of the above named places or objects are not in a clean or sanitary condition, said secretary shall report in writing to the director of the Department of Registration, sending a copy of such report to the person or persons charged to be responsible for such condition, and the Director of the Department of Registration may upon refusal of such person or persons to put such premises in a clean and sanitary condition, revoke the license of the person or persons so charged, to practice the trade, profession or occupation in connection with which such places or objects were being used. (Id. § 3.)

175. Adopt Rules.—The State Board of Health shall have power to adopt reasonable rules and regulations prescribing the sanitary requirements of medical practitioners, dentists, barber shops and barber schools and to cause said rules and regulations to be printed in a suitable form and to transmit a copy thereof to each registered medical practitioner, dentist and proprietor or manager of a barber shop or barber school. (Id. § 4.)

Venereal Disease Drugs.

176. Prohibition as to Sale of Remedies.—It shall be unlawful for any person, firm or corporation to sell, offer for sale, prescribe or recommend to any person the use of any preparation, proprietary medicine, compound or drug to be used in the treatment of syphilis, gonorrhœa, or chancroid; provided, that the provisions of this act shall not apply to the compounding of a prescription written by a physician duly licensed to practice medicine under the laws of the State of Utah. (L. 1919, c. 53, § 1.)

177. Evidence in Case of Prosecutions.—In any prosecutions brought for violations of the provisions of this act it shall be conclusive evidence that the drug, preparation or medicine is intended for use in the treatment of syphilis, gonorrhœa or chancroid, if any advertising matter in relation to any of said preparations or any written or printed matter on any package or wrapper of any of said preparations represents that the said preparation is useful or has curative properties in the treatment of syphilis, gonorrhœa or chancroid. (Id. § 2.)

178. Violation a Misdemeanor.—Any person convicted of violating the provisions of this act shall be deemed guilty of a misdemeanor and shall be punished as provided by law. (Id. § 3.)

179. Publications Prohibited—Penalty—Exceptions.—Whoever publishes, delivers or distributes or causes to be published, delivered or distributed in any manner whatsoever an advertisement concerning a venereal disease, lost manhood, lost vitality, impotency, sexual weakness, seminal emissions, varicocele, self-abuse or excessive sexual indulgence and calling attention to a medicine, article or preparation that may be used therefor or to a person or persons from whom or an office or place at which information, treatment or advice relating to such disease, infirmity, habit or condition may be obtained, is guilty of a misdemeanor and upon conviction thereof shall be punished by imprisonment for not more than six months or by a fine of not less than $50.00 nor more than $300.00, or by both such fine and imprisonment. This section, however, shall not apply to didactic or scientific treatises which do not advertise or call attention to any person or persons from whom or any office or place at which information, treatment or advice may be obtained, nor shall it apply to advertisements or notices issued by a municipal board or department of health or by the Department of Health of the State of Utah. (L. 1919, c. 54.)

Wood Alcohol.

See Nos. 9, 30 and 187.

Intoxicating Liquors.

180. Objects.—This entire title shall be deemed an exercise of the police powers of the State for the protection of the public health, peace, and morals, and all of its provisions shall be liberally construed for the attainment of that purpose. (C. L. 1917, § 3341.)

181. Definitions.—The word liquors as used in this title shall be construed to embrace all fermented, malt, vinous, or spiritous liquors, alcohol, wine, porter, ale, beer, absinthe, or any other intoxicating drink, mixture, or preparation of like nature, and all malt or brewed drinks; and all liquids, mixtures, or preparations, whether patented or not, which will produce intoxication; fruits preserved in alcoholic liquors of any kind; and all beverages, containing in excess of one-

half of one per cent of alcohol by volume, shall be deemed spirituous liquors, and shall be embraced in the words liquors as hereinafter used in this title; and all mixtures, compounds, or preparations, whether liquid or not, which are intended when mixed with water or otherwise, to produce, by fermentation or otherwise, an intoxicating liquor, shall also be deemed to be embraced within such term.

Wherever the words "this title" appear in any of the laws of this State enacted for the suppression of the liquor traffic, commonly called prohibition laws, they shall be construed to mean and include all such prohibition laws of this State.

The word "person" wherever used in this title shall be construed to mean natural persons, firms, copartnerships, corporations, and all associations of natural persons, whether acting by themselves or by a servant, agent, or employee.

A "druggist" or "pharmacist," for the purpose of this title, is defined as a person who is actually and in good faith engaged in the wholesale or retail drug business and licensed to compound and dispense drugs or medicines.

The words "warehouse manager," whenever used in this title shall be construed to mean the bonded dispenser at wholesale of alcohol, as provided for in section 3346. (Id. § 3342.)

182. Prohibitions.—Except as hereinafter provided, the manufacture, sale, keeping, or storing for sale in this State, or offering or exposing for sale, or importing, carrying, transporting, advertising, distributing, giving away, exchanging, dispensing, or serving of liquors, are forever prohibited in this State. It shall be unlawful for any person within this State knowingly to have in his or its possession any intoxicating liquors, except as in this title provided. (Id. § 3343.)

183. Penalties—Persistent Violator.—Any person convicted of violation of any of the provisions of this title shall be deemed guilty of a misdemeanor, and, where the punishment therefor is not herein specifically provided, shall be punished by a fine of not less than $50 nor more than $299.00, or by imprisonment in the county jail for not less than thirty days nor more than six months, or both such fine and imprisonment. A person having once been convicted of a violation of any of the provisions of this title, except section 3361,* who thereafter violates the provisions thereof, shall be considered a persistent violator of this title, and shall be deemed guilty of felony, and, upon conviction thereof, shall be imprisoned in the State Prison at hard labor for not less than three months nor more than two years. It shall be the duty of the prosecuting attorney, in all cases, to the best of his ability, to ascertain whether or not the defendant has at any time been convicted of any violation of any of the provisions of this title, and if so, such fact shall be set out in the complaint, and the said prosecuting attorney shall at the trial of such second or subsequent offense, introduce in evidence a certified copy of any or all such prior judgments of conviction, which shall be sufficient evidence of such prior convictions; and said prosecuting attorney shall not be permitted to use his discretion in charging and proving said second or subsequent offense. A person having once been convicted in any city or municipal court, or before a city justice of the peace for having violated any city ordinance prohibiting any person from knowingly having in his possession intoxicating liquor, or prohibiting the manufacture, sale, keeping or storing for sale or offering or exposing for sale, or carrying, presenting, advertising, distributing, giving away, exchanging, disposing or serving of liquors, and who thereafter violates any of the provisions of this title, shall be considered a persistent violator of this title as provided in this section. (Id. § 3345, as amended L. 1925, c. 10.)

184. Sales and Shipments—Qualifications and Duties of Warehouse Managers.—The Governor is hereby authorized and empowered to prescribe rules and regulations for the sale of alcohol for scientific and manufacturing purposes only, and for the sale of alcohol which shall have been denatured by some process approved by the United States Commissioner of Internal Revenue. The Governor shall establish or designate a warehouse or warehouses, and appoint or designate a manager or managers thereof, who shall, in accordance with rules and regulations prescribed by the Governor, have exclusive authority, except as provided in section 3347, to buy, import, receive, sell, and distribute alcohol; and such warehouse manager or managers shall bear all the expense incident to such business, and shall promptly fill all orders for alcohol at a price not to exceed 10 per cent of the cost of such alcohol laid down at such warehouse, unless a higher per cent be authorized by the Governor. The warehouse manager shall have authority to buy and import and make shipments or deliveries of alcohol only according to rules made by the Attorney-General, and shall make no imports, shipments, or deliveries which do not bear on the outer package or container, in a conspicuous place, a label or tag securely affixed, obtained from and designed and authorized by the Attorney-General, which shall bear the words:

*Relates to drinking intoxicating liquors in public. Omitted herein.

Alcohol shipment No..... Date..... Authorized by the Attorney-General.

Said labels or tags shall be numbered consecutively by the Attorney-General and an accurate record of all shipments or deliveries, in numerical order bearing the label number, shall be kept by the warehouse manager, which records shall show the date of sale or purchase, quantity bought or sold, name and address of purchaser, and means or route of shipment or delivery. Such records and the stock shall at all times be open to inspection by all executive, prosecuting, and peace officers. Any warehouse manager appointed or designated by the Governor, pursuant to this title, shall, before entering upon the duties imposed by this title, give a good and sufficient bond to the State of Utah in the sum of not less than $3,000, and conditioned upon the faithful discharge and performance of such duties. Such bond shall be approved by the Governor and filed with the Secretary of State. (C. L. 1917, § 3346.)

185. Exceptions—Permits as to Wholesale by Attorney-General—Records and Reports.—Alcohol may be purchased at wholesale by druggists, hospitals, scientific, and manufacturing institutions only from the warehouse managers, and only on written permit of the Attorney-General, for scientific and manufacturing purposes, by filing with the Attorney-General a statement in writing, under oath, stating that the applicant desires the alcohol for lawful purposes, and setting forth such purposes. A separate statement shall be made for each purpose on forms supplied by the Attorney-General; such statement giving the name, nature, and place of business of the applicant, the place where the alcohol is to be used, the nature of said business, the purposes for which said alcohol is to be used and the quantity desired, and that said applicant will not violate any of the provisions of this title. Any person authorized to ship alcohol shall fill in the actual date of shipment indelibly on tags or labels. An accurate record of all shipments and sales of alcohol must be kept by druggists and a report of all such sent to the Attorney-General on the first day of each and every month, giving the date and number of shipment as shown by the tag or label, quantity of alcohol sold or shipped, name and address of purchaser, and means and route of delivery. Any person failing so to record and report such sales and shipments, or falsely making any record or report, shall be deemed guilty of a misdemeanor. (Id. § 3347.)

186. As to Retail—Permits by Justices of the Peace—Duties of Druggists—Sales to Certain Persons Prohibited—Penalty.—Any person who shall desire to purchase alcohol for scientific or manufacturing purposes, except as provided in § 3347, shall apply in person to a justice of the peace of the precinct or city for a permit to make such purchases. To procure such permit, he shall make and file with the justice of the peace in the county where the alcohol is to be used a statement in writing under oath, stating that the affiant is not of intemperate habits or addicted to the use of any narcotic drug; that he is of sound mind, not a minor or an Indian; that such alcohol will not be used as a beverage nor for any purpose other than that stated, and shall set forth the quantity desired and the purpose for which he desires said alcohol; and that he will not use nor permit any other person to use any such alcohol for an unlawful purpose, and he shall give his residence (street address, in cities where same is generally required for delivery of United States mail), and the place at which such alcohol is to be used, and shall sign his name in full in ink. If the justice of the peace is satisfied as to the good faith of the applicant, he shall issue to said applicant, filled out in ink, a permit to purchase alcohol for scientific or manufacturing purposes. The original of said permit shall have attached thereto a duplicate copy and each shall be numbered with the same number, and be in substantially the following form:

State of Utah, county of ....., ss.

....., residing at ....., is hereby permitted to purchase alcohol in the amount of ..... (here insert quantity written in ink, in words and numerals), to be used for scientific or manufacturing purposes. This permit can be used for only one purchase, and the copy hereof attached hereto shall be conspicuously and securely pasted upon the package containing said alcohol, and this permit to purchase shall be void after twenty days from date hereof.

By order of the justice of the peace of ..... (precinct or city).

Dated this ..... day of ....., 19....

.....

Justice of the Peace.

Sales of alcohol, which are shipped to the purchaser by druggists on permits of justices of the peace, must bear on the outer package in a conspicuous place a

label or tag, securely affixed, supplied by the Attorney-General, which shall bear these words:

Alcohol shipment No..... Date..... Druggist Permit. Authorized by the Attorney-General of Utah.

All justices of the peace who shall issue permits under this title shall enter the number of such permit so issued upon the statement and application for the same, together with the quantity of alcohol allowed and the date, and shall file such applications in numerical order, and keep the same on file for at least one year. Such applications shall be open to the inspection of any executive prosecuting, or peace officer at any time. The permit mentioned in this section shall authorize the applicant to purchase, and any druggist to sell and deliver or ship to such applicant, the quantity named in said permit. The permit shall be canceled by such druggist, and kept on file by him in order by dates for at least one year, and the copy of said permit shall be, by the druggist, conspicuously and securely pasted upon receptacle containing said alcohol, and shall so remain upon said receptacle so long as the same shall contain alcohol. Said permit shall authorize only one purchase and sale. It shall be unlawful for any druggist to sell alcohol without the permit herein specified, or for any person to keep or have in possession any alcohol, unless the receptacle containing the same shall be distinctly labeled with the copy of the permit authorizing the purchase of the same, or the tags or labels furnished by the Attorney-General authorizing the purchase of the same, or the tags and labels furnished by the Attorney-General authorizing shipments. The permits on file at any druggist's place of business shall be open to public inspection; provided, however, that alcohol, liquors, alcoholic extracts, essences, medicines, or any preparations containing in excess of one-half of one per cent of alcohol by volume which can be used as a beverage, shall not be sold or furnished by druggists or any other dealer or persons to any person of intemperate habits, or addicted to the use of any narcotic drug, or to a minor, an Indian, or a person of unsound mind. A signed notice in writing served on any justice of the peace or any druggist or other dealer or other person by a peace officer, or by the wife, husband, mother, father, sister, brother, son, daughter, or guardian of any such minor or person, informing any such justice of the peace, druggist, or other dealer or person that the applicant or purchaser is intemperate, or addicted to the use of any narcotic drug, a minor, an Indian, or a person of unsound mind, shall be prima facie evidence of such fact. Any justice of the peace who shall issue a permit to buy alcohol, and any person who shall sell any liquors or preparations mentioned in this paragraph, for six months, thereafter, to such debarred person, after such notice has been served, without a hearing having been had to determine the facts, shall be deemed guilty of a misdemeanor. A conviction of any justice of the peace under this section shall also be a forfeiture of his office, and the court before whom such conviction is had shall, in addition to lawful penalties for misdemeanor, order and adjudge a forfeiture of such office. In case of notice served as aforesaid, a hearing thereon shall be held by the justice of the peace, upon petition of the applicant for liquor. Every informant serving notice as aforesaid shall be subpœnaed to appear and testify at such hearing and be given an opportunity to produce any evidence therein, provided, that any peace officer, relative, or person, as described herein, upon such hearing, may take a change of venue in the manner provided by law therefor. (Id. § 3348.)

187. Manufacture and Sale of Vinegar, Alcohol, Non-Intoxicating Cider, and Food Preparations—Sale of Jamaica Ginger Forbidden.—The provisions of this title shall not be construed to prevent any temperate person from manufacturing vinegar or preserved nonintoxicating cider for use or sale; or to prevent the manufacture of pure alcohol for sale to the warehouse manager only, or for shipment out of the State; provided, that any person who may engage in the manufacture of vinegar, preserved non-intoxicating cider, or alcohol for sale as herein provided, shall before commencing the manufacture thereof, first obtain a permit from the Attorney-General, by filing an affidavit to the effect that said permit is for the purpose of the manufacturing as herein provided; and said person engaged therein shall render a quarterly statement under oath to the Attorney-General, giving such facts as shall be called for by the Attorney-General, and setting forth the amount of all such vinegar, preserved non-intoxicating cider, or alcohol manufactured, amount sold to warehouse managers and the amount shipped out of the State; or prevent the manufacture or sale for lawful purposes of any food preparation, or any United States Pharmacopœia or National Formulary preparation in conformity with the Utah pharmacy laws, which preparation conforms to a standard established by the State Chemist, and contains no more alcohol than is absolutely necessary to extract the medicinal, flavoring, or perfume properties of the drug, oil, sap, or other substance, and to preserve the same; and which substance is manufactured and sold as medicines, flavoring ex-

tracts, essences, tinctures, perfumes, or other similar products for legitimate and lawful purposes and not as beverages; provided, that it shall be unlawful for any person to manufacture or sell or otherwise dispose of the essence or tincture of Jamaica ginger, or any like substances; and, provided, further, that any preparation containing in excess of one-half of one per cent of alcohol by volume, and which is shown on analysis by the State Chemist can be used as a beverage, shall not be sold; or to prevent the manufacture or sale of wood or denatured alcohol under the rules established by the Governor, and in compliance with the formulas and rules established by the United States; or to prevent the importation of wines for sacramental purposes only, by religious bodies, in the same manner as provided in section 3346 for the importation of alcohol by the warehouse manager. (Id. § 3349.)

188. Prescriptions Limited—Penalty for Violation.—It shall be unlawful for any physician, veterinarian, or other person to prescribe for any person any liquors for beverage purposes, or any compound containing in excess of one-half of one per cent by volume of alcohol which is capable of being used as a beverage; or to prescribe any medicine containing in total content of such prescription more than four ounces of alcohol, and such prescription shall not be refilled within seven days. Any person violating any of the provisions of this section shall be deemed guilty of a misdemeanor, and shall be punished as provided in section 3345. (Id. § 3370.)

189. Revocation of Licenses.—Upon conviction of any physician, druggist, or veterinarian for violating any of the provisions of this title, the court before whom such person shall be tried and convicted shall cause a certified copy of such judgment of conviction to be certified to the State, county, or city board having authority to issue licenses to any such physician, druggist, or veterinarian, as the case may be; and such board shall thereupon declare forfeited the said license and the same shall become null and void; and no license shall thereafter for one year be granted to the said person to practice medicine, pharmacy, veterinary science, or to dispense drugs in the State. Any keeper of a hotel, boarding house, pool room, billiard room, bowling alley, store, drug store, or other place requiring any license, or any employee with his knowledge, consent, connivance, or acquiescence, shall, keep, store, dispense, or use, contrary to the provisions of this title, any liquors, in addition to the penalties prescribed for the violations of this title, the license of such place shall be revoked for one year for the first offense, and for the second offense no such license shall be granted at the same place or to the person convicted for a period of two years; provided, that where the place is run under a lease by a person or persons other than the true owner of the building, nothing herein shall operate to prohibit the issuance of a license to a new lessee who was not in any way connnected as an employee or otherwise with the former business therein conducted at the time of the revocation of the license. (Id. § 3371.)

PART IV.

Miscellaneous Laws.

False Advertising.

190. Fraudulently Offering for Sale, Selling or Advertising.—Every person, whether in his own behalf or as an officer of a corporation or as an agent, employee or representative of another person, firm or corporation who shall knowingly sell or in any way dispose of merchandise, service or anything offered by such person, firm or corporation directly or indirectly to the public for sale or distribution with intent to increase the consumption thereof or to induce the public in any manner to enter into any obligation relating thereto, or to acquire title thereto or interest therein, to make, publish, disseminate, circulate or place before the public or cause directly or indirectly to be made, published, disseminated, circulated or placed before the public in this State in a newspaper, or publication, or in the form of a book, notice, handbill, bill, poster, circular, pamphlet, or letter, or by oral proclamation or in any other way of advertisement of any sort regarding merchandise, service or anything so offered to the public, which advertisement contains any assertion, representation or statement which is false or untrue in any

respect, or which is deceptive or misleading, or which is objectionable, as hereinafter defined, shall be guilty of a misdemeanor. (C. L. 1917, § 8351, as amended L. 1923, c. 82.)

191. Fraudulent and Deceptive Advertising Defined.—1. Within the meaning of sections 8351-8353, an advertisement shall be defined to be any notice or announcement made by a handbill, placard, sign, newspaper, magazine, or other public print, or by an oral proclamation, of any article or thing, whether real or personal, for sale or exchange, or of any entertainment, exhibit, or amusement to which an admission fee is charged.

2. It shall be deemed deceptive and misleading advertising for any person, firm or corporation engaged in business in buying and selling new or second-hand articles of goods, wares, or merchandise, or other property, real or personal, or who is engaged in the business of furnishing any kind of service, to advertise by means of "liner ads" in a newspaper, or otherwise, such articles, property or service for sale in a manner indicating that the sale is being made by a householder or private party not engaged in such business; and every person, firm or corporation engaged in any such business shall, in advertising such goods, wares, or merchandise, property or service for sale, either through "liner ads" or otherwise, affirmatively and clearly indicate that the seller is engaged in such business and is not a private party.

3. It shall be deemed deceptive and misleading advertising for any person, firm or corporation in a newspaper or other publication, or in any manner hereinbefore set out, to offer to the public for sale or distribution any merchandise or fabric as all wool which is composed partly or entirely of cotton or other vegetable substitute for wool, or who shall advertise or sell any clothing or fabric as virgin wool, composed wholly or in part of reworked wool or shoddy or which is second-hand or used merchandise, or which is defective in any manner or which consists of articles or units, or parts known as "seconds" or blemished merchandise, or which has been rejected by the manufacturer thereof as not first-class, unless there be conspicuously, displayed in direct connection with the name or description of such merchandise and each specific article, unit or part thereof, an unequivocal statement, phrase or word which will clearly indicate that such merchandise or article, unit or part thereof so advertised, is second-hand, used, defective, or consists of "seconds" or is blemished merchandise, or has been rejected by the manufacturer thereof as not first-class, as the fact may be. (Id. § 8352.)

192. Definition.—The following kinds of advertisement shall be deemed objectionable and pernicious within the meaning of §§ 8351-8353: Advertisements of sales of "damaged goods," of "fire sales," of "bankrupt sales," of "wreck sales," and the like, where merchandise not a part of such "damaged," "fire damaged," "bankrupt stock," "wreckage stock," or other stock represented in the advertisement is offered, represented or sold as a part of such stock, and all other advertisements wilfully designed or calculated to deceive or to mislead the persons to whom they are directed. (C. L. 1917, § 8353.)

NOTE: See also Nos. 22-23 and 76.

Flag Desecration.

193. Desecration of Flag—Penalty.—Any person who in any manner, for exhibition or display, shall place or cause to be placed any word, figure, mark, picture, design, drawing, or any advertisement of any nature upon any flag, standard, color, or ensign, of the United States of America, or who shall expose or cause to be exposed to public view any such flag, standard, ensign, or color upon which shall be printed, painted, or otherwise placed, or to which shall be attached, appended, affixed, or annexed any word, figure, mark, picture, design, or drawing, or any advertisement of any nature, or who shall expose to public view, manufacture, sell, expose for sale, give away, or have in possession for sale or to give away, or for use for any purpose any article or substance being an article of merchandise or a receptacle of merchandise, upon which shall have been printed, painted, attached, or otherwise placed a representation of any such flag, standard, color, or ensign, to advertise, call attention to, decorate, mark, or distinguish the article or substance on which so placed, or who shall publicly mutilate, deface, defile, or defy, trample upon or cast contempt upon, either by word or act, any such flag, standard, color, or ensign shall be deemed guilty of a misdemeanor, and shall be punished by a fine, not exceeding $100, or by imprisonment for not more than thirty days, or both, in the discretion of the court. (C. L. 1917, § 8484.)

194. Id. Flag, Etc., Defined.—The words flag, standard, color, or ensign, as used in the next preceding section, shall include any flag, standard, color, ensign, or any picture or representation of either thereof, made of any substance, or rep-

resented on any substance, and of any size, evidently purporting to be either said flag, standard, color, or ensign of the United States of America, or a picture, or a representation of either thereof upon which shall be shown the colors, the stars and the stripes, in any number of either thereof, or by which the person seeing the same, without deliberation, may believe [it] to represent the flag, color, standard, or ensign of the United States of America. (Id. § 8485.)

195. Id. Exceptions.—The two preceding sections shall not apply to any act permitted by the statutes of the United States of America, or by the United States Army and Navy regulations, nor shall it be construed to apply to a newspaper, periodical, book, pamphlet, circular, certificate, diploma, warrant, or commission of appointment to office, ornamental picture, or stationery, for use in correspondence, on any of which shall be printed, painted, or placed said flag, disconnected from any advertisement. (Id. § 8486.)

Matches.

195a. Manufacture, Sale, Etc., of Non-Safety Matches Prohibited—Definition.—No person, association, or corporation shall manufacture, store, offer for sale, sell, or otherwise dispose of, or distribute white phosphorus, single-dipped, strike-anywhere matches of the type popularly known as "parlor matches;" nor manufacture, store, sell, offer for sale, or otherwise dispose of, or distribute, white phosphorus, double-dipped, strike-anywhere matches or any other type of double-dipped matches, unless the bulb or first dip of such match is composed of a so-called safety or inert composition, non-ignitable on an abrasive surface; nor manufacture, store, sell, or offer for sale, or otherwise dispose of, or distribute matches which when packed in a carton of five hundred approximate capacity and placed in an oven maintained at a constant temperature of 200 degrees F., will ignite in eight hours; nor manufacture, store, offer for sale, sell, or otherwise dispose of, or distribute blazer, or so-called wind matches, whether of the so-called safety or strike-anywhere type. (C. L. 1917, § 3820.)

195b. Packages to be Labeled—Requirements for Storage.—No person, association, or corporationn shall offer for sale, sell, or otherwise dispose of, or distribute any matches, unless the package or container in which such matches are packed bears, plainly marked on the outside thereof, the name of the manufacturer and the brand or trade-mark under which the matches are sold, disposed of, or distributed; nor shall more than one case of each brand of matches of any type or manufacture be opened at any time in the retail store where matches are sold or otherwise disposed of; nor shall loose boxes of paper wrapped packages of matches be kept on shelves or stored in such retail stores at a height exceeding five feet from the floor; all matches, when stored in warehouses, must be kept only in properly secured cases, and not piled to a height exceeding ten feet from the floor; nor be stored within a horizontal distance of ten feet from any boiler, furnace, stove, or other like heating apparatus, nor within a horizontal distance of twenty-five feet from any explosive material kept or stored on the same floor; all matches shall be packed in boxes or suitable packages, containing not more than seven hundred matches in any one box or package; provided, however, that when more than three hundred matches are packed in any one box or package the said matches shall be arranged in two nearly equal portions, the heads of the matches in the two portions shall be placed in opposite directions, and all boxes containing three hundred and fifty or more matches shall have placed over the matches a centre holding or protecting strip, made of chip board, not less than one and one-quarter inches wide; said strip shall be flanged down to hold the matches in position when the box is nested into the shuck or withdrawn from it. (Id. § 3821.)

195c. Id. Manner of Packing.—All match boxes or packages shall be packed in strong shipping containers or cases; maximum number of match boxes or packages contained in any one shipping container or case shall not exceed the following numbers:

Number of Boxes.	*Nominal No. of Matches Per Box.*
½ gross	700
1 gross	500
2 gross	400
3 gross	300
5 gross	200
12 gross	100
20 gross, over 50 and under	100
25 gross, under	50

No shipping container or case constructed of fibre board, corrugated fibre board, or wood, nailed or wire bound, shall exceed a weight, including its contents, of seventy-five pounds; and no lock cornered wooden case containing matches shall have a weight, including its contents, exceeding eighty-five pounds; nor shall any other article or commodity be packed with matches in any such container or case; and all such containers and cases in which matches are packed shall have plainly marked on the outside of the container or case the words "strike-anywhere matches" or "strke-on-the-box matches." (Id. § 3822.)

195d. Penalty.—Any person, association, or corporation violating any of the provisions of this title shall be deemed guilty of a misdemeanor and shall be fined for the first offense not less than $5 nor more than $25, and for each subsequent violation, not less than $25. (Id. § 3823.)

Tobacco—Tobacco Products.

196. Sale, Etc., to Minors.—Any person who shall sell, give, or furnish any cigar, cigarette, or tobacco in any form, or any opium or other narcotic in any form, to any person under twenty-one years of age in this State shall be guilty of a misdemeanor. The provisions of this section shall not apply to the use, sale, giving, or furnishing of any narcotic upon the prescription of a physician. (C. L. 1917, § 8442.)

196a. Purchase or Possession of Liquor, Etc., by Minors—Penalty.—Any person under the age of twenty-one years who shall buy, accept, or have in his possession any intoxicating liquor, cigar, cigarette, or tobacco in any form, or any opium or any other narcotic in any form, shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined in any sum not exceeding $100. (Id. § 8443.)

197. Permit for Sale of Cigarettes and Cigarette Papers—Revocations—License—Bond—Taxes—Packing—Stamp—Records—Penalties—Fraud — Enforcement—Minors—Nuisance.—It shall be unlawful for any person, firm or corporation to barter, sell or offer for sale, cigarettes or cigarette papers in the State of Utah, without first having obtained a permit therefor, which said permit may be granted and issued by the board of city commissioners of any city of the first or second class, the city council of any city of the third class, the board of trustees of any town, or the board of county commissioners in any territory outside of any city or town. Said permit shall be in force and effect for one year from and after the date of issuance, unless sooner revoked, and shall be granted only to a person, firm or corporation owning or operating the place from which such sales are to be made, which place shall be within the territorial limits of the body granting such permit. Each permit shall be numbered and shall show the residence and place of business of the permit holder, and shall not be transferable. The body issuing such permit shall, on reasonable notice and hearing, revoke the permit of any person, firm or corporation violating any provision of this act, and no permit can be issued to such person, firm or corporation within a period of two years thereafter. The body issuing such permits shall keep an accurate record thereof and of all revocations of permits, and upon revocation of any permit shall immediately certify the same to the State Treasurer.

No permit shall be issued until the applicant shall have paid to the treasurer of the city, town or county, as the case may be, an annual license fee of ten ($10.00) dollars per year or fraction thereof. All such license fees shall be credited to the general fund of the city, town or county collecting the same.

No permit shall be issued until the applicant therefor shall have filed with the city recorder, or clerk of the body issuing said permit, a bond to be approved by the board of county commissioners, board of city commissioners, or city council as the case may be, which said bond shall be payable to the city, town or county issuing such permit for the benefit of all parties interested, and shall be in the amount of five hundred ($500.00) dollars and conditioned upon the faithful observance of all the provisions of this act, and for the payment of all damages that may result from the unlawful sale of cigarettes or cigarette papers. Said bond shall be signed by the obligor as the principal and by two qualified sureties or by a surety company authorized to do business in this State.

From and after the taking effect of this act there is hereby imposed, and there shall be collected by and paid to the State Treasurer, upon the sale of all cigarettes and cigarette papers, or wrappers and tubes sold in the State of Utah to consumers, the following taxes, to be paid at the time of sale and delivery to the consumer:

Class A. On cigarettes weighing not more than three pounds per thousand, one mill on each such cigarette;

Class B. On cigarettes weighing more than three pounds per thousand, two mills on each such cigarette;

Class C. On cigarette papers or wrappers or any papers made or prepared for the purpose of making cigarettes, made up in packages, books or sets; on each such package, book or set containing not more than fifty papers, one-half cent; containing more than fifty papers but not more than one hundred papers, one cent; containing more than one hundred papers, one-half cent for each fifty papers or fractional part thereof;

Class D. On tubes, one cent for each fifty tubes or fractional part thereof.

All cigarettes sold in this State under the provisions of this act, shall be put up in packages containing 5, 8, 10, 12, 15, 16, 20, 24, 40, 50, 80 or 100 cigarettes each. And whenever a carton of cigarettes is broken open, such carton shall be construed to be open stock and that all open stock of cigarettes or cigarette paper and each package, book or set of papers or of tubes, shall have securely affixed thereto a suitable stamp denoting the tax thereon, and said stamp shall be properly canceled under such regulations as the State Treasurer shall prescribe.

When a full carton of cigarettes is sold, the seal must be broken and the required amount of revenue stamps affixed to each separate package of cigarettes.

Every dealer of cigarettes and cigarette papers shall keep all surplus and open stock of cigarettes and cigarette papers in such form as may be prescribed by the State Treasurer, and shall keep a record of all his purchases of cigarettes and cigarette papers. Such records to include invoices or bills of all such purchases and shall at all times during the business hours of the day be subject to inspection by the State Treasurer or his deputies or such other officers as may be duly authorized by said State Treasurer.

Wholesalers, jobbers or distributors selling direct to consumers must comply with the provisions of this act the same as other authorized dealers.

Any person, firm or corporation violating any provision of section 1, of this act shall be punished by a fine of not less than one hundred ($100.00) dollars, nor more than two hundred ninety-nine ($299.00) dollars. All fines collected to be credited 50 per cent to the general fund of the city, town or county collecting the same; and 50 per cent to be remitted to the State Treasurer. Reports shall be made to the State Treasurer of all fines so collected, on the last day of each month.

It shall be unlawful for any person not authorized hereby, with the intent to defraud the State, to make, alter, forge or counterfeit any license or stamp provided for in this act or to have in possession any forged, counterfeited, spurious or altered license or stamp, knowing the same to be forged, counterfeited, spurious or altered, and whoever is found guilty of any violation of this provision shall be fined not more than one thousand ($1,000.00) dollars and be imprisoned in the State Penitentiary not more than three years.

The State Auditor shall prepare and have suitable stamps for use on each kind of package described herein. Upon requisition from the State Treasurer, the State Auditor shall deliver to his order the stamps designated in such requisition and shall charge the State Treasurer with the stamps thus delivered, and shall keep an accurate record of all stamps coming into and leaving his hands. The State Treasurer shall sell the stamps herein provided for, only to dealers holding permits issued as provided in this act and the moneys received from the sale of such stamps shall be turned into the general fund of the State. The State Treasurer shall redeem and make repayment for any unused stamps on written request made by any such dealer and pay for same out of any funds derived from the provisions of this act. It shall be unlawful for a dealer to sell or dispose of such stamps to another dealer or to any person whomsoever, except wherever a person, firm or corporation owns more than one store, in such cases, stamps may be distributed in the various stores by the main office, but each store must have a separate permit and cancellation stamp.

The State Treasurer, in the enforcement of this act, may call to his aid the Attorney-General, any county or district attorney or any peace officer, and he is further authorized to appoint such clerks and additional help as may be needed to carry out the provisions of this act. Provided that the Legislature shall make the necessary budgeted appropriation to the State Treasurer from the general fund to carry out the provisions of this chapter.

Any person who shall furnish to any minor under twenty-one years of age, by gift, sale or otherwise, any cigarette or cigarette paper or wrapper, or any paper made or prepared for the purpose of making cigarettes, or any tobacco of any kind whatsoever, shall be guilty of a misdemeanor, and shall be punished by fine of not less than twenty-five ($25.00) dollars, nor more than two hundred ninety-nine ($299.00) dollars, or by imprisonment in the county jail not exceeding six (6) months, or by both such fine and imprisonment.

Any person, firm or corporation maintaining a place where cigarettes or cigarette papers or tobacco are sold or kept with intent to sell in violation of the provisions of this act, shall be deemed guilty of keeping and maintaining a nuisance and the building or place so used for the sale or keeping for sale of cigarettes or papers or wrappers, or tobacco, in violation of the provisions of this act, shall be deemed to be a nuisance, and such persons, firm or corporation may be enjoined from maintaining such nuisance and such building or place abated as a nuisance, and the procedure for the actions to enjoin and abate such nuisance, or for contempt in violating an order of injunction, shall be, so far as applicable, the same as that now provided by the laws of this State enjoining and abating intoxicating liquor nuisances. (L. 1921, c. 145, § 1, as amended L. 1925, c. 68.)

198. Advertising or Display of Tobacco, Cigarettes, Etc.—It shall be a misdemeanor for any person, company or corporation to write, print, publish, or circulate in any newspaper, magazine, periodical or circular written, printed or published within the State of Utah, or any street sign, placard, or billboard, street car, package of merchandise other than the merchandise licensed in this act, or any other place of display, any advertisement of cigarettes or cigarette papers, cigars, chewing tobacco or smoking tobacco or any disguise or substitute of either of these except that a dealer in tobacco and cigars may have a sign on the front of his place of business stating that he is dealing in such articles, and excepting further that cigars, chewing tobacco and smoking tobacco may be advertised in any newspaper published within the State of Utah, provided, however, that nothing herein shall be so construed as to permit advertising of cigarettes in any manner.

Nor shall any cigarettes or cigarette papers, or any advertisement thereof, be displayed in any store window, in the State of Utah, provided, however, that nothing in this section contained shall be construed so as to prohibit the display of tobacco and the advertisements thereof, other than cigarettes and the advertisements thereof, in store windows. (L. 1921, c. 145, § 2, as amended L. 1923, c. 52.)*

199. Use of Tobacco, Etc., by Minors Unlawful.—It shall be a misdemeanor for the proprietor of any place of business to knowingly permit minors under twenty-one years of age to frequent such place of business while in the act of using tobacco in any form. The term "place of business" as here used shall apply to any and all such places as shops, stores, factories, public garages, offices, theatres, recreation and dance halls, pool rooms, cafes, cafeterias, cabarets, restaurants, hotels, lodging houses, street cars, interurban and railway passenger coaches and waiting rooms. (Id. § 3.)

200. Smoking Tobacco, Etc., in Enclosed Place, Except in Smoking Rooms, Forbidden—Smoking Signs.—It shall be a misdemeanor for any person to smoke cigars, cigarettes or tobacco in any form in any enclosed public place within the State of Utah, except in extra rooms, compartments or coaches specially provided for smoking purposes. The term "enclosed public place" as here used shall be construed to mean the dining rooms in hotels, restaurants, cafes and cafeterias; theatres, passenger elevators, street cars, interurban and railway passenger coaches, motor and other passenger vehicles employed as common carriers, railway station waiting rooms, State, county and city buildings, excepting that the owner or proprietor of any hotel dining room, restaurant, cafe or cafeteria may designate the same as a public smoking room by a conspicuous sign at or near the entrance; provided, further, that in any State, county or city building, any public officer who has a private office separate and apart from his public office, may if he so desires, designate such private office as a place where smoking may be permitted, and so long as such private office is so designated, smoking therein shall not be considered in violation of this act. (Id. § 4.)

Trade-Marks, Etc.

201. Defined.—The phrase "trade-mark" as used in this chapter, includes every description of word, letter, device, emblem, stamp, imprint, brand, printed ticket, label, or wrapper usually affixed by any mechanic, manufacturer, druggist, merchant, tradesman, association, or union, whether incorporated or unincorporated, to denote any goods to be goods imported, manufactured, produced, compounded, or sold by him, or by such association or union, other than any name, word, or expression generally denoting any goods to be of some particular class or description. (C. L. 1917, § 6145.)

202. Recorded With Secretary of State.—Any person, association, or union may record any trade-mark or name by filing with the Secretary of State his or

*Held to be unconstitutional in State v. Salt Lake Tribune Pub. Co., 249 Pac. 474 (1926).

its claim to the same, and a copy or description of such trade-mark or name, with his affidavit attached thereto, certified to by any officer authorized to take acknowledgments of conveyances, setting forth that he, or the firm, corporation, association, or union of which he is a member, is the exclusive owner, or agent of the owner, of such trade-mark or name. (Id. § 6146.)

203. **Record Open to Public.**—The Secretary of State must keep for public examination a record of all trade-marks or names filed in his office, with the date when filed and name of claimant; and must at the time of filing collect from each claimant the authorized fee. (Id. § 6147.)

204. **Ownership—Transfer—Damages for Infringement.**—Any person who has first adopted and used a trade-mark or name, whether within or beyond the limits of this State, is its original owner. Such ownership may be transferred in the same manner as personal property, and is entitled to the same protection by suits at law; and any court of competent jurisdiction may restrain, by injunction, and award damages for, any use of trade-marks or names in violation of this chapter. (Id. § 6148.)

205. **Owners May Adopt Marks of Ownership—Filing Fee.**—All persons, companies, and corporations engaged in the transportation or manufacture of any dairy product, ice cream, or soda water, or in bottling milk, cream, or soda water for sale and use, may adopt a mark or marks of ownership to be stamped or marked on any can, bottle, cask, keg, barrel, or other receptacle used in the handling and transportation of any of said products, and may file in the office of the Secretary of State a description of the name or marks so used by them, or either of them, and the use to be made of any such can, bottle, cask, keg, barrel, or other receptacle and cause the same to be published for two successive weeks in a weekly newspaper published and in general circulation in the State of Utah and pay to the Secretary of State a fee of $2 for filing the same. (Id. § 6150.)

206. **Selection of Marks.**—The brand or mark so selected and adopted as herein provided may consist of a name, design, mark or marks, or some particular color of paint or enamel used upon the can, bottle, cask, keg, barrel, or other receptacle, or any part thereof. (Id. § 6151.)

207. **Unlawful to Duplicate Brands or Marks.**—It shall be unlawful for any person, company, or corporation to adopt or use any brand or mark which has already been designated, appropriated, or obtained under the provisions of this chapter. (Id. § 6152.)

208. **Unlawful to Use Branded or Marked Receptacle.**—It shall be unlawful for any person other than the rightful owner thereof to use any can, bottle, cask, keg, barrel, or other receptacle marked or branded as herein provided, for any other purpose, or for the transportation or hauling of any other article or product than designated or provided for by such branding. (Id. § 6153.)

209. **Defacing of Marks or Brands Unlawful.**—It shall be unlawful for any person other than the rightful owner thereof to deface or remove any such brand, mark, or stamp put upon any such can, bottle, cask, keg, barrel, or other receptacle, as herein provided. (Id. § 6154.)

210. **Duty of Dairy and Food Commissioner.**—For the purpose of preventing the use of said cans, bottles, casks, kegs, barrels, or other receptacles, for any purpose other than that herein provided, and to insure the wholesomeness and high quality of said products and the sanitary condition of the receptacles in which the same are transported, it shall be the duty of the Dairy and Food Commissioner to enforce the provisions of this chapter. (Id. § 6155.)

211. **Penalty.**—Whoever shall violate any of the provisions or sections of this chapter shall be guilty of a misdemeanor, and shall, upon conviction thereof, be punished by a fine of not more than $100, or by imprisonment in the county jail, not exceeding thirty days, or by both such fine and imprisonment, at the discretion of the court. (Id. § 6156.)

212. **Description of Brand, Label, Etc., Filed and Published.**—All manufacturers, bottlers, or dealers in soda or mineral waters, beer, ale, porter, cider, wine or other beverages, or medical or other preparations, who shall use barrels, kegs, casks, boxes, fountains, tanks, jugs, siphons, bottles, or other vessels, or any tools, implements, or apparatus, upon which shall be stamped, impressed, engraved, printed, painted, or in any manner affixed the names, brands, marks, trade-mark, or other designations of ownership by said manufacturers, bottlers, or dealers respectively, shall file in the office of the county clerk of the county wherein the principal office, manufactory, or depot of such business is located in this State, a description of the names, brands, marks, or other designations of ownership so used by them respectively, and cause the same to be published for two successive weeks in a daily newspaper of general circulation in such county; provided, however, that it shall be unlawful for any manufacturer, bottler, or

dealer aforesaid to file or publish as aforesaid the name, brand, mark, or trade-mark, or other designation of ownership by any other manufacturer, bottler, or dealer. (Id. § 8451.)

213. Id. Unlawful for Any Person to Use, Sell, or Injure Any Package Labeled With Any Such Brand.—It shall be unlawful for any person or persons without the written consent of the owner or owners thereof, to use, sell, dispose of, buy, or traffic in, or wilfully break, destroy, or otherwise injure any such barrels, kegs, casks, boxes, fountains, tanks, siphons, bottles, jugs, or other vessels or any of such tools, implements, or apparatus, or to wilfully mar or erase any such names, brands, marks, or other designations so appearing thereon, or to fill any such barrels, kegs, casks, boxes, fountains, tanks, siphons, bottles, jugs, or other vessels with other beverages, medicines, compounds or substances whatever. (Id. § 8452.)

214. Id. Penalty.—Any person or persons, association or corporation who shall violate any of the provisions of sections 8451-8456 shall be deemed guilty of a misdemeanor, and, upon conviction thereof before any justice of the peace, shall be fined $5 for every barrel, cask, keg, box, siphon, fountain, or tank, and one dollar for every bottle, jug, or other vessel, and one dollar for every tool, implement, or other apparatus so by him or them used, sold, disposed of, bought, or trafficked in, or so marred, erased, broken, destroyed, or otherwise injured or filled, together with the costs of prosecution; and the employer or principal shall be so liable for the acts of his employees or agents for any such violation of sections 8451-8456, when engaged in the business of such employer or principal. (Id. § 8453.)

215. Id. Evidence—Warrant.—The using by any person other than the rightful owner thereof, without such written permission, of any such cask, barrel, keg, fountain, tank, bottle, siphon, box, or other vessel for the sale therein of ale, porter, lager beer, soda or mineral waters, or other beverages, or any other article of merchandise, medicine, compound, or preparation to be furnished to customers, or the buying, selling, or trafficking in any such barrel, keg, bottle, fountain, tank, siphon, box, or other vessel, or any such tool, implement, or apparatus by any person other than the owner, without the written permission of such owner, or the fact that any junk dealer or other dealer in casks, kegs, bottles, siphons, boxes, fountains, tanks, or other vessels, or the fact that any other manufacturer or bottler who is not the rightful owner thereof shall have in his possession any such cask, barrel, keg, bottle, fountain, tank, siphon, box, or other vessel, tool, implement, or apparatus so marked or stamped and registered as aforesaid, without such written permission, shall and is hereby declared to be prima facie evidence that such use, buying, selling, trafficking in, or possession is unlawful within the meaning of §§ 8451-8456. And it is hereby declared to be the duty of any justice of the peace, upon complaint having been made in writing before him, that any person or persons, association or corporation has violated any of the provisions of §§ 8451-8456, to immediately issue his warrant and cause such person or persons so accused to be brought before him, and proceed to try such accused party, and in case such accused party be found guilty of having violated any of the provisions of §§ 8451-8456, to assess the fine as provided in § 8453, such fines and costs to be collected as provided by law in other cases of misdemeanor. (Id. § 8454.)

216. Search Warrant.—In case such owner or owners of any such cask, barrel, bottle, box, fountain, tank, siphon, or other vessel, or tool, implement, or apparatus shall, in person or by his agent, make oath in writing before any justice of the peace that he has reason to believe, and does believe, that any other person is possessed of or is using, as by §§ 8451-8456 declared unlawful, any of the casks, barrels, kegs, bottles, boxes, fountains, tanks, siphons, or other vessels, tools, implements, or apparatus of such person or his principal, or that any junk dealer or other dealer in casks, barrels, kegs, bottles, siphons, fountains, tanks, or boxes, or any other dealer, manufacturer, or bottler has any such casks, barrels, kegs, boxes, fountains, tanks, siphons, or other vessels, or tools, implements, or apparatus secreted in, about, or upon his, her, or their premises, the said justice of the peace shall issue his search warrant and cause the premises so designated to be searched, as in other cases where search warrants are issued, as is now provided by law. And in case such barrel, cask, keg, bottle, box, fountain, tank, siphon, or other vessel, or any such tools, implements, or other apparatus shall be found in, about, or upon the premises so designated, the officer executing such warrant shall thereupon arrest the person or persons named in such search warrant, and bring him, her, or them before the justice of the peace who issued such warrant, who shall thereupon hear and determine such case, and if the accused is found guilty, he, she, or they shall be fined, as provided in § 8453. (Id. § 8455.)

217. Id. Exemption from Penalty on Condition.—No person shall be subject to punishment, or liable to the penalty prescribed in section 8453, who shall, within thirty days after March 23, 1901, in good faith, offer to deliver all such articles

in his possession or under his control to the rightful owner, upon payment to him by such owner of any rebate or deposit which such owner received when he parted with possession of the same. (Id. § 8456.)

218. **Forging or Counterfeiting Trade-Mark.**—Every person who wilfully forges or counterfeits, or procures to be forged or counterfeited any trade-mark usually affixed by any person, or by any association or union of workingmen, to his goods, which has been recorded in the office of the Secretary of State, with intent to pass off any goods to which such forged or counterfeited trade-mark is affixed, or intended to be affixed, as the goods of such person or such association or union of workingmen, is guilty of a misdemeanor. (Id. § 8472.)

219. **Selling Goods Bearing Counterfeited Trade-Mark.**—Every person who sells, or keeps for sale, any goods upon or to which any counterfeited trade-mark has been affixed, after such trade-mark has been recorded in the office of the Secretary of State, intending to represent such goods as the genuine goods of another, knowing the same to be counterfeited, is guilty of a misdemeanor. (Id. § 8473.)

220. **"Forged Trade-Mark," Etc., Defined.**—The phrases, "forged trade-mark," and "counterfeit trade-mark," or their equivalents, as used in this chapter, include every alteration or imitation of any trade-mark so resembling the original as to be likely to deceive. (Id. § 8474.)

221. **"Trade-Mark" Defined.**—The phrase "trade-mark," as used in the three preceding sections, includes every description of word, letter, device, emblem, stamp, imprint, brand, printed ticket, label, or wrapper, usually affixed by any mechanic, manufacturer, druggist, merchant, or tradesman, or by any association or union of workingmen, to denote any goods to be goods imported, manufactured, produced, compounded, or sold by him, or by such association or union of workingmen other than any name, word, or expression generally denoting any goods to be of some particular class or description. (Id. § 8475.)

222. **Refilling, Cask, Etc., Bearing Trade-Mark.**—Every person who has or uses any cask, bottle, vessel, case, cover, label, or other things bearing or having in any way connected with it the duly filed trade-mark or name of another, for the purpose of disposing, with intent to deceive or defraud, of any article other than that which such cask, bottle, vessel, case, cover, label, or other thing originally contained or was connected with by the owner of such trade-mark or name, is guilty of a misdemeanor. (Id. § 8476.)

Trading Stamps.

222a. **Unlawful to Sell Stamps, When—Penalty.**—It shall be unlawful for any person, firm, or corporation to sell, issue, transfer, or deliver to any other person, firm, or corporation within this State any trading stamp or stamps to be sold, issued, transferred, or delivered by such other person, firm, or corporation upon, in connection with, or as the result of a sale of any goods, wares, merchandise, or other commodity or thing of value, unless and until the person, firm, or corporation in the first instance so selling, issuing, transferring, or delivering the same shall have established an office within this State where all books of accounts relating to the sale, issue, transfer, or delivery of trading stamps in this State shall be kept, and shall have filed with the Secretary of State an appointment of a process attorney upon whom process in all civil actions may be served, and shall also have filed with the Secretary of State a good and sufficient bond as hereinafter specified. Any person, firm, or corporation violating any provision of this section shall be guilty of a misdemeanor. (C. L. 1917, § 6160.)

222b. **Bond Required—Action Against.**—Said bond shall be in the sum of $20,000, payable to the State of Utah, and shall be executed by the person, firm, or corporation furnishing the same, as principal, together with at least one corporate surety, and shall provide that the principal shall, upon presentation by the lawful holder of the required quantity of trading stamps in the proper form, redeem the same according to the terms of the contract under which they were issued, and that the said principal shall pay all taxes imposed by law and all fines and penalties imposed for a violation of any law of this State. Said bond shall be in such form and shall contain such other conditions and provisions as the Secretary of State shall deem necessary to protect the State and all persons, firms, or corporations holding trading stamps for redemption. Whenever any such bond shall, for breach of any condition therein contained, become forfeited, any person injured thereby may sue thereupon, or all persons so injured may join in prosecuting one action, but any such action must be commenced within one year after the date upon which the cause of action accrued. (Id. § 6161.)

Weights and Measures.

223. **U. S. Standard Adopted.**—The weights and measures received from the United States under a resolution of Congress approved June 14, 1836, and such new weights and measures as shall be received from the United States as standard weights and measures in addition thereto or in renewal thereof, and such as shall be supplied by the State in conformity therewith, and certified by the National Bureau of Standards, shall be the State standards of weights and measures. (C. L. 1917, § 6276.)

224. **Office and Working Standards—Verification—Use.**—In addition to the State standards of weights and measures, provided for above, there shall be supplied by the State at least one complete set of copies of these, to be kept at all times in the office of the State Superintendent, and to be known as office standards and such other weights, measures and apparatus as may be found necessary to carry out the provisions of this title, to be known as working standards. Such weights, measures and apparatus shall be verified by the State Superintendent, or his deputy or inspector, at his discretion, upon their initial receipt, and at least once in each year thereafter, the office standards by direct comparison with the State standards, the working standards by comparison with the office standards. When found accurate upon these tests the office and working standards shall be certified to by the superintendent. The office standards shall be used in making all comparisons of weights, measures, and weighing and measuring devices submitted for test in the office of the superintendent, and the State standard shall be used only in verifying the office standards and for scientific purposes. (Id. § 6277.)

225. **State Superintendent—Expenses.**—The State Commissioner of Agriculture shall be ex-officio Superintendent of Weights and Measures. There shall be a Deputy Superintendent of Weights and Measures and inspectors of weights and measures, the deputy and inspectors to be appointed by the superintendent. The Superintendent of Weights and Measures shall be allowed, for salaries for the deputy superintendent of weights and measures, inspectors of weights and measures, clerical services, traveling and contingent expenses for himself, his deputy, and inspectors, such sums as shall be appropriated by the Legislature. (Id. § 6278, as amended L. 1921, c. 142.)

226. **Superintendent and Deputy to Give Bonds—Terms.**—The State Superintendent of Weights and Measures shall forthwith, on his appointment, give a bond in the penal sum of $2,000, with sureties to be approved by the Secretary of State, for the faithful performance of the duties of his office and for the safekeeping of the standards entrusted to his care, and for the surrender thereof immediately to his successor in office or to the person appointed by the Governor to receive them. The Deputy Superintendent of Weights and Measures, and each inspector of weights and measures shall forthwith, upon his appointment, give a bond in the penal sum of $1,000, with sureties to be approved by the Secretary of State, for the faithful performance of the duties of his office and for the safekeeping of any apparatus entrusted to his care. (C. L. 1917, § 6279.)

227. **Custody and Car of Standards—Duty of Superintendent—Report.**—The Superintendent of Weights and Measures shall take charge of the standards adopted by this title as the standards of the State, and cause them to be kept in a fireproof building belonging to the State (or in a safe and suitable place in the office of the superintendent), from which they shall not be removed except for repairs or for certification, and he shall take all other necessary precautions for their safekeeping. He shall maintain the State standards in good order, and shall submit them at least once in ten years to the National Bureau of Standards, for certification. He shall keep a complete record of the standards, balances, and other apparatus belonging to the State, and take a receipt for same from his successor in office. He shall biennially, on the 15th day of December, make to the Governor a report of all work done by his office. (Id. § 6280.)

228. **Tests of City Standards—Biennial Inspections.**—The Superintendent of Weights and Measures, or his deputy or inspectors at his discretion, shall, at least once in five years, try and prove by the office standards all standard weights, measures, and other apparatus which may belong to any city required to appoint a sealer and purchase and keep standards of weights and measures by the provisions of this title, and shall certify to such when found to be accurate. The State Superintendent, or his deputy or inspectors at his direction shall, at least once in two years, visit these cities for the purpose of inspecting the work of the local sealers, and in the performance of such duties they may inspect the weights, measures, balances, or any other weighing or measuring device of any citizen, firm, or corporation, and shall have the same powers as the local sealer of weights and measures. The superintendent shall issue from time to time regulations for the

guidance of city sealers, and the said regulations shall govern the procedure to be followed by the aforesaid officers in the discharge of their duties. (Id. § 6281.)

229. **General Supervision—Inspection at State Institutions.**—The State Superintendent of Weights and Measures shall have and keep a general supervision of the weights and measures, and weighing or measuring devices offered for sale, sold, or in use in the State. He, or his deputy or inspectors at his direction, shall, at least once annually, test all scales, weights, and measures used in checking the receipts or disbursements of supplies in every institution for the maintenance of which moneys are appropriated by the Legislature, and he shall report in writing his findings to the Supervisory Board and to the executive officer, of the institution concerned, and, at the request of such board or executive officer, the Superintendent of Weights and Measures shall appoint in writing one or more employees then in actual service of the institution, who shall act as special deputies without extra compensation, for the purpose of checking the receipts or disbursements. (Id. § 6282.)

230. **General Powers and Duties of Superintendent—Annual Inspections.**—When not otherwise provided by law, the State Superintendent shall have the power, and it shall be his duty in those parts of the State in which a city sealer is not required to be appointed by the provisions of this title, to inspect, test, try, and ascertain if they are correct, all weights, measures, and weighing or measuring devices kept, offered, or exposed for sale, sold, or used or employed by any proprietor, agent, lessee, or employee, in proving the size, quantity, extent, area, or measurement of quantities, things, produce, or articles for distribution or consumption, purchased or offered or submitted by such person or persons for sale, hire, or award; and he shall have the power to, and shall from time to time weigh or measure and inspect packages or amounts of commodities of whatsoever kind kept for the purpose of sale, offered for sale, or sold in a manner in accordance with law. He shall, at least once each year and as much oftener as he may deem necessary, see that all weights, measures, and weighing or measuring devices used are correct. He may, for the purpose above mentioned, and in the general performance of his official duties, enter and go into or upon, and without formal warrant, any stand, place, building, or premises, or stop any dealer whatsoever, and require him, if necessary, to proceed to some place which the State Superintendent may specify, for the purpose of making the proper tests. Whenever the State Superintendent finds a violation of the statutes relating to weights and measures, he shall cause the violator to be prosecuted. (Id. § 6283.)

231. **Correct Standards to be Sealed.**—Whenever the State Superintendent compares weights, measures, or weighing or measuring instruments and finds that they correspond, or causes them to correspond with the standards in his possession, he shall seal or mark such weights, measures, or weighing or measuring instruments with appropriate devices. (Id. § 6284.)

232. **Incorrect Standards to be Condemned—May be Confiscated, When.**—The State Superintendent shall condemn and seize and may destroy incorrect weights, measures, or weighing or measuring devices which in his best judgment are not susceptible of satisfactory repair; but such as are incorrect and yet may be repaired, he shall mark or tag as "condemned for repairs." The owner or user of any weights, measures, or weighing or measuring devices of which such disposition is made shall have the same repaired or corrected within ten days, except upon satisfactory showing the superintendent may extend such time, and they may neither use nor dispose of the same in any way, but shall hold the same at the disposal of the superintendent. Any weights, measures, or weighing or measuring devices which have been "condemned for repairs," and have not been repaired as required above, shall be confiscated by the superintendent. (Id. § 6285.)

233. **Powers and Duties of Deputy and Inspectors.**—The powers and duties given to and imposed upon the State Superintendent of Weights and Measures by sections 6283-6285 are hereby given to and imposed upon his deputy and inspectors also, when acting under his instructions and at his direction. (Id. § 6286.)

234. **City Sealer—Appointment—Salary—Deputies.**—There shall be a city sealer of weights and measures in cities of not less than twenty-five thousand population, according to the latest official State or United States census, to be appointed by the mayor and city commission. He shall be paid a salary, to be determined by the mayor and city commission, and no fee shall be charged by him or by the city for the inspecting, testing, or sealing, or the repairing or adjusting of weights, measures, or weighing or measuring devices. Whenever the mayor and city commission shall deem it necessary, one or more deputy sealers of weights and measures may be appointed, and their salary fixed as above. All deputies appointed shall have the same powers, and may perform the same duties as the city sealer, when acting under his instructions and direction. (Id. § 6287.)

235. Bond of City Sealer.—The city sealer of weights and measures shall forthwith, on his appointment, give a bond in the penal sum of $1,000, with sureties to be approved by the appointing power, for the faithful performance of the duties of his office. (Id. § 6288.)

236. City Standards—Custody.—The mayor and city commission of each city required to appoint a sealer under the provisions of this title shall procure at the expense of the city, and shall keep at all times, a set of weights and measures and other apparatus as complete and of such materials and construction as the said Superintendent of Weights and Measures may direct. All such weights, measures, and other apparatus, having been tried and accurately proven by the State Superintendent, shall be sealed and certified to by him as hereinbefore provided, and shall be then deposited with and preserved by the city sealer as public standards for such city. (Id. § 6289.)

237. Powers and Duties of City Sealer.—Where not otherwise provided by law, the city sealer shall have the same powers and shall perform the same duties within his city as granted to and imposed upon the State Superintendent of Weights and Measures by sections 6283-6285. (Id. § 6290.)

238. Id. Records—Report.—The city sealer shall keep a complete record of all of his official acts, and shall make an annual report, duly sworn to, on the 30th day of November, to the State Superintendent of Weights and Measures, on blanks furnished by the latter; and also, any special reports that the latter may request. (Id. § 6291.)

239. Police Powers of Inspectors and Sealers.—The Superintendent of Weights and Measures, his deputy and inspectors, and the city sealers and deputy sealers of weights and measures, are hereby made special policemen, and are authorized and empowered to arrest, without formal warrant, any violator of the statutes in relation to weights and measures, and to seize for use as evidence without formal warrant any false or unsealed weight, measure, or weighing or measuring device or package or amount of commodity found to be used, retained, or offered or exposed for sale or sold in violation of law. (Id. § 6292.)

240. Unlawful Interference—Penalty.—Any person who shall hinder or obstruct in any way the Superintendent of Weights and Measures, his deputy or inspectors, or any city sealer or deputy sealer of weights and measures, in the performance of his official duties, shall be guilty of a misdemeanor, and, upon conviction thereof in any court of competent jurisdiction, shall be punished by a fine of not less than $20 or more than $200, or by imprisonment in the county jail for not more than three months, or by both such fine and imprisonment. (Id. § 6293.)

241. Misrepresentation—Use of Counterfeit Seal—Penalty.—Any person who shall impersonate in any way the Superintendent of Weights and Measures, his deputy or inspectors, or any city sealer or deputy sealer of weights and measures, by the use of his seal or counterfeit of his seal, or otherwise, shall be guilty of a misdemeanor, and upon conviction thereof in any court of competent jurisdiction, shall be punished by a fine of not less than $100 and imprisonment not more than one year, or by both such fine and imprisonment. (Id. § 6294.)

242. Measurement of Food Products in Packages—Net Contents to be Marked—Proviso—Package Defined.—It shall be unlawful to keep for the purpose of sale, or sell, or offer or expose for sale, any food products in package form, unless the net quantity of the contents be plainly and conspicuously marked on the outside of the package, in terms of weight, measure or numerical count; provided, however, that reasonable variations or tolerances shall be permitted, and that these reasonable variations or tolerations and also exemptions as to small packages shall be established by rules and regulations made by the Dairy and Food Bureau; and, provided, further, that this section shall not be construed to apply to those commodities in package form, the manner of sale of which is specifically regulated by the provisions of other sections of this title. The word "package," as used in this section, shall be construed to include the package, carton, case, can, box, barrel, bottle, phial, or other receptacle put up by the manufacturer; or, when put up prior to the order of the commodity, by the vendor, which may be labeled, branded, or stenciled, or otherwise marked, or which may be suitable for labeling, branding, or stenciling, or marking otherwise, making one complete package of the commodity. The word "package" shall be construed to include both the wholesale and the retail package, with the exception of shipping cases when contents are properly marked. (Id. § 6296.)

243. Sale of Butter and Oleomargarine—Sizes of Packages—Net Weight to Show.—It shall be unlawful for any person to sell, or offer to sell, any butter or renovated or process butter or oleomargarine in any other manner than by weight. It shall be unlawful for any person to put up, pack, or keep for the purpose of

sale, offer or expose for sale, or sell any butter, or renovated or process butter or oleomargarine in the form of prints, bricks, or rolls in any other than the following sizes, to wit: One-quarter pound, one-half pound, one pound, one and one-half pounds, or multiples of one pound. Each print, brick, or roll shall bear a definite, plain, and conspicuous statement of its true net weight, on the principal label, where there be such a label, otherwise on the outside wrapper thereof; such statement shall be in Gothic type, not less than twelve point. The prints, bricks, or rolls referred to in this section shall be construed to include those prints, bricks, or rolls put up by the manufacturer or producer; or when put up prior to the order of the commodity by the vendor. (Id. § 6298.)

244. Bread—Labeled to Show Weight and Name of Manufacturer.—All bread kept for the purpose of sale, offered or exposed for sale, or sold shall be sold by weight. To each loaf of bread shall be attached a label plainly showing its correct weight and the firm name of the manufacturer thereof the size of the label and type to be used to be specified by the State Superintendent of Weights and Measures. It shall be unlawful for any person to make or keep for the purpose of sale, offer or expose for sale, or sell any bread other than such as shall be in accordance with the provisions of this section. (Id. § 6299.)

245. Measurement of Liquid and Other Commodities—Vegetables and Fruit.—It shall be unlawful to sell, except for immediate consumption on the premises, liquid commodities in any other manner than by weight or liquid measure, or commodities not liquid in any other manner than by measure of length, by weight, or by numerical count; provided, however, that nothing in this section shall be construed to prevent the sale of vegetables, fruits, and produce in the standard barrel adopted by the United States Government, or of berries and small fruit boxes as provided in section 6301, usually sold by the head or bunch, in this manner. For the purpose of this section, the term "commodities not liquid" shall be construed to include goods, wares, and merchandise which have heretofore been sold by measure of length, by weight, by measure of capacity, or by numerical count, or which are susceptible of sale in any of these ways. (Id. § 6300.)

246. Berries and Small Fruit—Measurement and Sale.—It shall be unlawful after the first day of August, 1915, to sell or offer to sell any berries or small fruits in any other manner than by weight, or in the containers described in this section. It shall be unlawful to procure or keep for the purpose of sale, offer or expose for sale, sell or give away any baskets or other open containers for berries or small fruits, holding one quart or less, or to procure or keep for the purpose of sale, offer or expose for sale, or sell berries or small fruit in baskets or other open containers, holding one quart or less of any other than the following capacities, when level full; one quart having a capacity of 67.2 cubic inches and containing not less than twenty-one ounces; one pint having a capacity of 33.6 cubic inches and containing not less than 10.5 ounces; one-half pint having a capacity of 16.8 cubic inches and containing not less than 5.3 ounces standard dry measure. It shall be unlawful to use unclean or unsanitary berry cups[,] crates, boxes, sacks, or other containers. It shall be unlawful for any dealer or vendor to transfer berries or small fruits from one container to another, or from the containers in which said fruits or berries are packed by the producer. (Id. § 6301, as amended L. 1927, c. 11.)

247. Sale by Weight—Construction.—Whenever any commodity is sold on a basis of weight, it shall be unlawful to employ any other weight in such sale than the net weight of the commodity; and all contracts concerning goods sold on a basis of weight shall be understood and construed accordingly. Whenever the weight of a commodity is mentioned in this title, it shall be understood and construed to mean the net weight of the commodity. (C. L. 1917, § 6302.)

248. Use of False Weights and Measures—Other Violations—Penalty.—Any person, who by himself, or by his servant or agent, or as the servant or agent of another person, shall offer or expose for sale, sell, use in the buying or selling of any commodity or thing or for hire or award, or retain in his possession a false weight or measure, or weighing or measuring device, which has not been sealed by the State Superintendent or his deputy or inspectors, or by sealer or deputy sealer of weights and measures, within one year, or shall dispose of any condemned weight or measure, or weighing or measuring device contrary to law, or remove any tag placed thereon by the State Superintendent, or his deputy or inspectors, or by a sealer or deputy sealer of weight and measures; or who shall sell or offer or expose for sale less than the quantity he represents, or shall take or attempt to take more than the quantity he represents, when as the buyer he furnished the weight, measure, or weighing or measuring device by means of which the amount of commodity is determined; or who shall keep for the purpose of sale, offer or expose for sale or sell any commodity in a manner contrary to law; or who shall violate any provisions of this title for which a specific penalty has

not been provided; or who shall sell or offer for sale, or use or have in his possession for the purpose of selling or using, any device or instrument to be used to, or calculated to, falsify any weight or measure, shall be guilty of a misdemeanor and shall be punished by a fine of not less than $20 or more than $200 or by imprisonment for not more than three months, or by both such fine and imprisonment, upon the first conviction in any court of competent jurisdiction; and upon the second or subsequent conviction in any court of competent jurisdiction he shall be punished by a fine of not less than $50 or more than $500, or by imprisonment in the county jail for not more than one year, or by both such fine and imprisonment. (Id. § 6303.)

249. **Definition of Terms.**—The word "person" as used in this title shall be construed to impart both the plural and singular, as the case demands, and shall include corporations, companies, societies, and associations.

The words "weights, measures, or weighing or measuring devices" as used in this title, shall be construed to include all weights, scales, beams, measures of every kind, instruments and mechanical devices for weighing or measuring, and any appliances and accessories connected with any or all such instruments.

The words "sell" or "sale" as used in this title shall be construed to include barter and exchange. (Id. § 6304.)

NOTE: See also Nos. 9, 24, 26, 44 et seq., 83, and 195a et seq.

PART V.

Cases.

1. General Food and Drug Law.

Confiscation and Destruction of Food a Portion of Which Only is Unfit for Use: See Baker v. Latses, 60 Utah 38, 206 Pac. 553 (1922).

Potatoes—Unfit for Food: See Baker v. Latses, 60 Utah 38, 206 Pac. 553 (1922).

2. Special Food Laws.

Dairymen—Permit: *Salt Lake City v. Howe, 37 Utah 170, 106 Pac. 705, Ann. Cas. 1912 C., 189 (1910).

Food—Peddlers—License: *Park City v. Daniels, 46 Utah 554, 149 Pac. 1094, Ann. Cas. 1918E, 107 (1915).

Meat—License: Provo City v. Provo Meat and Packing Co., 49 Utah 528, 165 Pac. 477, Ann. Cas. 1918D, 530 (1917).

3. Special Drug Laws.

Pharmacy—Domestic Family Remedies: See State v. Yee Foo Lun, 45 Utah 531, 147 Pac. 488 (1915).

Pharmacy: *State v. Waldron, 64 Utah 406, 231 Pac. 431 (1924).

4. Civil Action to Recover Damages for Injury Alleged to Have Been Caused by Consumption or Use of Product.

Feeding Stuffs: Thatcher Milling & Elevator Co. v. Campbell, 64 Utah 422, 231 Pac. 621 (1924).

Food: Walters v. United Grocery Co., 51 Utah 565, 172 Pac. 473, L. R. A. 1918E, 519 (1918); *Bozicevich v. Kenilworth Mercantile Co., 58 Utah 458, 199 Pac. 406, 17 A. L. R. 346 (1921). See also: Wasatch Orchard Co. v. Morgan Canning Co., 32 Utah 229, 89 Pac. 1009, 12 L. R. A. (N. S.) 540 (1907); Baker v. Latses, 60 Utah 38, 206 Pac. 553 (1922).

Food—Distribution of Samples: Shafer v. Keeley Ice Cream Co., 65 Utah 46, 234 Pac. 300, 38 A. L. R. 1523 (1925).

Horse Medicine: Wright v. Howe et al., 46 Utah 588, 150 Pac. 956, L. R. A. 1916B, 1104 (1915).

5. Miscellaneous.

Cigarettes—Advertising: *State v. Salt Lake Tribune Pub. Co., 249 Pac. 474 (1926).

False Advertising: See Goddard v. General Reduction & Chemical Co. et al., 57 Utah 180, 193 Pac. 1103 (1920).

Trade-Marks: Davidson v. Munsey, 29 Utah 181, 80 Pac. 743 (1905); Holley Milling Co. v. Salt Lake & Jordan Mill & Elevator Co., 58 Utah 149, 197 Pac. 731 (1921). See also: Rocky Mountain Bell Telephone Co. v. Utah Independent Telephone Co. et al., 31 Utah 377, 88 Pac. 26, 8 L. R. A. (N. S.) 1153 (1906).

Trading Stamps: *State v. Holtgreve, 58 Utah 563, 200 Pac. 894, 26 A. L. R. 696 (1921); Sperry & Hutchinson Co. v. Mattson et al., 64 Utah 214, 228 Pac. 755 (1924); Same v. Bennion et al., 64 Utah 221, 228 Pac. 758 (1924).

VERMONT.*

PART I.

General Food and Drug Law.

1. Standards of Purity; Penalty.—The standards of purity for food products, except as otherwise provided, shall be those adopted and now in use by the United States Department of Agriculture as authorized by acts of Congress approved June third, nineteen hundred and two, and March third, nineteen hundred and three, as promulgated by such department by circular nineteen issued in pursuance of such acts, and such standards as may hereafter be adopted or promulgated by such department pursuant to such authority. A person shall not sell or offer for sale food products that do not conform to such standards, after having received notice from the State Board of Health† forbidding the same; provided, however, that food products failing to conform to such standards, if correctly and accurately labeled, may be sold when such sale does not conflict with the provisions of this chapter. A person who violates a provision of this section shall be imprisoned not more than six months, or fined not more than one hundred dollars nor less than five dollars, or both. (G. L. 1917, § 6263.)

2. Adulterated, Misbranded or Misrepresented Articles; Sale Prohibited.—A person shall not sell, offer or expose for sale an adulterated or misbranded food, drug or substance, to be used for medicine, food or drink for men or domestic animals, or any device or apparatus falsely and fraudulently represented to have medicinal or curative qualities. (Id. § 6264.)

3. Food and Drugs; Definitions.—The word "food" as used in this chapter shall include all articles whether simple, mixed or compound used for food, drink, confectionery, or condiments, by man or beast. The word "drug" as used in this chapter, shall include all medicines and preparations recognized in the United States Pharmacopœia or National Formulary, for internal or external use, and any substance or mixture of substances intended to be used for the cure, mitigation or prevention of disease of either man or beast. (Id. § 6265.)

4. Adulterated Food; Definition.—For the purposes of this chapter, an article of food shall be deemed to be adulterated if any substance has been mixed and packed with it so as to reduce or lower or injuriously affect its quality or strength; or if any substance has been substituted wholly or in part for the article; or if any valuable constituent of the article has been wholly or in part abstracted; or if it is mixed, colored, powdered, coated, or stained in a manner whereby damage or inferiority is concealed; or if it contains any added poisonous or other added deleterious ingredient which may render such article injurious to health, provided that when in the preparation of food products for shipment they are preserved by an external application applied in such manner that the preservative is necessarily removed mechanically, or by maceration in water, or otherwise, and directions for the removal of such preservative are printed on the covering of the package, the provisions of this chapter shall be construed as applying only when such products are ready for consumption; or if it consists in whole or in part of a filthy, decomposed or putrid animal or vegetable substance, or any portion of an animal unfit for food, whether manufactured or not, or if it is the product of a diseased animal or one that has died otherwise than by slaughter. (Id. § 6266.)

5. Adulterated Drug; Definition.—For the purposes of this chapter, a drug shall be deemed to be adulterated if, when it is sold under or by a name recognized in the United States Pharmacopœia or National Formulary, it differs from the standard of strength, quality or purity, as determined by the test laid down in the United States Pharmacopœia or National Formulary official at the time of investigations, provided that a drug defined in the United States Pharmacopœia

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*CITATIONS: "G. L. 1917" refers to the General Laws of Vermont, 1917, enacted by Act No. 254 Acts of 1917, and published by authority of Act No. 255, Acts of 1917. "P. A." refers to the public acts of the year cited.

†See No. 22b. This law is to be corrected accordingly.

or National Formulary shall not be deemed to be adulterated under this provision if the standard of strength, quality or purity is plainly stated upon the bottle, box or other container thereof although the standard may differ from that determined by the test laid down in the United States Pharmacopœia or National Formulary; or if its strength or purity falls below the professed standard or quality under which it is sold. (Id. § 6267.)

6. Adulterated Confectionery; Definition.—For the purposes of this chapter, confectionery shall be deemed to be adulterated if it contains terra alba, barytes, talc, chrome yellow, or other mineral substance or poisonous color or flavor, or other ingredient deleterious or detrimental to health, or any vinous malt or spirituous liquor or compound or narcotic drugs. (Id. § 6268.)

7. Misbranded; Definition.—The word "misbranded" as used in this chapter, shall apply to all drugs, or articles of food, or articles which enter into the composition of food, the package or label of which shall bear any statement, design or device regarding such article, or the ingredients or substances contained therein, which are false or misleading in any particular, and to any food or drug product which is falsely branded as to the State or country in which it is manufactured or produced. (Id. § 6269.)

8. Misbranded Food; Definition.—For the purposes of this chapter an article of food shall be deemed to be misbranded if it is an imitation of or offered for sale under the distinctive name of another article; or if it is labeled or branded so as to deceive or mislead the purchaser, or purports to be a foreign product when not so; or if the contents of the package originally put up have been removed in whole or in part and other contents have been placed in such package; or if it fails to bear a statement on the label of the quantity or proportion of any morphine, opium, cocaine, heroin, alpha or beta eucaine, chloroform, cannabis indica, chloral hydrate or acetanilide or any derivative or preparation of any substances contained therein; or if in package form, the quantity of the contents is not plainly and conspicuously marked on the outside of the package in terms of weight, measure or numerical count; provided, however, that reasonable variations shall be permitted, and tolerances and also exemptions as to small packages shall be established by rules and regulations made in accordance with the provisions of section six thousand two hundred and seventy-four; or if the package containing it or its label bears any statement, design, or device regarding the ingredients or the substances contained therein, which is false or misleading in any particular. (Id. § 6270.)

9. Misbranded Drug; Definition.—For the purposes of this chapter a drug shall be deemed to be misbranded:

I. If it is an imitation of or offered for sale under the name of another article;

II. If the contents of the package as originally put up have been removed, in whole or in part, and other contents have been placed in such package;

III. If its package or label bears or contains any statement, design or device regarding the curative or therapeutic effects of such article or any of the ingredients or substances contained therein, which is false and fraudulent; or,

IV. If the package fails to bear a statement on the label of the quantity or proportion of any alcohol, morphine, opium, cocaine, heroin, alpha or beta eucaine, chloroform, cannabis indica, chloral hydrate or acetanilide, or any derivative or preparation of any such substances contained therein. Nothing in this paragraph shall be construed to apply to physicians' prescriptions, or preparations recommended and prescribed in the United States Pharmacopœia or National Formulary. (Id. § 6271.)

10. Foods, When Not Adulterated or Misbranded.—An article of food which does not contain any added poisonous or deleterious ingredients shall not be deemed to be adulterated or misbranded in the case of mixtures or compounds which may be known as articles of food, under their own distinctive names, and not in imitation of or offered for sale under the distinctive name of another article, if the name is accompanied on the same label or brand with a statement of the place where such article has been manufactured or produced; or in the case of articles labeled, branded or tagged so as to plainly indicate that they are compounds, imitations or blends, and the word "compound," "imitation" or "blend," as the case may be, is plainly stated on the package in which it is offered for sale; provided that the word "blend" as used herein shall be construed to mean a mixture of like substances, not excluding harmless coloring or flavoring ingredients used for the purpose of coloring and flavoring only; and provided that nothing in this chapter shall be construed as requiring or compelling proprietors or manufacturers of proprietary foods which contain no unwholesome added ingredients to disclose

their trade formulas, except in so far as the provisions of this chapter may require to secure freedom from adulteration or misbranding. (Id. § 6272.)

11. Adulterating or Misbranding For Purpose of Sale; Sale of Such; Destruction; Penalty.—A person who fraudulently adulterates or misbrands for the purpose of sale an article of food, drink, drug or medicine, as defined in this chapter, shall be imprisoned not more than one year, or fined not more than four hundred dollars, and the article so adulterated or misbranded shall be forfeited and destroyed under the direction of the court. A person who sells or offers for sale an article of food, drink, drug or medicine, which is adulterated or misbranded, or any kind of diseased or unwholesome provisions, as defined in this chapter, shall be imprisoned not more than one year or fined not more than four hundred dollars, and the articles so adulterated or misbranded, or such diseased or unwholesome provisions, shall be forfeited and destroyed under the direction of the court. (Id. § 6273.)

12. Rules and Regulations of State Board of Health; Penalty.—The State Board of Health shall adopt such rules and regulations as it deems necessary to facilitate the enforcement of the provisions of this chapter, and for the collecting and examining of drugs, foods, liquors and candy, articles of clothing, fabrics, wall paper or anything containing poisonous pigments or substances whereby the health of any person may be injured. Said board shall cause such rules and regulations to be printed in pamphlet form for distribution, furnish to each local health officer a sufficient number of copies to supply the members of the local board of health and all practicing physicians in such town and furnish to each town clerk a sufficient number of copies for distribution under the provisions of law as to the distribution of the acts and resolves of the General Assembly; and said local health officers and town clerks shall distribute the same. A person who violates a rule or regulation made under the provisions of this chapter for which no other penalty is provided, shall be fined not more than five hundred dollars. (Id. § 6274.)

13. Inspection of Food; Destruction.—A member or officer of the State Board of Health, director, chemist or inspector of the State Laboratory of Hygiene, or a local health officer in his own town, may inspect the carcasses of slaughtered animals intended for food, and meat, fish, vegetables, produce, fruit or provisions, and for such purpose may enter any building, enclosure or other place in which such carcasses or articles are stored, kept or exposed for sale. If such carcasses or articles are designated for food for man and are found tainted, diseased, corrupted, decayed, unwholesome or from any cause unfit for food, the local board of health or such member or officer of the State Board of Health, director, chemist or inspector of the State Laboratory of Hygiene shall seize the same and cause it to be forthwith destroyed or disposed of otherwise than for food. (Id. § 6275.)

14. Samples For Analysis; Prosecutions.—A person who doubts the purity or genuineness of an article of food or drug which he has purchased, may, at his own expense, send a sealed sample of it to the State Laboratory of Hygiene for inspection. If, upon examination, such article appears to be adulterated or misbranded, the State Board of Health may obtain a certified sample of it, and, if such sample appears to be adulterated, said board shall immediately begin proceedings against the vendor. (Id. § 6276.)

15. Purchase of Samples.—A person who offers or exposes for sale a drug or article of food within the meaning of this chapter shall furnish to a member of the State Board of Health, a local health officer or a director, chemist or inspector of the State Laboratory of Hygiene, who applies for the same and tenders its value in money, a sufficient sample for the purpose of analysis of such drug or article of food. (Id. § 6277.)

16. Preservation of Part of Sample.—The analyst before commencing the analysis of the sample shall, whenever possible, reserve a part thereof, which shall be sealed; and, in case of a complaint or indictment, a part of the reserved portion of such sample alleged to be adulterated shall, upon application, be delivered to the defendant or his attorney, and the other part to the Secretary of the State Board of Health. (Id. § 6278.)

17. Adulteration and Sale of Liquor; Penalty.—A person who, for the purpose of sale, adulterates liquor used or intended for drink with cocculus indicus, vitriol, grains of paradise, opium, alum, capsicum, copperas, laurel water, logwood, Brazil wood, cochineal, sugar of lead or other substance which is poisonous or injurious to health, or knowingly sells such liquor so adulterated, shall be imprisoned not more than one year or fined not more than one thousand dollars. (Id. § 6279.)

18. Permit to Use Preservatives.—Nothing in this chapter shall be so construed as to prevent the State Board of Health from issuing to a producer or manufac-

turer of foods or drinks a permit to use such preservatives or coloring matters as said board may determine are not detrimental to health. (Id. § 6293.)

19. Interfering With Health Officer; Penalty.—A person who in any way interferes with a member of the State Board of Health, a local health officer, or the director, chemist or inspectors of the State Laboratory of Hygiene, in the performance of their duties under this chapter, shall be fined not more than fifty dollars for the first offense and for each subsequent offense shall be fined one hundred dollars. (Id. § 6294.)

20. General Penalty.—A person or corporation that violates a provision of this chapter for which other penalty is not provided shall be fined not more than one hundred dollars nor less than fifty dollars. (Id. § 6295.)

21. Notice of Violations of United States Statutes.—The State Board of Health or an agent thereof shall notify the proper prosecuting officer of a violation of a United States statute for preventing the adulteration or misbranding of food or drugs. (Id. § 6296.)

22. Prosecutions; Penalties; Jurisdiction.—The State's attorney to whom the State Board of Health reports a violation of this chapter shall cause proceedings to be commenced and prosecuted in the proper court without delay for the enforcement of the penalties as in such case provided. Justices shall, except as hereinbefore provided, have concurrent jurisdiction with the county court of offenses under this chapter to the extent of fining the respondent fifty dollars, or may bind him over for trial by the proper court. (Id. § 6297.)

Miscellaneous General Provisions.

22a. Officers, Etc., Abolished.—The following officers, boards, commissions, arms and agencies of the State Government heretofore created by law, are hereby abolished, viz.: . . . creamery commissioners, . . . (P. A. 1923, No. 7, § 4.)

22b. Department of Public Health, Powers.—The Department of Public Health shall have power to exercise the rights, powers and duties now vested by law in the State Board of Health.* (Id. § 31.)

22c. Department of Agriculture, Powers.—The Department of Agriculture shall have power:

1. To exercise the rights, powers and duties now vested by law in the Commissioner of Agriculture. . . .

3. To exercise the rights, powers and duties now vested by law in the creamery commissioners. (Id. § 33.)

22d. Establishment.—For the promotion of scientific and practical agriculture and for the prevention of frauds and adulterations in commercial fertilizers, foods, feeding stuffs, seeds and commercial products, the Vermont Agricultural Experiment Station is hereby established in connection with and under the control of the University of Vermont and State Agricultural College. (G. L. 1917, § 457.)

22e. Same; Control of.—The executive committee of the trustees of the University of Vermont and State Agricultural College shall act as a board of control for such experiment station. Said board shall appoint a director and such other officers and employees as it deems proper for such experiment station. Said board shall have general oversight and direction of the affairs of such station. Said director shall audit all bills. (Id. § 458.)

22f. Officers' Duties.—Said board shall cause to be investigated by said director and officers such subjects as it, from time to time, deems advisable, having due regard to the conditions and needs of the State; but said board shall cause said director and officers to perform the following duties:

I. Make investigations relating to the ravages of insects and disseminate such information as may be advisable for their abatement;

II. Make investigations and experiments directed to the introduction and fostering of new agricultural industries adapted to the various climates and soils of the State, and especially of new fodder plants and feeding stuffs;

III. Conduct experiments on the nutrition and growth of plants, with a view to ascertaining what fertilizers are best suited to the various crops of the State.

IV. Give instruction and practical demonstration in agriculture to the people of the State†

V. Conduct and maintain a farm and conduct such activities with reference to the breeding of stock, field culture, the analysis and adaption of soils and the general pursuit of agriculture as will, in the judgment of said board, be for the best

*The laws herein are to be corrected accordingly.

†Subd. IV, added P. A. 1923, No. 71, § 2.

interests of the State. The expense incurred under the provision of this sub-division shall be paid from the moneys annually available for the use of the Vermont Agricultural Experiment Station.*

VI. The sum of twenty-five thousand dollars is hereby appropriated for the year beginning July 1, 1927, and fifteen thousand dollars is hereby appropriated for the year beginning July 1, 1928, for the Vermont Agricultural Experiment Station to be expended through the Department of Animal and Dairy Husbandry of said station to render additional service to the students and the dairy industry of the State by teaching (including short course work, demonstrations, technical assistance and correspondence), the most modern and approved practical and profitable methods of producing and handling dairy cattle, milk and milk products; purchasing needed equipment and supplies for the production, care, handling, processing and manufacturing of milk and milk products, and by building up a high quality dairy herd and operating and maintaining a dairy farm which shall be the farm known as the University Farm, provided, however, a sufficient portion of said farm is made available for such purpose together with the buildings, equipment and supplies thereon and such stock as may be agreed upon. All stock, equipment and supplies purchased from this fund shall be the permanent property of said station and receipts from all sales from said dairy farm shall be turned back into the operating fund of said farm. The general plan of putting into effect the provisions of this section and the general budget of the funds hereby made available shall be made with the advice and consent of the following committee of representative dairymen, to wit:—A. P. Bigelow of Moretown, S. E. Gray of Derby, F. H. Cochran of Stowe.

This committee shall have power to fill vacancies in its own membership. The members of said committee shall not receive any compensation for their services. The auditor of accounts is hereby directed to issue his warrant in favor of the treasurer of said station for the amount of such appropriation and said auditor shall annually audit the expenditures incurred under the provisions of this act.† (Id. § 459.)

22g. Analyses.—The officers and employees, of such experiment station shall, so far as time and means permit, make, free of charge, analyses of all samples received from residents of the State, of unlicensed commercial fertilizers, home-made fertilizers, materials for composting the same, soils, feeding stuffs for domestic animals, milk and other dairy products, oleomargarine and other substitutes for butter, agricultural seeds and agricultural materials and products which are susceptible to chemical analysis; provided that, in their judgment, such analyses will be for the public good. (Id. § 460.)

22h. Bulletins; Report.—Said director shall, from time to time, publish bulletins of the work of such station. Copies thereof shall be furnished free to anyone sending his address. Said director shall publish an annual report for free distribution, at an expense not to exceed one thousand dollars. The expenses incurred under the provisions of this section shall be paid from the moneys annually available for the use of the Vermont Agricultural Experiment Station. (Id. § 461.)

22i. Supervision; Equipment; Health Officers' School.—The State Board of Health shall have the supervision and management of, and equip with the proper and necessary apparatus, instruments and supplies, the laboratory of hygiene, for the chemical and bacteriological examination of water supplies, milk and food products, and the examination of cases and suspected cases of diphtheria, typhoid fever, tuberculosis, malaria and other infectious and contagious diseases. Said board may conduct a school of instruction for health officers at such times and places as it directs. It may issue a periodical giving the results of the work done at the laboratory and the approved methods for the protection of the public health, and such publications shall be furnished free to health officers and residents of the State. (Id. § 6209.)

22j. Director; Appointment and Duties.—Said board shall appoint and may remove in its discretion a director of such laboratory, who shall keep a record of the specimens sent to him for examination, and examine such specimens without unnecessary delay. Said director shall, before the first day of April, in each even year, make a full report to said board of all matters pertaining to the laboratory, and shall make such other and special reports as said board directs. Said director may, with the approval of said board, appoint such assistants as may be required. (Id. § 6210.)

22k. Free Use; Investigations for State's Attorneys; Expert Testimony.—The use of the laboratory, and all investigations mentioned in this chapter therein made, except as otherwise provided, shall be free to the people of this State. Whenever the State's attorney of a county on the order of a superior judge or the Attorney-General, requests for use in a criminal cause pending in his office, an expert investi-

*Subd. V, added P. A. 1925, No. 14, § 1.
†Subd. VI, added P. A. 1927, No. 9, § 1.

gation, chemical or pathological, of a substance, such investigation shall be made at the laboratory forthwith, without charge to the State; and the expert making such investigation shall submit the results of his work to said State's attorney, and shall attend court as a witness at any place in the State when required to do so by subpœna, and submit in court the results of his investigation; and he shall be paid as such witness his actual expenses of attendance when summoned by the State. (Id. § 6211.)

NOTE: See also Nos. 172-173 and 219 et seq.

PART II.

Special Food Laws.

Apples.

23. **Application of Chapter; Closed Packages.**—The provisions of this chapter shall apply only to closed packages of apples; and the words "closed packages" shall mean a barrel, box or other container, the contents of which cannot be seen or inspected when such barrel, box or container is closed. (G. L. 1917, § 5947.)

24. **Person; Construction.**—The word "person" as used in this chapter shall be construed to include corporations, companies, societies and associations. The act, omission or failure of an officer, agent or other person acting for or employed by a corporation, company, society or association, within the scope of his employment or office, shall also be deemed to be the act, omission or failure of such corporation, company, society or association. (Id. § 5948.)

25. **Marking; Quantity; Grade; Variety.**—Every closed package of apples which is packed, sold, distributed, offered or exposed for sale or distribution in the State by any person shall have affixed in a conspicuous place on the outside thereof a plainly printed statement clearly and truly stating the quantity of the contents and the name and address of the packer, or of the person by whose authority the apples were packed; and the package shall be marked with the true name of the variety, the grade or class and the minimum size of the apples contained therein, and the name of the State where grown. If the true name of the variety is not known to the packer, or the person by whose authority the package is packed or marked, then such variety shall be designated as "unknown." Every package of apples which is repacked shall bear the name and address of the repacker, or the name and address of the person by whose authority it is repacked, in place of that of the original packer. Such marks shall be in block letters and figures of not less than thirty-six point gothic. The marks indicating grade or class may be accompanied by any other designation of grade or brand if that designation or brand is not inconsistent with or marked more conspicuously than the one of the six marks indicating grade or class which is used on such package. Minimum size shall be stated in variation of a quarter of an inch, like two inches, two and a quarter inches, two and a half inches, two and three-quarters inches, three inches, three and three-quarters inches, and so on, in accordance with the facts. Minimum size may be designated by figures instead of words and the word "minimum" may be designated by using the abbreviation "min." (Id. § 5951, as amended P. A. 1921, No. 173, § 4.)

26. **Misbranded, or Adulterated; Not to be Sold.**—A person shall not pack, sell, distribute, offer or expose for sale or distribution, apples which are adulterated or misbranded within the meaning of this chapter. (G. L. 1917, § 5952.)

27. **Adulteration, Construed.**—Apples packed in a closed package shall be deemed to be adulterated if their measure, quality, grade or purity does not conform in each particular to the statement and marks required on such package. (Id. § 5953.)

28. **Misbranded, Construed.**—Apples in a closed package shall be deemed to be misbranded:

I. If the package fails to bear all statements and marks required by the third *and fifth preceding sections;

II. If the package is falsely marked or bears a statement, design or device regarding such apples which is false or misleading, or if the package bears a

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* See G. L. 1917, § 5951, as amended.

statement, design or device indicating that the apples contained therein are Vermont "standard grade" and such apples when packed or repacked do not conform to the requirements prescribed by the fifth preceding section. (Id. § 5954.)

29. Rules and Regulations.—The Commissioner of Agriculture shall make and publish uniform rules and regulations for carrying out the provisions of this chapter, and shall publish rules for the grading and packing of apples, specifying for each variety the minimum size which shall be admissible to the grade designated "fancy." (Id. § 5955.)

30. Notice to Person Concerned and State's Attorney.—When said commissioner becomes cognizant of a violation of a provision of this chapter he shall cause notice of such fact to be given to the person concerned and to the State's attorney of the county in which the offense was committed. (Id. § 5956.)

31. Adulterating, Misbranding, etc.—A person who adulterates or misbrands apples within the meaning of this chapter, or a person who packs, sells, distributes, offers or exposes for sale or distribution apples in violation of a provision of this chapter shall be fined not more than ten dollars for the first offense, and for each subsequent offense not more than twenty-five dollars. (Id. § 5957.)

32. Defenses.—A person shall not be convicted of a violation of a provision of this chapter when he can establish by satisfactory evidence that he acted solely as distributor, and that he was not a party to the packing and grading of such apples, or when he can establish a guaranty, signed by the person from whom he received such apples, to the effect that the same are not adulterated or misbranded, within the meaning of this chapter, designating it. Such guaranty or satisfactory evidence, to afford protection, shall contain the name and address of the party making the sale or shipment of such apples to said distributor; and, in such cases, said party shall be amenable to the penalties which would otherwise attach to the distributor under the provisions of this chapter. (Id. § 5958.)

33. Jurisdiction.—Justices shall have concurrent jurisdicton with county, municipal and city courts of offenses arising under this chapter. (Id. § 5960.)

34. Standard Box and Barrel; Dimensions.—The standard barrel for apples shall be of the following dimensions when measured without distention of its parts: Length of stave, twenty-eight and a half inches; diameter of head, seventeen and an eighth inches; distance between heads, twenty-six inches; circumference of bulge, sixty-four inches, outside measurement; and the thickness of staves not greater than four-tenths of an inch; provided, that any barrel of a different form having a capacity of seven thousand and fifty-six cubic inches shall be a standard barrel, and such barrel shall be plainly marked "Vermont Standard Barrel". The standard box for apples shall be of the following dimensions, by inside measurement: eighteen inches by eleven and a half inches by ten and a half inches, without distention of its parts, and having a capacity of not less than two thousand one hundred and seventy-three and a half cubic inches, and such box shall be plainly marked "Vermont Standard Box". When a box, barrel or container other than a standard barrel or a standard box, as hereinafter specified, is used, such barrel, box or container shall have plainly specified thereon the number of bushels and parts of bushel contained therein. (P. A. 1921, No. 173, § 1.)

35. Standard Grades.—The standard grades of apples when packed or repacked in closed packages within this State shall be as follows: "Vermont Standard Fancy" shall consist only of apples of one variety, not less than ninety-seven per cent of which are well-matured specimens, hand-picked, color above medium and high for the variety, normal shape, of good size for the variety and reasonably uniform in size, sound and free from dirt, disease, insect or fungus injury, bruises and other defects, except such as are necessarily caused in the operation of packing, and shall be packed properly in clean, strong packages. "Vermont Standard A" shall consist only of apples of one variety, not less than ninety-five per cent of which are well-matured specimens, hand-picked, of medium color for the variety, normal shape, sound, and practically free from dirt, disease, insect or fungus injury, bruises and other defects, except such as are necessarily caused in the operation of packing, and shall be packed properly in clean, strong packages. "Vermont Standard B" shall consist only of apples of one variety, not less than ninety per cent of which are of practically normal shape, practically free from dirt, disease, insect or fungus injury, bruises and other defects that materially injure the useful quality of the apples, and shall be properly packed. Vermont Orchard Run shall consist of apples of one variety, conforming to the foregoing specification of grade, and shall be properly packed in clean, strong packages. Apples not conforming to the foregoing specifications of grade, or, if conforming, not branded in accordance therewith, shall be classified as "Unclassified" and so branded. (Id. § 2.)

NOTE: See also No. 215.

Beverages.

See Nos. 17, 22i, 38, 123-124, 125 et seq., 174 et seq., and 195 et seq.

Bread—Bakeries.

36. Bread; to be Wrapped.—A person shall not carry or cart about with intent to sell or offer for sale, or deliver to customers after it has been sold, for human food, any kind or quality of bread or cake in loaf form unless each loaf is wrapped separately in waxed paper, tissue paper or some similar wrapper or a sanitary container of sufficient thickness and quality to protect the bread and cake from dust and dirt. A person who violates a provision of this section shall be fined five dollars for each offense. (G. L. 1917, § 7040.)

NOTE: See also No. 125 et seq.

Canneries.

See No. 125 et seq.

Cider.

See Nos. 174 and 183.

Cold Storage.

See No. 125 et seq.

Confectionery.

37. Selling Adulterated Candy; Penalty.—A person by himself, servant or agent, or as a servant or agent, or a corporation by itself, servant or agent, shall not manufacture for sale, or knowingly sell or offer for sale, candy adulterated by the admixture of terra-alba, barytes, talc or any other mineral substance, by poisonous colors, flavors or other ingredients deleterious or detrimental to health. (G. L. 1917, § 6292.)*

38. Candy Containing Liquors.—A person or corporation that sells, furnishes or gives away candy of any sort or kind containing intoxicating liquors of any sort in any quantity whatsoever, or flavored in a manner to imitate the taste of intoxicating liquor, shall be fined ten dollars for the first offense and, for each subsequent offense, twenty-five dollars. (Id. § 6565.)

NOTE: See also Nos. 6 and 125 et seq.

Dairy Products—Substitutes For Dairy Products.

39. Dilution or Adulteration of Milk; Penalty.—A person shall not sell, furnish or have in his possession with intent to sell or furnish, milk or cream diluted with water, adulterated or not of standard quality, or milk or cream which is treated with chemicals; nor shall a person sell, offer for sale or furnish milk from which the cream or a part thereof has been taken, or retain the part of the milk known as "strippings," without the full knowledge of the person to whom such milk is sold, offered for sale or furnished. A person who violates a provision of this section shall be fined not more than three hundred dollars nor less than fifty dollars for each offense. (G. L. 1917, § 5907.)

40. Standard of Milk as Paying Basis.—Milk containing three and seven-tenths per cent of butter fat shall be the standard used as a paying basis in creameries and cheese factories. (Id. § 5908.)

41. Test of Samples, Evidence.—Whenever, in prosecutions under the second preceding section, the ordinary means of proof are not available or sufficient, sealed samples of the milk or cream sold or furnished or kept with intent to be sold or furnished, taken from such milk or cream in the presence of at least one disinterested witness and with the knowledge and in the presence of the person or his agent or servant so selling or furnishing or having in his possession with intent to sell or furnish, may be sent to the Vermont Agricultural Experiment Station to be tested; and when such sample of milk or cream is taken in strict

*For penalty, see No. 20. See also Nos. 19 and 22.

conformity with all the requirements of this section and the next succeeding section, and not otherwise, the result of such test shall be deemed competent evidence in such prosecution, but shall not exclude other evidence. (Id. § 5909, as amended P. A. 1923, No. 108.)

42. Same; Disposition.—Such samples shall be placed in tin or glass vessels securely sealed with a label thereon stating the time when and place where the sample was drawn, from whose milk or cream taken, and signed by the person taking the same and by one or more disinterested witnesses. Upon request, a like sample shall be given to such person, his agent or servant, for which a receipt shall be given to the person taking or drawing the same. (G. L. 1917, § 5910.)

43. Standard Milk Defined.—Standard milk shall contain not less than eleven and seventy-five hundredths per cent of solids, or not less than eight and a half of total solids exclusive of fat. This rule shall govern tests made at such experiment station, and an officer or employee thereof found guilty of fraud in making tests shall be fined one thousand dollars. (Id. § 5911.)

44. Fraudulent Marking of Butter or Cheese; Penalty.—A person who marks or otherwise designates or causes to be marked or otherwise designated as "creamery" butter or cheese, or the package in which it is contained, when such butter or cheese is not manufactured at a creamery, or sells or offers to sell any such butter or cheese so marked, shall be fined not more than three hundred dollars nor less than fifty dollars; provided that a person may brand, mark or otherwise designate the product of his dairy as "private creamery," and, in such case, the name of the maker shall be plainly marked on each package so branded or designated. (Id. § 5912.)

45. Jurisdiction.—Justices shall have concurrent jurisdiction with county, municipal and city courts of offenses arising under the six preceding sections. (Id. § 5913.)

46. Sale of Diluted Milk or Cream; Forfeiture.—A person who knowingly sells or furnishes or offers to sell milk or cream diluted with water or adulterated shall forfeit to the person to whom such milk or cream is sold or furnished not more than one hundred dollars nor less than twenty-five dollars, to be recovered in an action of tort, on this statute, before a justice's municipal or city court. (Id. § 5914.)

47. Supplying Diluted or Adulterated Milk; Penalty.—A person who knowingly sells, supplies or brings to be manufactured to a creamery, cheese factory, condensary or receiving station milk or cream diluted with water, or adulterated, or milk from which cream has been taken, or keeps back part of the milk known as "strippings," or knowingly brings or supplies milk or cream to a creamery, cheese factory, condensary or receiving station that is tainted or partly sour from want of care in the keeping of strainers or vessels in which such milk or cream is kept, or a butter or cheese manufacturer who knowingly uses or directs his employees to use cream from the milk brought to such butter or cheese manufacturer, without the consent of the owners thereof, shall forfeit not more than one hundred dollars nor less than twenty-five dollars, to be recovered in an action of tort, on this statute, before a justice's, municipal or city court, in the name and for the benefit of those upon whom such fraud is committed. Except milk sold in its raw state for local consumption, nothing in this section shall be construed as preventing a person or corporation from adding pure, fresh, sweet cream or pure, fresh, sweet skim milk to milk offered for sale, provided such milk when sold shall not contain less than three and seven-tenths per cent butter fat nor less than twelve per cent total solids. (Id. § 5915, as amended P. A. 1921, No. 172.)

48. Unfair Discrimination Defined; Penalty.—Any person, firm, company, association or corporation, foreign or domestic, doing business in this State and engaged in the business of buying milk, cream or butter fat for the purpose of manufacture or sale, who, with the intention of creating a monopoly or destroying the business of a competitor, shall discriminate between different sections, communities, localities, cities or towns of this State by purchasing such commodity or commodities at a higher price or rate in one section, community, location, city or town than is paid for the same commodity by said person, firm, company, association or corporation in another section, community, locality, city or town after making due allowance for the difference, if any, in the grade or quality, and in the actual cost of transportation from the point of purchase to the point of manufacture, or sale, shall be deemed guilty of unfair discrimination, which is hereby prohibited and declared to be unlawful, and any person, firm, company, association or corporation or any officer, agent, receiver or member of such firm,

company, association or corporation found guilty of unfair discrimination as herein defined shall be imprisoned not more than one year, or fined not more than five hundred dollars, or both. (G. L. 1917, § 5916.)

49. Milk Receptacles; Misuse; Penalty.—A person, who, by himself, his servant or agent, or as the servant or agent of any other person, partnership or corporation, having the custody of a receptacle used as a container for milk destined for sale or for use in the manufacture of any food product destined for sale, places, or causes or permits to be placed, or suffers to remain therein, any offal, swill, kerosene, vegetable matter or any article or substance other than milk, skimmed milk, buttermilk, cream, or water or other agent used for cleansing such receptacle, shall be fined not more than ten dollars for each receptacle so misused. (Id. § 5917.)

50. Shipping Misused Receptacles; Penalty.—A person who, by himself, his servant or agent, or as the servant or agent of any other person, partnership or corporation, sends, ships, returns or delivers, or causes or permits to be sent, shipped, returned or delivered, or in any way aids or assists therein, to a producer of milk or to any other person, any receptacle used as a container of milk, containing any offal, swill, kerosene, vegetable matter, or any other offensive material or substance, shall be fined not more than ten dollars for each offense. (Id. § 5918.)

51. Duty of Person Receiving Misused Receptacles.—A person who receives from a person, partnership or corporation any receptacle used or to be used as a container of milk, containing any offal, swill, kerosene, vegetable matter, decayed or decomposed matter, or any other offensive material or substance, shall forthwith submit such receptacle to the health officer of the town where such receptacle is received, for examination; and if such health officer finds such receptacle to be in such condition as to be a menace to the public health, it shall be adjudged a nuisance, and the health officer shall act relative thereto as provided in chapter two hundred and sixty-seven [G. L. 1917].* (Id. § 5919.)

52. Same; Penalty.—A person who fails to submit to the health officer a receptacle used or to be used as a container of milk, as required in the preceding section, shall be fined not more than five dollars for each offense. (Id. § 5920.)

53. Licenses For Sale of Milk and Cream; General Provisions.—A person carrying on the business of selling, supplying or delivering milk or cream from house to house or who sells milk or cream over the counter for consumption as food, shall not sell, supply or deliver, milk or cream whether produced from cows owned by him or in his possession or under his control, or purchased by him for sale from other dairies, to the inhabitants of the State unless he has procured a license therefor from the board of health of the town in which such milk or cream is sold, which is hereby authorized to issue such a license. Before granting such license, the State Board of Health, or its authorized agents, or said board of health of such town, shall make, or cause to be made, a thorough inspection and examination of the cows producing such milk or cream, of the barns, stables and premises where such cows are kept, of all pails, cans and measures used in connection with such business, and of the neatness and cleanliness with which such milk or cream is obtained and dispensed. Such licenses shall not be granted unless such cows are in a healthy condition, nor unless the barns, stables, premises and utensils used in connection therewith are in good sanitary condition, nor unless such milk and cream are obtained and sold in a neat and cleanly manner; and if the State Board of Health certifies to the board of health of any town that a person named therein should not be granted a license, a license shall not be granted such person. A person who incidentally sells or furnishes to his neighbors milk or cream from his private dairy shall not be deemed to be carrying on the business of selling or supplying milk or cream within the meaning of this section. (Id. § 5921.)

54. Samples; Examination; Penalty.—Said board of health of such town shall, at least semiannually, send to the State Laboratory of Hygiene for examination, samples of milk or cream from the herd of each party who has obtained a license, and said licensee shall allow said board to take such samples whenever it desires. A person who violates a provision of this or the preceding section shall be fined not more than fifty dollars nor less than five dollars. (Id. § 5922.)

55. Term of License; Fee.—Such license shall be for a term of one year, unless sooner revoked by said board of health of such town for just cause, and the fee for such license shall be two dollars, to be retained by said board for its services under the two preceding sections. (Id. § 5923.)

56. Milk Tickets; Form; Use; Penalty.—Retail dealers in milk who use milk tickets shall have the same printed in coupon sheets of convenient size to furnish customers, which shall be taken up by tearing off coupons from the sheet, and

*Entitled "Preservation of Public Health."

such coupons shall be immediately destroyed. A person using a coupon the second or subsequent time shall be fined five dollars for each offense. (Id. § 5924.)

57. Utensils Tested; Marking; Expense.—Bottles, pipettes or measuring glasses used by a person in determining by test the value of milk or cream received from other persons shall, before such use, be tested for accuracy of measurement and for accuracy of the per cent scale marked thereon, at the Vermont Agricultural Experiment Station. Such bottles, pipettes or measuring glasses as are correct shall be marked in permanent marks or characters, which shall be proof that they were so tested; but incorrect bottles, pipettes or glasses shall not be marked. The person owning such bottles, pipettes or measuring glasses shall pay the actual expense of testing the accuracy of the same. (Id. § 5925.)

58. Certificate of Competency to Operator; Fee.—A person who manipulates a mechanical, chemical, or other test, for the purpose of measuring the percentage of butterfat in milk or cream, or who conducts any other test or examination for determining the quality of milk or cream, the results of which are used as a basis for apportioning its value, or the butter or cheese made from the same, shall secure a certificate from the Commissioner of Agriculture certifying that he is competent to perform such work which certificate the commissioner may revoke for cause. Said commissioner may make rules and regulations governing the application for and the granting of such certificates and may charge a fee for each certificate not to exceed two dollars. (Id. § 5926, as amended P. A. 1927, No. 103, § 1.)

58a. Samples; Tests.—Samples of milk or cream taken for the purpose of such test or examination, shall be taken at the creamery, cheese factory, condensary, receiving station, or place where delivered. The Commissioner of Agriculture may make such regulations concerning the taking and handling of samples, the conduct of tests and computing the results thereof as he deems necessary. Such tests shall be made in the plant where the samples are taken or at some approved place within the State. (P. A. 1927, No. 103, § 2.)

58b. Records.—The original record of such tests shall be recorded in a book kept for that purpose at the place where said tests are made. Such record shall show the date of tests, producers' names, dates samples were taken, and the certified operator's name. Such records shall be open to the inspection of the Commissioner of Agriculture or his duly authorized deputies. (Id. § 3.)

58c. Statements, What to Contain.—The statements furnished to each patron regularly showing the quantity of milk or cream delivered during the period covered by the payment shall also show the result of any and all tests which are made during the period covered by the payment, provided such test or tests are used as a basis for varying the price to the producer for the milk or cream delivered. Said statements shall when requested be open to inspection by the Commissioner of Agriculture or his duly authorized deputies. In case definite grades are established for purchasing milk or cream, such grades shall before being used as a basis of payment be approved by the Commissioner of Agriculture. (Id. § 4.)

59. Violating Two Preceding Sections; Penalty.—A person who violates a provisions of the two preceding sections* shall be fined not more than twenty-five dollars for the first offense and, for each subsequent offense, not more than fifty dollars. Sheriffs, deputy sheriffs and constables shall institute complaint against a person violating a provision of the two preceding sections. (G. L. 1917, § 5927.)

60. Test; Penalty.—When cream is bought or sold according to its butter fat content, there shall be accurately weighed into the test bottle the full weight of cream as specified by the method employed. A person who violates a provision of this section shall be fined not more than fifty dollars nor less than ten dollars. (Id. § 5928.)

61. Butter Substitutes; Labels.—A person, who, by himself or agent, sells, exposes for sale or has in his possession with intent to sell, an article, substance or compound, made in imitation of butter or as a substitute for butter, and not made wholly of milk or cream, or containing fats, oils or grease not produced from milk or cream, shall have the words "imitation butter," or if such substitute is a compound known as oleomargarine, then the word "oleomargarine," or if it is known as butterine, then the word "butterine," stamped, labeled or marked upon the top, side and bottom of each tub, firkin, box or package containing such article, substance or compound; or if such article, substance or compound is not in the original package, then upon a label to be attached in a conspicuous place to such article, substance or compound. In case of retail sales of such article, substance or compound not in the original package, the seller shall attach in a conspicuous place to each package and deliver therewith to the purchaser a label or wrapper bearing the words "imitation butter," "oleomargarine" or "butterine," as the article may be. Such words shall be stamped, labeled or marked in a straight line in

*See Nos. 57 and 58.

printed letters of plain uncondensed gothic type, not less than half an inch in length, so that such words cannot be easily defaced, and other words shall not appear in connection therewith except that every such tub, firkin, box or package, including the package delivered to the consumer shall be plainly marked with a stamp or label showing the name of each ingredient used in their manufacture. (Id. § 5929, as amended P. A. 1925, No. 105.)

62. **Cheese; Labels.**—A person who, by himself or agent, sells, exposes for sale or has in his possession with intent to sell, an article, substance or compound made in imitation of or as a substitute for cheese and not made wholly from milk or cream, or containing fats, oils or grease not produced from milk or cream, shall have the words "imitation cheese" stamped, labeled or marked in printed letters of plain roman type, not less than one inch in length, so that such words cannot be easily defaced, upon the side of each cheese cloth or band around the same, and upon the top and side of each tub, firkin, box or package containing such article, substance or compound. In case of retail sales of such article, substance or compound not in the original package, the seller shall attach in a conspicuous place to each package and deliver therewith to the purchaser a label or wrapper bearing the words "imitation cheese" in printed letters of plain roman type, not less than half an inch in length. (G. L. 1917, § 5930.)

63. **Violation of Two Preceding Sections; Penalty.**—A person who violates a provision of the two preceding sections, or who, with intent to deceive, defaces, erases, cancels or removes a mark, stamp, brand, label or wrapper provided for in the two preceding sections, shall be fined one hundred dollars for the first offense and, for each subsequent offense, two hundred dollars. (Id. § 5931.)

64. **Sale of Imitation Butter as Butter; Penalty.**—A person who, by himself or agent advertises, sells, exposes for sale or has in his possession with intent to sell, an article, substance or compound made in imitation of butter, or as a substitute for butter and not made wholly of milk or cream, or containing fats, oils or grease not produced from milk or cream, contained in a box, tub, article or package, marked or labeled with the words "dairy," "milk," "cream," "butter" or "creamery," or the name of a breed of dairy cattle, or the reproduction of a photograph, engraving or drawing of a cow, shall be fined not more than two hundred dollars nor less than ten dollars. (Id. § 5932, as amended P. A. 1923, No. 109.)

65. **Prosecutions.**—A State's attorney may enter places where butter or cheese is stored or kept for sale, and may take specimens of suspected butter and cheese, and cause them to be analyzed or otherwise satisfactorily tested, and he shall record and preserve the result of such analysis or test as evidence. The expense of such analysis or test, not to exceed twenty dollars in any one case, may be included in the costs of prosecution. (G. L. 1917, § 5933.)

66. **Butter and Cheese; Definitions.**—The word "butter" and "cheese" as used in the first, second, fourth and fifth preceding sections shall mean the products usually known by those names, manufactured wholly from milk or cream with salt and rennet with or without coloring matter. (Id. § 5934.)

67. **Monthly Statements; Contents.**—An owner, operator or manager of a co-operative or proprietary creamery, cheese factory, condensary or receiving station for milk or cream shall make and deliver at least monthly to each patron of such creamery, cheese factory, condensary or receiving station a statement showing the quantity of milk or cream as determined by weight or measure, which said patron delivers during the period covered by such statement. Such statement shall also show the quality of the milk or cream delivered by said patron, as determined by a test approved by the Commissioner of Agriculture, and the price paid for such milk or cream shall, in the absence of any agreement in writing providing for a different mode of payment, be based upon the quality as determined by such test. (Id. § 5935.)

68. **Same; Penalty.**—An owner, operator or manager of a creamery or cheese factory who fails to comply with a provision of the preceding section shall be fined not more than twenty-five dollars nor less than ten dollars for each offense. (Id. § 5936.)

69. **Inspection of Creameries, etc., Duties of Commissioner of Agriculture.**—The Commissioner of Agriculture shall, at least twice each year, inspect or cause to be inspected, as to their sanitary condition, all creameries, cheese factories, condensaries or receiving stations for milk or cream, and shall require the correction of all insanitary conditions and practices found therein. While so doing he shall take cognizance of the condition in which milk or cream is delivered. If he has reason to believe that such milk or cream, or part thereof, is produced and kept under insanitary conditions he shall inspect, or cause to be

inspected, the dairy and premises of the producer of such milk or cream, and shall make such recommendations and orders as in his judgment will improve such milk or cream to a medium standard. In case his orders or recommendations are not complied with he may order, in writing, the owner, operator or manager of such creamery, cheese factory, condensary or receiving station receiving such milk or cream and the owner, operator or manager of neighboring creameries, cheese factories, condensaries and receiving stations, to refuse to receive the milk or cream from such dairy until permitted so to do by order of said commissioner. An owner or proprietor of a creamery, cheese factory, receiving station or condensary who disobeys such order, or who fails to comply with the provisions of this section, shall be fined not more than fifty dollars for each offense. (Id. § 5937.)

70. Report of Yearly Business; Penalty.—On or before the first day of March of each year all creameries, cheese factories, condensaries and receiving stations shall send the Commissioner of Agriculture a full and accurate report of the amount of business done during the preceding year, together with such other statistical information as he may require. A person who violates a provision of this section shall be fined twenty-five dollars. (Id. § 5938.)

71. Same; Duties of Commissioner of Agriculture; Penalty.—If in the opinion of said commissioner a creamery, cheese factory, condensary or receiving station is not complying with the provisions of section 5935, he shall immediately notify the owner, operator or manager of such creamery, cheese factory, condensary or receiving station and recommend to him a suitable form of statement. If, within sixty days after such recommendation, such creamery, cheese factory, condensary or receiving station does not comply with such recommendations, said owner, operator or manager, or, if the owner or proprietor is a corporation, any officer thereof, shall be fined not more than one hundred dollars nor less than twenty-five dollars. (Id. § 5939.)

72. Same; Exception.—A creamery, cheese factory, condensary or receiving station and the owners, operators, managers, proprietors or officers thereof, receiving milk or cream from less than three patrons, shall not be subject to the provisions of the three preceding sections. (Id. § 5940.)

73. Inspection of Creameries; Duties and Powers of the Commissioner of Agriculture.—The Commissioner of Agriculture, or his deputy, may enter upon the premises of a creamery, cheese factory, condensary or receiving station for milk or cream, and may take possession of any or all samples of milk or cream drawn for the purpose of testing their butter fat content which are on the premises or in the possession of an employee, or may take samples from patrons' deliveries, and then and there test the same. The owner, operator or manager of such a creamery, cheese factory, condensary or receiving station for milk or cream shall, if requested by said commissioner or his deputy, give him full access to all creamery records appertaining to the tests thereof, and said commissioner or his deputy may make transcripts therefrom. The results of the tests made by said commissioner or his deputy may, at the discretion of said commissioner, be communicated to the owner, operator or manager or to any of the patrons of such creamery, cheese factory, condensary or receiving station for milk or cream from which such samples have been taken and tested, or to all of them. The owner, operator or manager of such a creamery, cheese factory, condensary or receiving station, at which tests, under the provisions of this section, are made by said commissioner or his deputy, may require said commissioner or his deputy to take duplicate sealed sub-samples of all samples thus tested and to promptly forward the same to the Vermont Agricultural Experiment Station for further test, in which case communication of the results of the tests made by said commissioner or his deputy shall not be made to the patrons of such creamery, cheese factory, condensary or receiving station unless the same shall substantially agree with the results of the tests made by such experiment station, or unless the commissioner is notified by such experiment station that the samples were received in a condition unfit to analyze. The owner, operator or manager of such a creamery, cheese factory, condensary or receiving station, who requires the taking and forwarding of sub-samples, shall pay in advance all the carriage charges thereon and such experiment station for all tests made under the provisions of this section at the rate of ten cents for each milk sample and fifteen cents for each cream sample. The money thus received shall be used to defray the expenses incurred by such experiment station in connection with this section, but any balance that may remain after paying such expenses shall be paid by the director of such experiment station to the State Treasurer. Such experiment station shall report in duplicate to said commissioner and to the owner, operator or manager of the creamery, cheese factory, condensary or receiving station the results of such tests

made by it. If samples are received in poor condition, such experiment station shall not be required to analyze the same, but in such case the advance payments required by this section shall be returned to the party making the same. (Id. § 5941.)

74. Inspection of Creameries; Regulations Concerning Milk Tests.—Said commissioner or his deputy may enter the premises of such a creamery, cheese factory, condensary or receiving station, and may inspect all apparatus and materials used for making tests for the purpose of determining the accuracy of the same, and for ascertaining whether the provisions of sections 5925 and 5926 are being complied with. Said Commissioner of Agriculture may order any testing apparatus to be repaired, or may condemn the same, or any part thereof, or any materials used in making tests, and may give such instructions and make such regulations concerning the taking of samples of milk and cream for making the butter fat test, the making of such test and the computing of the results thereof as he deems proper. (Id. § 5942, as amended P. A. 1919, No. 163.)

75. Records, False Statements, Hindering or Impeding Commissioner; Penalty.—An owner, operator or manager of such a creamery, cheese factory, condensary or receiving station wherein milk or cream is bought and paid for on the basis of its butter fat content shall keep or cause to be kept on file for at least one year all the original records of butter fat tests of milk and cream made by a licensed tester, as provided in section 5926* of the general laws, as amended by section 1 of No. 163 of the acts of 1919. Said original records shall contain the names or numbers of patrons whose butter fat tests are made, the percentage of butter fat contained in said patron's milk or cream and the period of time which said tests cover, and be signed by said licensed tester. Said owner, operator or manager who credits a patron delivering milk or cream with a greater or less percentage of fat than is actually contained in the milk or cream so delivered, or who hinders, impedes or obstructs said commissioner or his deputy in the discharge of his duty under the provisions of the two preceding sections, or who refuses him access to his testing apparatus, or his records of tests, or who neglects to follow the instructions given by said commissioner under the provisions of the preceding section shall be fined not more than one hundred dollars nor less than twenty-five dollars for each offense. (G. L. 1917, § 5943, as amended P. A. 1923, No. 110.)

75a. Company Defined.—The word "company" as used in this chapter, shall apply to a person, partnership, unincorporated association or corporation whose principal business in this State is, or who is devoting a substantial portion of time to, the business of operating a creamery or condensed milk factory or of contracting for dairy products. (G. L. 1917, § 5723.)

75b. Commissioners.—The Secretary of State and the Commissioner of Taxes shall, by virtue of their offices, be Commissioners of Creamery Companies; and they shall furnish such companies with such blanks as are necessary for use in complying with the provisions of this chapter. (Id. § 5724.)

75c. License Required; Prerequisites.—A creamery company shall not transact business in this State unless it first obtains a license from the commissioners authorizing it so to do. Before receiving such license, the company shall file with the Secretary of State a certified copy of its charter or articles of association and its by-laws, in case such company is a corporation, or, in case such company is an unincorporated association, a list of associates, or, in case of a partnership, the names of the individuals composing such partnership, and in case the partnership is a limited partnership, a copy of the partnership agreement. (Id. § 5725.)

75d. Issuance and Renewal of Licenses; Fees.—Upon the filing of papers required by the preceding section, and the depositing of such bond, mortgage or other security as the commissioners may require under the provisions of the following section, and upon the payment of a license fee of five dollars, the commissioners shall grant a license authorizing company to do business until the first day of April thereafter, unless sooner revoked; and annually thereafter, on the first day of April, such license may, upon application, be renewed upon the payment of like fee and the filing of such papers as are required by the preceding section and the depositing of such bond, mortgage or other security as the commissioners deem necessary. Such license may be revoked by the commissioners for a violation of a provision of this chapter or of the general laws of this State. A company duly licensed under the provisions of this chapter shall, within five days after the first day of July, October, January and April, file with the commissioners upon blanks furnished for that purpose, a sworn statement showing assets, liabilities, income and disbursements and such other information regarding its financial condition as the commissioners shall require. (Id. § 5726.)

75e. Bond or Security, Statements, Penalty.—Before issuing a license, the commissioners shall require a company, except as otherwise provided in section five thou-

*See No. 58.

sand seven hundred and thirty-six, to file in the office of the Secretary of State a good and sufficient surety bond, executed by a surety company duly authorized to transact business in this State, in such sum as the commissioners shall direct; or the commissioners may accept, in lieu of such bond, such security by way of mortgage or otherwise as they deem sufficient. Such bonds, mortgage or other security shall be taken for the sole benefit of patrons in this State of such company. The commissioners may at any time, in their discretion, require such company to file detailed statements of the business transacted by it in this State, and may at any time require it to give such bonds or additional bonds or may accept in lieu thereof such security by way of mortgage or otherwise, as they deem necessary. In case such company shall refuse or neglect to file such detailed statements or to give bonds or other security required by the commissioners, they may suspend the license of such company until such time as it shall comply with their orders. (Id. § 5727, as amended P. A. 1923, No. 103, § 1.)

75f. Exception.—Nothing in this act shall prevent the purchase, without license, of dairy products of one dairy company by another company. (P. A. 1923, No. 103, § 2.)

75g. Duplicate License Filed.—Such company shall file in the town clerk's office in each town where it does business, a duplicate of its license. The commissioners shall receive one dollar for each duplicate license. (G. L. 1917, § 5728.)

75h. Service of Process.—Before a license is issued under the provisions of this chapter, such company, if a nonresident or a foreign corporation, shall, in writing, appoint the Secretary of State its true and lawful attorney upon whom service of legal process in any action or proceeding against it may be made with the same validity as if made upon such company; and the provisions of sections five thousand four hundred and fifty-seven and five thousand four hundred and fifty-eight shall apply to such company. (Id. § 5729.)

75i. Payments When Made; Agreement.—A creamery company may contract with its patrons for the payment of the several sums due them at such time and in such manner as may be mutually agreed upon, but in the absence of such agreement such payments shall be due and payable on the fifteenth day of each month for products delivered or furnished during the preceding calendar month; provided, however, that in case of such an agreement, such company shall file with the commissioners within five days after such agreement is made, a memorandum thereof duly sworn to by such company. The foregoing provisions shall not be construed to prevent such company from making payments weekly or bimonthly and in case such payments are so made such fact shall be taken into consideration by the commissioners in determining the amount of bond, mortgage or other security that such company shall be required to furnish; provided, however, that in case such company shall agree to make payments weekly or bimonthly, a memorandum of such agreement, duly sworn to by such company, shall be filed with said commissioners. (Id. § 5730.)

75j. Statement Furnished Patron.—At the time payment is made for products, such company shall, in case a patron has furnished milk or cream, furnish to each such patron a statement of the number of pounds of milk or cream furnished by him during the period for which the payment is made, together with the price allowed for the same. (Id. § 5731.)

75k. Lien.—All accounts due its patrons shall constitute a first lien on the real estate of such company in this State and shall take precedence of any subsequent mortgage or attachment by any creditor of such company other than by a patron who may have a valid claim under the provisions of this chapter, and of any other lien except taxes. (Id. § 5732.)

75l. Nonpayment; Recovery on Bond.—If such company shall, for the period of ten days after the date agreed upon for the payment of the several amounts due its patrons, and without their consent fail to pay the several amounts their due for products delivered or furnished by them; or, in case an agreement as to time and manner of payment has not been made, if such company shall, on or before the twenty-fifth day of any month, without the consent of its patrons, fail to pay them the several amounts their due for products delivered or furnished by them for the preceding calendar month, such company shall by reason of such nonpayment be in default as to all patrons whose accounts shall then remain unpaid, and the bond or other security hereinbefore provided for shall be forfeited to the extent of all sums then due from such company to its several patrons in this State, and, by virtue of such default, the conditions of such bond or other securities shall be deemed to be broken. (Id. § 5733.)

75m. Commissioners to be Trustees.—All bonds, mortgages or other securities required and furnished under the provisions of this chapter shall be given to the commissioners as trustees of the company furnishing the same, for each and all of the patrons in this State and shall be conditioned for the faithful performance by such company of all the acts prescribed for, and all the conditions imposed upon, such com-

pany by this chapter, and for compliance by such company with all the general laws of this State now in force or hereafter enacted. (Id. § 5734.)

75n. Proceedings for Recovery on Bond.—Upon breach of the condition of a bond, mortgage or other security, the commissioners shall, upon application by a patron of a company whose account for products furnished such company remains unpaid as hereinbefore provided, institute appropriate proceedings thereon in their names as trustees for the benefit of all of the patrons of such company in this State to whom such company may be indebted at the time such proceedings shall be instituted. Such proceedings may be commenced in any county in this State where a patron of such company resides. (Id. § 5735.)

75o. Bond, Exemptions.—Such company shall not be required to file a bond or give security under the provisions of this chapter if all of its patrons consent in writing that such bond or security need not be given, and such written agreement is duly executed and filed with the commissioner, nor if all of its patrons are stockholders therein. If such written agreement is filed, and other persons become patrons of such company, such company shall notify said commissioner of the names and post office addresses of said persons within five days after they become patrons of such company. (Id. § 5736, as amended P. A. 1923, No. 104.)

75p. Prior Laws.—The laws relating to creamery companies in force prior to the first day of June, nineteen hundred and fifteen, shall control as to rights accrued and liabilities incurred prior to such date, and under any bond given prior to such date. (G. L. 1917, § 5737.)

75q. Penalty; Jurisdiction.—A company that neglects or refuses to comply with a provision of this chapter shall be fined not more than one hundred dollars nor less than ten dollars for each day's neglect or refusal. Justice's, municipal and city courts shall have concurrent jurisdiction with the county court of offenses arising under this chapter. (Id. § 5738.)

76. Notice; Penalty.—An owner or proprietor of a public dining room using oleomargarine on the tables therein or for cooking food for use therein shall post in conspicuous places, and which can be read from every table in such room, a sign with letters at least three inches high, which shall read, "Oleomargarine used here." An owner or proprietor, or, if the owner or proprietor is a corporation, any officer thereof who violates a provision of this section shall be fined not more than two hundred dollars nor less than fifty dollars. (Id. § 5946.)

77. Milk and Milk Products; Prohibition.—A person, firm or corporation, by himself, his servant or agent, or as the servant or agent of another, shall not manufacture, sell or exchange, or have in possession with intent to sell or exchange, any milk, cream, ice cream, except chocolate ice cream, which may contain the amount of fats other than milk fat normally contained in the chocolate or cocoa used in the manufacture of chocolate ice cream, skim milk, buttermilk, condensed, evaporated or powdered milk, condensed skim milk, or any of the fluid derivatives of any of them to which has been added any fat or oil other than milk fat, either under the name of said products or articles or the derivatives thereof so that the resulting product is in imitation or semblance of milk, cream or skim milk, whether or not condensed, evaporated, concentrated, powdered, dried or desiccated, or under any fictitious or trade name whatsoever. (P. A. 1925, No. 104, § 1.)

78. Enforcement.—The Commissioner of Agriculture, by himself or his assistants, chemists, inspectors or agents, shall be charged with the enforcement of this act. (Id. § 2.)

79. Penalty.—A person who violates any of the provisions of this act shall be imprisoned not more than sixty days nor less than thirty days or be fined not more than one hundred dollars nor less than fifty dollars or both. (Id. § 3.)

80. Oleomargarine, etc.; License; Fees.—The Secretary of State may license persons, copartnerships or corporations to sell oleomargarine, imitation of, substitute for process or renovated butter or nut margarine when said products conform to the requirements of the pure food laws of this State, upon receipt of application for such license accompanied by a license fee of twenty-five dollars for a period of one year or a pro-rated fraction thereof for a less time. Such license shall entitle the holder thereof to sell said products for a period of one year, or such part of any year as may remain between the date of such license and the first day of July next following, and all licenses hereunder shall expire on July first of each year. All fees received hereunder shall be forthwith paid into the treasury of the State by said secretary. (P. A. 1925, No. 106, § 1.)

81. Imitation Butter; Penalty.—No person by himself, his agent or servant shall render or manufacture, sell, offer or expose for sale, take orders for the future delivery of, or have in his possession with intent to sell, any article, product

or compound, made wholly or partly from any fat, oil or oleaginous substance or compound thereof, not produced from unadulterated milk or cream from the same, which shall be in imitation of yellow butter produced from pure unadulterated milk or cream from the same; but the provisions of this section shall not prohibit the manufacture or sale of oleomargarine in a separate and distinct form and in such manner as will advise the consumer of its real character, free from coloration and from any ingredient causing it to look like butter, in color, except such coloration as it may derive from unadulterated uncolored butter, cream or milk used in its manufacture or processing. Any person, firm or corporation, or agent thereof, who violates any provision or provisions of this section shall be fined not less than one hundred dollars nor more than five hundred dollars. (Id. § 2.)

82. Selling Without License; Penalty.—A person not licensed as provided in this act who sells or offers for sale, in this State, oleomargarine, imitation of, substitute for process, renovated butter or nut margarine shall be fined not more than five hundred dollars nor less than one hundred dollars. (Id. § 3.)

83. When Act Becomes Effective.—This act shall not take effect as to present holders of oleomargarine licenses until their licenses now in force have expired. (Id. § 4.)

84. Enforcement of Act.—The Secretary of State shall be charged with the enforcement of this act. (Id. § 5.)

84a. Tests on Application of Owner; Terms; Priority.—An owner of cattle or horses may make application to said commissioner for a State test of his stock for tuberculosis or glanders. . . .

When the commissioner* receives an application for the tuberculin test from the owner of a herd contributing to the local milk supply of a municipality requiring a tuberculin test as a condition precedent to the granting of a license for the sale of milk, such application shall have priority in the administering of the test. . . . (G. L. 1917, § 500, as amended P. A. 1925, No. 16, § 2.)

84b. Condemned Animals Used for Breeding; Restrictions.—Under regulations to be prescribed by said commissioner and approved by the State Board of Health, animals which have responded to the tuberculin test but which show no marked physical indications of disease, may be retained by the owner in quarantine and used for breeding purposes. The milk of such animals, after having been sterilized or pasteurized, according to such regulations, may be sold or manufactured into butter or cheese. In case animals quarantined under the provisions of this section are at any time condemned or killed, the owner shall not receive compensation therefor from the State. The premises on which such animals are kept, shall be at all times subject to inspection by said commissioner or his agent or by the State Board of Health. Such animals may, at any time, be sold for immediate slaughter in any slaughterhouse subject to federal inspection. (G. L. 1917, § 505.)

84c. Duties of Commissioner;† Quarantine; Milk or Cream; Pasteurization.—. . . (2) Said commissioner, his agent, or any person appointed or authorized to assist in the work of applying such tuberculin test may enter a barn, stable, yard, pasture or other building or inclosure where cattle may be, for the purpose of making inspection and applying such tuberculin test. If a person refuses to allow cattle owned or kept by him to be tested as provided in this act, said commissioner or his agent shall quarantine all barns, stables, yards, pastures or other buildings and premises where said cattle are kept. During such quarantine no cattle or swine shall be removed from or placed on or in premises or buildings covered by said quarantine, except for purposes of immediate slaughter and then only under consent and regulations of the said commissioner.

During such quarantine no milk or cream from cattle covered by said quarantine shall be sold, exchanged, bartered or given away to be used for any food purposes whatsoever, until said milk or cream has been first pasteurized in accordance with regulations prescribed by said commissioner and approved by the State Board of Health. No other dairy products shall be traded, sold, exchanged, bartered, or given away unless said dairy products have been made from milk or cream pasteurized as provided in this section. The expense of such quarantine shall be paid by the owner or person in charge of such animals. Such quarantine shall remain in effect until the owner of said animals shall file with the Commissioner of Agriculture a signed agreement as provided in section 500 of the General Laws, as amended, or until said owner has had all of said animals tested at his own expense by a veterinarian approved by the Commissioner of Agriculture. . . .

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*Live Stock Commissioner.

†Commissioner of Agriculture.

(8) Penalty. Any person who violates a provision of this act shall be fined not more than two hundred dollars nor less than twenty-five dollars, or imprisoned not more than sixty days nor less than ten days. (P. A. 1925, No. 17, § 1, as amended P. A. 1927, No. 12, § 2.)

84d. Penalty for Defacing Placard, Notice, Etc.; Jurisdiction.—A person shall not remove, deface or obscure, or cause to be removed, defaced or obscured a placard or notice posted by the Commissioner of Agriculture or his agent, upon buildings or premises quarantined under this act. Justices shall have concurrent jurisdiction with county, municipal and city courts of offenses arising under this act. (P. A. 1927, No. 12, § 4.)

85. Ice Cream; Standard of Purity.—The standard of purity and quality for ice cream shall be as follows:

I. Ice cream, a frozen product made from cream and sugar, with or without gelatine and a natural flavoring and containing not less than fourteen per cent of milk fat;

II. Fruit ice cream, a frozen product made from cream, sugar and sound, clean, mature fruits, with or without pure gelatine and containing not less than twelve per cent of milk fat;

III. Nut ice cream, a frozen product made from cream, sugar and sound, nonrancid nuts, with or without pure gelatine and containing not less than twelve per cent of milk fat. (G. L. 1917, § 6307.)

86. Prohibition.—An article of food marked, labeled, branded, named or called ice cream shall not be sold or offered for sale unless it shall conform to the standard established by this chapter. (Id. § 6308.)

87. Frozen Food Sold Under Descriptive Name; Regulation.—Articles of food frozen in the form of ice cream but not conforming to the standards established by this chapter may be sold or offered for sale under any fancy, descriptive or trade name whatsoever, except that the words "ice cream" or "cream" shall not be a part of such name; nor appear, nor be used in any manner whatsoever in connection with such product or the sale thereof. (Id. § 6309.)

88. Penalty.—A person who violates a provision of this chapter shall be fine not more than two hundred dollars. (Id. § 6310.)

NOTE: See also Nos. 22b, 22c, 22f, 22g, 22i, 105b et seq., 125 et seq., 195 et seq., 198, and 218.

Feeding Stuffs.

89. Feeding Stuffs; Definition.—The words "concentrated commercial feeding stuff" as used in this chapter, shall include linseed meals, cottonseed meals, cottonseed feeds, pea meals, cocoanut meals, gluten meals, gluten feeds, maize feeds, starch feeds, sugar feeds, distiller's dried grains, brewers' dried grains, malt sprouts, hominy feeds, cerealine feeds, rice meals, oat feeds, corn and oat chops, corn and oat feeds, corn bran, ground beef or fish scraps, meat and bone meals, mixed feeds, wheat, rye, barley and buckwheat offals, condimental stock and poultry foods, patented, proprietary or trade-marked stock and poultry foods and other materials of a similar nature not named in the following section. (G. L. 1917, § 5980, as amended P. A. 1921, No. 174.)

90. Same.—The words "concentrated commercial feeding stuff" as used in this chapter, shall not include hay and straw, the whole seed nor the unmixed meals made directly from the entire grains of wheat, rye, barley, oats, Indian corn, buckwheat, India wheat and broom corn, nor pure grains ground together. (Id. § 5981.)

91. Sales; Statement of Contents.—Every lot or parcel of concentrated commercial feeding stuffs as defined in this chapter, used for feeding farm live stock, sold, offered or exposed for sale, shall have a plainly printed statement conspicuously affixed thereto clearly and truly certifying the number of net pounds of feeding stuff in a package, the name, brand or trade-mark under which the article is sold, the name and address of the manufacturer or importer, the minimum percentages of crude protein and of crude fat, and the maximum percentage of crude fiber, the several constituents to be determined by the methods adopted by the association of official agricultural chemists, and the specific name of each ingredient used in its manufacture. If the feeding stuff is sold in bulk at retail or put up in packages belonging to the purchasers, the agent or dealer shall, upon request of the purchaser, furnish him with the certified statement named in this section. (G. L. 1917, § 5982.)

92. Illegal Sales.—A manufacturer, importer, agent or person shall not knowingly sell, offer or expose for sale a concentrated feeding stuff as defined in

section five thousand nine hundred and eighty without the statement required in the preceding section, or state that such feeding stuff contains substantially a larger percentage of either crude protein or crude fat, or substantially a smaller percentage of crude fibre than is contained therein, or omit to state or fail to properly state the specific name of every ingredient used in its manufacture. (Id. § 5983.)

93. Adulterations; Exceptions; Penalty.—A person who adulterates whole or ground grain with milling or manufactured offals, or with a foreign substance, or bran or middlings made from the several grains or the mixtures of wheat bran and middlings known in trade as mixed feed, with a foreign substance for the purpose of sale, unless the true composition, mixture or adulteration thereof is plainly marked or indicated upon the packages containing the same or in which it is offered for sale; or a person who uses in the manufacture of a compound feeding stuff, other than poultry feed, any wheat screenings or materials containing weed seeds to such an extent that the proportion of weed seeds is in excess of two per cent, by weight, of such compounded feeding stuff, unless a statement of such use of wheat screenings or materials containing weed seeds is plainly marked or indicated upon the packages containing the same, or in which it is offered for sale; or a person who knowingly sells or offers for sale whole or ground grain, bran or middlings which is so adulterated, unless the true composition, mixture or adulteration is plainly marked or indicated upon the packages containing the same, or in which it is offered for sale; or a person who knowingly sells or offers for sale a compounded feeding stuff containing over two per cent, by weight, of weed seeds, unless a statement of such use of wheat screenings or material containing weed seeds, is plainly marked or indicated upon the packages containing the same, or in which it is offered for sale, shall be fined not more than one hundred dollars nor less than twenty-five dollars for each offense. (Id. § 5984.)

93a. Use; Report.—The auditor of accounts shall annually draw an order in favor of the treasurer of such experiment station* in payment of the expenses incurred at such station in compliance with the provisions of this chapter relating to concentrated commercial feeding stuffs and agricultural seed, but the amount of such order in any one year shall not exceed the sum of one thousand dollars of the moneys annually available for the use of the Vermont Agricultural Experiment Station and the fees covered into the State treasury under section five thousand nine hundred and eighty-eight during such year. The director of such station shall annually publish a statement of the receipts and expenditures under the provisions of this chapter relating to such commercial feeding stuffs and agricultural seed. (Id. § 5991.)

94. Prosecutions.—The Director of the Experiment Station shall, upon ascertaining a first violation of a provision of this chapter, forthwith notify the manufacturer, importer or dealer in writing and give him ten days' time within which to comply with the provisions which have been violated. If said manufacturer, importer or dealer fails to comply with such provisions within such time or violates the provisions of the preceding sections more than once, the director shall notify the State's attorney of the county in which such violation occurred, who shall prosecute said manufacturer, importer or dealer; but a prosecution shall not be instituted in relation to the quality of a commercial feeding stuff, fertilizer, fertilizing material or agricultural seed if the same is found to be substantially equivalent to the statement of analysis made by the manufacturer, importer or dealer. (Id. § 5992.)

95. Collection of Samples.—The Director of the Experiment Station may, in person or by deputy, enter premises where commercial fertilizers, feeding stuffs or agricultural seed are stored, and take for analysis a sample not exceeding two pounds in weight of fertilizers or feeding stuff or four ounces in weight of agricultural seed, from any lot or parcel of commercial fertilizer, feeding stuff or agricultural seed, including the exempted materials named in section five thousand nine hundred and eighty-one, which may be in the possession of the manufacturer, importer, dealer or agent. The market price of the seed desired as a sample shall be tendered before such sample is taken. Such samples shall be taken from a parcel or number of packages which shall not be less than five per cent of the whole lot inspected, and shall be thoroughly mixed and placed in a suitable vessel, carefully sealed, and a label placed thereon stating the name or brand of commercial fertilizer; feeding stuff or agricultural seed or material sampled, the name and address of the person from whose stock the sample was drawn, and the date and place of drawing. Such label shall be signed by the director or his deputy, provided that, upon request of the person from whose stock the sample is taken,

*Agricultural Experiment Station.

such sample shall be taken in duplicate and carefully sealed in the presence of the person in interest or his representative, and one of such samples shall be retained by the director and one by the person whose stock is sampled. The sample retained by the director shall be for comparison with the certified statement named in section five thousand nine hundred and seventy-three [commercial fertilizers], five thousand nine hundred and eighty-two or five thousand nine hundred and eighty-six [agricultural seed], as the case may be. (Id. § 5993.)

96. Analysis of Samples; Publication.—Said director shall cause one sample of each kind of fertilizer, feeding stuff or agricultural seed collected as provided in the preceding section to be analyzed annually. The analyses of feeding stuffs may include determination of crude protein, crude fat, crude fibre and such other ingredients as it is deemed advisable to determine. The results of analyses provided for in this section together with such additional information in relation to the character, composition value and use of such fertilizers, feeding stuffs and seed as the circumstances may advise, including the names and addresses of persons from whom the samples of seed were obtained and the names and addresses of the wholesale dealers of same, shall be published in reports, bulletins, special circulars or elsewhere as often as is deemed advisable. (Id. § 5994.)

97. Importer; Definition.—The word "importer," as used in this chapter, shall mean a person who sells or procures for sale commercial fertilizers or concentrated commercial feeding stuffs made in other States. (Id. § 5996.)

98. Brands.—For the purposes of this chapter, commercial fertilizers, commercial feeding stuffs and agricultural seed shall be considered as distinct brands when differing either in guaranteed composition, trade-mark, name or in characteristic method of marking of whatever nature. (Id. § 5997.)

99. Obstructing Director.—A person who hinders, impedes or obstructs the director or his deputy in the discharge of his duty as provided in the preceding sections of this chapter shall be fined not more than one hundred dollars nor less than twenty-five dollars for each offense. (Id. § 5998.)

100. General Penalty.—A person who violates a provision of this chapter for which other penalty is not provided shall, subject to the provisions of section five thousand nine hundred and ninety-two, be fined not more than fifty dollars for the first offense, and for each subsequent offense, not more than one hundred dollars. (Id. § 5999.)

101. Statement of Contents, Samples, Registration.—Before any manufacturer, importer, agent or person shall sell, offer or expose for sale any commercial feeding stuffs as defined in section 5980 of the general laws, he shall file with the director of the Vermont Agricultural Experiment Station a certified copy of the statement specified in section 5982 of the general laws, for each brand of commercial feeding stuff; said certified copy to be accompanied, when the director shall so request, by a sealed package containing at least one pound of the commercial feeding stuffs to be sold, offered or exposed for sale, and the manufacturer, importer, agent or person furnishing said sample shall thereupon make affidavit that the said sample is representative of the commercial feeding stuff offered for registration. The director shall have power to refuse to register any commercial feeding stuff under a name, brand or trade-mark which would be misleading or deceptive, or which would tend to mislead or deceive, as to the materials of which it is composed, or when the specific name of each and all ingredients used in its manufacture are not stated. He shall also have the power to refuse to register more than one commercial feeding stuff under the same name or brand when offered by the same manufacturer, importer, agent or person. Should any commercial feeding stuffs be registered in this State, and it is afterward discovered that such registration is in violation of any of the provisions of this act, the director shall have the power to cancel such registration. The director shall have the power to refuse to allow any manufacturer, importer, agent or person to lower the guaranteed analysis or change the ingredients of any brand of his or their commercial feeding stuffs during the term for which registered unless satisfactory reasons are presented for making such change or changes. (P. A. 1923, No. 111, § 1.)

102. License, Fees.—A manufacturer, importer, agent or seller of a commercial feeding stuff as defined in section 5980 of the general laws, shall annually pay to the director of the Vermont Agricultural Experiment Station a license fee of twenty dollars for each brand of commercial feeding stuffs sold, offered or exposed for sale. All licenses shall expire on December thirty-first of the year for which they are issued. If the manufacturer, importer or shipper of a commercial feeding stuff duly registers the same and pays the required license fee, an agent or seller of said manufacturer, importer or shipper shall not be required to

register the same or to pay such fee. The director, on the receipt of said fee, shall issue to the manufacturer, importer, agent or seller paying such fee a license for the sale of the kind of commercial feeding stuffs for which the fee is paid, and he shall cover all fees received under this section into the State treasury. The auditor of accounts shall annually issue his warrant in favor of the treasurer of the experiment station in payment of the expenses incurred by said director in compliance with the provisions ofthis act and of chapter 251* of the general laws relating to commercial feeding stuffs, in the conduct of feeding experiments with dairy cattle, swine or poultry and in compliance with the requirements of section 460† of the general laws insofar as they relate to analyses of feeding stuffs for domestic animals and of dairy products, but such order shall not exceed the amount of license fees paid to the State treasurer as herein provided. Said director shall annually publish a statement of the receipts and expenditures under this act. (Id. § 2.)

103. Powers and Regulations of Director of Experiment Station.—The Director of the Vermont Agricultural Experiment Station is hereby empowered to enforce the provisions of this act and to prescribe and enforce such rules and regulations relating to the sale of commercial feeding stuffs as he may deem necessary to carry into effect the full intent and meaning of this act. (Id. § 3.)

104. Co-operation of Commissioner of Agriculture.—The Commissioner of Agriculture is hereby authorized, in his discretion, to co-operate with the Director of the Experiment Station in the enforcement of section 5993 of the general laws. (Id. § 4.)

105. Penalty.—A manufacturer, importer, agent or person who knowingly shall sell, offer or expose for sale any commercial feeding stuff which has not been registered, in accordance with the provisions of section 1 of this act, or has not been licensed in accordance with the provisions of section 2 of this act, shall be deemed subject to the provisions of section 5999 of the general laws. (Id. § 5.)

105a. Part of Feeding Stuffs Law.—This act shall be considered a part of chapter 251* of the general laws. (Id. § 6.)

NOTE: See also No. 22d et seq.

Fish.

See No. 13.

Fruit Juices.

See No. 183.

Fruits, Vegetables, Etc.

105b. Commissioner of Agriculture to Establish Grades and Standards.—The Commissioner of Agriculture may establish and promulgate official voluntary grades and standards for such farm products as he may deem advisable which are produced within the State for the purpose of sale and may from time to time amend or modify such grades and standards. Before establishing, amending or modifying any such grades or standards, the commissioner shall hold properly advertised public hearings in such places within the State as he shall deem proper. Notice of such hearing shall specify the date and place of each hearing and that it is to be held for the purpose of obtaining information relative to establishing grades or standards for farm products if found advisable. (P. A. 1927, No. 102, § 1.)

105c. Brands, Labels, Etc.—The commissioner may determine or design brands, labels or trade-marks for identifying farm products packed in accordance with official grades and standards established as aforesaid and may cause to be printed said brands, labels or trade-marks and may distribute same at a reasonable price. A written application to the commissioner requesting permission to use said brands, labels or trade-marks and a written acceptance thereto by the commissioner or a duly authorized assistant shall be a condition precedent to the use of such brands, labels or trade-marks. The commissioner may revoke or suspend the right to use such brands, labels or trade-marks whenever it appears on investigation that they have been used to identify farm products not in fact conforming to the grade indicated. (Id. § 2.)

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*This chapter includes sections 5972-5999, which contain the feeding stuff, fertilizer and agricultural seed laws.

†See No. 22g.

105d. **Publicity.**—Upon the establishment of such grades or standards and upon the determination of brands, labels or trade-marks, the commissioner shall give them due publicity and distribute information relative to their use. (Id. § 3.)

105e. **Permit to Use Brand or Label Required; Penalties.**—After notice of the establishment of grades or standards and the determination of brands, labels or trade-marks as herein provided, it shall be unlawful to use a brand, label or trade-mark to identify farm products as being of a grade established as aforesaid before a permit is granted or after the revocation of the right to use such brand, label or trade-mark by the commissioner. Violations of this section shall be punished for the first offense by a fine of not more than fifty dollars and for a subsequent offense by a fine of not more than two hundred dollars. A person who obstructs or hinders the commissioner or any of his assistants in the performance of his duties under this act shall be punished by a fine of not less than ten dollars nor more than one hundred dollars. (Id. § 4.)

105f. **Inspection.**—The commissioner may employ inspectors to inspect farm products, marked, branded or labeled in accordance with official grades or standards established and promulgated by the commissioner for the purpose of determining and certifying the quality and condition thereof and other material facts relative thereto. Certificates issued in pursuance of such inspection and executed by the inspector shall state the date and place of inspection, the grade, condition and approximate quality of the farm products inspected and any other pertinent facts that the commissioner may require. Such a certificate and all federal certificates relative to the condition or quality of said farm products shall be prima facie evidence in all courts of the State of the facts required as aforesaid to be stated therein. The Commissioner of Agriculture may, subject to the approval of the Governor, employ such assistance as may be necessary to carry out the provisions of this act. (Id. § 5.)

105g. **Rules and Regulations; Fees.**—The commissioner may prescribe rules and regulations for carrying out the purposes of sections 2 to 6, including the fixing of fees for inspections and reasonable tolerances incident to proper grading of agricultural products. Such fees shall be paid monthly into the State treasury. (Id. § 6.)

105h. **Commissioner to Have Access to Buildings; Power to Open Containers.**—The commissioner, in person or by deputy, shall have free access at all reasonable hours to any building or other place wherein it is reasonably believed that farm products, marked, branded or labeled in accordance with official grades established and promulgated by the commissioner are being marketed or held for commercial purposes. He shall also have power in person or by deputy to open any bags, crates or other containers containing said farm products and examine the contents thereof, and may upon tendering the market price, take samples therefrom. (Id. § 7.)

105i. **Appropriation.**—The sum of five thousand dollars is hereby appropriated for the purpose of carrying out the provisions of this act. (Id. § 8.)

NOTE: See also Nos. 13, 23 et seq., 125 et seq., and 215-216.

Hops.

106. **Inspector.**—The judges of the county court of a county may appoint an inspector of hops for such county, who shall be sworn. (G. L. 1917, § 5901.)

107. **Same; Duties.**—Said inspector, on request, shall inspect hops packed for market in the county for which he was appointed, and shall mark in legible characters, on each bag or package by him inspected, the true weight of hops therein, designating the quality by No. 1, No. 2 or No. 3, with the initial of the Christian name and the surname at length of the grower, or person presenting the same for inspection, and of the inspector, and the year, in figures, in which they were inspected, and the word "Vermont." (Id. § 5902.)

108. **Fraud; Penalty.**—A grower, owner, presenter for inspection or inspector who is guilty of fraud in the packing, inspecting or marking of bags or bales of hops shall be fined fifty dollars. (Id. § 5903.)

109. **Inspector's Fees.**—Said inspector shall be entitled to receive from the person requesting him to inspect hops, six cents for each hundred pounds so inspected and marked, and six cents for each mile of necessary travel, going and returning, in the performance of his duties. (Id. § 5904.)

Ice.

See No. 124a et seq.; No. 205.

Maple Syrup.

110. Definition of "Dealer."—For the purposes of this act a dealer in maple syrup is defined to be a person who buys maple syrup in this State for the purpose of resale, either in the original package or in other and different form, who annually buys maple syrup in quantity equivalent to one thousand gallons of standard weight and who pays for said maple syrup according to grades determined by density and color. (P. A. 1925, No. 102, § 1.)

111. Licenses.—The Commissioner of Agriculture shall issue licenses for such number of State maple syrup inspectors as he deems necessary for the convenience of the producers of and dealers in maple syrup and for the prevention of frauds in the grading of the same. Licenses shall be issued only to competent and responsible persons who shall pass a satisfactory examination in syrup grading under rules and regulations established by the Commissioner of Agriculture. A person in the employment of a dealer shall not be eligible for such a license. Upon request in writing from producers of or dealers in maple syrup in any town, the Commissioner of Agriculture shall license a maple syrup inspector for the inspection and grading of maple syrup in such towns submitted to him for inspection and grading. Licenses shall remain in effect for such time as said commissioner may determine and may be revoked by him at will. (Id. § 2, as amended P. A. 1927, No. 101, § 1.)

112. Settlement of Disputes Regarding Grading.—In case of disagreement between buyer and seller with respect to density, color or grade of maple syrup, arising from the decision of any State maple syrup inspector the parties may refer the matter to the Vermont Agricultural Experiment Station for determination by submitting a sample of not less than one pint. Such sample shall be taken by the inspector in the presence of the interested parties and forwarded to the experiment station, carriage prepaid, together with data necessary to identify the package, barrel, drum or lot from which the sample was drawn, together with the names of the parties involved. In such case the decision of the experiment station shall be final. (P. A. 1925, No. 102, § 3.)

113. Color and Density Standards.—The color and density standards established by the United States Department of Agriculture for the testing and gradings of maple syrup shall be the standards for color in the grading of maple syrup in this State. The Commissioner of Agriculture may approve the use of color gradings having different designations, provided such other designations are based upon said United States color standards and are used under such regulations as the commissioner shall provide for the prevention of frauds and unfair competition. (Id. § 4.)

114. Sampling, Testing and Grading Devices; Expenditures.—The Commissioner of Agriculture shall procure accurate sampling, testing and grading devices in quantity sufficient to meet the anticipated requirements under this act. The Auditor of Accounts is hereby authorized to issue his warrant in favor of the Commissioner of Agriculture for the actual expenditures incurred in the enforcement of this act, not to exceed the sum of five hundred dollars. (Id. § 5.)

115. Expense of Inspection and Grading to be Paid by Dealers or Producers.—The expense of the inspection and grading of maple syrup under the provisions of this act, including the actual expense incurred by the experiment station under section 3 of this act, shall be paid by the dealers or producers applying for the same and collected under such regulations as the commissioner of agriculture may prescribe. (Id. § 6, as amended P. A. 1927, No. 101, § 2.)

116. Rules and Regulations.—The Commissioner of Agriculture shall prepare and promulgate such rules and regulations as shall be necessary to carry out the provisions of this act. (P. A. 1925, No. 102, § 7.)

117. Penalties.—A person who violates a provision of this act shall be fined not more than fifty dollars for each offense. An inspector of maple syrup who fraudulently grades maple products shall be fined not more than one hundred dollars for each offense. (Id. § 8.)

NOTE: See also No. 217.

Meat—Meat Products.

118. Compound Lard.—A person by himself, his agent or servant, shall not prepare, sell or expose for sale lard or a substance intended for use as lard which contains an ingredient other than the pure fat of swine, in a tierce, bucket, pail or other package, under a label bearing the words "pure," "refined" or "family,"

alone or in combination with other words, unless the package containing the same bears upon the outside thereof, in letters not less than a fourth of an inch long, the words "compound lard." (G. L. 1917, § 5905.)

119. **Same; Penalty.**—A person who violates the provisions of the preceding section shall be fined not more than fifty dollars for each offense. (Id. § 5906.)

120. **Slaughterhouses, Etc.; Regulations; Penalty.**—The State Board of Health shall make and enforce such regulations as it deems best for the purpose of controlling the sanitation of slaughterhouses and other places where meat and meat products are prepared and kept, either for sale or storage. A person shall not carry on the business of butchering in a building or upon premises within two hundred feet of a dwelling house, without the consent in writing of the local board of health describing the building and premises and limiting the time said person may carry on such business; and the secretary of the local board of health shall, in cases where such consent is given, make inspections when necessary of such building or premises wherein butchering is done, and direct and prescribe regulations under which such business may be carried on. A person who violates a provision of this section shall be fined not more than three hundred dollars nor less than fifty dollars. (Id. § 6258.)

121. **Inspectors; Duties; Fees.**—The State Board of Health or a local board of health may appoint inspectors of meat who shall at the request of the shipper inspect meat intended for interstate shipment. An inspector shall receive therefor a fee of twenty-five cents each for the first five animals inspected and five cents for each animal in excess of five and ten cents a mile each way for travel, to be paid by the person requesting such inspection. The State Board of Health shall make necessary rules and regulations relating to such inspection and the marking of animals so inspected. (Id. § 6259.)

121a. **Report and Prosecutions for Violations of Chapter; Jurisdiction.**—Each health officer shall report violations of the provisions of this chapter to the State's attorney of the county in which the offenses were committed, and said State's attorney shall prosecute for such violations and for all violations coming within his knowledge. Justices shall have concurrent jurisdiction with county, municipal and city courts of offenses under this chapter. (Id. § 6261.)

121b. **Collection of Expense of Abating Nuisances.**—The expense of abating nuisances or doing other matters for the protection of the public health in which individuals or corporations are made liable for the expense thereof, shall be collected by an action of tort, on this statute, in the name of the town entitled to recover the same, and may be begun and prosecuted by the local board of health for the benefit of such town. (Id. § 6262.)

122. **Selling, Shipping or Keeping With Intent to Sell or Ship Unwholesome Meat For Food Purposes; Penalty.**—A person who sells or offers to sell or keeps with intent to sell for food purposes, the flesh of any animal or fowl which died or was killed when diseased, or the flesh of a calf which was less than three weeks old or weighed less than fifty pounds, dressed weight, when killed, or a person who ships out of this State, for food purposes, the flesh of an animal or fowl which died or was killed when diseased, or the flesh of a calf which was less than three weeks old when killed, shall be imprisoned not more than one year or fined not more than three hundred dollars, or both. The possession of any such flesh dressed or packed in a manner suitable for sale or use as food, shall be prima facie evidence of the intention to sell the same, or to ship the same out of the State, for use as food. (Id. § 6280.)

122a. **Sale of Carcasses.**—Said commissioner* may, with the approval of the Governor, arrange for the disposition of the animals found to have tuberculosis, by tuberculin test applied as hereinbefore provided, at any slaughterhouse where all animals slaughtered are inspected and passed upon by an agent or official of, and according to the regulations of the Bureau of Animal Industry of the United States Department of Agriculture. The commissioner shall have authority to license such slaughterhouses to purchase such condemned animals under such regulations as he deems necessary to safeguard the public health. Said commissioner shall have authority to license dealers under suitable regulations, who may handle on a commission basis animals condemned as tuberculous for resale to licensed slaughterhouses for immediate slaughter. The commissioner may give owners of animals condemned as tuberculous permission under suitable regulations to sell such condemned animals to dealers or slaughterhouses licensed in accordance with the terms of this section. All regulations regarding licenses under this section shall be approved by the Governor. All payments made for animals sold shall be to the owner of the animal at the time

*Live Stock Commissioner.

it was condemned, who shall be required if requested to furnish the commissioner with a post mortem report of each animal signed by the inspector of the United States Bureau of Animal Industry who made the post mortem inspection. Licensees shall make such reports under oath as the commissioner may require. Said commissioner or his agent when the tuberculin test is completed shall forthwith brand each condemned animal with a letter "T" on the left jaw and shall insert in the ear of such animal a numbered tag and a record of such number shall be kept by the commissioner. For any violation of the provisions of this act or of the regulations prescribed by the commissioner by virtue hereof, by a licensee or by an agent of a licensee, the license granted may be immediately suspended and may be revoked for cause upon hearing. (Id. § 506, as amended P. A. 1921, No. 20, § 1.)

122b. **Funds Available; Selling Condemned Animals for Food; Penalty.**—The sum annually available for the purposes of this chapter and, in addition thereto, whatever amount may be received by the State from the sale of condemned animals shall be used to carry out the provisions of the preceding sections of this chapter. In case of the outbreak within the State of some unusual or dangerous disease of domestic animals, said commissioner may use such further sums as the Governor may authorize to be paid in the manner provided by law, but the expenses so incurred shall in no case be deducted from the amount annually provided. A person, or persons, or rendering company, offering for sale, cattle or stock condemned by this act, for food purposes, shall be fined not more than two thousand dollars or less than one thousand dollars, unless such cattle or stock are inspected and passed upon by an agent or official of, and according to the regulations of, the Bureau of Animal Industry of the United States Department of Agriculture. (G. L. 1917, § 510, as amended P. A. 1919, No. 18, § 8.)

122c. **Slaughter, Appraisal, Salvage.**—Animals condemned as tuberculous may upon request of the owner, and at his expense, be slaughtered upon the owner's premises under the supervision of any veterinarian approved by the Department of Agriculture or one regularly employed by the State or United States Bureau of Animal Industry. Said veterinarian shall inspect and pass upon the fitness of such carcasses as food for human consumption under rules as prescribed by the United States Bureau of Animal Industry. The State shall furnish to said veterinarian a stamp or seal, and a carcass passed by him for human consumption shall bear an imprint of said stamp or seal and may then be sold by said owner. In the event the owner of the animal is entitled to indemnity from the State, the owner and said veterinarian shall appraise the salvage of said animal and in the event of a disagreement a third disinterested party shall be selected to act with them to make the appraisal. The owner shall receive the salvage and the State shall pay the indemnity provided in section 503 of the General Laws and amendments thereto. In the event the carcass is not passed by said veterinarian as being fit for human consumption such carcass shall be burned or buried in the presence of said veterinarian. Said veterinarian shall report to the Commissioner of Agriculture the indentification, name or number of each animal so killed, his findings and such other information as the commissioner may deem necessary. (P. A. 1923, No. 16.)

NOTE: See also Nos. 13, 84b, and 125 et seq.

Mineral Water.

123. **Fraud on Owner of Mineral Spring.**—A person who, with fraudulent intent, fills with mineral water bottles marked with the name of a spring, without the consent of the owner of the spring, shall be fined fifty cents for each bottle so filled. (G. L. 1917, § 6900.)

124. **Fraud in Sale of Mineral Water.**—A person who willfully sells or keeps for sale water in bottles marked with the name of mineral water, knowing the same not to be genuine, or who, with intent to deceive, knowingly disposes of water bearing the name of a spring other than that from which it is taken, shall be imprisoned not more than six months or fined not more than five hundred dollars. (Id. § 6901.)

Vinegar.

See No. 183.

Water and Ice.

124a. **Use of Water and Ice Prohibited.**—Said board (State Board of Health) may prohibit the use of water or ice from any source, when, in its opinion, the

same is so contaminated, unwholesome or impure that the use thereof endangers the public health. (G. L. 1917, § 6312.)

124b. Examination of Fitness; Rules and Regulations.—Said board may case examinations of such waters to be made to ascertain their purity and fitness for domestic use, or their liability to impair the interests of the public or of persons lawfully using them, or to imperil the public health. Said board may make rules and regulations to prevent the pollution and to secure the sanitary protection of such waters. (Id. § 6313.)

124c. Publication of Orders, Rules, Etc.—The publication of order, rule or regulation made by said board under the provisions of this chapter, in a newspaper published in the town or village in which such order, rule or regulation is to take effect, or, if a newspaper is not published in such town or village, the posting of a copy of such order, rule or regulation in three public places in such town or village, shall be legal notice to all persons; and an affidavit of such publication or posting by the person causing such notice to be published or posted, filed and recorded with a copy of the notice in the office of the clerk of such town or village shall be admitted as evidence of the time at which and the place and manner in which the notice was given. (Id. § 6314.)

124d. General Penalty.—A person who violates a rule, regulation or order made under the provisions of this chapter shall be imprisoned not more than one year or fined not more than five hundred dollars or both. (Id. § 6322.)

NOTE: See also Nos. 22i and 123-124.

Sanitation.

125. Definitions.—As used in this chapter, the word "food" shall include all articles used for food, drink, confectionery or condiment, by man, whether simple, mixed, or compound, and all substances and ingredients used in the preparation thereof; the word "establishment" shall include all buildings, rooms, basements, cellars, lofts, or other premises, or part thereof, used, occupied, or maintained for the purpose of manufacturing, preparing, packing, canning, bottling, keeping, storing, handling, serving, or distributing, in any manner, food for sale; and the word "person" shall extend and be applied to a person, partnership, association, company or corporation. (G. L. 1917, § 6298.)

126. General Requirements.—A person shall not manufacture, prepare, pack, can, bottle, keep, store, handle, serve, or distribute, in any manner, food, for the purpose of sale, in an unclean, insanitary, or unhealthful establishment, or and unclean, insanitary, or unhealthful conditions. (Id. § 6299.)

127. Special Provisions.—An establishment, subject to the provisions of this chapter, shall be constructed, maintained and operated with strict regard for the health of the employees and for the purity and wholesomeness of the food therein produced, kept, stored, handled, served, or distributed, so far as may be reasonable and necessary in the public interest and consistent with the character of the establishment, pursuant to the following general requirements:

I. The entire establishment and its immediate appertaining premises, including the fixtures and furnishings, the machinery, apparatus, implements, utensils, receptacles, vehicles, and other devices used in the production, keeping, storing, handling, serving or distributing of the food, or of the materials used in the food, shall be constructed, maintained, and operated in a clean, sanitary and healthful manner;

II. The food and the materials used in the food shall be protected from any foreign or injurious contamination which may render them unfit for human consumption;

III. The clothing, habits, and conduct of the employees shall be conducive to and promote cleanliness, sanitation and healthfulness;

IV. There shall be proper, suitable and adequate light, ventilation, drainage and plumbing;

V. There shall be proper, suitable and adequate toilets and lavatories, constructed, maintained and operated in a clean, sanitary and healthful manner. (Id. § 6300.)

128. Employees.—An employer shall not require, permit or suffer any person affected with any contagious, infectious or other disease or physical ailment which may render such employment detrimental to the public interest to work in such establishment, and a person so affected shall not work in any such establishment, subject to the provisions of this chapter. (Id. § 6301.)

129. Powers and Duties of State Board of Health.*—The State Board of Health may require a person proposing to work or working in an establishment, subject to the provisions of this chapter, to undergo a physical examination for the

*See No. 22b.

purpose of ascertaining whether said person is affected with any contagious, infectious or other disease or physical ailment which may render his employment detrimental to the public interest. The examinations shall be made at a time and pursuant to conditions which shall be prescribed by said board. A person who refuses to submit to such examination shall not work or be required, permitted or suffered to work in any such establishment. (Id. § 6302.)

130. **Powers of Inspection.**—It shall be the duty of the State Board of Health to enforce the provisions of this chapter, and it shall be permitted to inspect, through its duly authorized officers, inspectors, agents or assistants, at all reasonable times, an establishment subject to the provisions of this chapter. (Id. § 6303.)

131. **Same; Hearing; Orders.**—If it appears upon such inspection that any establishment is being maintained or operated in violation of the provisions of this chapter, said board shall cause written notice thereof, together with an order commanding an abatement of such violation, and a compliance with this chapter within a reasonable period of time to be fixed in the order, to be served upon the person violating such provisions. Under such rules and regulations as may be prescribed, a person upon whom such notice and order are served shall be given an opportunity to be heard and to show cause why such order should be vacated or amended. If, upon such hearing, it appears that the provisions of this chapter have not been violated, then the State Board of Health shall immediately vacate such order, but without prejudice. If, however, it appears that such provisions have been violated, and such person fails to comply with an order issued by said board under the provisions of this section, said board shall, forthwith, certify the facts to the proper prosecuting officer. (Id. § 6304.)

132. **State Board of Health to Prescribe Rules and Regulations.**—Said board shall make uniform and necessary rules and regulations for carrying out the provisions of this chapter. (Id. § 6305.)

133. **Penalty.**—A person who violates a provision of this chapter shall be fined not more than three hundred dollars for the first offense, and for each subsequent offense not more than five hundred dollars. (Id. § 6306.)

NOTE: See also Nos. 13, 36, 39 et seq., and 120 et seq.

PART III.

Special Drug Laws.

Abortifacients.

134. **Advertising or Dealing in Anything to Cause Miscarriage.**—A person who knowingly causes to be made public by print, writing, words or language that give any information where anything or any advice or information may be obtained for the purpose of causing or procuring the miscarriage of a pregnant woman, shall be imprisoned in the State Prison not more than ten years nor less than three years; and a person who sells or gives away anything for the purpose of producing such miscarriage shall be imprisoned in the State Prison not more than three years nor less than one year, and fined not more than five hundred dollars nor less than two hundred dollars. (G. L. 1917, § 7015.)

Dangerous Caustic or Corrosive Substances.

135. **Definitions.**—In this act, unless the context or subject matter otherwise requires—

A. The term "dangerous caustic or corrosive substance" means each and all of the acids, alkalis and substances named below: (a) Hydrochloric acid and any preparation containing free or chemically unneutralized hydrochloric acid (HCl) in a concentration of ten per centum or more; (b) sulphuric acid and any preparation containing free or chemically unneutralized sulphuric acid (H_2SO_4) in a concentration of ten per centum or more; (c) nitric acid or any preparation containing free or chemically unneutralized nitric acid (HNO_3) in a concentration of five per centum or more; (d) carbolic acid (C_6H_5OH), otherwise known as phenol, and any preparation containing carbolic acid in a concentration of five per

centum or more; (e) oxalic acid and any preparation containing free or chemically unneutralized oxalic acid ($H_2C_2O_4$) in a concentration of ten per centum or more; (f) any salt of oxalic acid and any preparation containing any such salt in a concentration of ten per centum or more; (g) acetic acid or any preparation containing free or chemically unneutralized acetic acid ($HC_2H_3O_2$) in a concentration of twenty per centum or more; (h) hypochlorous acid, either free or combined, and any preparation containing the same in a concentration so as to yield ten per centum or more by weight of available chlorine, excluding calx chlorinata, bleaching powder and chloride of lime; (i) potassium hydroxide and any preparation containing free or chemically unneutralized potassium hydroxide (KOH), including caustic potash and Vienna paste, in a concentration of ten per centum or more; (j) sodium hydroxide and any preparation containing free or chemically unneutralized sodium hydroxide (NaOH), including caustic soda and lye, in a concentration of ten per centum or more; (k) silver nitrate, sometimes known as lunar caustic, and any preparation containing silver nitrate ($AgNO_3$) in a concentration of five per centum or more, and (1) ammonia water and any preparation yielding free or chemically uncombined ammonia (NH_3), including ammonium hydroxide and "hartshorn," in a concentration of five per centum or more.

B. The term "misbranded parcel, package or container" means a retail parcel, package or container of any dangerous caustic or corrosive substance for household use, not bearing a conspicuous, easily legible label or sticker, containing (a) the name of the article; (b) the name and place of business of the manufacturer, packer, seller or distributor; (c) the word "poison," running parallel with the main body of reading matter on said label or sticker, on a clear, plain background of a distinctly contrasting color, in uncondensed gothic capital letters, the letters to be not less than 24-point size, unless there is on said label or sticker no other type so large, in which event the type shall be not smaller than the largest type on the label or sticker, and (d) directions for treatment in case of accidental personal injury by the dangerous caustic or corrosive substance. (P. A. 1925, No. 114, § 1.)

136. Prohibition.—No person shall sell, barter, or exchange, or receive, hold, pack, display or offer for sale, barter or exchange any dangerous caustic or corrosive substance in a misbranded parcel, package or container, said parcel, package or container being designed for household use. (Id. § 2.)

137. Penalty.—Any person violating the provisions of this act shall upon conviction thereof be punished by a fine of not more than two hundred dollars or by imprisonment for not more than ninety days, or by both such fine and imprisonment, in the discretion of the court. (Id. § 3.)

138. Enforcement; Registration of Brands and Labels.—The State Board of Health shall enforce the provisions of this act, and it is hereby authorized and empowered to approve and register such brands and labels, intended for use under the provisions of this act as may be submitted to it for that purpose and as may in its judgment conform to the requirements of this statute: Provided, however, that in any prosecution under this act the fact that any brand or label involved in said prosecution has not been submitted to said board of health for approval, or if submitted has not been approved by it, shall be immaterial. (Id. § 4.)

139. Prosecution of Violations.—Every State's attorney to whom there is presented, or who in any way procures, satisfactory evidence of any violation of the provisions of this act shall cause appropriate proceedings to be commenced and prosecuted in the proper courts, without delay, for the enforcement of the penalties as in such cases herein provided. (Id. § 5.)

140. Name of Act.—This act may be cited as the "Vermont Caustic Alkali or Acid Act of 1925." (Id. § 6.)

Distribution of Samples.

141. Distribution of Samples of Medicine.—A person, firm or corporation that distributes or causes to be distributed a free or trial sample of a medicine, drug, chemical or chemical compound, by leaving the same exposed upon the ground, sidewalks, porch, doorway, letter box or in any other manner, that children may become possessed of the same, shall be fined not more than three hundred dollars nor less than one hundred dollars. (G. L. 1917, § 7037.)

Embalming Fluid.

141a. Sale or Use of Embalming Fluid Regulated.—The sale or use for embalming purposes of any fluid containing arsenic, zinc, mercury, copper, lead, silver, antimony, chloral, or cyanogen, or of any compound containing any of these, or any poisonous alkaloid, is prohibited, and all brands of embalming compounds used within the State shall be tested and approved by the State Board of Health. (P. A. 1927, No. 109, § 2.)

Pharmacy, Poisons and Narcotics.

142. Board; Appointment; Term.—The State Board of Pharmacy shall consist of five resident pharmacists, who shall be duly sworn. The term of office of each member shall be five years. The Governor shall annually, in the month of January, appoint a member of said board. (G. L. 1917, § 6117.)

143. Organization of; Quorum; Examinations.—Said board shall meet annually at the State House, on the first Wednesday in February, and elect a president, a secretary and a treasurer. Said board shall also meet at least three times a year to examine applicants for licenses and certificates and at least thirty days' notice of the time and place of such a meeting shall be given by mail to all known practicing pharmacists and applicants in the State. Three members of said board shall constitute a quorum. (Id. § 6118.)

143a. Board of Pharmacy, Salaries.—Each member of the State Board of Pharmacy shall receive four dollars a day for services rendered, and necessary expenses. If the amount received by said board in any fiscal year for licenses, under the provisions of chapter two hundred and sixty, and the amount annually available are not sufficient to pay the per diem and expenses allowed said board, the auditor of accounts shall allow the expenses in full and such percentage of the per diem that the expense of the board to the State shall not exceed the receipts under the provisions of chapter two hundred and sixty and the sum annually available. (Id. § 7366, as amended P. A. 1927, No. 135.)

144. Delegates to Meetings of National Board.—The Governor shall annually designate one member of said board to attend, as a delegate, the annual meeting of the national boards of pharmacy. Said delegate shall not receive a per diem for the time spent by him in attending such meeting, but shall receive his necessary expenses. (G. L. 1917, § 6119.)

145. By-Laws; Revocation of License.—Said board may make by-laws, and may revoke the license of a pharmacist who has been convicted of unlawfully selling intoxicating liquor, or for any just and sufficient cause. (Id. § 6120.)

146. Licenses; Qualifications of Applicants; Assistant Pharmacists.—Said board shall grant licenses for the practice of pharmacy in this State to persons who are not less than twenty-one years of age; who are citizens of the United States; who are graduates of a recognized high school; who have practiced pharmacy or served an apprenticeship with a pharmacist for at least three years, providing that not more than two years of credit in meeting such requirement may be given for attendance of at least two full years at a recognized college or school of pharmacy; and who have passed a satisfactory examination before said board. This act shall not apply to persons who have served an apprenticeship of two years or more under a registered pharmacist before the passage of this act and who apply to the Board of Pharmacy for examination within two years after the passage of this act, nor shall it apply to persons who have passed one or more subjects before said Board of Pharmacy. (Id. § 6121, as amended P. A. 1927, No. 106.)

147. Record of Licenses; Fees.—A person receiving a license shall, within thirty days from the date thereof, cause it to be recorded in the office of the Secretary of State, in a book kept for that purpose, and shall pay him twenty-five cents for recording the same. (G. L. 1917, § 6122.)

148. Fee for Licenses; Renewals; Revocations.—A person applying for a license or certificate under the second preceding section shall pay five dollars to the treasurer of said board. Each pharmacist is licensed by said board shall in the month of January, 1929, and biennially thereafter apply for renewal of his license and pay four dollars to said treasurer therefor. The license of a pharmacist who fails so to do, on or before the first day of the following April, shall be revoked by said board and he shall not practice pharmacy until he has paid to said treasurer the sum of two dollars, together with any sum in arrears. (Id. § 6123, as amended P. A. 1927, No. 107.)

149. **Display of License.**—A person to whom a license is granted shall display the same in a conspicuous part of the pharmacy in which he does business. (G. L. 1917, § 6124.)

150. **Non-Licensed Person Not to Act as Pharmacist.**—A person not licensed as a pharmacist shall not practice pharmacy or display a sign, emblem or device indicating that his place of business is used as a pharmacy, drug or chemical store, apothecary shop or place for the retailing, compounding or dispensing of drugs, chemicals or poisons, or for the compounding or dispensing of physicians' prescriptions, or expose for sale at retail drugs, chemicals or poisons, unless such place of business is conducted, managed or controlled by a duly licensed pharmacist. (Id. § 6125.)

151. **Practice of Pharmacy Construed; Application of Chapter.**—The words "practice of pharmacy" as used in this chapter, shall be construed to mean the compounding of physicians' prescriptions and the preparation of ingredients therefor; but this chapter shall not apply to the business of a licensed practitioner of medicine, or prevent such practitioner from supplying his patients with medicines, or to persons who sell medicines or poisons at wholesale only, or to the manufacture or sale of patent or proprietary medicines, or to the sale, other than on prescription, of drugs, medicines and poisons, or to the sale of insecticides or any substances for use in the arts; nor shall this chapter prohibit the employment in a pharmacy of apprentices or assistants for the purpose of being instructed in the practice of pharmacy, but such apprentices or assistants shall not prepare or dispense physicians' prescriptions or sell or furnish poisons, except in the presence and under the personal supervision of a licensed pharmacist. (Id. § 6126.)

152. **Prosecutions; Penalties; Disposition of Fines.**—A person who violates a provision of this chapter shall be imprisoned not more than six months or fined not more than fifty dollars nor less than twenty-five dollars. Such fines shall be paid to the State and half shall become a part of the consolidated school fund and half be used as the money covered into the State treasury by the treasurer of said board. (Id. § 6127.)

152a. **Disposition of License Fees.**—The treasurer of said board shall receive the fees provided in this chapter, and quarterly, on the first day of February, May, August and November, make a report to the State Treasurer of examinations given, certificates granted and licenses renewed, and pay into the State treasury all moneys received by him therefor. (Id. § 6128.)

153. **Regulation of the Sale of Poisonous Drugs; Record.**—A person other than a registered pharmacist or physician, who sells or keeps for sale arsenic, corrosive sublimate, chloroform, aconite, strychnine, morphine, opium, cocaine, eucaine, heroin, carbolic acid, prussic acid, paregoric, chloral hydrate, belladonna, cyanide potassium, digitalis, nux vomica or any salts, solutions, extracts or tinctures of such drugs, shall keep and offer them for sale only in original and sealed packages or bottles which shall have been prepared by a registered pharmacist or manufacturing chemist, and under a label on which shall be plainly printed the name and nature of the drug therein contained, the proper antidote to be given when taken in dangerous or poisonous quantities and the name of the pharmacist, manufacturing chemist or wholesale house that prepared or put up the same, with the name of the place where it was manufactured or prepared for sale. A person who sells any of such drugs shall have affixed to the bottle, box or wrapper containing the article sold, a label of white paper upon which shall be printed in red letters, the name and place of business of the vendor, and the words, "Poison" and "Antidote," and the label shall also contain the name of an antidote, if any, for the poison sold. When a sale is made by anyone of any of such drugs, salts, solutions, extracts or tinctures, such sale shall be entered and recorded in a book kept for that purpose, giving the name of the article sold, date of sale, to whom sold, residence of purchaser, for whom purchased, the use to be made of the article or drug purchased and the name of the salesman or clerk making such sale. Such book shall be in such form as the State Board of Health shall prescribe and shall be open to the inspection of health officers, members of the State Board of Health and State officials who may wish to examine the same. The provisions of this section shall not apply to compounds or preparations labeled according to other provisions of this chapter. (Id. § 6282.)*

154. **Same; Penalty.**—A person who violates a provision of the preceding section shall be fined not more than one hundred dollars. (Id. § 6283.)

155. **Application of Two Preceding Sections.**—The provisions of the two preceding sections shall not apply to legally qualified practitioners of medicine or to their prescriptions or recipes to their patients. (Id. § 6284.)

156. **Certain Poisonous Drugs to be Sold Only Upon Prescription; Exception.**—A person, firm or corporation shall not sell, furnish, give away or deliver

*See No. 19 et seq.

any opium, morphine, heroin, codeine, cocaine, cannabis indica, cannabis sativa, or any preparation thereof, or any salt or compound of such substances, except upon the written prescription or written order of a licensed physician, dentist or veterinarian, bearing the name of the physician, dentist or veterinarian giving it. Such prescription when filled shall show the date of each filling and shall be retained on file by the druggist filling it for at least two years and it shall not again be filled except upon the order of the prescriber, given in person or in writing. Such prescription shall not be copied, except for the purpose of record by the druggist filling the same, and it shall at all times be open to inspection by members of the State Board of Health, members of the State Board of Pharmacy, and their authorized agents, and by the police authorities of the State. The provisions of this and the four following sections shall not apply to prescriptions, or to the sale, distribution, giving away or dispensing of preparations and remedies, if such prescriptions, preparations or remedies do not contain more than two grains of opium or more than a quarter of a grain of morphine, or more than an eighth of a grain of heroin, or more than one grain of codeine, or more than half a grain of extract of cannabis indica, or more than half a grain of extract of cannabis sativa, or any salt or compound of any of them in one fluid ounce, or, if a solid or semisolid preparation, to the avoirdupois ounce; or to liniments, ointments or other preparations which are prepared for external use only, except liniments, ointments and other preparations which contain cocaine or any of its salts; or to compound medicinal tablets, pills or powders containing not over a twentieth of a grain of morphine or a quarter of a grain of codeine or any of their salts, except heroin, to each pill, powder or tablet; provided, that such preparations, remedies or prescriptions are sold, distributed, given away or dispensed in good faith as medicines and not sold for the purpose of evading the provisions of this and the four following sections. (Id. § 6285.)

157. Regulations as to Manufacturers, Wholesalers, etc.—The manufacturers, jobbers, wholesale druggists and licensed pharmacists, physicians, veterinarians and dentists may sell opium, morphine, heroin, codeine, cocaine, cannabis indica, cannabis sativa, or any preparation thereof, or any salt or compound of such substances, to a manufacturer, jobber, wholesale druggist, licensed pharmacist, physician, veterinarian and dentist, and to an incorporated hospital; but such substances or preparations except such as are included within the exemptions set forth in the preceding section, shall be sold only upon a written order duly signed by such manufacturer, jobber, wholesale druggist, pharmacist, physician, veterinarian, dentist or superintendent of such incorporated hospital, which order shall state the article or articles ordered and the date. Such orders shall be kept on file in the laboratory, warehouse, pharmacy or store in which they are filled, by the proprietor thereof, or his successors, for not less than two years from the date of delivery, and shall, at all times, be open to inspection by members of the State Board of Health, members of the State Board of Pharmacy, and their authorized agents, and by the police authorities of the State. (Id. § 6286.)

158. Prescription by Physician; Evasion.—The provisions of the two preceding sections shall not be construed to prevent a licensed physician, dentist or veterinarian from prescribing, administering or dispensing any drug that may be indicated for any patient under his care; provided, that such prescribing, administering or dispensing is not for the purpose of evading the provisions of the two preceding sections; and provided, further, that every physician, dentist and veterinarian shall keep a record in a suitable book of the names and addresses of all patients to whom he dispenses narcotics; and provided, further, that a veterinarian shall not prescribe any of the drugs mentioned in the second preceding section, for the use of a human being. (Id. § 6287.)

159. Falsely Personating Another For Purpose of Evasion; Alteration of Prescription.—A person who, for the purpose of evading or assisting in the evasion of a provision of the three preceding sections, falsely represents that he is a pharmacist, physician, veterinarian or dentist, or that he is a manufacturer, jobber, wholesale druggist, or an agent or employee of an incorporated hospital, or who, not being a licensed physician, veterinarian or dentist, makes or alters a prescription for any of such substances, shall be deemed to have violated a provision of such sections. (Id. § 6288.)

160. Violation of Four Preceding Sections; Penalty.—A person who violates a provision of the four preceding sections or who aids or abets another in such violation, shall be imprisoned not more than one year, or fined not more than one thousand dollars nor less than fifty dollars, or both. Justices shall have concurrent jurisdiction with county, municipal and city courts of offenses under this and the preceding section. (Id. § 6289.)

161. Analysis of Drugs.—The State Board of Health shall make a chemical analysis to determine the composition and quality of any substance mentioned in the fifth preceding section on application of a State's attorney and shall furnish a certificate certifying to the composition or quality thereof. Such certificate, under seal of said board which shall be affixed by the chemist thereof making the analysis, shall be prima facie evidence of the composition and quality of the substance analyzed. (Id. § 6290.)

161a. Selling Fabrics or Paper Containing Arsenic.—A person, corporation or agent who sells or offers for sale or exchange a woven fabric or paper containing arsenic in any form, or an article of dress or of household use composed wholly or in part of such woven fabric or paper, or any article of dress containing arsenic, shall be fined not more than one hundred dollars; provided, that the provisions of this section shall not apply to dress goods or articles of dress containing not more than a hundredth of a grain, nor to other material containing not more than a tenth of a grain of arsenic per square yard of material. (Id. § 6291.)

161b. Probate Court May Order Treatment.—When a person becomes an habitual drunkard or dipsomaniac, or so addicted to the intemperate use of narcotics or stimulants as to have lost the power of self-control, the probate court for the district in which he resides or is domiciled, shall, on application of the selectmen of the town where he resides or is domiciled, or any of his relatives, upon reasonable notice to such person, make inquiry; and, if it finds him to be an habitual drunkard or dipsomaniac, or so far addicted to the intemperate use of narcotics or stimulants as to have lost the power of self-control, shall order such person committed for one year to an institution in this State where he can receive special treatment for such condition, or shall order him committed to the care, custody and control of some suitable person for a similar period, but, if such person is committed to an institution in this State, the supervisors of the insane may, in their discretion, give him a conditional discharge at the expiration of four months, and a revocation of such conditional discharge by the Board of Supervisors at any time thereafter until the expiration of the term of commitment shall be sufficient warrant for the return of such person to the institution from which he was discharged, there to remain until the expiration of the full term of one year from the date of the original commitment; and if such person is indigent and such fact is so certified to by the selectmen of his town, the expense of commitment and treatment and all necessary expense of transportation to such institution and from such institution to the town from which he was committed at the time of his discharge or at the expiration of the term of commitment, shall be borne by the State; but in the event of the death of such indigent person while an inmate of such institution, the expense of removal and burial shall be borne by the town from which he was committed. (Id. § 4293.)

161c. Private Patients.—Any institution established by the laws of this State or operating under State regulation may receive any drug habitue, habitual drunkard or dipsomaniac who applies to be received as a private patient into such institution for medical treatment. The term of such voluntary commitment shall be not less than one month for alcoholism and not less than four months for the drug habit. The term of commitment and the fee to be paid for the same shall be definitely determined and agreed to in writing by the applicant at the time of admission. The superintendant of such institution may hold and restrain such voluntary patient for the term agreed upon at the time of such voluntary commitment in the same manner as though he had been committed by the probate court. (Id. § 4294.)

161d. Liability for Support.—The estate of any person who is committed to or received by any institution or person under this chapter shall be liable for his support therein and the expenses of any proceedings provided by this chapter, which shall be paid in the manner and by and to the person that the court before whom the case is heard, orders, and such court may issue execution for such expenses accordingly. (Id. § 4295.)

161e. Appeal.—The State or any other party in interest may appeal from the finding, decision or decree of such court and such appeal shall lie to the county court and proceedings therein shall be had as provided in chapter one hundred and fifty-nine, except that a bond or security for costs shall not be required in case of any appeal by the State or by the alleged inebriate or dipsomaniac. (Id. § 4296.)

161f. Inmates Subject to Regulations of Institution.—A person admitted to an institution under this chapter shall be subject to the rules and moral, medical and sanitary treatment thereof until discharged or the term of his commitment expires. (Id. § 4297.)

161g. Powers of Supervisors; Penalty.—The State Board of Supervisors of the Insane shall exercise over a person admitted to an institution under this chapter, the same supervision and power which it exercises over the insane. An officer of an institution who receives and detains therein an habitual drunkard or dipsomaniac or

a person who has lost the power of self-control as defined in this chapter, contrary to the provisions of this chapter, shall be fined not more than three hundred dollars. (Id. § 4298.)

Tuberculin—Antitoxin—Serum.

162. Regulation of Sale and Distribution of Tuberculin.—All tuberculin sold, given away or used within this State, shall bear a label stating the name and address of the person, firm, or institution making it and the date of preparation. A person selling or giving away tuberculin shall report to the Live Stock Commissioner the amount of tuberculin sold or given away, the degree of strength, the name and address of the person to whom sold or given and the date of delivery. Such report shall include the address of and be signed by the person or firm making the report. A person buying or procuring tuberculin shall not use or dispose of it until assured in writing by the person from whom the tuberculin is received that its delivery has been reported to the Live Stock Commissioner or unless he has reported its receipt to said commissioner with information required to be furnished by those who distribute tuberculin, and the person buying or procuring tuberculin shall keep a correct record of the amount received; the amount used and the amount on hand; and shall report these facts whenever any tuberculin is used, and, if at any time unused tuberculin is not deemed fit or is not to be used, said person shall forward it to said commissioner with a statement showing his name and address, where and when such tuberculin was procured, the amount procured at the time and the amount used. If the amount forwarded to the commissioner and the amount used do not equal the amount procured, a statement shall be made as to the disposition of the remainder. (G. L. 1917, § 515.)

163. Treatment to Prevent Normal Reaction; Sale of a Reactor.—A person shall not treat any bovine animal with material or substance nor in any manner for the purpose of preventing a normal reaction on the part of such animal to the tuberculin test. A person shall not knowingly sell or offer for sale an animal that has reacted to the tuberculin test. (Id. § 516.)

164. Penalty.—A veterinary surgeon who violates a provision of the two preceding sections shall forfeit his certificate to practice and thereafter be debarred from practicing his profession within the State of Vermont, until such disability is legally removed. (Id. § 517.)

165. Same.—A person who violates a provision of this act shall be fined not more than two hundred dollars nor less than ten dollars, or be imprisoned not more than six months. (Id. § 518.)

166. Purchase and Distribution; Penalty.—The State Board of Health is hereby authorized to procure antitoxin and serum for the treatment and prevention of diphtheria and scarlet fever, and immunizing serum for typhoid fever, and to distribute the same free of charge, upon application therefor by licensed physicians, under such rules and regulations as said board may prescribe; and the expense thereof shall be paid by the State, upon vouchers duly approved by said board. A person selling or disposing of any antitoxin or serum procured or distributed under the provisions of this section for personal gain shall be fined not more than fifty dollars nor less than ten dollars. (Id. § 6208, as amended P. A. 1925, No. 113.)

Venereal Disease Drugs.

167. Reports by Physician, Druggist or Other Person; Sale of Drugs, Report; Penalty.—A physician or other person who knows or has reason to believe that a person whom he treats or prescribes for or to whom he sells patent or proprietary medicine purporting to cure or alleviate the symptoms of gonorrhœa or syphilis, has one of these diseases shall immediately report the name, nationality, race, marital state, address, age and sex of such person to the Secretary of the State Board of Health, on cards furnished for that purpose. Druggists, other than jobbers or wholesale druggists, or any other person, selling in compound or separately, other than on the prescription of a licensed physician, any preparation of copaiba, cubebs, santalwood [sandalwood] oil, methylene blue, hydrastis, formin, potassium permanganate, any one of the colloidal silver preparations, zinc, copper, alum, salts of mercury, other than calomel, iodide of soda or iodide of potassium, or any of the arsenical compounds known under the common name of arsephenamine, shall enter the sale of such drug or compound in a book kept for such purpose, said book to

be furnished by the State Board of Health, which shall show the name and address of the person to whom such drug or compound was sold and the purpose for which it is to be used. This book shall at all times be open to inspection of the members of the State Board of Health, members of the State Board of Pharmacy or their authorized agents. Druggists, storekeepers, or any others dealing in drugs, when ordering any of the above-mentioned drugs from jobbers, wholesalers or other purveyors, shall make in triplicate a list of such drugs and amount ordered, one copy of which shall be sent to the person or persons from whom such purchase is made, one copy to the State Board of Health, and one copy retained on file by the purchaser for a period of two years, such file to be at all times open for inspection by members of the State Board of Health, members of the State Board of Pharmacy, and their authorized agents. The sum of three thousand dollars of the moneys annually available for the purposes of said board shall be used to carry out the provisions of this and the first and fourth following sections. [See G. L. 1917, sections 6251 and 6254.]* A person or firm who fails to comply with the provisions of this section shall be fined not more than two hundred dollars. (G. L. 1917, § 6250, as amended P. A. 1919, No. 177.)

168. **Examination and Test.**—Said board shall provide at the expense of the State facilities for the free laboratory examination of material from suspected cases of gonorrhœa and syphilis, and shall furnish the treatment known as arsephenamine or other accredited specific treatment at cost or free to such clinical patients as said board shall deem entitled to such aid. Such diagnosis and treatment shall not be furnished until the report required by either the second or third preceding section [See§ 6250, ante, and G. L. 1917, § 6249]* has been made. Said board shall include in bulletins or circulars distributed by it information concerning such diseases. (G. L. 1917, § 6252, as amended P. A. 1919, No. 178.)

169. **Advertisements; Nature of Diseases; Remedies.**—A person shall not publish, or cause to be published, deliver or distribute, or cause to be delivered or distributed, in any manner whatsoever, or post, display, or permit to be posted, displayed, or to remain on any buildings, windows or outhouses, or premises, or other surface owned or controlled by him, or to have displayed in or on any window or place where the same could be read by passersby or the public, any advertisement, label, statement, print or writing which refers to any person or persons from whom, or to any means by which, or to any office or place at which, may be obtained any treatment or cure for syphilis, gonorrhœa, chancroid, lost manhood, sexual weakness, lost vitality, impotency, seminal emissions, gleet, varicocele, or self-abuse, whether described by such names, words, terms or phrases, or by any other names, words, terms or phrases, calculated or intended to convey to the reader the idea that any of said diseases, infirmities, disabilities, conditions or habits are meant or referred to, or which refers to any medicine, article, device or preparation that may be used for the treatment, cure or prevention of any of the diseases, infirmities, disabilities, conditions or habits mentioned in this section. (P. A. 1921, No. 213, § 1.)

170. **Application of Act.**—This act shall not apply to publications, advertisements or notices of the United States government, the State or of any city in the State. (Id. § 2.)

171. **Penalty.**—A person who violates any of the provisions of this act shall be fined not more than one hundred dollars, or imprisoned not more than one year, or both. (Id. § 3.)

Wood Alcohol.

172. **Wood Alcohol, or Methyl; Sale For Medicinal Purposes.**—A person shall not sell, offer or expose for sale or have in his custody, possession or control with intent to distribute or sell any commodity, food, drug, preparation or mixture of any kind whatever intended for internal use, which contains methyl or wood alcohol, or sell, offer or expose for sale or distribution, or have in his custody, possession or control with intent to distribute, sell, furnish or use upon or apply to the body of another any drug, hair tonic, bay rum or similar preparation intended for external use which contains methyl or wood alcohol. Nothing in this section shall apply to veterinary remedies containing methyl or wood alcohol when such remedies are plainly and distinctly labeled in such manner as to indicate that they are intended solely for external use on animals. (G. L. 1917, § 7038.)

173. **Penalty.**—A person who violates a provision of the preceding section shall be imprisoned not more than three months, or fined not more than one hundred dollars nor less than five dollars. (Id. § 7039.)

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*Omitted herein.

Intoxicating Liquors.

174. Intoxicating Liquor Defined.—The words "intoxicating liquor" or "liquor" as used in this chapter shall include spirituous or intoxicating liquor, malt liquors, lager beer, fermented wine, fermented cider, distilled spirits and any beverage which contains more than one-half of one per cent of alcohol by volume at sixty degrees Fahrenheit. (G. L. 1917, § 6452, as amended P. A. 1921, No. 204, § 2.)

175. Illegal Sale, Etc.; Penalty.—A person who manufactures, sells, barters, transports, imports, exports, delivers, prescribes, possesses or furnishes any intoxicating liquor, except as authorized in this chapter, or possesses a still or other apparatus for the manufacture of intoxicating liquor, or who exposes or keeps with intent to furnish or sell intoxicating liquors shall be imprisoned not more than twelve months nor less than three months or fined not more than one thousand dollars nor less than three hundred dollars, or both. For a subsequent conviction within three years after a conviction for a violation of this section the respondent shall be imprisoned not more than eighteen months nor less than six months, and in addition thereto may be fined not more than two thousand dollars. (G. L. 1917, § 6558, as amended P. A. 1923, No. 135.)

176. Soliciting Orders; Penalty.—A person who for himself, or as agent, takes or solicits orders for the sale of intoxicating liquors, shall be imprisoned not more than six months nor less than three months or fined not more than five hundred dollars, nor less than one hundred dollars. (G. L. 1917, § 6559, as amended P. A. 1921, No. 204, § 22.)

177. General Penalty.—A person who willfully violates a provision of this chapter for which other penalty is not prescribed shall be imprisoned not more than three months nor less than one month or fined not more than two hundred dollars nor less than fifty dollars, or both. (G. L. 1917, § 6577.)

178. Sentences, Length.—A sentence of imprisonment under this chapter, either cumulative or on failure to pay fine and costs, shall not exceed the term of three years. (Id. § 6578.)

179. Notice to Collector of Internal Revenue.—When a person is convicted of or pleads guilty to manufacturing, selling, bartering, importing, exporting, delivering, furnishing or possessing intoxicating liquor the court shall forthwith give notice thereof, together with the main facts of the case and a statement of the financial condition of the respondent to the United States collector of internal revenue for this district. (Id. § 6588, as amended P. A. 1923, No. 136.)

180. Constitutional Basis of Act.—Chapter 279 of the General Laws* and this act shall be deemed to be an exercise of the power granted by article 18 of the Constitution of the United States and the police power of the State for the protection of the public welfare, health, peace, safety and morals of the people of the State, and all of its provisions shall be liberally construed for the accomplishment of these purposes. This act shall become a part of chapter 279 of the General Laws. (P. A. 1921, No. 204, § 1.)

181. Prohibition; Exceptions; Federal Permits.—A person shall not manufacture, sell, barter, transport, import, export, deliver, prescribe, furnish or possess any intoxicating liquor except as authorized in this act, and all the provisions of this act shall be liberally construed to the end that the use of intoxicating liquor as a beverage may be prevented, except, however, liquor, preparations and compounds for non-beverage purposes and wine for sacramental purposes may be manufactured, purchased, sold, bartered, transported, imported, exported, delivered, prescribed, furnished and possessed, but only as provided by or under the laws of the United States; and federal permits, so-called, except permits to transport or to purchase and use for sacramental purposes, shall be no defense in prosecutions under this act unless the holder thereof shall file with the Secretary of State a certified copy thereof within ten days of the date of the issue of the same, and a conviction of a person under this act or the federal law prohibiting liquor for beverage purposes shall nullify any and all registration by such person, of federal permits then existing in this State. The Secretary of State shall receive a fee of fifty cents to be paid by the person filing the copy of the permit, and all copies of permits filed shall be open to public inspection. (Id. § 4.)

182. Prescriptions.—A person other than a physician holding a federal permit to prescribe liquor shall not issue any prescription for liquor. Such physician shall not prescribe liquor contrary to the laws of the United States nor unless

*Of which the aforegoing sections are a part.

after careful physical examination of the person for whose use such prescription is sought, or if such examination is found impracticable, then upon reliable information obtainable, he in good faith believes that the use of such liquor as a medicine by such person is necessary and will afford relief to him from some known ailment. A pharmacist filling a prescription shall at the time indorse upon it over his own signature the word "canceled," together with the date when the liquor was delivered and then make the same part of the record that he is required to keep as provided by the laws of the United States.

Every physician who issues a prescription for liquor shall keep a record as provided by the laws of the United States, alphabetically arranged in a book, which shall show the date of issue, amount prescribed, to whom issued, the purpose or ailment for which it is to be used and directions for use, stating the amount and frequency of the dose. (Id. § 5.)

183. Beverages For Home Use; Vinegar.—The penalties provided in this act shall not apply to a person manufacturing vinegar or nonintoxicating cider and fruit juices exclusively for use in the home. Nothing herein shall be construed to prevent the sale of vinegar. (Id. § 6.)

184. Reference to United States Laws.—Whenever in this act reference is made to the laws of the United States it shall be construed and interpreted as referring to the laws of the United States in force at the time any act in question was committed. (Id. § 26.)

PART IV.

Miscellaneous Laws.

Flag Desecration.

185. Use of National Flag or Coat of Arms.—A person who attaches to or imprints or represents upon goods, wares or merchandise, or an advertisement of the same, the national flag or the coat of arms of the United States, or an imitation or representation of the same, or attaches to or imprints upon such flag or coat of arms goods, wares or merchandise, or an advertisement of the same, shall be fined not more than one hundred dollars nor less than ten dollars. Justices shall have concurrent jurisdiction with county, municipal and city courts of offenses under this section, to the extent of fining the respondent twenty dollars, or may bind over for trial. (G. L. 1917, § 7111.)

Tobacco—Tobacco Products.

186. Furnishing Tobacco to Persons Under Sixteen; Exception.—A person who sells or gives away a cigar, snuff or tobacco in any form, except cigarettes, to a person under sixteen years of age, except upon the written order or permission of the minor's parents or guardian, shall be fined not more than twenty dollars. (G. L. 1917, § 7041.)

187. Furnishing Cigarettes, Wrappers, etc., to Minors; Penalty.—A person who sells, gives away or furnishes to a person under twenty-one years of age cigarettes, cigarette papers or wrappers shall be imprisoned not more than two months or fined not more than fifty dollars, or both. A plainly printed copy of this and the preceding section shall, upon application, be furnished by the Secretary of State and be posted in a conspicuous place in each store, shop, office or place of business where cigarettes are sold or kept for sale. A person who fails to so post such copy shall be fined not more than twenty-five dollars nor less than five dollars. (Id. § 7042.)

188. Advertisements of Liquor and Tobacco, etc., in Public Places.—A bill, poster, notice or advertisement of intoxicating liquors, cigarettes, cigars or tobacco shall not be posted or displayed on a fence, building, structure or other object within two hundred feet of a church, chapel or school building, except by the written permission of the selectmen of a town or city council of a city, which permission shall not be effective until filed with the town or city clerk. This section shall not be construed to apply to a building in which the business of

selling such articles is legally conducted. A person who violates a provision of this section shall be fined not more than twenty-five dollars nor less than five dollars. Justices shall have concurrent jurisdiction with county, municipal and city courts of offenses arising under this section. (Id. § 7043.)

Trade-Marks, Etc.

189. Adoption; Filing; Fee.—A person, partnership, corporation, association or union of workingmen, or an association or corporation of such persons, partnerships, corporations or associations or unions of workingmen, organized for the protection of the members thereof, may adopt as and for a trade-mark or trade-name any particular name, term, design, device, label, stamp or form of advertisement not previously owned or adopted by another, to designate or distinguish goods, wares or merchandise by him or them or the member thereof manufactured or prepared, or on which the labor of persons belonging to such association or union of workingmen has been put, or which are manufactured or prepared by the members of such protective association or corporation, and may file the same for record in the office of the Secretary of State by leaving two copies, counterparts or facsimiles thereof with said secretary, and shall also file therewith an accurate description of such name, term, design, device, label, stamp or form of advertising, verified under oath by the person or some member or officer of the partnership, corporation, association or union of workingmen or protective association or corporation by whom it is filed. The fee for such filing shall be two dollars. Said secretary may make such rules and regulations and prescribe such forms as may be necessary to carry out the provisions of this chapter. (G. L. 1917, § 5961.)

190. Certificate; Evidence.—Said secretary shall deliver to the person, partnership, corporation, association or union of workingmen or such protective association or corporation so filing such trade-mark or trade-name, a duly attested certificate of the record thereof, for which he shall receive a fee of two dollars. Such certificate shall in all actions and prosecutions under this chapter be sufficient proof of the adoption of such trade-mark or trade-name. A name, term, design, device, label, stamp or form of advertisement shall not be recorded that in any way resembles or would be reasonably mistaken for a name, term, design, device, label, stamp or form of advertisement already on record. (Id. § 5962.)

191. Use of Trade-Mark Without Authority of Owner.—A person who, without authority from the owner of a trade-mark or trade-name, adopted and recorded as aforesaid, knowingly and willfully makes or sells a representation, likeness, similitude, copy, imitation or counterfeit of such trade-mark or trade-name, or who, without authority from such owner, affixes, impresses or uses such trade-mark or trade-name upon any goods, wares or merchandise, shall be imprisoned not more than one year or fined not more than one thousand dollars, or both. (Id. § 5963.)

192. Sale of Goods Unlawfully Marked.—A person who knowingly and willfully sells or keeps for sale goods upon which or in connection with which is affixed a forgery, imitation or counterfeit of a trade-mark or trade-name adopted and recorded as provided in this chapter, and intended to represent such goods as the genuine goods of another person or as goods upon which the labor of a member or members of such association or union of workingmen has been put, or as goods manufactured or prepared by the members of such protective association or corporation, shall be punished as provided in the preceding section. (Id. § 5964.)

193. Misuse of Trade-Marks.—A person who, with intent to defraud another person, partnership, corporation, association or union of workingmen, or such protective association or corporation, knowingly affixes or causes to be affixed to or upon a shipment, package or bottle containing goods, wares or merchandise, a name, term, design, device, label, stamp or form of advertisement which designates such goods, wares or merchandise, either wholly or in part, by a word or words or by general design which is wholly or in part the same, either in appearance or in sound, as the word or words or the general design of a trade-mark or trade-name adopted and recorded as provided in this chapter, or who knowingly sells or exposes for sale such merchandise, package or bottle with such imitating or counterfeit name, term, design, device, label, stamp or form of advertisement, may also be imprisoned not more than one year or fined not more than five hundred dollars, or both. (Id. § 5965.)

194. Same; Injunction; Damages; Destruction.—The Court of Chancery may, on complaint of the owner of a trade-mark or trade-name adopted and recorded as provided in this chapter, enjoin other persons, partnerships, corporations, associations or unions of workingmen or such protective associations or corporations or members thereof from the manufacture, use or sale, without authority of the owner, of all likenesses, similitudes, copies, imitations or counterfeits thereof, and also from selling or exposing for sale goods, compounds or preparations to or with which such unauthorized likenesses, similitudes, copies, imitations or counterfeits are affixed or connected, and may award to such complainant such a sum of money as shall be just and reasonable compensation for the damage to the reputation of the complainant's genuine goods, compounds, preparations, trade-mark or trade-name, by reason of such wrongful manufacture, use, sale or exposure for sale, and may also require the defendant to pay the complainant in such a cause a sum equal to the amount which the complainant would have received for the same quantity of genuine goods, compounds or preparations and may also order that all such likenesses, similitudes, copies, imitations or counterfeits in the possession or under the control of the defendant be delivered to an officer of the court or to the complainant to be destroyed. (Id. § 5966.)

195. Publication and Registration of Name; Mark, Etc., of Owner.—A person or corporation engaged in buying, selling or dealing in milk, cream or nonintoxicating beverages in receptacles, or a licensed buyer, dealer in or vendor of intoxicating beverages, whose name, mark or device is produced in a permanent manner in or upon such receptacle, may file in the office of the clerk of the town in which his or its principal place of business is situated, a description of the name, mark or other device so used, and cause such description to be published in such town four weeks successively in a newspaper published therein; and, if a newspaper is not published therein, such publication shall be in a newspaper published in the county in which such town is situated. (Id. § 5967.)

196. Use Without Consent of Owner; Penalty.—A person who, without the owner's consent, buys, sells, takes, uses in his business, conceals or disposes of a receptacle belonging to a person or corporation which has complied with the provisions of the preceding section shall be imprisoned not more than sixty days or fined not more than five dollars for each such receptacle so unlawfully bought, sold, taken, used, concealed or disposed of; and, for each subsequent offense said person shall be imprisoned not more than six months or fined not more than ten dollars for each such receptacle so unlawfully bought, sold, taken, used, concealed or disposed of. The possession by a person in the transaction of his business of a receptacle, the owner of which has complied with the provisions of the preceding section, shall be prima facie evidence that the same was unlawfully bought, sold, taken, used, concealed or disposed of. (Id. § 5968.)

197. Mutilating Receptacle or Erasing Name, etc.; Penalty.—A person who willfully destroys, mutilates or defaces a receptacle bearing the name or other divice of an owner who has complied with the provisions of the second preceding section, or willfully erases, mars, covers or changes a name or other device produced in a permanent manner in or upon such receptacle, shall be imprisoned not more than sixty days or fined not more than five dollars for each receptacle so destroyed, mutilated or defaced, or upon which a name or other device has been erased, marred, covered or changed; and, for each subsequent offense he shall be imprisoned not more than six months or fined not more than ten dollars for each receptacle so destroyed, mutilated or defaced or upon which a name or other device has been erased, marred, covered or changed. (Id. § 5969.)

198. Same; Butter Crates or Carriers; Penalty.—A person who puts any unclean or foul matter into a receptacle, the owner of which has complied with the provisions of the third preceding section, or who mutilates, destroys or pollutes a butter crate or carrier, shall be fined not more than five dollars nor less than fifty cents for each receptacle so defiled, mutilated or destroyed, and, for each subsequent offense shall be fined not more than twenty dollars nor less than two dollars for each receptacle so defiled, mutilated or destroyed. (Id. § 5970.)

199. Search Warrant; Proceedings.—If a person or corporation which has complied with the provisions of the fourth preceding section, or the agent of such person or corporation, makes oath before a justice of the peace or judge of a municipal or city court that he has reason to believe and does believe that a person has unlawfully in his possession or is secreting a receptacle marked as provided in the fourth preceding section, said justice or judge shall, if satisfied that there is a reasonable cause for the belief, issue a search warrant to discover and obtain the same, and may cause to be bought before him a person in whose possession

such receptacle is found, and shall thereupon inquire into the circumstances of such possession; and if said justice or judge finds that said person is guilty of a willful violation of a provision of the three preceding sections, he shall impose the penalty prescribed therein, and award to the owner the possession of the property taken upon such search warrant. (Id. § 5971.)

NOTE: See also No. 105b et seq; Nos. 123-124.

Weights and Measures.

200. **United States Standard Adopted.**—The standards of weight and measure that have been or may be adopted by the United States shall be the standards of weight and measure for this State; and the weights, measures and balances received from the United States under a resolution of Congress, approved June fourteenth, eighteen hundred and thirty-six, and such new weights, measures and balances as shall be received from the United States as standard weights, measures and balances in addition thereto, or in renewal thereof, shall be the authorized standards by which all standards of weights and measures of this State shall be tried, proved and sealed. (G. L. 1917, § 5868.)

200a. **Department Created.**—The following administrative departments are hereby created: . . .

7. The Department of Public Service which shall be administered by the Commissioner of Public Service and in which shall be the Public Service Commission and the Commissioner of Industries. (P. A. 1923, No. 7, § 2, as amended P. A. 1923, No. 8, § 2.)

200b. **Department of Public Service.**—The Department of Public Service shall have power: . . .

3. To exercise the rights, powers and duties now vested by law in the Commissioner of Weights and Measures through the Commissioner of Industries. . . . (P. A. 1923, No. 8, § 8.)

201. **Commissioner of Weights and Measures.**—The Commissioner of Industries shall, by virtue of his office, be Commissioner of Weights and Measures. He may appoint a deputy commissioner and remove him at pleasure and shall be responsible for his acts. A record of such appointment shall be made in the office of Secretary of State. (G. L. 1917, § 5869, as amended P. A. 1923, No. 8, § 9.)

201a. **Inspectors; Appointment; Oath.**—Said commissioner may, when necessary, subject to the approval of the Governor, appoint inspectors, whose salaries shall be fixed by the Board of Control and who shall receive their actual and necessary hotel and transportation expenses while away from home on official business. Said inspectors shall be sworn. (G. L. 1917, § 5870, as amended P. A. 1919, No. 161, § 1.)

201b. **Expenses; Assistance.**—Said commissioner shall be paid his actual and necessary expenses when away from home on official business. Said commissioner may, subject to the approval of the Governor, employ such assistance, clerical or otherwise, as the Governor deems necessary for the proper performance of the duties of said commissioner. (G. L. 1917, § 5871.)

202. **Duties of Commissioner.**—Said commissioner shall take charge of the standards adopted by the State, cause them to be kept in the capitol building, from which they shall not be removed, except for repairs or for certification, and take all other necessary precautions for their safe-keeping. He shall maintain such standards in good order and shall submit them once in ten years to the National Bureau of Standards for certification. He shall inspect the weights, measures and balances of the several towns, and, once in five years and oftener if necessary, compare the same with those in his possession and seal such as are correct; and, unless otherwise provided by law, he hall have a general supervision of the weights, measures and weighing and measuring devices of the State, those in use in the State and those sold or hired or offered for sale, hire or award in the State. (Id. § 5872, as amended P. A. 1919, No. 161, § 2.)

202a. **Town Treasurer's Duties.**—Each town treasurer shall provide and keep in repair in his office whatever weights, measures and balances the town directs. Such weights, measures and balances shall not be legal or used by said treasurer as herein provided, unless proved and sealed as provided in the preceding section. Said treasurer shall prove and seal weights, measures and balances presented to him for that purpose, by comparison of the same with the standards in his office, and shall be entitled to receive from the person presenting the same, ten cents for each article so sealed and a reasonable compensation for alterations. (G. L. 1917, § 5873.)

203. **Record.**—Said commissioner shall keep a complete record of the standards and other apparatus in his possession, and take a receipt for same from his

successor in office. He and his inspectors shall have the power to inspect, try, test and ascertain if they are correct, and if so seal same, all weights, scales, beams, measures of every kind, instruments or mechanical devices for measurement, and the tools, appliances or accessories connected with any such instruments or measurements used or employed within the State by a proprietor, agent, lessee or employee in determining the size, quantity, extent, area or measurment of quantities, things, produce, articles for distribution or consumption offered or submitted by such a person for sale, hire or award. (Id. § 5874.)

204. Inspection and Test; Report.—Said commissioner or his inspectors shall visit the various towns in order to inspect the work of the town treasures as sealers, and shall, upon the request of any citizen, firm, corporation or educational institution of the State, test or calibrate weights, measures, weighing or measuring devices and instruments or apparatus used as test standards in the State and shall seal such as are correct. He or his inspectors shall, at least once annually, test all weights, measures and balances used in checking the receipt or disbursement of supplies in State institutions and shall seal such as are correct and shall report in writing his findings to the executive officer of the institution concerned. (Id. § 5875.)

205. Examination of Commodities; Prosecution.—Said commissioner, his deputy or his inspectors may, at irregular intervals, examine commodities sold or offered for sale and test them for correct weight, measure or count. He, his deputy or his inspectors, for such purposes and in the general performance of their official duties may, without formal warrant, enter or go into or upon any stand, place, building or premises, and may stop any vendor, peddler, junk dealer, coal wagon or coal truck, ice wagon or ice truck, or any dealer whatsoever, for the purpose of making proper tests; and in exercise of their duties they shall have full police power to enforce all reasonable measures for testing any weighing or measuring devices and for ascertaining whether false or short weights and measures are being given in any sales or transfers of commodities taking place within the State, and they may seize for use as evidence, and hold until final disposition of the same, any commodity, package or other article sold or offered for sale contrary to the law relating to weights and measures. Said commissioner, his deputy or inspectors, may arrest, without warrant and on view, in any part of the State, a person found violating a provision of this chapter and take such person before a magistrate having jurisdiction of the offense, and detain such person in custody at the expense of the State until opportunity is had to notify a prosecuting officer, who shall forthwith prosecute such offender. Grand jurors in such cases shall receive the fees prescribed by section seven thousand four hundred and fifty-one [G. L. 1917]. Except as herein otherwise provided, whenever said commissioner, his deputy or his inspectors find a violation of the statutes relating to weights and measures, they shall submit the evidence to a proper prosecuting officer in the county in which said violation occurred, who shall thereupon prosecute the offender. (Id. § 5876, as amended P. A. 1919, No. 161, § 3.)

206. Tolerances.—Said commissioner shall, after consultation with and with the advice of the National Bureau of Standards, establish tolerances for use in the State, and such tolerances shall be the legal tolerances in the State. (G. L. 1917, § 5877.)

207. Rules and Regulations.—Said commissioner may make suitable rules and regulations to govern the sale of commodities. (Id. § 5878.)

207a. Report.—Said commissioner shall keep a complete record of all work done under his direction and shall, in each even year, make a report to the Governor of the work done during the preceding two years. Such report shall also contain such other matter and recommendations as seem pertinent. (Id. § 5879.)

208. Marking of Standards.—The State standards shall be stamped with the letters S. S., and the town standards with the letters T. S., and city standards with the letters C. S. (Id. § 5880.)

209. Marking of Weights and Measures.—Every weight for use in trade, except when the small size of the weight renders it impracticable, shall have the denomination of such weight permanently marked on the top side thereof in legible figures or letters; and every measure of capacity for use in trade shall have the denomination and kind thereof permanently marked on the outside of such measure in legible figures or letters. A weight or measure not in conformity with this section shall not be sealed by said commissioner, inspectors or town treasurers. (Id. § 5881.)

210. Sealing Without Verifying.—A person authorized to seal weights and measures in accordance with the provisions of this chapter, who stamps a weight or measure without duly verifying the same by comparison with the town stand-

ards or is guilty of a breach of any duty imposed upon him by law, or otherwise misconducts himself in the execution of his office, shall be liable to removal and shall be fined not more than two hundred dollars for each offense. (Id. § 5882.)

211. For Using False Measures After Inspection; Seizure of Same.—A person who, after an inspection of his weighing and measuring devices, or either, uses or has in his possession for use in trade, in public weighing, or in ascertaining the weight of commodities for or in transportation, any weight, measure, scale, balance, steelyard or other weighing or measuring device, which is false or incorrect, or which has been stamped or tagged as condemned by said commissioner, inspectors or treasurers, providing the same has not been afterwards sealed as correct by said officials, shall be fined not more than one hundred dollars for the first offense, and, for each subsequent offense, not more than two hundred dollars. After an inspection has been made, any such false or incorrect weight, measure, scale, balance, steelyard or other weighing or measuring device may be seized by any official acting under authority of this chapter, and, on order of the court, the same shall be forfeited. (Id. § 5883.)

212. False Weights; Offenses; Penalty.—A person, who himself or by his servant or agent, or as the servant or agent of another, shall offer or expose for sale, sell for use, or use in the buying or selling of any commodity or thing or for hire, or award, or retain in his possession a false weight or measure, or weighing or measuring device, or who shall dispose of any condemned weight, measure, or weighing or measuring device contrary to law, or remove any tag placed thereon by a sealer of weights and measures without his permission or, who shall sell or offer or expose for sale, less than the quantity he represents, or offers and exposes for sale any such commodity in a manner contrary to law or who shall sell or offer for sale, or have in his possession for the purpose of selling, any device or instrument to be used to, or calculated to falsify any weight or measure, or in purchasing misrepresents the amount purchased shall, upon conviction, except as hereinafter provided, be fined not more than one hundred dollars for the first offense and, for each subsequent offense, not more than two hundred dollars. (Id. § 5884, as amended P. A. 1919, No. 161, § 4.)

213. Obstructing Officers; Violation of Orders; Penalty.—A person who neglects or refuses to produce for said commissioner, his deputy, inspectors or town treasurers, all weighing and measuring devices in his possession and used in trade or on his premises, or refuses to permit said officers to examine same, or obstructs the entry of said officers, or obstructs or hinders any officer acting under the authority of this chapter, or knowingly violates a rule or regulation made under the authority of section five thousand eight hundred and seventy-eight, or violates a provision of this chapter for which other penalty is not prescribed, shall be fined not more than two hundred dollars. (G. L. 1917, § 5885, as amended P. A. 1919, No. 161, § 5.)

213a. Appointment; Duties; Penalty.—The Commissioner of Weights and Measures may designate one or more of the employees of a corporation, association, firm or individual, or some other suitable person, to act as a weigher or surveyor for such corporation, association, firm or individual. Such weigher or surveyor shall be appointed for a specified term and shall, before entering upon his duties, make oath faithfully to execute his trust as weigher or surveyor. Said commissioner shall issue a certificate of such designation and shall keep a record of the same. The rights and duties of such weigher or surveyor shall be prescribed by said commissioner, and such weigher or surveyor shall not receive compensation from the State for the duties so performed. Such a weigher or surveyor who misrepresents the quantity of commodities weighed or measured by him, or otherwise misconducts himself in the execution of his duties as weigher or surveyor, may be removed from office and shall be fined not more than two hundred dollars for each offense. (G. L. 1917, § 5886.)

214. Hundredweight; Ton.—A hundredweight shall mean the net weight of one hundred pounds avoirdupois, and a ton, the net weight of two thousand pounds, and contracts or sales concerning the same shall be construed accordingly. (Id. § 5887.)

215. Bushel of Grain and Vegetables; Peck, Quart, Pint.—Whenever the commodities hereinafter mentioned are purchased or sold by the bushel, peck or quart, or multiple or fraction thereof, the bushel of such commodity shall consist of the respective number of pounds herein set forth, viz:

Alfalfa seed, sixty pounds.
Apples, forty-eight pounds.
Apples, dried, twenty-five pounds.
Barley, forty-eight pounds.

Beans, sixty pounds.
Beans, unshelled, green, twenty-eight pounds.
Beans, string, twenty-four pounds.
Beans, soy, fifty-eight pounds.
Beets, sixty pounds.
Beet greens, twelve pounds.
Buckwheat, forty-eight pounds.
Butternuts, dried, twenty-eight pounds.
Carrots, fifty pounds.
Charcoal, twenty pounds.
Chestnuts, fifty pounds.
Clover seed, sixty pounds.
Corn meal, fifty pounds.
Corn, shelled, fifty-six pounds.
Corn in ear, husked, seventy pounds.
Corn in ear, unhusked, seventy-two pounds.
Cranberries, thirty-two pounds.
Cucumbers, forty-eight pounds.
Dandelions, twelve pounds.
Emmer, forty pounds.
Flaxseed, fifty-five pounds.
Hungarian grass seed, fifty pounds.
India wheat, forty-six pounds.
Kafir corn, fifty-six pounds.
Millet, fifty pounds.
Oats, thirty-two pounds.
Onions, fifty-two pounds.
Parsley, eight pounds.
Parsnips, forty-five pounds.
Peaches, forty-eight pounds.
Peanuts, green, twenty-two pounds.
Peanuts, roasted, twenty pounds.
Pears, fifty-eight pounds.
Peas, sixty pounds.
Peas, unshelled, green, twenty-eight pounds
Plums, forty-eight pounds.
Popcorn, fifty-six pounds.
Potatoes, sixty pounds.
Potatoes, sweet, fifty-four pounds.
Quinces, forty-eight pounds.
Redtop seed, fourteen pounds.
Rye, fifty-six pounds.
Salt, coarse, seventy pounds.
Salt, fine, fifty-six pounds.
Spelt, forty pounds.
Spinach, twelve pounds.
Timothy or herd's grass seed, forty-five pounds.
Tomatoes, fifty-six pounds.
Turnips, sixty pounds.
Wheat, sixty pounds.

The legal peck shall be a fourth part of the bushel, the legal dry quart shall be a thirty-second part of the bushel, and the legal dry pint shall be a sixty-fourth part of the bushel. (Id. § 5888, as amended P. A. 1921, No. 170.)

216. Produce to be in Good Shipping Order.—The kinds of produce enumerated in the preceding section shall be in good order for shipping; and beets, turnips, carrots and onions shall be reasonably free from the soil in which they grew and fairly trimmed of their tops. (G. L. 1917, § 5889.)

217. Maple Syrup; Penalty.—The legal weight of a gallon of maple syrup shall be not less than eleven pounds and the legal measure thereof shall be two hundred and thirty-one cubic inches. Whenever maple syrup is sold by the gallon, quart, pint, or gill, or multiple or fraction thereof, it must be sold according to such legal weight and measure. The legal quart shall be a fourth of a gallon; the legal pint, an eighth of a gallon; and the legal gill, a thirty-second of a gallon. A person who sells or offers for sale a less quantity of maple syrup than represented or sells the same in a manner contrary to law shall be fined not more than five dollars for the first offense, and for each subsequent offense, not more than ten dollars. (Id. § 5890.)

218. Milk.—The standard measure of milk shall be wine measure. (Id. § 5893.)

218a. Justices.—Justices of the peace shall have concurrent jurisdiction with county, municipal and city courts of offenses arising under this chapter. (Id. § 5897.)

219. Marking of Weight; Variations; Regulations.—A dealer or his employee who sells, offers or exposes for sale food in containers or package form shall have the correct net quantity of the contents plainly and conspicuously marked on the outside of the package or container in terms of weight, measure or numerical count; however, reasonable variations shall be permitted and allowance and exemptions as to small packages shall be established by rules and regulations made from time to time by the Commissioner of Weights and Measures. (P. A. 1919, No. 162, § 1.)

220. Prosecution; Guaranty.—A dealer shall not be prosecuted under the provisions of this act if he shows a guaranty signed by the wholesaler, jobber, manufacturer, dealer or other person, from whom he purchased such articles, to the effect that the same are correctly marked or labeled within the meaning of this act, designating it. Such guaranty, to afford protection, shall contain the name and address of the person making the sale of such articles to such dealer. The name appearing on the container and the marking as provided by section one shall be deemed to constitute a guaranty. If it shall appear that any of the provisions of this act have been violated and the party or parties giving such guaranty are without the State, no action shall be brought but the Commissioner of Weights and Measures shall present the facts to the proper national authorities for their action. (Id. § 2.)

221. Meaning of Terms.—A package or retainer* shall for the purposes of this act be exposed for sale when it is kept or displayed at a place of business where commodities are bought or sold, and the word "weight" shall be construed to mean net weight. (Id. § 3.)

222. Contracts.—If commodities are sold by weight, it shall be understood to mean the net weight of all commodities so sold; and all contracts concerning goods sold by weight shall be understood and construed accordingly. (Id. § 4.)

223. Penalty.—A person who, himself or by his servant or agent, or as a servant or agent of another, violates the provisions of this act shall be fined not more than one hundred dollars for the first offense and not more than two hundred dollars for each succeeding offense. (Id. § 5.)

NOTE: See also Nos. 8, 23 et seq., and 39 et seq.

PART V.

Cases.

1. Special Food Laws.

Beverages—Bitters, Tinctures, Etc.: See Russell v. Sloan, 33 Vt. 656 (1861).

Beverages—Jamaica Ginger: State v. Krinski, 78 Vt. 162, 62 Atl. 37 (1905).

Beverages—Peppermint Essence: State v. Kezer, 74 Vt. 50, 52 Atl. 116 (1901).

Flour—Inspectors: Hatch v. S. Robinson & Co., Same v. Wade, 26 Vt. 737 (1854).

Meat—Inspection: *State v. Peet, 80 Vt. 449, 68 Atl. 661, 14 L. R. A. (N. S.) 677, 130 Am. St. Rep. 998 (1908).

Meat—Slaughterhouse: State v. Woodbury, 67 Vt. 602, 32 Atl. 495 (1894).

Meat—Veal: *State v. Peet, 80 Vt. 449, 68 Atl. 661, 14 L. R. A. (N. S.) 677, 130 Am. St. Rep. 998 (1908). See also: Mann v. Birchard, 40 Vt. 326, 94 Am. Dec. 398 (1867).

Milk—Added Water: Tabor v. Herrick, 54 Vt. 630 (1882); State v. Field, 95 Vt. 375, 115 Atl. 296 (1921).

*Milk—Illegal—Breach of Contract to Buy*s See Temple v. Duffy et al., 96 Vt. 114, 117 Atl. 101 (1922).

Water: See State Board of Health v. Village of St. Johnsbury et al., 82 Vt. 276, 73 Atl. 581, 23 L. R. A. (N. S.) 766 (1909).

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* So in the act.

2. Special Drug Laws.

Abortifacients: See State v. Fiske, 66 Vt. 434, 29 Atl. 633 (1894); State v. Montifoire, 95 Vt. 508, 116 Atl. 77 (1922).

Distribution of Samples: *State v. Cray, 85 Vt. 99, 81 Atl. 450, 36 L. R. A. (N. S.) 630 (1911).

Pharmacy: *State v. Abraham, 78 Vt. 53, 61 Atl. 766 (1905). See also: State v. Chandler & Keyes, 15 Vt. 425 (1843); Twombly v. Piette, 134 Atl. 700 (1926).

Poisons: See Twombly v. Piette, 134 Atl. 700 (1926).

3. Civil Action to Recover Damages for Injury Alleged to Have Been Caused by Consumption of Product.

Drugs: Twombly v. Piette, 134 Atl. 700 (1926).

Food: See Pease v. Sabin, 38 Vt. 432, 91 Am. Dec. 364 (1866); Warren v. Buck, 71 Vt. 44, 42 Atl. 979, 76 Am. St. Rep. 754 (1898).

4. Miscellaneous.

Trading Stamps: *State v. Dodge, 76 Vt. 197, 56 Atl. 983 (1904).

Weights and Measures: See Nye v. Merriam, 35 Vt. 438 (1862).

VIRGINIA.*

PART I.

General Food and Drug Law.

General Food Law.

1. Offices Abolished; Duties Transferred.—The offices of Dairy and Food Commissioner and Deputy Dairy and Food Commissioner, including the office of Superintendent of Weights and Measures, be, and they are, hereby severally abolished.

All the powers conferred and all the duties imposed by law upon the Dairy and Food Commissioner, the Deputy Dairy and Food Commissioner, and the Superintendent of Weights and Measures, shall hereafter be exercised or performed by the Commissioner of Agriculture and Immigration, without additional compensation, under the direction of the Board of Agriculture and Immigration.

The unexpended balance of any appropriation made to the dairy and food division, or to the Dairy and Food Commissioner, or to the Superintendent of Weights and Measures, is hereby transferred to the Commissioner of Agriculture and Immigration and may be expended by him under the direction of the Board of Agriculture and Immigration, for the purposes named in the appropriation, but as far as necessary he shall use the existing force in performing the additional duties imposed and exercising the additional powers conferred by this act. (Code Supp. 1926, § 1154(1).)

1a. Department of Agriculture and Immigration.—(a) Except as otherwise provided in this act, all provisions of law in force the day before this act takes effect, in relation to the Department of Agriculture and Immigration, the Board of Agriculture and Immigration, and the Commissioner of Agriculture and Immigration, shall continue in force.

(b) All the powers conferred, and all the duties imposed upon the Board of Agriculture and Immigration, the Commissioner of Agriculture and Immigration, and the former Dairy and Food Commissioner, by sections thirty-two hundred and eighty-one to thirty-two hundred and eighty-nine of the Code of Virginia,† in relation to shellfish, and any and all amendments of the said sections are hereby transferred to, vested in, and shall be exercised or performed by, the State Board of Health. . . . (L. 1927, c. 33, § 18.)

2. Salary of Commissioner; Deputy Commissioner; His Appointment and Salary; Assistants, Their Duties, Powers and Salaries.—There shall be a Deputy Dairy and Food Commissioner who shall be appointed by the Commissioner of Agriculture and Immigration and the Dairy and Food Commissioner, acting jointly, subject to the confirmation of the State Board of Agriculture and Immigration. The salary of said commissioner and of the deputy commissioner shall be paid out of appropriation made by the General Assembly for that specific purpose. The said commissioners may also appoint by and with the advice of the Board of Agriculture and Immigration, such other special assistants as the proper performance of the duties of the office may require, which such assistants shall be paid for the time actually employed, a said commissioner and board may direct. The persons so appointed shall have the power to administer oaths in all matters relative to the dairy and food laws, and shall take and subscribe to the constitutional oath of office and file the same in the office of the Secretary of the Commonwealth; and they shall hold office during the pleasure of the commissioners. The assistants shall have the same right of access to the places to be inspected as the said commissioner. The salaries are to be paid semi-monthly. The salaries and actual and necessary expenses of the said commissioner, deputy commissioner and assistants, in the performance of their official duties, shall be paid upon warrants issued by the Dairy and Food Commissioner upon the State Auditor, and which shall be audited by

*CITATIONS: "Code 1924" refers to the Code of Virginia, 1924, published by the Michie Company. "Code Supp. 1926" refers to the 1926 supplement thereto. "L." refers to the general acts of the year cited.

†See Nos. 187a-187i.

the State Board of Agriculture and Immigration and by the State Accountant, out of appropriations made by the General Assembly from time to time, for that purpose. The Board of Agriculture and Immigration shall provide office room and the necessary furniture and fixtures, and the necessary stationery, supplies and printing for the conduct of the business of the said Dairy and Food Commissioner, on his application to the said board therefor. Said office to be and remain in the city of Richmond. (Code 1924, § 1158.)

3. **Chemical Work Incident to Execution of Pure Food Laws.**—The chemical work incident to the execution of the dairy and pure food laws shall be done in the chemical laboratory of the Department of Agriculture and Immigration. (Id. § 1159.)

4. **Duties of Dairy and Food Commissioner; Powers as to Inspection; Penalties for a Failure to Obey Notice of Commissioner.**—It shall be the duty of the Dairy and Food Commissioner to carefully inquire into the dairy and food and drink products, and the several articles which are food or drinks, or the necessary constituents of the food or drinks, which are manufactured or sold, or exposed or offered for sale in this State, and he may, in a lawful manner, procure samples of the same, which shall be duly and carefully examined or analyzed by the State Chemist, who shall report to the said commissioner the results of such examination or analyses; and it shall be the duty of the said commissioner to make a complaint against the manufacturer or vendor of any such food or drink or dairy products as are adulterated, impure or unwholesome, in contravention of the laws of this State, and furnish all evidence thereof to obtain a conviction of the offense charged. The Dairy and Food Commissioner or his deputy, or any person appointed by him for that purpose, may make complaint and cause proceedings to be commenced against any person for enforcement of the laws relative to adulteration, impure or unwholesome food or drink, and in such cases he shall not be obliged to furnish security for costs, and shall have power, in the performance of his duties, to enter into any creamery, factory, store, salesroom, drug store or laboratory, or place where he has reason to believe food or drink is made, stored, sold or offered for sale, and open any cask, tub, jar, bottle or package containing or supposed to contain, any article of food or drink, and examine or cause to be examined the contents thereof, and take therefrom samples for analysis. The person making such inspection shall take such samples of such article or produce in the presence of at least one witness, and he shall, in the presence of said witness, mark or seal such sample, and shall tender at the time of taking to the manufacturer or vendor of such product, or to the person having the custody of the same, the value thereof, and the statement in writing for the taking of such sample. Whenever it is determined by the Dairy and Food Commissioner, his deputy or assistants, that filthy or unsanitary conditions exist or are permitted to exist in the operation of any bakery, confectionery, or ice cream plant, or at any place where any food or drink products are manufactured, stored or deposited, or sold for any purpose whatever, the proprietor or proprietors, owner or owners of such bakery, confectionery or ice cream plant, or any person or persons owning or operating any plant where any food or drink products are manufactured, stored, deposited or sold, shall be first notified and warned by the said commissioner, his deputy or assistants, to place such bakery, confectionery, or ice cream plant, or any place where any food or drink products are manufactured, stored, deposited or sold, in a sanitary condition within a reasonable length of time; and any person or persons owning or operating any bakery, confectionery or ice cream plant, or any place where any food or drink products are manufactured, stored, deposited or sold, failing to obey such notice and warning, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be punished by a fine of not less than twenty-five nor more than three hundred dollars and costs of prosecution, or imprisonment in the county or city jail not to exceed ninety days, or until such fine or costs are paid, or both fine and imprisonment, at the discretion of the court. (Id. § 1160.)

5. **Authority to Seize Food and Dairy Products.**—The Dairy and Food Commissioner, his deputy, or any person by said commissioner duly appointed for that purpose, is authorized at all times to seize and take possession of any and all food and dairy products, substitutes therefor, or imitation thereof kept for sale, exposed for sale, or held in possession or under the control of any person which in the opinion of said commissioner, or his deputy, or such person by him duly appointed, shall be contrary to the provisions of this chapter or other laws which now exist or which may be hereafter enacted. (Id. § 1161.)

6. **Disposition of Goods Seized.**—The person so making such seizure, as aforesaid shall take from such goods as seized a sample for the purpose of analysis and shall cause the remainder to be boxed and sealed and shall leave the same in the possession of the person from whom they were seized, subject to such dispo-

sition as shall hereafter be made thereof according to the provisions of this chapter. (Id. § 1162.)

7. Samples Forwarded to State Chemist.—The person so making such seizure shall forward the sample so taken to the Dairy and Food Commissioner who shall turn over the same to the State Chemist and the said chemist shall certify the results of such analysis, which certificate shall be prima facie evidence of the fact or facts therein certified to, in any court where the same may be offered in evidence. (Id. § 1163.)

8. Procedure by the Justice as to the Person Accused.—If upon such analysis it shall appear that said food and dairy products are adulterated, substituted, misbranded, or imitated within the meaning of this chapter, said commissioner, or his deputy, or any person by him duly authorized may make complaint before any justice of the peace or police justice having jurisdiction in the city, village or magisterial district, where such goods were seized, and thereupon said justice of the peace shall issue his summons to the person from whom said goods were seized, directing him to appear not less than six nor more than twelve days from the date of issuing to said summons and show cause why said goods should not be condemned and disposed of. If the said person from whom said goods were seized cannot be found, the said summons shall be served upon the person then in possession of the goods.. The said summons shall be served at least six days before the time of appearance mentioned therein. If the person from whom said goods were seized cannot be found, and no one can be found in possession of said goods, and the defendant shall not appear on the return day, the said justice of the peace shall proceed in said cause in the same manner as where a writ of attachment is returned not personally served upon any of the defendants, and none of the defendants shall appear upon the return day. (Id. § 1164.)

9. Judgment as to the Goods Seized.—Unless cause to the contrary thereof is shown, or if said goods shall be found upon trial to be in violation of any of the provisions of this chapter or other laws which now exist or which may be hereafter enacted, it shall be the duty of said justice of the peace or police justice to render judgment that said seized property be forfeited to the State of Virginia, and that the said goods be destroyed or sold by the said commissioner for any purpose other than to be used for food. The mode of procedure before said justice shall be the same, as near as may be in civil proceedings before justices of the peace. Either party may appeal to the circuit or corporation courts as appeals are taken from the justices' courts, but it shall not be necessary for the commonwealth to give any appeal bond. (Id. § 1165.)

10. Disposition of Proceeds from Sale of Such Goods.—The proceeds arising from any such sale shall be paid into the State treasury and credited to the general fund; provided, that if the owner or party claiming the property or goods so declared forfeited can produce and prove a written guaranty of purity, signed by the wholesaler, jobber, manufacturers, or other party residing within this State from which said articles were purchased, then the proceeds of the sale of such articles, over and above the costs of seizure, forfeiture and sale, shall be paid over to such owner or claimant to reimburse him, to the extent to [of] such surplus, for his actual loss resulting from such seizure and forfeiture as shown by the invoice. (Id. § 1166.)

11. Duty of Prosecuting Attorney.—It shall be the duty of the prosecuting attorney when called upon by said commissioner, or by any person by him authorized as aforesaid, to render any legal assistance in his power in proceeding under the provisions of this chapter. (Id. § 1167.)

12. Issue of Bulletins of Analyses.—The Dairy and Food Commissioner shall prepare, print and distribute to all papers of the State, and to such persons as may be interested or may apply therefor, a quarterly bulletin in suitable paper covers, containing results of inspections, the results of analyses made by the State Chemist, with the popular explanation of the same, and such other information as may come to him in his official capacity relating to the adulteration of food and drink products and of dairy products, so far as he may deem the same of benefit and advantage to the public; also a brief summary of all the work done during the quarter by the commissioner and his assistants in the enforcement of the laws of the State, but not more than ten thousand copies of such quarterly bulletins shall be printed. (Id. § 1168.)

13. Punishment for Hindering Commissioner.—Any person who shall willfully hinder or obstruct the Dairy and Food Commissioner, or his deputy or other persons or assistants by him duly authorized, in the exercise of the powers conferred upon him by this chapter, shall be deemed guilty of a misdemeanor and on conviction shall be punished by a fine of not less than ten dollars nor more than one hundred dollars, or by imprisonment in the county or city jail for not less than ten days nor

more than ninety days, or both such fine and imprisonment in the discretion of the court. (Id. § 1169.)

14. **Commissioner to Have Enforcement of All Laws to Prevent the Manufacture of Adulterated Foods, Etc.**—The enforcement of all laws to prevent the manufacture and sale of adulterated and misbranded articles of food, shall be placed under the Dairy and Food Commissioner,* and shall be enforced by him, and under his direction, and all books, papers, and matters, referring to the enforcement of such laws, shall be transferred to the office of the Dairy and Food Commissioner. (Id. § 1174.)

15. **Annual Report of Commissioner.**—The Dairy and Food Commissioner shall make an annual report to the Commissioner of Agriculture and Immigration to be, by said Commissioner of Agriculture and Immigration, transmitted to the Governor on or before the first day of January in each year, and which shall be printed and published on or before the first day of January next thereafter, which report shall cover the doings of his office for the preceding fiscal year, which shall show, among other things, the number of manufactories and other places inspected and by whom, the number of specimens of food articles analyzed and the State Chemist's report upon each one; the number of complaints entered against persons for the violation of the laws relative to the adulteration of food, the number of convictions had, and the amount of fines imposed therefor, together with such recommendations relative to the statutes in force as his experience may justify. (Id. § 1175.)

16. **Analysis and Examination of Samples of Food for Sale; Publication of Same.**—For the purpose of protecting the people of the State from imposition by the adultering [adulterating] and misbranding of food, the Dairy and Food Commissioner shall cause to be procured from time to time, and under the rules and regulations to be prescribed by him, with the approval of the Board of Agriculture and Immigration, samples of food offered for sale in this State, and shall cause the same to be analyzed and examined microscopically or otherwise by the chemists or other experts of the Department of Agriculture and Immigration; and he is hereby authorized to make such publication of the results of the examination, analyses, and so forth, as he may deem proper; and for the proper execution of the provisions of this chapter, the Dairy and Food Commissioner shall, with the approval of the board, make such appointments as may be necesssary and the board shall fix the compensation of such appointees. (Id. § 1176.)

17. **Punishment of Manufacturer, Etc., of Adulterated or Misbranded Food.**—No person, firm or corporation, either directly or through any agent, shall manufacture, sell, expose for sale or have in his possession with intent to sell, any article of food, which is adulterated or misbranded within the meaning of this chapter, and any person who shall violate any of the provisions of this chapter in relation to adulterated or misbranded foods shall be guilty of a misdemeanor. (Id. § 1177.)

18. **Procedure in Case of Detection of Adulteration or Misbranding; Chemist's Analysis as Evidence.**—The chemist or other experts of the Department of Agriculture and Immigration shall make, by the methods in use at the time by the association of official agricultural chemists of the United States, examinations of specimens of food offered for sale in Virginia, which may be collected from time to time as prescribed by this chapter in various parts of the State; and if it shall appear from any such examinations that any such specimen is adulterated or misbranded within the meaning of this chapter, notice thereof shall be given to the manufacturer, guarantor, or person from whom the sample was obtained. Any person so notified shall be given an opportunity to be heard under such rules and regulations as may be prescribed by the Dairy and Food Commissioner and the Commissioner and Board of Agriculture and Immigration, and if it appears that any of the provisions of this chapter have been violated, the Dairy and Food Commissioner shall certify the facts to the Commonwealth's attorney of the city or county in which the sample was obtained, and furnish the officer with a copy of the results of the analysis or other examinations of such article, duly authenticated by the analyst or other officer making such examination under the oath of such officer. In such prosecutions arising under this chapter the certificates of the analyst or other officer making the analysis or examination, when duly sworn to by such officer, shall be prima facie evidence of the fact or facts therein certified. (Id. § 1178.)

19. **Duty of Commonwealth's Attorney in Prosecution.**—It shall be the duty of every Commonwealth's attorney to whom the Dairy and Food Commissioner shall report any violation of this chapter, to cause the proceedings to be commenced and prosecuted without delay for the fines and penalties in such cases prescribed. (Id. § 1179.)

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*Now Commissioner of Agriculture and Immigration. See No. 1. This law is to be corrected accordingly.

20. Meaning of "Food."—The term "food" as used in this chapter shall include all articles used for food, drink, confectionery, or condiment by man or other animals, whether simple, mixed, or compound. (Id. § 1180.)

21. When Article Deemed Adulterated.—For the purpose of this chapter an article shall be deemed to be adulterated:

In the case of confectionery;

First. If it contains terra alba, barytes, talc, chrome yellow, or other mineral substance or poisonous color or flavor, or other ingredient deleterious or detrimental to health, or any vinous, malt, or spirituous liquor or compound or narcotic drug.

In the case of other food:

First. If any substance has been mixed or packed with it, so as to reduce or lower or injuriously affect its quality or strength.

Second. If any substance has been submitted [substituted] wholly or in part for the article.

Third. If any valuable constituent of the article has been wholly or in part abstracted.

Fourth. If it be mixed, colored, powdered, coated, polished or stained in a manner whereby damage or inferiority is concealed.

Fifth. If it contains any added poisonous or other added deleterious ingredient which may render such article injurious to health. Provided, that when in the preparation of food products for shipments they are preserved by any external application in such manner that the preservative is necessarily removed mechanically, or by maceration in water, or otherwise, and directions for the removal of said preservative shall be printed on the covering of the package or furnished with the article, the provisions of this chapter shall be construed as appplying only when said products are ready for consumption.

Sixth. If it consists in whole or in part of diseased, filthy, decomposed, or putrid animal or vegetable matter, or any portion of an animal unfit for food, whether manufactured or not, or if it is the product of a diseased animal, or one that had died otherwise than by slaughter.

Seventh. If the containing vessel or any part of it be of such composition as will be acted upon, in the ordinary course of use, by the contents thereof in such a way as to produce an injurious, deleterious, or poisonous compound. (Id. § 1181.)

22. Meaning of "Misbranded"; Also of "Blend."—The term "misbranded" as used in this chapter shall apply to all articles of food, or articles which enter into the composition of food, the package or label of which shall bear any statement, design or device regarding such article, or the ingredients or substance contained therein, which shall be false or misleading in any particular, and to any food product which is falsely branded as to the State, territory, or country in which it is manufactured or produced.

An article shall also be deemed misbranded:

First. If it be an imitation of, or offered for sale under the distinctive name of another article.

Second. If it be labeled or branded so as to deceive or mislead the purchaser, or purport to be a foreign product when not so, or if the contents of the package as originally put up shall have been removed in whole or in part, and other contents shall have been placed in such package, or if it fail to bear a statement on the label of the quantity or proportion of any morphine, opium, cocaine, heroin, alpha or beta eucaine, chloroform, cannabis indica, chloral hydrate, or acetanalide or any derivative or preparation of any such substance contained therein.

Third. If in package form, and the quantity of the contents be not plainly and conspicuously marked on the outside of the package in terms of weight, measure or numerical count; provided, however, that such reasonable variations shall be permitted, and tolerances and also exemptions as to small packages as shall be or are established by rules and regulations made in accordance with the provisions of section eleven hundred and eighty-five.

Fourth. If the package or its label shall bear any statement, design, or device regarding the ingredients or substance contained therein, which statement, design, or device shall be false or misleading in any particular; provided, that an article of food which does not contain any added poisonous or deleterious ingredients shall not be deemed to be adulterated or misbranded in the following cases:

(a) In the case of mixtures or compounds which may be now or from time to time hereafter known as articles of food under their own distinctive names, and not an imitation of, or offered for sale under the distinctive name of another article of food, if the name be accompanied on the same label or brand with a statement of the place where said article has been manufactured or produced.

(b) In the case of articles labeled, branded, or tagged so as to plainly indicate that they are compounds, imitations or blends, and having the word "compound," "imitation," or "blend," as the case may be, plainly stated on the package in which

such article is offered for sale: provided, the labeling is according to the rules prescribed by the Dairy and Food Commissioner with the approval of the Commissioner and the Board of Agriculture and Immigration.

The term "blend" as used in this chapter shall be construed to mean a mixture of of like substances, not excluding harmless coloring or flavoring ingredients used for the purpose of coloring or flavoring only. Nothing in this chapter shall be construed as requiring or compelling proprietors or manufacturers of proprietary foods which contain no unwholesome added ingredients to disclose their trade formulas, except in so far as the provisions of this chapter may require to secure freedom from adulteration and misbranding. (Id. § 1182.)

23. When guaranty Relieves Dealer.—No dealer shall be prosecuted under the provisions of this chapter when he can establish a guaranty signed by a wholesale dealer, manufacturer or other party, residing in Virginia, from whom he purchased such articles, to the effect that the same is not adulterated or misbranded within the meaning of this chapter designating it. Provided, however, that if the article in question is in a broken or open package, said guaranty shall not afford immunity from prosecution, unless such dealer shall furnish satisfactory proof that the article has not been changed in quality. The affidavit of such person shall be accepted as such proof, and the person making such affidavit falsely shall be guilty of perjury, and punished accordingly: Said guaranty, to afford protection, shall contain the name and address of the party or parties making the sale of such articles to such dealer, and in such cases said party or parties shall be amenable to the prosecutions, fines, and other penalties which would attach in due course, to the dealer under the provisions of this chapter; provided, that the above guaranty shall not afford protection to any dealer after the first offense in connection with a product from a particular wholesale dealer or manufacturer. (Id. § 1184.)

24. Standards of Variability Permissible to Any Article of Food.—The Dairy and Food Commissioner with the approval of the Commissioner and Board of Agriculture and Immigration shall from time to time, fix and publish standards or limits of variability permissible in any article of food, and these standards when so published shall be the standards before all courts: provided, that when standards have been or may be fixed by the Secretary of Agriculture of the United States, they shall be accepted by the Department of Agriculture and Immigration and published as standards for Virginia, but said standards shall not go into effect until a reasonable time after publication. The Dairy and Food Commissioner, with the approval of the Commissioner and Board of Agriculture and Immigration shall have authority to make uniform rules and regulations for carrying out the provisions of this section. (Id. § 1185.)

25. Purchase of Samples for Analysis.—Every person who exposes or offers for sale or delivers to a purchaser any food, shall furnish within business hours and upon tender and full payment of the selling price, a sample of such food, to any person duly authorized to secure the same, and who shall apply to such manufacturer or vendor or person delivering such food to a purchaser for such sample in sufficient quantity for the analysis of such article or articles in his possession. Samples may be purchased on the open market and shall be representative samples; the collector shall also note the name of the vendor and agent through whom the sale was actually made, together with date of purchase, and all samples not taken in unbroken and sealed original packages shall be sealed by the collector in the presence of the vendor with a seal provided for the purpose.

When possible, samples shall be unbroken and sealed original packages, or taken out of unbroken and sealed original packages. Three like samples shall be obtained where the article is in the original package, or if not in the original package the sample obtained shall be divided into three equal parts and each part shall be labeled with the marks, brands or tags upon the package, carton, container, wrapper or accompanying printed or written matter. One sample shall be delivered to the party from whom purchased, or to the party guaranteeing such merchandise; two samples shall be sent to the Dairy and Food Commissioner, one of which is to be analyzed, as provided in this chapter, and the other shall be held under seal by the Dairy and Food Commissioner. (Id. § 1186.)

26. Punishment for Failure to Comply With Requirements of This Chapter.—Any manufacturer, dealer or person who refuses to comply upon demand with the requirements of this chapter or who shall impede, obstruct, hinder or otherwise prevent or attempt to prevent any chemist inspector or other person in the performance of his duty in connection with this chapter, shall be guilty of a misdemeanor, and upon conviction be fined not less than ten dollars nor more than one hundred dollars, or be imprisoned not more than one hundred days, or both, in the discretion of the court; and said fines, less the legal costs, shall be paid into the treasury of the State. (Id. § 1187.)

27. **Meaning of "Person," Act of Agent, Etc., as Act of Corporation, Etc.**—The word "person" as used in this chapter shall be construed to import both the plural and the singular, as the case demands, and shall include partnerships, corporations, companies, societies and associations. When construing and enforcing the provisions of this chapter, the act, omission or failure of any officer, agent or other individual acting for or employed by any partnership, corporation, company, society, or association within the scope of his employment or office, shall in every case be also deemed the act, omission, or failure of such partnership, corporation, company, society, or association, as well as that of the individual. (Id. § 1188.)

28. **Punishment of Person Manufacturing, Etc., Adulterated Food.**—Any person, firm, or corporation who shall manufacture, sell or offer for sale any article of food that is adulterated within the meaning of this chapter, shall be guilty of a misdemeanor, and in addition to being subject to the penalties already provided in this chapter, the article of food shall be subject to seizure, and condemnation, followed by sale or destruction. (Id. § 1189.)

29. **Judges to Charge Grand Juries; Commonwealth's Attorney to Forward Samples for Analysis; Their Fees.**—For the purpose of a more rigid enforcement of the law prohibiting the sale of adulterated and misbranded foods in the State of Virginia, it shall be the duty of the judge of the circuit or corporation court for each county and city of this State to bring this chapter to the attention of the grand juries of his county or city, and upon the finding of an indictment against the manufacturer or vendor of such adulterated or misbranded food, beverages, or condiments, or at any time prior thereto, the Commonwealth's attorney may, if he deem it proper, forward a sample of the same to the Commissioner of Agriculture, to be analyzed or examined, microscopically or otherwise, by the chemists or other experts of the Department of Agriculture, who shall render a report thereon to said Commonwealth's attorney, which report may be used in evidence before said grand jury or at the trial of said person or persons so indicted. For each conviction hereunder, said Commonwealth's attorney shall be entitled to a fee of ten dollars, which shall be paid by the city or county in which said conviction was had upon an order from the judge of said court, and said fee shall be paid, notwithstanding the provisions of any law to the contrary limiting the salary or fees of Commonwealth's attorneys; and said fee shall be taxed as a part of the costs against the defendant, and when collected shall be paid into the treasury of said county or city. (Id. § 1190.)

30. **To Prevent the Sale of Deleterious Foods; Seizure and Destruction of Such Foods; Penalties for Violation.**—It shall be unlawful for any person, firm or corporation to sell or to offer or expose for sale for human food any article which has been prepared, handled or kept where the sanitary conditions are such that the article is rendered unhealthy, unwholesome, deleterious, or otherwise unfit for human food, or which consists in whole or in part of diseased, filthy, decomposed or putrid animal or vegetable matter.

The Dairy and Food Commissioner, his agents or assistants, and all peace and health officers shall have the power and are required to seize any and all articles which are offered or exposed for sale for human food, which have been prepared handled, or kept where the sanitary conditions are such that the article is rendered unhealthy, unwholesome, deleterious or otherwise unfit for human food, or which consist in whole or in part of diseased, filthy, decomposed or putrid animal or vegetable matter; and shall deliver the same forthwith to and before the nearest police justice or justice of the peace, together with all information obtained, and said police justice or justice of the peace shall, upon sworn complaint being filed, issue warrant for the arrest of any person charged in any such complaint with a violation of the provisions of this section, and shall proceed to try the case. Any person, firm or corporation who shall violate any of the provisions of this section, shall be guilty of a misdemeanor and, upon conviction, shall be fined not less than ten nor more than one hundred dollars, and the article or articles of food in question shall be destroyed.

The Dairy and Food Commissioner, his agents or assistants and all peace and health officers in the execution of the provisions of this section, shall have full right to enter and inspect all places in which any articles of human food are stored, offered or exposed for sale; and any person, firm or corporation who shall hinder or obstruct any of the said officers in the discharge of the authority or duty imposed by the provisions of this section, shall be guilty of a violation of the same. (Id. § 1218.)

31. **Duties and Compensation of Commonwealth's Attorneys Relating to the Enforcement of Laws Governing Articles Used as Food for Human Beings or Animals.**—Whenever a violation of any laws governing the manufacture and preparation for sale, storage and sale of articles used as food or condiment by human beings or animals, commonly known as the "pure food" and "feeding stuffs laws,"

is reported by the Dairy and Food Commissioner to any Commonwealth's Attorney, it shall be the duty of the Commonwealth's Attorney to whom any such violation is so reported by the said commissioner, to cause the proceedings to be commenced and prosecuted without delay for the fines and penalties in such cases prescribed and upon the termination of such proceedings to report in detail to the Dairy and Food Commissioner the results of the same.

For every conviction in any case instituted by any Commonwealth's Attorney upon the complaint of the Dairy and Food Commissioner, the Commonwealth's Attorney prosecuting any such case, after he has reported the results of the same to the Dairy and Food Commissioner as hereinabove provided, shall be entitled to a fee of five dollars, which shall be taxed as a part of the costs in the case, as costs are taxed in other criminal cases, and execution issued therefor against the defendant; and said fee shall be paid notwithstanding any law to the contrary limiting or prescribing the compensation and fees of Commonwealth's Attorneys.

In any case of a sale or delivery of goods in violation of the provisions of the pure food or feeding stuffs laws, the person, firm or corporation making such sale or delivery, may be prosecuted either in the county or city in which such sale or delivery originated, or in the county or city in which the said illegal goods may be found by the Dairy and Food Commissioner, or his agents or assistants. (Id. § 1223.)

32. Rules and Regulations of Dairy and Food Commissioner Enacted Into Law; Punishment for Violation of Provisions of Section.—1. The rules and regulations of the Dairy and Food Commissioner fixed and established by and with the approval of the Board of Agriculture and Immigration be, and they are hereby, enacted into law, as follows:

2. . . . (19) All foods offered or exposed for sale in Virginia must be branded or labeled in English on the principal label, in type not smaller than eight-point caps, and on same kind of background as the word or words with which they are associated; provided, in case the size of the package will not permit the use of eight-point cap type, the size of the type may be reduced proportionately so as to truly and clearly set forth the contents of the material so branded or labeled, and if such foods are artificial, imitation, compound, blended or adulterated, the words "artificial," "imitation," "compound," "blended," "adulterated," or such permitted qualifying term as may be used, must immediately precede or follow the word or words they modify, and be shown in type equally as prominent as is the name of the article simulated.

The information required to be shown on the containers of beverages or drink products may appear either on a label pasted on the container or on the crown cap on the container. The entire information required must appear either on the label pasted on the container or on the crown, it may not be shown in part on either or both, nor may it be shown blown in the bottle. . . .

(21) The use of saccharine in food products manufactured, offered or exposed for sale in this State, is inhibited. . . .

3. Any person, firm, corporation or association violating any of the provisions of this section shall be guilty of a misdemeanor, and upon conviction thereof, shall be punished by a fine of not less than twenty-five nor more than three hundred dollars. (Code 1924 and Code Supp. 1926, § 1227a.)

33. Annual Reports to Include Account of Money Expended.—The published annual report of the Dairy and Food Commissioner which shall be made to the Commissioner of Agriculture and Immigration as provided in section eleven hundred and seventy-five, shall cover the work done during that period with any incidental information concerning same which the said board and commissioner may deem proper; also a complete accounting of all moneys, expended for the preceding fiscal year. (Code 1924, § 1228.)

General Drug Law.

See No. 35 and the pharmacy law, No. 208 et seq.

Miscellaneous General Provisions.

34. Selling Unsound Provisions, How Punished.—If any person knowingly sells any diseased, corrupted, or unwholesome food, whether meat or drink, intended for human consumption, without making the same known to the buyer, he shall be fined not exceeding one hundred dollars or confined in jail not exceeding six months, or both. The meat of any animal which has developed the disease of actinomycosis or lumpy jaw shall be deemed diseased, corrupted, and unwholesome and within the provisions of this section. (Code 1924, § 1219.)

35. Adulterating Food, Drink, or Medicine, How Punished.—If any person fraudulently or knowingly adulterate, for the purpose of sale, any drug or medi-

cine, or any article of food or drink, with any substance that may be injurious to health, or with barytes or any substance intended to increase the weight or quantity of such food or drink, he shall be deemed guilty of a misdemeanor; and the adulterated articles shall be forfeited and destroyed. (Id. § 1702.)

36. Powers and Duties of Commissioner.—The Commissioner of Agriculture shall see to the proper execution of the laws relating to the subject of his department, and he shall investigate and promote such subjects relating to the improvement of agriculture, the beneficial use of commercial fertilizer and compost, and for the inducement of immigration and capital, and he shall be especially charged with the supervision of the trade in commercial fertilizers as will best protect the interests of the farmers with the enforcement of the laws which are or may be enacted in this State concerning the sale of commercial fertilizers, seed and food products, with authority to make regulations governing the same, subject to the approval of the board, and publish them in bulletins. . . . (Id. § 1107.)

NOTE: See also No. 418.

PART II.

Special Food Laws.

Apples.

37. Standard Grades.—The Commissioner of Agriculture and Immigration is hereby directed to establish and promulgate from time to time official standard grades for all closed packages of apples, by which the quantity, quality and size may be determined, and prescribe and promulgate rules and regulations governing the markings which shall be required upon packages of apples for the purpose of showing the name and address of the producer or packer, the variety, quantity, quality and size of the product, or any of them; provided, that the Commissioner of Agriculture and Immigration shall establish a grade for immature apples packed for export only, and an unclassified or similar marking for all apples not included in the other grades established.

It is the intent of this act that the Commissioner of Agriculture and Immigration, before establishing such standards, shall consult with the directors of the State Horticultural Society as representing the various apple growing sections of the State. (L. 1927, c. 74, § 1.)

38. Markings.—Whenever such standard for the grade or other classification of apples under this act becomes effective, every closed package containing apples grown and packed in the State of Virginia and sold, offered or exposed for sale, or packed for sale or transported for sale by any person, firm, company or organization, shall bear conspicuously upon the outside thereof, in plain words and figures, such markings as are prescribed by the Commissioner of Agriculture and Immigration under the provisions of this act. (Id. § 2.)

39. Powers of Commissioner.—The Commissioner of Agriculture and Immigration, through the Director of the Division of Markets, of the State of Virginia, shall be charged wih the enforcement of the provisions of this act and for that purpose shall have the power:

(a) To enter and to inspect personally, or through any authorized agent every place within the State of Virginia where apples are produced, packed or stored for sale, shipped, delivered for shipment, offered for sale, or sold, and to inspect such places and all apples and apple containers and equipment found in any such place.

(b) To appoint, superintend, control and discharge such inspectors and subordinate inspectors as in his discretion may be deemed to be necessary, for the special purpose of enforcing the terms of this act, to prescribe their duties and fix their compensation.

(c) Personally, or through any authorized agent or any such inspector, to forbid the movement of any closed package or packages of apples found to be in violation of any of the provisions of this act which have not been actually accepted by a common carrier for shipment in interstate traffic, and to require the same to be repacked or remarked. A carload of apples shall not be considered as actually accepted by a common carrier for shipment until the loading is finished, the car sealed and the bill of lading issued.

(d) The cause to be instituted through the Commonwealth's Attorneys of the State, in the Circuit Court of any county or Corporation Court of any city, of the State of Virginia in which apples are packed, shipped, delivered for shipment, offered for sale or sold, in violation of any of the provisions of this act, or may be found, prosecutions for such violations. (Id. § 3.)

40. Delivery to Station or Carrier, Etc.—When apples in closed packages are delivered to a railroad station or a common carrier for shipment, or delivered to a storage house for storage, such delivery shall be prima facie evidence that the apples are offered or exposed for sale. (Id. § 4.)

41. Penalty.—Any person, firm, company, organization or corporation, who shall violate any of the provisions of this act, shall be punishable by a fine of not more than five hundred ($500.00) [dollars] for each offense. (Id. § 5.)

42. Exceptions.—No person, firm or corporation shall be prosecuted under the provisions of this act:

(a) When he or it can establish satisfactory evidence to the effect that he or it was not a party to the packing, grading or marking of such apples, and had no knowledge that the same were mismarked or illegally packed.

(b) When he or it can establish that the apples offered for sale have passed inspection by an authorized inspector of the State of Virginia and bear the official Virginia State inspection stamp, or by an inspector of the United States Department of Agriculture and found to be packed in accordance with the requirements of the Commissioner of Agriculture and Immigration of Virginia (Id. § 6.)

NOTE: See also Nos. 67 and 416.

Bakery Products—Bread.

43. Regulations as to Materials Used in Bakery Products.—All materials used in the production or preparation of bakery products shall be stored, handled and kept in a way to protect them from spoiling and contamination, and no material shall be used which is spoiled or contaminated, or which may render the bread or other bakery products unwholesome or unfit for food. The ingredients used in the production of bread and other bakery products and the sale or offering for sale of bread and other bakery products shall comply with the provisions of the Virginia laws against adulteration and misbranding. No ingredients shall be used which may render the bread or other bakery products injurious to health. No ingredients shall be used which may deceive the consumer or which lessens the nutritive value of the bakery product without being plainly labeled, branded or tagged or having a sign making such facts plain to the purchaser or consumer under rules and regulations to be prescribed by the Dairy and Food Commissioner with the approval of the Board of Agriculture and Immigration; provided, however, that in case of bread to be sold by the loaf such labeling shall be, in the case of unwrapped bread, placed upon the same sticker as hereinafter provided to show the name and address of the manufacturer and the net weight or measure of the loaf. (Code 1924, § 1196a.)

44. Distribution.—All handling or sale of bread or other bakery products and all practices connected therewith shall be conducted at all times so as to prevent the distribution of contamination or diseases among consumers, and so as to prevent the distribution of the infection in bread commonly known as "rope" or other bakery infections, and so as to protect the food supply against waste. No bread or other bakery products except as hereinafter provided, shall be returned from any consumer or other purchaser to the dealer or baker, nor from any dealer to the baker, and no baker or dealer shall directly or indirectly accept any returns or make any exchange of bread or other bakery products from a dealer, restaurant or hotel keeper, consumer or other person, and all bread and all other bakery products shall be kept moving to the consumer in as direct a line as may be practicable and without unreasonable delay and without any exchange, return or practice whatsoever which may disseminate contamination, disease or fraud among consumers or infection among bakeshops, or which may cause waste in the food supply. The Dairy and Food Commissioner, with the approval of the Board of Agriculture and Immigration, shall make such reasonable rules and regulations as may be necessary for carrying into effect the foregoing provisions of this act; provided, that this section shall not be construed to apply to crackers or to such other bakery products as are packed at the place of production in cartons, cans, boxes, or similar permanent containers and where the product is so packed or sealed at the place of production as to fully protect the freshness and wholesomeness of the product and to protect it from contamination, adulteration and fraud in the channels of trade and which remains in the original unbroken package in which each bakery product has been packed, except insofar as may be necessary to prevent waste in the food supply; provided,

further, the Dairy and Food Commissioner, with the approval of the Board of Agriculture and Immigration, may by rules and regulations establish such exemptions as may be necessary to facilitate the sale of any accumulated or unsold stocks of wholesome bread or other bakery products, but any such exemptions or sales shall not be in violation of the expressed purposes of this section; provided, further, that the phrase "permanent containers" shall not be construed to include the paper or permanent wrappers as used in wrapping loaves of bread. (Id. § 1196b.)

45. Weights and Labels.—All bread stored, sold, offered or exposed for sale by the loaf shall have conspicuously affixed thereon a label on which shall be printed in the English language in letters and figures not smaller than one-fourth inch in height, the net weight of the loaf, when baked. The name and address of the baker or manufacturer of the loaf shall also be shown on the same label.

The Dairy and Food Commissioner, with the approval of the Board of Agriculture and Immigration, shall adopt and establish such reasonable tolerances or variations within which the weights of loaves shall be kept; provided, however, that such tolerances and variations shall not exceed one ounce per loaf on loaves weighing less than one pound or two ounces on loaves weighing more than two pounds twelve hours after baking. (Id. § 1196c.)

46. Enforcement of Provisions by Dairy and Food Commissioner.—The Dairy and Food Commissioner* is hereby charged with the enforcement of the provisions of this act. (Id. § 1196d.)

47. Penalty.—Any person, firm or corporation who shall violate any of the provisions of this act shall be subject to a fine of not less than ten dollars, nor more than one hundred dollars, and each day's continuance of any practice, act or condition prohibited herein shall constitute a separate offense within the meaning of this act. (Id. § 1196e.)

NOTE: See also Nos. 4, 125 et seq. and 191-192.

Beverages.

48. Sale of Cider.—Every person selling or exposing to [for] sale any cider which is composed of nothing but pure apple juice and such ingredients as may be necessary to preserve same shall label or brand, so as to be conspicuously seen by the buyer, each and every barrel, cask, keg, or other vessel of whatsoever kind in which the same is kept or from which it is sold or otherwise dispensed with the words "pure apple cider."

Every person selling or exposing to [for] sale any cider which is not composed of pure apple juice and such ingredients as may be necessary to preserve it shall label or brand, so as to be conspicuously seen by the buyer, each and every barrel, cask, keg, or other vessel of whatsoever kind in which it is kept or from which it is sold or otherwise dispensed with the words "chemical cider."

Any person violating the provisions of this section shall be guilty of a misdemeanor, and upon conviction shall be punished by a fine of not less than twenty dollars nor more than fifty dollars. (Code 1924, § 1192.)

49. Soft Drinks Defined.—The words "soft drinks" as used in this act shall be construed to embrace and include any and all beverages, patented, domestic or otherwise, of every description and kind, which may be offerd for sale, in this State, not embraced in the words "ardent spirits" as defined in this act. (Id. § 4675(57).)

50. License for Sale of Soft Drinks.—It shall be unlawful for any person firm, or corporation to dispense soft drinks without obtaining a license to do so from the Circuit Court of the county, or Corporation or Hustings Court of the city in which county or city the privileges are to be exercised. No such license shall be granted unless it shall appear that notice of the application has been posted for ten days on the front door of the applicant's place of business and where the soft drinks are to be sold. Any citizen may appear personally or by counsel in opposition to the granting of said license, and the court may in its discretion refuse to grant such license if convinced that the person applying is not a suitable person to exercise the said privilege. The clerk of the court shall receive for all services rendered by him in connection with the issuance of such a license a fee not to exceed twenty-five cents. All licenses issued under this section shall be granted subject to revocation by the Circuit Court of the county or the Corporation or Hustings Court of the city where such person does business; and shall also be subject to suspension for cause during the vacation of the court by the judge of such court having jurisdiction, but shall be good until suspended or revoked.

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*Now Commissioner of Agriculture and Immigration. See No. 1. This law is to be corrected accordingly.

Provided, that it shall not be necessary to obtain such license to sell soft drinks at any place for benevolent or charitable purposes; provided, further, that it shall be unlawful for any dispenser of soft drinks to use any ardent spirits as a flavor or mixture.

Any person violating any of the provisions of this section of this act shall be deemed guilty of a misdemeanor and shall be fined not less than twenty-five nor more than one hundred dollars for the first offense, and shall be fined not less than fifty nor more than five hundred dollars for the second offense, and for every subsequent offense shall be fined not less than one hundred nor more than five hundred dollars, and confined in jail not less than one nor more than six months. (Id. § 4675(58).)

51. Tax on Nonresident Manufacturers of Soft Drinks Maintaining Distribution or Storage Warehouses.—Every nonresident manufacturer of soft drinks maintaining in this State distributing or storage warehouses for the sale of soft drinks by wholesale, shall pay for such privilege the sum of five hundred dollars to the Auditor of Public Accounts. (Id. § 4675(76).)

NOTE: See also Nos. 32, 191-192, 269 et seq., 395 et seq., and 415.

Bran.

See No. 124.

Canneries.

See Nos. 191-192.

Cider.

See Nos. 48, 283 and 395 et seq.

Cold Storage.

52. Definition of Terms.—For the purpose of this act, "cold storage" shall mean the storage or keeping of articles of food at or below a temperature of forty-five degrees above zero Fahrenheit in a cold storage warehouse; "cold storage warehouse" shall mean any place artificially or mechanically cooled to or below a temperature of forty-five degrees above zero Fahrenheit in which articles of food are placed or held for thirty days or more; "articles of food" shall mean fresh meat and fresh meat products, except in process of manufacture, and all fresh fish, game, poultry, eggs, milk, butter, cheese and edible fats and oils and lard.

(a) Any individual, firm, corporation or association engaged in the business of maintaining and operating cold storage warehouses in which articles of food as herein defined are stored for hire or compensation shall be called a public cold storage warehouseman.

(b) Any individual, firm, corporation or association that maintains and operates as an adjunct to their business, cold storage warehouses for the storage of articles of food as herein defined exclusively owned or dealt in by them, shall be called a private cold storage warehouseman.

(c) Any individual, firm, corporation or association that combines a public cold storage warehouse business with the storage of commodities as herein defined, which directly or indirectly it owns, deals in, or otherwise has an interest in, shall be called a combined public and private cold storage warehouseman. (Code 1924, § 1228a.)

53. Licenses to Operate Cold Storage Warehouses.—Any person, firm or corporation desiring to operate or to continue to operate a cold storage warehouse as herein defined and classified shall make application in writing to the State Dairy and Food Commissioner* for that purpose, stating the location of the plant or plants. On receipt of the application, the State Dairy and Food Commissioner shall cause an examination to be made into the sanitary condition of said plant or plants, and, if found by him to be in a sanitary condition, he shall cause a license to be issued authorizing the applicant to operate such cold storage warehouse or warehouses for and during the period of one year. The license shall be issued upon the payment by the applicant of a license fee of twenty-five dollars to the State Dairy and Food Commissioner for each such warehouse, except that when the gross business of such warehouse does not exceed the sum of one thousand dollars per annum, such license fee shall be five dollars, and where the gross business exceeds one thousand dollars and does not exceed two thousand dollars, such license fee shall be ten dollars.

*Now Commissioner of Agriculture and Immigration. See No. 1. This law is to be corrected accordingly.

All licenses, however, issued under this act at any time between the date of the passage hereof and the first day of January, nineteen hundred and twenty, shall expire on the last named date, and thereafter all licenses issued hereunder shall expire on the thirty-first day of December next succeeding their issuance. (Id. § 1228b.)

54. Unsanitary Warehouses Prohibited.—In case any cold storage warehouse, or any part thereof, covered by a license under the provisions of this act, shall at any time be deemed by the State Dairy and Food Commissioner to be in an unsanitary condition, it shall be his duty to notify the licensee of such condition, and, upon the failure of the licensee to put such cold storage warehouse, or the specified part thereof, in a sanitary condition within a reasonable time to be designated by him, it shall be the duty of the State Dairy and Food Commissioner to prohibit the use under his license of such cold storage warehouse, or part thereof, as he deems to be in an unsanitary condition, until such time as it may be put in a sanitary condition. (Id. § 1228c.)

55. Receipts and Withdrawals of Food; Records; Quarterly Reports.—It shall be the duty of any person, firm or corporation licensed to operate a cold storage warehouse to keep an accurate record of the receipts and the withdrawals of the articles of food, and the State Dairy and Food Commissioner and his assistants shall have free access to these records at any time. Every such person, firm or corporation shall, furthermore, submit a quarterly report to the Dairy and Food Commissioner setting forth in itemized particulars the quantity of articles of food products as herein defined held in each cold storage warehouse owned or operated by the licensee. Such quarterly reports shall be filed on or before the fifteenth day of the month following the expiration of each quarter, and the reports so rendered shall show the conditions existing on the last day of the quarter reported, and a summary of such reports shall be prepared by the State Dairy and Food Commissioner and shall be open to public inspection at any and all times. (Id. § 1228d.)

56. Inspections.—It shall be the duty of the State Dairy and Food Commissioner to inspect all cold storage warehouses in the State, and to make such inspection of the entry of articles of food therein as he may deem necessary to secure the proper enforcement of this act. The State Dairy and Food Commissioner, his assistants and employees, when properly authorized by him, shall be permitted access to such cold storage warehouses, and all parts thereof, at all reasonable times for the purpose of inspection and enforcement of the provisions of this act. The State Dairy and Food Commissioner may also appoint and designate such person, or persons, as he may deem qualified to make the inspection herein required. (Id. § 1228e.)

57. Containers; Marking.—No person, firm or corporation conducting a cold storage warehouse, as defined in this act, shall place or store in any cold storage warehouse in this State articles of food, as herein defined, unless the same shall be plainly and durably marked, stamped or tagged, either upon the container in which they are packed or upon the article of food itself, with the words "cold storage," with the name and location of the cold storage warehouse, and with the date when placed therein; and no person, firm or corporation shall remove or permit the removal of such articles of food from any cold storage warehouse unless the same shall be plainly and durably marked, stamped or tagged, either on the container in which it is enclosed or upon the article of food itself, with the date when it is removed from such cold storage warehouse. (Id. § 1228f.)

58. Storage Period.—No person, firm or corporation shall keep in any cold storage warehouse any article of food, as herein defined, for a longer period than ten calendar months, except with the written consent of the State Dairy and Food Commissioner, as hereinafter provided; nor shall any cold storage warehouse permit any articles of food to be kept in cold storage for a longer period than ten months, except for the purpose of temporary preservation. In the event that articles of food remain in storage for a period of ten months, the warehouseman shall forthwith notify the Dairy and Food Commissioner of such fact, giving the name and address of the owner and the quantity and kind of the articles of food in storage, and shall also, at the same time, mail a copy of the said notice to the owner to his last known post office address. If any person, firm or corporation have any articles of food in any cold storage warehouse, and the name and whereabouts of the owner thereof be unknown, then, upon the expiration of the ten-months storage period prescribed by this act, the Dairy and Food Commissioner shall order such articles of food to be sold at public auction; and the proceeds therefrom, after deducting costs of sale and storage charges, shall be paid into the State treasury and there held subject to the order of said owner. The said commissioner shall upon application, extend the period of storage beyond ten months for any particular articles of food when, in his opinion, such extension will not be detrimental to the public interests, and, provided the same are found, upon examination, to be in proper condition for further storage. The length of time for which further storage is allowed shall be specified

in an order granting the permission. The length of time that any articles of food may have been kept in cold storage in some other warehouse either within or without this State shall be computed in the period of ten months permitted. (Id. § 1228g.)

59. Signs to be Displayed; Notice to Purchasers; What Advertising Unlawful.—It shall be unlawful for any public or private, or combined public and private, cold storage warehouseman, or any wholesale or retail dealer in food, or any operator of any hotel, restaurant, or public eating place, to sell, or to offer or expose for sale, articles of food as herein defined which have been held in any cold storage warehouse for a period of thirty days or over without notifying persons purchasing or intending to purchase the same that they have been so kept, by the display of a placard conspicuously marked "cold storage goods," on the bulk mass or articles of food; provided, that in the case of hotels, restaurants, and public eating places, the required notice may appear on the bill of fare or menu card, in the form of a statement that "all cold storage products served here are marked*" and in such event every cold storage product appearing on the bill of fare or menu card must be preceded by an asterisk (*). It shall be unlawful to represent or advertise as fresh, articles of food which have been held in any cold storage warehouse for a period of thirty days or over. (Id. § 1228h.)

60. Return to Storage Prohibited.—It shall be unlawful to return to any cold storage warehouse any articles of food as herein defined which has [have] once been released from such storage and placed on the market for sale to consumers, except for the purpose of temporary preservation; but nothing in this section shall be construed to prevent the transfer of goods from one cold storage warehouse to another; provided, that all prior stamping, marking and tagging shall remain thereon, and that such transfer is not made for the purpose of evading any provisions of this act. (Id. § 1228i.)

61. Unwholesome Articles.—The licensee shall not receive or keep in any cold storage warehouse any food products which are in any way diseased, tainted or unfit for human consumption. (Id. § 1228j.)

62. Rules and Regulations.—The State Dairy and Food Commissioner shall, with the approval of the State Board of Agriculture and Immigration, make all necessary rules and regulations to carry into effect the provisions of this act. (Id. § 1228k.)

63. To What Products Act Not Applicable.—The provisions of this act shall not apply to ice boxes or refrigerators maintained by wholesale or retail dealers. (Id. § 12281.)

64. Public Warehouseman Not to Own or Deal in Stored Food Commodities.—No person, firm or corporation, or any employee of same, engaged in the business of storing foods as herein defined for the public in a public cold storage warehouse, and charging for such services, shall either directly or indirectly own or deal in any food commodities, as hereinabove defined, stored in such warehouse, except food commodities that are legally acquired for charges or advances made.

No person, firm or corporation licensed to operate a cold storage warehouse shall make any loan on foods as herein defined stored in such warehouse, or incur liability by indorsement, guarantee or otherwise in connection with any loan on foods stored in such warehouse in excess of seventy per centum of the market value of such foods on the date of said loan. A margin of not less than thirty per centum on every loan shall be maintained at all times.

Any advances made by the cold storage warehouse on the goods upon which the loan is made, such as freight, cartage or insurance, shall be included in the seventy per centum of the market value permitted above. (Id. § 1228m.)

65. Penalties.—After this act shall have been in force thirty days, any person, or any member or agent of any firm, or any officer, director or agent of any corporation violating any provision of the same shall be guilty of a misdemeanor and, upon conviction, shall be fined not less than twenty-five dollars nor more than five hundred dollars for the first offense. Upon a second or subsequent conviction the offender shall be subject to a like fine, or, in addition, shall be confined in jail not less than thirty days nor more than one year, in the discretion of the tribunal trying the case. (Id. § 1228n.)

66. Authority of Dairy and Food Commissioner to Employ Assistants; Appropriations.—The Dairy and Food Commissioner is hereby authorized and required, with the approval of the Board of Agriculture and Immigration, to employ as many assistants, in addition to those already employed by them, as may be necessary effectually to enforce the provisions of this act, and the sum of five thousand dollars, or so much thereof as may be necessary, is hereby appropriated out of any funds in the treasury not otherwise appropriated, to be expended by the said commissioner in carrying out its said provisions, in addition to the other funds to the credit of the Dairy and Food Division. Furthermore, all license fees received under this act shall be paid into the treasury of the State to the credit of the Dairy

and Food Division, and shall be used for the purpose of supplementing the appropriation aforesaid. The Dairy and Food Commissioner shall include in his annual report a detailed statement of all such receipts and disbursements. (Id. § 1228o.)

67. Records of Temperature in Warehouses.—On and after September first, nineteen hundred and twenty-six, every individual, firm, corporation or association engaged in the business of maintaining and operating cold storage warehouses in which apples or other perishable fruits are stored for hire or compensation, shall keep, or cause to be kept careful and accurate daily records of the temperatures existing in each room or division of such warehouses; such records for any period to be open and accessible at all times for inspection by any person having or having had apples or other perishable fruit in said warehouses during the said period.

Any person maintaining and operating any such cold storage warehouse who shall fail to comply with the provisions of this act shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not less than twenty-five nor more than one hundred dollars for each offense. (Code Supp. 1926, § 1228p.)

68. Inspection and Examination of Records; Penalty.—Every such cold storage warehouse shall be subject to inspection at any time by any authorized agent of the Department of Agriculture, which agent shall have the right to examine the records provided for herein; and said agent shall report to the storage after each and every inspection.

Any individual, firm, corporation or association maintaining and operating any such storage warehouse, or any other person who shall make or cause or permit to be made, any alterations or false entries on the records provided for herein, shall be guilty of a misdemeanor, and upon conviction thereof shall be subject to a fine of not less than fifty dollars, nor more than five hundred dollars. (Id. § 1228q.)

NOTE: See also No. 101 and Nos. 191-192.

Confectionery.

69. Adulteration of Candy.—No person shall either directly or by his servant or as servant or agent of any other person or corporation, manufacture for sale or knowingly sell or offer to sell any candy adulterated by the admixture of terra alba, barytes, talc, or any other mineral substance or poisonous colors or flavors or other ingredients deleterious or injurious to health.

Any person violating any of the provisions of this section shall be punished by a fine not exceeding two hundred dollars nor less than twenty dollars. The candy so adulterated shall be forfeited and destroyed under the direction of the Circuit Court of a county or Corporation Court of a city, or the judge of either. (Code 1924, § 1193.)

NOTE: See also Nos. 4, 21, 89-90, 92, and 191-192.

Dairy Products—Substitutes for Dairy Products.

70. Duty of Commissioner to Foster Dairy Industry.—It shall also be the duty of the Dairy and Food Commissioner* to foster and encourage the dairy industry of the State, and, for that purpose he shall investigate the general conditions of the creameries, cheese factories, condensed milk factories, skimming stations, milk stations and farm dairies in this State, with full power to enter upon any premises for such investigation, with the object in view of improving the quality and creating and maintaining uniformity of the dairy products of the State; and should it beome necessary in the judgment of the Dairy and Food Commissioner, he may cause instruction to be given in any creamery, cheese factory, condensed milk factory, skimming station, milk station, or farm dairy, or in any locality of this State, and in order to secure the proper feeding and care of cows, or the practical operation of any plant producing dairy products, and in order to procure such a uniform and standard quality of dairy products in this State, he shall furnish a sufficient number of competent assistants, the appointment of whom is provided for in section eleven hundred and fifty-eight,† and they shall be duly qualified to act as such assistants. (Code 1924, § 1170.)

71. Warning and Punishment of One Using or Furnishing Impure Milk.—Whenever it is determined by the Dairy and Food Commissioner, his deputy or assistants, that any person is using, selling or furnishing to any skimming station, creamery, cheese factory, condensed milk factory, milk depot, farm dairy, milk dealer, the retail trade or to any consumer of milk, any impure or unwholesome milk or cream,

*Now Commissioner of Agriculture and Immigration. See No. 1. This law is to be corrected accordingly.

†See No. 2.

which impurity or unwholesomeness is caused by the unsanitary or filthy conditions of the premises where cows are kept or by the unsanitary or filthy care or handling of the cows, or from the use of unclean utensils or from unwholesome food, or from any other cause. Such person shall first be notified and warned by the said commissioner, his deputy or assistants not to use, sell or furnish such milk or cream to such skimming station, creamery, cheese factory, condensed milk factory, milk depot, farm dairy, milk dealers, the retail trade or to any consumer of milk, and any person failing to obey such notice and warning and continuing to use, sell or furnish to any skimming station, creamery, cheese factory, condensed milk factory, farm dairy, milk dealer or to the retail trade such impure or unwholesome milk or cream, shall be guilty of a misdemeanor, and, upon conviction thereof shall be punished by a fine of not less than ten dollars nor more than fifty dollars and costs of prosecution, or imprisonment in the county or city jail not to exceed ninety days, or until such fine and costs are paid, or both fine and imprisonment at the discretion of the court. (Id. § 1171.)

72. **Warning and Punishment in Regard to Unsanitary Conditions or any Skimming Station, Etc.**—Whenever it is determined by the Dairy and Food Commissioner, his deputy or assistants, that unsanitary conditions exist, or are permitted to exist, in the operation of any skimming station, creamery, cheese factory, condensed milk facory, milk depot, or farm dairy, the proprietor or proprietors or manager of said skimming station, creamery, cheese factory, condensed milk factory, milk depot, or farm dairy, shall be first notified and warned by the said commissioner, his deputy or assistants, to place such skimming station in a sanitary condition within a reasonable length of time; and any person or persons, owning or operating such skimming station, creamery, cheese factory, condensed milk factory, milk depot, or farm dairy, failing to obey such notice and warnings, shall be guilty of a misdemeanor, and upon conviction thereof, shall be punished by a fine of not less than twenty-five dollars nor more than three hundred dollars, and cost of prosecution, or imprisonment in jail not to exceed ninety days, or until such fine and costs are paid, or both fine and imprisonment at the discretion of the court. (Id. § 1172.)

73. **Registration of Dairy, Et Cetera; Report of Milk, Et Cetera, Received, and of Butter, Et Cetera, Manufactured.**—It shall be the duty of the proprietor or proprietors of every skimming station, creamery, cheese factory, condensed milk station, ice cream factory, or milk depot in the State where milk or cream is received, by purchase or otherwise, to register with the Dairy and Food Commissioner, on or before April first of each year, upon blanks furnished by said official, the location of such skimming station, creamery, cheese factory, condensed milk factory, ice cream factory, or milk depot, and the name of its owner or owners and manager. And it shall be the duty of the proprietor or proprietors of every skimming station, creamery, cheese factory, condensed milk factory, ice cream factory, or milk depot in this State, where milk or cream is received, by purchase or otherwise, to file a report with the Dairy and and Food Commissioner, said report to be made on or before April first of each year, upon blanks furnished by said official, and to show the amount of milk or cream received by said skimming station, creamery, cheese factory, condensed milk factory, ice cream factory, or milk depot during the year ending December thirty-first preceding; and said report shall show the amount of butter, cheese, condensed milk, or ice cream manufactured during the year, together with a list of the names and post office addresses of the patrons of said skimming station, creamery, cheese factory, condensed milk factory, ice cream factory, or milk depot. Any person or persons owning or operating a skimming station, creamery, cheese factory, condensed milk factory, ice cream factory, or milk depot failing to meet the provisions of this section shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not less than ten nor more than one hundred dollars, or confinement in jail not to exceed sixty days, or both; provided, however, that ice cream factories shall not be required under this act to furnish a list of the names and post office addresses of the perons, firms or corporations to whom the products of said ice cream factories are sold by retail. (Id. § 1173.)

74. **Penalty for Adulterating Milk.**—Whoever shall knowingly sell, supply, or bring to be manufactured, to any cheese or butter manufactory in this State, any milk, diluted with water, or in any way adulterated, or milk from which any cream has been taken, or milk commonly known as skimmed milk; or whoever shall keep back any part of the milk known as strippings, or knowingly bring or supply to any cheese manufactory milk that is tainted or partly sour, from want of proper care in keeping clean any vessel in which said milk is kept, after being notified of such taint or carelessness; or any cheese manufacturer who shall knowingly use, or direct any of his employees to use, for his or their individual benefit, any cream from the milk brought to the said cheese manufacturer, without the consent of all the owners thereof, shall, for each offense, forfeit not less than twenty-five nor more

than one hundred dollars, to be recovered by any person upon whom such fraud is committed. (Id. § 1197.)

75. Sale of Filled Milk a Fraud Upon the Public.—Filled milk, as herein defined, is hereby declared to be an adulterated article of food, injurious to the public health, and that its sale constitutes a fraud upon the public. (Id. § 1197a.)

76. "Filled Milk" Defined.—The term "filled milk" means any milk, cream or skimmed milk, whether or not condensed, evaporated, concentrated, powdered, dried, or desiccated, to which has been added, or which had been blended or compounded with, any fat or oil other than milk fat. (Id. § 1197b.)

77. Manufacture, Etc., of Filled Milk Unlawful.—It shall be unlawful for any person, firm, corporation or association to manufacture, sell or exchange, or have in possession with intent to sell or exchange, any filled milk under any name whatsoever. (Id. § 1197c.)

78. Use of Chocolate as a Flavor Not Prohibited; Articles to Which Act is Not Applicable.—Nothing in this act contained shall be construed as prohibiting the use of chocolate as a flavor; nor shall this act be construed as intended to apply to any article while the same is under the protection of the interstate and foreign commerce clause of the Constitution of the United States. (Id. § 1197d.)

79. Enforcement of Act.—The Dairy and Food Commissioner and his assistants are hereby charged with the enforcement of this act. (Id. § 1197e.)

80. Punishment for Violation of Act.—Any person, or any member or agent of any firm or association, or any officer, director or agent of any corporation, violating any provision of this act, shall be guilty of a misdemeanor, and, upon conviction, be fined not exceeding five hundred dollars, or imprisoned in jail for not exceeding six months or both. (Id. § 1197f.)

81. Oleomargarine, Process or Renovated Butter to be Handled in Such Manner as Will Show Its Real Character.—For the prevention of fraud and deception in the storage and sale of oleomargarine, process or renovated butter, it shall be unlawful for any person, firm or corporation, either by themselves or by any officer, agent, servant or employee, to sell, ship, consign, offer for sale, expose for sale, or have in possession with intent to sell or store or keep along with any goods or merchandise intended for sale or any materials entering into foods intended for sale any oleomargarine, process or renovated butter, unless the same shall be kept and presented in a manner and form separate and distinct from pure butter and in such manner and form as will clearly show its real character; and unless such person, firm or corporation shall in all other respects comply with the provisions of the two following sections. (Id. § 1198.)

82. Places of Public Entertainment Selling or Serving Oleomargarine, Process or Renovated Butter to Display Certain Signs.—Hotels, restaurants, licensed boarding houses and all other places of public entertainment, storing, using, selling, offering for sale, or serving oleomargarine, process or renovated butter shall first display signs in conspicuous places in their stores, factories, dining rooms, lunchrooms, et cetera, which signs must bear the words printed in black letters, one inch square on a white background reading as follows (in the case of oleomargarine or substitutes for pure butter): "We sell oleomargarine here," "We serve oleomargarine here"; or (in the case of process or renovated butter): "We sell process or (renovated) butter here," "We serve process (or renovated) butter here." The sign herein provided for shall contain the words specified and no others. (Id. § 1199.)

83. Manufacturers, Dealers, Etc., to Display Certain Signs; How Each Tub, Box, Wrapper, Etc., to be Marked.—Manufacturers, dealers or agents selling, exposing or offering for sale oleomargarine or substitutes for pure butter, or process or renovated butter, shall first display signs in conspicuous places, and as directed by the Dairy and Food Commissioner, or his agents, or assistants, in their store houses and sales rooms bearing the following words, and no others, printed in black letters one inch square on a white background (as the case may be): "We sell oleomargarine here," "We sell process (or renovated) butter here," and each tub, box, container and package of oleomargarine or process or renovated butter shall be plainly marked with the net weight of the contents of the package and the word "oleomargarine" or "process (or renovated) butter," as the case may be, to clearly indicate that the product is oleomargarine or process (or renovated) butter, and where sales of oleomargarine, process butter, or renovated butter are made by retail from bulk, the container or wrapper in which the product is delivered to the purchaser shall be plainly marked with the net weight of the contents of the package and the word "oleomargarine" or "process (or renovated) butter," as the case may be. (Id. § 1200.)

84. How Violation of Three Preceding Sections Punished; Dairy and Food Commissioner Charged With Their Enforcement.—Any person, firm or corporation, who shall violate any of the provisions of the three preceding sections shall be guilty of a misdemeanor, and for such offense shall be fined not exceeding two hun-

dred dollars. The Dairy and Food Commissioner is hereby charged with the enforcement of the provisions of the three preceding sections. (Id. § 1201.)

85. How Oleomargarine to be Branded; Delivery of Label to Purchaser; When Sale Void.—Every person who shall manufacture for sale, or who shall offer or expose for sale, any article or substance, in semblance of butter or cheese, not the legitimate product of the dairy and not made exclusively of milk or cream, but into which the oil or fat of animals not produced from milk enters as a component part, or into which melted butter or any oil thereof has been introduced to take the place of cream, shall distinctly and durably stamp, brand, or mark upon every tub, firkin, box, or package of such article or substance the word "Oleomargarine," in plain Roman letters, not less than half an inch square, placed horizontally in proper order, thus, "Oleomargarine." In all cases of retail sale of such article or substance in parcels, the seller shall deliver therewith to the purchaser a written or printed label, bearing the plainly written or printed word "Oleomargarine" in type or letter as aforesaid; and every sale of such article not so stamped, branded, marked, or labeled, shall be void, and no action shall be maintained for the price thereof. (Id. § 1202.)

86. Penalty for Violating Preceding Section; Presumptive Evidence.—If any person sell or offer to sell, or cause or procure to be sold, or offered or exposed for sale, or have in his possession with intent to sell, contrary to the provisions of the preceding section, any article or substance required by said section to be stamped, marked, or labeled; or, in case of retail sale, without delivery of a label as required by said section, he shall for every such offense be fined one hundred dollars, one-half to go to the informer, and the other half to the Commonwealth. On the trial for such offense, proof of the sale, or offer or exposure alleged, shall be presumptive evidence of knowledge of the character of the article so sold or offered. (Id. § 1203.)

87. Cans and Other Receptacles Used as Containers of Milk, Cream and Ice Cream, Must be Clean; Penalty for Violation.—No person, company, or corporation shall furnish or provide any can or other receptacle used for the purpose of transporting milk, cream or ice cream intended for human consumption or for manufacture into a product for human consumption, nor shall any person, company or corporation use any cans or other receptacles for the purpose of transporting milk, cream or ice cream intended for human consumption or for the manufacture into a product for human consumption unless said can or other receptacle and the cover or stopple thereto be thoroughly cleansed and sterilized by the use of hot water or steam, or both hot water and steam, before said can or other receptacle is delivered to the person who is to fill the same, or before said can or other receptacle is used for the purpose of transporting milk, cream or ice cream, as above set out.

Every person, company or corporation who shall receive milk, cream or ice cream, which is delivered in cans, bottles, or other receptacles shall thoroughly cleanse and sterilize such receptacle with hot water or steam, or both hot water and steam, as soon as practicable after the contents are removed, and before the said receptacles are returned to the shippers or persons from whom the same were received.

Any person who shall be convicted for violating any of the provisions of this section shall be fined the sum of five dollars for each bottle, can or other receptacle furnished or used which has not been cleansed and sterilized as herein provided. (Id. § 1204.)

88. Measuring Utensils for Milk and Cream to be Tested and Marked; Fees.—No bottle, pipette, or other measuring glass or utensils shall be used in this Commonwealth by an inspector of milk or cream, or by any person in any milk inspection laboratory, in determining by the Babcock or any other centrifugal machine, the percentage of fat in milk or cream for the purposes of the inspection or by any person in any milk depot, creamery, cheese factory, condensed milk factory, or other place, in determining by the Babcock or other centrifugal machine, the composition or value of milk or cream as a basis for payment in buying or selling, until it has been tested for accuracy and verified by the chief chemist, his assistants or other experts of the Department of Agriculture and Immigration of Virginia. Every such bottle, pipette, or other measuring glass or utensil shall be submitted to the Dairy and Food Commissioner by the owner or user thereof to be tested for accuracy before the same is used in this Commonwealth for the purposes aforesaid. The said commissioner shall cause the bottle, pipette or other measuring glass or utensil so submitted, after the fees herein provided have been paid, to be tested in the laboratory of the said Department of Agriculture and Immigration. The owner or user shall pay to the said commissioner, as a fee for making the test, a sum not exceeding five cents for each bottle, pipette or other measuring glass or utensil tested. Any bottle, pipette or other measuring glass or utensil that has been tested and verified as aforesaid shall be marked by the chief chemist, his assistants or other

experts of the said Department of Agriculture and Immigration, to indicate the fact of such test or verification; or if tested and found to be inaccurate, may be marked by him or them to indicate that it is inaccurate. No bottle, pipette or other measuring glass or utensil that has been marked by the said chief chemist, his assistants or other experts of the said Department of Agriculture and Immigration to indicate that it is inaccurate shall be used in this Commonwealth by any person in determining the composition or value of milk or cream. (Id. § 1205.)

89. Inspection of Centrifugal Machines and Scales; When Condemned; Fees.—Every Babcock or other centrifugal machine, or cream test or butter fat test scale, used in this Commonwealth by any inspector of milk or cream or by any person in any milk inspection laboratory for determining the composition of milk or cream for purposes of inspection, or by any person in any milk depot, ice cream factory, confectionery, creamery, cheese factory, condensed milk factory, laboratory or other place for determining the composition or value of milk or cream as a basis for payment in buying or selling, shall be subject to inspection at least once in each year by the Dairy and Food Commissioner, his assistants or agents. The owner or user of any such scale shall pay to the said commissioner as a fee for making such annual inspection the sum of one dollar for each scale inspected. Any Babcock or other centrifugal scale used as aforesaid, that is not in the opinion of the said commissioner or his assistants or agents in condition to give accurate results, may be condemned by the commissioner or his assistants or agents. No Babcock or other centrifugal machine or scale that has been condemned by said commissioner or his assistants or agents as not in condition to give accurate results shall be used in this Commonwealth by any person for determining the composition or value of milk or cream as aforesaid, unless the machine or scale be changed to the satisfaction of the said commissioner or his assistants or agents, and approved by him. (Id. § 1206.)

90. Manipulators of Machines to Procure Certificates; When Certificate Revoked.—No inspector of milk or cream, and no person in any milk inspection laboratory, shall manipulate the Babcock or other centrifugal machine for the purpose of determining the composition of milk or cream for purposes of inspection, and no person in any milk depot, ice cream factory, confectionery, creamery, cheese factory, condensed milk factory, or other place in this Commonwealth shall manipulate the Babcock or other centrifugal machine for the purpose of determining the composition or value of milk or cream as a basis for payment in buying or selling, without first obtaining a certificate from the Dairy and Food Commissioner that he is competent to perform such work. The fee for such certificate shall be one dollar and shall be paid by the applicant therefor to the said commissioner. In case any holder of a certificate is notified by the Dairy and Food Commissioner, his assistants or agents to correct his use of a Babcock or other centrifugal machine, and such person or holder of a certificate so notified fails to comply with the notice and correct his use of a Babcock or other centrifugal machine, he or they shall be deemed guilty of a violation of law and in the discretion of said commissioner, and chief chemist of the Department of Agriculture and Immigration acting jointly, may forfeit his certificate. No holder of a certificate whose authority to manipulate a Babcock or other centrifugal machine has been revoked by the Dairy and Food Commissioner and said chief chemist, shall thereafter manipulate in this Commonwealth any centrifugal machine for the purposes aforesaid until his certificate has been renewed. (Id. § 1207.)

91. To Whom Certificates Issued; Rules for Application and Examination Therefor; Standards of Milk and Cream Measure; Samples.—The Dairy and Food Commissioner is hereby authorized to issue certificates of competency to such persons desiring to manipulate the Babcock or other centrifugal machine who may present certificates of such competency properly filled out and signed by the professor of dairy husbandry or other authorized officer of the Virginia Agricultural and Mechanical College and Polytechnic Institute, and to such other persons as in the opinion of the Dairy and Food Commissioner are competent to manipulate said machines. The said commissioner may make and enforce rules governing applications for such certificates and the granting thereof and may, in his discretion, revoke the authority of any holder of a certificate who, in the opinion of the Dairy and Food Commissioner and said chief chemist, is not correctly manipulating any Babcock or other centrifugal machine as aforesaid or is using dirty or otherwise unsatisfactory glassware or utensils. The Dairy and Food Commissioner is hereby authorized to fix such standards and to issue such regulations as may be deemed necessary to carry out the provisions of law; but in the use of the Babcock or other centrifugal machine, the standard milk measurer or pipettes shall have a capacity of seventeen and six-tenths cubic centimeters and the standard test tubes or bottles for milk shall have a capacity of two cubic centimeters for each ten per centum marked on the necks thereof; cream shall be tested by weight and the standard unit for testing shall be eighteen grams, and it is hereby made a violation of law to use any other standard

of milk or cream measure where milk or cream is purchased by or furnished to creameries or cheese factories, and where the value of said milk or cream is determined by the per centum of butter fat contained in the same or where the value of milk or cream is determined by the per centum of butter fat contained in the same by the Babcock or other centrifugal test or cream test or butter fat test scales. In sampling milk or cream from which composite tests are to be made to determine the per centum of butter fat contained therein, no such sample or sampling shall be lawful unless a sample be taken from each weighing, and the quantity thus used shall be proportioned to the total weight of the milk or cream tested. (Id. § 1208.)

92. Tests of Measuring Glasses or Utensils; Inspection of Machines and Scales Annually; Collection of Fees; Entry by Commissioner and Agents Upon Certain Premises.—It shall be the duty of the Dairy and Food Commissioner and he is hereby authorized, to test or cause to be tested all bottles, pipettes and other measuring glasses or utensils submitted to him as provided in section twelve hundred and five, to inspect or cause to be inspected at least once each year every Babcock or other centrifugal machine or cream test or butter fat test scales used in this Commonwealth by an inspector of milk or cream or by any person in any milk inspection laboratory for purposes of inspection, or by any person in any milk depot, ice cream factory, confectionery, creamery, cheese factory, condensed milk factory or other place for determining the composition or value of milk or cream as a basis for payment in buying or selling, and to collect or cause to be collected the fees provided for by law. The said Dairy and Food Commissioner, his assistants or agents, are further authorized to enter upon any premises in this Commonwealth where any centrifugal machine or cream test and butter fat test scales are used as aforesaid to inspect the same and to ascertain if the provisions of law are complied with. (Id. § 1209.)

93. Penalty for Over-Reading or Under-Reading, Etc., Test; Effect of Tender of Payment.—Any person who shall by himself or as the officer, servant, agent or employee of any person, firm or corporation, falsely manipulate or underread or overread the Babcock test or any other contrivance used for the purpose of determining the amount of milk fat in milk or cream, or who shall make any false determination of any test or contrivance used for the purpose of determining the amount of milk fat in any dairy products, shall be guilty of a misdemeanor. The tender of payment for milk or cream at any given test, shall constitute prima facie evidence that such test was made. (Id. § 1210.)

94. Commissioner to Enforce Six Preceding Sections; Parties Exempt From Their Operation.—It shall be the duty of the Dairy and Food Commissioner to see that the provisions of the six preceding sections are complied with, and he may in his discretion prosecute or cause to be prosecuted any person violating any of their provisions. But they shall not be construed to affect any persons using any centrifugal or other machine or test in determining the composition or value of milk or cream when such determination is made for the information of such persons only and not for purposes of inspection, or as a basis for payment in buying or selling. (Id. § 1211.)

95. Disposition of Fees; Payment of Expenses.—The money collected under the provisions of the seven preceding sections shall be paid into the State treasury to the credit of the Dairy and Food Commissioner of the Department of Agriculture and Immigration and used to help defray the expenses of the office of the said division in addition to the regular appropriation therefor. The expenses incident to the enforcement of the said seven preceding sections shall be paid from the funds in the State treasury to the credit of the Dairy and Food Division of the Department of Agriculture and Immigration as the other expenses of said division are paid. (Id. § 1212.)

96. Obstruction of Commissioner or His Agents.—Any person who shall hinder or obstruct the Dairy and Food Commissioner, his assistants or agents in the discharge of the authority or duty imposed upon him or them by the eight preceding sections, and any person, firm or corporation violating any of their provisions shall be guilty of a misdemeanor and, upon conviction, shall be punished by a fine of not less than ten dollars nor more than fifty dollars, and costs of prosecution, or by imprisonment in the county or city jail not to exceed ninety days or until such fine and costs are paid, or both fine and imprisonment at the discretion of the court. (Id. § 1213.)

97. "Person" or "Holder" Defined.—The word "person" or "holder" as used in the nine preceding sections shall also include a corporation, association or partnership or two or more persons having a joint or common interest. (Id. § 1214.)

98. Definition of Varieties of Ice Cream and Milk.—Ice cream is a frozen product made from cream, milk and sugar, with or without a natural flavoring, and contains not less than eight per centum of milk fat.

Fruit ice cream is a frozen product made from cream, milk, sugar and sound, clean, mature fruits, and contains not less than eight per centum of milk fat.

Nut ice cream is a frozen product made from cream, milk, sugar and sound, nonrancid nuts, and contains not less than eight per centum of milk fat.

In the manufacture of ice cream the use of a small amount of gelatine, not exceeding four ounces to ten gallons of cream, is permitted, together with sugar and eggs, and such coloring matter as permitted under the national pure food laws.

Condensed skimmed milk is skim milk from which a considerable portion of water has been evaporated. (Id. § 1215.)

99. Unlawful to Sell Ice Cream Which Does Not Meet the Fixed Standards.—It shall be unlawful for any person, firm or corporation to offer or expose for sale any ice cream or condensed skimmed milk which does not meet the standards fixed by the preceding section for the article or articles manufactured, exposed or offered for sale as ice cream or condensed skimmed milk.

Whenever condensed skimmed milk is offered or exposed for sale in this State, each can or container shall be plainly and clearly marked in letters of appropriate size, "Condensed Skimmed Milk." (Id. § 1216.)

100. Penalty for Violation of the Two Preceding Sections.—Any manufacturer, company, or person, who shall violate any of the provisions of the two preceding sections, shall be guilty of a misdemeanor and for such offense shall be fined for the first offense not more than twenty-five dollars, and for each subsequent offense, not exceeding one hundred dollars. (Id. § 1217.)

NOTE: See also Nos. 1 et seq., 52 et seq., 125 et seq., 163 et seq., 191-192, 309, 395 et seq., and 420.

Edible Fats and Oils.

See No. 52 et seq.

Eggs.

101. Rules and Regulations of Dairy and Food Commissioner Enacted Into Law; Punishment for Violation of Provisions of Section.—1. The rules and regulations of the Dairy and Food Commissioner* fixed and established by and with the approval of the Board of Agriculture and Immigration be, and they are hereby, enacted into law, as follows:

2. . . . (22) Eggs showing deterioration by chemical analysis or otherwise shall not knowingly be sold as fresh eggs, but shall be classed as storage eggs and so marked, and all invoices and copies of same covering storage goods must be plainly marked "storage goods" in type or writing sufficiently large to be easily discernible. . . .

3. Any person, firm, corporation or association violating any of the provisions of this section shall be guilty of a misdemeanor, and upon conviction thereof, shall be punished by a fine of not less than twenty-five nor more than three hundred dollars. (Code 1924 and Code Supp. 1926, § 1227a.)

NOTE: See also Nos. 52 et seq. and 163 et seq.

Feeding Stuffs.

102. Duty of the Dairy and Food Commissioner; Analysis of Certain Food Stuffs; Appointments.—The Dairy and Food Commissioner* shall cause to be procured from time to time, and under the rules and regulations to be prescribed by him, with the approval of the Commissioner and Board of Agriculture and Immigration, in accordance with the provisions of this chapter, samples of concentrated commercial feeding stuffs exposed or offered for sale in this State, and shall cause the same to be analyzed and examined microscopically or otherwise by the chemists or other experts of the Department of Agriculture and Immigration; and he is hereby authorized to make such publication of the results of the examination, analyses, and so forth, as he may deem proper; and for the proper execution of the provisions of this chapter the Dairy and Food Commissioner shall, with the approval of the commissioner and the board, make such appointments as may be necessary, and the board shall fix the compensation of such appointees. (Code 1924, § 1229.)

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*Now Commissioner of Agriculture and Immigration. See No. 1. This law is to be corrected accordingly.

103. Any Person, Etc., Selling, Etc., Any Adulterated, Etc., Concentrated Commercial Feeding Stuff Shall be Guilty of a Misdemeanor; Punishment.—Any person, firm or corporation, either directly or through any agent, who shall manufacture, sell, expose for sale, or have in his possession with intent to sell, any concentrated commercial feeding stuff which is adultered [adulterated] or misbranded within the meaning of this chapter, or within the rules and regulations prescribed in accordance with the provisions of this chapter by the Dairy and Food Commissioner, with the approval of the Commissioner and Board of Agriculture and Immigration, or who shall violate any of the provisions of this chapter, a punishment for which is not otherwise specifically prescribed in this chapter, shall be guilty of a misdemeanor, and for such offense shall be fined not exceeding two hundred dollars for the first offense, and for each subsequent offense not exceeding three hundred dollars, or be imprisoned not exceeding one year, or both fine and imprisonment, in the discretion of the court; and such fines, less legal costs and charges, shall be paid into the treasury of the State. (Id. § 1230.)

104. How Analysis Made; Manufacturer, Etc., of Adulterated, Etc., Articles Shall be Notified; Hearing; Certificate of Analyses as Evidence.—The chemists or other experts of the Department of Agriculture and Immigration shall make, by the methods in use at the time by the Association of Agricultural Chemists of the United States, examinations of specimens of concentrated commercial feeding stuffs exposed or offered for sale in Virginia, which may be collected from time to time as prescribed by this chapter, in various parts of the State; and if it shall appear from any such examination that any such specimen is adulterated or misbranded within the meaning of this chapter, or the rules and regulations prescribed by the Dairy and Food Commissioner, notice thereof shall be given to the manufacturer, guarantor, or person from whom the sample was obtained. Any person so notified shall be given an opportunity to be heard under such rules and regulations as may be prescribed by the Dairy and Food Commissioner and the Commissioner and Board of Agriculture and Immigration, and if it appears that any of the provisions of this chapter have been violated, the Dairy and Food Commissioner shall certify the facts to the Commonwealth's attorney of the city or county in which the sample was obtained, and furnish that officer with a copy of the results of the analysis or other examinations of such article duly authenticated by the analyst or other officer making such examination under the other of such officer. In all prosecutions arising under the provisions of this chapter the certificates of the analyst or other officer making the analysis or examination, when duly sworn to by such officer, shall be prima facie evidence of the fact or facts therein certified. (Id. § 1231.)

105. Duty of Commonwealth's Attorney to Prosecute.—It shall be the duty of every Commonwealth's attorney to whom the Dairy and Food Commissioner shall report any violation of the provisions of this chapter to cause the proceedings to be commenced and prosecuted without delay for the fines and penalties in such cases prescribed. (Id. § 1232.)

106. Definition of Concentrated Commercial Feeding Stuffs; What it Does Not Include.—The term concentrated commercial feeding stuffs, as used in this chapter, shall be held to include all feeds intended for feeding to live stock and poultry, except hays, straws and corn stover, when the same are not mixed with other materials; nor shall it apply to the whole unmixed seeds or grains of cereals, when not mixed with other materials; nor shall it include the pure products of wheat, known as middlings, shorts and brain [bran] made from wheat only; nor to the pure products of corn, known as corn meal, hominy grits and corn bran.

Nothing contained in this chapter shall be construed to exempt any products intended for feeding to domestic animals, from a printed statement certifying the net weight of the contents of the package, the name under which it is offered for sale, and the name and address of the manufacturer of said product, but when said product shall be sold and delivered to the consumer at the place of manufacture, the miller or manufacturer thereof shall not be required to furnish the printed statement hereinbefore provided for; nor shall this chapter apply to the by-products of wheat as hereinbefore expressed, nor to corn meal, hominy, grits or corn bran, when the sales thereof are made by farmers growing the wheat and corn from which said products are made. (Id. § 1233.)

107. What Must be on Exterior of Package, Etc., of Concentrated Commercial Feeding Stuff.—Every lot or parcel of concentrated commercial feeding stuff sold, offered or exposed for sale within this State, shall have affixed thereto, or printed thereon, in a conspicuous place on the outside thereof, a legible and plainly printed statement, in the English language, clearly and truly certifying the net weight of the package; the name, brand or trade-mark under which the article is sold; the name and address of the manufacturer, jobber or importer; the name of each and all ingredients of which the article is composed; a guarantee that the contents are pure and [un]adulterated and a statement of the maximum percentage

it contains of crude fiber and the minimum percentage of crude fat and the minimum percentage of crude protein, allowing one per centum of nitrogen to equal six and one-fourth per centum of protein; all three constituents to be determined by the methods in use at the time by the association of Official Agricultural Chemists of the United States. But all concentrated commercial feeding stuffs shall be in standard weight bags or packages of twenty-five, fifty, seventy-five, one hundred, one hundred and twenty-five, one hundred and forty, one hundred and fifty, one hundred and seventy-five, and two hundred pounds. (Id. § 1234.)

108. Every Manufacturer, Etc., Before Selling, Etc., in This State Shall do Certain Things.—Each and every manufacturer, importer, jobber, agent or seller, before selling, offering or exposing for sale in this State any concentrated commercial feeding stuff shall, for each and every feeding stuff bearing a distinguishing name or trade-mark, file for registration with the Dairy and Food Commissioner a copy of the statement required by the preceding section and accompany said statement, on request, by a sealed glass jar or bottle containing at least one pound of such feeding stuff to be sold, exposed or offered for sale, which sample shall correspond within reasonable limits to the feeding stuff which it represents in the percentage of crude protein, crude fat, and crude fibre which it contains. (Id. § 1235.)

109. Agent of Manufacturer, Etc., Need Not File Statement When Manufacturer Has Done So.—Whenever a manufacturer, importer or jobber of any concentrated commercial feeding stuff shall have filed a statement as required by the preceding section, no agent or seller of such manufacturer, importer or jobber shall be required to file such statement. (Id. § 1236.)

110. The Commissioner May Refuse to Register Certain Feeding Stuffs; May Cancel Registration of Feeding Stuffs Violating Provisions of Chapter; Other Powers of Commissioner.—The Dairy and Food Commissioner shall have power to refuse to register any concentrated commercial feeding stuff under a name which would be misleading as to the materials of which it is composed, or when the names of each and all of its ingredients are not stated, or if the guarantees of the constituent parts of the feed do not meet the standards adopted by the Dairy and Food Commissioner, with the approval of the Commissioner and the Board of Agriculture and Immigration. Should any concentrated commercial feeding stuffs be registered, and if it afterwards discovered that they are in violation of any of the provisions of this chapter, the Dairy and Food Commissioner shall have the power to cancel such registration. The Dairy and Food Commissioner shall also have the power to refuse to allow any manufacturer, importer, jobber, dealer or agent to lower the guaranteed analysis or change the ingredients of his or their feeds during a calendar year for which registered, unless satisfactory reasons are presented for making such change or changes. (Id. § 1237.)

111. Power of the Commissioner to Adopt Rules, Etc.—The Dairy and Food Commissioner, with the approval of the commissioner and Board of Agriculture and Immigration, shall from time to time adopt rules and regulations for carrying out the provisions of this chapter, fix and publish standards or limits of variability permissible in any article of concentrated commercial feeding stuff, and these standards, rules and regulations when so published, shall be standards for Virginia before all courts, but said standards shall not go into effect until a reasonable time after publication. The Dairy and Food Commissioner, with the approval of the commissioner and Board of Agriculture and Immigration, shall have authority to make uniform rules and regulations for carrying out the provisions of this chapter. (Id. § 1238.)

112. Inspection Tax.—Each and every manufacturer, jobber, importer, agent, or seller of any concentrated commercial feeding stuff, as defined in section twelve hundred and thirty-three shall pay the Dairy and Food Commissioner an inspection tax of fifteen cents per ton for each ton of such commercial feeding stuff, sold, offered or exposed for sale or distributed in this State, and shall affix to or accompany each car shipped in bulk and to each bag, barrel or other package of such concentrated commercial feeding stuff, a tag or stamp to be furnished by the Dairy and Food Commissioner stating that all charges specified in this section have been paid: Provided whenever any concentrated commercial feeding stuff, as defined in section twelve hundred and thirty-three is kept for sale in bulk, stored in bins or otherwise, the manufacturer, dealer, jobber or importer keeping the same for sale shall keep on hand cards of proper size, upon which the statement or statements required in section twelve hundred and thirty-four is or are plainly printed; and if the feeding stuff is sold at retail in bulk, or if it is put up in packages belonging to the purchaser, the manufacturer, dealer, jobber or importer, shall furnish the purchaser upon request with one of said cards, upon which is or are printed the statement or statements described in this section, together with sufficient tax tags or stamp to cover same; provided, that the inspection tax of fifteen cents per ton shall not apply to un-

mixed whole seeds and grains when not mixed with other materials; and provided also, that wheat and corn millers, their agents and all distributors or dealers exposing for sale, selling or distributing pure wheat middlings, shorts or bran, or pure corn meal, hominy, grits or corn bran, exempted from the inspection fee of fifteen cents per ton, shall register with the Dairy and Food Commissioner, on or before the first day of July in each and every year, and at the time of such registration pay to the Dairy and Food Commissioner a registration or inspection fee as follows, namely: the wheat millers operating with a capacity of over fifteen barrels and not over twenty-five barrels of flour per day, five dollars; over twenty-five barrels and not over fifty barrels per day, ten dollars; over fifty barrels and not over two hundred barrels per day, fifteen dollars; and all over two hundred barrels per day, twenty dollars; and the corn millers operating with a capacity of over ninety bushels of meal per day and not over one hundred and fifty bushels per day, five dollars; over one hundred and fifty bushels per day and not over three hundred bushels, ten dollars; over three hundred bushels per day and not over twelve hundred bushels, fifteen dollars; and over twelve hundred bushels per day, twenty dollars; but when the manufacturer, agent or shipper has paid the registration or inspection fee provided for in this section, no agent or seller of such manufacturer or shipper shall be required to pay any additional registration or inspection fee for the same year. It is further provided that, upon demand, all inspection tags or stamps shall be redeemed by the Dairy and Food Commissioner upon surrender of same, accompanied by an affidavit that the same have not been used, provided said tags or stamps are returned for redemption within the time fixed by the Board of Agriculture and Immigration. The money collected under the provisions of this section shall be paid into the State treasury to the credit of the Department of Agriculture and used to help defray the expenses of the office of the Dairy and Food Commissioner in addition to the regular appropriation therefor. Nothing in this chapter shall be construed to restrict or prohibit the sale of concentrated commercial feeding stuffs in bulk to each other by importers, manufacturers, or manipulators who mix concentrated commercial feeding stuffs for sale. The Dairy and Food Commissioner is hereby empowered to prescribe the form of such tax tags or stamps. (Id. § 1239.)

113. What is a Violation of this Chapter; Penalty.—Any manufacturer, importer, jobber, dealer, or distributor, who shall sell, offer, or expose for sale or distribution in this State any concentrated commercial feeding stuff, without having attached thereto or furnished therewith such tax stamps, labels, or tags, as is required by the preceding sections, or who shall use such stamps, labels, or tags a second time to avoid the payment of the tonnage tax, or who shall counterfeit or use a counterfeit of such tax stamps, labels, or tags, or who shall sell, offer or expose for sale, or distribution in this State any concentrated commercial feeding stuff, without complying with the requirements of this chapter, or which may contain substantially a smaller percentage of crude protein, or crude fat, or a larger percentage of crude fibre, than it is certified to contain, or who shall mix or adulterate any feeding stuff with foreign mineral or other substances, such as rice, chaff, hulls, cotton seed hulls, buckwheat hulls, peanut shells, corn cobs, oat hulls, weed seeds, elevator chaff, screenings, flax plant refuse, or similar materials of little or no feeding value, or with substances injurious to the health of domestic animals, shall be guilty of a violation of the provisions of this chapter, and, in addition to the fine prescribed in section twelve hundred and thirty, the lot of feeding [stuff] mixed and adulterated, as aforesaid, shall be subject to seizure, condemnation or sale by the circuit or corporation courts, as the case may be, the proceeds from such sales to be deposited in the State treasury. The court, however, may, in its discretion, release the feeding stuff so withdrawn when the requirements of this chapter have been complied with, and upon payment of all costs and expenses incurred by the State in any proceedings connected with such seizure and withdrawal.

An article of concentrated commercial feeding stuff, containing as ingredients oat hulls, peanut hulls or shells, cotton seed hulls, flax plant by-products or screenings, shall not be deemed to be in violation of the provisions of this section, when the name of every such ingredient is clearly and correctly stated on the analysis tags or brand with such other information as is required to be shown on each package of such concentrated commercial feeding stuff, and when the statement required to be shown on said analysis tag or brand is in accordance with the regulations prescribed by the Dairy and Food Commissioner, with the approval of the Commissioner and Board of Agriculture and Immigration. (Id. § 1240.)

114. How Stuff for Analysis is Taken; Publication of Results.—The Dairy and Food Commissioner, together with his deputies, agents, and assistants, shall have free access to all places of business, millls, buildings, carriages, cars, vessels and packages of whatsoever kind used in the manufacture, transportation, importation or sale of any concentrated commercial feeding stuff, and shall have power and au-

thority to open any package containing or supposed to contain any concentrated commercial feeding stuff, and, upon tender and full payment of the selling price of said sample, to take therefrom, in the manner hereinafter prescribed, samples for analysis; and he shall annually cause to be analyzed, in his discretion, at least one sample so taken of every concentrated commercial feeding stuff that is found, sold, offered or exposed for sale in this State under the provisions of this chapter. Said sample, not less than one-fourth pound in weight, shall be taken from not less than ten bags or packages, or, if there be less than ten bags or packages, then the sample shall be taken from each bag or package, if it be in bag or package form, or if such feeding stuff be in bulk, then it shall be taken from ten different places in the lot. The Dairy and Food Commissioner is hereby authorized to publish from time to time in reports or bulletins, the results of the analysis of such sample or samples, together with such additional information as circumstances advise; provided, however, that if such sample or samples as analyzed by the analyst differ from the statement prescribed in section twelve hundred and thirty-four, then at least thirty days before publication of the results of such analysis the Dairy and Food Commissioner may give written notice of such results to the manufacturer, importer, agent or jobber of such feeding stuff, if the name and address of the manufacturer, jobber or importer be known. (Id. § 1241.)

115. Impeding, Obstructing, Etc., the Chemist, Etc., is a Violation of This Chapter.—Any manufacturer, importer, jobber, agent or dealer who refuses to comply with the requirements of the provisions of this chapter or any manufacturer, importer, jobber, agent or dealer or person who shall impede, obstruct, hinder or otherwise prevent or attempt to prevent any chemist, inspector or other authorized agents in the performance of his duty in connection with the provisions of this chapter, shall be guilty of a violation of the provisions of the same. (Id. § 1242.)

116. Analysis of Food Stuffs, Etc., by the Chemical Department of the State Agricultural Department.—Any person, firm or corporation engaged in the business of buying or handling, or [of] feeding foodstuffs, for cattle, stock and other domestic animals in this State, may send samples of such foodstuffs to the chemical department of the State Agricultural Department, with request that the same be analyzed and the State Chemist with the approval of the Dairy and Food Commissioner shall see that such analyses are made with all reasonable expedition and shall report the results thereof to the person sending such samples without charge, so far as the appropriation made by the State to the Dairy and Food Department will permit, provided the use of said appropriation for such purpose shall be in the discretion of the Dairy and Food Commissioner. (Id. § 1244.)

117. Dairy and Food Commissioner to Cause to be Collected and Analyzed Samples of Condimental Stock and Poultry Foods, Et Cetera; Power to Make Appointments.—The Dairy and Food Commissioner shall cause to be collected from time to time, and under the rules and regulations prescribed by him, with the approval of the commissioner and Board of Agriculture and Immigration in accordance with the provisions of this section, samples of condimental stock and poultry foods and powders, and patented, proprietary or trade-mark stock and poultry foods and powders, and liquid preparations of like kind of intended for like purposes, for which a nutritive value combined with a medicinal property is claimed, or for which either a nutritive or a medicinal property is claimed or which is intended as an alternative [alterative] or tonic for horses, cattle, swine or poultry, and which are found exposed or offered for sale in this State, and shall cause same to be analyzed and examined microscopically or otherwise by the chemists or other experts of the Department of Agriculture and Immigration, and he is hereby authorized to make such publication of the results of the examination, analysis, and so forth, as he may deem proper, and for the proper execution of the provisions of this section, the Dairy and Food Commissioner shall, with the approval of the commissioner and the board, make such appointments as may be necessary, and the board shall fix the compensation of such appointees. (Id. § 1245.)

118. Manufacturers, Dealers, Et Cetera, to Make Application to Sell Condimental Stock and Poultry Foods, Et Cetera; Inspection Fee; Certificate; Disposition of Fees.—Before any manufacturer, company, person or persons shall sell, offer or expose for sale in this State any condimental stock and poultry food or powder, and liquid preparations of like kind or intended for like purposes he, or they shall for each and every brand of condimental stock and poultry food or powder, and for each and every brand of patented, proprietary or trade-mark stock and poultry food and powders and liquid preparations of like kind or intended for like purposes, for which a nutritive value combined with a medicinal property is claimed, or for which either a nutritive or a medicinal property is claimed, or which is intended as an alterative or tonic for horses, cattle, swine or poultry, make applications to the Dairy and Food Commissioner to sell the same, and shall pay annually to the

Dairy and Food Commissioner at the time of making application to sell, an inspection fee of twenty dollars for each and every brand of condimental foods and powders and each brand of patented, proprietary or trade-mark stock and poultry food and powders, and each brand of liquid preparations of like kind or intended for like purposes, he or they may desire to offer for sale in this State, said fee or fees so paid to be used for the purpose of defraying the costs of taking samples and making such examinations and analyses as is provided for in the preceding section. The Dairy and Food Commissioner shall issue, on receipt of the proper application and inspection fee or fees, a certificate granting the right to sell in this State, the article or articles for which certificate was issued, which certificate shall terminate on the last day of the calendar year in which issued. The money collected for inspection fees under the provisions of this section shall be paid into the State treasury, and be used to help defray the expenses of the office of the Dairy and Food Commissioner, in addition to the regular appropriation therefor. (Id. § 1246.)

119. If Manufacturer or Importer, Et Cetera, Has Paid Inspection Fee, no Agent or Seller Need Pay it.--Whenever a manufacturer, importer, agent or jobber of any condimental stock or poultry food, powders or liquids, described in the preceding section, shall have paid the inspection fee or fees provided therein, no agent or seller of such manufacturer, importer or jobber, shall be required to pay such fee. (Id. § 1247.)

120. If Foods or Powders Are Not Labeled Correctly, or if They Contain Deleterious Substances, Commissioner May Decline to Issue Certificate or to Declare Forfeited One Already Granted.—The Dairy and Food Commissioner shall have the power to decline to issue a certificate, or to declare forfeited a certificate already granted for the sale of such condimental stock and poultry foods, powders, or liquids, as are described in section twelve hundred and forty-five, if each package of said foods and powders are not labeled in accordance with the rules and regulations prescribed by the Dairy and Food Commissioner, with the approval of the Commissioner and Board of Agriculture and Immigration, or if such foods and powders contain any substance or substances which may prove deleterious or harmful when used for the purpose or purposes for which they are recommended. (Id. § 1248.)

121. Penalty for Violation of Section Twelve Hundred and Forty-six.—Any manufacturer, company, person or persons who shall violate any of the provisions of section twelve hundred and forty-six shall be guilty of a misdemeanor, and for such offense shall be fined twenty dollars for the first offense, and not exceeding one hundred dollars for such subsequent offense, or be imprisoned not exceeding three months, or both fine and imprisonment, in the discretion of the court, and such fine, less legal costs and charges, shall be paid into the treasury of the State. (Id. § 1249.)

NOTE: See also Nos. 31, 124 and 163 et seq.

Fish.

See Nos. 52 et seq. and 125 et seq.

Flavoring Extracts.

See Nos. 288 and 293.

Flour, Meal, Etc.

122. Adulteration of Flour.—No person or persons shall hereafter adulterate wheat flour by the addition of corn starch, corn flour, barley flour, or other adulteration, nor shall manufacture, sell or exchange, or expose for sale or exchange, or have in his or their possession for the purposes of sale or exchange any wheat flour adulterated with corn starch, corn flour, barley flour, or other adulteration, nor shall receive or solicit any order for the manufacture, sale, exchange, or delivery within this State of any wheat flour adulterated with corn starch, corn flour, barley flour, or other adulteration unless he or they shall plainly and durably brand, stamp, or mark each package, parcel, box, or barrel containing such adulterated wheat flour with the word "combination," and beneath this word shall be plainly stamped on every barrel, box or other package the name and percentage of each ingredient used therein, and any such person or persons who shall fail to stamp each barrel, box, or package as aforesaid, or who shall mis-state the percentage of every ingredient in such combination shall be deemed guilty of a misdemeanor, and on conviction thereof shall be punished by a fine of not less than twenty-five dollars

or exceeding one hundred dollars for each offense, or imprisoned in jail not less than sixty days, or both in the discretion of the court.

The possession by any person who is either manufacturer, merchant, wholesale or retail dealer of any packages, parcels, or boxes containing any of the combination flour defined by this section that is not plainly and durably marked with the word "combination" shall be prima facie evidence that the order upon which such flour was obtained was for such flour; provided, that if packages, and so forth, containing combination flour shall be plainly and durably marked as required by the provisions of this section before or when the same are sold or exchanged or exposed for sale or exchange, then the person or persons so selling or exposing for sale or exchange the same shall be exempt from the penalties of this section. (Code 1924, § 1194.)

123. Deception in the Sale of Meal Ground or Milled From Indian Corn.—(a) No person shall sell, offer for sale, expose for sale, or have in his possession with intent to sell, any meal ground or milled outside of this State, from Indian corn, knowing the same to be ground or milled outside of this State, under the name of "Virginia" or "Old Dominion" meal, or under any other name, or with any character, design, mark, or name on the sacks, bags, or packages intended to create the impression that such meal has been ground or milled within the State of Virginia.

(b) No person shall sell, offer, or expose for sale any meal ground or milled within this State under the name of "Virginia" or "Old Dominion" meal manufactured from Indian corn grown west of the boundaries of this State and known as "western corn" nor bearing any character, design, or mark on the sacks, bags, or packages containing said meal intended to create the impression that such meal has been ground or milled from Indian corn grown within this State.

(c) Nothing contained in this section shall be construed to prevent the sale within this State of meal ground or milled out of this State from Indian corn not marked in such manner as to create the impression that such meal was ground or milled within this State from Indian corn, nor be so construed as to prevent the sale within this State of meal ground or milled within this State from Indian corn grown west of the boundaries of this State, and known as "western corn," not labeled or branded with such characters or marks as to create the impression that such meal was ground or milled from Indian corn grown within this State.

(d) Any person violating any of the provisions of this section shall be deemed guilty of a misdemeanor, and be punished by a fine of not less than ten dollars nor more than two hundred dollars, or by imprisonment in the jail of the county or city in which the offense is committed for a term not exceeding six months.

(e) In any prosecution for a violation of clause (a) of this section, proof of the sale or offer or exposure for sale, or possession with intent to sell, shall be prima facie evidence of knowledge that such meal was ground or milled outside of this State.

(f) In any prosecution for a violation of clause (b) of this section, proof of the sale or offer or exposure for sale, shall be prima facie evidence of knowledge that such meal was ground or milled from Indian corn grown west of the boundaries of this State and known as "western corn." (Id. § 1195.)

124. Unlawful to Manufacture for Sale, or Knowingly to Sell or Offer to Sell, Any Article or Product as Mill Feed, Mill Stuff, Bran, Brown Stuff, or Ship Stuff, Composed of Ingredients Other Than the Bran of Corn, Wheat, or Other Cereal Grain; Penalty.—It shall be unlawful for any person to manufacture for sale, or knowingly to sell or offer to sell, as mill feed, mill stuff, bran, brown stuff, or ship stuff, any article or product composed of ingredients other than bran of corn, wheat, or other cereal grain. Any person who shall violate this section shall be guilty of a misdemeanor, and for each offense shall be fined not less than ten dollars nor more than two hundred dollars. (Id. § 1196.)

125. For What Inspectors May be Appointed, and by Whom.—Inspectors may be appointed of any of the following commodities, to-wit: Flour, corn meal, bread, salt, fish, pork, beef, tar, pitch, turpentine, lumber, hemp, butter, or lard, but no inspection shall be required or made of lumber exported from the State by the party who shall have cut the same on his own land, except at the request of such party. Such appointment shall be made annually, in September or October, by the Governor, for the several counties, cities, and towns in which it may be necessary to appoint such inspectors. The same person may be appointed inspector of two or more of said commodities; but there shall not be in the same city or town more than one, nor in the same county more than six inspectors of the same commodity. (Id. § 1400.)

126. How Vacancy Filled.—In case of a vacancy in the office of inspectors, the Governor shall appoint one for the residue of the year. (Id. § 1401.)

127. Deputy Inspectors.—Any inspector (other than an inspector of lumber), with the approbation of the Governor, may appoint one or more deputies to assist

him, for whose acts his principal shall be liable, and be entitled to the same fees as for his own. (Id. § 1402.)

128. Removal of Inspectors and Deputies.—The Governor may remove from office at any time an inspector or deputy inspector, for neglect of duty, incapacity, or misconduct. (Id. § 1404.)

129. Inspection Districts.—Where more than one inspector shall be appointed in the same county for the same commodity, the court shall lay off the county into as many districts as there are inspectors, and assign one to each inspector; and no inspector shall be authorized to inspect such commodity in the district assigned to any other, except when that other shall fail, on being required by the owner, promptly to inspect the same. (Id. § 1405.)

130. Quality of Flour and Meal Offered for Inspection.—All wheat flour offered for inspection shall be well bolted and merchantable, of due fineness and without mixture of coarser flour, or of any other grain than wheat; and all corn meal so offered shall be well sifted, made of corn well kiln-dried and merchantable, of due fineness and without mixture of any other material. (Id. § 1406.)

131. How Barrels Containing Same to be Made.—All barrels containing flour, meal, and bread, offered for inspection, shall be made of good seasoned timber, either split or sawed, with ten hoops, well nailed with four nails in each chine hoop and three nails in each bilge hoop. The stave shall be twenty-seven inches long, and the head seventeen inches and a half in diameter. In half barrels the staves shall be twenty-three inches long and the head twelve and a half inches in diameter. (Id. § 1407.)

132. What Quantity to Contain.—Each barrel of flour or corn meal shall contain one hundred and ninety-six pounds of flour or meal and each half barrel ninety-eight pounds; and in case of deficient quantity, any person offering such flour or meal for inspection shall forfeit eight cents for each pound of such deficiency not exceeding three, and seventeen cents for each pound over three. (Id. § 1408.)

133. How Fish to be Packed.—All fish offered for inspection shall be packed, all of one kind in barrels of well seasoned strong timber, clear of sap, not less than five-eighths of an inch thick, made tight, with at least twelve hoops, containing not less than twenty-eight gallons. The barrels shall be well nailed and pegged, and full of fish, well salted, clean, sound, and merchantable. But nothing in this section or chapter shall require salt fish packed as aforesaid brought into the city of Alexandria, from any other State or country, to be inspected unless the merchant importing such fish so desires. (Id. § 1409.)

134. How Beef and Pork to be Packed.—All barrels containing pork or beef offered for inspection shall be made of the same kind of timber, and of the same thickness and strength, as is prescribed for fish barrels, and shall contain at least two hundred and four pounds net of good, clean, fat, sound, merchantable meat, well salted between each layer, and well pickled. There shall not be more than two heads in any one barrel of pork, and the whole shall be well salted and cured before it is packed. (Id. § 1410.)

135. How Barrels for Salt Made.—All barrels containing salt offered for inspection shall be made of good, seasoned materials, with at least ten hoops, with four nails in each chine hoop and three nails in each upper bilge hoop, and not exceeding thirty inches in length and eighteen inches in diameter across the head within the chine. (Id. § 1412.)

136. Owner, Etc., to Mark Weight and Tare.—Every barrel of flour, corn meal, bread, fish, pork, beef, tar, pitch or turpentine; every barrel, box, or bag of salt, and every bale of hemp made, packed or filled in this State and offered for inspection shall have the weight and tare thereof marked thereon by the manufacturer, packer, or filler thereof. (Id. § 1415.)

137. Manufacturers of Flour, Etc., to Brand Marks on Barrels.—Every manufacturer of flour, corn meal, bread, or salt, for exportation shall keep a mark by which his own manufactory may be distinguished, with which he shall brand or mark distinctly each barrel of flour, meal, or bread, and each barrel, box, or bag of salt, before the same is removed from the place where manufactured; but no such manufacturer shall use or permit to be used on any such commodity more than one such brand or mark within one year from the first day of June annually, other than a private mark indicating the quality of the article. (Id. § 1416.)

138. Violations of Two Preceding Sections Punished.—For every barrel, box, bag, or bale of any of the commodities mentioned in the two preceding sections, offered for inspection, or removed from the manufactory contrary to either of said sections, the person offering the same for inspection, or the manufacturer, shall forfeit fifty cents; and if any person willfully put a false tare or weight on any such barrel, box, bag, or bale, he shall forfeit one dollar on every such barrel, box, bag, or bale. (Id. § 1417.)

139. Inspector to Attend When Required, and Inspect.—Every inspector, by himself or or a deputy, shall attend when required, at such time or place, within his county or inspection district, as the owner of any commodity of which he is inspector may appoint, and examine such commodity, either by boring through the head, in case of a barrel, with an auger not exceeding half an inch in diameter, or in some other satisfactory manner as to barrels and all other parcels. (Id. § 1418.)

140. How Inspector to Brand Flour, Meal and Bread.—If an inspector of flour, corn meal, or bread shall judge that it is merchantable, and packed in proper barrels as prescribed, he shall, after plugging the hole, if one has been made, brand the barrel in the quarter, with the name of the county or place in which he is inspector; and in respect to flour, with the quality thereof, either as "family flour," "extra superfine," "superfine," "fine," or "middlings;" and as to corn meal, with the words "fine meal;" and as to bread, with the words "fine bread." (Id. § 1419.)

141. How Fish, Pork, Beef, Tar, Etc., Branded.—If an inspector of fish, pork, beef, tar, pitch, or turpentine, shall judge the same to be sound and merchantable, and as to fish, pork, or beef, that it is properly packed and salted, and in proper barrels, he shall brand or stamp each barrel with the letter "V," with the first letter of the name of his county or town, and with his own name; and in respect to fish, pork, or beef, with the number "one" or "two," as he may judge it to be of first or second quality, either as to the quality of the article, or the order in which the barrel is found; and in respect to pork, with the letter "L," for large pork, or the letter "S," for small pork, as the case may be; and the head of each barrel of tar, pitch, or turpentine, with a mark distinguishing the article it contains. (Id. § 1420.)

142. How Salt Branded.—If an inspector of salt judge the same to be merchantable, and, if packed in barrels, that they are such as are required, he shall mark or brand each barrel, box, or bag, in a durable way, with the name of his county, and with the quality thereof, as number "one," "two," or "three." He shall also weigh each barrel, box, or bag, and mark the same in like manner, with the gross weight, and with the tare, allowing for each barrel of salt twenty-eight pounds for the tare. But if he finds that the barrel exceeds that tare, he shall cause the true tare to be marked thereon, for which he shall have an extra fee of one cent on each barrel, bag, or box. (Id. § 1421.)

143. How Alum Salt Branded.—In the case of alum salt (not to be exported in bulk), the inspector may examine the same in bulk, if desired, but shall, after it is packed, weigh and mark or brand the same, as directed in the preceding section, and also with the words "alum salt." (Id. § 1422.)

144. When He May Pass or Weigh Salt.—No inspector shall pass any salt in a barrel of larger dimensions than is prescribed; nor shall any salt be weighed by him until it lies twenty-four hours, at least, and such additional time after packing, as the inspector shall deem sufficient for draining it. (Id. § 1423.)

145. Certificate as to Salt Exported in Bulk.—In the case of salt intended to be exported in bulk, if the inspector find the same to be of the first quality, he shall grant to the owner a certificate stating the quality and probable quantity of the salt, the name of the vessel in which it is loaded, and the market to which it is destined. (Id. § 1424.)

146. How to Brand Butter and Lard.—Each inspector of butter or lard shall examine all offered for inspection in tubs, firkins, kegs, or barrels, exceeding in weight fifty pounds; and shall brand or stamp the same, if fit to pass, with the number "one," "two," or "three," as he may judge it to be of first, second, or third quality. (Id. § 1425.)

147. When Articles Unfit to Pass, How Marked.—If any inspector of any commodity offered to him for inspection judge the same to be unmerchantable and unfit to pass, or not packed as required, he shall brand each such barrel, box, bag, cask, tub, firkin, or keg, so deemed unfit to pass, with the word, "condemned;" and if he judge such commodity merchantable and in good condition, except that the barrel is under the size required, he shall brand on such barrel the word "undersize," and at the same time brand thereon the true quality of the said commodity; and in the case of lumber or salt inspected in bulk, shall refuse the certificate required when the article is passed; and in the case of hemp, shall annex to each bale a label, stamped with the word "condemned." But such inspector shall, if required by the by the owner of such commodity, secure the same for a further examination. If no such examination, as hereinafter provided, be had within twenty days, or on such review the inspector's judgment be confirmed, he shall brand the same, if not previously done, according to his judgment. (Id. § 1428.)

148. Duty of Inspector, When Barrels Are Damaged.—If any inspector find any such barrel of any such commodity damaged or out of order, though not to such extent as to make it proper on that account to condemn it, he shall state, in writing, the cost of putting the same in good order, with the block or cooper's mark on the

same, the grade of the article, and the maker's or packer's brand thereon, and deliver such statement to the owner of such article. The amount of damage thus ascertained shall be deducted from the price, if it has been sold, unless otherwise agreed, or unless the seller shall cause such barrel to be put in good order. (Id. § 1429.)

149. Review of Inspector's Judgment; How Costs Thereof Paid.—Any person offering for inspection any such commodity, which is adjudged of inferior quality, or condemned or refused by any inspector, may apply within twenty days after such inspection to a justice of the county or city for which he is inspector, who shall thereupon issue a warrant directed to three disinterested persons selected by him to review the inspector's judgment. They shall take an oath to discharge their duty faithfully; and if they declare such commodity to be merchantable or of better quality than it was judged to be by the inspector, he shall thereupon erase the mark or brand with which he may have marked the same, and mark, brand, or label it, as the said reviewers may direct; and in the case of lumber or salt inspected in bulk, grant a certificate or note in conformity with the reviewers' judgment; and in such cases the inspector shall pay the costs of the review, including three cents to each of the reviewers for each barrel of any commodity, or for every five bushels of salt, not in barrels, or fifty cents for each bale of hemp, or seventy-five cents for each thousand pieces of lumber, or six cents for each parcel of butter or lard received. But if the judgment of the inspector be confirmed by the reviewers, then the complainant shall pay the costs of the review, including the same compensation to the reviewers, besides the fees of inspection to the inspector, except that in the case of salt he shall pay the inspector ten cents for each barrel or every five bushels of salt. (Id. § 1430.)

150. Penalty, if Reviewer Refuse to Act.—If any person so appointed as a reviewer refuse to act, he shall forfeit to the person applying for such warrant five dollars. (Id. § 1431.)

151. Fees of Inspectors and Cullers.—Inspectors of the several commodities hereinbefore mentioned, and cullers of lumber, shall have the following fees:

First—For each barrel of flour, corn meal or bread inspected, two cents;

Second—For each barrel of fish, pork, and beef, six cents; and for each barrel of tar, pitch, and turpentine, four cents;

Third—For each barrel of salt, and for every five bushels thereof, when it is inspected in boxes, in bags, or in bulk, one cent;

Fourth—For each tub, firkin, keg, or barrel of butter or lard, four cents;

Fifth—The inspector shall receive for every thousand feet, board measure, of merchantable plank, scantling, or ranging timber, five cents; for every thousand merchantable staves or heading, eight cents; and on every thousand shingles, two cents. The cullers of lumber shall receive for every thousand received of merchantable pipe staves and heading, fifty cents; for every thousand hogshead staves and heading, forty-two cents; for every thousand long butt staves, eighty-three cents; for every thousand short butt staves, sixty-two and a half cents; for every thousand barrel staves, thirty-three cents; for every thousand shingles, ten cents, and for every thousand feet, board measure, of plank, scantling, or ranging timber, thirty cents; and on all condemned staves, plank, scantling, or ranging timber and shingles, one-half of the above compensation shall be allowed; one-half of all which fees shall be paid by the seller and the other half by the buyer; and in computing the said staves, heading, or shingles, the short hundred, or one hundred, shall be the standard by which they shall be bought and sold, and the fees charged.

Sixth—For each ton of hemp inspected, the inspector shall have one dollar and a half, and so in proportion for any smaller quantity. (Id. § 1432.)

152. By Whom Paid.—The said fees shall be paid by the person offering the commodity for inspection, except in the case of lumber, and in that case one-half shall be paid by the buyer and one-half by the seller, unless the same be not sold at the time of inspection, in which case the whole shall be paid by the person offering it for inspection. (Id. § 1433.)

153. Owner to Furnish Hands to Inspector.—While the inspector is engaged in examining and weighing any commodity, the person offering the same for inspection shall furnish as many hands at his own charge to assist the inspector as may be necessary. (Id. § 1434.)

154. When Packages to be Reweighed; Expense of Repacking.—An inspector, if he suspect any commodity on which the tare is marked to be falsely marked, or if the purchaser request it, shall unpack any barrel or other parcel of such commodity, and if he find the tare greater than is marked, the manufacturer or packer and filler who sold the same shall pay the expense of unpacking or repacking, in addition to any penalty imposed by law. But if otherwise, the said expense shall be paid by the inspector, if he acted on his own suspicion, or by the purchaser, if the trial was made at his request. (Id. § 1435.)

155. Inspectors to Enforce Laws.—Every inspector shall endeavor to enforce the law as to the inspection of commodities of which he is inspector, and in every case in his knowledge of any violation thereof, shall inform the attorney for the Commonwealth of his county or city. (Id. § 1436.)

156. Inspectors, Etc., Prohibited from Trading in Commodities of Which They are Inspectors.—If any inspector, deputy inspector, or culler of lumber, trade in or purchase, otherwise than for his own consumption, any commodity of which he is inspector or culler, he shall forfeit, if an inspector of flour, corn meal, bread, fish, pork, beef, tar, pitch, or turpentine, seven dollars for every barrel, cask, bag, or box, or for every five bushels of salt in bulk, so traded in or purchased; if an inspector of butter or lard, five dollars for each tub, firkin, keg, or barrel; and if an inspector of lumber or hemp, or a culler of lumber, one hundred dollars for every such offense. But nothing in this section shall be construed to prevent an inspector or culler of lumber from selling any commodity which he may have received in payment of his fees. (Id. § 1437.)

157. Use of False Brand or Mark Punished.—If any person willfully use or imitate the brand or mark of any other person on any such commodity, or pack any such commodity in a barrel, cask, box, bag or bale, tub, firkin, or keg, previously branded or marked with the name or brand of any other person, or alter the brand or mark made by an inspector on such commodity, or shift or change the contents of any such barrel, cask, box, bag or bale after it has been inspected, or mark or brand with the brand or mark of the inspector, or in imitation thereof, any not inspected, and sell or offer to sell the same, he shall be fined twenty dollars for every such offense. (Id. § 1438.)

158. Penalty for Selling Articles Falsely Marked.—If any person sell, or offer to sell, any such commodity in barrels, or other package or parcel, known by him to be of less weight, size, and gauge (after allowing for ordinary shrinkage and loss of weight) than is required by law, or than is marked or branded thereon, or than is stated in the certificate of the inspector thereof, he shall forfeit ten dollars for every such barrel, package, or parcel so sold or offered for sale. (Id. § 1439.)

159. Liability of Manufacturer or Packer.—If any penalty hereinbefore imposed shall be recovered of any person other than the manufacturer or packer of the article for any default of said manufacturer or packer, such person may recover the amount paid by him from such manufacturer or packer. (Id. § 1440.)

160. Penalty on Inspector for Falsely Marking, Etc.—If any inspector or culler mark or brand any barrel or other package of any such commodity, or give a certificate of his having inspected any lumber or salt in bulk, without having actually inspected the same, or pass or brand any such commodity as merchantable which he knows to be unfit to pass (unless ordered by reviewers, according to law), or permit any other person to use his mark or brand for that purpose, or be guilty of any wilful neglect or omission of his duty as inspector, he shall be fined fifty dollars for every such offense. (Id. § 1441.)

161. Inspector's Book.—Every inspector shall keep a book, in which he shall enter an account of the quantity and description of the commodities inspected by him; and each manufacturer of salt shall return monthly, to the inspector of salt in the county, city, town, or district to which he belongs, a statement of the salt removed from his manufactory without being inspected, to be entered by said inspector in his said book. (Id. § 1442.)

162. Quarterly Returns and Publications.—Each inspector of salt shall deliver quarterly under oath, an abstract of all salt so inspected by, or stated to him, to the clerk of the court of his county or city; and each inspector of flour, meal, or bread shall publish, quarterly, a statement of the quantity and quality of the said commodity inspected by him. (Id. § 1443.)

NOTE: See also Nos. 416-417 and 428-431.

Fruit Juices.

See No. 293.

Fruits, Vegetables, Etc.

163. Division of Markets Continued; Appointment of Director and Assistants.—For the purpose of promoting the economical handling, packing, storage, distribution and sale of agricultural products in this Commonwealth, and for the further purpose of assisting producers and consumers in selling and purchasing agricultural products at a fair and reasonable price, the Division of Markets for agricultural products, heretofore established within the Department of Agriculture and Immigration, shall be continued, and shall be administered under the supervision of

the Commissioner of Agriculture and Immigration by a director who shall be qualified for the performance of his duties by training and experience.

The Board of Agriculture and Immigration, shall appoint the director and such assistants as may be needed, and the board shall fix their compensation, but shall give proper consideration to nominations by the commissioner. (Code 1924, § 1250.)

164. Powers and Duties of Director.—In the administration of the said division, the said director shall exercise and discharge the following powers and duties, under the supervision of the Commissioner of Agriculture and Immigration.

(a) He shall investigate the cost of food production and marketing in all its phases, and in particular, shall investigate the market demand for the products of Virginia farms, the relative location of producers with reference to the most profitable markets for their products, the transportation facilities, the most advantageous methods of packing, storing and standardizing agricultural products, and may establish and publish official standards for capacity and marking of open or closed, filled or unfilled receptables for agricultural products and voluntary official standards for the grade or classification of agricultural products. He shall further make investigations with a view of ascertaining whether or not the agricultural products of this State are being subjected to unfair competition in the markets of Virginia and of the country at large by the agricultural products or manufactured substitutes therefor produced in other States or imported from foreign countries.

(b) The said director may assist in the organization of co-operative societies among producers and consumers, for the purpose of promoting and conserving the interest of producers of agricultural products in the sale and distribution of same, and in the purchase of their necessary supplies, and for the purpose of reducing the cost of living to consumers.

(c) The said director is authorized to make and establish rules and regulations for carrying out the purposes of this chapter, such rules and regulations to become effective when approved by the Commissioner and Board of Agriculture and Immigration, and enforceable by action or proceedings in any court of competent jurisdiction. (Id. § 1251.)

165. Division to Disseminate Information as to Marketing; Bulletins to be Distributed; Lists of Consignors and Producers.—The Division of Markets shall gather and disseminate information on all subjects relating to the marketing and distribution of Virginia agricultural products, and by correspondence and publication, or by any other practicable means, shall endeavor to keep producers and consumers informed of the demand and supply and at what markets the various agricultural products can be best handled or procured. The division shall publish periodical bulletins setting forth the current market prices for Virginia agricultural products in the principal markets of the State, and in other markets accessible for the disposition of such products, and when deemed advisable, giving information as to the available supplies of agricultural products and as to the demand in several markets for such products. The division may also prepare from time to time bulletins as to the most efficient and economical methods of standardization, storage, packing, transportation and marketing of agricultural products, and cause the same to be distributed in such manner as the commissioner may determine. The division shall investigate the sources of supply of agricultural products and prepare and publish lists of the names and addresses of producers and consignors and supply the same persons applying therefor. (Id. § 1252.)

166. Investigation and Correction of Improper Practices; Finding Markets for Producers.—The said Division of Markets shall investigate delays, improper conditions, overcharges and unfair rates in the transportation of agricultural products, and may cause proceedings to be instituted in the proper courts for the abatement or redress of such injuries; and, when deemed advisable, may cause to be instituted proper proceedings to prevent restraint of trade or unlawful combinations to fix prices. When notified by producers that agricultural products produced in the State cannot be sold or will have to be sacrificed for lack of a ready market, it shall investigate such case, and make such suggestions to the producers as may seem advisable, and in addition may assist the said producers in any practicable manner in finding a satisfactory market for the products in question. (Id. § 1253.)

167. Co-operation of United States Department of Agriculture.—In carrying out the provisions of this chapter, the said division shall endeavor to secure the co-operation and assistance of the Office of Markets of the United States Department of Agriculture. It shall thoroughly investigate the methods that may be suggested by the said office for the promotion of economical and efficient marketing of agricultural products together with statistical information applicable to the marketing of Virginia agricultural products, and, when it may seem advisable and not inconsistent with the requirements of this chapter or of any other law of this Commonwealth, it shall endeavor to secure the adoption in this State of any methods of marketing

which may be suggested by the said Office of Markets of the United States Department of Agriculture. (Id. § 1254.)

168. Report of Work Done by Division.—On or before the first day of January, in every year, the Commissioner of Agriculture and Immigration shall make a report to the Governor, covering the twelve months ending September thirtieth, next preceding. Such reports shall summarize the work done by the Division of Markets during the period covered, and shall include any comments on the results of the work or statement of the results of any particular investigations which may seem proper. Every such annual report shall also include a complete accounting of all moneys received or expended by the said division in carrying out the provisions of the five preceding sections for the period covered by the report. In addition to the information required above, the reports made on or before the first day of January immediately preceding a regular session of the General Assembly shall include a detailed budget of the financial requirements of the said division for the ensuing two years, with such recommendations as to additional legislation as may be expedient. (Id. § 1255.)

169. Payment of Expenses.—The expenses incident to carrying out the provisions of the six preceding sections, shall be paid by the Treasurer of the State out of the appropriation to credit of the Commissioner of Agriculture and Immigration upon warrants drawn upon the Auditor of Public Accounts by the said commissioner countersigned by the President of the Board of Agriculture and Immigration. (Id. § 1256.)

170. Investigation of and Certification as to Agricultural Products Upon Request of Parties Financially Interested.—In order to promote, protect, further and develop the agricultural interests of this State, the Director of Division of Markets, with the approval of the Commissioner of Agriculture, is hereby authorized, when requested by parties financially interested in a lot of any agricultural products, to investigate and certify the quality, condition, grade or other classification of such agricultural product, under such rules and regulations as he may prescribe, including payment of such fees as he deems reasonable for the services rendered or performed by employees or licensed agents of the Division of Markets of the Department of Agriculture. (Id. § 1289h.)

171. Certificates as Evidence.—Certificates of inspection and reinspection issued under this act by authorized agents of the Division of Markets of the Department of Agriculture and those relating to the grade, classification, quality or condition of agricultural products issued under authority of the Congress of the United States shall be accepted in any court of this Commonwealth as prima facie evidence of the true grade, classification, condition or quality of such agricultural product at the time of its inspection. (Id. § 1289k.)

NOTE: See also Nos. 21, 30, 37 et seq., 67, 191-192, 269 et seq., 415-416, and 421-422.

Ice.

See No. 419.

Meal.

See Nos. 123 et seq., 416 and 428 et seq.

Meat—Meat Products.

172. Sanitary Conditions of Slaughtering of Meats, Etc.; Powers of Health Officers in Regard to Same; Punishment for Violation of Same.—It shall be unlawful for any person or persons, firm or corporation to sell, or to have in his possession with intent to sell for human food, meat or meat food products which has [have] been slaughtered, prepared, or kept where the sanitary conditions are such that the meat or meat food products are rendered unhealthy, unwholesome, or otherwise unfit for human food.

All peace and health officers shall have the power and are required to seize any animal carcass or parts of carcasses which are intended for sale or offered for sale for human food, which have been slaughtered and prepared, handled or kept under unsanitary conditions, and shall deliver the same forthwith to and before the nearest police judge or justice of the peace, together with all information obtained, and said police judge or said justice of the peace shall, upon sworn complaint being filed, issue warrant for the arrest of all persons who have violated the provisions of this section, and proceed to try the case. Any person, persons, firm or corporation found guilty of violating the provisions of this section shall be fined not less than

ten nor more than one hundred dollars, and the meat in question shall be destroyed. (Code 1924, § 1183.)

173. **Providing for the Sanitation of Slaughterhouses and Other Places Where Animals Are Slaughtered for Food, or Where Animal Carcasses Are Prepared for Food.**—The following rules and regulations and standards are established for the sanitation of slaughterhouses, abattoirs, packing houses, sausage factories, rendering plants or other places where animals are slaughtered for sale for human food or where animal carcasses, or parts thereof, are prepared for human food.

First—Every building or room used as a slaughterhouse, abattoir, packing house, sausage factory, rendering plant, or similar establishment shall be properly lighted, drained, plumbed, and ventilated and conducted with due regard for the purity and wholesomeness of the meat food products therein produced and with strict regard to the influences of such conditions upon the health of the operatives, employees and clerks.

Second—The floors, side walls, ceilings, receptacles, implements, machinery, and the clothing of the operatives, shall at all times be kept in a clean, healthful and sanitary condition. The doors, windows and other openings, during the fly season, shall be fitted with self-closing screen doors and wire window screens of not coarser than fourteen mesh wire gauze, and the meat food products in the process of preparation, packing, storing or distribution, shall be securely protected from flies, dust, dirt and from all other foreign or injurious contamination.

Third—The sleeping places for persons employed in such establishments shall be separate and apart from the room in which meat food products are manufactured, packed, stored or distributed. No person shall be permitted to work in any such establishment who is known to be afflicted with any contagious or infectious disease, or any skin disease. Every such establishment shall be provided with a convenient washroom and toilet of sanitary construction, but such toilet shall be entirely separate and apart from any room used for the preparation, manufacture or storage of meat food products. Every room or compartment in which meat or meat food products are prepared, cured, rendered, stored, packed, or otherwise handled, shall be free from odors from toilets, catch basins, tank rooms, casing departments, or from hides, or other injurious contamination. All water and ice used in the preparation of carcasses, meats or meat food products shall be pure, clean and wholesome.

Fourth—No swine shall be maintained at or near any slaughterhouse, and the offal from the slaughter of animals shall not be fed, unless it be first subjected to proper tankage; and every slaughterhouse or abattoir shall be equipped with adequate facilities for the tankage of the offal incident to the slaughter of animals, and all the gross offal except the casings resulting from the slaughter of animals shall be tanked. (Id. § 1221.)

174. **Licenses; Exceptions.**—No person, firm or corporation shall operate or conduct any slaughterhouse, abattoir, packing house, sausage factory, rendering plant or place where animals are slaughtered for sale for human food, or where animal carcasses, or parts thereof, are prepared for human food, unless a license, for which no charge shall be made, has first been issued by the Dairy and Food Commissioner* to the owner, operator or manager of such establishment, authorizing said person, firm or corporation to operate and conduct a slaughterhouse, abattoir, packing house, sausage factory, rendering plant or other similar business, and no person shall conduct or operate any such establishment or business after the revocation of such license, nor slaughter animals for sale for food in any place other than in a slaughterhouse which is licensed as therein provided, and the said Dairy and Food Commissioner is hereby authorized and empowered to cause inspection to be made of every building, premises or place in or upon which animals are slaughtered for human food, or animal carcasses or parts thereof, are prepared for human food and to grant license for the operation of the same whenever, in the judgment of the said commissioner, the business conducted in or upon said building, premises or place is managed in a sanitary manner, and in accordance with the requirements of the law and of the rules and regulations provided in section one [1221] of this act, and of such rules and regulations as may be adopted as provided in section two of this act, and, whenever, in his judgment, such building, premises or place, and the surroundings, are suitable for the proper sanitary operation of a slaughterhouse, abattoir, or other similar business; provided that nothing in this act shall apply to established slaughterhouses, abattoirs, packing houses, sausage factories, rendering plants or other similar establishments, when such establishments are licensed and conducted under the rules and regulations of the United States Department of Agriculture; and, provided, further, that the provisions of this act shall not apply to the preparation or

*Now Commissioner of Agriculture and Immigration. See No. 1. This law is to be corrected accordingly.

sale of meat or meat food products from animals raised or purchased for farm purposes by the farmers offering said products for sale; provided, the said products have been handled and prepared in a sanitary manner, and are sound and wholesome, and the provisions of this act shall not be construed to prohibit the sale of said products by merchants purchasing from such farmers; provided, the said products are kept and handled in a sanitary manner. (Id. § 1222.)

175. **Rules and Regulations of Dairy and Food Commissioner Enacted Into Law; Punishment for Violation of Provisions of Section.**—1. The rules and regulations of the Dairy and Food Commissioner fixed and established by and with the approval of the Board of Agriculture and Immigration be, and they are hereby, enacted into law, as follows:

2. . . . (23) Genuine Smithfield hams, sides, shoulders and jowls are hereby defined to be the hams, sides, shoulders and jowls which are cut from the carcasses of peanut-fed hogs, raised in the peanut belt of the State of Virginia or the State of North Carolina, and which are cured, treated, smoked and processed in the town of Smithfield, in the State of Virginia. No person, firm or corporation shall knowingly, label, stamp, pack, sell or offer for sale in this State any ham, side, shoulder or jowl as genuine Smithfield ham, side, shoulder, or jowl, either in or out of a container, unless such ham, side shoulder or jowl be a genuine Smithfield ham, side, shoulder or jowl as hereby defined.

Packing houses situated in the town of Smithfield, engaged in the business of packing hams, sides, shoulders or jowls, as hereby defined, shall be subject to the inspection of this division.

(24) No person, firm or corporation shall knowingly sell or offer for sale in this State any live hog as a peanut-fed hog raised in the peanut belt of the State of Virginia or State of North Carolina, unless such hog was, in fact, so fed and raised; and no person, firm or corporation shall knowingly sell or offer for sale in this State, any whole dead hog, or any cut from the carcass of a dead hog, and represent, in any manner that such hog had been peanut-fed and raised in the peanut belt of the State of Virginia or the State of North Carolina, unless such was the fact, or represent that such cut from the carcass of a dead hog was taken from a peanut-fed hog, raised in the peanut belt of the State of Virginia or the State of North Carolina, unless such was the fact.

(25) No person, firm or corporation, other than a person, firm or corporation actually engaged in agriculture and slaughtering hogs raised upon his, their or its own premises, or the farm of some other, in this State, shall sell or offer for sale to any person, firm or corporation, any dead hog, or cut therefrom, unless it bears some mark of identification to be designated by this division showing where and when it was slaughtered. This paragraph shall have no application to any establishment in this State covered by the inspection of the United States Agricultural Department.

3. Any person, firm, corporation or association violating any of the provisions of this section shall be guilty of a misdemeanor, and upon conviction thereof, shall be punished by a fine of not less than twenty-five nor more than three hundred dollars. (Code 1924 and Code Supp. 1926, § 1227a.)

176. **Regulating Sale of Kosher Meat and Meat Preparations.**—Any person, who, with intent to defraud, sells or exposes for sale any meat or meat preparation, and falsely represents the same to be kosher, whether such meat or meat preparation be raw or prepared for human consumption, or as having been prepared under and of a product or products sanctioned by the orthodox Hebrew religious requirements; or falsely represents any food product or the contents of any package or container to be so constituted and prepared, by having or permitting to be inscribed thereon the word "kosher" in any language is guilty of a misdemeanor. (Code 1924, § 4463a.)

NOTE: See also Nos. 21, 30, 34, 52 et seq., 125 et seq., 163 et seq., and 191-192.

Oysters.

177. **Rules and Regulations of Dairy and Food Commissioner* Enacted Into Law; Punishment for Violation of Provisions of Section.**—1. The rules and regulations of the Dairy and Food Commissioner fixed and established by and with the approval of the Board of Agriculture and Immigration be, and they are hereby, enacted into the law, as follows:

2. . . . (18) The soaking of shucked oysters or clams in fresh water before shipment is inhibited, but may be washed in fresh water. . . .

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*Now Commissioner of Agriculture and Immigration. See No. 1. This law is to be corrected accordingly.

3. Any person, firm, corporation or association violating any of the provisions of this section shall be guilty of a misdemeanor, and upon conviction thereof, shall be punished by a fine of not less than twenty-five nor more than three hundred dollars. (Code 1924, § 1227a.)

177a. Department of Conservation and Development.—The State Commissioner on Conservation and Development, the Commissioner of Game and Inland Fisheries, the Commission of Fisheries and the Commissioner of Fisheries shall be within the Department of Conservation and Development. All provisions of law in relation to the said State agencies are continued in force, except that the Department of Game and Inland Fisheries shall be hereafter known as the Commission of Game and Inland Fisheries. . . . (L. 1927, c. 33, § 19.)

178. Culling Oysters.—All oysters taken from any natural rocks, beds or shoals, in the waters of this State shall be culled on their natural rocks, beds or shoals, as taken, and oysters whose shells measure less than three inches in length, measuring from hinge to mouth, and all shells, shall be included in said cullings and replaced upon said rocks, beds, or shoals; provided, that oysters once passed from the culling board to the inside of the boat less than the size above prescribed, and all shells shall be considered as not having been culled as taken, according to the provisions of this section; provided, that when small oysters are adhering so closely to the shell of the marketable oysters as to render removal impossible without destroying the young oyster, then it shall not be necessary to remove it. (Code 1924, § 3243.)

179. Buying or Selling Unculled Oysters; Penalty; Not to Apply Above Seed Line in James River.—It shall be unlawful for any person to take, buy or sell oysters under the prescribed size, and shells so taken as aforesaid from the natural rocks, beds and shoals. Any person violating the provisions of this or the preceding section, either by taking from the said rocks, beds or shoals, or by buying or selling oysters less than three inches in length, from the hinge to mouth, or shells as hereinbefore mentioned, in excess of five per centum of small oysters and shells in shucking stock and five per centum of shells in seed oysters, which shall be classed as unculled, shall be deemed guilty of a misdemeanor, and on conviction thereof, shall be fined not less than ten nor more than one hundred dollars, and required to throw said unculled oysters and shells back on the public rock, and for failure or refusing to throw back said unculled oysters and shells on said public rock, when ordered to do so by an inspector or his deputy, shall be fined not less than twenty-five nor more than one hundred dollars; but so much of this section and the preceding section as prohibits the taking and catching of oysters whose shells measure less than three inches from hinge to mouth, shall not apply to James river above a line drawn from Coopers creek in the county of Isle of Wight, to a point at the south side of the main channel in said river opposite Finches pier in the city of Newport News, thence up said channel to the present lower corner of Miles oyster planting ground, thence to Massey's house on the river bank in the county of Warwick, which shall be known as seed line, nor to the eastern side of Accomac and Northampton counties, nor to any rivers, creeks, or other estuaries of the Potomac river.

In the waters of this State entering the Potomac the prohibited size shall be two and one-half inches. In addition to the penalty above prescribed, the license of any person found guilty of violating this section may, in the discretion of the Commission of Fisheries, be revoked by order of said commission, and such person shall not be again licensed to take or catch oysters in this State for a period of one year after the commission of such offense. The having at one time more than one bushel of oysters and shell on the culling board, deck, washboard, or other receptacle above the hold of the boat of any person oystering upon the natural rocks, beds or shoals, or the attempt of any person to escape or to throw oysters or shells overboard into the water, other than in the ordinary process of culling, upon the approach of the oyster inspector, or police boat, shall be prima facie evidence of the violation of this section. Any person offering oysters for sale or having the same in his possession, which shall not have been culled, as required by this section shall be deemed guilty of violating the law, and if upon trial he shall claim that such oysters are from private planting grounds, the burden of proving that fact shall be upon him. Such person may be tried in any court having jurisdiction over the waters where he is arrested or apprehended and if any such person shall resist in any way any inspector or other authorized person in making an examination of the oysters suspected, or upon being requested by such officer or other authorized person to be admitted into a boat or oyster house for the purpose of such inspection, shall refuse to so admit such officer or other authorized person, the party suspected shall be deemed prima facie guilty of violating this section. (Code Supp. 1926, § 3244.)

180. Permit to Load Oysters; Inspection; Purchasers to Keep Account of Oysters Taken.—It shall be unlawful for any person, firm, or corporation operating by boats or vessels to buy shell oysters taken from the public oyster rocks of the Commonwealth until he has first obtained a permit for each load or trip from the oyster inspector from whose district the said oysters are to be taken, or from the captain of one of the oyster police boats. The said inspector or police boat captain, shall have the right, at all times, to inspect oysters taken from the public rocks of the Commonwealth, loaded on any boat or vessel, or sold to any person, firm or corporation, as to quality and measure, and for this inspection the owner or master of such vessel, or the purchaser, shall pay a tax to the inspector, or police boat captain, of one cent per bushel on the number of bushels of oysters taken or purchased from such public rocks.

A strict account of all oysters taken from the public oyster rocks of this Commonwealth by others than by boats, shall be kept by the purchasers, and the tax on same shall be paid, by such purchasers, as herein provided, between the first and tenth of each month immediately following that in which such purchases are made. Such purchases shall obtain, monthly, permits to buy such oysters, as herein provided for, provided, however, that in view of the fact that different conditions obtain in different localities, the Commissioner of Fisheries shall be, hereby, empowered to direct the several oyster inspectors of the State to issue permits and to collect the tax as herein provided, from time to time, and in such manner as he, the Commissioner of Fisheries, in the exercise of his judgment, may deem advisable. (L. 1927, c. 118, § 1.)*

180a. Duty of Oyster Inspector.—It shall be the duty of the oyster inspector, in whose district a cargo of oysters is to be loaded to inspect, if he deems it necessary, said oysters as they are taken on board of vessel and to see that all measures are a full legal bushel of oysters; that any shucking stock taken does not have more than five per centum of shells or small oysters, and when said vessel is loaded to collect the tax on same, and furnish the owner or master with a certificate showing the number of bushels in each load and certifying over the signature of the Commissioner of Fisheries, countersigned by the inspector or police captain, that the tax on each load is paid, copy of which said certificate shall be sent to the office of the Commission of Fisheries. (Id. § 2.)

180b. Deputy Inspectors.—When at any time there is to be loaded in any one district more than one vessel at the same time, the inspector is empowered to appoint a sufficient number of deputy inspectors for the purposes hereinbefore set forth, if he deems it necessary; and that on or before the tenth of each month the inspector shall render a statement to the office of the Commission of Fisheries, on blanks furnished by the commission, showing the amounts collected, from what vessels collected, and to whom paid. The inspector and his deputies shall be allowed for their services ten per centum on all sums collected for tax. (Id. § 3.)

180c. Disposition of Taxes Collected.—All taxes collected from the above inspection, after said inspectors and deputies shall have received their ten per centum, shall be forwarded by the inspectors to the Auditor of Public Accounts, monthly, with his other collections. (Id. § 4.)

180d. Failure to Procure Permit or Certificate of Inspection; Penalty.—The owner or master of any boat or vessel found buying and carrying oysters from the public rocks of the Commonwealth without a permit or certificate of inspection shall be fined not less than twenty nor more than two hundred dollars. (Id. § 5.)

180e. Additional Compensation for Inspectors.—If it should develop that the compensation herein before allowed for inspectors and their deputies is not sufficient, such compensation may be increased by the Commission of Fisheries, subject to the direction and with the consent of the Governor. (Id. § 6.)

180f. Disposition of Revenue Derived From Act.—The net revenue derived from this act, or so much thereof as is necessary, shall be used for bacteriological work, as required by the State Board of Health of this State for protecting and developing the oyster and clam industry of Virginia, and the public health, and shall be expended under the direction of the Governor. (Id. § 7.)

180g. Same.—On and after January first, nineteen hundred and twenty-eight, the revenue derived from this act shall go into the general fund and be appropriated out under the budget. (Id. § 8.)

180h. Construction of Act.—This act shall not be construed so as to delay the master of any vessel in loading, nor to affect the shipment of shell oysters by barrel

*Chapter 118 of the Laws of 1927 amends and re-enacts Chapter 387 of the Laws of 1926 which was compiled as § 3247a of the 1926 Supplement to the Virginia Code of 1924.

or otherwise under consignment from wharves or stations served by common carriers. (Id. § 9.)

181. Carrying Oysters Out of the State, or Buying for That Purpose Prohibited; Penalties.—It shall be unlawful for any person to carry, or attempt to carry, or to buy for the purpose of carrying out of this State any oysters taken from the natural rocks, beds or shoals in the waters of this Commonwealth, until he has first obtained for each cargo a permit to do so from the inspector from whose district the said cargo is to be taken, or from the captain of one of the oyster police boats, and has paid to the inspector or police captain a tax of three cents per bushel on the number of bushels in said cargo. Said permit shall be signed by the Commissioner of Fisheries and countersigned by the said inspector or police captain, and it shall be the duty of said commission to grant such permit whenever after examination by the commission of the seed area and public hearing, as hereinafter provided, the commission shall ascertain that it will not injure or deplete said seed areas to grant such permits and that the supply of seed oysters is in excess of demand for seed oysters by planters in the State of Virginia; and, provided, that the commission shall have power to cease granting such permits whenever after examination and public hearing, as hereinafter provided, the commission shall ascertain that said seed areas are becoming depleted, and that to continue to grant such permits would seriously injure the same. The hearing hereinbefore provided for shall be held in Newport News, Virginia, after advertising the same once a week for three consecutive weeks in a newspaper published in Newport News and in a newspaper published in Norfolk, giving the time, place and purpose of said hearing; provided, however, the public hearing herein provided for, and the notice herein required to be given shall not apply to the action of the Commission of Fisheries in first granting the permit herein provided for, for the shipping of seed oysters out of this State. Any person violating the provisions of this section shall, upon conviction thereof, be confined in the penitentiary for one year, or at the discretion of the jury, may be confined in jail not exceeding one year, and fined not exceeding five hundred dollars. Moreover, all boats and vessels, together with their tackle used in violating this section and all oysters found thereon, shall be forfeited to the Commonwealth, in proceedings as provided for the enforcement of forfeitures. If any oyster inspector or other person shall knowingly aid and abet or shall collude with any person in the violation of this section, he shall be deemed guilty of a misdemeanor and upon conviction thereof, shall be confined in jail not exceeding six months and fined not exceeding five hundred dollars.

All tax collected for carrying oysters out of the State shall be forwarded by the inspector to the Auditor of Public Accounts monthly, with his other collection, out of which there shall be paid so much as is necessary for the bacteriological work as required by the United States Public Health Bureau for the safeguarding and protection of the sea food industry of the State of Virginia, subject to the direction of the Governor.

The provisions of this section shall not apply to the shipments out of this State of oysters in the shell known as barrel stock from steamboat wharves and depots served by common carriers.

On and after January first, nineteen hundred and twenty-eight, the revenue derived from this act shall go into the general fund and be appropriated out under the budget. (Code Supp. 1926, § 3249.)

182. Permit to Carry Oysters From Certain Grounds; Penalty.—No person, without having a written permit from an oyster inspector, an oyster police officer, or from a member of the Commission of Fisheries, shall at any time during the closed season, carry oysters out of James river above a line drawn from Pig Point, in the county of Nansemond, to Newport News Point, in the county of Warwick, whether said oysters, be taken from natural rocks or planting grounds, nor shall any person take clams, or crabs in the waters of this State or oysters from either public or private grounds on Sunday or in the night time, between the hour of sunset and sunrise, nor shall any person load on any vessel any oysters from the public waters of the Commonwealth on Sunday or in the night time between the hours of thirty minutes after sunset and thirty minutes before sunrise. Any person violating the provisions of this section shall be fined not less than twenty-five nor more than one hundred dollars. (Id. § 3251.)

183. Oyster Measures; Penalty.—It shall not be lawful at any time, for any person to buy or sell oysters in this State in the shell by any other than one-half bushel or one bushel metallic measures, and such measures shall be iron circular tubs with straight sides and straight solid bottoms with holes in bottoms, if desired, for draining, such holes to be no larger, however, than one inch in diameter. A half-bushel tub shall have the following dimensions (all measurements to be from inside to inside): Fifteen inches across the top, thirteen inches across the bottom,

and seventeen inches diagonally from the inside chine to the top; and a bushel tub shall measure eighteen and one-half inches across the top, seventeen inches across the bottom, and twenty-one and one-half inches diagonally from the inside chine to the top. When oysters are bought or sold out of the shell it shall be by the wine measure, according to the standard prescribed for such measure by section fourteen hundred and sixty-eight of this Code.* Any person violating any provision of this section shall be fined not less than twenty-five nor more than one hundred dollars for each offense. Moreover, if any inspector or other oyster official have reason to believe that measures not conforming to the above requirements are used on board any vessel or craft, or in any oyster house, he is hereby empowered to search for, seize and destroy such unlawful measures. (Code 1924, § 3252.)

184. Citizen Not to be Interested With Nonresident; Penalty.—If any citizen of this State shall, for market or profit, be concerned or interested with any person not a resident thereof, in taking or catching crabs, clams, oysters, terrapins or other shellfish, in any of the waters of this State, or in planting oysters therein, or shall knowingly permit any person, not a resident of this State, to engage in any such business in his name for market or profit, he shall be fined not less than one hundred nor more than five hundred dollars for each offense; but, the restrictions as to residence in this section shall not prevent a resident from owning stock in a corporation in which nonresidents are stockholders, if said corporation is authorized by law to occupy oyster planting ground. (Id. § 3253.)

185. Nonresidents Not to Take or Plant Oysters, Etc.—If any person other than a resident of this State, as defined in this chapter, shall take or catch crabs, clams, oysters, terrapin or other shellfish, in any of the waters of this State for market or profit, or if any person other than a resident of this State or a corporation authorized by law to occupy and hold oyster planting grounds, rent any oyster planting ground, or plant oysters in any of the waters of the State, he shall be fined not less than five hundred dollars nor more than two thousand dollars for each offense. Where the penalty is incurred by reason of the defendant being a nonresident, the burden of proof as to his residence shall be on him. (Id. § 3254.)

186. Who Deemed Nonresident; Proviso.—No person shall be deemed a resident of this State, within the meaning of this chapter, who is not a taxpayer in the State, and shall not have maintained his residence therein for one year and actually resided therein for the four months next preceding the time when he makes application for any privilges or licenses granted to residents under this chapter; or unless he be a bona fide purchaser of land in this State and has actually lived within this State for the four months next preceding the time when he makes application for any privileges or licenses granted to residents under this chapter; provided, no restriction as to residence in this section shall prevent any person from obtaining license when required for buying crabs, clams, oysters, terrapin or other shellfish or for the shucking of oysters; provided, further, that in dredging or scraping private planting grounds on permission of the commission the restriction as to residence in this section shall not prohibit the having of nonresidents as crew for any boat used in the oyster or other shellfish industry, if such boat be owned wholly by a resident or residents of Virginia, and also has for its master a resident as defined in this chapter. (Id. § 3255.)

187. Penalty on Inspector for Neglect of Duty as to Sealing and Inspecting; Destruction of Unauthorized Measures.—If any inspector fail to comply with the requirements for inspecting and sealing, he shall be fined twenty dollars for each offense. If an inspector have reason to believe that other measures are used on board any vessel or craft than such as are hereinbefore prescribed, he shall seize and destroy said measures. (Id. § 3273.)

187a. Examination, Analysis and Inspection of Oysters and Clams, Oyster Packing Houses and Other Places at Which Oysters Are Sold for Market.—For the purpose of protecting the oyster and clam industries of the State of Virginia, as well as the public health of the country, and preventing the sale of oysters and clams which are deemed unfit for market, the Health Commissioner of this State is hereby directed, in his discretion, or at the request of the Governor, or the Commissioner of Fisheries, to make an examination or analysis of the oysters or clams, by either of the aforesaid officers, whether on the oyster planting or clamming grounds; in oyster packing houses; or, in any other place or places, in this State, from which such oysters and clams are to be taken or sold for food purposes. And the said health commissioner in making such examination of oyster packing houses, or other places so designated, shall examine as well not only the oysters or clams therein, but the packing houses and plants wherein they are handled, as well as the sanitary conditions surrounding the same. (Id. § 3281, as amended L. 1927, c. 116.)

*Repealed.

187b. Designation of Oyster and Clam Grounds on Which Are Oysters and Clams Unfit for Market.—When the Health Commissioner is satisfied, as a result of an examination, analysis, or inspection, made pursuant to section thirty-two eighty-one, that the oysters and clams upon such ground, or in such packing houses, or other place where they are sold, or offered for sale, as in said section, thirty-two hundred and eighty-one described, are unfit for market; or, that such packing house, or other place is so unsanitary as to render it an unfit place in which to prepare oysters and clams for market, he shall notify the Commissioner of Fisheries, and the owner or operator of such oyster or clam ground, packing house, or other place, of such fact.

Upon receipt of such notice, the owner or operator of such oyster or clam ground, packing house, or other place, shall cease to take oysters and clams from such ground, except as is provided in section thirty-two hundred and eighty-four and section thirty-two hundred and eighty-five, and shall cease to prepare for market, or to sell, or offer for sale, or to dispose of, in any manner, oysters or clams in such packing houses or other place, as herein mentioned, until the cause for such notice shall have been removed or relieved, to the satisfaction of said Health Commissioner.

And the said Health Commissioner may establish, alter, and change, in his discretion, at any time, standards which shall control the marketing of oysters and clams; and he shall be the sole judge as to whether or not such oysters and clams are fit for market, and also for such standards.

When from the examinations provided for in section thirty-two hundred and eighty-one of this act, the Health Commissioner is satisfied that the oysters and clams upon any ground. in this State, are unfit for market, he shall in collaboration with the Commissioner of Fisheries, cause the limits or boundaries of such area, upon which such oysters and clams are located or planted, to be condemned and to remain so, until such time as the Health Commissioner shall find such oysters and clams relieved from the condition existing at the time of such examination, and fit for market. (Id. § 3282.)

187c. Oysters and Clams Upon the Grounds in This State, Unfit for Market, Not to be Removed.—When it shall be determined by the Health Commissioner that the oysters and clams, upon any ground in this State, are unfit for market, and the owner of such ground has been notified of that fact by the Health Commissioner, or the Commissioner of Fisheries, or such ground has been condemned, as provided in section thirty-two hundred and eighty-two, it shall be unlawful for any person, firm, or corporation, to take oysters or clams from such area, for any purposes except as provided in section thirty-two hundred and eighty-four and section thirty-two hundred and eighty-five. (Id. § 3283.)

187d. Permit for Removal of Oysters and Clams From Private Grounds.—When oysters or clams, located upon any private grounds, under lease or deed, have been condemned as provided by sections thirty-two hundred and eighty-one and thirty-two hundred and eighty-two, and the owner or owners thereof desire to remove them to another area, where they may be cleaned and made fit for market, such oysters and clams may be removed for such purpose, provided that the owner or owners shall first secure a permit from the Commissioner of Fisheries, in writing, and said commissioner is hereby authorized to grant such permit, in his discretion, under such rules and regulations as he may prescribe.

When such oysters and clams have been removed, under such a permit it shall be unlawful to dispose of same for market in any manner, until the Health Commissioner has declared them to have passed examinations and tests satisfactory to him, and the Commissioner of Fisheries notified thereof. (Id. § 3284.)

187e. Permit for Removal of Oysters and Clams From Public Grounds.—When oysters and clams located upon grounds belonging to the State (public grounds) are found to be unfit for market, as provided in sections thirty-two hundred and eighty-one and thirty-two hundred and eighty-two, they may be removed by those holding tongers licenses for ordinary tongs, from the said public grounds, upon permits granted, by the Commissioner of Fisheries, in his discretion, but only during the period from May first, to August fifteenth, and only for the purpose of transferring such oysters and clams to areas where they may be cleansed and made fit for market. When such oysters and clams shall have been so removed, as provided in this section, it shall be unlawful to again remove them until they have been declared by the Health Commissioner, in writing, to have passed examinations and tests satisfactory to him. (Id. § 3285.)

187f. What Constitutes Violation of Section 3283.—It shall be a violation of the provisions of section thirty-two hundred and eighty-three for any person, firm or corporation, to have in their possession, to store, to sell, or offer for sale, any oysters or clams which have been unlawfully removed from oyster and clam grounds contrary to the provisions of sections thirty-two hundred and eighty-four and thirty-two hundred and eighty-five. (Id. § 3286.)

187g. What Officers Charged With the Enforcement of the Six Preceding Sections, May do, Penalties and Disposition of Fines.—For the purpose of carrying out the provisions of the six preceding sections, the Health Commissioner and the Commissioner of Fisheries, and such agents or assistants of either of the said commissioners as are now or may be hereafter appointed, may enter upon any premises located in the State of Virginia, or upon any boat, vessel, barge, car, or other conveyance, wharf, packing or shucking house, store, stall, or other place where oysters and clams may be found, and if it appears that the provisions of said sections, or any of them, have been violated, may, with or without a warrant, arrest any person or persons, who are, or who have been, or who are believed to be, or have been, in charge of such oysters and clams, and may seize, in the name of the Commonwealth of Virginia, and take possession of such oysters and clams, and may seize and take possession of any boat, vessel, barge, car, or other conveyance, used in violation of the provisions of said sections, together with the cargo of any such boat, vessel, which may be held till the accused has paid the penalty for his offense, if upon trial he is found guilty, or has upon trial been acquitted, as the case may be. Any person or persons impeding, hindering or interfering with the said commissioners, their agents or assistants, or persons appointed by them, or either of them, in the discharge of their duties in carrying out the provisions of said sections, and any person or persons, firm or corporation who shall violate any of the provisions of said sections, shall be guilty of a misdemeanor, and upon conviction shall be fined not less than twenty-five dollars for the first offense, and for any subsequent offense not less than fifty dollars, or may be punished by imprisonment, not exceeding one year, or both, in the discretion of the court trying the case. Any fine assessed and collected hereunder shall be paid into the treasury of this State, through the oyster officials, as in the case of all other fines imposed and collected for violation of the oyster laws; and in addition to the penalties herein provided, the oysters and clams taken from such areas, contrary to the provisions of said sections, shall be forfeited to the Commonwealth. When an oyster inspector is directly instrumental in apprehending and bringing to trial an offender, against whom a fine is imposed and collected, under said sections, one-fourth of the fine shall go to the said inspector, and the remaining three-fourths shall be paid into the treasury, as aforesaid. (Id. § 3287.)

187h. Offender May Pay Fine and be Discharged.—The person liable for any fine under the preceding section may pay the officer directly instrumental in apprehending such person such sum as may be agreed upon between such person and officer and all costs; and thereupon such person shall be discharged from all legal proceedings that may be instituted against him for such offense; provided that the amount so agreed upon be not less than the minimum fine imposed for such offense, any such agreement to be in the nature of a compromise and not to be used as evidence in any proceeding for such violation. (Code 1924, § 3288.)

187i. Who to Enforce Eight Preceding Sections; Rules and Regulations; Duty of Commonwealth's Attorneys.—The Health Commissioner and the Commissioner of Fisheries,* of this State, are hereby charged with the enforcement of the provisions of the eight preceding sections, and for the purpose of carrying out their provisions, they are, hereby, authorized to make uniform rules and regulations, and it shall be the duty of the attorney for the Commonwealth, to whom they, or either of them, shall report any violation of said sections, to cause proceedings to be commenced and prosecuted, without delay, for the fines and penalties in such cases provided.

Upon the taking effect of this section as hereby amended, the Commissioner of Agriculture and Immigration shall immediately turn over to the State Health Commissioner all of the floating and other equipment heretofore used by the Commissioner of Agriculture and Immigration in performing the duties imposed by sections thirty-two hundred and eighty-one to thirty-two hundred and eighty-nine, inclusive, of the Code of Virginia. (Id. § 3289, as amended L. 1927, c. 116.)

NOTE: See also No. 1a.

Salt.

See Nos. 125 et seq and 416.

Vinegar.

188. To Prevent the Manufacture and Sale of Adulterated Cider Vinegar.—No person shall manufacture, produce, sell, keep for sale, or offer for sale any vinegar which shall not have an acidity equivalent to the presence of at least four and one-half per centum by weight of absolute acetic acid, or any cider vinegar which

*See No. 1a.

shall have less than such amount of acidity or less than two per centum by weight of cider vinegar solids upon full evaporation over boiling water.

No person shall manufacture, produce, sell, keep for sale, or offer for sale any vinegar or product in imitation or semblance of cider vinegar which is not cider vinegar.

No person shall manufacture, produce, sell, keep for sale, or offer for sale any vinegar which shall contain any preparation of lead, copper, sulphuric acid, or other ingredients injurious to health or any artificial coloring matter.

Every manufacturer or producer of cider vinegar shall plainly brand on each head of the cask, barrel, keg, or other package containing such vinegar his name and place of business and the words "cider vinegar"; and no person shall label or brand as for cider vinegar any package containing vinegar which is not cider vinegar.

Whoever by himself or another violates any of the provisions of this section shall be guilty of a misdemeanor, and upon conviction shall be punished by a fine of not less than fifty dollars nor more than one hundred dollars.

For the purpose of this section the term "cider vinegar" shall be understood to mean vinegar made exclusively of pure apple juice. (Code 1924, § 1191.)

189. Vinegar Defined; Manufacture or Sale of Adulterated or Misbranded Vinegar Prohibited; Penalties.—1. All vinegar made by fermentation without distillation must carry in solution only the extractive matter derived exclusively from the fruit, grain, sugar or syrup from which it was derived and fermented, and comply with the following definitions:

The terms "cider vinegar" and "apple vinegar" or words of similar import shall be constructed [construed] to mean the product made exclusively from the expressed juice of fresh, whole apples by alcoholic and subsequent acetous fermentations.

The terms "wine vinegar" and "grape vinegar" or words of similar import, shall be construed to mean the product made by the alcoholic and subsequent acetous fermentations of the expressed juice of fresh whole grapes.

The term "malt vinegar" or words of similar import, shall be construed to mean the product made by the alcoholic and subsequent acetous fermentations, without distillation, of an infusion of barley malt or cereals whose starch had been converted by malt.

The term "sugar vinegar" or words of similar import, shall be construed to mean the product made by the alcoholic and subsequent acetous fermentations, without distillation, of solutions of sugar, syrup, molasses or refiners' syrup.

The terms "glucose vinegar" or "corn sugar vinegar" or words of similar import, shall be construed to mean the product made by the alcoholic and subsequent acetous fermentations, without distillation, of solutions of corn sugar or glucose prepared from corn starch.

The terms "spirit vinegar," "distilled vinegar" or "grain vinegar" or words of similar import, shall be construed to mean the product made by the acetous fermentation of dilute distilled alcohol derived from grain, sugar, syrup, molasses or refiners' syrup.

The term "evaporated apple products vinegar" or "vinegar made from evaporated apple products," or words of similar import, shall be construed to mean the product made by the alcoholic and subsequent acetous fermentations of the aqueous extract obtained from clean, sound, dried apples, dried chopped apples or dried apple skins or cores.

2. Vinegar which fails to comply with such definitions or which contains any substance or ingredient not derived exclusive[ly] from the fruit, grain, sugar or syrup from which it shall so be made, or which contains less than four grams of acetic acid in one hundred cubic centimeters of the vinegar at twenty degrees centigrade, shall be deemed adulterated.

3. The product made by the destructive distillation of wood known as pyroligneous acid, or acetic acid derived from other sources than fruit, grain, sugar or syrup, or a product in which any such acid shall be used, mixed or compounded, shall not be sold, offered or had in possession for sale as vinegar.

4. Mixtures of two or more of the foregoing vinegars or compounds and packages containing the same shall be plainly marked with the word "compound," together with the proportions of the vinegars so mixed, in addition to the other requirements hereof. No such compound shall be colored or made in imitation of any other kind of vinegar or sold, offered or had in possession for sale when so colored or made.

5. Packages containing vinegar which has been reduced with water must be plainly marked "reduced to four per centum acid strength," indicating the acidity to which it has been reduced.

6. Each cask, barrel or other container of such vinegar, shall be plainly marked with the name and place of business of the manufacturer or distributor thereof, and

the kind of vinegar contained therein, in the terms above defined; and no person shall falsely mark any package containing any vinegar so defined, with any other brand or designation or with any additional words, marks or description which shall be false or deceptive in any particular whatever.

7. No person, firm or corporation shall manufacture, sell, offer, or have in possession for sale, in this State:

(1) Any vinegar so defined which does not comply with such definitions.

(2) Any adulterated or misbranded vinegar.

(3) Any vinegar or product in imitation of any vinegar so defined.

(4) Any vinegar to which any artificial coloring matter has been added of any kind whatever, or which contains any substance or ingredient not derived exclusively from the fruit, grain, sugar or syrup from which it purports to have been derived.

8. Violation of this act shall be a misdemeanor and punished by a fine of not less than one hundred dollars, nor more than five hundred dollars for the first offense, and not less than five hundred nor more than one thousand dollars for all subsequent offenses. (Id. § 1192a.)

190. Rules and Regulations of Dairy and Food Commissioner* Enacted Into Law; Punishment for Violation of Provisions of Section.—1. The rules and regulations of the Dairy and Food Commissioner fixed and established by and with the approval of the Board of Agriculture and Immigration be, and they are hereby, enacted into law, as follows:

2. . . . (20) The term vinegar, when used without qualification, means cider vinegar, and the sale of any other kind under the name of vinegar, unless the name be qualified, will be held to be misbranded. Vinegars, recognized in the United States standards, are classified as follows:

One, cider vinegar, apple vinegar. Two, wine vinegar, grape vinegar. Three, malt vinegar. Four, sugar vinegar. Five, glucose vinegar. Six, spirit vinegar, distilled vinegar, grain vinegar.

All vinegar offered or exposed for sale shall be kept up to the recognized standards of the United States Department of Agriculture, which are adopted as the standards of this State, and must be labeled true to name and be free from foreign coloring matter. . . .

3. Any person, firm, corporation or association violating any of the provisions of this section shall be guilty of a misdemeanor, and upon conviction thereof, shall be punished by a fine of not less than twenty-five nor more than three hundred dollars. (Id. § 1227a.)

NOTE: See also No. 283.

Sanitation.

191. To Prevent the Transportation or Storage of Food Products Under Insanitary Conditions; Penalties for Violation.—It shall be unlawful for any person, firm or corporation, or for any transportation company, express company, railroad company or steamboat company or any common carrier to permit insanitary conditions to exist in the transportation or storage of an article of food, whereby such article of food may become contaminated from being so transported or stored in insanitary surroundings.

The term "food" as used in this section shall include all articles used for food, drink, confectionery, or condiment by man or other animals, whether simple, mixed or compound.

Any person, firm or corporation who shall violate any of the provisions of this section shall be guilty of a misdemeanor, and upon conviction shall be punished by a fine of not less than five dollars nor more than one hundred dollars, and costs of prosecution, or by imprisonment in the county or city jail not to exceed ninety days, or until such fine and costs are paid, or by both fine and imprisonment at the discretion of the court.

The Dairy and Food Commissioner* is hereby charged with the enforcement of this section, and he and his assistants or agents shall have full right to enter and inspect all stores, warehouses, freight or express car, steamboats, or steamships, trucks, drays, wagons, and any and all means or places of transportation or storage of articles of food; and any person, firm or corporation who shall hinder, or obstruct the Dairy and Food Commissioner, his assistants or agents in the discharge of the authority or duty imposed upon him or them by the provisions of this section, shall be guilty of a violation of the same.

Whenever any article of food is transported or stored under insanitary conditions, the proceedings for the enforcement of the penalties and punishments fixed

*Now Commissioner of Agriculture and Immigration. See No. 1. This law is to be corrected accordingly.

for violations of this section may be instituted and maintained in any county or city through which or in which such article of food has been or is so transported or stored under insanitary conditions as aforesaid. (Code 1924, § 1220.)

192. **Rules and Regulations of Dairy and Food Commissioner Enacted Into Law; Punishment for Violation of Provisions of Section.**—1. The rules and regulations of the Dairy and Food Commissioner fixed and established by and with the approval of the Board of Agriculture and Immigration be, and they are hereby, enacted into law, as follows:

2. (1) Every building, room, basement or cellar occupied or used as a bakery, confectionery, cannery, packing house, slaughter house, dairy, creamery, cheese factory, restaurant, hotel, grocery, meat market or other place or apartment used for the preparation for sale, manufacture, packing, storage, sale or distribution of any food or food products shall be properly lighted, drained, plumbed and ventilated, and conducted with due regard for the purity and wholesomeness of the food therein produced, and with strict regard to the influence of such conditions upon the health of the operatives, employees, clerks or other persons therein employed. The term "food" as used herein shall include all articles used for food, drink, confectionery or condiment, whether simple, mixed or compound, and all substances or ingredients used in the preparation thereof.

(2) The floors, side walls, ceilings, furniture, receptacles, implements and machinery of every establishment where food is manufactured, packed, stored, sold or distributed, shall at all times be kept in a clean, healthful and sanitary condition.

(3) Food in the process of manufacture, preparation, packing, storing, sale or distribution, must be securely protected from flies, dust, dirt and as far as may be necessary, from all other foreign or injurious contamination. The provisions of this regulation shall also apply to the following fruits: Grapes, raisins, currants, figs, prunes, dates, berries, cherries and plums.

(4) All refuse, dirt and the waste products subject to decomposition and fermentation incident to the manufacture, preparation, packing, storing, selling and distributing of food, must be removed from the premises daily.

(5) All trucks, trays, boxes, baskets, buckets, and other receptacles, chutes, platforms, racks, tables, shelves and all knives, saws, cleavers, and other utensils and machinery used in moving, handling, cutting, chopping, mixing, canning and all other processes, must be thoroughly cleaned daily.

(6) The clothing of operatives, employees, clerks, or other persons must be clean.

(7) The side walls and ceilings of every bakery, confectionery, creamery, cheese factory, hotel and restaurant kitchen, shall be well plastered, wainscoted, or ceiled, preferably with metal or lumber, and shall be kept oil painted or well limewashed, and all interior woodwork in every bakery, confectionery, creamery, cheese factory, hotel and restaurant kitchen shall be kept washed and clean with soap and water; and every building, room, basement, or cellar occupied or used for the preparation, manufacture, packing, storage, sale or distribution of food, shall have an impermeable floor made of cement or tile, laid in cement, brick, wood or other suitable non-absorbent material which can be flushed and washed clean with water.

(8) The doors, windows and other openings of every food-producing or distributing establishment during the fly season, shall be fitted with self-closing screen doors and wire window screens of not coarser than fourteen-mesh wire gauze.

(9) The sleeping place or places for persons employed in such establishments shall be separate and apart from the room in which food products are manufactured or stored, and no person shall sleep in any place where flour, meal or the manufactured products thereof are manufactured or stored.

(10) No domestic animals except cats, shall be permitted to remain in any room used for the manufacture or storage of food products.

(11) No employer shall knowingly permit, require or suffer any person to work in a bakery, confectionery, cheese factory, dairy, creamery, hotel or restaurant kitchen, who is afflicted with any contagious or infectious disease, or with any skin disease.

(12) Cuspidors shall be provided by the owner or operator of each work-room of every bakery, confectionery, or other food-producing establishments, and no employee or other person shall expectorate on the floors or side walls of any such bakery, confectionery, creamery, or other food-producing establishment. Plain notice forbidding such expectoration shall be posted in every such place.

Smoking in workrooms of food-producing establishments is inhibited.

(13) Every place in which human foods are manufactured, prepared, exposed or offered for sale shall be provided with a convenient washroom and toilet of sanitary construction, but such toilet shall be entirely separate and apart from any room used for the manufacture or storage of food products.

(14) Delivery wagons used in the delivery of products of bakeries and confectioneries shall be covered wagons, closed at both ends.

(15) Delivery wagons used to transport or deliver meats or meat products must be provided with tarpaulins of sufficient size to cover the entire body of wagon when loaded, and the tarpaulins shall be carefully spread over loads of meats and meat products unprotected by boxes or casings when in transit through the streets of the cities and towns of the State.

(16) The rooms or compartments in which meat or meat-food products are prepared, cured, stored, packed, or otherwise handled, shall be free from odors, from toilets, catch basins, tank rooms, casing departments, hide cellars, nor shall hides be stored in such rooms.

(17) All bottles, jugs, barrels and containers used in the packing, storage, distribution and sale of drink products must be sterilized with boiling water or live steam before filling the same. . . .

3. Any person, firm, corporation or association violating any of the provisions of this section shall be guilty of a misdemeanor, and upon conviction thereof, shall be punished by a fine of not less than twenty-five nor more than three hundred dollars. (Code 1924 and Code Supp. 1926, § 1227a.)

NOTE: See also Nos. 4, 30, 43 et seq., 52 et seq., 70 et seq., 172-174, and 187a et seq.

PART III.

Special Drug Laws.

Abortifacients.

193. Attempt to Produce Abortion, or by Publication, Etc., Prompt the Procuring of it; How Punished.—If any person administer to, or cause to be taken by a woman, any drug or other thing, or use any means with intent to destroy her unborn child, or to produce abortion or miscarriage, and thereby destroy such child or produce such abortion or miscarriage, he shall be confined in the penitentiary not less than three nor more than ten years. No person, by reason of any act mentioned in the foregoing part of this section, shall be punishable where such act is done in good faith, with intention of saving the life of such woman or child. And if any person, by publication, lecture, advertisement, or by the sale or circulation of any publication, or in any other manner, encourage or prompt the procuring of abortion or miscarriage, he shall be deemed guilty of a misdemeanor, and shall, upon conviction, be fined not less than one hundred nor more than five hundred dollars, and be confined in jail not less than one nor more than twelve months for each offense. (Code 1924, § 4401.)

Condimental Stock and Poultry Foods and Powders.

See No. 117 et seq.

Dangerous Caustic or Corrosive Substances.

194. Definitions.—In this act, unless the context or sub-matter otherwise requires.

(A) The term "dangerous caustic or corrosive substance" means each and all of the acids, alkalis, and substances named below: (a) Hydrochloric acid and any preparation containing free or chemically unneutralized hydrochloric acid in a contration of ten per centum or more; (b) sulphuric acid and any preparation containing free or chemically unneutralized sulphuric acid in a concentration of ten per centum or more; (c) nitric acid or any preparation containing free or chemically unneutralized nitric acid in a concentration of five per centum or more; (d) carbolic acid, otherwise known as phenol, and any preparation containing carbolic acid or phenol in a concentration of five per centum or more; (d-1) cresol or any preparation containing cresol in a concentration of five per centum or more; (e) oxalic acid and any preparation containing free or chemically unneutralized oxalic acid in a concentration of ten per centum or more; (f) any salt of oxalic acid and any prep-

aration containing any such salt in a concentration of ten per centum or more; (g) acetic acid or any preparation containing free or chemically unneutralized acetic acid in a concentration of twenty per centum or more; (h) hydrochlorous acid, either free or combined, and any preparation containing the same in a concentration so as to yield ten per centum or more by weight of available chlorine, excluding calx chlorinta, bleaching powder, and chloride of lime; (i) potassium hydroxide and any preparation containing free or chemically unneutralized potassium hydroxide, including caustic potash and Vienna paste, in a concentration of ten per centum or more; (j) sodium hydroxide and any preparation containing free or chemically unneutralized sodium hydroxide, including caustic soda and lye, in a concentration of ten per centum or more; (k) silver nitrate, sometimes known as lunar caustic, and any preparation containing silver nitrate in a concentration of five per centum or more, and (l) ammonia water and any preparation yielding free or chemically uncombined ammonia, including ammonium hydroxide and "hartshorn," in a concentration of five per centum or more.

(B) The term "misbranded parcel, package, or container" means a retail parcel, package, or container of any dangerous caustic or corrosive substance for household use, not bearing a conspicuous, easily legible label or sticker, containing (a) the name of the article; (b) the name and place of business of the manufacturer, packer, seller, or distributor; (c) the word "poison," running parallel with the main body of reading matter on said label or sticker, on a clear, plain background of a distinctly contrasting color, in uncondensed gothic capital letters, the letters to be not less than twenty-four point size, unless there is on said label or sticker no other type so large, in which event the type shall be not smaller than the largest type on the label or sticker, and (d) directions for treatment in case of accidental personal injury by the dangerous caustic or corrosive substance; except that provisions (a), (c) and (d) of above section shall not apply to physicians' prescriptions but the said prescription shall carry the regular poison label. (Code Supp. 1926, § 1702a.)

195. Prohibiting Sale of Misbranded Packages.—No person shall sell at retail barter, or exchange, or display, or offer for sale, barter, or exchange in this State, except at wholesale any dangerous caustic or corrosive substance in a misbranded parcel, package, or container, said parcel, package, or container being designed for household use. (Id. § 1702b.)

196. Penalty.—Any person violating the provisions of this chapter shall, upon conviction thereof, be punished by a fine of not more than two hundred dollars, or by imprisonment for not more than ninety days, or by both such fine and imprisonment, in the discretion of the court. (Id. § 1702c.)

197. Duties of Board of Pharmacy.—The State Board of Pharmacy shall enforce the provisions of this act, and it is hereby authorized and empowered to approve and register such brands and labels intended for use under the provisions of this act as may be submitted to it for that purpose and as may in its judgment conform to the requirements of this statute; provided, however, that in any prosecution under this act the fact that any brand or label involved in said prosecution has not been submitted to said State Board of Pharmacy for approval, or if submitted, has not been approved by it, shall be immaterial. (Id. § 1702d.)

Distribution of Samples.

198. Throwing Sample Packages of Medicines in Yards, Halls, Porches, or Doorways, a Misdemeanor.—It shall be unlawful for any person, firm, or corporation to throw or place, or cause to be thrown or placed, in any yard, hall, porch, doorway, or vestibule of any house in this State, any sample or sample package of medicine without permission from the owner or occupant of such premises. Nothing in this section shall be so construed as to prevent any person, firm, or corporation from delivering samples or sample packages of medicine, if said delivery is made direct to the owner or occupant of any house, or to any person over twelve years of age. Any person violating any of the provisions of this section shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined not less than five nor more than fifty dollars. (Code 1924, § 1701.)

Insecticides and Fungicides.

199. Sale of Adulterated or Misbranded Insecticides or Fungicides.—It shall be unlawful for any person to manufacture, sell, or offer for sale, within the Commonwealth, any insecticide or fungicide which is adulterated or misbranded, within the mean of this act. (Code 1924, § 1137a.)

200. Fraud.—It shall be unlawful for any person to defraud any other person by knowingly or recklessly misrepresenting the value of any treatment applied to trees, shrubs, vines, or other plant material, or to any animal, for preventing, destroying, repelling or mitigating any insect, fungus or bacterial disease, or for accelerating its growth or productive powers. (Id. § 1137b.)

201. Rules and Regulations.—The Commissioner of Agriculture and Immigration shall promulgate uniform rules and regulations for enforcing this act, including the collection and examination, by existing agencies, of insecticides and fungicides, manufactured or offered for sale in the Commonwealth, for the purpose of determining whether such articles are adulterated or misbranded within the meaning of this act; and, if it shall appear after such examination that any of such specimens are adulterated or misbranded within the meaning of this act, the Commissioner of Agriculture and Immigration shall cause notice thereof to be given to the person from whom such sample was obtained. Any person so notified shall be given an opportunity to be heard at a designated time and place; and, if it appears that any of the provisions of this act have been violated, the Commissioner of Agriculture and Immigration shall cause the certification of such facts to the proper court, with a copy of the results of the analysis or examination, authenticated be the analyst or expert, under oath. Results of analysis or examinations of insecticides and fungicides may be published, under the direction of the Commissioner of Agriculture and Immigration. (Id. § 1137c.)

202. Person Defined.—For the purposes of this act, the word "person" shall include corporations, companies, societies, associations, partnerships, or any individual or combination of individuals. (Id. § 1137d.)

203. Insecticides Defined.—The term "insecticides" as used in this act, shall include any substance, or mixtures of substances, intended to be used for preventing, destroying, repelling, or mitigating any insects which may infest vegetation, man or animals, or households, or be present in any environment whatsoever. The term "Paris green," as used in this act, shall include the product sold in commerce as Paris green, and chemically known as the aceto-arsenite of copper. The term "lead arsenate," as used in this act, shall include the product or products sold in commerce as lead arsenate, and consisting chemically of products derived from arsenic acid, by replacing one or more hydrogen atoms by lead, That the term "fungicide," as used in this act, shall include any substance, or mixture of substances, intended to be used for preventing, destroying, repelling, or mitigating any and all fungi that may infest vegetation, man or animals, or be present in any environment whatsoever. (Id. § 1137e.)

204. Adulteration.—For the purpose of this act, an article shall be deemed to be adulterated:

In the case of Paris green.—First, if it does not contain at least fifty per centum of arsenious oxide; second, if it contains arsenic in water soluble forms equivalent to more than three and one-half per centum of arsenious oxide; third, if any substance has been mixed and packed with it so as to reduce or lower or injuriously affect its quality or strength.

In the case of lead arsenate paste.—First, if it contains more than fifty per centum of water; second, if it contains total arsenic equivalent to less than twelve and one-half per centum of arsenic oxide; third, if it contains arsenic in water soluble forms equivalent to more than seventy-five one-hundredths per centum of arsenic oxide. In the case of dry powdered lead arsenate.—First, if it contains total arsenic equivalent to less than twenty-five per centum of arsenic oxide; second, if it contains arsenic in water soluble forms equivalent to more than one per centum of arsenic oxide; third, if any substances have been mixed and packed with either form of arsenate of lead so as to reduce, lower, or injuriously affect its quality or strength. Provided, however, that extra water may be added to lead arsenate (as described in this paragraph), if the resulting mixture is labeled lead arsenate and water, the percentage of extra water being plainly and correctly stated on the label.

In the case of insecticides or fungicides other than Paris green and lead arsenate. —First, if its strength, purity or efficacy fall below the professed standard or quality under which it is sold; second, if any substance has been substituted wholly or in part for the article; third, if any valuable constituent of the article has been wholly or in part abstracted; fourth, if it is intended for use on vegetation, and shall contain any substance or substances which, although preventing, destroying, repelling or mitigating insects or fungi, shall be injurious to such vegetation when used under normal conditions according to the direction of the manufacturer. (Id. § 1137f.)

205. Misbranding.—The term "misbranded," as used herein shall apply to all insecticides, Paris green, lead arsenates, or fungicides, or articles which enter into the composition of insecticides or fungicides, the package, label, or accompanying descriptive circulars of which shall bear any statement, design, or device regarding such article, or the ingredients or substances contained therein, which shall be false

or misleading in any particular, and to all insecticides, Paris greens, lead arsenates, or fungicides, which are falsely branded as to the State, territory or country in which they are manufactured or produced.

For the purposes of this act, an article shall be deemed to be misbranded:

In the case of insecticides, Paris green, lead arsenates, and fungicides.—First, if it be an imitation, or offered for sale under the name of another article; second, if it be labeled or branded so as to deceive or mislead the purchaser, or if the contents of the package as originally put up shall have been removed in whole or in part, and other contents shall have been placed in such package; third, if the quantity of the contents be not plainly and correctly marked on the outside of the package, in terms of weight, measure, or numerical count

In case of insecticides and fungicides.—First, if the correct names and percentage amounts of each and every ingredient of the insecticides or fungicides having insecticidal or fungicidal properties are not plainly stated on the label; second, if it contains arsenic in any of its combinations or in the elemental form, and the amount of arsenic in water soluble form (expressed as per centum of metallic arsenic or arsenic oxid) is not stated on the label; third, if it consists, partially or completely, of an inert substance or substances which do not effectively prevent, destroy, or repel insects or fungi, and does not have the names and percentage amounts of each and every one of such inert ingredients, and the fact that they are inert, plainly and correctly stated on the label. Provided, however, that in lieu of naming and stating the percentage amounts of each and every inert ingredient the producer may state on the label the total percentage of inert ingredients present and the fact that they are inert. (Id. § 1137g.)

206. Disposition of Adulterated or Misbranded Articles.—Any insecticide or fungicide that is condemned as being adulterated or misbranded, within the meaning of this act, shall be confiscated and disposed of by destruction, or in such other manner as the court may direct. (Id. § 1137h.)

207. Offenses.—Any person who shall violate any of the provisions of this act, or any rule or regulation of the Commissioner of Agriculture and Immigration promulgated under this act, shall be guilty of a misdemeanor, and shall, upon conviction thereof, be fined not to exceed two hundred dollars for the first offense; and, upon conviction for each subsequent offense, be fined not to exceed three hundred dollars, or sentenced to imprisonment for not to exceed one year, or both such fine and imprisonment in the discretion of the court. (Id. § 1137i.)

Jamaica Ginger.

See No. 292.

Pharmacy, Poisons and Narcotics.

208. Virginia Pharmaceutical Association; What Real Estate it May Hold.—The Virginia Pharmaceutical Association, incorporated by an act of the General Assembly, approved March third, eighteen hundred and eighty-six, shall continue a corporation under the name of "The Virginia Pharmaceutical Association." Said association shall not hold, at any one time, real estate in excess of ten thousand dollars in value. (Code 1924, § 1655.)

209. Its Objects.—The object of said association is to unite the pharmacists and druggists of this State for mutual aid, encouragement, and improvement, encourage scientific research, develop pharmaceutical talent, elevate the standard of professional thought, and ultimately restrict the practice of pharmacy to qualified pharmacists and druggists. (Id. § 1656.)

210. Punishment for Unlawful Manufacture, Etc., of Adulterated, Etc., Drug.—It shall be unlawful for any person to manufacture, sell, or offer for sale any drug which is adulterated or misbranded, within the meaning of this chapter; and any person who shall violate any of the provisions of this chapter shall be guilty of a misdemeanor, and for each offense shall, upon conviction thereof, be fined not less than twenty nor more than one hundred dollars or imprisoned in jail not exceeding six months, or both, in the discretion of the court; and for each subsequent offense and conviction thereof shall be fined not exceeding two hundred dollars or imprisoned in jail not exceeding six months, or both, in the discretion of the court. (Id. § 1657.)

211. Rules and Regulations to be Made by Board of Pharmacy.—The Board of Pharmacy shall make uniform rules and regulations for carrying out the provisions of this chapter, including the collection and examination of specimens of drugs manufactured or offered for sale in this State. (Id. § 1658.)

212. **Guaranty to Protect Dealer from Prosecution.**—No dealer shall be prosecuted under the provisions of this chapter, who can establish a guaranty signed by the wholesaler, jobber, manufacturer, or other party residing in this State or in the United States, from whom he purchased such articles that the same when purchased in this State are not adulterated or misbranded within the meaning of this chapter, or if purchased out of this State, but within the United States, when the said dealer can establish a guaranty signed by the person or persons, residing in the United States, from whom he has purchased such article to the effect that the same are not adulterated or misbranded within the meaning of the national food and drug act of June thirtieth, nineteen hundred and six. Said guaranty, to afford protection in either case, shall contain the name and address of the party or parties making the sale of such articles to such dealer, and in such case said party or parties shall be amenable to the prosecutions, fines, and other penalties which would attach, in due course, to the dealer under the provisions of this chapter. (Id. § 1659.)

213. **Examination of drugs by the Board; Notices of Violations of This Chapter; Chemical Analyses as Evidence.**—The examination of specimens of drugs shall be made under the direction and supervision of the Board of Pharmacy, for the purpose of determining from such examination whether such articles are adulterated or misbranded within the meaning of this chapter, and if it shall appear from any such examination that any of such specimens is adulterated or misbranded within the meaning of this chapter, the Board of Pharmacy shall cause notice thereof to be given to the party from whom such sample was obtained. Any party so notified shall be given an opportunity to be heard, under such rules and regulations as may be prescribed as aforesaid, and if it appears that any of the provisions of this chapter have been violated by such party, then the Board of Pharmacy shall at once certify the facts to the Commonwealth's Attorney of the city or county wherein the offense occurred, with a copy of the results of the analysis of [or] the examination of such article duly authenticated by the analyst or officer making such examination, under the oath of such officer. It shall be the duty of the Department of Agriculture and Immigration of this State to make such chemical analysis as may be necessary for carrying out the provisions of this chapter. In all prosecutions arising under this chapter the certificate under oath of the analyst or other officer making the analysis or examination therein shall be prima facie evidence of the facts therein certified. (Id. § 1660.)

214. **Duty of Commonwealth's Attorney in Case of Report of Violation of Law.**—It shall be the duty of each Commonwealth's Attorney to whom the Board of Pharmacy shall report any violation of this chapter to cause appropriate proceedings to be commenced and prosecuted in the Corporation Court of the city or the Circuit Court of the county wherein the offense occurred, without delay, for the enforcement of the penalties as in such case provided (Id § 1661.)

215. **Definition of Terms for Purposes of This Chapter.**—The word "drug" as used in this chapter, shall include all medicines and preparations recognized in the United States Pharmacopœia or National Formulary for internal or external use, and any substance or mixture of substances intended to be used for the cure, mitigation or prevention of disease of either man or other animals.

The word "person" as used in this chapter, shall be construed to import both the plural and singular, as the case demands, and shall include corporations, companies, societies and associations.

The word "pharmacy," as used in this chapter, shall include every place (except as hereinafter provided) in which drugs, medicines or poisons are retailed or dispensed, or are displayed for sale at retail, or are kept in stock in other than manufacturers' or wholesalers' original packages, or in which physicians' prescriptions are compounded.

The term "original package," as used in this chapter shall be construed to mean the original carton, case, can, box, bottle, vial or other receptacle, put up by the manufacturer or wholesaler with his label attached, making one complete package of the drug article.

The term "patent or proprietary medicines," as used in this chapter, shall include only medicines prepared according to a private formula or a secret process or under a trade-mark of the manufacturer or owner, and sold under a trade name in an original package on which appear the disease or diseases for which the medicine is intended to be used and specific directions for its administration. (Id. § 1662.)

216. **When Article Deemed Adulterated.**—For the purpose of this chapter an article shall be deemed to be adulterated:

First—If, when a drug is sold under or by a name recognized in the United States Pharmacopœia or National Formulary, it differs from the standard of strength, quality, or purity, as determined by the tests laid down in the United States Pharmacopœia or Naional Formulary official at the time of investigation; provided, that no drug defined in the United States Pharmacopœia or National Formulary, except

preparations of opium shall be deemed to be adulterated under this provision, if the standard of strength, quality, or purity be plainly stated upon the bottle, box, or other container thereof, although the standard may differ from that determined by the test laid down in the United States Pharmacopœia or National Formulary, and any preparation of opium except laudanum, shall not be deemed to be adulterated, provided it does not differ from the standard of strength, quality or purity, as determined by the tests laid down in the United States Pharmacopœia or National Formulary in any particular, save as to the amount and strength of alcohol contained in its menstruum, and said amount and strength of alcohol contained in its menstruum is plainly stated upon the bottle, box, or other container thereof.

Second—If its strength or purity fall below the professed standard of quality under which it is sold. (Id. § 1663.)

217. When Article Deemed Misbranded.—For the purpose of this chapter, an article shall be deemed to be misbranded:

First—If it fail to bear a label designating the name of the preparation, as put up for sale, or drug contained in the package, and in addition thereto the name and address of the manufacturer, distributor, wholesaler or retail pharmacist.

Second—If it be an imitation of, or offered for sale under the name of another article, or if it be so labeled or branded as to deceive or mislead the purchaser; or purport to be a foreign product when it is not so.

Third—If the contents of the package as originally put up shall have been removed, in whole or in part, and other contents shall have been placed in such package without proper alteration of the original label, or if the package fail to bear a statement on the label of the quantity or proportion of any alcohol, morphine, opium, cocaine, heroin, alpha or beta eucaine, chloroform, cannabis indica, chloral hydrate, or acetanilide, or any derivative or preparation of the said substances contained therein; but nothing in this section shall be so construed as to require any article recognized in the United States Pharmacopœia or National Formulary to be labeled as to its contents when such article conforms to the standard as laid down in the United States Pharmacopœia, or National Formulary, and is labeled and sold or dispensed as such, or to require medicines dispensed on the prescriptions of lawfully authorized practitioners of medicine, dentistry, or veterinary medicine to be labeled, except as directed by such practitioner. (Id. § 1664.)

218. Act of Agent or Officer Declared Act of Principal.—For the purpose of enforcing a civil liability arising in any manner from the provisions of this chapter, the act, omission or failure of any officer, agent or other person acting for or employed by any corporation, company, society or association, within the scope of his employment or office, shall, in every case, be also deemed to be the act, omission or failure of such corporation, company, society, or association, as well as that of the person. (Id. § 1665.)

219. Board of Pharmacy; How Appointed; Qualification of Members; Oath.—The Board of Pharmacy of the State of Virginia shall consist of five members, to be appointed by the Governor, each for the term of five years; their terms of office shall continue to be so arranged that the term of one of them shall expire each year.

The Virginia Pharmaceutical Association shall annually recommend five registered pharmacists, citizens of Virginia, who shall have had not less than ten years' practical experience in pharmacy, from whom the Governor shall fill all vacancies occurring in said board. Every person appointed a member of the board shall, before entering upon the duties of his office, take the oath of office before some officer authorized to administer an oath, and file the certificate of said oath with the secretary of the board. In the event of the failure of the said Virginia Pharmaceutical Association to make such recommendation, the Governor shall make the said annual appointment in accordance with the other provisions contained in this section. (Id. § 1666.)

220. Officers of Board; Terms of Office; Bond of Treasurer; Quorum.—There shall be a president, secretary, and a treasurer of the board, who shall be selected by the board from its own members, except that the offices of secretary and treasurer may be held by some one other than a member of the board. They shall hold office for a period of one year from their election and qualification, or until their successors are elected and qualified. The offices of secretary and treasurer may be held by the same person. The treasurer shall give bond for the faithful performance of the duties of his office in such penalty and with such security as may be approved by the board. Three members of the board shall constitute a quorum for the transaction of business. (Id. § 1667.)

221. Meetings of Board.—The board shall hold its annual meetings on the fourth Monday in April of each year, in the city of Richmond, Virginia, and such other meetings at such times and places, and upon such notice as said board may determine and as the business of said board may require. (Id. § 1668.)

222. Expenses of Board.—The expenses incurred by the Board of Pharmacy in the discharge of the duties imposed upon it to an amount not exceeding six thousand dollars per annum shall be paid out of the treasury of the Commonwealth on warrants issued by the Auditor of Public Accounts, such warrants to be issued on certificates signed by the secretary and president of the Board of Pharmacy. (Id. § 1669.)

223. Salaries.—The salaries of the secretary and treasurer shall be fixed by the board. Each member of the board shall be paid the sum of ten dollars, for every day he is actually engaged in the service of the board, and shall be reimbursed for such actual and legitimate expenses as he may incur in going to and from the place of meeting and remaining thereat during the sessions of the board. (Id. § 1670.)

224. By-Laws, Rules and Regulations.—The Board of Pharmacy shall have authority to make such by-laws, rules and regulations, not inconsistent with the laws of the State, as may be necessary for the lawful performance of its powers; to engage and pay for such professional and other services as it may deem necessary in investigating violations of the law, enforcement of its provisions, and to transact all business relating to the legal practice of pharmacy. (Id. § 1671.)

225. Powers and Duties of Board.—The Board of Pharmacy shall regulate the practice of pharmacy and the sale of poisons, and control the character and standard of all drugs and medicines dispensed in the State, and investigate all complaints as to the quality and strength of all drugs and medicines and take such action as may be necessary to prevent the sale of such as do not conform to the requirement of law. (Id. § 1672.)

226. Examination of Applicants for Registration; Issuance of Certificates and Permits.—The Board of Pharmacy shall conduct examinations of applicants for registration when so determined by the board, and not less frequently than once in six months, and may issue two grades of certificates to be known, respectively, as those of "registered pharmacist" and "registered assistant pharmacist," and permits to physicians to sell medicines in rural districts and towns of not over one thousand population. (Id. § 1673.)

227. Registration of Pharmacies; Registration of Pharmacists and Assistant Pharmacists; Renewal of Permits to Sell medicines.—The Board of Pharmacy shall require and provide for the annual registration of every pharmacy doing business in this State; the proprietor of every pharmacy opening for business after the taking effect of this act shall apply to the Board of Pharmacy for registration and it shall be unlawful for the pharmacy to do business until so registered; the fee for such registration, whether original or annual, shall be two dollars, and upon payment thereof the board of pharmacy shall issue permit to applicant entitled to receive same.

The Board of Pharmacy shall also require and provide for the annual registration of every registered pharmacist and regstered assistant pharmacist engaged in business in the State, and charge and receive the sum of two dollars for each such registration. All permits of the Board of Pharmacy to sell or dispense medicines shall be renewed annually. The board shall charge and receive the sum of two dollars for each renewal. (Id. § 1674.)

228. Investigation of Alleged Violations of Law.—The Board of Pharmacy shall have power to investigate all alleged violations of any law of this State regulating the dispensing or sale of drugs, medicines or poisons or the practice of pharmacy which may come to its notice; and whenever there appears reasonable cause therefor to take and hear testimony with reference to the same, and in the discretion of such board, to bring the same to the notice of the proper prosecuting authorities, or bring actions in the name of the Board of Pharmacy, for the recovery of penalties in such cases as may be provided by law. (Id. § 1675.)

229. Recognition and Recording of Licenses.—The Board of Pharmacy shall recognize all certificates or licenses issued by former boards of the State, and make and keep a record of all licenses and certificates issued by it. Such records shall be open to inspection by any citizen of the State. (Id. § 1676.)

230. Refusal to Grant and Revocation of Licenses.—The Board of Pharmacy shall not grant a license to any applicant if satisfied that the safety of the public health will be endangered by reasons of the habits or character of said applicant. If any persons shall have obtained a license by misrepresentation or fraud, or shall become unfit or incompetent by reason of negligence, habits, or other cause, to practice as a pharmacist or assistant pharmacist, the Board of Pharmacy shall have power to revoke such license after giving such person reasonable notice and an opportunity to be heard, and if any licensee shall willfully and repeatedly violate any of the provisions of law relating to pharmacy or the rules and regulations established by the Board of Pharmacy, such board shall revoke his or her license upon sufficient evidence of such violation, which shall be in addition to any other punishment imposed by law for such violation (Id. § 1677.)

231. **Notification to Registered Person of Revocation.**—Whenever the Board of Pharmacy shall revoke the certificate of any registered or assistant registered pharmacist, it shall notify the registered person of such action, and he or she shall immediately deliver to the board or its representative, his or her certificate of registration. (Id. § 1678.)

232. **Annual Report of Board.**—The Board of Pharmacy shall render annually to the Governor a report of its proceedings, including receipts and disbursements, during the preceding year. (Id. § 1679.)

233. **Licenses Without Examination; to Whom Issued.**—The Board of Pharmacy may issue licenses to practice as pharmacists or assistant pharmacists in this State, without examination, to such persons as have been legally registered or licensed as pharmacists or assistant pharmacists in other States, provided that the applicant for such license shall present satisfactory evidence of qualifications equal to those required from licentiates in this State, and that he was registered or licensed by examination in such other State, and that the standard of competence required in such other State is not lower than that required in this Stae. Applicants for license under this section shall, with their application, forward to the Secretary of the Board of Pharmacy the same fees as are required of other candidates for license. (Id. § 1680.)

234. **Supervision of Pharmacies; Physicians as Compounders of Medicines; Soda Fountains.**—Every pharmacy, as defined in this chapter, shall be under the personal supervision of a registered pharmacist, except that during the temporary absence of the registered pharmacist, a registered assistant pharmacist may act in place of the said registered pharmacist and registered apprentices may be in temporary charge, but only with privileges of merchants and retail dealers; but nothing in this section shall apply to sales of homeopathic medicines by homeopathic pharmacists nor shall this chapter be construed to interfere with any legally qualified practitioner of medicine, dentistry or veterinary medicine, who is not the proprietor of a store for the dispensing or retailing of drugs, or who is not in the employ of such a proprietor, in the compounding of his own prescriptions, or to prevent him form supplying to his patients such medicines as he may deem proper, if such supply is not made as a sale. In rural districts and in towns having a population of one thousand or less, any physician or physicians regularly licensed under the laws of Virginia shall be granted by the Board of Pharmacy an annual permit to compound and sell medicines, fill prescriptions and sell poisons, duly labeling the same as required by this chapter; and merchants and retail dealers may sell the ordinary non-poisonous domestic remedies in original packages put up by the manufacturers and wholesale dealers, proprietary medicines, copperas, cream tartar, calomel, Paris green, bluestone, carbolic acid, London purple, sweet spirits nitre, paregoric, tincture of iron, and quinine, in original packages which conform to the requirements of this chapter, and such other medicines as the Board of Pharmacy may permit. Nothing in this chapter shall prevent the sale and dispensing at soda fountains and by other dealers of granular effervescent and proprietary liquid preparations, and beverages claiming curative properties and whose composition are [is] not in conflict with the provisions of this chapter. The Board of Pharmacy shall also permit the sale of all insecticides and poisons used for the destruction of pest and other forms of disease in trees and plants, under such rules and regulations as will properly protect the lives and health of the public, and not inconsistent with this chapter. (Id. § 1681.)

235. **Compounding or Retailing Drugs Except in Compliance With This Chapter Unlawful; Display of Certain Signs Unlawful.**—Except as prescribed in this chapter it shall be unlawful for any person to practice as a pharmacist, or assistant pharmacist, or to engage in, carry on, or be employed in the dispensing, compounding or retailing of drugs, medicines or poisons within this State; the possession by any person in any place other than a private home or a place of storage, of a miscellaneous stock of bulk pharmaceuticals, drugs, or medicinal preparations not in original packages shall be prima facie evidence that such person is practicing pharmacy.

It shall be unlawful for any place of business which is not a pharmacy as defined in this chapter to have upon it or in it as a sign the words, "pharmacy," "pharmacist," "drug store," "druggist," "prescriptions filled" or any like words indicating that drugs are compounded or sold, or prescriptions filled therein. Each day during which, or a part of which, such sign is allowed to remain upon or in such place of business shall constitute a separate offense under this section.

Any person, firm or corporation may own and conduct a pharmacy, as herein defined, provided the same is conducted and operated under the personal supervision of a registered pharmacist, but during the temporary absence of such registered pharmacist, a registered assistant pharmacist may act in place of the said registered pharmacist.

Nothing in this act contained shall be construed to prohibit or make unlawful the employment in pharmacies conducted under the personal supervision of a registered pharmacist, of other than registered and registered assistant pharmacist for purposes other than the compounding and sale of drugs, medicines and poisons, or the permitting such employees to make sales of articles other than drugs, medicines and poisons, or of patent and proprietary medicines and nonpoisonous drugs and medicines in original packages.

The Board of Pharmacy may, in its discretion, issue permits to such pharmacies as may be temporarily not under the supervision of a registered pharmacist to remain open for business for a period not to exeed ten days, but such pharmacy may not during such period sell any poisons, nor compound or dispense physicians' prescriptions. Pharmacies desiring such permits must make application to the Board of Pharmacy, setting forth the circumstances upon which their applications are based. (Id. § 1682.)

236. **Display of Certificate.**—Every person practicing as a registered pharmacist or registered assistant pharmacist, and every person engaged in selling or compounding medicines under a permit, must at all times display his certificate conspicuously in the place in which he practices under such certificate. (Id. § 1683.)

237. **Application to be Registered as Pharmacist.**—Every person who shall hereafter desire to be registered as a pharmacist or assistant pharmacist, shall file with the Secretary of the Board of Pharmacy an application, duly verified under oath, setting forth the name and age of the applicant, the place or places at which and the time spent in, the study of the science and art of pharmacy, the experience in the compounding of physicians prescriptions which the applicant has had under the direction of a registered pharmacist, and shall appear at a time and place designated by the Board of Pharmacy and submit to an examination as to his or her qualifications for registration as a pharmacist or assistant pharmacist, and every such applicant shall present to the board evidence of having completed his grammar school work or its equivalent. (Id. § 1684.)

238. **Qualifications of Pharmacist.**—In order to be licensed as a registered pharmacist within the meaning of this chapter, an applicant shall present to the board satisfactory evidence that he or she is at least twenty-one years of age, and that he or she is a graduate of a school of pharmacy approved by the State Board of Pharmacy. (Id. § 1685.)

239. **Qualifications of assistant Pharmacist.**—In order to be licensed as an assistant pharmacist within the meaning of this chapter, an applicant shall be not less than eighteen years of age, and shall have had not less than two years' experience in pharmacy under the instruction of a registered pharmacist, and shall pass an examination satisfactory to a majority of the board. (Id. § 1686.)

240. **Fees of Applicants.**—Every applicant for original registration as a pharmacist shall pay to the Secretary of the Board of Pharmacy the sum of twenty-five dollars, and every applicant for original registration as an assistant pharmacist shall pay the sum of fifteen dollars. (Id. § 1687.)

241. **Issue of Certificate.**—If the applicant for license as pharmacist or assistant pharmacist has complied with all the requirements of the preceding sections, the Board of Pharmacy shall enroll his or her name upon the register of pharmacists or assistant pharmacists, and issue to him or her a certificate of registration as pharmacist or assistant pharmacist. (Id. § 1688.)

242. **Sale of Pharmaceutical Preparations; Employment of Assistants.**—Nothing in this chapter shall be construed to prevent or interfere with any retail druggist or wholesale dealer, or manufacturing concern or their employees from selling, compounding or manufacturing in the regular course of business, any pharmaceutical preparations, or any patent or proprietary preparations that conform to the requirements of this chapter, and the sale of which is not in conflict with any of its provisions; or prevent the employment, by registered pharmacists of apprentices or assistants for the purpose of being instructed in pharmacy, but such apprentices or other unregistered employees or assistants shall not be allowed to prepare or dispense prescriptions, or to sell or furnish medicines or poisons, except in the presence of and under the personal direction of a registered [pharmacist] or registered assistant pharmacist. (Id. § 1690.)

243. **Regulation of Sale of Poisons.**—It shall be unlawful for any person or persons having authority to sell or dispense medicines or poisons to retail any poison enumerated in the following schedule, without distinctly labeling the bottle, box, vial or paper in which said poison is contained with the name of the article and the word "poison" and the name and place of business of the seller; and in addition thereto, at least one of the most readily obtainable effective antidotes to such poisonous articles; arsenic and its preparations, corrosive sublimate, biniodide of mercury, ammonio-chloride of mercury, mercuric oxide and all other mercuric salts; cyanide of

potassium, hydrocyanic acid, strychnine and its salts, essential oil of bitter almonds; cocaine, alpha and beta eucaine and their salts; aconite, belladonna, nux vomica, cantharides, digitalis, colchium, conium, hyoscyamus, and their active principles and pharmaceutical preparations; preparations of opium of a greater strength than camphorated tincture of opium of the United States Pharmacopœia, creosote, croton oil, chloroform, chloral hydrate, carbolic acid (phenol), oxalic acid, corrosive mineral acids in concentrated form; and other deadly poisons; and it shall be unlawful for any person to sell or deliver any poison mentioned in the above schedule unless it be found upon due inquiry that the purchaser is aware of its poisonous nature; and it shall also be unlawful to sell or deliver any of the said poisons to any person under sixteen years of age, except upon the written order of some responsible adult. The provisions of this section shall not apply to the dispensing of poisons in usual doses on prescriptions of physicians, dentists or veterinary surgeons, when prepared and dispensed in accordance with the pharmacy laws of this State; nor to preparations containing any of the substances named in this section, when a single box, bottle, or other package, or when the bulk of one-fourth fluid ounce, or the weight of one-fourth avoirdupois ounce does not contain more than an adult medicine dose of such substance; nor to limiments or ointments, sold in good faith as such, when plainly labeled "For external use only"; nor to preparations put up and sold in the form of pills capsules, tablets, or lozenges, containing any of the substances enumerated in this section, and intended for internal use, when the dose recommended does not contain more than one-fourth of an adult medicinal dose of such substance; nor to such preparatons for diarrhœa and cholera as are described in section sixteen hundred and ninety-three. (Id. § 1691.)

244. Punishment for Violation of the Twenty Preceding Sections.—Any person violating any of the provisions of the twenty preceding sections shall be guilty of a misdemeanor, and upon conviction thereof, shall be fined not less than one hundred dollars nor more than five hundred dollars for each offense, or confined in jail not less than thirty days nor more than six months, or both. (Id. § 1692.)

245. Sale of Morphine, Heroin or Opium.—It shall be unlawful for any person to sell, furnish or give away any morphine, heroin, opium and preparations thereof containing a higher percentage of morphine than tincture of opium of the strength ordered by the United States Pharmacopœia, or any salt or compound of the foregoing substances, except upon the original written prescription or order of a lawfully authorized practitioner of medicine, dentistry, or veterinary medicine, which must have plainly written upon it the name and address of the patient, and must be signed by the person giving it, which prescription can be filled only once. It shall be unlawful for any person except a licensed physician, dentist or veterinary surgeon, manufacturing pharmacist or chemist, or a wholesale or retail pharmacist or druggist to have in his possession the drugs mentioned in this section, and possession of the same by other persons shall be prima facie evidence of the intent to sell or give away or otherwise dispose of the same.

Provided that the provisions of this section shall not apply to sales made by any manufacturers, wholesale or retail druggists to other manufacturers, wholesale or retail druggists; nor to sales made to hospitals, colleges, scientific or public institutions, or to physicians, dentists, or veterinary surgeons; nor to the sale of cough syrups and other domestic and proprietary remedies of this character, which are prepared and sold in good faith as medicines and not intended for defeating the purposes of this chapter, if such remedies do not contain more than two grains of opium or one-third grain of morprine [morphine] or one-fourth grain of heroin in one fluid ounce, or if a solid preparation in one avoirdupois ounce, nor to preparations containing opium which are prepared and sold in good faith for diarrhœa and cholera, each bottle or package of which is accompanied by specific directions for use and a caution against habitual use; nor to powder of ipecac and opium, commonly known as "Dover's powder"; nor to liniments or ointments, when plainly labeled "For external use." (Id. § 1693.)

246. Unlawful Prescription of Cocaine, Etc., by Veterinary or Dentist; Prescription by Physician.—It shall be unlawful for any practitioner of medicine, dentistry, or veterinary medicine to furnish to or prescribe for the use of any habitual user of the same, any cocaine, alpha or beta eucaine, heroin, opium, morphine, codeine, or any salt or compound of the foregoing substances, or any preparations containing any of the foregoing substances or their salts or compounds. And it shall be unlawful for any practitioner of dentistry to prescribe any of the foregoing substances for any person not under his treatment in the regular practice of his profession, or for any practitioner of veterinary medicine to prescribe any of the foregoing substances for the use of any human being.

The provisions of this section shall not be construed to prevent any lawfully authorized practitioner of medicine from prescribing in good faith for the use of any habitual user of narcotic drugs who is under his professional care, such substances

as he may deem necessary for his treatment, when such prescriptions are not given for the purpose of evading the provisions of this chapter. (Id. § 1694.)

247. Punishment for Violation of Two Preceding Sections.—Any person who shall violate any of the provisions of the two preceding sections shall be deemed guilty of a misdemeanor, and upon conviction thereof, for the first offense, shall be fined not exceeding one hundred dollars, and upon conviction of a second offense, shall be fined not less than two hundred nor more than one thousand dollars, or shall be imprisoned in jail not exceeding six months, or both at the discretion of the court. (Id. § 1695.)

248. Punishment for Unlawful Dispensing of Cocaine, Etc.—No person shall sell, give away or otherwise dispense cocaine, alpha or beta eucaine, or any mixture of either, except on the prescription of a licensed physician, and any person violating the provisions of this section shall be deemed guilty of a felony, and upon conviction thereof, shall be imprisoned in the State Penitentiary not less than one nor more than five years, but nothing herein contained shall be construed to prohibit the sale of cocaine or of alpha or beta eucaine by any licensed manufacturing pharmacists or chemists or wholesale or retail druggists to other licensed manufacturing pharmacists or chemists, or wholesale or retail pharmacists or druggists, or to hospitals, colleges, scientific or public institutions, or to licensed physicians, dentists or veterinary surgeons; nor to the use of cocaine or alpha or beta eucaine by any licensed physician, dentist or veterinary surgeon in the regular course of his practice. (Id. § 1696.)

249. Punishment for Having in Possession Cocaine With Intent to Sell; Possession of Same as Evidence.—If any person except a licensed physician, dentist or veterinary surgeon, manufacturing pharmacist, or chemist, or wholesale or retail pharmacist or druggist have in his possession cocaine, or alpha or beta eucaine, or any mixture of either, with intent to sell, give away or otherwise dispense the same, he shall be deemed guilty of a felony, and punished by confinement in the State Penitentiary not less than one nor more than five years; and possession of cocaine or alpha or beta eucaine or any mixture of either, except by a licensed physician, dentist, veterinary surgeon, manufacturing chemist or pharmacist, or wholesale or retail pharmacist or druggist, or on the prescription of a licensed physician, shall be prima facie evidence of an intent to sell, give away or otherwise dispense the same, but nothing herein contained shall be construed to apply to any hospital, college or scientific or public institution. (Id. § 1697.)

250. Signing and Filling of Prescription for Use of Cocaine, Etc.—Every prescription for the use of cocaine or alpha or beta eucaine must be signed by the licensed physician giving the same, and the name and address of the patient must be plainly written upon the prescription, which prescription may be filled only once, and any person violating any of the provisions of this section shall be guilty of a misdemeanor, and upon conviction thereof, shall be fined not less than twenty nor more than one hundred dollars. (Id. § 1698.)

251. Disposition of Fines and Fees.—All fines and fees collected under this chapter shall be paid into the treasury of the State of Virginia. (Id. § 1699.)

252. Druggists and Pharmacists in Certain Border Cities and Towns; Removal of Drug Store to This State; Provisions Relating to.—In any city or town (whether incorporated or not) in the State of Virginia, situated on and having for one of its boundaries the dividing line between Virginia and some other State, and not any such natural barrier as would make any adjoining town or city in another adjoining State a separate and different community and people, it shall be lawful for any reputable citizen of Virginia, who, while residing in such town or city in the State of Virginia continuously for not less than five years, and has for not less than five years been engaged in the conduct of a drug store or pharmacy in such adjoining town or city of such other State, and as a lawfully registered pharmacist under the laws of such adjoining State, been engaged in selling, compounding and dispensing drugs, medicines and prescriptions to the people of the towns or cities of both States for not less than five years in such town or city, to remove his drug store from such town or city of such adjoining State into such town or city in Virginia, or to buy or open and conduct a drug store or pharmacy in such town or city in Virginia, and engage in the business of selling, compounding and dispensing drugs, medicines and prescriptions, and upon application to the Board of Pharmacy of Virginia he shall be granted a certificate as a registered pharmacist without examination on the payment of the fee prescribed by law, and on producing satisfactory evidence of the reputable conduct of such pharmacy or drug store by him, and the registration of such person as a registered pharmacist in such other town or city of such adjoining State, and of having been a resident of Virginia for at least five years while so engaged in conducting such pharmacy or drug store; but such certificate shall entitle him to engage in the practice of pharmacy only in such town or city, and shall not apply to any registered pharmacist or assistant registered phar-

macist of another State who may come to Virginia to be employed by another person in selling, compounding and dispensing drugs, medicines and prescriptions. (Id. § 1700.)

253. Giving Ardent Spirits or Narcotics to Inmates of Hospital or Colony, or Bringing the Same on the Premises; Punishment.—Any person who shall sell or give to any patient of any hospital or colony, or bring on the premises of such hospital or colony, any ardent spirits or narcotic drug, or administer same to said patient or place or cause same to be placed where any such patient may receive the same, except it be prescribed by the superintendent or physicians of such hospital or colony, shall be deemed guilty of a misdemeanor. (Id. § 1065.)

254. Inebriates, Their Commitment, Care and Treatment and Expense Therefor.—Any person who through use of alcoholic liquors or habit-forming drugs, has become dangerous to the public or himself, and unable to care for himself or his property or family, and for either of these reasons has become a burden on the public, shall, upon complaint of any person, be brought before a commission in the same manner and under the same process as is provided by law for commissions of insanity, and if said person shall be found by said commission to be in the condition above mentioned, such person shall be committed to a State Hospital for the Insane, as an inebriate, to be kept and held there until the superintendent of that institution shall declare such person cured and restored to his normal condition, when he shall be discharged, or paroled, as may seem proper to the superintendent of said institution. But every inebriate so committed and received at such institution shall be assigned and kept in wards separate and apart from the insane patients.

Every person committed under this section who has property in excess of the homestead and other exemptions to which he or she is entitled, shall be liable to said State Hospital for the purpose of covering expenses of treatment, at the rate of twenty-five dollars per month, while detained there.

The hospital board is hereby authorized to designate one or more of the State Hospitals for the care of inebriates and when so designated all commitments shall be made accordingly. (Code Supp. 1926, § 1068.)

255. "Inebriates' Home" Continued.—The act entitled "an act to incorporate the Inebriates' Home," approved March thirteenth, eighteen hundred and seventy-two, shall continue in force. (Code 1924, § 1069.)

256. How Inebriates, Opium Eaters, Etc., Committed to Private Hospitals.—Upon complaint in writing by any relatives, and in the event there is no husband, wife, father, mother, brother, sister or adult children residing in the county, city or town wherein such habitual drunkard, opium eater or person addicted to other drug habits and lost to self-control resides, then by any two of the friends of the party to any justice of the peace of the county or city wherein said party resides (they having first agreed and entered into a bond, with approved security, to pay all costs incurred by the investigation and further proceedings) that any person is an habitual drunkard, opium eater or addicted to other drug habits, and lost to self-control, and that there is good reason to believe that said inebriate, opium eater or person addicted to other drug habits would be benefited by treatment in a private hospital or sanitarium, it shall be the duty of said justice to issue his warrant ordering such person to be brought before him. He and two other justices shall inquire whether such person be an habitual drunkard, opium eater or addicted to other drug habits, and lost to self-control; and for that purpose shall summon his physician, if he have one, and if none, then some other physician practicing in the vicinity, and other friends. If, after such examination, which shall be in writing, it shall appear that the person so examined is an habitual drunkard, opium eater or addicted to other drug habits and lost to self-control, and that, in the opinion of said justices, the benefits of a private hospital or sanitarium would possibly restore such person to sobriety and self-control, then such justices, after said examination, shall, in their discretion, have power to commit the said inebriate, opium eater or person addicted to other drug habits to a private hospital or sanitarium, with the consent of the authorities of such private hospital or sanitarium, there to remain under treatment until, in the opinion of such authorities, it will be safe to allow him or her to go at large. (Id. § 1070.)

257. What Time Such Inebriate, Etc., Shall be Compelled to Remain; Right of Appeal; Trial by Jury.—But no such inebriate, opium eater or person addicted to other drug habits shall be compelled by the provisions of the preceding section to remain in said hospital or sanitarium for a period exceeding four months, without his or her consent, entered in writing on the records of such private hospital or sanitarium; but, nothing in this or the preceding section shall be construed so as to prevent any person, who shall find himself or herself aggrieved by the judgment of the justices aforesaid, from appealing to the Circuit Court of the county or Corporation Court of the city in which he or she may reside, and the said appeal shall be allowed as a matter of right, and the said court shall proceed, without delay, and

without any formal pleadings, to review the said proceedings, and the party accused shall have the right of trial by jury to ascertain the fact whether or not he or she is an habitual drunkard, opium eater or addicted to other drug habits, and lost to self-control. If the jury aforesaid shall, by their verdict, decide that the accused is not an habitual drunkard, opium eater or addicted to other drug habits and lost to self-control, the said court shall enter an order dismissing the whole proceeding. All costs of the proceedings, whether before the justice or the court, shall be ordered to be paid by those making the complaint. (Id. § 1071.)

258. Rights of Person Proceeded Against; Fitness of Sanitarium; Appeal; What Order Court Shall Enter.—The person proceeded against shall have the right to be heard in opposition to the proceedings, and upon all questions arising therein, both before the justices and the courts, and shall have the right to be given the opportunity to employ counsel to represent him. The justices shall, before making an order of commitment, inquire and ascertain whether the private hospital or sanitarium to which it is proposed to commit the person proceeded against is a fit and proper institution to have the care of such person, and shall in their order of commitment designate the particular hospital or sanitarium to which the person proceeded against is to be committed, and which they shall find to be a proper institution to have the charge of such person; and the person committed shall have, as a matter of right, the right to appeal from the judgment of the justices aforesaid in respect to the fitness of the institution to which he may be committed, to the circuit court of the county or to the corporation court of the city in which the proceedings may be had; and upon such appeal the court shall review the question whether the private hospital or sanitarium designated by the justices is a fit and proper institution to have the care of the person so committed by them. If the court shall be of the opinion that the private hospital or sanitarium designated by the justices is a fit and proper institution, it shall affirm their judgment in that respect. But if the said court shall find that the private hospital or sanitarium designated by the justices is not a fit and proper institution to have the care of the person committed, and if the court shall, by the verdict of the jury, further find that the person proceeded against is an habitual drunkard, opium eater or person addicted to the use of other drugs and lost to self-control, then the court shall have power to inquire and ascertain some other private hospital or sanitarium proper and fit to take charge of the person proceeded against; and the court shall in such case, by its order, designate and appoint such other private hospital or sanitarium to take charge of such person in lieu and in place of the one designated by the said justices. (Id. § 1072.)

259. Duty of Sheriff, Other Officer or Person Who Has Charge of Any Person Committed to a Private Sanitarium; Right of Private Sanitarium to Receive Such Persons so Committed and Voluntarily.—The said justices or, in case of an appeal as provided for in the foregoing section and a decision by the jury that the accused is an habitual drunkard, opium eater or person addicted to other drug habits and lost to self-control, the court may appoint the sheriff of the county or sergeant of the city in which the proceedings are held, or other proper officer named in the order of commitment, to take and convey the person against whom the proceedings are to the private hospital or sanitarium to which such person is committed by the said justices or court; and it shall be the duty of such sheriff or other officer to take charge of the said inebriate or opium eater or person addicted to other drug habits, and deliver him to the authorities of the said private hospital or sanitarium; or the justices or court may, in their order of commitment, appoint such person as the said private hospital or sanitarium may name to receive the said inebriate, opium eater or person addicted to other drug habits, and deliver him to the authorities of the said hospital or sanitarium; and upon any such commitment the authorities of the private hospital or sanitarium to whom such person may be committed as aforesaid shall have power to receive and detain such person for the period for which he may be committed, not exceeding the term of four months at any one time; and the authorities of any private hospital or sanitarium may likewise receive and detain any inebriate, opium eater or person addicted to other drug habits and lost to self-control, who may voluntarily enter such hospital or sanitarium as a patient: provided, such person shall enter upon the records of such institution his or her consent to remain in such institution for the period of time for which such person may so consent in writing to remain in such hospital or sanitarium. (Id. § 1073.)

260. Justices Committing Inebriates, Opium Eaters, Etc., to Certify Fact to the Circuit Court; Appointment of Committee; Bond, Report by Committee.—The justices committing an inebriate, opium eater or person addicted to other drug habits to a private sanitarium shall, at the time of such commitment, certify to the circuit court of the county or the corporation court of the city, as the case may be,

the fact of such committal; and the said court shall have power to appoint a committee to take charge of the estate, real and personal, of said inebriate, opium eater or person addicted to other drug habits; said committee shall execute a bond with such security as the court may require, conditioned, for the faithful discharge of his duties; and he shall report to the said court the time and circumstances of the release of such inebriate from the private hospital or sanitarium to which he may have been sent; and upon such report, if satisfactory, and upon a settlement of his accounts, the said committee may be released from further responsibility. (Id. § 1074.)

NOTE: See also Nos. 384 and 395 et seq.

Serum.

261. Manufacture and Distribution of Serum for the Prevention and Treatment of Hog Cholera.—The Commissioner of Agriculture and State Board of Agriculture shall cause to be manufactured and distributed, as hereafter provided, serum for the prevention and treatment of hog cholera, such as that now manufactured by the Biochemic Division of the Bureau of Animal Industry under the United States Department of Agriculture. (Code 1924, § 1283.)

262. Sufficient Supply of Serum to be Kept on Hand.—It shall be the duty of the State Board of Agriculture to cause to be manufactured and keep on hand ready for immediate use, enough of said serum to supply any citizen of this State, who shall apply therefor. (Id. § 1284.)

263. Formula; Disposition of Receipts From Sale.—The serum shall be manufactured in accordance with formula prescribed by the United States Department of Agriculture, and shall be supplied at cost to any citizen of this State, who shall make application therefor. Such sums as may be derived from the sale of the serum herein provided for shall be used exclusively by the State Board of Agriculture in maintaining the supply of said serum. (Id. § 1285.)

264. Supervision; Appropriation.—It shall be the duty of the Commissioner of Agriculture and the State Board of Agriculture to supervise and carry into effect the duties herein set forth, and they shall take such steps as may be necessary to accomplish such purpose. Such necessary sums of money as the General Assembly may appropriate for the purpose shall be used to carry into effect the provisions of this and the three preceding sections. (Id. § 1286.)

Toilet Preparations.

See Nos. 288 and 395 et seq.

Venereal Disease Drugs.

264a. Venereal Diseases; Definition.—Syphilis, gonorrhea and chancroid, hereinafter designated venereal diseases, are hereby declared to be contagious, infectious, communicable, and dangerous to the public health. (Code 1924, § 1554b.)

265. Record by Druggists of Sales of Drugs for Venereal Diseases.—Any druggist or other person who sells any drugs, compound, specific or preparation of any kind used for, or believed by the druggist or person to be intended to be used for, the treatment of any of said venereal diseases, shall secure and keep a record of the name and address of the person making such purchases, except when such drug, compound, specific or preparation is used in filling a written prescription by a physician licensed to practice medicine under the laws of Virginia. A copy of said record shall be mailed, or otherwise delivered, each week to the State Board of Health. Such records shall be kept inaccessible to the public as provided in section nine of this act [1554j]. (Id. § 1554g.)

266. Records of Infected Persons.—All information and reports concerning persons infected with venereal diseases shall be filed by health officers to whom furnished until finally disposed of by burning, but they shall be kept inaccessible to the public except in so far as publicity may attend the performance of the duties imposed by the laws of the State. (Id. § 1554j.)

267. Violations of Venereal Disease Act.—Any person violating the terms of this act shall be deemed guilty of a misdemeanor and, upon conviction thereof, shall be fined a sum not to exceed one hundred dollars or confined in jail for a term not to exceed sixty days, either or both; and in the discretion of the court may thereafter be placed under a bond not exceeding one thousand dollars ($1,000) for twelve months. (Id. § 1554l.)

268. Venereal Disease Advertisements.—(1) It shall be unlawful for any person, firm, corporation or association, except boards of health or agencies approved by the State Board of Health, to post or otherwise exhibit or distribute in any manner whatsoever in any place any advertisement or other printed matter concerning venereal diseases, lost manhood, lost vitality, impotency, seminal emissions, self-abuse, varicocele or excessive sexual indulgence, and calling attention to any medicine or preparation that may be used therefor.

(2) For each and every violation of this section the defendant upon conviction shall be fined not less than ten dollars nor more than one hundred dollars. (Id. § 1554m.)

Wood Alcohol.

See Nos. 282-283.

Intoxicating Liquors.

269. Ardent Spirits Defined.—The words ardent spirits as used in this act, shall be construed to embrace alcohol, brandy, whiskey, rum, gin, wine, porter, ale, beer, all malt liquors, all malt beverages, absinthe and all compounds or mixtures or [of] any of them; all compounds or mixtures of any of them with any vegetable or other substance; alcoholic bitters, bitters containing alcohol; also all liquids, mixtures or preparations whether patented or otherwise, which will produce intoxication, fruits preserved in ardent spirits, and all beverages containing more than one-half of one per centum of alcohol by volume, except as herein provided. (Code 1924, § 4675 (1).)

270. Persons Defined; Commissioner Defined.—The word person as used in this act shall be construed to embrace all natural persons, firms, corporations, combinations and associations of every kind; and the word commissioner as used in this act shall be contrued to mean the Attorney-General. (Id. § 4675 (2).)

271. Manufacture, Transportation, Sale, Use, Et Cetera, of Ardent Spirits Restricted.—It shall be unlawful for any person in this State to manufacture, transport, sell, keep, or store for sale, offer, advertise or expose for sale, give away or dispense or solicit in any way, or receive orders for or aid in procuring ardent spirits, except as hereinafter provided.

But nothing in this act shall be so construed as to prohibit any representative of any wholesale druggist or liquor manufacturer duly licensed under the laws of the United States to manufacture or sell ardent spirits from furnishing price lists with descriptions of the ardent spirits for sale, to druggists duly licensed and authorized under the provisions of this act to possess, keep, sell or store for sale such ardent spirits: Provided, that before any such person may furnish such price lists of ardent spirits he shall first obtain from the Attorney-General a permit so to do and give a bond with surety to be approved by the Attorney-General in the penal sum of twenty-five hundred ($2,500.00) dollars, conditioned that he will not violate any of the provisions of this act so long as he shall hold such permit. Provided, further, that such permit shall be revocable in the discretion of the Attorney-General. (Id. § 4675 (3).)

272. Attempts, Accessories; Procedure; Punishment.—It shall be unlawful for any person to attempt to do any of the things prohibited by this act or to aid or abet another in doing, or attempting to do, any of the things prohibited by this act.

And on an indictment or information for the violation of any provisions of this act, the jury may find the defendant guilty of an attempt, or of being an accessory, and the punishment shall be the same as if the defendant were solely guilty of such violation. (Id. § 4675 (4).)

273. Violations of the Provisions of the Preceding Sections; Acting as Agent of, Seller, or Purchaser.—Any person who shall manufacture distilled ardent spirits shall be guilty of a felony. Any person who shall violate any other provisions of sections three and four of this act (§§ 4675 (3), 4675 (4) of this Code), and any person, except a common carrier, who shall act as the agent or employee of such manufacturer or such seller, or person in so keeping, storing, offering or exposing for sale such ardent spirits, or act as the agent or employee of the purchaser in purchasing such ardent spirits, except as herein provided, shall be deemed guilty of a misdemeanor for the first offense, and of a felony for any subsequent offense committed after the first conviction; provided, that the offense of drinking, giving away, or receiving ardent spirits contrary to the provisions of this act, shall not be deemed a felony in any case; except as herein provided and, provided further, that the purchasing or having in possession by any person of ardent spirits for personal use, shall in no case be deemed a felony, but the burden of proof that said ardent spirits are for personal use shall be upon the defendant. (Id. § 4675 (5).)

274. Penalties.—Any person who shall violate any of the provisions of this act shall, except as otherwise herein provided, be deemed guilty of a misdemeanor, and be fined not less than fifty dollars, nor more than five hundred dollars, and be confined in jail not less than one nor more than six months, except that the sale of any ardent spirits, or the transportation thereof in the excess of one gallon shall be punished by a fine not exceeding five hundred dollars and confinement in jail not less than three nor more than twelve months, and except it be clearly shown at the trial that the amount being transported did not exceed one quart, and that it be clearly shown that there was no intent to sell the same, and that a satisfactory explanation be given by the defendant as to where, when, and from whom, if he knows, he obtained such ardent spirits, the punishment shall be by a fine of not less than fifty dollars nor more than one hundred dollars, or by confinement in jail not less than ten nor more than thirty days, either or both, in the discretion of the court or jury trying the case. The penalty for any subsequent offense committed after the first conviction which is not declared a felony by this act, shall be a fine of not exceeding five hundred dollars and imprisonment in jail for not less than three months nor more than twelve months. Whenever, in this act, the violation of any provisions is declared a felony, the person convicted of such violation shall be punished by confinement in the penitentiary for not less than one nor more than five years, or, in the discretion of the jury, by confinement in jail not less than six months nor more than twelve months, and by a fine not exceeding five hundred dollars; but where, upon the trial of any charge of violation of this act, other than the charge of manufacture of [or] sale of ardent spirits, or the transportation thereof in excess of one quart, or for a felony it shall appear to the jury trying the case, that there has been no intentional violation of any provisions thereof, but an unintentional or inadvertent violation thereof; then the jury may, in their discretion, omit the jail sentence.

But no court, nor the judge thereof, of this Commonwealth, nor any justice, mayor or other officer trying the case, shall suspend the sentence of any person convicted of any felony or the illegal manufacture, or the sale, of ardent spirits or the transportation thereof in quantities exceeding one gallon, or for any second or subsequent conviction of any offense against the prohibition laws of this State or any ordinance of a city or town authorized by his act, since the first day of November, nineteen hundred and sixteen.

The term "conviction" as used in this act is intended to mean the conviction for any act committed after the sentence of the trial court whenever the time limit for perfecting an appeal shall have expired, or the judgment of the lower court shall have been affirmed at the time of the trial of the second or subsequent offense, provided the offense tried as a second offense was committed after that for which he was "convicted."

The term second or subsequent offense as used in this act is intended to mean second or subsequent offenses committed against this act after the defendant has been convicted for a violation of this act or any city or town ordinance, or State prohibition law since November first, nineteen hundred and sixteen. (Code Supp. 1926, § 4675 (6).)

275. The Words "Fine" and "Property Accruing to the State by Forfeiture," or Words of the Same Effect as Used in the Laws Relating to Enforcement of Prohibition in This State Construed.—Whenever the words "fine" and "property accruing to the State by forfeiture," or words of the same effect, are used in the laws providing for enforcement of prohibition in this State, they shall be construed to mean the net amount remaining after deducting costs payable out of the State treasury from the appropriation made to pay the criminal charges of the State, authorized under said prohibition laws, also the amount authorized by the laws for enforcement of prohibition in this State in connection with the seizure or sale of forfeited property, and all fines and proceeds accruing from the sale of forfeited property shall be accounted for by the officer receiving the same separately from other fines and forfeitures and all costs payable out of the State treasury from the appropriation for the payment of criminal expenses in connection with the enforcement of prohibition laws of this State, shall be allowed and paid separately from other costs made a charge by law upon the treasury payable from the appropriation for criminal expenses. (Code 1924, § 4675 (7).)

276. Punishment When Fine and Costs Are Not Paid.—Whenever a fine is prescribed for the violation of the laws for the enforcement of prohibition in this State, and such fine and the costs incident to the prosecution and conviction are not paid, the defendant shall be sentenced to the State convict road force for a period of not less than three months nor more than six months, and if the law prescribes a jail sentence and such sentence is imposed, then the defendant shall be sentenced to the State convict road force for the period of such jail sentence, and for the

additional period of not less than three months and not more than six months, as herein provided. (Id. § 4675 (8).)

277. **Situs of Sale When Shipment is Made by a Common Carrier.**—In case of a sale in which a shipment or delivery of such ardent spirits is made by a common or other carrier, the sale thereof shall be deemed to be made in the county or city wherein the delivery thereof is made by such carrier to the consignee, his agent or employee. A prosecution for such sale may likewise be had in the city or county wherein the seller resides or from which the shipment is made. (Id. § 4675 (10).)

278. **When Possession of Ardent Spirits Unlawful; Possession Prima Facie Evidence of Unlawful Possession.**—The possession by any person of ardent spirits at any place other than his permanent bona fide home shall be unlawful, and the possession at such home shall be unlawful unless the ardent spirits shall have been lawfully acquired from a person or persons authorized by law to furnish the same, or wine manufactured in the home not in violation of the provisions of this act. Upon a prosecution of a person for the unlawful possession of ardent spirits, such possession shall be prima facie evidence of unlawful possession, by the person or persons occupying the premises, and the burden shall be upon the accused to satisfy the judge or jury trying the case that he lawfully acquired possession of such ardent spirits. (Id. § 4675 (12).)

279. **Unlawful to Grind or Transport Malt.**—It shall be unlawful for any person to grind or transport malt in this State or any substitute for the same by whatever name it may be called to be used in the manufacture of ardent spirits, and the burden of proof shall be upon any person grinding or transporting malt to show that such malt is not to be used in violation of this act. (Id. § 4675 (15).)

280. **Unlawful to Sell, Etc., Malt, Malted Grain or Mixtures Thereof.**—It shall be unlawful for any person to sell, give away, transport, distribute or have in his possession any malt, malted grain, or any mixture thereof, other than in a private home and all officers charged with the duty of enforcing the prohibition laws of this State, or the United States, are authorized to seize any such malt, malted grain or mixture thereof wherever found other than in a private home without a warrant and to destroy the same. Any person violating the provisions of this act shall be deemed guilty of a misdemeanor. (Id. § 4675 (16).)

281. **Devices to Evade the Provisions of This Act.**—The keeping, storing, or giving away of ardent spirits, or any shift, or any device whatever, to evade the provisions of this act, shall be deemed unlawful within the provisions of this act, and shall be punished as unlawful selling is punished. (Id. § 4675 (22).)

282. **Manufacturing, Selling, Etc., Ardent Spirits Containing a Poisonous Substance; Punishment.**—If any person shall manufacture, sell, offer for sale or have in his possession for sale any ardent spirits containing wood alcohol, caustic potash, extract of fish berries or other poisonous substance, whether similar thereto or not, such person shall be punished by confinement in the State Penitentiary for not less than one nor more than ten years, or in the discretion of the jury confined in jail not less than six nor more than twelve months, and if any person shall die from having drunk such ardent spirits, containing such poison, then any person having manufactured the ardent spirits causing such death, or any person having sold such ardent spirits, shall be prima facie guilty of murder in the second degree. If the person poisoned shall not die from the effects of such poison then the person having manufactured or sold such poisoned ardent spirits shall be guilty of a felony and be punished by confinement in the penitentiary not less than one nor more than ten years. (Id. § 4675 (23).)

283. **Wine or Cider, Manufacture, Use, Sale of, When Not Prohibited by This Act; Denatured Alcohol or Denatured Rum for Use in Industrial or Mechanical Arts, When Exempted From Provisions of This Act; Wood or Denatured Alcohol Exempted From Provisions of This Act.**—The provisions of this act shall not be construed to prevent any person from manufacturing for his domestic consumption at his home, but not to be sold, dispensed or given away, except as hereinafter provided, wine or cider from fruit of his own raising; or to prevent the manufacture from fruit of cider for the purpose of making vinegar, not used as a beverage; and nonintoxicating cider, containing not more than one per centum of alcohol by volume, for use or sale.

Nothing in this act or in any section thereof shall have any application whatever to denatured alcohol or denatured rum intended for use only in the industrial or mechanical arts, including especially the manufacture of tobacco, cigarettes, cheroots, or cigars, where the same is brought or shipped into the State under bond and there kept and stored under bond, in strict compliance with the United States Internal Revenue laws and regulations, until actually applied to the users above mentioned and none other whatsoever.

Nothing in this act shall be construed to apply to wood or denatured alcohol, the manufacture or sale of which does not require the payment of United States liquor dealers tax. (Id. § 4675 (32).)

284. **City Ordinances Regulating the Sale, Et Cetera, of Ardent Spirits.**—All counties coming within the provisions of chapter one hundred and two, acts of General Assembly, nineteen hundred and sixteen, and chapter three hundred and forty-nine, acts of General Assembly of nineteen hundred and twelve, and all cities and towns of the State of Virginia shall have full power (anything in their charters to the contrary notwithstanding) to pass any and all ordinances (not repugnant to the Constitution and laws of the State), and such cities and towns are hereby authorized and empowered to pass such ordinances embracing such provisions of this act as are applicable, and further to prohibit the manufacture, transportation, sale, keeping or storing for sale, advertising or exposing for sale, receiving, giving away, or dispensing ardent spirits, and to provide adequate penalties therefor, provided, such penalties shall be the same as those provided under the prohibition laws of the State for similar offenses, and provided, further, that no mayor, police justice or other person having jurisdiction to try offenses against such ordinances shall have power to suspend the sentence of any person convicted of the violation of said city or town ordinances; provided, that nothing herein contained shall be construed to prevent mayor, police justice or other persons having jurisdiction to try offenses against such ordinances from suspending the jail sentences in cases of transportation and possession of ardent spirits where the quantity does not exceed one pint.

Wherever the violation of the prohibition law of this State is made a felony and the punishment therefor is confinement in the penitentiary, or whenever upon a prosecution for a second or subsequent offense against such ordinances for such act or acts as would have constituted a felony, had the offense been prosecuted and convictions had by and for the Commonwealth under the county of ..... and now attending said terms and provisions of the prohibition laws of the State, then in such cases, the ordinances herein provided for shall make such offenses misdemeanors and shall be punishable by a fine of not less than two hundred and fifty dollars nor more than five thousand dollars and by confinement in jail not less than six months nor more than twenty-four months, and he shall be sentenced to work out the term of his confinement on the public roads of this State.

It shall be the duty of all officers named in section 46, of this act (§ 4675 (47) of this Code), to enforce all of the provisions of such ordinances as are adopted by virtue of the power herein conferred, or which are herein validated; and to conduct all prosecutions and proceedings thereunder in the name of the county, city or town in whose behalf such prosecutions or proceedings are had; and neglect, failure or refusal of such officers so to do shall be deemed misfeasance in office.

Upon final conviction under any of such ordinances, the same fees for services rendered by any of said officers shall be taxed against the defendant as would be taxed upon final conviction in a prosecution had by the Commonwealth for a similar violation of the prohibition laws of this State, anything in the charter or ordinances of any city or town to the contrary notwithstanding.

All ordinances of the cities and towns of the State of Virginia heretofore passed in pursuance of and in conformity with section twenty-seven of this chapter three hundred and eighty-eight of the acts of nineteen hundred and eighteen or subsequent acts are hereby validated, anything in their charters to the contrary notwithstanding, except where they are in conflict with the provisions of this act.

All fines imposed under the ordinances of cities and towns and counties for the violation of such ordinances with reference to prohibition, adopted under and pursuant to this section, shall be paid to and be retained by such cities and towns, and counties, the Commonwealth shall not be chargeable with any costs for enforcing the provisions of this section, nor shall any such costs be paid out of the State treasury. (Id. § 4675 (37).)

284a. **Giving to Persons of Intemperate Habits; Sending Females for Ardent Spirits.**—It shall be unlawful for any person to give ardent spirits to any person of intemperate habits or addicted to the use of any narcotic drug except on the prescription of a physician.

It shall be unlawful for any person or persons to send or use a female in the purchase or sale of ardent spirits or to deliver the same whether gift, purchase or sale, and upon conviction for a violation of this section, the same penalties shall be imposed as are provided for under section six [4675(6)]. (Id. § 4675(40).)

285. **Burden Upon Accused to Prove Exemption.**—When, in any case prosecuted under this act, the accused claims the benefit of any exception in or to any section of this act, the burden shall be upon him to prove that he comes within the exception (Id. § 4675 (45).)

286. **What Shall be Deemed Contraband and Forfeited.**—All ardent spirits and materials used in the manufacture of ardent spirits and containers in which

ardent spirits are manufactured, kept, stored, possessed, sold or in any manner used in violation of the provisions of this act shall be deemed contraband and shall be forfeited to the Commonwealth, provided the provisions of this act shall have no application to ardent spirits stored in bona fide homes prior to November first, nineteen hundred and sixteen, or acquired according to provisions of section 12 of this act (§ 4675(12) of this Code), so long as the same shall not be used in violation of this act. (Id. § 4675(46).)

287. **Hotels Permitted to Use Certain Cooking Wines and Bath Houses to Use Alcohol.**—Nothing in this act shall prevent the manager of any hotel which has on hand ardent spirits, wines or alcohols purchased prior to July first, nineteen hundred and seventeeen, and shown by its sworn statements filed with the clerk of the court which granted license under the act approved March tenth, nineteen hundred and sixteen, from having and using said ardent spirits, wines and alcohols for cooking and culinery purposes only, or externally with massage in connection with baths given at a bathing establishment used in connection with said hotel; and not to be used contrary to the provisions of this act; provided, however, that the manager of said hotel or the owner of said hotel must procure a license to do so from the circuit court of the county or the corporation or hustings court for the city in which such hotel is located.

Before making application for such license, notice must be posted and continuously kept in a conspicuous place in the office of the hotel in which the privilege is to be exercised, for at least thirty days before making the application, stating the court before which and the time at which the application will be made for license to have and use such ardent spirits, wines and alcohols. Such notice shall be published once a week for three successive weeks in some newspaper published in the county or city, and if there is no newspaper published in the county in which the privilege is to be exercised the notice shall be published in some newspaper of general circulation therein.

Before the court shall grant any such license, the judge thereof shall be satisfied that the manager of said hotel making the application is of good moral character, is a hotel manager in good standing, that the hotel for which license is sought is a reputable one in which the business of keeping a hotel is carried on in good faith by the owner or lessee thereof; that said manager is not of intemperate habits or addicted to the use of any narcotic drugs; that he will observe the laws controlling the use of such ardent spirits, wines and alcohols; that the applicant has presented satisfactory proof that there is a necessity existing for the granting of such license; provided that any citizens may appear personally or by counsel in opposition to the granting of any license herein provided for.

Each manager of any licensed hotel shall file a sworn statement, with the clerk of the court which granted the license, on the first of each month, stating the amount of ardent spirits, wines and alcohols on hand on the first of the previous month, and the amount on hand on the date the statement is made.

If the license is granted the applicant shall give bond in the penalty of not less than five hundred dollars, nor more than twenty-five hundred dollars, as the court may require, with security to be approved by the court and with condition that said applicant will not use or dispose of any ardent spirits, wines or alcohols, except under and in accordance with the provisions of this act. (Id. § 4675(59).)

288. **Medicines Containing Alcohol, Toilet, Medicinal and Antiseptic Preparations and Solutions, Et Cetera, Containing Alcohol, Flavoring Extracts Containing Alcohol, How May be Manufactured, Kept, Sold and Dispensed; Violations, How Punished; How Manufacturers of Flavoring Extracts, Toilet, Medicinal, Antiseptic Preparations and Solutions May Obtain Alcohol.**—The provisions of this act shall not be construed to prevent the sale or gift and keeping and storing for sale by druggists and general merchants or others duly licensed by existing laws of any medicinal preparations manufactured in accordance with formulas prescribed by the United States Pharmacopœia and National Formulary patent and proprietary preparations, and other bona fide medicinal and technical preparations which contain no more alcohol than is necessary to extract the medicinal properties of the drugs contained in such preparations, and no more alcohol than is necessary to hold the medicinal agents in solution and to preserve the same, and which are manufactured and sold and used exclusively as medicine and not as beverages; or to prevent the manufacture and sale of toilet, medicinal and antiseptic preparations, and solutions not intended for internal human use, nor to be sold as beverages, and upon the outside of each bottle, box or package of which is printed in English conspicuously and legibly and clearly the quantity by volume of alcohol in such preparations; or to prevent the manufacture or keeping for sale of the food product known as flavoring extracts which shall be so manufactured or sold for cooking and culinary purposes only, and not to be sold for beverage purposes; provided, that it shall not

be lawful to manufacture or sell any toilet, medicinal, antiseptic preparations or solutions, or any flavoring extracts or patent or proprietary medicines or preparations, the manufacture or sale of which required the payment of the United States liquor dealer's tax.

Provided, such manufacturers, druggists, general and retail merchants and others duly licensed under existing laws, shall first secure from the circuit court of the county or the corporation or hustings court of the city where such manufacturer, druggist, general and retail merchant or other duly licensed person does business, a permit to manufacture, purchase, keep, store, and sell such articles for which permit no tax shall be charged but the clerk entering the order therefor shall receive a fee of twenty-five cents; which said permits shall be subject to revocation for cause by the circuit court of the county or the corporation or hustings court of the city where such manufacturer, druggist, general merchant, or other duly licensed person, does business, and provided, further, that such permits shall also be subject to suspension for cause during the vacation of the court by the judge of such court having jurisdiction; said permits granted to merchants and retail druggists to be good until suspended or revoked.

It shall be unlawful for any person to sell such toilet, medicinal, antiseptic preparations or solutions or flavoring extracts or patent or proprietary medicines or preparations for beverage purposes in the guise of flavoring extracts or medicines, and a sale of any of them for beverage purposes shall be punished as prescribed by this act, but a sale of any of them without the permit required by this section shall be deemed a misdemeanor and for the first offense be punishable by a fine of not less than ten nor more than one hundred dollars, and for any subsequent offense by a fine of not less than fifty nor more than five hundred dollars.

It shall be unlawful for any person to purchase such toilet, medicinal or antiseptic preparations or solutions of flavoring extracts or patent or proprietary medicines or preparations for use as a beverage, under representation to the vendor, that the same is intended for bona fide use as a toilet, medicinal or antiseptic preparation or flavoring extract; any purchase upon such misrepresentation shall be deemed a misdemeanor, and punishable by a fine of not less than ten dollars nor more than one hundred dollars.

It shall be unlawful for any person to sell any such preparations, solutions, extracts or medicines as is [are] above inumerated in this section to any person who is intoxicated or who is known by the person selling it to be a person of intemperate habits as is defined by section forty-nine in this act.* Any violation of this provision shall be punished as unlawful selling of ardent spirits is punished by this act; providing that any such medicinal preparations may be sold to a person of intemperate habits by a licensed druggist under the same conditions that whiskey and brandy may be sold by a druggist as prescribed in this act.

Wherever in any prosecution under this section it appears from the evidence that the defendant has sold any of the preparations, solutions, extracts or medicines enumerated in this section in a quantity exceeding a normal or usual purchase, or has made more than one sale to the same person within a period of twenty-four hours, this shall be prima facie evidence that the defendant knowingly sold such preparation, solution, extract or medicine for beverage purposes and the burden shall be upon him to rebut said presumption to the satisfaction of the jury or court trying the case.

The manufacturers of flavoring extracts, or of toilet, medicinal, antiseptic preparations or solutions, patent or proprietary medicines or preparations, permitted to be manufactured by this act shall be permitted to purchase and cause to be transported into this State by common carriers in accordance with the provisions of this act, and to store ardent spirits or alcohol necessary for the manufacture of said articles, but not to be sold or given away; provided, that such manufacturer must secure from the commissioner a permit which shall be subject to the rules and regulations prescribed by the commissioner and be subject to suspension or revocation for cause, and shall file with the clerk of the Circuit Court of the county or corporation or hustings court of the city within which such manufactory is located a monthly report as is required of druggist by this act.

But before the commissioner shall issue a permit to manufacturers of flavoring extracts, or toilet, medicinal or antiseptic preparations or solutions, patent or proprietary medicines or preparations permitted to be manufactured by this act, the applicant shall give bond to the Commonwealth in the sum of not less than one thousand dollars nor more than ten thousand dollars conditioned that he will not violate any of the provisions of this act.

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*Reference is to § 4675 (81) of this Code, omitted herein.

All permits issued by the commissioner for the manufacture and sale of articles and preparations permitted to be manufactured by this section shall expire May first of each year. (Id. § 4675 (60).)

289. **Sale of Ardent Spirits by Druggists, When Permitted; Sales by Druggists, for Medicinal Purposes; How Druggists Not Licensed Under This Act May Procure Pure Grain, Ethyl or Fruit Alcohol for Own Pharmaceutical Use.**—The provisions of this act shall not be construed to prevent the sale and keeping and storing for sale by druggists licensed under this act. as hereinafter provided, of pure grain, fruit or ethyl alcohol for mechanical, pharmaceutical, and scientific purposes or of wine for sacramental purposes upon affidavit as hereinafter provided, or of ardent spirits for medicinal purposes, or as provided in the preceding section.

But alcohol and other ardent spirits except such preparations as are permitted to be manufactured and sold by section fifty-nine of this act (§ 4675 (60) of this Code), shall not be sold by druggists for medicinal purposes except under a license as required by this act, and then only upon a written prescription of a physician in active practice of good standing in his profession, and not of intemperate habits, or addicted to the use of any narcotic drug, prescribing the quantity of alcohol, or other ardent spirits, designating the said amount in fractions of a pint, the disease or malady for which it is prescribed, how it is to be used, the name of the person for whom prescribed, the number of previous prescriptions for ardent spirits, other than medicines or preparations permitted to be sold by section fifty-nine of this act (§ 4675 (60) of this Code), given by such physician for such person within six months next preceding the date of such prescription, and stating that the same is absolutely necessary as a medicine, and not to be used as a beverage, and that such physician, at the time such prescription was given, made a careful, personal, physical examination of such person; and only one sale, not exceeding two quarts of alcohol, or one gallon of malt or vinous liquors, or one pint of brandy or whiskey, shall be made upon such prescription, which shall at all times be kept on file by the druggist filling the same, and open to the inspection of all State, county and municipal officers, their deputies and inspectors. It shall be the duty of the druggist to register in an alphabetically arranged book, kept exclusively for the purpose of registering prescriptions and affidavits, all prescriptions from physicians mentioned in this section in the following order: The name of the physician, the name of the person prescribed for, the quantity of alcohol or other ardent spirits, and the use for which prescribed, and shall endorse on the prescription or affidavit the date upon which the prescription was filled, and the name of the druggist or firm filling said prescription, or making said sale, and such book shall at all times be open for the same inspection as the prescription.

But nothing in this act shall prevent a druggist duly licensed under existing laws from buying, storing and using pure grain, ethyl or fruit alcohol for his own pharmaceutical purposes, provided, he makes the monthly reports to the clerk of the court as required by this act; and any common carrier may transport such alcohol to any druggist under a permit from the commissioner as provided in this act, or under like conditions, wine, for the purpose of compounding wine antimony, wine of ipecac and like preparations. (Id. § 4675 (61).)

290. **When Identification to be Required by Druggist.**—If any person lawfully applying by affidavit for ardent spirits is not personally known to the druggist to whom he applies, as the person named in the affidavit, and a proper person to receive such ardent spirits, the druggist shall require him to be identified by some person known to him, who is not of intemperate habits or addicted to the use of narcotic drugs. (Id. § 4675 (62).)

291. **Purchases by Dentists, Physicians and Veterinary Surgeons.**—Nothing in this act shall be construed to prevent dentists, physicians and veterinary surgeons from purchasing in accordance with the provisions of this act, pure fruit or ethyl or grain alcohol to be used in the practice of their profession, and for no other purpose whatsoever, upon affidavit prescribed herein or upon a permit from the commissioner. (Id. § 4675 (63).)

292. **Jamaica Ginger.**—It shall be unlawful for anyone but a licensed pharmacist to sell, dispense or give away to the consumer the extract, essence or tincture of Jamaica ginger, and such pharmacist only upon the prescription of a regular, licensed physician, and then only upon the same conditions as ardent spirits are sold under the provisions of this act.

Nothing in this act shall be construed to prevent the manufacture and transportation for sale outside of the State, of the extract, essence, or tincture of Jamaica ginger, into territory where the same may be legally sold. (Id. § 4675 (64).)

293. **To Provide for the Transportation of Wine Into Virginia in Interstate Commerce and Its Use in the Manufacture of Beverages Containing Less Than One-Half of One Per Centum of Alcohol by Volume; When Permitted.**—Nothing in this act shall be construed to prevent the transportation into the State of Vir-

ginia in interstate commerce of liquids such as wines, fruit juices, or other materials permitted to be used and transported under the provisions of the national prohibition act, and its use in the manufacture of beverages containing less than one-half of one per centum of alcohol of [by] volume, under restrictions and provisions as follows: A manufacturer, who has been licensed under the laws of the State of Virginia as a manufacturer of flavoring extracts, et cetera, and of any beverage containing less than one-half of one per centum of alcohol by volume, may, on making application and giving such bond as the Commissioner of Prohibition may prescribe, be given a permit to develop in the manufacture thereof by the usual methods of fermentation and fortification, or to transport in interstate commerce into the State of Virginia liquids such as wines, fruit juices or other materials permitted to be used and transported under the provisions of the national prohibition laws, containing more than one-half of one per centum of alcohol by volume, but before any such liquid is withdrawn from the factory or otherwise disposed of the alcoholic contents thereof shall, under such rules and regulations as the Commissioner of Prohibition may prescribe, be reduced below one-half of one per centum of alcohol by volume, provided that such liquid shall be transported into the State of Virginia in interstate commerce and may be removed, under such bond, and under such other regulations as the Commissioner of Prohibition may prescribe, from one bonded plant or warehouse to another, for the purpose of having the alcohol extracted therefrom; the alcohol so extracted may, under rules and regulations prescribed by the Commissioner of Prohibition of Virginia, be used for any purpose permitted under the laws of the State of Virginia.

In any case where the manufacturer, having been permitted by the Commissioner of Prohibition to transport into Virginia or develop by the usual methods of fermentation or fortification liquids such as wines, fruit juices, or other materials permitted to be used or transported under the provisions of the national prohibition laws, containing more than one-half of one per centum of alcohol by volume, in the manner and for the purpose herein provided, is charged with failure to reduce the alcoholic contents of any such liquid below one-half of one per centum before withdrawing the same from the factory, then in such case the burden of proof shall be on such manufacturer to show that such liquid so manufactured, sold or withdrawn contains less than one-half of one per centum of alcohol by volume. In any suit or proceedings involving the alcoholic contents of any such beverages the reasonable expense of analysis of such beverage shall be taxed as costs in the case. (Id. § 4675(65).)

294. Sales by Druggists of Pure Grain, Ethyl or Fruit Alcohol for Scientific, Pharmaceutical and Mechanical Purposes; Sales by Druggists of Wine for Sacramental Purposes; Penalty on Druggists, Et Cetera, for Violations.—It shall be lawful for wholesale and retail druggists to sell pure grain, ethyl or fruit alcohol for scientific, pharmaceutical and mechanical purposes, or wine for sacramental purposes, for use by religious bodies only, to a person, not a minor, nor of intemperate habits and not addicted to use of any narcotic drugs, who shall at the time and place of sale, if brought in person, make an affidavit in writing, signed by himself, before such druggist, or a registered pharmacist, then in the employ of such druggist, or, if not bought in person, before any person authorized by law to administer oaths, stating the quantity, when, where and fully for what purpose and by whom such alcohol or wine is to be used, and that the affiant is not a minor nor of intemperate habits and not addicted to the use of any narcotic drugs. Such affidavit shall be filed and preserved by the druggist selling the alcohol and wine and be subject to inspection at all times by any State, county, or municipal officer, their deputies or inspectors, and a record thereof made by such druggist in the record book for affidavits and prescriptions herein mentioned, showing date of affidavit, by whom made, the quantity of such alcohol or wine, and when, where, for what purpose and by whom to be used. Only one sale shall be made upon such affidavit, and for no greater quantity than is therein specified. The person offering said prescription to be filled, or making said affidavit, shall certify to the correctness of the record in said record book by recording his signature opposite said record of said prescription or affidavit. For the purpose of this act, any registered druggist or pharmacist making such sale shall have authority to administer the oaths required by this section.

If any druggist, owner of a drug store, registered pharmacist, or clerk, or employee shall, knowingly sell or give away such alcohol, or other ardent spirits, to any one to be used for any purpose other than that named in said prescription or affidavit (provided that no ardent spirits other than alcohol for mechanical or pharmaceutical, or wine for sacramental purposes, or such preparations as are permitted to be manufactured and sold under section fifty-nine of this act (§ 4675(60) of this Code), shall be sold except upon prescription), or shall sell or give away any ardent spirits other than preparations permitted to be manufactured and sold under section

fifty-nine of this act (§ 4675(60) of this Code), without such prescription or affidavit, he shall be deemed guilty of a misdemeanor, and in addition to the penalty prescribed for a misdemeanor by this act, the license of such druggist to sell ardent spirits shall be revoked by the court for the period of one year, and all ardent spirits in possession of said druggist or in the said drug store, or on the premises connected therewith, shall be turned over by order of the court to the commissioner; for a subsequent offense, in addition to the penalty prescribed for a misdemeanor by this act, the license of said druggist to practice pharmacy shall be revoked forthwith, and all ardent spirits in the possession of said druggist, or in the said drug store, or on the premises connected therewith, shall forthwith be by order of the court turned over to the commissioner and the court shall forthwith certify the fact of the revocation of said license to the authority granting such license, which order of revocation shall forthwith be made a matter of record by said authority, and shall act to a bar to the granting of license to said druggist in the future. (Id. § 4675(66).)

295. **Presumptions Upon Sale by Druggists, Et Cetera, Unlawful Sales by Employees Without Employer's Knowledge; Penalties for Failure to Discharge Convicted Employees.**—In any prosecution against a druggist, owner of a drug store, registered pharmacist, clerk or employee, for selling or giving away ardent spirits contrary to law, if such sale or gift be proven, it shall be presumed to be unlawful in the absence of satisfactory proof to the contrary, but the presentation of such prescription or affidavit by the defendant on trial shall be sufficient to rebut the presumption arising from the proof of such sale or gift; provided that the jury shall believe from all the evidence in the case that such sale or gift was made in good faith under the belief that such prescription or affidavit and the statements therein were true; and provided further, that such druggist, owner of a drug store, registered pharmacist, clerk or employee shall have complied with all other provisions of this act relating to such sale or gift; and provided further, that if any clerk or employee in a drug store other than the druggist, owner of said drug store, shall sell or give away any ardent spirits contrary to the provisions of this act, upon conviction of said clerk or employee, said druggist, or owner of said drug store, may before trial and the revocation of the license and before the ardent spirits in his possession are turned over to the commissioner as required in section nine,* be permitted to present to the court evidence that said sale or gift was without his knowledge, consent, acquiescence or connivance, and if the court is convinced from said evidence that said druggist, or owner of said drug store was not in any sense a party to the violation of this act by his clerk or other employee, then said druggist, or owner of a drug store shall not be deemed guilty of the violation of said section nine of this act by reason of the violation thereof by his clerk or employee.

If any druggist or owner of a drug store, who has been duly notified that any clerk or employee has been convicted of a violation of any of the provisions of this section, shall fail at once to discharge said clerk or employee permanently, he shall be deemed guilty of a misdemeanor, and upon conviction, shall be fined not less than one hundred nor more than five hundred dollars, and for any subsequent offense shall be fined not less than one hundred nor more than five hundred dollars, and be confined in jail not less than one nor more than six months, and if any registered pharmacist shall be convicted of the violation of this section, he shall, in addition to the penalties provided for such violation, forfeit his license as a registered pharmacist for a period of two years. (Id. § 4675(67).)

296. **Indictments Against Druggists.**—While any good and sufficient indictment may be used, an indictment against any druggist, owner of a drug store, registered pharmacist, clerk or employee, for any offense committed under the provisions of this act relating to druggist, shall be sufficient if substantially in the form and to the effect following:

"Commonwealth of Virginia,

County of ..... to-wit:

In the Circuit Court of said county:

The grand jurors in and for the body of said county of ..... and now attending said court at its ..... term, 19....., upon their oaths do present that ..... within one year next prior to the finding of this indictment in the said county of ..... did unlawfully sell, give away, offer, dispense, expose, keep and store for sale and gift, ardent spirits against the peace and dignity of the Commonwealth of Virginia."

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*There seems to be a clerical error here as there is no such requirement in § 9 of the act, which is § 4675(9) of the Code. Reference probably is to § 4675(66) of this Code. See No. 294.

And if it be a second offense, it shall be so stated in the indictment returned, and the prosecuting attorney shall introduce before the trial court evidence of said former conviction, and shall not be permitted to use his discretion in charging said second offense, or in introducing evidence or proving the same on the trial: Provided, that the failure to charge a former conviction shall not invalidate the indictment.

If the offense is committed in a city, the word city shall be substituted for county, the court having jurisdiction substituted for Circuit Court, and the name of the city for the name of the county. (Id. § 4675 (68).)

297. Affidavit by Person of Intemperate Habits, Use Other Than Stated in Affidavit.—If any person who is of intemperate habits or addicted to the use of any narcotic drug shall make the affidavit hereinbefore mentioned, or if any person making such affidavit shall use as a beverage, or for any purpose, or at any place other than that stated in the affidavit, or shall knowingly permit another to make use of said alcohol or wine, or any part thereof, or shall knowingly make any false statement in such affidavit, he shall be guilty of a misdemeanor. (Id. § 4675 (69).)

298. When Issue of Prescriptions by Physicians Unlawful, Penalty.—If any physician who is not in active practice, or who is not in good standing in his profession, or who is of intemperate habits, or addicted to the use of any narcotic drug shall issue any such prescription as is mentioned in this act, or if any physician shall issue such prescription without at the time making a careful, personal physical examination of the person for whom the ardent spirits are prescribed, or shall prescribe such ardent spirits for any person who he knows or has reason to believe is in the habit of drinking to intoxication, unless it is prescribed bona fide and solely for medicinal purposes as a necessary treatment, when the patient is confined to his bed or in some hospital or institution as a result of alcoholism, or shall in his prescription make any false statement, or shall prescribe ardent spirits when such ardent spirits are plainly not a remedy, or shall prescribe more than two quarts of alcohol, or one gallon of malt or vinous liquor or one pint of brandy or whiskey, or shall resort to any shift or device by which ardent spirits may be improperly procured, he shall be deemed guilty of a misdemeanor, and in addition to the penalty prescribed for a misdemeanor by this act, for the first offense under this act, the court may in its discretion suspend the license of such physician for a period of six months, and for a second offense in addition to the penalty prescribed for a misdemeanor by this act the court shall suspend such license for a period of twelve months and for any subsequent offense in addition to the penalty prescribed for a misdemeanor by this act, the court shall forthwith revoke the license of said physician, and shall forthwith certify the facts of the revocation of said license to the authority granting said license, which order of revocation shall forthwith be made a matter of record by said authority, and shall act as a bar to the granting of license to said physician in the future. (Id. § 4675 (70).)

299. When Records, Prescriptions, Affidavits and Reports Not Required; Access to by Officers.—This act is subject to the following, however: that wherever and whenever its requirements are such as to make necessary the keeping of records which are in effect duplicate of records required under provisions of the national prohibition act; and provides for the filing of prescriptions and affidavits in any manner different from prescriptions and affidavits provided for by the national prohibition act, but in effect duplicating the record so provided for by the national prohibition act; and provides for the filing of monthly reports by pharmacists and others with the clerks of the Circuit Courts of counties or with the clerks of the Corporation or Hustings Court of cities, which reports are in effect duplicates of reports required to be filed with the Federal Prohibition Director for Virginia, in accordance with provisions of the national prohibition act; such records, prescriptions, affidavits and reports shall not be required. It is deemed sufficient if the licensee under this act keep such records, keep on file such prescriptions, and make such reports, as are provided for in the national prohibition act; and any officer authorized to enforce the provisions of this act shall have access to all such records, files and reports aforementioned at any reasonable hour. (Id. § 4675 (72).)

300. Issue of License to Druggist; Statement Required of Druggists; License to Hospital, Chemical Laboratories, and Statements Required; Bond Required Upon Issuance of License.—Before a druggist shall sell ardent spirits on prescription, or pure fruit, ethyl, or grain alcohol for scientific, mechanical, or pharmaceutical purposes, or wine for sacramental purposes on affidavit as provided in this act, he must procure a license to do so from the Circuit Court of the county, or the Corporation or Hustings Court of the city, provided no such license shall be required for the sale of articles permitted to be manufactured and sold under section . . . of this act.*

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*Number of section is also omitted in § 72 of chapter 407, Acts of 1924, codified as § 4675 (73). Probably means section codified as 4675 (60). See No. 288.

Before making application for such license notice must be posted and continuously kept on the front door of the store or place of business in which the privilege is to be exercised for at least thirty days before making the application, stating the court before which and the time at which the application will be made for license to sell pure fruit, ethyl and grain alcohol, wine for sacramental purposes, and other ardent spirits. Such notice shall be published once a week for three successive weeks in some newspaper published in the county or city, and if there is no newspaper published in the county in which the privilege is to be exercised, the notice shall be published in some newspaper having general circulation therein and shall be posted for twenty days on the front door of the courthouse of said county.

Before the court shall grant any license, the judge thereof shall be satisfied that the person making the application is a qualified voter of the State, is of good moral character, is a registered pharmacist in good standing, that he has in his drug store belonging to him, and not including patent medicines and drugs to be sold on commission, drugs of the value of one thousand dollars (wholesale price), provided that in towns of less than five hundred inhabitants the value of the stock of drugs referred to above shall be not less than five hundred dollars, wholesale value, and carries on in good faith the business of a druggist; that he is not of intemperate habits or addicted to the use of any narcotic drug; that he is a person of good character and will observe the laws controlling the sale of ardent spirits and alcohol; that the applicant has presented satisfactory proof that there is a necessity existing for the granting of such license, and that the sale of ardent spirits at that place and by the applicant will not be contrary to sound public policy or injurious to the moral or material interests of the community. And, provided, further, that in no case shall a license be granted if a majority of the voters qualified to vote at the last preceding election petition the court not to grant any such license in the following cases, namely: In a town of over one thousand inhabitants the petition shall be signed by a majority of the qualified voters of such town; in a town under one thousand inhabitants, the petition shall be signed by a majority of said qualified voters of the town or magisterial district in which said town is situated; if in the district the petition shall be signed by a majority of said qualified voters of the magisterial district and towns of less than one thousand inhabitants in said magisterial district; provided, that where license has been refused an applicant under the provisions of this section no further application for license may be made by the same applicant within two years nor by any other applicant where the petition of voters presented to the court is not alone directed against the granting of license to the particular person, but is also against the granting of a license to any person within the territory covered by the petition. Any license granted under this section may be revoked at any time by the court granting the same for cause, and after two years from the date of issue upon the petition provided for in this section, provided that where there was another licensed under this section in the territory covered by the petition, and the petition was against the granting of license on account of the fact that there was already a licensee doing business and such licensee has discontinued business, application may be renewed by the same or another applicant unless the petition was against granting the license to the particular applicant.

The court may also in its discretion issue to any wholesale druggist who is a qualified voter of the State and of good moral character, a license to sell pure grain, ethyl, and fruit alcohol, to any druggist, or other person for scientific, pharmaceutical and mechanical purposes or wine for sacramental purposes under the provisions of section nine of this act*; and pure grain, ethyl, and fruit alcohol, wine for sacramental purposes, or other ardent spirits to retail druggists in Virginia only, licensed under this act, and pure grain, ethyl, or fruit alcohol to retail druggists outside of the State of Virginia, where the sale thereof is permitted by law; provided, that any citizen may appear personally or by counsel in opposition to the granting of any license herein provided for, provided, that the provisions of this section shall not be construed to require a license for the purchase or sale of the preparations permitted to be manufactured and sold under section fifty-nine of this act (§ 4675(60) of this Code). Each retail and wholesale druggist shall file a sworn statement with the clerk of the court granting the license on or before the fifth of each month, stating the amount of pure fruit, ethyl and grain alcohol, wine or other ardent spirits, other than preparations permitted to be manufactured and sold under section eight-b of this act,† on hand the first of the previous month, the amount received during the previous month, and the amount on hand the date the statement is made. Nothing in this act shall prevent the superintendent of a hospital from ordering, purchasing or receiving ardent spirits or the superintendent of a chemical laboratory from order-

*Reference is to § 4675(66) of this Code. See No. 294.
†Reference is to § 4675(60) of this Code. See No. 288.

ing, purchasing or receiving pure grain, ethyl or pure fruit alcohol for the use of the hospital or laboratory, not to be used contrary to the provisions of this act, and nothing shall prevent common carriers from transporting and delivering such ardent spirits and alcohol to such hospitals or laboratories having license to order and receive the same, under a permit from the commissioner, but before ordering or receiving said ardent spirits other than preparations permitted to be manufactured and sold under section eight-b of this act† before ordering or receiving said alcohol, the hospital or laboratory shall procure license from the court under the same conditions as license is granted to druggists; provided, further, that it shall be unlawful for any hospital to sell ardent spirits, other than preparations permitted to be manufactured and sold under section eight-b of this act,† except upon prescription of its own patients under the same restrictions and reports required of druggists; and, provided, further, that chemical laboratories shall make report as required by druggists of the disposition and use of all alcohol received by them.

No pharmacist licensed under the provisions of this act shall charge more than one hundred per centum gross profit on any medicinal or sacramental ardent spirits sold hereunder, and a violation of this provision shall work a forfeiture of his license; but no druggist shall dispense any but pure liquor of standard proof.

If the license is granted the applicant shall give bond in the penalty of not less than one thousand dollars, nor more than ten thousand dollars, as the court may require, with security to be approved by the court and with condition that he will not dispense or sell any ardent spirits or alcohol, except under and in accordance with the provisions of this act.

The court may also on its discretion issue a license as heretofore provided, to a corporation engaged in the retail drug business in this State under the provisions of this section, provided, the said corporation has a capital stock of not less than two thousand dollars fully paid and, provided, further, that the said registered pharmacist is in good standing, is of good moral character; that he is not of intemperate habits or addicted to the use of any narcotic drug; that he is a person of good character and will observe the laws controlling the sale of ardent spirits and alcohol, and, provided, further, the said registered pharmacist shall personally supervise the filling of all prescriptions for the sale of ardent spirits. (Id. § 4675 (73).)

301. Issue of License to Partnership Engaged in Retail Drug Business.—The court may also, in its discretion, issue a license as provided in section seventy-two [§ 4675(73)] hereof, to a partnership or to an individual engaged in the retail drug business in this State under the provisions of the said section; provided, the said partnership or individual has a capital of not less than two thousand dollars fully paid; and provided, further, that the registered pharmacist in charge of the said drug business is in good standing and of good moral character, that he is not of intemperate habits or addicted to the use of any narcotic drug; that he is a person who will observe the laws controlling the sale of ardent spirits and alcohol; and, provided, further, that the said registered pharmacist shall personally supervise the filling of all prescriptions for the sale of ardent spirits. (Code Supp. 1926, § 4675 (73½).)

302. Shipment of Ardent Spirits to Pharmacists; Records to be Kept by Transportation Company.—Nothing in this act shall be construed to prevent a duly licensed pharmacist under this (act?) from having shipped to him, or to prevent any transportation company from delivering to him under a permit from the commissioner, pure fruit, ethyl, and grain alcohol, wine or other ardent spirits, in such quantities and at such times as said pharmacist licensed under this act may deem necessary. But before any shipment is delivered, the consignee shall sign a record, to be made and kept by the transportation company, which shall state the name of the shipper, the kind and quantity of the ardent spirits shipped, the date of shipment and of delivery, and the consignee shall make affidavit before some person authorized to administer an oath that the pure fruit, ethyl and grain alcohol, wine or other ardent spirits included in the shipment are to be sold, dispensed or used according to the provisions of this act. Any registered pharmacist licensed under this act, failing to comply with any of the provisions of this section, or who shall make a false affidavit, shall be guilty of a misdemeanor. Provided, the provisions of this act shall not be construed to require a permit for the transportation or the keeping records by a transportation company of any of the articles permitted to be manufactured and sold under section . . . of this act.*

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*The section number is also omitted in § 73 of chapter 407, Acts of 1924, codified as § 4675 (74). Probably means section codified as 4675 (60). See No. 288.

And provided, further, that the dispensary of Norfolk city, now operated under the direction of the health department of said Norfolk city, be and the same is hereby, given all the rights and privileges of pharmacists and hereby authorized to sell ardent spirits for medicinal purposes only, subject to all the provisions, conditions and limitations of this act.

This act shall not apply to Bedford county. (Code 1924, § 4675 (74).)

303. Permits to be Issued by Commissioner; Permit as Evidence; Common Carrier to Transport Only on Permit; Fee to be paid for Permit.—The commissioner, whenever in his discretion it shall be deemed necessary to do so, or when he shall be thereto required by any section of this act, may give permits in triplicate for the purchase, use or transportation of ardent spirits, and may give permits for the transportation of ardent spirits to physicians, dentists, veterinary surgeons, superintendents of hospitals and laboratories authorized by this act to purchase and use ardent spirits for medicinal purposes. The commissioner shall specify in each permit the kind and quantity of ardent spirits to be transported under it, and the purpose for which it is to be used. It shall be lawful for any common carrier or transportation company to transport any ardent spirits which has upon the container a permit of the commission[er]. But before the ardent spirits shall be delivered to the consignee he shall make affidavit that he is the person named in the permit and that he will use ardent spirits for the purposes named therein. The commissioner shall keep in his office a copy of every original permit, a duly certified copy of which shall be evidence of what it contains, in any prosecution for violation of this act.

The affidavits of the consignee shall be kept filed and be subject to inspection as other affidavits under this act.

It shall be unlawful for any common carrier or transportation company to transport ardent spirits for any physician, dentist, veterinary surgeon, superintendent of a hospital or superintendent of a laboratory without a permit of the commissioner pasted on the outside of the container.

For every permit issued by the commissioner shall be paid to him a fee of fifty cents, except that retail druggists shall not be required to pay for permits for having alcohol transported under the provisions of this act for medicinal, pharmaceutical and mechanical purposes, shall receive for all services rendered by him in connection with the issuance of such a license a fee not to exceed twenty-five cents. All licenses issued under this section shall be granted subject to revocation by the Circuit Court of the county or the Corporation or Hustings Court of the city where such person does business, and shall also be subject to suspension for cause during the vacation of the court by the judge of such court having jurisdiction, but shall be good until suspended or revoked.

Provided, that it shall not be necessary to obtain such license to sell soft drinks at any place for benevolent or charitable purposes; provided, further, that it shall be unlawful for any dispenser of soft drinks to use any ardent spirits as a flavor or mixture.

Any person violating any of the provisions of this section of this act shall be deemed guilty of a misdemeanor and shall be fined not less than twenty-five nor more than one hundred dollars for the first offense, and shall be fined not less than fifty nor more than five hundred dollars for the second offense, and for every subsequent offense shall be fined not less than one hundred nor more than five hundred dollars, and confined in jail not less than one nor more than six months. (Id. § 4675 (75).)

304. Duties of Attorney for the Commonwealth.—The attorney for the Commonwealth of every county and city in this State shall, as often as once a month, examine all prescriptions and affidavits and record books required to be kept by any section of this act and filed in the clerk's office, and if the said prescriptions, affidavit and records are not made and kept according to the provisions of this act, or if he has reason to believe that there has been any violation of any of the provisions of this act, he shall take such action as may be necessary to bring the offender to justice. (Id. § 4675 (79).)

305. Prescriptions, Affidavits and Record Books to be Examined.—The commissioner in person or by his deputies or inspectors shall as often as possible examine all prescriptions, affidavits and record books required by this act, and report the violation of any of its provisions to the attorney for the Commonwealth of the city or county in which said violations occur, whose duty it shall be to proceed at once to investigate and prosecute the same. (Id. § 4675 (80).)

306. Prescriptions and Affidavits to be in Duplicate; Filing; Examination.—All prescriptions and affidavits required by this act shall be made in duplicate and one original filed with the clerk of the Circuit Court of the county or the Corporation Court of the city, which has criminal jurisdiction, on or before the fifth day of every month following the filing of such prescription and the making of such affidavits, by the druggists, or by the common carrier handling the same, and the failure of any physician to make out said prescription in duplicate and the failure of the

persons making the affidavit to do so in duplicate shall be deemed a misdemeanor. The clerk of the court with whom said prescriptions and said affidavits shall be filed shall paste them in an alphabetically arranged book, and permit their examination without fee. Any clerk who shall fail or refuse to comply with the duties imposed upon him by this section shall be fined not less than five dollars and not more than twenty-five dollars. This section is subject to this proviso, however, that whenever the prescriptions have been issued and filed in accordance with the provisions of the national prohibition act and the regulations issued in pursuance thereof the prescriptions and affidavits mentioned in this section shall not be required. (Id. § 4675 (86).)

307. Certain Advertisements, and Circulation, Et Cetera, of Certain Matter Prohibited; Publication of Statements Regarding the Liquor Traffic; How Punished.—It shall be unlawful (one), to advertise upon any street car, railroad car or other vehicle of transportation or any public place or resort, or upon any sign or billboard, or by circular, poster, price list, newspaper, periodical, or otherwise within this State ardent spirits, or to advertise the manufacture, sale, keeping for sale or furnishing of the same, or the person from whom, or the firm or corporation from which, or the place where, or the price at which, or the method by which the same or any of them may be obtained in any way whatever, provided, that wholesale druggists licensed under this act shall be permitted to send price lists to those to whom they are permitted to sell ardent spirits under this act; (two), to circulate or publish any written or printed matter, in which any advertisement in this section shall appear, or to permit any sign, or billboard, containing such advertisement to remain upon one's premises; or to circulate any price list, order blank or other matter for the purpose of inducing or securing orders for such ardent spirits no matter where located. Any sheriff, constable or police officer is authorized to remove any such advertisement from any sign, billboard, or other public place when it comes to his notice, and shall do so upon demand of any citizen.

Any advertisement or notice containing the picture of a brewery, distillery, bottle, keg, barrel, or box, or other receptacle represented as containing ardent spirits, or designed to serve as an advertisement thereof, shall be within the inhibition of this section. Nothing in this act shall be construed as prohibiting any person from giving away without any compensation therefor any paper or magazine which he has received by mail, or which he has brought into the State in person, provided, that such gift shall be a subterfuge or device, or a violation of the provisions of this act, forbidding the circulation of newspapers, periodicals, or other written or printed matter containing any advertisement of ardent spirits; (three), it shall be unlawful for any newspaper or periodical published in this State to print in its columns, statements concerning the liquor traffic, for which the said newspaper or periodical receives compensation of any kind, without printing at the beginning of and at the close of said statement in type of the same size used in the body of the said article the following statement: "Printed as paid advertising."

When any violation of any of the provisions of this section of this act shall have occurred, the continuation and repetition of the unlawful act or any of like kind by the offending person, firm or corporation, may be prevented by a writ of injunction issued by a court of equity or by the judge thereof in vacation, upon a bill filed in the name of the State of Virginia by the Attorney-General, or by any attorney for the Commonwealth in any county or city, or by any citizen or citizens of the county or city in which the offense has been committed; and all rules of evidence, practice and procedure that pertain to courts of equity generally may be invoked and applied, as well as the rules and practice prescribed for bills in equity to abate nuisances, as far as the same are applicable. All persons, whether agents, servants or officers of corporations, or agents or servants of individuals aiding or abetting in the commission of the offense, may be made parties defendant to such bills. (Id. § 4675 (87).)

308. Analysis of Mixtures Supposed to Contain Ardent Spirits; Chemist Certificate as Evidence.—It shall be the duty of the State Commissioner of Agriculture, at the request of any officer, State, county or municipal, including the Commissioner of Prohibition charged with the execution of this act and other laws of this State concerning ardent spirits as herein defined, to cause to be analyzed, forthwith, any mixture, supposed to contain ardent spirits as herein defined, and to return to the officer making the request a certificate of the chemist showing such analysis. The certificate of any chemist employed by the Department of Agriculture of this State, when signed and sworn to by him, shall be evidence in all prosecutions for violations of this act or of any other laws relating to ardent spirits as herein defined and all controversies touching the mixture analyzed by him; and if the person taking the sample shall label the same with a mark of identification and cause it to be delivered to the chemist for analysis, with a certificate stating that the container contains the actual fluid taken by him from manufacturer, dealer, or the person storing, selling, or attempting to sell the same, the burden of proof shall be upon the

accused to show that it is not the fluid so taken; but on motion of the accused and for good cause shown, the court may require the chemist making the analysis, and the person taking the sample to appear as witnesses and be subject to cross examination. (Id. § 4675 (88).)

309. Transportation of Malted Milk and Similar Preparations; Commissioner to Control Sale of Preparations Containing Malt or Alcohol.—The commissioner (Attorney-General) shall have the right to permit the transportation into the State, and from place to place within the State, of malted milk and other similar preparations coming under the letter but not the spirit of this act, and shall have the power to prohibit or regulate the sale of preparations and beverages, containing malt or alcohol subject, however, to the provisions herein contained with regard to the manufacture and sale of such preparations for medicinal purposes. (Id. § 4675 (92).)

310. Act Deemed Exercise of Police Powers.—This entire act shall be deemed an exercise of the police power of the State for the protection of the State, for the protection of the public health, peace and morals, and the prevention of the sale and use of ardent spirits, and all of its provisions shall be liberally construed to affect [effect] these objects, provided that no person shall be prosecuted for an offense for which he has been tried in any other court, or is being prosecuted therefor at the time of the institution of the proceedings under this act. (Id. § 4675 (99).)

311. Transportation for Medical Purposes.—The provisions of this act shall not be construed to prevent the transportation of ardent spirits by a common carrier when prescribed for a minor or a female for medicinal purposes upon a prescription by a physician in accordance with the provisions of this act.

Provided, that in such cases, or in any other when the consignee is too ill to make the affidavit and sign the order required before delivery can be made under this act, no delivery shall be made except upon the written order of the attending physician, which order shall set forth that the consignee is a minor or a female, or the nature of the illness preventing the delivery to such consignee, and shall name some competent person to whom delivery shall be made, which order of the physician must be written in duplicate, must be duly sworn to, and shall be filed by the common carrier in the same manner as if the delivery has been made to the consignee in person. No common carrier shall deliver such a shipment to the person presenting such an order from a physician until such person has endorsed upon the order, in the presence of the agent of the common carrier, his signature and address. (Id. § 4675 (111).)

312. When Possession of Distilled Liquor, One Gallon of Wine or Three Gallons of Beer, or Other Malt Liquor Prima Facie Evidence of Purpose to Sell.—The possession by any person of any ardent spirits, at any place other than his home, except as provided in this act, and the possession in his home of more than one gallon of distilled liquors, wine and malt liquor at any one time, shall, in any proceeding or prosecution under this act, be prima facie evidence that such person possesses such ardent spirits for the purpose of sale, provided, that it shall be lawful for any person to carry from the depot of a common carrier to his own home any ardent spirits which he has received from such common carrier in accordance with the provisions of this act, or to carry from the depot any ardent spirits which he has received from a common carrier upon the written authority of the consignee or physician as provided for in this act, said ardent spirits to be delivered at the home of said consignee; or to carry any ardent spirits which have been delivered to him by a registered pharmacist upon the prescription of a physician as provided in this act. (Id. § 4675 (115).)

313. Stamps to be Affixed to Affidavits and Prescriptions.—Every prescription and affidavit required by this act shall have affixed thereto and duly cancelled by the initials in ink of the person affixing the same a five-cent stamp, to be furnished to druggists, transportation companies and other persons handling such prescriptions and affidavits, who shall keep such stamps for that purpose in stock. Said stamps shall be prepared by the commissioner and sold by him to the parties required by law to handle the same. The persons for whom the prescriptions are given and the persons making the affidavits shall pay for the stamps affixed thereto. All money received by the commissioner from the sale of stamps or otherwise under this act shall be paid into the treasury of the State, and shall there be accounted for as a separate fund.

Provided that all stamps purchased under this section and not used may be redeemed before September first, nineteen hundred and eighteen, by the holders thereof upon proper evidence that they were bona fide purchased from the commissioner; and the Auditor of Public Accounts shall issue his warrant on the Treasurer, upon the certificate of the Commissioner of Prohibition, to pay out of the treasury of the State amounts necessary for the redemption of said stamps at the purchase price of five cents each. (Id. § 4675 (116).)

314. Filing Certificate of Resolution of City Council; Term "Permittee" Defined.—Upon the filing with the Attorney-General, by any city in the State, having, as shown by the latest census of the United States, a population of not less than one hundred thousand of a duly certified copy of a resolution of its city council approving the granting of a permit to any corporation, or person, to manufacture alcohol for industrial and nonbeverage purposes in said city and to sell and transport the same to points within or without the State, where the same may be lawfully sold in compliance with this chapter and laws and regulations now in effect, or which may hereafter be put into effect by the State of Virginia and the United States, the Attorney-General may in his discretion grant such a permit upon the filing of an application and the giving of a bond as herein provided. The term permittee as used in this chapter shall be construed to mean the person or corporation to whom such a permit is issued. (Code Supp. 1926, § 4580 (1).)

315. Form of Application; Plans and Descriptions Accompanying Application.—The application filed with the Attorney-General for such permit shall be verified by affidavit and shall set forth the name and address of all parties having an interest in the proposed alcohol producing plant, or if a corporation, shall set forth the name and address of its principal officers and directors and the name and address of the individuals owning fifty-one per centum of the stock. Upon any change in the officers, directors or controlling interest of any permittee under this act, it shall be the duty of such permittee to promptly notify the Attorney-General of such change. Accompanying said application shall be an accurate plan and description of the premises and distilling apparatus, distinctly showing the location of every still, boiler, doubler, wine tub, and receiving cistern, installed or to be installed, the course and construction of all pipes used or to be used in the distillery, and of every branch and every cock or joint thereof, and of every value [valve] therein, together with every place, vessel, tub, or utensil from and to which any such pipe leads, or with which it communicates; also the number and location and cubic content of every such still, mash tub, and fermenting tub, the cubic contents of every receiving cistern and the color of each fixed pipe. There shall also be furnished a detail description of the process employed or to be employed at the plant, which will show the flow of material from the time received on the premises through the various apparatus, into the locked receiving tanks; also a plan showing the line of the premises and location of buildings thereon, and of all buildings which it is then proposed to erect thereon, provided, however, that whenever the documents filed with the officers of the United States under the internal revenue laws and regulations pursuant thereto, shall contain the foregoing information, the filing of a certified copy of such document or documents with the Attorney-General shall be deemed a sufficient compliance with this section. In the event of any change in the plans as submitted, shall be made during the course of construction, plans showing the same shall be submitted to and approved by the Attorney-General before the plant shall commence to operate. (Id. § 4580 (2).)

316. Bond.—As a condition precedent to the granting of such permit such person or corporation shall file with the Attorney-General a bond payable to the Commonwealth of Virginia, in the penal and liquidated sum of ten thousand dollars, with security to be approved by him, conditioned that such person or corporation will not sell, barter, give away, deliver or remove any alcohol or ardent spirits, or permit to be sold, bartered, given away, delivered or removed any alcohol or ardent spirits in violation of the laws and regulations of the State or of the United States and will faithfully observe, keep, perform and be bound by, any and all provisions, restraints and conditions of the laws and regulations of the State and of the United States, now in force, or which may hereafter be put into effect concerning, affecting or regulating the manufacture, sale, transportation or delivery of alcohol and ardent spirits. (Id. § 4580 (3).)

317. Authority of Attorney-General; Appeal.—It shall be the duty of the Attorney-General to supervise the enforcement of this chapter. The Attorney-General shall prescribe the form and fix the conditions of all permits issued under the chapter and shall have authority to make regulations require the keeping of records and the filing of reports, to give effect to the provisions of the chapter, and shall have the right, after notice and hearing, to suspend or revoke such permit for the violation of any law or regulation by the permittee, or by his, or its officers, agents, employees or servants, in connection with the privilege granted by such permit, and upon the breach of any of the conditions of the bond required by this chapter, the Attorney-General shall collect the penalty of the bond; provided, however, no permit issued under this chapter shall grant any privilege inconsistent with the laws of the United States or the State of Virginia. From any action of the Attorney-General under this section, the Commonwealth or the permittee, if aggrieved, shall have the right to appeal to the Supreme Court of Appeals, provided, such appeal shall be perfected by filing with said court a petition setting

forth the grounds of appeal within sixty days after such action shall have been taken, provided, however, that said plant shall remain closed under proper supervision until the action of the Attorney-General is superseded by the Supreme Court of Appeals.

The Attorney-General shall preserve a record of all evidence introduced before him at the hearing, and upon such appeal shall forthwith certify the same, together with a certificate showing the action taken by him, to said court. The Supreme Court of Appeals may in its discretion award a supersedeas to the action of the Attorney-General, and may require of the permittee such bond as it shall deem proper. The appeal shall be heard and determined in the same manner as equity appeals are heard and determined, and shall be disposed of promptly by the court at such time as it may prescribe, irrespective of its place of session. (Id. § 4580 (4).)

318. Inspection of Books and Premises.—The Attorney-General, or any officer or officers of the law designated by him, shall have the right, at any hour, to enter and inspect the premises of any alcohol manufacturing plant and may examine the books and records of such permittee, to see that the laws relating to alcohol and ardent spirits are being observed; and may take from the products found on the premises such samples as may be required for the purpose of chemical analysis. (Id. § 4580 (5).)

319. Sale, Delivery and Removal of Alcohol.—It shall be unlawful for any permittee, or for any officer, agent, employee, or servant of such permittee, or for any person, to sell, deliver, transport or remove from the premises of any alcohol manufacturing plant, any alcohol or ardent spirits except in compliance with a permit authorizing such sale, delivery, transportation or removal, issued as required by section seventy-four of chapter four hundred and seven, of the Acts of Assembly of 1924 [§ 4675 (75), Code 1924], except, however, that as to shipments to points outside of the State of Virginia, no affidavit shall be required of the person to whom such alcohol is shipped; and, provided, further, that no permit shall be required for the sale, delivery, transportation, or removal from such alcohol manufacturing plant of alcohol denatured in accordance with formulas that may be provided by regulations so as to render such alcohol unfit for beverage use. The container in which such denatured alcohol is transported shall be labeled "denatured alcohol." (Id. § 4580 (6).)

320. Violations of Chapter.—It shall be unlawful for any permittee, or for any officer, agent, employee, or servant of such permittee, to violate the terms of any permit or regulation issued under the chapter or to make any false statement in any application, record, or report required by the chapter, or to forge any permit required by this chapter, or to hinder or obstruct any officer charged with the duty of enforcing the provisions of this chapter, or to remove or permit the removal of any mash, or alcohol, from the premises of any alcohol manufacturing plant, except as provided in the chapter and in accordance with the regulations authorized therein. (Id. § 4580 (7).)

321. Penalty.—Any person who shall violate any of the provisions of this chapter shall be deemed guilty of a felony and upon conviction shall be punished by confinement in the penitentiary not less than one or more than three years or in the discretion of the jury, by confinement in jail not less than six months or more than twelve months and any corporation which shall violate any of the provisions of this chapter shall upon conviction, be fined not exceeding fifty thousand dollars. (Id. § 4580 (8).)

321a. Permits to Manufacture Near-Beer.—Upon the filing with the Attorney-General, by any city in the State, having, as shown by the latest census of the United States, a population of not less than one hundred thousand and not more than one hundred and thirty-five thousand, of a duly certified copy of a resolution of its city council approving the granting of a permit to any corporation, or person, to manufacture near-beer (containing not more than one-half of one per centum of alcohol upon the completion of de-alcoholization), in said city, for beverage purposes, and to sell and transport the same to points within or without the State, where the same may be lawfully sold in compliance with this act and laws and regulations now in effect, or which may hereafter be put into effect, by the State of Virginia and the United States, the Attorney-General may grant such a permit upon the filing of an application and the giving of a bond as herein provided; and upon the issue of such permit the permittee shall be entitled to manufacture said near-beer by any processes from time to time prescribed by the internal revenue laws of the United States and regulations pursuant thereto, provided the said near-beer after completion of said process of manufacture and de-alcoholization, shall contain not more than one-half of one per centum of alcohol, and for the said purpose the purchase, sale, transportation and possession of all malts, hops, materials, products and other ingredients to be used in the manufacture of said near-beer, as prescribed by said internal revenue laws of the United States and regulations pursuant thereto shall be lawful. The

term permittee as used in this act shall be construed to mean the person or corporation to whom such a permit is issued. (L. 1927, c. 47, § 1.)

321b. **Application for Permit; What to Contain.**—The application filed with the Attorney-General for such permit shall be verified by affidavit and shall set forth the names and addresses of all parties having an interest in the proposed producing plant, or if a corporation, of its principal officers and directors and of the individuals owning fifty-one per centum of the stock. Upon any change in the officers, directors or controlling interest of any permittee under this act, it shall be the duty of such permittee to promptly notify the Attorney-General of such change. Accompanying said application shall be an accurate plan and description of the premises, plant, machinery and equipment, distinctly showing the location, course and construction of all pipes used or to be used in the said plant, and of every branch and every cock or joint thereof, and of every valve therein, together with every place, vessel, tub, or utensil from and to which any such pipe leads, or with which it communicates; also the number and location and cubic content of every fermenting tub, the cubic contents of every receiving cistern and the color of each fixed pipe. There shall also be furnished a detailed description of the process employed or to be employed at the plant, which will show the flow of material from the time received on the premises through the various apparatus, into all receiving tanks; also a plan showing the line of the premises and location of buildings thereon, and of all buildings which it is then proposed to erect thereon; provided, however, that whenever the documents filed with the officers of the United States under the internal revenue laws and regulations pursuant thereto, shall contain the foregoing information, the filing of a certified copy of such document or documents with the Attorney-General shall be deemed a sufficient compliance with this section. In the event any change in the plans as submitted shall be made during the course of construction, plans showing the same shall be submitted to and approved by the Attorney-General before the plant shall commence to operate. (Id. § 2.)

321c. **Bond.**—As a condition precedent to the granting of such permit such person or corporation shall file with the Attorney-General a bond payable to the Commonwealth of Virginia, in the penal and liquidated sum of ten thousand dollars, with security to be approved by him, conditioned that such person or corporation will not sell, barter, give away, deliver or remove any alcohol or ardent spirits, or permit to be sold, bartered, given away, delivered or removed any alcohol or ardent spirits in violation of the laws and regulations of the State or of the United States and will faithfully observe, keep, perform and be bound by, any and all provisions, restraints and conditions of the laws and regulations of the State and of the United States, now in force, or which may hereafter be put into effect, concerning, affecting or regulating the manufacture, sale, transportation or delivery of alcohol and ardent spirits. (Id. § 3.)

321d. **Enforcement of Act; Revocation of Permit; Appeals.**—It shall be the duty of the Attorney-General to supervise the enforcement of this act. The Attorney-General shall prescribe the form and fix the conditions of all permits issued under the act and shall have authority to make regulations, require the keeping of records and the filing of reports, to give effect to the provisions of the act, and shall have the right, after notice and hearing, to suspend or revoke such permit for the violation of any law or regulation by the permittee, or by his, or its officers, agents, employees or servants, in connection with the privilege granted by such permit, and upon the breach of any of the conditions of the bond required by this act, the Attorney-General shall collect the penalty of the bond; provided, however, no permit issued under this act shall grant any privilege inconsistent with the laws of the United States or the State of Virginia. From any action of the Attorney-General under this section, the Commonwealth or the permittee, if aggrieved, shall have the right to appeal to the Supreme Court of Appeals, provided such appeal shall be perfected by filing with said court a petition setting forth the grounds of appeal within sixty days after such action shall have been taken; provided, however, that said plant shall remain closed under proper supervision until the action of the Attorney-General is superseded by the Supreme Court of Appeals. The Attorney-General shall preserve a record of all evidence introduced before him at the hearing, and upon such appeal shall forthwith certify the same, together with a certificate showing the action taken by him, to said court. The Supreme Court of Appeals may, in its discretion, award a supersedeas to the action of the Attorney-General, and may require of the permittee such bond as it shall deem proper. The appeal shall be heard and determined in the same manner as equity appeals are heard and determined, and shall be disposed of promptly by the court at such time as it may prescribe, irrespective of its place of session. (Id. § 4.)

321e. **Inspection; Analysis.**—The Attorney-General, or any officer or officers of the law designated by him, shall have the right, at any hour, to enter and inspect the premises of any such plant and may examine the books and records of such per-

mittee, to see that the laws relating to alcohol and ardent spirits are being observed; and may take from the products found on the premises such samples as may be required for the purpose of chemical analysis. (Id. § 5.)

321f. Unlawful to Sell or Remove Alcohol; Proviso.—It shall be unlawful for any permittee or for any officer, agent, employee, or servant of such permittee, or for any person to sell, deliver, transport or remove from the premises of any such plant, any alcohol or ardent spirits except that any by-product alcohol may be disposed of, transported, sold, delivered and removed in compliance with a permit authorizing such sale, delivery, transportation or removal, issued as required by section seventy-four of chapter four hundred and seven, of Acts of Assembly, nineteen hundred and twenty-four, except, however, that as to shipments to points outside of the State of Virginia, no affidavit shall be required of the person to whom such by-product alcohol is shipped; and, provided, further, that no permit shall be required for the sale, delivery, transportation, or removal from such plant of alcohol denatured in accordance with formulas that may be provided by regulations approved by the Attorney-General so as to render such alcohol unfit for beverage use. The container in which such denatured alcohol is transported shall be labeled "denatured alcohol." (Id. § 6.)

321g. Unlawful to Violate Terms of Permit or Regulation, Etc.—It shall be unlawful for any permittee, or for any officer, agent, employee, or servant of such permittee, to violate the terms of any permit or regulation issued under this act, or to make any false statement in any application, record, or report required by the act, or to forge any permit required by this act, or to hinder or obstruct any officer charged with the duty of enforcing the provisions of this act, or to remove or permit the removal of any alcohol or ardent spirits from the premises of any such plant, except as provided in the act and in accordance with the regulations authorized therein. (Id. § 7.)

321h. Inspectors; Duties; Salary.—The Attorney-General is authorized, in his discretion, to employ and to discharge, not exceeding two inspectors for each plant operating under a permit issued under this act, the duty of such inspector or inspectors being to see that all of the provisions of this act and of all State and applicable municipal laws are observed and for that purpose shall have free ingress upon the lands and into the buildings used or occupied by any permittee in connection with the conduct of any business herein authorized and shall upon such land and within such buildings having authority of State prohibition inspectors; the Attorney-General shall fix the salary of each inspector appointed at not exceeding one hundred and fifty dollars per month for each inspector, which salary shall be paid semi-monthly by the permittee for the inspector or inspectors of whose plant each is appointed. (Id. § 7½.)

321i. Penalty for Violation of Act.—Any person who shall violate any of the provisions of this act shall be deemed guilty of a felony and upon conviction shall be punished by confinement in the penitentiary not less than one or more than three years, or in the discretion of the jury, by confinement in jail not less than six months or more than twelve months and any corporation which shall violate any of the provisions of the act shall, upon conviction, be fined not exceeding fifty thousand dollars. (Id. § 8.)

PART IV.

Miscellaneous Laws.

False Advertising.

322. Untrue, Deceptive or Misleading Advertising; How Punished.—Any person, firm, or corporation or association who, with intent to sell or in any wise dispose of merchandise, securities, service, or anything offered by such person, firm, corporation or association, directly or indirectly, to the public for sale or distribution, or with intent to increase the consumption thereof, or to include the public in any manner to enter into any obligation relating thereto, or to acquire title thereto, or any interest therein, makes, publishes, disseminates, circulates, or places before the public, or cause, directly or indirectly, to be made, published, disseminated, circulated, or placed before the public in this State, in a newspaper or other publications, or in the form of a book, notice, handbill, poster, blueprint, map, bill, tag, label, circular, pamphlet, or letter, or in any other way, an advertisement of any sort regarding merchandise, securities, service, land, lot, or anything so offered to the public, which advertisement contains any promise, assertion,

representation or statement of fact which is untrue, deceptive, or misleading, shall be guilty of a misdemeanor, and upon conviction thereof, be punished by a fine of not less than twenty-five dollars, nor more than two hundred and fifty dollars, or confined in jail for a period of not less than ten days nor more than sixty days, or by both such fine and imprisonment. The words "untrue, deceptive or misleading," as used in this act shall be construed as including the advertising in any manner by any person, of any goods, wares or merchandise as a bankrupt stock, receiver's stock, or trustee's stock, if such stock contains any goods, wares or merchandise put therein subsequent to the date of the purchase of such advertiser of such stock. (Code Supp. 1926, § 4465a.)

Tobacco—Tobacco Products.

323. Establishment of Warehouses; Their Discontinuance.—Tobacco warehouses, which were public warehouses on the day before this Code takes effect, shall continue to be such; and the several circuit and corporation courts may hereafter authorize the erection of tobacco warehouses, or may establish the same, as public warehouses within their respective counties and cities; which said warehouses shall be constructed, or shall have been constructed, so as to keep safely, and guard against fire and weather, as far as practicable, all tobacco stored therein, and shall be kept in good repair and at all times Sunday expected [excepted] be open for receiving, storing, selling and delivering tobacco; but the owner of any such warehouse shall have the right to discontinue the same as a public warehouse, after having published a notice of his intention to do so once a week for four successive weeks in some newspaper published in the county or city, wherein such warehouse is situated, or if no newspaper be published therein, after having posted such notice at the front door of the courthouse of such county or city for four successive weeks. (Code 1924, § 1348.)

324. Samplers; Their Appointment and Term.—For each such public warehouse there shall be two samplers of tobacco, who shall be appointed by the Governor, by and with the advice and consent of the Senate, for the term of four years, commencing on the first day of October succeeding their appointment. They shall be appointed in January or February of the year nineteen hundred and twenty-two, and every fourth year thereafter, and the samplers in office when this Code takes effect shall continue therein until the term for which they were appointed shall have expired by limitation. (Id. § 1349.)

325. How Vacancy Filled.—If a vacancy occur in the office of sampler during his term, the Governor shall appoint another in his place to serve for such part of the term as shall not have expired. (Id. § 1350.)

326. Qualification and Bond.—Every sampler shall, within sixty days after his appointment, qualify and give bond before the clerk of the circuit court of the county or corporation court of the city wherein the warehouse for which he is appointed is situated, in the penalty of ten thousand dollars. If he fail to qualify and give bond within the time prescribed, his office shall be deemed vacant. Within thirty days after the execution of such bond, the clerk of the court in which it is given shall transmit a copy thereof to the Auditor of Public Accounts, and if he fail to do so, he shall for such failure forfeit one hundred dollars. (Id. § 1351.)

327. Deputy Sampler.—Any sampler may nominate to the Governor a deputy, who shall be appointed by the Governor, if approved by him. Such deputy, after taking the oath required of his principal, may perform any of the duties of his principal whenever the principal is unable to perform the same; and the principal and the sureties on his official bond shall be responsible for all the acts of his deputy as such. (Id. § 1352.)

328. New Samplers to Give Receipts to Predecessors.—New samplers, appointed at any such warehouse, shall give to those whom they succeed, a receipt containing the numbers, marks, and gross tare and net weight, of every hogshead or cask of tobacco which shall be then at the warehouse. They shall be thereupon chargeable with the delivery of such hogsheads and casks of tobacco, but in no way accountable for any loss of weight or defect of quality of said tobacco, which may have occurred without their fault. (Id. § 1353.)

329. Sampling, Weighing, and Branding Tobacco.—The samplers shall uncase and break every hogshead, cask, tierce, or box of tobacco brought to their respective warehouses to be sampled; weigh and sample it, and mark, or brand the same, as "Virginia," or "Western," according to the facts; and also, with the name of the warehouse, the tare of the hogshead, cask, tierce, or box; the quantity of net tobacco therein, and the condition thereof. The net weight shall be ascertained by weighing the hogshead, cask, tierce, or box, before it is uncased, and deducting

therefrom the weight of the empty hogshead, cask, tierce, or box. The sample shall not exceed eight pounds in weight, and shall belong to the buyer of the tobacco from whom it was taken. (Id. § 1354.)

330. Weighing Leaf Tobacco in Warehouses; Proprietors to Furnish Itemized Statements; Penalty.—All leaf tobacco sold upon the floor of any tobacco warehouse in the State of Virginia shall first be weighed by some reliable person who shall have first sworn and subscribed to the following oath—to wit:

"I do solemnly swear (or affirm) that I will correctly and accurately weigh all tobacco offered for sale at the warehouse of ....., and correctly test and keep accurate the scales upon which the tobacco so offered for sale is weighed."

Said oath shall be filed in the office of the clerk of the circuit court of the county or corporation court of the city in which said warehouse is situated.

The proprietor of each and every warehouse shall render to each seller of tobacco at his warehouse a bill plainly stating the amount charged for weighing and handling, the amount charged for auction fees, and the commission charged on such sale, or any other charges made for selling and handling such tobacco.

For each and every violation of the provisions of this section a penalty of ten dollars may be enforced, and the same may be recovered by any one so offended. (Id. § 1355.)

331. Samplers' Receipts.—The sampler shall thereupon, if required by the owner or his agent, give a receipt or note for every such hogshead, cask, tierce, or box, in the following form, if the tobacco be good, sound, well conditioned and merchantable:

"..... Warehouse,

the ..... day of ....., 19.....

VIRGINIA TOBACCO

Marks.	No.	Gross.	Tare.	Net.	
Passed.					Received of ..... hogshead, &c., of tobacco, marks, numbers, weights and species, as per margin to be delivered to the said ....., or order, on demand. Witness our hands. Samplers."

(Id. § 1356.)

332. When Tobacco Unsound, Etc., or Western, What Receipt to State.—If the tobacco received to be sampled, be found to be not good, sound, well-conditioned, merchantable, and clear of trash, the samplers, in addition to the marks required as to passed tobacco, if required by the owner or his agent, shall also give a receipt in the form prescribed for passed tobacco, except that the word "refused" shall be plainly written on the face thereof, instead of the word "passed." If the tobacco be of good quality, and only too high in order for shipment, then the sampler shall not mark the receipt "refused," but shall mark it with the words "too high." If the tobacco sampled shall be western, the receipt shall so state. (Id. § 1357.)

333. Penalty for False Branding, Etc.—If any person fraudulently makes any false mark or brand upon any such hogshead, cask, tierce, or box, or with a fraudulent intent, alter, obliterate, or remove any mark or brand thereon, or shift the contents thereof, or cause the same to be done, he shall, for every such offense, be fined fifty dollars. And if any person use, or permit to be used on any hogshead, cask, tierce or box of tobacco, any name, brand, or mark indicating the name of a planter who neither raised nor sold said tobacco, he shall be fined twenty dollars for each hogshead, cask, tierce, or box so falsely marked or branded; and if any person other than the owner, or the authorized agent of such owner, alter, obliterate,

or remove any mark or brand upon any prize package of tobacco, or otherwise divert said prized package from the warehouse to which it was directed to be weighed and sampled, he shall be fined fifty dollars for each offense. (Id. § 1358.)

334. "Western Tobacco" to be so Branded.—Before any unmanufactured western tobacco, whether stemmed or unstemmed, brought to Virginia in hogsheads or prized packages, shall be offered for sale, or shipped, or exported therefrom, except such tobacco in transitu, the owner thereof, his agent, or a sampler of tobacco, shall mark or brand each hogshead or package with the words "western tobacco." If any person sell or offer for sale, or ship or export any such tobacco representing the same by marks, brands, or otherwise as Virginia tobacco, he shall be fined not less than fifty nor more than one hundred dollars, for each hogshead or package so sold or offered for sale, one-half to go to the use of the State and the other half to the informer. (Id. § 1359.)

335. Loose Tobacco.—The samplers shall receive and weigh all loose tobacco brought to their warehouses, and give certificates for the same, and issue manifests thereof when delivered out. (Id § 1360.)

336. Samplers to Give Receipts.—Samplers shall, immediately on the delivery of any tobacco to their warehouses, if required by the person bringing the same; give a receipt therefor, describing the same as unsampled tobacco. Any sampler refusing to do so shall forfeit to the owner of such tobacco fifty dollars. (Id. § 1361.)

337. Person Delivering Leaf Tobacco to Warehouseman, Etc., for Sale Must Impart True Name of Owner; Record of Purchase or Delivery.—Every person who shall deliver any leaf tobacco to a warehouseman or to a co-operative marketing association for sale, offer for sale or display for sale thereof, shall impart to such warehouseman or co-operative marketing association, the true name of the owner of said leaf tobacco; and it shall be the duty of such warehouseman or co-operative marketing association to keep a record of such purchase or delivery showing the quantity of leaf tobacco so delivered, and said name of the owner thereof, given as provided herein. (Id. § 1361a.)

338. Record Required Where Leaf Tobacco is Delivered by Person Other Than Grower, or Landlord; What Such Person Must Impart to Warehouseman, Etc.; to Whom Section is Not Applicable.—Where leaf tobacco is delivered to a warehouseman or co-operative marketing association for sale, offer for sale or display for sale, by a person other than the grower thereof, or the landlord of the land upon which said tobacco was grown, it shall be the duty of said warehouseman or co-operative marketing association to keep a record showing the facts required in section one [1361a] of this act, and in addition thereto if possible the name of the person from whom the person delivering said tobacco obtained the same, and the name of the original grower thereof, and the name of the landlord upon whose land said tobacco was grown, if the same was grown by a tenant. And said person, other than such grower or landlord, shall impart to such warehouseman or cooperative marketing association the true name of the person from whom he obtained said tobacco, and the name of said grower thereof and said landlord: Provided, however, that this section shall not apply to licensed leaf tobacco dealers offering for resale tobacco once sold upon the warehouse floor, and with respect to which the provisions of this act have previously been complied with. (Id. § 1361b.)

339. Ticket or Card to be Placed Upon Leaf Tobacco.—Said warehouseman or co-operative marketing association shall also place upon all leaf tobacco delivered to him or to it for sale, offer for sale, or display for sale a ticket or card which shall state the matters and things required to be recorded by said warehouseman or co-operative marketing association by sections one and two of this act.* (Id. § 1361c.)

340. Tickets or Cards to be Open to Inspection for Ten Days After Delivery of Tobacco.—All cards or tickets kept, prepared or placed upon tobacco as required herein, shall, for the period of ten days after the delivery of such tobacco, be open to the inspection of any representative of any public tobacco warehouse, or tobacco growers co-operative association during regular business hours and who shall have access to the place where said cards or tickets are kept for the purpose of such inspection. (Id. § 1361d.)

341. Violations of Provisions of Act Which Are Misdemeanors.—Any person who shall give a fictitious or false name to such warehouseman or co-operative marketing association, or who shall fail to give to such warehouseman or co-operative marketing association the true name of the owner of said leaf tobacco or said person from whom said tobacco was obtained or said grower and said landlord, upon delivering the same as aforesaid, shall be guilty of a misdemeanor. Any warehouseman or co-operative marketing association who shall fail to comply with any of the provisions of this act, or who shall deny to any such representative the privilege of such inspection or access, as provided in section four (§ 1361d of this Code),

*§§ 1361a and 1361b of this Code.

shall be guilty of a misdemeanor. Any warehouseman or co-operative marketing association who shall buy or sell tobacco as above set forth knowing that the name in which said leaf tobacco is sold, or any name given pursuant to the provisions hereof, is false or fictitious, shall be guilty of a misdemeanor. (Id. § 1361e.)

342. Punishment of Person Guilty of a Misdemeanor.—Any person guilty of a misdemeanor under the provisions of this act shall be punished by a fine of not less than fifty dollars nor more than five hundred dollars. (Id. § 1361f.)

343. "Warehouseman" Defined.—The term "Warehouseman" as used in this act is hereby defined as any person, firm or corporation engaged in the business of selling leaf tobacco at auction, for a commission or for any other consideration. (Id. § 1361g.)

344. Purpose of Act.—The purpose of this act is to prevent frauds in the handling and sale of leaf tobacco. (Id. § 1361h.)

345. Accounts of Tobacco Warehouse Sales Required.—The proprietor of each and every leaf tobacco warehouse doing business in this State shall keep a correct account of the number of pounds of leaf tobacco sold upon the floor of his warehouse daily. (Id. §. 1362.)

346. Monthly Reports to Commissioner; Results Classified.—On or before the tenth day of each succeeding month the said warehouse proprietors shall make a statement, under oath, of all the tobacco so sold upon the floor of his warehouse during the past months and shall transmit the said statement, at once, to the Commissioner of Agriculture and Immigration. The reports so made shall be so arranged and classified as to show the number of pounds of tobacco sold for the producers of tobacco from first hand; the number of pounds sold for dealers and the number of pounds resold by the proprietor of the warehouse for his own account or for the account of some other warehouse. (Id. § 1363.)

347. Commissioner to Keep Record and Publish in Bulletin.—The Commissioner of Agriculture and Immigration shall cause said statements to be accurately copied into a book to be kept for this purpose and shall keep separate and apart the statements returned to him from each leaf tobacco market in the State, so as to show the number of pounds of tobacco sold by each market for the sale of leaf tobacco; the number of pounds sold by producers, and the number of pounds resold upon each market. The commissioner shall keep said books open to the inspection of the public, and shall, on or before the twentieth day of each month, after the receipt of the reports above required to be made to him on or before the tenth day of each month, cause the said reports to be published in the bulletin issued by the Agricultural Department, and in one or more journals published in the interest of the growth, sale, and manufacture of tobacco in the State, or having a large circulation therein. (Id. § 1364.)

348. Penalty for Failure to Report Sales.—Any warehouse failing to make the report as required by section thirteen hundred and sixty-two shall be subject to a penalty of twenty-five dollars and the costs in the case, to be recovered by any person suing for same. (Id. § 1365.)

349. Penalty for Delivering Tobacco Without Order of Owner.—Any sampler who shall deliver from his warehouse any tobacco without an order from the owner or his authorized agent, shall, for every hogshead, cask, or parcel of tobacco so delivered, forfeit to the owner one hundred and fifty dollars. (Id. § 1366.)

350. Samplers to Furnish Manifests.—The samplers shall furnish with all tobacco delivered out of their warehouses, if required by the owner or his authorized agent, a manifest or list of the same, describing, as in notes, receipts, or certificates given therefor, when the same was inspected, or, in the manifest thereof, when received from another warehouse. (Id. § 1367.)

351. Receipts, Etc., to be Printed and Dated.—All notes or receipts and manifests shall be on printed blanks, and the date inserted at full length. (Id. § 1368.)

352. Penalty for Illegal Receipts, Etc.—Every sampler who shall shall issue a note, receipt, or manifest, in any other manner than is prescribed by law, shall be received from another warehouse. (Id. § 1369.)

353. Re-sampling.—The samplers of any warehouse, at the request of the owner, or his authorized agent, of the sampled tobacco so stored therein, shall resample and weigh it, and if found to be damaged, or that any part of it has been embezzled, it shall be so entered on their books, and be subject to the order of the owner. (Id. § 1370.)

354. Penalty for Delivering Wrong Tobacco.—If any sampler deliver out, in discharge of any note or receipt, other tobacco than that for which the same was issued, or alter or shift any tobacco from the hogshead or cask, in which the same was received, except in a case expressly authorized by law, he shall be fined for every such offense one hundred and fifty dollars. (Id. § 1371.)

355. Penalty for Not Delivering Tobacco on Demand.—If any sampler, fail to deliver any tobacco, when it is demanded, to the owner thereof, or his authorized agent, he shall forfeit to such owner double the value of such tobacco. (Id. § 1372.)

356. Samplers to Keep Books; What Entries to Make.—The samplers shall provide and keep books, in which they shall enter the numbers, weights, marks, and names of owners of all tobacco received, sampled, or delivered out by them, as well at the time the same was received as at the time the same was sampled or delivered out, and note the state and condition of each hogshead, cask, tierce, or box; and in which, also, they shall keep fair and true accounts of all money received by them to the use of the proprietors of the warehouses. (Id. § 1373.)

357. Not to Buy Tobacco, Etc.—If any sampler directly or indirectly, buy, stem, or manufacture any tobacco other than tobacco grown on his own plantation, he shall forfeit ten dollars for every hundred pounds of tobacco so bought, stemmed, or manufactured. (Id. § 1374.)

358. Discharge From Liability on Delivery of Tobacco.—If any hogshead or cask of tobacco be delivered out by a sampler, and received by the owner, such sampler, from the time of such delivery, shall be discharged from any liability by reason of the fact that the said tobacco was unsound or unmerchantable, or of less quantity than the notes or receipts given for the same specify, unless it be proved that such loss was due to the negligence of the sampler. (Id. § 1375.)

359. Samplers' Fees.—There shall be paid to said samplers for each hogshead, cask, tierce, or box, weighing not less than five hundred pounds, sampled by them, one dollar for opening, sampling, coopering up, furnishing nails, marking, and weighing, to be paid by the owner. For a review, the fees shall not exceed one dollar; and for re-sampling the fees shall be the same. (Id. § 1376.)

360. For Rent.—For each hogshead, cask, tierce, or box of tobacco, weighing not less than five hundred pounds, received, sampled, stored, or delivered out of any warehouse, rent shall be paid to the samplers at the following rates, to-wit: Seventy-five cents for a period of four months, or any less time, and ten cents for each month or part of month after four months that the tobacco shall remain in said warehouse, to be paid by the purchaser or person to whom the hogshead, cask, tierce, or box is delivered, which rent shall be for the exclusive use of the proprietors of the warehouse. (Id. § 1377.)

361. For Storage.—For every hogshead, cask, tierce, or box, of the weight aforesaid, of sampled tobacco, received on storage at any warehouse, there shall be paid to the samplers thereof one dollar. (Id. § 1378.)

362. For Delivering Tobacco.—There shall be paid to the samplers of each hogshead, cask, tierce, or box, of five hundred pounds and over, delivered out of their warehouse, fifty cents, to be paid by the person to whom the hogshead, cask, tierce, or box is delivered. When tobacco is reviewed or re-sampled in the same warehouse in which it was originally sampled, there shall be but one storage fee, and one delivery fee, for each hogshead, cask, tierce, or box: Provided, that should there be any extra storage on said re-sampled tobacco, it shall attach to the re-sampled number, and be paid by the purchaser. (Id. § 1379.)

363. When Only Half Fees to be Paid.—For such services by the samplers rent, and storage, as are mentioned in the four preceding sections, only one-half the amount prescribed therein shall be paid where the hogshead, cask, tierce, or package is of less weight than five hundred pounds, and the same shall be paid by the persons respectively mentioned in said sections. (Id. § 1380.)

364. Fees for Sale of Loose Tobacco.—For all loose tobacco sold at any public warehouse, the following charges shall be paid, to-wit: On every one hundred pounds of such tobacco so sold, eight cents shall be paid by the owner and the like sum by the purchaser, one-half of which shall be for the samplers and the other half for the proprietors of the warehouse; and there shall be no other charges or fees for loose tobacco sold as aforesaid, but the said charges shall be in full of all services rendered in respect thereto, including receiving, unloading, weighing, and delivering. (Id. § 1381.)

365. When Fees to be Paid.—The samplers shall require payment of all sums to be paid to the proprietors of their warehouses, before the delivery of the tobacco for which they are due, and shall not be bound to deliver any such tobacco until such sums and all their own fees have been paid. (Id. § 1382.)

366. When Sampler From Another Warehouse to Act; How His Fees Are Paid.—A sampler from another warehouse shall be authorized to act whenever his services shall be required in consequence of the disagreement in opinion of the two samplers at any warehouse, as to the quality of tobacco, or in consequence of the absence of either of them, or to sample tobacco belonging to one of them. He shall be paid for his services, in the first case, out of the fees of the other two

samplers, in the proportion to the time he acts, and, in the other cases, out of the fees of the sampler who is absent, or whose tobacco is to be sampled. (Id. § 1383.)

367. Division of Fees, Etc., Prohibited.—No sampler shall divide his sample fees with any person, nor shall any sampler or proprietor of any warehouse pay to another a bonus to induce tobacco to be carried to his warehouse; and if any sampler or proprietor of any warehouse violate this provision, or demand or receive for his services any other fees, greater or less than are allowed by law, he shall be deemed guilty of a misdemeanor; and any agent or representative of any person for the sale of tobacco, who receives any rebate or bonus of any part of the sampler's fees, or warehouse fees, shall be deemed guilty of a misdemeanor, and, on conviction thereof, be fined not less than twenty nor more than one hundred dollars. Nothing in this section shall be construed to prevent any sampler or proprietor of a warehouse from making and publishing a uniform reduction, for the benefit of the public generally, of the fees to be charged at his warehouse for the services of such sampler, or the rent of such warehouse, respectively. (Id. § 1384.)

368. When Samplers to Settle With Proprietors; Insurance.—The samplers of each warehouse shall account for and pay to the proprietors thereof, on the tenth day of April, the tenth day of July, the tenth day of October, and the tenth day of January, in each year, all money received, or which ought to be received, by them, to the use of said proprietors. And the proprietors of every such warehouse shall keep, free of charge to the planter and owner of tobacco, an open policy of insurance upon their respective warehouses, sufficient to cover every loss by fire or water which any person having tobacco stored therein may sustain; and for a failure so to do, they shall be liable to the owners thereof for any damage or loss they may sustain by reason of any partial or total destruction of said tobacco by fire or water. (Id. § 1385.)

369. Where Tobacco of Planter to be Stored; to be Sampled Before Sale.—Every commission merchant or other person, to whom unmanufactured tobacco, in hogsheads or packages, owned by a farmer or planter, is consigned for sale, shall store such tobacco in a public warehouse, where it is practicable, unless otherwise instructed in writing by the owner at the time of shipment, and it shall be unlawful for any person to offer such unmanufactured tobacco, when so stored in a public warehouse, for sale by sample, unless such sample has been drawn and certified by a sampler of tobacco appointed by the Governor, and qualified according to law; but the owner of any package of prized tobacco, in person or by his authorized agent acting for him, may have the same exposed for sale, uncased, and uncovered and sampled, as loose tobacco, in the presence of both buyer and seller, without being sampled according to the provisions of this section. (Id. § 1386.)

370. Proprietors to Furnish Scales, Etc.—The proprietor of every warehouse shall have proper scales or balances and weights, and all other proper conveniences provided, and see that they are kept in repair, and that the weights conform to the lawful standard. (Id. § 1387.)

371. Removal of Samplers.—On complaint to the Governor of neglect of duty or misconduct by a sampler, he shall hear the said complaint, upon giving notice of the time and place of hearing to said sampler, and upon being satisfied that the complaint is sustained, he shall remove him. (Id. § 1388.)

372. Use of False Brand, Punished.—If any person use, or permit to be used, on any cask, box, or keg of manufactured tobacco, any brand or mark indicating a place or a manufacturer different from the place in which, or the manufacturer by whom, it was really manufactured, he shall forfeit ten dollars for each cask, box, or keg so falsely marked or branded, one-half whereof shall be to the informer. (Id. § 1389.)

373. Manufactured Tobacco.—None of the provisions of this chapter, other than the preceding section, shall be construed to apply to manufactured tobacco. (Id. § 1390.)

374. Nesting Punished.—If any person nest a hogshead or cask of tobacco with inferior tobacco, or other thing, with intent to defraud the purchaser, he shall be fined one hundred dollars for each hogshead or cask so nested. (Id. § 1391.)

375. Penalties for Certain Violations.—If any person violate any of the provisions of section thirteen hundred and seventy-six, or of the sections following to thirteen hundred and eighty-two inclusive, or of section thirteen hundred and eighty-six, he shall be fined one hundred dollars, one-half to go to the informer. (Id. § 1392.)

376. Record to be Kept by Commander of Vessel, Etc., of Tobacco Shipped.—The commander of any boat or vessel taking on board of his vessel any tobacco, in bulk or in parcels, otherwise than in hogsheads or casks, to be transported for hire from one part of the State to another part thereof, shall keep a record of the quantity of such tobacco, how encased, if at all, and of the names and addresses of the consignors and consignees; which record shall be open to the inspection of any

party interested. For every violation of this section, such commander shall be fined twenty dollars. (Id. § 1393.)

377. Punishment for Receiving Tobacco Without Consent of Owner.—If the commander of such boat or vessel, or other person employed thereon, shall knowingly, without the consent of the owner, take any tobacco on board, or conceal the fact of its being on board, the party so offending, if he be the commander of such boat or vessel, shall forfeit ten cents for every hundred pounds weight of such tobacco; if he be a person other than the commander, shall forfeit twenty dollars for such offense. All tobacco put on board such boat or vessel without the knowledge of the owner, shall be restored to him. (Id. § 1394.)

378. Publication of Insurance.—Every proprietor of a public tobacco warehouse shall, at least once a year, publish in some newspaper published in this State, once a week for four successive weeks, a statement showing the amount of insurance he has on such warehouse, the companies in which the insurance has been effected, and the length of time the policies have to run. (Id. § 1395.)

379. Reprized Packages.—Each sampler shall keep in a different column an account of all reprized packages from original samples. For the failure to comply with the provisions of this section, the sampler shall be fined one hundred dollars, and it shall be sufficient cause for removal from office. (Id. § 1396.)

380. Punishment for Sending Tobacco to Wrong Warehouse.—If any person or corporation send the tobacco of a planter or other person to any warehouse other than that to which such tobacco is marked by the owner or his agent, the person or corporation so sending such tobacco shall be deemed guilty of a misdemeanor, and, upon conviction thereof, be fined not less than twenty nor more than fifty dollars for each package so sent. (Id. § 1397.)

381. Sales by Samplers and Others of Unclaimed Tobacco in Warehouses in the City of Richmond, and Disposition of the Proceeds.—When any tobacco shall have remained in any warehouse in the city of Richmond undemanded for a term of one year from the time of its inspection therein the warehouseman or other person having the tobacco in charge or entitled to the dues thereon may advertise in some newspaper published in said city once a week for three successive weeks a list of marks, numbers, and weights of such tobacco, with the names of the persons to whom notes or receipts for it were given, and if no owner claims said tobacco and pays the accrued extra storage thereon within sixty days after date of such advertisement he shall sell or cause the same to be sold on account of whom it may concern. The proceeds of such sale shall be paid into the State treasury, after deducting therefrom all dues and fees and the usual charges for selling. The amounts so paid into the treasury shall be refunded to the owner of said tobacco on the return to the person entitled thereto of the notes or receipts issued for the same. (Id. § 1398.)

382. Judges to Charge Grand Juries.—The judges of the Circuit and Corporation Courts in such counties and cities as have public tobacco warehouses therein, shall give the provisions of this chapter in charge to the grand juries. (Id. § 1399.)

383. Furnishing Cigarettes or Tobacco in Any Form or Pistols, Et Cetera, to Minors.—If any person sell, barter, give, or furnish, or cause to be sold, bartered, given, or furnished to any minor under eighteen years of age, a pistol or dirk or bowie knife, having good cause to believe him or her to be a minor under eighteen years of age, or if any person sell, barter, give, or furnish, or cause to be sold, bartered, given, or furnished to any minor under sixteen years of age, cigarettes or tobacco in any form, having good cause to believe him or her to be a minor under sixteen years of age, said person shall be guilty of a misdemeanor and be fined not less than two dollars and fifty cents nor more than one hundred dollars. (Id. § 4695.)

384. Use of Opium in the Manufacture of Cigarettes Prohibited.—Any manufacturer or manufacturers of cigarettes who shall employ opium, either in the tobacco used or paper wrappers of cigarettes, shall be guilty of a misdemeanor, and shall be fined not less than one hundred dollars nor more than one thousand dollars for each offense, or imprisoned not less than six months, or both. (Id. § 4696.)

385. Inspector or Sampler of Tobacco Issuing False Receipt or Not, How Punished.—If any inspector or sampler of tobacco, issue, or cause to be issued, his receipt or note for any tobacco not received into the warehouse of which he is inspector or sampler, or more than one receipt or note for the same tobacco, except when authorized by law to do so, or re-issue or pass away a tobacco receipt or note, after the delivery of the tobacco for which it was given, he shall be confined in the penitentiary not less than two nor more than five years. (Id. § 4708.)

Trade-Marks, Etc.

386. **Any Person, Firm, Corporation, Etc., May Adopt a Trade-Mark, Etc.; Unlawful to Counterfeit, Etc., or Imitate the Same, After it Has Been Filed for Registration.**—Whenever any person, firm, or corporation, or any association or union of workingmen has heretofore adopted or used, or shall hereafter adopt or use, any label, trade-mark, term, design, device, or form of advertisement for the purpose of designating, making known, or distinguishing any goods, wares, merchandise, or other product of labor, as having been made, manufactured, produced, prepared, packed or put on sale by such person, firm or corporation, or association or union of workingmen by a member or members of such association or union, and has filed the same for registry, as hereinafter provided, it shall be unlawful to counterfeit or imitate such label, trade-mark, term, design, device or form of advertisement, or to use, sell, offer for sale, or in any way utter or circulate any counterfeit or imitation of any such label, trade-mark, term, design, device, or form of advertisement. (Code 1924, § 1455.)

387. **Punishment for Counterfeiting, Etc., Registered Trade-Mark or Having in Possession With a Fraudulent Intent Merchandise or Products of Labor, on Which Any Counterfeit is Printed, Etc.**—Whoever counterfeits or imitates any such registered label, trade-mark, term, design, device, or form of advertisement, or knowingly and with intent to deceive, sells, offers for sale, or in any way utters or circulates any counterfeit or imitation of any such registered label, trade-mark, term, design, device, or form of advertisement, or knowingly and with intent to deceive, keeps or has in his possession, with the intent that the same shall be sold or disposed of, any goods, wares, merchandise, or other product of labor to which, or on which, any such counterfeit or imitation is printed, painted, stamped or impressed, or knowingly and with intent to deceive, sells or disposes of any goods, wares, merchandise or other product of labor contained in any box, case, can, or package to which, on on which, any such counterfeit or imitation is attached, affixed, printed, painted, stamped or impressed, or knowingly and with intent to deceive, keeps or has in his possession with intent that the same shall be sold or disposed of, any goods, wares, merchandise, or other product of labor in any box, case, can, or package to which, or on which, any such counterfeit or imitation is attached, affixed, printed, painted, stamped or impressed, shall be punished by a fine of not more than one hundred dollars, or by imprisonment for not more than three months. (Id. § 1456.)

388. **Application for Registry of Trade-Marks.**—All such applications for registry shall be made on forms prescribed by the Secretary of the Commonwealth, and any person applying to the Secretary of the Commonwealth for a certificate of registry of any label, trade-mark, term, design, device or form of advertisement, shall furnish to the said secretary a copy, facsimile, or counterpart thereof. (Id. § 1457.)

389. **What Necessary in Filing Trade-Mark, Etc., for Registry.**—Every such person, firm, corporation, association or union that has heretofore adopted or used, or shall hereafter adopt or use a label, trade-mark, term, design, device, or form of advertisement, as provided in section fourteen hundred and fifty-five, may file the same for registry in the office of the Secretary of the Commonwealth by leaving six copies, counterparts, or facsimiles thereof with the said secretary, and by filing therewith a sworn application, specifying (1) the name or names of the person, firm, corporation, association or union, on whose behalf such label, trade-mark, term, design, device or form of advertisement shall be filed; (2) the class of merchandise and the description of the goods to which it has been, or is intended to be appropriated, stating that the party so filing, or on whose behalf such label, trade-mark, term, design, device, or form of advertisement shall be filed, has a right to use the same; (3) that no other person, firm, association, union, or corporation, has the right to such use, either in the identical form or in any such near resemblance thereto as may be calculated to deceive, and (4) that the facsimile or counterparts filed therewith are true and correct. There shall be paid for such filing and registry to the Secretary of the Commonwealth a fee of two dollars and fifty cents. Said Secretary shall deliver to such person, firm, corporation, association, or union so filing, or causing to be filed, any such label, trade-mark, term, design, device or form of advertisement, so many duly attested certificates of the registry of the same as such person, firm, corporation, association, or union may apply for, for each of which certificates said secretary shall receive a fee of two dollars and fifty cents. Any such certificate of registry shall in all suits and prosecutions under this chapter be sufficient proof of the adoption and registry of such label, trade-mark, term, design, device, or form of advertisement. Said Secretary of the Commonwealth shall not record for any person,

firm, corporation, union, or association any label, trade-mark, term, design, device, or form of advertisement that would probably be mistaken for any label, trade-mark, term, design, device, or form of advertisement heretofore filed by or on behalf of any other person, firm, corporation, union or association. (Id. § 1458.)

390. Fraudulent Representations in Procuring the Filing and Registry of Trade-Marks; Punishment Therefor.—Any person who shall for himself, or on behalf of any other person, firm, corporation, association, or union, procure the filing and registry of any label, trade-mark, term, design, or form of advertisement in the office of the Secretary of the Commonwealth, under the provisions of this chapter, by making any false or fraudulent representations or declaration, verbally, or in writing, or by any fraudulent means, shall be liable to pay any damages, sustained in consequence of any such filing, to be recovered by or on behalf of the party injured thereby, in any court having jurisdiction, and shall be punished by a fine not exceeding one hundred dollars, or by imprisonment not exceeding three months. (Id. § 1459.)

391. Use of Counterfeits, Etc., of Registered Trade-Mark, Etc., May be Enjoined and Illegal Profits Required to be Paid to Plaintiff; Counterfeits, Etc., Destroyed.—Every such person, firm, corporation, association, or union which has adopted and registered a label, trade-mark, term, design, device, or form of advertisement, as aforesaid, may proceed by suit to enjoin the manufacture, use, display, or sale of any counterfeits or imitations thereof, and all courts of competent jurisdiction shall grant injunctions to restrain such manufacture, use, display, or sale, as may be by the said court deemed just and reasonable, and shall require the defendants to pay to such person, firm, corporation, association, or union, all profits derived from such wrongful manufacture, use, display, or sale; and such court shall also order that any such counterfeits or imitations in the possession, or under the control of any defendant in such cause, be delivered to an officer of the court, or to the complainant, to be destroyed. (Id. § 1460.)

392. Person Displaying Genuine Registered Trade-Mark, Etc., Without Authority, Guilty of Misdemeanor.—Every person who shall use or display the genuine registered label, trade-mark, term, design, device, or form of advertisement, of any such person, firm, corporation, association, or union in any manner, not being authorized so to do by such person, firm, corporation, union, or association, shall be deemed guilty of a misdemeanor, and shall be punished by imprisonment for not more than three months, or by a fine of not more than one hundred dollars. (Id. § 1461.)

393. By Whom Suits May be Prosecuted in Behalf of Unincorporated Union or Association.—In all cases where such association, or union, is not incorporated, suits under this chapter may be commenced and prosecuted by an officer, or member of association or union, on behalf of, and for the use of such association or union. (Id. § 1462.)

394. Use of Name or Seal of Any Person, Etc., Without Authority, a Misdemeanor.—Any person, or persons, who shall in any way use the name or seal of any such person, firm, corporation, association, or union, or officer thereof, in and about the sale of goods, or otherwise, not being authorized to so use the same, shall be guilty of a misdemeanor, and shall be punishable by imprisonment for not more than three months, or by a fine of not more than one hundred dollars. (Id. § 1463.)

395. Protection of Persons and Corporations in Names, Marks and Devices Produced on Containers of Certain Commodities; Filing and Publication of Description of Names, Etc.; Certified Copy of Description as Evidence.—Any person or corporation engaged in manufacturing, bottling or selling soda waters, mineral or aerated waters, cider, ginger ale, milk, cream, ice cream, soft drinks, or other beverages or medicines, medical preparations, perfumery, oils, compounds or mixtures, in bottles, siphons, tins, crates or kegs, with his, her, its or their names or other marks or devices branded, stamped, engraved, etched, blown, impressed or otherwise produced upon such bottles, siphons, siphon heads, tins, crates, or kegs, or the boxes used by him or it, may file in the office of the clerk of the county or corporation court in which his or its principal office of business is situated or in the clerk's office of the chancery court of the city of Richmond, if said principal office of business is situated in said city, or if such person or corporation shall manufacture or bottle out of this State, then in any county in this State, and also in the office of the Secretary of the Commonwealth, a description of the name or names or marks or devices so used by him, her, it or them and cause such description to be printed once in each week, for three weeks successively, in a newspaper published in the county or corporation in which said description may have been filed as aforesaid, and if there be no newspaper published in the county or corporation in which said description has been filed as aforesaid, then in the newspaper published nearest to that county or corporation, and he, her, it or they shall thereupon be deemed the pro-

prietor of such name, mark or device, and of every vessel or receptacle upon which it may be branded, stamped, engraved, etched, blown, impressed or otherwise produced.

A certified copy of the description of the names, marks or devices referred to in this act and filed in the office of the Secretary of the Commonwealth, shall be prima facie evidence of the ownership of such bottles, siphons, boxes, crates, tins or kegs in the trial of any case arising under the provisions of this act. For filing such paper or giving such copy, said Secretary of the Commonwealth may make a reasonable charge not exceeding five dollars. (Id. § 1463a.)

396. **Acts Violating Rights Acquired Under Preceding Section Declared Misdemeanors; How Punished.**—It is hereby declared to be unlawful for any person or corporation to fill with soda waters, mineral or aerated waters, cider, ginger ale, milk, or soft drinks, or other beverages or with medicine, medical preparations, perfumery, oils, compounds or mixtures, any bottle, box, crate, tin or keg so marked or distinguished as aforesaid, with or by any name, mark or device, of which a description shall have been filed and published, as provided in section one, [1463a] or to deface, erase, obliterate, cover up or otherwise remove or conceal, any such name, mark or device thereon, or to sell, buy, give, take, receive, or otherwise dispose of or traffic in the same without the written consent of, or unless the same shall have been purchased by an agreement in writing, from the person or persons, corporation or corporations, whose mark or device shall be or shall have been in or upon the bottle, siphon, siphon head, crate, tin or keg so filled, trafficked in, used or handled as aforesaid. Any person or corporation offending against the provisions of this section shall be deemed guilty of a misdemeanor, and shall be punished for the first offense by imprisonment not less than ten days, nor more than one year, or by a fine of five dollars, and in addition thereto fifty cents for each and every such bottle, box, siphon, siphon head, crate, tin or keg so filled, sold, disposed of, received, bought or trafficked in, or by both such fine and imprisonment, and for each subsequent offense by imprisonment not less than twenty days nor more than one year, or by a fine of not less than fifty dollars, and in addition thereto one dollar for each and every bottle, box, siphon, crate, tin or keg filled, sold, used, disposed of, received, bought or trafficked in, or by both such fine and imprisonment, in the discretion of the judge or jury before whom the offense shall be tried. (Id. § 1463b.)

397. **What Constitutes Presumptive Evidence of Unlawful Use and Purchase of and Trafficking in Marked or Distinguished Containers.**—The use by any person other than the person or persons, corporation or corporations, whose device, name or mark shall be or shall have been upon the same without such written consent as aforesaid, of any such marked or distinguished bottle, box, siphon, siphon heads, crate, tin, or keg, filled [filed] and published, as herein provided, for the sale therein of soda water, mineral or aerated waters, cider, ginger ale, milk, cream, soft drinks or other beverages, or of any articles of merchandise, medicines, medical preparations, perfumery, oils, compounds, mixtures or preparations, or for the furnishing of such or similar beverages to customers, or the receiving, buying, selling, using, disposing of or trafficking in any such bottles, boxes, siphon, siphon heads, crates, tins or kegs by any person other than said persons or corporations having his, her, its, or their name, mark, or device thereon, or the having by any junk dealer, or dealers in second-hand articles, venders of bottles and so forth, possession of any such bottles, boxes, siphons, siphon heads, crates, tins, or kegs, and [a] description of the marks, names or devices whereon shall have been so filed and published, as aforesaid, shall, and it is hereby declared, to be presumptive evidence of the said unlawful use, and purchase of and trafficking in such bottles, siphons, boxes, siphon heads, crates, tins or kegs. (Id. § 1463c.)

398. **Procedure Where Offense Under Act is Charged; Imposing Punishment Upon Person Found Guilty and Awarding Possession of Property to Owner.**—Whenever any person or persons, corporation or corporations mentioned in section one of this act [§ 1463a of this Code], or his, her, its or their agent shall make oath before any police justice or justice of the peace that he, she or it has reason to believe, and does believe, that within the city or town of such police justice or within the county of such justice of the peace, any of his, her or its bottles, boxes, siphons, siphon heads, crates, tins or kegs, a description of the names, marks or devices whereon has been filed and published as aforesaid, are being unlawfully used or filled, or had, by any person or corporation manufacturing or selling soda, mineral or aerated waters, cider, ginger ale, milk, cream, soft drinks or other beverages or medicines, medical preparations, perfumery, oils, compounds or mixtures, or that any junk dealer or dealer in second-hand articles, vender of bottles, or any other person or corporation has any such bottles, boxes, siphons, siphon heads, crates, tins or kegs in his or its possession or secreted in any place,

the said police justice or justice of the peace, before whom such oath is made must thereupon issue a search warrant to discover and obtain the same, and may also issue his warrant stating the offense charged, and cause to be brought before him the person in whose possession such bottles, boxes, siphons, siphon heads, crates, tins or kegs may be found, and shall then inquire into the circumstances of such possession, and if said police justice or justice of the peace finds such person has been guilty of a violation of section two of this act, [§ 1463b of this Code], he must impose the punishment therein prescribed, and he shall award possession of the property taken upon such warrant to the owner thereof. (Id. § 1463d.)

399. Right of Appeal; Commitment of Convict to Jail; Justice Must Return and File Papers.—Any person convicted under the provisions of the preceding section shall have the right of appeal from the decision of such police justice or justice of the peace to the Circuit, Corporation, or Hustings Court, and shall, unless let to bail, be committed to jail, until the next term of such court, and the witnesses shall be recognized to appear at the same time. The justice shall return and file all of the papers in each case with the clerks of the court. (Id. § 1463e.)

400. Appeal Tried Without Formal Pleadings; Right to Trial by Jury.—The appeal shall be tried without formal pleadings in writing, and the accused shall be entitled to trial by jury in the same manner as if he had been indicted for the offense in said court. (Id. § 1463f.)

401. Requiring or Accepting Deposit Upon Property Deemed a Sale Thereof.—The requiring, taking or accepting of any deposit, for any purpose, upon any bottle, siphon, siphon head, crate, tin, keg, freezer, can, spoon, block, mould, tray, pan, brick, pail, keg, tub, refrigerator, box, cutlery, glass, china, chair, table, or sign, shall not be deemed or constitute a sale of such property, either optional or otherwise in any proceeding under this article. (Id. § 1463g.)

402. Person Who Has Filed and Published Description of Name, Etc., Not Required to Again File and Publish Such Description.—Any person or corporation that has heretofore filed, in the offices mentioned in section one of this act [§ 1463a of this Code], a description of the name or names, marks or devices upon his or its property, therein mentioned, and has caused the same to be published according to the law existing at the time of such filing and publication, shall not be required to again file and publish such description to be entitled to the benefits of this article. (Id. § 1463h.)

Weights and Measures.

403. State Standards of Weights and Measures.—The weights and measures received from the United States under joint resolutions of Congress, approved June fourteenth, eighteen hundred and thirty-six, and July twenty-seventh, eighteen hundred and sixty-six, and such new weights and measures as shall be received from the United States as standard weights and measures in addition thereto or renewal thereof, and such as shall be supplied by the State in conformity therewith and certified by the National Bureau of Standards shall be the State standards of weights and measures. (Code 1924, § 1485 (1).)

404. State Superintendent of Weights and Measures.—The Dairy and Food Commissioner* shall ex-officio be State Superintendent of Weights and Measures. (Id. § 1485 (2).)

404a. Office Standards and Working Standards to be Supplied by State; Verification and Sealing; Use of Office and State Standards.—In addition to the State standard of weights and measures, provided for above, there shall be supplied by the State at least one complete set of copies of these, to be kept at all times in the office of the State Superintendent, and to be known as office standards; and such other weights, measures and apparatus as may be found necessary to carry out the provisions of this act, to be known as working standards. Such weights, measures, and apparatus shall be verified by the State Superintendent upon their initial receipt and at least once in each year thereafter, the office standards by direct comparison with the State standards, the working standards by comparison with the office standards. When found accurate upon these tests the office and working standards shall be sealed by stamping on them the letter "V" and the last two figures of the year with seals which the State Superintendent shall have and keep for that purpose. The office standards shall be used in making all comparisons of weights, measures, and weighing or measuring devices submitted for test in the office of the Superintendent and the State standards shall be used only in verifying the office standards and for scientific purposes (Id § 1485 (3).)

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*Now Commissioner of Agriculture and Immigration. See No. 1. This law is to be corrected accordingly.

405. Where Standards Shall Be Kept; Certification by National Bureau of Standards; Record to be Kept and Annual Report to be Made by Superintendent.—The superintendent shall take charge of the standards adopted by this act as standards of the State, and cause them to be kept in a safe and suitable place in the city of Richmond, from which place they shall not be removed except for repairs or for the certification, and he shall submit them at least once in ten years to the National Bureau of Standards for certification. He shall keep a complete record of the standards, balances, and other apparatus belonging to the State and take a receipt for the same from his successor in office. He shall annually on the thirty-first day of December make to the Governor a report of all work done by his office during the twelve months next preceding the first day of October. (Id. § 1485 (4).)

406. Local Sealers of Weights and Measures.—The boards of supervisors of the respective counties, and the councils or other governing bodies of the respective cities, may appoint for their respective counties and cities a local sealer of weights and measures; provided, however, that two or more counties may appoint jointly for their respective counties and towns a local sealer, subject to the approval of the State Director of Weights and Measures; and provided, further, that if in any particular city or county the services of a full time local sealer be not required, the council or board of supervisors of such city or county may appoint a part time local sealer of weights and measures.

Local sealers appointed under this section shall hold office for such terms, and shall receive such salaries, as the appointing power may prescribe. The salaries herein provided for shall be paid out of the county or city treasury, as the case may be, and no fee shall be charged by the local sealer, or by the county or city, for inspecting, testing, or sealing, or the repairing or adjusting of weights, measures, or weighing or measuring devices. Local sealers appointed under this section may be removed at any time, by the authority which appointed them, for nonfeasance, misfeasance, or malfeasance in office. (Code Supp. 1926, § 1485 (5).)

407. Set of Weights and Measures to be Kept by Governing Bodies of Counties and Cities; to be Sealed and Certified by State Superintendent.—The board of supervisors of each county, and the council or other governing body of each city, appointing a sealer under the provisions of this act shall procure at the expense of the county or city, and shall keep at all times a set of weights and measures and other apparatus as complete, and of such materials and construction as the State Superintendent of Weights and Measures may direct. All such weights and measures, and other apparatus having been tried and accurately proven by the State Superintendent shall be sealed and certified to by him as hereinbefore provided, and shall be then deposited with and preserved by the county or city sealer as public standards for each county or city. (Code 1924, § 1485 (6).)

408. Powers and Duties of County and City Sealers.—When not otherwise provided by law the county or city sealer shall have the power and it shall be his duty within his county or city to inspect, test, try, and ascertain if they are correct all weights, measures, and weighing or measuring devices kept, offered, or exposed for sale, sold, or used or employed within the county or city by any proprietor, agent, lessee, or employee in proving the size, quantity, area, or measurement of quantities, things, produce, or articles for distribution or consumption purchased or offered or submitted by such person or persons for sale, hire, or award; and he shall have the power to and shall from time to time weigh or measure and inspect packages or amounts of commodities of whatsoever kind kept for the purpose of sale, offered or exposed for sale, or sold or in the process of delivery, in order to determine whether the same contain the amounts represented, and whether they be kept, offered or exposed for sale or sold in a manner in accordance with law; he shall at least twice each year and as much oftener as he may deem necessary see that all weights, measures, and weighing or measuring devices used in the county or city are correct. He may for the purpose above mentioned, and in the general performance of his official duties, enter and go into or upon, and without formal warrant, any stand, place, building, or premises, or stop any vendor, peddler, junk dealer, coal wagon, ice wagon, delivery wagon, or any person whomsoever, and require him, if necessary, to proceed to some place which the sealer may specify, for the purpose of making the proper tests. Whenever the county or city sealer finds a violation of the statutes relating to weights and measures, he shall cause the violator to be prosecuted. (Id. § 1485 (7).)

409. Sealing or Marking Weights and Measures to Indicate Correspondence With Standards.—Whenever the county or city sealer compares weights, measures, or weighing or measuring devices and finds that they correspond or causes them to correspond with the standards in his possession, he shall seal or mark such weights, measures, or weighing or measuring devices with appropriate devices to be approved by the State Superintendent of Weights and Measures. (Id. § 1485 (8).)

410. Condemnation and Destruction of Incorrect Weights and Measures; Condemnation for Repairs.—The county or city sealer shall condemn and seize and may destroy incorrect weights, measures, or weighing or measuring devices which, in his best judgment, are not susceptible of satisfactory repair, but such as are incorrect and yet, in his best judgment may be repaired, he shall mark or tag as "condemned for repairs" in a manner prescribed by the State Superintendent of Weights and Measures. The owners or users of any weights, measures, or weighing or measuring devices of which such disposition is made shall have the same repaired and corrected within ten days, and they may neither use nor dispose of the same in any way, but shall hold the same at the disposal of the sealer. Any weights, measures, or weighing or measuring devices which have been "condemned for repairs," and have not been repaired as required above, shall be confiscated by the sealer. (Id. § 1485 (9).)

411. Record to be Kept and Annual and Special Reports to be Made by County and City Sealers.—The county or city sealer shall keep a complete record of all of his official acts, and shall make an annual report to the authority which appointed him, and an annual report duly sworn to, on the first day of October, to the State Superintendent of Weights and Measures, on blanks furnished by the latter, and also, any special reports that the latter may request. (Id. § 1485 (10).)

412. Seizure for Use as Evidence of False or Unsealed Weight, Measure, Etc.—The Superintendent of Weights and Measures and the county and city sealers are hereby authorized and empowered to seize for use as evidence, without formal warrant, any false or unsealed weight, measure, or weighing or measuring device or package or amount of commodity found to be used, retained or offered or exposed for sale or sold in violation of law.

There is hereby conferred upon the superintendent, his assistants and inspectors, police power for the purpose of carrying out the provisions of this act only, and in the exercise of their duties they shall upon demand, exhibit their badges to any person questioning their authority, and they are authorized and empowered to make arrests of any person violating any provisions of this act. (Code Supp. 1926, § 1485 (11).)

413. Punishment for Hindering or Obstructing State Superintendent, or County or City Sealer.—Any person who shall hinder or obstruct in any way the Superintendent of Weights and Measures, or any county or city sealer in the performance of his official duties shall be guilty of a misdemeanor, and upon conviction thereof, shall be punished by a fine of not less than twenty, nor more than two hundred dollars, or by imprisonment in jail for not more than three months, or by both such fine and imprisonment. (Code 1924, § 1485 (12).)

414. Punishment for Impersonating State Superintendent or County or City Sealer.—Any person who shall impersonate in any way the Superintendent of Weights and Measures, or any county or city sealer, by the use of his seal or counterfeit of his seal, or otherwise, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be punished by a fine of not less than one hundred nor more than five hundred dollars, or by imprisonment for not more than one year, or by both such fine and imprisonment. (Id. § 1485 (13).)

415. Liquid Commodities.—It shall be unlawful to sell, except for immediate consumption on the premises, liquid commodities in any other manner than by weight or liquid measure, or commodities not liquid in any other manner than by measure of length, by weight, or by numerical count, unless otherwise agreed in writing by the mutual consent of the buyer and seller; provided, however, that nothing in this section shall be construed to prevent the sale of fruits, vegetables, and other dry commodities in the standard barrel provided for in section twenty-four [1485 (20)]; or of berries and small fruits in boxes as provided for in section twenty-five [1485 (21)]; or of vegetables or fruits usually sold by the head or bunch in this manner; provided, further, that nothing in this section shall be construed to apply to foodstuffs put up in original packages.

For the purpose of this section the term "original package" shall be construed to include a commodity in a package, carton, case, can, barrel, bottle, box, phial, or other receptacle, or in coverings or wrappings of any kind, put up by the manufacturer, which may be labeled, branded, or stenciled, or otherwise marked, or which may be suitable for labeling, branding, or stenciling, or marking, otherwise, making one complete package of the commodity. The words "original package" shall be construed to include both the wholesale and the retail package.

For the purpose of this section the term "commodities not liquid" shall be construed to include goods, wares, and merchandise, which are not in liquid form and which have heretofore been sold by measure of length, by weight, by measures of capacity, or by numerical count, or which are susceptible of sale in any of these ways. (Code Supp. 1926, § 1485 (13½).)

416. Legal Standards; Cord; Bushel, Where Certain Agricultural Products Are Sold by Weight.—A cord contains one hundred and twenty-eight cubic feet, being eight feet long, four feet high, and four feet wide, or the equivalent thereof; and in all measurements of wood, tan-bark or other things subject to such measurements the fore-going shall be the true and legal standard, any usage, by law or ordinance of any corporation, railroad or other company to the contrary, notwithstanding. And in all sales by weights of the agricultural products hereinafter named, the number of pounds per bushel as stated in the following schedule shall be the true and legal standard: Alfalfa seed, sixty pounds; barley, forty-eight pounds; navy and soja beans, sixty pounds; blue grass seed, fourteen pounds; bran, twenty pounds; buckwheat, forty-eight pounds; carrots, fifty pounds; castor beans, forty-six pounds; chestnuts, fifty-seven pounds; clover seed, sixty pounds; coal (anthracite) eighty pounds; corn (in ear), seventy pounds; corn (shelled), fifty-six pounds; corn meal, forty-eight pounds; dried apples, twenty-eight pounds; dried peaches (peeled), forty pounds; dried peaches (unpeeled), thirty-two pounds; flaxseed, fifty-six pounds; hemp seed, forty-four pounds; Hungarian grass seed, forty-eight pounds; lime (unslacked), eighty pounds; malt, thirty-eight pounds; millet seed, fifty pounds; oats, thirty-two pounds; onions, fifty-seven pounds; orchard grass seed, fourteen pounds; parsnips, fifty pounds; Virginia peanuts, twenty-two pounds; Spanish peanuts, thirty pounds; peas (black eye and other cow-peas), sixty pounds; potatoes (Irish), sixty pounds; potatoes (sweet), fifty-six pounds; plastering hair, eight pounds; red top grass seed, forty pounds; rye, fifty-six pounds; salt, fifty pounds; timothy seed, forty-five pounds; tomatoes, sixty pounds; turnips, fifty-five pounds; wheat, sixty pounds; cotton seed, thirty pounds. (Code 1924, § 1485 (14).)

417. Barrels of Flour.—Every barrel of flour put up or manufactured in this State, shall contain not less than one hundred and ninety-six pounds of flour, and every barrel of flour put up or manufactured in this State, and every barrel shipped into the State, shall have the number of pounds contained therein plainly stamped on one head. If any person or firm doing business in this State wilfully or knowingly sell or causes to be sold flour in barrels or packages not so correctly stamped, showing the correct number of pounds contained in such barrels or packages, he or they shall be fined twenty-five dollars; and the sale of every such barrel or package shall constitute a separte offense. (Code Supp. 1926, § 1485 (14½).)

418. Marking Packages.—It shall be unlawful to keep for the purpose of sale, offer or expose for sale, or sell any commodity in package form unless the net quantity of the contents be plainly and conspicuously marked on the outside of the package; in terms of weight, measure, or numerical count; provided, however, that reasonable variations or tolerances shall be permitted and that these reasonable variations or tolerances and also exemptions as to small packages shall be established by rules and regulations made by the Superintendent of Weights and Measures; and, provided, further, that this section shall not be construed to apply to those commodities in package form the manner of sale of which is specifically regulated by the provisions of other sections of this act.

The words "in package form" as used in this section shall be construed to include a commodity in a package, carton, case, can, box, barrel, bottle, phial, or other receptacle, or in coverings or wrappings of any kind put up by the manufacturer, or, when put up prior to the order of the commodity, by the vendor, which may be labeled, branded, or stenciled, or otherwise marked, or which may be suitable for labeling, branding, or stenciling, or marking otherwise, making one complete package of the commodity. The word "package" shall be construed to include both the wholesale and retail package. (Id. § 1485 (17½).)

419. Sale of Ice.—It shall be unlawful for any person, firm or corporation to sell ice in this Commonwealth in any other manner than by weight. All ice shall be correctly weighed by the seller at the time of delivery to the purchaser. All agents or employees of any person, firm or corporation engaged in the sale and delivery of ice shall be provided with suitable and correct weighing devices to be used for the purpose of correctly weighing each piece of ice delivered, and it shall be unlawful for any such agent or employee to report or make a charge for any quantity of ice in excess of the quantity, in pounds, or fractions thereof, actually delivered according to the correct weight thereof. It shall be unlawful for any person, firm, or corporation delivering ice to refuse, on demand, to allow the purchaser to witness the weighing of the same at the time of delivery, or to refuse, on demand, to furnish the purchaser with a weight slip at the time of delivery containing the name of the person, firm or corporation selling the ice, the number of pounds sold, and signed by the agent or employee of such person, firm, or corporation. (Id. § 1485 (18½).)

420. Requirements as to Bottles and Jars Used for Sale of Milk or Cream; Penalties for Violating Provisions of Section; Powers and Duties of Sealers.—Bottles used for the sale of milk or cream shall be of the capacity of one-half gallon,

three pints, one quart, one pint, one-half pint, and one gill. Bottles or jars used for the sale of milk or cream shall have clearly blown or otherwise permanently marked in the side of the bottle the capacity of the bottle and the word "sealed," in the side or bottom of the bottle the name, initials, or trade-mark of the manufacturer, and a designating number, which designation shall be different for each manufacturer and may be used in identifying the bottles. The designating number shall be furnished by the State Superintendent of Weights and Measures upon application by the manufacturer, and upon the filing by the manufacturer of a bond in the sum of one thousand dollars, with sureties, to be approved by the attorney-general, conditioned upon their conformance with the requirements of this section. A record of the bonds furnished and the designating numbers and to whom furnished shall be kept in the office of the Superintendent of Weights and Measures.

Any manufacturer who sells or offers to sell milk or cream bottles to be used in the State that do not comply as to size and markings with the provisions of this section shall suffer a penalty of five hundred dollars, to be recovered by the Attorney-General in an action against the offender's bondsmen, to be brought in the name of the Commonwealth. Any dealer who uses, for the purpose of selling milk or cream, jars, or bottles purchased after this law takes effect that do not comply with the requirements of this section as to markings and capacity, shall be deemed guilty of using a false or insufficient measure.

Sealers of weights and measures are not required to seal bottles or jars for milk or cream marked as in this section provided, but they shall have the power to, and shall from time to time, make tests on individual bottles used by the various firms in the territory over which they have jurisdiction, in order to ascertain if the above provisions are being complied with, and they shall immediately report violations found to the State Superintendent of Weights and Measures. (Code 1924, § 1485 (19).)

421. Standard Barrel for Dry Commodities Other Than Apples and Cranberries; Standard Barrel for Cranberries; Unlawful to Sell, Ship or Use Other Barrels.—The standard barrel for fruits, vegetables, and other dry commodities other than apples and cranberries, shall be of the following dimensions when measured without distention of its parts; length of staves, twenty-eight and one-half inches; diameter of heads, seventeen and one-eighth inches; distance between heads, twenty-six inches; circumference of bulge, sixty-four inches, outside measurement; and the thickness of staves not greater than four-tenths of an inch; provided, that any barrel of a different form, having a capacity of seven thousand and fifty-six cubic inches, shall be a standard barrel. The standard barrel for cranberries shall be of the following dimensions when measured without distention of its parts: Length of staves, twenty-eight and one-half inches; diameter of heads, sixteen and one-fourth inches; distance between heads, twenty-five and one-fourth inches; circumference of bulge, fifty-eight and one-half inches, outside measurements; and the thickness of staves not greater than four-tenths of an inch.

It shall be unlawful for any person to offer or expose for sale, sell, or ship any other barrels for fruits, vegetables, or other dry commodities, or to offer or expose for sale, sell, or ship any fruits, vegetables or other dry commodities in other barrels than the standard barrels as defined in this section, or subdivisions thereof known as the third, half, or three-quarters barrel; provided, however, that nothing in this section shall apply to barrels used in packing or shipping apples and commodities sold exclusively by weight or numerical count; and, provided, further, that no barrel shall be deemed below standard within the meaning of this section when shipped to any foreign country and constructed according to the specifications or directions of the foreign purchaser if not constructed in conflict with the laws of the foreign country to which the same is intended to be shipped. (Id. § 1485 (20).)

422. How Berries and Small Fruits to be Sold; Requirements as to Containers.—It shall be unlawful to sell or offer to sell any berries or small fruits in any other manner than by weight, or in the containers described in this section. It shall be unlawful to procure or keep for the purpose of sale, offer or expose for sale, sell, or give away baskets or other open containers for berries or small fruits, holding one quart or less, or to procure or keep for the purpose of sale, offer or expose for sale, or sell berries or small fruits in baskets or other open containers, holding one quart or less, of any other than the following capacities, when level full: One quart, one pint, or one-half pint, standard dry measure. (Id. § 1485 (21).)

423. Weight to be Employed When Commodity is Sold on a Basis of Weight.—Whenever any commodity is sold on a basis of weight, it shall be unlawful to employ any other weight in such sale than the net weight of the commodity and all contracts concerning goods sold on a basis of weight shall be understood and construed accordingly. Whenever the weight of a commodity is mentioned in this act, it shall be understood and construed to mean the net weight of

the commodity at the time of delivery to the customer. (Code Supp. 1926, § 1485 (22).)

424. Punishments Prescribed for Certain Offenses.—Any person who, by himself or by his servant or agent, or as the servant or agent of another person, shall offer or expose for sale, sell, use in the buying or selling of any commodity or thing or for hire or award, or retain in his possession a false weight or measure or weighing or measuring device or any weight or measure or weighing or measuring device, which has not been sealed by the State Superintendent or by a sealer or deputy sealer of weights and measures within one year, or shall dispose of any condemned weight, measure, or weighing or measuring device contrary to law, or remove any tag placed thereon by the State Superintendent or by a sealer of weights and measures; or who shall sell or offer or expose for sale less than the quantity he represents, or shall take or attempt to take more than the quantity he represents, when, as the buyer, he furnishes the weight, measure, or weighing or measuring device by means of which the amount of commodity is determined; or who shall keep for the purchase of [or] sale,* offer or expose for sale, or sell any commodity in a manner contrary to law; or who shall violate any provision of this act for which a specific penalty has not been provided; or who shall sell or offer for sale, or use or have in his possession for the purpose of selling or using any device or instrument to be used to or calculated to falsify any weight or measure shall be guilty of a misdemeanor, and shall be punished by a fine of not less than twenty or more than two hundred dollars, or by imprisonment for not more than three months, or by both such fine and imprisonment, upon a first conviction, and upon a second or subsequent conviction he shall be punished by a fine of not less than fifty or more than five hundred dollars, or by imprisonment in jail for not more than one year, or by both such fine and imprisonment. (Code 1924, § 1485 (23).)

425. Definitions of Certain Words and Phrases Used in Act.—The word "person" as used in this act shall be construed to import both the plural and singular, as the case demands, and shall include corporations, companies, partnerships, firms, societies, and associations.

The words "weights, measures, or [and] weighing or [and] measuring devices," as used in this act shall be construed to include all weights, scales, beams, measures of every kind, instruments and mechanical devices for weighing or measuring, and any appliances and accessories connected with any or all such instruments.

The words "sell" or "sale," as used in this act, shall be construed to include barter and exchange. (Id. § 1485 (24).)

426. Superintendent to Have All Powers of a Sealer of Weights and Measures; His Duty to Appoint Sealers of Weights and Measures; Powers of Appointees.—The Commissioner of Agriculture and Immigration as ex-officio Superintendent of Weights and Measures, shall, in addition to the powers hereinbefore conferred upon him, have, throughout the Commonwealth, all the powers and authority of a sealer of weights and measures. Furthermore, it shall be the duty of the Commissioner of Agriculture and Immigration to appoint, as inspectors of weights and measures, such of the employees of his office as he may deem necessary for the better and more efficient enforcement of this act, and such employees, when so designated by the Commissioner of Agriculture and Immigration, shall throughout the limits of the Commonwealth, have all the powers and authority conferred upon a sealer of weights and measures by this act, and the State Superintendent and sealers of weights and measures shall be guided in the performance of their duties by the Department of Commerce, Bureau of Standards, manual of inspection and information for weights and measures officials. (Code Supp. 1926, § 1485 (25).)

427. Appropriation to Enable Superintendent to Purchase Standards and Employ Clerical Assistance.—In order to enable the Superintendent of Weights and Measures to purchase the necessary standards to carry out the provisions of this act, and to employ necessary clerical assistance, the sum of five thousand dollars is hereby appropriated, said sum to be paid out of any moneys in the treasury not otherwise appropriated. (Code 1924, § 1485 (26).)

428. Standard of Weights and Standard Measure for Certain Corn Mill Products.—The standard of weights for the following corn mill products, namely, flours, hominy, grits and meals, shall be one hundred pounds avoirdupois, and the standard measure for such commodities, when the same are packed for sale, shipped, sold, or offered for sale in packages of five pounds or over, shall be a package containing net avoirdupois weight one hundred pounds, or a multiple of one hundred pounds, or one of the following fractions thereof, five, ten, twenty-five or fifty pounds, and each of which packages shall bear a plain, legible and conspicuous statement of the net weight contained therein. (Id. § 1485 (28).)

*So in the law. Probably means "for the purpose of sale."

429. Standard Package for Certain Corn Mill Products; Unlawful to Pack, Ship or Sell Such Products in Other Than Standard Packages; Punishment for Violation of Provisions of Act.—The standard package for the following corn mill products, namely, flours, hominy, grits, and meals, when the same are packed, shipped, sold, or offered for sale in packages of five pounds or over, shall be those containing net avoirdupois weight one hundred pounds, or multiples of one hundred pounds, or the following fractions thereof; five, ten, twenty-five, and fifty pounds; provided, however, that the provisions of this section shall not apply to the retailing of meal direct to customers from bulk stock, when purchased and delivered by actual weight or measure, or to exchange of corn for meal by mills grinding for toll.

It shall be unlawful for any person, firm or corporation or association to pack, or cause to be packed for sale, to ship or offer for shipment, or to sell, or offer for sale, the following corn mill products, namely, flours, hominy, grits, and meals, which when in original unbroken package form, shall not be one of the standard measures established in this section and bear a plain, legible and conspicuous statement, of the net weight contained therein; and any person, firm, corporation, or association guilty of a violation of the provisions of this act shall be deemed guilty of a misdemeanor and be liable to a fine of not exceeding three hundred dollars. By the term "in original unbroken package form," as used in this act, is meant any form of package or carton or other container made or prepared to contain products for sale in such original package or other container and purporting to contain any specific weight or measure. (Id. § 1485 (29).)

430. Rules and Regulations for Enforcement of Act.—The Dairy and Food Commissioner, with the approval of the Board of Agriculture and Immigration, may establish necessary rules and regulations for the enforcement of this act. (Id. § 1485 (30).)

431. Act Not Applicable to Packages Under Five Pounds.—Nothing in this bill shall be construed as applying to packages under five pounds. (Id. § 1485 (31).)

NOTE: See also Nos. 1, 22, 35, 37 et seq., 45, 88 et seq., 107, 125 et seq., 163 et seq., 178 et seq., and 323 et seq.

PART V.

Cases.

1. General Food and Drug Law.

Analysis by Assistant State Chemist—Admissibility: See *Gayle & Eason v. Commonwealth, 115 Va. 958, 80 S. E. 741 (1914).

Food—Destruction of Wholesome Food—Action Against Inspector: *Holdsworth v. Crowder & Brother, 111 Va. 663, 69 S. E. 935 (1911).

2. Special Food Laws.

Beverages—Flavoring Extracts: Bragg v. Commonwealth, 133 Va. 645, 112 S. E. 609 (1922).

Bread—Peddler—License: Corby Baking Co. v. Commonwealth, 123 Va. 10, 96 S. E. 133 (1918).

Feeding Stuffs: See Walker v. Gateway Milling Co., 121 Va. 217, 92 S. E. 826 (1917).

Flour—Inspection: Delaplane v. Crenshaw & Fisher, Same v. Haxall, Crenshaw & Co., 56 Va. 457 (1860); *Voight v. Wright, 141 U. S. 62, 11 S. Ct. 855, 35 L. Ed. 638 (1891).

Markets: Town of Suffolk v. Parker, 79 Va. 660, 52 Am. Rep. 640 (1884); Brown v. Commonwealth, 98 Va. 366, 36 S. E. 485 (1900); Chambers v. City of Roanoke, 114 Va. 766, 78 S. E. 407 (1913). See also: City of Norfolk v. Anthony, 117 Va. 777, 86 S. E. 68 (1915).

Meat—Inspection: *Brimmer v. Rebman, 138 U. S. 78, 11 S. Ct. 213, 34 L. Ed. 862 (1891), affirming *In re Rebman, 41 Fed. 867 (1890).

Meat—License: Sledd v. Commonwealth, 60 Va. 813 (1870); Frommer v. City of Richmond, 72 Va. 646, 31 Am. Rep. 746 (1879).

Meat—Packing House—License: Morris & Co., Inc. v. Commonwealth, 116 Va. 912, 83 S. E. 408 (1914); *Commonwealth v. Armour & Co., 118 Va. 242, 87 S. E. 610 (1916), affirmed in *Armour & Co. v. Virginia, 246 U. S. 1, 38 S. Ct. 267, 62 L. Ed. 547 (1918).

Meat—Slaughterhouse: Pruner & Hubbles v. Pendelton et al., 75 Va. 516, 40 Am. Rep. 738 (1881).

Milk—Adulteration—Inspection—Vendors to Register and Secure License: City of Norfolk v. Flynn, 101 Va. 473, 44 S. E. 717, 62 L. R. A. 771, 99 Am. St. Rep. 918 (1903).

Oleomargarine: *Ex parte Scott et al., 66 Fed. 45 (1895).

Oysters—Tax: *Commonwealth v. Brown, 91 Va. 762, 21 S. E. 357, L. R. A. 110 (1895).

3. Special Drug Laws.

Narcotics: Taylor v. Commonwealth, 109 Va. 825, 63 S. E. 1079 (1909); Henderson v. Commonwealth, 130 Va. 761, 107 S. E. 700 (1921).

Narcotics—Unlawful Sale to Wife—Action by Husband: Rollins v. Scott, 9 Va. Law Reg. 771.

Pharmacy: See *Poisons.*

Poisons: *Bertram v. Commonwealth, 108 Va. 902, 62 S. E. 969 (1908).

Wood Alcohol: See Modern Woodmen of America v. Lawson, 110 Va. 81, 65 S. E. 509, 135 Am. St. Rep. 927 (1909).

4. Civil Action to Recover Damages for Injury Alleged to Have Been Caused by Consumption of Product.

Drugs: Highland Pharmacy, Inc., & Goldmeer v. White, 144 Va. 106, 131 S. E. 198, 44 A. L. R. 1478 (1926).

Feeding Stuffs: See Walker v. Gateway Milling Co., 121 Va. 217, 92 S. E. 826 (1917).

Narcotics—Unlawful Sale to Wife—Action by Husband: Rollins v. Scott, 9 Va. Law Reg. 771.

Tobacco: See Gerst v. Jones & Co., 73 Va. 518, 34 Am. Rep. 773 (1879).

5. Miscellaneous.

Tobacco: Branch et al. v. Commonwealth, 11 Va. 479 (1807); *Commonwealth v. Colquhouns et al., 12 Va. 213 (1808); Page v. Peyton, 12 Va. 566 (1808); Scott v. Hardaway, 18 Va. 263 (1814); Thweatt's Adm'r. v. Jones, 22 Va. 328, 10 Am. Dec. 538 (1822); Mitchell v. Commonwealth, 28 Va. 572 (1829); Auditor of Public Accounts v. Dugger & Foley, 30 Va. 241 (1831); DeRothschilds v. The Auditor, 63 Va. 41 (1872); Glass v. Davis et al., 64 Va. 184 (1873); *American Tobacco Co. v. City of Danville, 125 Va. 12, 99 S. E. 733 (1919); *Reaves Warehouse Corporation v. Commonwealth, *Motley & Motley v. Commonwealth, 141 Va. 194, 126 S. E. 87 (1925), appeal dismissed in Reaves Warehouse Corp. v. Virginia, 271 U. S. 690, 46 S. Ct. 481, 70 L. Ed. 549 (1926); *Danville Warehouse Co., Inc. v. Tobacco Growers Co-operative Association, Inc., 143 Va. 741, 129 S. E. 739 (1925); *Tobacco Growers Co-operative Association v. Danville Warehouse Co., Inc., 144 Va. 456, 132 S. E. 482 (1926).

Trade-Marks: Virginia Baking Co. v. Southern Biscuit Works, 111 Va. 227, 68 S. E. 261, 30 L. R. A. (N. S.) 167 (1910); A. I. M. Percolating Corporation v. Ferrodine Chemical Corporation et al., 139 Va. 366, 124 S. E. 442 (1924). See also: F. T. Blanchard Co. v. Simon et al., 104 Va. 209, 51 S. E. 222 (1905); Stein et al. v. Morris et al., 120 Va. 390, 91 S. E. 177 (1917); Benj. T. Crump Co., Inc. v. J. L. Lindsay, Inc., 130 Va. 144, 107 S. E. 679, 17 A. L. R. 747 (1921).

Trading Stamps: *Young v. Commonwealth, 101 Va. 853, 45 S. E. 327 (1903).

WASHINGTON.*

PART I.

General Food and Drug Law.

1. Regulation of Misbranding and Adulteration—United States Standard.—The Commissioner of Agriculture† shall, from time to time, with the approval of the Agricultural Advisory Board,† adopt, publish and enforce reasonable and uniform rules and regulations against the adulteration and misbranding of foods and drugs, and shall adopt, publish and enforce, as the standards of this State, the standards of quality, purity and strength adopted and applied by the United States Department of Agriculture, in the enforcement of the laws of the United States against the adulteration and misbranding of foods and drugs, except in cases where other standards are specifically prescribed by the laws of this State. (Rem. C. S. 1922, § 6137.)

2. Record of Standards—Distribution of Rules.—The standards of quality, purity and strength of foods and drugs, and the rules and regulations against adulteration and misbranding of foods and drugs adopted by the Commissioner of Agriculture, as in this act provided, shall be recorded and indexed by the Commissioner of Agriculture in well bound books to be kept in his office as public records, and shall take effect at the expiration of thirty days from the date of their adoption, and it shall be the duty of the Commissioner of Agriculture to cause said standards, rules and regulations, and the amendments and additional standards, rules and regulations adopted from time to time, to be published in pamphlet form for general distribution to manufacturers and dealers in foods and drugs. (Id. § 6138.)

3. Prima Facie Evidence of Adulteration or Misbranding.—In any prosecution for the violation of the laws of this State against adulteration or misbranding of foods and drugs, and in any proceedings for the condemnation of adulterated or misbranded foods or drugs, it shall be competent to prove that the standards of quality, purity and strength adopted by the Commissioner of Agriculture, as in this act provided, have not been complied with, and proof of that fact shall be prima facie evidence of a violation of the law against the adulteration or misbranding of foods and drugs. (Id. § 6139.)

3a. Combination of Poisonous Substances With Bread.—It shall be unlawful for any person to sell, offer for sale, use, distribute, or leave in any place, any crackers, biscuit, bread or any other preparation resembling or in similitude, of any edible product, containing arsenic, strychnine or any other poison. (Id. § 6140.)

3b. Penalty.—Any person violating the provisions of the preceding section shall upon conviction be punished by a fine of not less than ten ($10) dollars nor more than five hundred dollars ($500). (Id. § 6141.)

3c. Sale of Adulterated Milk, a Felony.—Any person who shall sell, offer for sale, or have in his possession for the purpose of sale, either as owner, proprietor, or assistant, or in any manner whatsoever, whether for hire or otherwise, any milk or any food products, containing the chemical ingredient commonly known as formaldehyde, or in which any formaldehyde or other poisonous substance has been mixed, for the purpose of preservation or otherwise, shall be guilty of a felony, and upon conviction thereof shall be imprisoned in the penitentiary for the period of not less than one (1) year nor more than three (3) years. (Id. § 6142.)

3d. Act Supplementary to Existing Laws—Enforcement.—This and the preceding section shall be supplementary to the laws of this State now in force prohibiting the adulteration of food and fraud in the sale thereof, and the State Dairy and Food Commissioner, the chemist of the State Agricultural Experiment Station, the State Attorney-General and the prosecuting attorneys of the several counties of this State are hereby required, without additional compensation, to assist in the execution of this act, and in the prosecution of all persons charged with the viola-

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*CITATIONS: "Rem. C. S. 1922" refers to Remington's Compiled Statutes of Washington, 1922, published by the Bancroft-Whitney Company. "Rem. Supp. 1923" refers to the 1923 supplement thereto. "L." refers to the session laws of the year cited.

†See Nos. 30 and 34. This law is to be corrected accordingly.

tion thereof, in like manner and with like powers as they are now authorized and required by law to enforce the laws of this State against the adulteration of food and fraud in the sale thereof. (Id. § 6143.)

4. Sale of Adulterated Articles Prohibited.—No person, firm or corporation shall, within this State, sell, offer for sale, have in his possession with intent to sell, or manufacture for sale, any article of food or drug which is adulterated or misbranded within the meaning of this act. (Id. § 6144.)

5. "Drug" and "Food" Defined.—The term "drug," as used in this act, shall include all medicines and preparations recognized in the United States Pharmacopœia or National Formulary for internal or external use, and any substance or mixture of substances intended to be used for the cure, mitigation or prevention of disease of either man or other animals. The term "food," as used herein, shall include all articles used for food, drink, confectionery or condiment by man or other animals, whether simple, mixed or compound. (Id. § 6145.)

6. Adulterated—What Deemed.—For the purposes of this act an article shall be deemed to be adulterated: In the case of drugs: First, if when a drug is sold under or by a name recognized in the United States Pharmacopœia or National Formulary, it differs from the standard of strength, quality or purity, as determined by the test laid down in the United States Pharmacopœia or National Formulary official at the time of investigation: Provided, that no drug defined in the United States Pharmacopœia or National Formulary shall be deemed to be adulterated under this provision if the standard of strength, quality or purity be plainly stated upon the bottle, box or other container thereof, although the standard may differ from that determined by the test laid down in the United States Pharmacopœia or National Formulary. Second, if its strength or purity fall below the professed standard or quality under which it is sold.

In case of confectionery: If it contains terra alba, barytes, talc, chrome yellow or other mineral substance or poisonous color or flavor, or other ingredient deleterious or detrimental to health, or any vinous, malt, or spirituous liquor, or compound or narcotic drug. In case of food: First, if any substance has been mixed and packed with it so as to reduce or lower or injuriously affect its quality or strength. Second, if any substance has been substituted wholly or in part for the article. Third, if any valuable constituent of the article has been wholly or in part abstracted. Fourth, if it be mixed, colored, powdered, coated, or stained in a manner whereby damage or inferiority is concealed. Fifth, if it contains sodium sulphite or any added poisonous or other added deleterious ingredient which may render such article injurious to health: Provided, that when in the preparation of food products for shipment they are preserved by an external application applied in such manner that the preservative is necessarily removed mechanically or by maceration in water, or otherwise, and directions for the removal of said preservatives shall be printed on the covering or [of] the package, the provisions of this act shall be construed as applying only when said products are ready for consumption. Sixth, if it consists in whole or in part of a filthy, decomposed or putrid animal or vegetable substance, or any portion of an animal unfit for food, whether manufactured or not, or if it is the product of a diseased animal, or one that has died otherwise than by slaughter. (Rem. Supp. 1923, § 6146.)

7. Misbranded Articles—What Are.—The term "misbranded," as used herein, shall apply to all drugs, or articles of food, or articles which enter into the composition of food, the package or label of which shall bear any statement, design or device regarding such article, or the ingredients or substances contained therein which shall be false or misleading in any particular, and to any food or drug product which is falsely branded as to the State, territory or country in which it is manufactured or produced.

For the purposes of this act an article shall also be deemed to be misbranded: In the case of drugs: First, if it be an imitation of or offered for sale under the name of another article. Second, if the contents of the package as originally put up shall have been removed, in whole or in part, and other contents shall have been placed in such package, or if the package fail to bear a statement on the label of the quantity or proportion of any alcohol, morphine, opium, cocaine, heroin, alpha or beta eucaine, chloroform, cannabis indica, chloral hydrate or acetanilide or any derivative or preparation of any such substances contained therein. Third, if its package or label shall bear or contain any statement, design or device regarding the curative or therapeutic effect of such articles or any of the ingredients or substances contained therein, which is false or fraudulent.

In the case of food: First, if it be an imitation of or offered for sale under the distinctive name of any other article. Second, if it be labeled or branded so as to deceive or mislead the purchaser or purport to be a foreign product when not so, or if the contents of the package as originally put up shall have been removed in

whole or in part and other contents shall have been placed in such package, or if it fail to bear a statement on the label of the quantity or proportion of any morphine, opium, cocaine, heroin, alpha or beta eucaine, chloroform, cannabis indica, chloral hydrate or acetanilide, or any derivative or preparation of any such substances contained therein. Third, if in package form, the quantity of the contents be not plainly and conspicuously marked on the outside of the package in terms of weight, measure or numerical count: Provided, however, that the reasonable variations shall be permitted, and tolerances and also exemptions as to small packages shall be established by rules and regulations made in accordance with the provisions of sections 6137, 6138 and 6139. Fourth, if the package containing it or its label shall bear any statement, design or device regarding the ingredients or the substances contained therein, which statement, design or device shall be false or misleading in any particular: Provided, that an article of food which does not contain any added poisonous or deleterious ingredients shall not be deemed to be adulterated or misbranded in the following cases: First, in the cases of mixtures or compounds which may be now or from time to time hereafter known as articles of food, under their own distinctive names, and not an imitation of or offered for sale under the distinctive name of another article, if the name be accompanied on the same label or brand with a statement of the place where the said article has been manufactured or produced. Second, in the case of articles labeled, branded or tagged so as plainly to indicate that they are compounds, imitations, or blends, and the word "compound," "imitation," or "blend," as the case may be, is plainly stated on the package in which it is offered for sale: Provided, that the term "blend" as used herein shall be construed to mean a mixture or [of] like substances, not excluding harmless coloring and flavoring ingredients used for the purpose of coloring and flavoring only: And provided, further, that nothing in this act shall be construed as requiring or compelling proprietors or manufacturers of proprietary foods which contain no unwholesome added ingredients to disclose their trade-mark formulas, except in so far as the provisions of this act may require to secure freedom from adulteration or misbranding. (Id. § 6147.)

8. Guaranty of Purity—Guarantor Liable.—No dealer shall be prosecuted under the provisions of this act if he shall prove a written guaranty of purity in a form approved by the Dairy and Food Commissioner:* Provided, that the guarantor is a resident of the State of Washington. The guaranty referred to herein shall contain the full name and address of the person, firm or corporation making the sale to the dealer, and such person, firm or corporation shall be held liable to all prosecutions, fines and other penalties which would attach to the dealer under the provisions of this act. (Rem. C. S. 1922, § 6148.)

9. Possession Prima Facie Evidence—Seizure by Commissioner—Procedure as to Disposal.—Possession by any person, firm or corporation of any article of food or drug, the sale of which [is] prohibited by this act, or being the consignee thereof, shall be prima facie evidence that the same is kept or shipped to the said person, firm or corporation in violation of the provisions of this act, and the Dairy and Food Commissioner is hereby authorized to seize upon and take into his possession such articles of food and thereupon apply to the Superior Court of the county in which such food is seized for an order directing him to dispose of or sell the same and apply the proceeds of the same to the general fund, less the amount required to reimburse the purchaser for actual loss as shown by the bill, provided he or they have a guaranty as required in the preceding section: Provided, however, that the Dairy and Food Commissioner shall first give notice to the person, firm or corporation in whose possession such goods are found, if in the possession of a common carrier, then the consignee of such food or drug notifying such person, firm or corporation that he has seized such foods or drugs, and the reason therefor, and that he has made an application to the Superior Court for an order to sell or dispose of the same, and that he will call up said application [applicant] for hearing on a day certain, which shall not be less than ten days from the service of such notice, and that at the hearing of said application the said person, firm or corporation shall show cause, if any they have, why the prayer of the petition should not be granted. Upon the hearing of said petition the affidavits or oral testimony may be introduced to establish the contention of the respective parties. Hearing, however, may be had at an earlier date by mutual consent of the parties to said application. (Id. § 6149.)

10. Samples to be Furnished for Analysis.—Every person selling, exhibiting or offering for sale, manufacturing or having in his possession with intent to sell or serve, or deliver to a purchaser, any article of food or drug included in the provisions of this act, shall furnish the Dairy and Food Commissioner or any of his deputies or any person authorized by him and demanding the same, who shall apply to him for the purpose and shall tender him the price at which the article of food is

*See No. 34. This law is to be corrected accordingly.

sold, a sample sufficient for the analysis of any such article of food which is in his possession. (Id. § 6150.)

11. **Prosecutions—By Whom.**—It shall be the duty of the Attorney-General and the prosecuting attorneys in the counties of this State to prosecute all cases arising under the provisions of this act. (Id. § 6151.)

12. **Taking Samples—Possession Prima Facie Evidence of Intent.**—The Dairy and Food Commissioner, or his deputies, shall have power in the performance of their official duties to enter any restaurant, eating-house, hotel, public conveyance, public or private hospital, asylum, school, eleemosynary or penal institution, where foods or drugs are served or used, and take for analysis any article of food or drug, or ingredients which enter into the composition of food or drugs, there[in] used. Any article of food, drugs or ingredients which enter into the composition of foods or drugs therein used and so taken, if found to be adulterated, shall be prima facie evidence that the same is kept to be used or served to patrons, guests, boarders, patients or inmates of such institution, and the person, firm or corporation owning and operating said restaurant, eating-house, hotel, public conveyance, public or private hospital, asylum, school, eleemosynary or penal institution and having in his or its possession adulterated foods or drugs shall be deemed to have such adulterated foods or drugs contrary to the provisions of this act. (Id. § 6152.)

13. **Penalties—Payment and Disposal of.**—Every person, firm or corporation violating the provisions of this act or refusing to comply upon demand with any of the provisions thereof, shall be guilty of a misdemeanor, and upon conviction shall be fined not less than twenty-five dollars ($25) and not to exceed five hundred dollars ($500), or, in case of second offense, to be imprisoned not less than thirty days and not to exceed ninety days, or both such fine and imprisonment. Any person found guilty of selling, offering for sale, having in his possession with intent to sell or serve, or manufacturing for sale any adulterated article of food or drug under the provisions of this act, shall pay, in addition to the penalties herein provided for, all necessary costs and expenses incurred in inspecting and analyzing such adulterated articles of foods or drugs, in addition to the costs of such action: Provided, that all penalties and costs for the violation of the provisions of this act shall be paid to the Board of State Dairy and Food Commission, or to their agent, and by them paid into the State treasury and applied to the general fund: And provided, further, that the dealers having goods in stock on the passage of this act, which do not comply with its provisions relating to branding or labeling, may inventory the same and stamp them with a mark for identification, and shall have the right thereafter to sell the goods so inventoried and marked, in ordinary course of business until disposed of: And provided, further, that this act shall go into effect on the first day of October, 1907. (Id. § 6153.)

14. **Monthly Report of Commissioner.**—The Dairy and Food Commissioner shall publish each month a report of the work of his office, including the brand, name and address of manufacturer, analysis and fines* of foods and drugs found to be adulterated, and the necessary expense, if any, of said publication, shall be defrayed as provided in section 5465 of Remington and Ballinger's Code. (Id. § 6154.)

Miscellaneous General Provisions.

15. **Person Omitting to Label Drugs, or Labeling Them Wrongly.**—Every person who, in putting up any drug, medicine, or food, or preparation used in medical practice, or making up any prescription, or filling any order for drugs, medicines, food or preparation shall put any untrue label, stamp or other designation of contents upon any box, bottle or other package containing a drug, medicine, food or preparation used in medical practice, or substitute or dispense a different article for or in lieu of any article prescribed, ordered, or demanded, or put up a greater or less quantity of any ingredient specified in any such prescription, order or demand than that prescribed, ordered, or demanded, or otherwise deviate from the terms of the prescription, order, or demand by substituting one drug for another, shall be guilty of a misdemeanor: Provided, however, that, except in the case of physician's prescriptions, nothing herein contained shall be deemed or construed to prevent or impair or in any manner affect the right of an apothecary, druggist, pharmacist, or other person to recommend the purchase of an article other than that ordered, required or demanded, but of a similar nature, or to sell such other articles in place or in lieu of an article ordered, required or demanded, with the knowledge and consent of the purchaser. (Rem. C. S. 1922, § 2507.)

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*Apparently "kinds."

16. Concealing Foreign Matter in Merchandise.—Every person who, with intent to defraud, shall place or conceal any foreign substance in any barrel, bag, bale, box or other package containing any article of merchandise, shall be guilty of a gross misdemeanor. (Id. § 2618.)

16a. Liability of Intoxicated Physician.—Every physician or surgeon, or person practicing as such, who, being in a state of intoxication, or under the influence of any narcotic drug, shall prescribe or administer any poison, drug or medicine, or do any other act as a physician, to another person, which, though done without design, shall cause the death of the latter, shall be guilty of manslaughter. (Id. § 2402.)

16b. Willfully Poisoning Food.—Every person who shall willfully mingle poison in any food, drink or medicine intended or prepared for the use of a human being, and every person who shall willfully poison any spring, well or reservoir of water, shall be punished by imprisonment in the State penitentiary for not less than five years, or by a fine of not less than one thousand dollars. (Id. § 2516.)

17. Creation of Department.—There shall be a department of the State Government known as the Department of Agriculture, which shall be charged with the administration of the laws relating to agriculture, agricultural resources and products, horticulture, live stock, food, drugs and oils, and such other subjects as the legislature may provide. (Id. § 2723.)

18. Powers of Commissioner.—The commissioner shall have power and it shall be his duty:

(1) To exercise all the powers and perform all the duties now vested in and required to be performed by the State Veterinarian.

(2) To exercise all the powers and perform all the duties now vested in and required to be performed by the State Dairy and Food Commissioner.

(3) To exercise all the powers and perform all the duties now vested in and required to be performed by the State Commissioner of Horticulture and the district horticultural inspectors appointed by such commissioner. . . .

(6) To exercise all the powers and perform all the duties now vested in and required to be performed by the State Commissioner of Labor so far as they concern the inspection and supervision of bakeries and bakeshops. . . .

(8) To exercise all the powers and perform all the duties now vested in and required to be performed by the director of the Washington Agricultural Experiment Station in respect to concentrated commercial feeding stuffs. . . .

(10) To publish and distribute bulletins and reports embodying information upon the subjects of agriculture, horticulture, live stock, dairying, foods and drugs and other matters pertaining to his department. . . .

(12) To make a report to the Governor, at least thirty days before the commencement of each biennial session of the legislature, containing an account of all matters pertaining to his department and its administration, which shall be printed and published in the manner provided by law.

(13) To declare, promulgate and enforce quarantine measures for the protection of any agricultural crop, forest trees, forest products or other products not otherwise protected by law against the ravages of destructive or injurious insects or diseases. To adopt, promulgate and enforce rules and regulations for the inspection, grading and certification of growing crops of agricultural or vegetable seed grown in this State and to inspect, grade and certify the same at the request of the grower and to fix and collect fees for such inspection, grading and certification and to pay the fees so collected into the State treasury. (Id. § 2724.)

19. Assistants.—The Commissioner of Agriculture may appoint such assistants, inspectors, experts and other employees as may be necessary for the administration of the affairs of the department, at such rates of compensation as the advisory board may determine upon. The commissioner may require any assistant, inspector or other employee to give a surety bond to the State of Washington in such sum and with such conditions as he shall determine, the premium on such bond to be paid by the State. He shall before appointing any assistant or inspector require him to take an examination on such subject or subjects as shall pertain to the performance of his duties; but he may appoint without examination any person who is a graduate of the State College of Washington in such subject, or who is a graduate of any recognized school maintaining a course of instruction in such subject equivalent to the course prescribed at the State College of Washington therein. (Id. § 2725.)

20. Assignment of Assistants.—The Commissioner of Agriculture shall designate the division of the department to which any assistant or inspector appointed by him shall be assigned. An assistant or inspector may be assigned to more than one division. Any assistant or inspector assigned to any division shall, subject to the supervisory control of the commissioner, possess and exercise the same powers and

perform the same duties as the Commissioner of Agriculture, with respect to all matters within such division. (Id. § 2726.)

21. Appeals to Commission.—Any person aggrieved by any finding, order or act of any assistant or inspector in the Department of Agriculture may appeal from such finding, order or act to the commissioner, who shall forthwith proceed to hear and determine such appeal, render his decision therein, and report the same to the appellant and to such assistant or inspector. Such decision shall specify the further proceedings to be had in the premises. Such decision shall not, however, preclude an appeal or proper action in the courts in cases where such rights would otherwise exist. (Id. § 2727.)

22. Officer Not Interested in Contracts.—It shall be unlawful for the commissioner, or any assistant, inspector, or other employee, to be interested, directly or indirectly, either as owner, agent or solicitor, in the sale or purchase of any article, commodity or product used or produced by any person with whom he may come in contact in his official capacity. Any person violating the provisions of this section shall be guilty of a gross misdemeanor. (Id. § 2728.)

23. Chemists of Department.—The chemists of the Washington Agricultural Experiment Station and the dean of the Department of Chemistry of the University of Washington shall be the chemists of the Department of Agriculture, and it shall be the duty of such chemists or either of them, without compensation other than their expenses necessarily incurred in the performance of such work, to analyze any and all substances that the Commissioner of Agriculture, his deputies or inspectors may send to them, and report to the commissioner, without unnecessary delay, the result of any analysis so made, and when called upon by said commissioner any such chemist shall assist, as an expert or otherwise, in any prosecution for the violation of any law pertaining to the department. (Id. § 2729.)

23a. Fees and Expenses.—All moneys collected as fees or otherwise by the Department of Agriculture shall be paid into the State general fund. All expenses incurred under the provisions of this act shall be paid out of the general fund, and shall be audited by the State Auditor upon proper vouchers approved by the Commissioner of Agriculture; and the State Auditor shall draw warrants upon the State Treasurer for the amounts thus audited, in the manner provided by law. (Id. § 2730.)

23b. Dietician.—The Director of Business Control shall have the power to select a member of the faculty of the University of Washington, or the State College of Washington, skilled in scientific food analysis and dietetics, to be known as the State Dietician, who shall make and furnish to the department of food analyses showing the relative food value, in respect to cost, of food products, and advise the department as to the quantity, comparative cost, and food values, of proper diets for the inmates of the State institutions under the control of the department. The State dietician shall receive his actual and necessary traveling expenses while engaged in the performance of his duties. (Id. § 10790.)

23c. Board of Health.—The Director of Health, who shall be an experienced physician and four other persons experienced in matters of health and sanitation, to be appointed by the Governor, shall constitute the State Board of Health. The director shall be chairman and executive officer of the board and with the advice and assistance of the board, shall have charge and supervision of the Department of Health, and shall receive a salary of not to exceed five thousand dollars per annum. (Id. § 10814.)

23d. Board of Health—Powers and Duties.—The State Board of Health, created by this act, shall have the power, and it shall be its duty:

(1) To exercise all the powers and perform all the duties now vested in, and required to be performed by, the State Board of Health;

(2) To exercise such other powers and perform such other duties as may be provided by law. (Id. § 10816.)

23e. Director of Health—Powers and Duties.—The Director of Health shall have the power, and it shall be his duty:

(1) To exercise all the powers and perform all the duties now vested in, and required to be performed by, the State Commissioner of Health;

(2) To, with the assistance of the State Registrar of Vital Statistics, exercise all the powers and perform all the duties, in relation to the registration of vital and mortuary statistics, now vested in, and required to be performed by, the State Commissioner of Health, the Superintendent of Registration, and the State Registrar;

(3) To, not less often than once each six months, visit and inspect each of the State institutions, ascertain the sanitary and health conditions existing at each of said institutions, require the respective governing authorities thereof to take such action as will conserve the health of all persons connected therewith, and report his findings to the Governor. (Id. § 10817.)

23f. Institutional Board of Health.—The Director of Health and the head physicians of the Women's Industrial Home and Clinic, the State Custodial School, and each of the State Hospitals for the Insane, and one woman physician to be appointed by the Governor to hold office during his pleasure, shall constitute a board, to be known as the Institutional Board of Health, which shall power, and it shall be its duty, to visit each such institution and advise the superintendent regarding general policy of custodial care and treatment of the inmates thereof, to, from time to time, advise general rules and regulations for carrying out such policy, and to, with the advice and assistance of the State Dietician, adopt and prescribe general rules and regulations to provide a healthful and proper diet for the various classes of inmates of such State institutions, having regard to their age, physical and mental condition, and their ability to perform labor. The Director of Health shall be the chairman of the Institutional Board of Health which shall meet at the State Capital on the last Monday in June of each year and at such other times and places, at the call of the chairman, as the board may fix by rules and regulations. The board may, from time to time, cause to be printed a report showing the general policy of, and the rules and regulations relating to, custodial care and treatment, and the rules and regulations relating to diet, as recommended by the board, and furnish a sufficient number of copies to each such State institution for its use. The superintendent of each of such institutions shall, however, have exclusive care and charge of the custodial treatment of the inmates of the institution under his care, and may or may not adopt the suggestions of the Institutional Board of Health relating to custodial treatment. The board may also, upon request, furnish copies of the dietetic rules and regulations to other institutions. (Id. § 10818.)

24. Department of Agriculture—Divisions.—The Department of Agriculture shall be organized into, and consist of, five divisions, to be known respecively as, (1) the Division of Agriculture, (2) the Division of Horticulture, (3) the Division of Dairy and Live Stock, (4) the Division of Foods, Feeds, Drugs, and Oils, and (5) the Division of Weights and Measures. The Director of Agriculture shall have charge and general supervision of the department and shall receive a salary of not to exceed seventy-five hundred dollars per annum. (Id. § 10841.)

25. Supervisor of Agriculture.—The Director of Agriculture shall have the power to appoint and deputize an assistant director to be known as the Supervisor of Agriculture, who shall have charge and supervision of the Division of Agriculture, and, with the approval of the director, shall have power to appoint and employ such inspectors and clerical and other assistants, as may be necessary to carry on the work of the devision. (Id. § 10842.)

26. Supervisor of Horticulture.—The Director of Agriculture shall have the power to appoint and deputize an assistant director, to be known as the Supervisor of Horticulture, who shall have charge and supervision of the Division of Horticulture, and, with the approval of the director, shall have power to appoint and deputize such inspectors, and to appoint and employ such clerical and other assistants, as may be necessary to carry on the work of the division. (Id. § 10843.)

27. Supervisor of Dairy and Livestock.—The Director of Agriculture shall have the power to appoint and deputize an assistant director, to be known as the Supervisor of Dairy and Live Stock, who shall have charge and supervision of the Division of Dairy and Live Stock, and, with the approval of the director, shall have power to appoint and deputize such veterinarians, testers, and inspectors, and to appoint and employ such clerical and other assistants, as may be necessary to carry on the work of the division. (Id. § 10844.)

28. Supervisor of Foods, Feeds, Drugs and Oils.—The Director of Agriculture shall have the power to appoint and deputize an assistant director, to be known as the Supervisor of Foods, Feeds, Drugs, and Oils, who shall have charge and supervision of the Division of Foods, Feeds, Drugs, and Oils, and, with the approval of the director, shall have power to appoint and deputize such inspectors, and to appoint and employ such clerical and other assistants, as may be necessary to carry on the work of the division. (Id. § 10845.)

29. Supervisor of Weights and Measures.—The Director of Agriculture shall have the power to appoint and deputize an assistant director, to be known as the Supervisor of Weights and Measures, who shall have charge and supervision of the Division of Weights and Measures, and, with the approval of the director, shall have power to appoint and deputize such sealers, testers, and inspectors, and to appoint and employ such clerical and other assistants, as may be necessary to carry on the work of the division. (Id. § 10846.)

30. Director of Agriculture—Powers and Duties.—The Director of Agriculture shall have power, and it shall be his duty, to exercise all the powers and perform all the duties now vested in, and required to be performed by, the Commissioner

of Agriculture, and to exercise such other powers and perform such other duties as may be provided by law. (Id. § 10847.)

31. Division of Agriculture—Powers and Duties.—The Director of Agriculture shall have the power, and it shall be his duty, through and by means of the Division of Agriculture:

(1) To exercise all the powers and perform all the duties relating to the State Fair, commercial fertilizers, surveys and classification of lands, quarantine measures for the protection of any agricultural crops, forest trees, forest products, or other products not otherwise protected by law, agricultural and vegetable seeds, and growing crops thereof, now vested in, and required to be performed by, the Commissioner of Agriculture; . . .

(5) To exercise all the powers and perform all the duties relating to grain, hay, peas, grain and hay products, rice, beans, and other similar articles, nitrates and other fertilizers, sulphur and other chemicals, except the regulation of rates, service and facilities of public warehouses and public terminal warehouses in relation thereto, now vested in, and required to be performed by, the Public Service Commission;

(6) To exercise all the powers and perform all the duties now vested in, and required to be performed by, the Director of Farm Marketing;

(7) To enforce and supervise the administration of all laws relating to agriculture, agricultural products, and agricultural interests. (Id. § 10848.)

32. Division of Horticulture—Powers and Duties.—The Director of Agriculture shall have the power, and it shall be his duty, through and by means of the Division of Horticulture:

(1) To exercise all the powers and perform all the duties relating to horticulture, and horticultural plants and products, now vested in, and required to be performed by, the Commissioner of Agriculture;

(2) To enforce and supervise the administration of all laws relating to horticulture, horticultural products, and horticultural interests. (Id. § 10849.)

33. Division of Dairy and Livestock—Powers and Duties.—The Director of Agriculture shall have the power, and it shall be his duty, through and by means of the Division of Dairy and Live Stock;

(1) To exercise all the powers and perform all the duties relating to diseases among domestic animals, the quarantine and destruction of diseased animals, now vested in, and required to be performed by, the Commissioner of Agriculture;

(2) To exercise all the powers and perform all the duties relating to milk, milk products, and dairies and dairy products, now vested in, and required to be performed by, the Commissioner of Agriculture;

(3) To exercise all the powers and perform all the duties relating to the registration of stallions and jacks, now vested in, and required to be performed by, the Commissioner of Agriculture;

(4) To enforce and supervise the administration of all laws relating to dairies, dairy products, live stock, and dairy and live stock interests. (Id. § 10850.)

34. Division of Foods, Feeds, Drugs and Oils—Powers and Duties.—The Director of Agriculture shall have the power, and it shall be his duty, through and by means of the Division of Foods, Feeds, Drugs, and Oils:

(1) To exercise all the powers and perform all the duties formerly vested in, and required to be performed by, the State Oil Inspector, now vested in, and required to be performed by, the Commissioner of Agriculture; Exercise all the powers and perform all the duties relating to foods, food products, drinks, and drugs, formerly vested in and required to be performed by the State Dairy and Food Commissioner, now vested in and required to be performed by the Commissioner of Agriculture; exercise all the powers and perform all the duties relating to concentrated commercial feeding stuffs formerly vested in and required to be performed by the Director of the Washington Agricultural Experiment Station, now vested in, and required to be performed by, the Commissioner of Agriculture; and exercise all the powers and perform all the duties relating to foods, food products, drinks, concentrated commercial feeding stuffs, drugs, and oils and other petroleum products, now vested in, and required to be performed by, the Commissioner of Agriculture;

(2) To exercise all the powers and perform all the duties relating to bakeries and bakeshops, now vested in, and required to be performed by, the Commissioner of Agriculture;

(3) To enforce and supervise the administration of all laws relating to foods, food products, drinks, feeds, drugs, and oils, and their inspection, manufacture, and sale. (Id. § 10851.)

35. Division of Weights and Measures—Powers and Duties.—The Director of Agriculture shall have the power, and it shall be his duty, through and by means of the Division of Weights and Measures:

(1) To exercise all the powers and perform all the duties relating to weights and measures, now vested in, and required to be performed by, the Secretary of State, the Superintendent of Weights and Measures, the Deputy Superintendent of Weights and Measures, the Inspector of Weights and Measures, and the State Sealers. (Id. § 10852.)

35a. Chief Departmental Assistants.—The director of each of the departments of the State Government created by this act shall have the power, from time to time, to designate and deputize one of the assistant directors of this department to act as, and to be, the chief assistant director, who shall have charge and general supervision of the department in the absence of, or in case of the disability of, the director, and who shall, in case a vacancy occurs in the office of director, continue in charge of the department until a director is appointed and qualified or the Governor shall appoint an acting director. (Id. § 10876.)

36. Distribution of Powers and Duties Generally.—In all cases where an existing State office, board, commission, bureau, or department is abolished by this act, or where the powers and duties vested in, and required to be performed by, any existing officer, board, commission, bureau, or department are transferred to, vested in and required to be performed by, a department or committee created by this act, or a State officer, all employees of such office, board, commission, bureau or department so abolished, or the powers and duties of which are so transferred, as the director of the department or the committee or officer to which the powers and duties of such office, board, commission, bureau, or department are transferred may select, shall continue to perform their usual duties upon the same terms and conditions as heretofore until removed, or appointed to positions in accordance with the provisions of this act relative to such department, or transferred to some other department. In all cases where the powers and duties of any such existing office, board, commission, bureau, or department are divided between two or more of the departments or committees created by this act, or State officers, each of such departments, committees, or officers shall receive, on the above terms and conditions, such of the employees of said office, board, commission, bureau, or department as are selected by the respective directors of the departments, or by the committee, or State officer to which the functions thereof are by this act transferred. (Id. § 10881.)

37. Official Reports.—All reports required by law to be made by any existing office, board, commission, bureau, or department abolished by this act, or the powers and duties of which are vested in, and required to be performed by, a department or committee created by this act, or a State officer, shall hereafter be made by the executive and administrative head of the department, or the committee or officer to which the powers and duties of such existing office, board, commission, bureau, or department are transferred. (Id. § 10885.)

38. Vesting of Powers and Duties Under Former Laws—Penalties.—In all cases where any powers and duties, which have heretofore been vested in, or performed by, any existing officer, board, commission, bureau, or department, or any deputy or subordinate officer thereof, are by this act transferred, either in whole or in part, to, or vested in and required to be performed by, a department or committee created by this act, or State officer, such powers and duties shall be vested in, and shall be performed by, the department, committee, or officer to which the same are hereby transferred, and not otherwise. And every act done in the exercise of such powers and duties shall have the same legal effect as if done by the former officer, board, commission, bureau, or department, or any deputy or subordinate officer thereof. Every person and corporation shall be subject to the same obligations and duties, and shall have the same rights arising from the exercise of such powers and the performance of such duties, as if such powers and duties were exercised and performed by the officer, board, commission, bureau, or department, or any deputy or subordinate officer thereof, designated in the respective laws which are to be administered by the departments or committees created by this act, or State officers. Every person and corporation shall be subject to the same penalty or penalties, civil or criminal, for failure, to perform any obligation or duty, or for doing a prohibited act, as if such obligation or duty arose from, or such act were prohibited in the exercise of, such power or duty, by the officer, board, commission, bureau, or department, or any deputy or subordinate officer thereof, designated in the respective laws which are to be administered by the departments or committees created by this act, or State officers. (Id. § 10887.)

39. Civil and Criminal Liability of Officers and Employees.—Every officer or employee of any department created by this act, who shall commit any act prohibited, or fail to perform any duty required, by the law creating the office or employment whose duties are transferred by this act to the department of which he is an officer or employee, shall be subject to the same penalty or penalties, civil or criminal, as are prescribed by such law for the commission of such prohibited act or the failure to perform such duty. (Id. § 10888.)

40. Location of Offices.—The governor shall have the power in his discretion to require all administrative departments of the State Government and the appointive officers thereof, other than those created by this act, to maintain their principal offices at the State Capitol, in rooms to be furnished by the Department of Business Control. (Id. § 10892.)

41. Offices, Boards, Etc., Abolished.—From and after the thirty-first day of March, 1921, the following offices, boards, commissions, bureaus, and departments of the State Government heretofore created by law shall be and are hereby abolished, viz.: . . . The Agricultural Advisory Board, the Commissioner of Agriculture, the Assistant Commissioner of Agriculture in charge of the Division of Agriculture, the Assistant Commissioner of Agriculture in charge of the Division of Horticulture, the Assistant Commissioner of Agriculture in charge of the Division of Dairy and Live Stock, the Assistant Commissioner of Agriculture in charge of the Division of Foods, Feeds, Drugs, and Oils, . . . the Director of Farm Marketing, . . . the State Grain Inspector, the State Deputy Grain Inspectors, the State Board of Health, the State Commissioner of Health, . . . the Commissioner of Labor, . . . the State Oyster Commission, . . . The State Board of Pharmacy, . . . the Department of Weights and Measures, . . . and the Hop Inspector. (Id. § 10893.)

42. Exercise of Powers and Duties of Abolished Offices, Etc.—The exercise of all powers and the performance of all duties which have been, subsequent to February 9, 1921, vested in or imposed upon any of the officers, boards, commissions, bureaus, or departments of the State Government, enumerated in section 10893 are, at such time or times subsequent to March 31, 1921, as the act or acts so empowering or imposing, might otherwise become effective, hereby conferred and imposed upon the officers, committees, boards, or departments of the State Government, created by this chapter, which shall have been, by this chapter, authorized to exercise the powers and perform the duties of the respective officers, boards, commissions, bureaus and departments of the State Government, abolished by this chapter. (Id. § 10897.)

43. Powers and Duties of Offices Created.—Whenever, subsequent to February 9, 1921, powers and duties have been vested in or imposed upon any officer, board, commission, bureau, or department of the State Government other than those specified in section 10893, which relate to the performance of the governmental functions which have been transferred to some other officer, committee, board or department of the State Government by this chapter, such powers and duties shall, from and after the first day of April, 1921, be exercised and performed by the officers, committees, boards, or departments of the State Government created by this chapter and to whom such functions have been transferred. (Id. § 10898.)

NOTE: See also No. 261.

PART II.

Special Food Laws.

Apples.

See No. 363.

Bakeries.

44. Bakeries—Drainage, Plumbing and Ventilation of.—All buildings or rooms occupied as biscuit, bread or cake bakeries shall be drained or plumbed in a manner conducive to the proper healthful and sanitary condition thereof, and constructed with air shafts and windows or ventilating pipes sufficient to insure ventilation as the Commissioner of Agriculture* shall direct, and no cellar or basement not used as a bakery on the thirtieth day of January, 1919, shall hereafter be used and occupied as a bakery and a cellar or basement theretofore occupied as a bakery shall, when once closed, not be reopened for use as a bakery. (Rem. C. S. 1922, § 6285.)

45. Wash-rooms, Etc., to be Apart From Bake-room.—Every such bakery shall be provided with a proper wash-room and water-closet, or closets, apart from the bake-room or rooms where the manufacturing of such products is conducted; and no water-closet, earth closet, privy or ashpit shall be within or communicate directly with a bake-shop. (Id. § 6286.)

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*See No. 34. This law is to be corrected accordingly.

46. Baking-rooms—Size, Plastering, Etc.—Every room used for the manufacture of flour or meal food shall be at least eight feet in height, the side walls of such room shall be plastered or wainscoted, the ceiling plastered or ceiled with lumber or metal, and if required by the Commissioner of Labor,* shall be whitewashed at least once in three months; the furniture and utensils of such room shall be so arranged as to be easily moved in order that the furniture and floor may at all times be kept in proper healthful and sanitary condition. (Id. § 6287.)

47. Food Products—How Kept.—The manufactured flour or meal food products shall be kept in perfectly dry and airy rooms, so arranged that the floors, shelves and all other facilities for storing the same can be easily and perfectly cleaned. (Id. § 6288.)

48. Sleeping-rooms to be Separated From Storage-rooms.—The sleeping places for persons employed in a bakery shall be kept separate from the room or rooms where flour or meal food products are manufactured or stored. (Id. § 6289.)

49. Inspection—Certificate to Owner.—After an inspection of a bakery has been made by the Commissioner of Labor and it is found to conform to the provisions of this act, said commissioner shall issue a certificate to the owner or operator of such bakery, that it is conducted in compliance with all the provisions of this chapter, but where orders are issued by said commissioner to improve the condition of a bakery, no such certificate shall be issued until such order and the provisions of this chapter have been complied with. (Id. § 6290.)

50. Order to Alter, Service of Notice of.—The owner, agent or lessee of any property affected by the provisions of this act, shall, within thirty days after the service of notice upon him, of an order issued by the Commissioner of Labor requiring any alterations to be made in or upon such premises, comply therewith, or cease to use or allow the use of such premises as a bake-shop; such notice shall be in writing and may be served upon such owner, agent, or lessee, either personally or by mail, and a notice by registered letter, postage prepaid, mailed to the last known address of such owner, agent, or lessee shall be deemed sufficient for the purposes of this chapter. (Id. § 6291.)

51. Diseased Persons, Employment of, Prohibited.—No employer shall require, permit or suffer any person to work in his bake-shop who is affected with tuberculosis, or with scrofulous diseases, or with any venereal disease, or with any communicable skin affection or contagious disease and no person so affected shall work or remain in a bake-shop. Every employer is hereby required to maintain himself and his employees in a clean and sanitary condition while engaged in the manufacture, handling or sale of such food products. (Id. § 6292.)

52. Persons Under Sixteen—Work Hours For.—No employer shall require, permit or suffer any person under sixteen years of age to work in his bake-shop between the hours of eight o'clock in the evening and five o'clock in the morning. (Id. § 6293.)

53. Penalty for Violation.—Any person who violates the provisions of this chapter or refuses to comply with the requirements of the Commissioner of Labor, as provided herein, shall be guilty of a misdemeanor, and on conviction thereof before any court of competent jurisdiction, shall be fined not less than twenty-five nor more than fifty dollars or imprisoned not more then ten days for the first offense; and shall be fined not less than fifty nor more than one hundred dollars and imprisoned not less than ten nor more than thirty days for each offense after the first. (Id. § 6294.)

NOTE: See also Nos. 54-55 and 353.

Bread, Etc.

54. Combination of Poisonous Substances With Bread.—It shall be unlawful for any person to sell, offer for sale, use, distribute, or leave in any place, any crackers, biscuit, bread or any other preparation resembling or in similitude of any edible product, containing arsenic, strychnine or any other poison. (Rem. C. S. 1922, § 6140.)

55. Penalty.—Any person violating the provisions of the preceding section shall upon conviction be punished by a fine of not less than ten dollars ($10) nor more than five hundred dollars ($500). (Id. § 6141.)

NOTE: See also Nos. 44 et seq. and 353.

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*See Nos. 18 and 34. This law is to be corrected accordingly.

Beverages.

56. Selling Liquors Not Aged.—Every person who, as principal, agent or otherwise, shall sell or offer for sale any spirituous or distilled intoxicating liquor known as whiskey (except Scotch or Irish whiskey), any part of which has not been aged for a period of four years in wooden barrels or casks, or who shall, as principal, agent or otherwise, sell or offer for sale any malt liquor that has not been aged for a period of more than sixty (60) days, or which contains more than eight (8) per cent alcohol by weight shall be guilty of a gross misdemeanor. (Rem. C. S. 1922, § 2695.)

57. Mixing, Distilling, Selling, Etc., Low Wines or Spirits.—Every person who, by mixing, compounding or distilling low wines or ardent spirits, or who, by adding thereto any flavoring or other substance, shall produce, or who shall sell or offer for sale or have in his possession with intent to sell, any liquor known as whiskey, gin or brandy so produced, shall be guilty of a gross misdemeanor. (Id. § 2696.)

NOTE: See also Nos. 34, 292 et seq., and 333 et seq.

Cider.

See No. 305.

Cold Storage.

See No. 176 et seq.

Confectionery.

See No. 6.

Dairy Products—Substitutes for Dairy Products.*

58. Sale of Adulterated Milk, a Felony.—Any person who shall sell, offer to sell, or have in his possession for the purpose of sale, either as owner, proprietor, or assistant, or in any manner whatsoever, whether for hire or otherwise, any milk or any food products containing the chemical ingredient commonly known as formaldehyde, or in which any formaldehyde or other poisonous substance has been mixed, for the purpose of preservation or otherwise, shall be guilty of a felony, and upon conviction thereof shall be imprisoned in the penitentiary for the period of not less than one (1) year nor more than three (3) years. (Rem. C. S. 1922, § 6142.)

59. Act Supplementary to Existing Laws—Enforcement.—This and the preceding section shall be supplementary to the laws of this State now in force prohibiting the adulteration of food and fraud in the sale thereof; and the State Dairy and Food Commissioner,† the chemist of the State Agricultural Experiment Station, the State Attorney-General and the prosecuting attorneys of the several counties of this State are hereby required, without additional compensation, to assist in the execution of this act, and in the prosecution of all persons charged with the violation thereof, in like manner and with like powers as they are now authorized and required by law to enforce the laws of this State against the adulteration of food and fraud in the sale thereof. (Id. § 6143.)

60. Definitions.—For the purpose of this act certain words, terms and expressions therein contained shall be construed as follows:

The term "dairy" shall mean any place where milk from two or more cows is produced for sale.

The term "creamery" shall mean any place, building or structure wherein milk or cream is manufactured into butter for sale at wholesale.

The term "milk plant" shall mean any place, building or structure wherein milk is received for bottling, pasteurizing, clarifying or otherwise processing.

The term "cheese factory" shall mean any place, building or structure wherein milk is manufactured into cheese.

The term "factory of milk products" shall mean any place, building or structure, other than a creamery, milk plant, cheese factory, or milk condensing plant, wherein milk or any of its products is manufactured, altered, changed or compounded into any article, compound or product designed and intended for human consumption.

The term "milk" shall mean the fresh, clean, lacteal secretion obtained by milking one or more healthy cows, properly fed and kept, and not obtained or taken within

*See No. 24 et seq. This law is to be corrected accordingly.

†See No. 34. This law is to be corrected accordingly.

ten days preceding the parturition of such cow or cows, nor within five days thereafter, and which contains not less than eight and fifty one-hundredths per cent of milk solids, and not less than three and twenty-five one-hundredths per cent of fat: Provided, however, that nothing in this act shall prohibit the sale of the whole, unadulterated and unskimmed milk of any cows whose milk tests below the butterfat standard herein fixed.

The term "skimmed milk" shall mean any milk from which the cream has been removed, or which contains less than three and twenty-five one-hundredths per cent of butterfat, and not less than eight and eight-tenths per cent of milk solids exclusive of fat.

The term "sterilized milk" shall mean milk that has been heated to the temperature of boiling water, or to a higher temperature, and maintained at such temperature for a length of time which shall be sufficient to kill all organisms present in such milk.

The term "blended milk" shall mean milk which is modified in its composition so as to have a definite and stated percentage of one or more of its constituents.

The term "condensed milk," "evaporated milk" and "concentrated milk," and each or either of them, shall mean the product resulting from the evaporation of a considerable portion of the water from the whole, fresh, clean, lacteal secretion obtained by the milking of one or more healthy cows, and not obtained within ten days before nor within five days after parturition, and which contains, all tolerances being allowed for, not less than twenty-five and five-tenths per cent of total solids and not less than seven and eight-tenths per cent of milk fat.

The words "condensed milk" when used in this act, not in connection with "sweetened condensed milk" shall include condensed milk to which sucrose has been added.

The term "condensed skimmed milk," "evaporated skimmed milk" and "concentrated skimmed milk," and each or either of them shall mean the product resulting from the evaporation of a considerable portion of the water from skimmed milk, and which contains, all tolerances being allowed for, not less than eighteen per cent of milk solids.

The term "sweetened condensed milk," "sweetened evaporated milk" and "sweetened concentrated milk," and each or either of them, shall mean condensed milk conforming to the standards and definitions of this act, to which sugar (sucrose) has been added.

The term "sweetened condensed skimmed milk," "sweetened evaporated skimmed milk" and "sweetened concentrated skimmed milk," and each or either of them, shall mean the product resulting from the evaporation of a considerable portion of the water from skimmed milk, to which sugar (sucrose) has been added, and which contains, all tolerances being allowed for, not less than twenty-eight per cent of milk solids.

The term "dried milk" shall mean the product resulting from the removal of water from milk, and which contains, all tolerances being allowed for, not less than twenty-six per cent of milk fat and not more than five per cent of moisture.

The term "dried skimmed milk" shall mean the product resulting from the removal of water from skimmed milk and which contains, all tolerances being allowed for, not more than five per cent of moisture.

The term "malted milk" shall mean the product made by combining whole milk with the liquids separated from a mash of ground barley malt and wheat flour, with or without the addition of sodium chloride, sodium bicarbonate, or potassium bicarbonate, in such manner as to secure the full enzymic action of the malt extract, and by removing water, and which contains not less than seven and one-half per cent of butterfat and not more than three and one-half per cent of moisture.

The term "buttermilk" shall mean that portion of the cream which remains after the separation and removal therefrom of the butter fat without the addition of water.

The term "ice cream" shall mean the frozen product made from the combination of milk fats, milk solids, and sugar, with or without harmless coloring or flavoring matter, and with or without the addition of pure gelatine or vegetable gums, and which contains not less than ten per cent of milk fats, and not less than twenty per cent of milk fats and milk solids, not fat, combined.

The term "fruit ice cream" shall mean the frozen product made from the combination of milk fats, milk solids, and sugar, with or without harmless coloring or flavoring matter, and with or without the addition of pure gelatine or vegetable gums, and to which has been added sound, clean and mature fruits and which contains not less than ten per cent of milk fat, and not less than twenty per cent of milk fats and milk solids, not fat, combined.

The term "nut ice cream" shall mean the frozen product made from the combination of milk fats, milk solids, and sugar, with or without harmless coloring or flavoring matter, and with or without the addition of pure gelatine or vegetable gums, and to which has been added sound, clean and non-rancid nuts, and which contains

not less than ten per cent of milk fat and not less than twenty per cent of milk fat and milk solids, not fat, combined.

The term "ice milk" shall mean the frozen product made from the combination of pure, sweet milk and sugar, with or without harmless coloring or flavoring matter, and containing not less than two and four-tenths per cent of milk fat, and not more than six-tenths of one per cent of pure and harmless vegetable gum or gelatine.

The term "milkfat" and "butterfat," and each or either of them, shall mean the fat of milk having a Reichert-Meissel number not less than twenty-four, and a specific gravity not less than .905 at a temperature of forty degrees Centigrade.

The term "cream" shall mean that portion of milk rich in butter fat which rises to the surface on standing, or is separated from it by centrifugal force, and which is fresh and clean and contains not less than eighteen per cent of milk fat.

The term "butter" shall mean the clear, nonrancid product made by gathering in any manner the fat of fresh or ripened milk or cream into a mass containing not less than eighty per cent of milk fat, and which also contains a small portion of other milk constituents with or without harmless coloring matter.

The term "renovated butter" shall mean butter that has been reduced to a liquid state by melting and drawing off such liquid or butter oil, and has thereafter been churned or manipulated in connection with milk, cream or other product of milk.

The term "reworked butter" shall mean the product obtained by mixing, rechurning or reworking butter manufactured on different dates or at different places: Provided, however, that the mixing of the clean, fresh trimmings or remnants from one day's churning or cutting with butter from the churning of the same creamery on the day next following shall not make the product reworked butter within the meaning of this act.

The term "milk products" shall mean and include each, every and any article, substance, product or compound manufactured, produced or compounded from milk, whether such milk conform to the standard and definitions set forth in this section or not.

The term "milk by-products" shall mean any and all products of milk derived or made therefrom after the removal of the milk fat or milk solids in the process of making butter or cheese, and shall include skimmed milk, buttermilk, whey, casein and milk powder.

The term "cheese" shall mean the sound, solid, and ripened product made from milk or cream by coagulating the casein therein with rennet, lactic acid or pepsin with or without the addition of ripening ferments and seasoning, and with or without salt or harmless coloring matter.

The term "full cream cheese" or "full milk cheese," and each or either of them, shall mean cheese which contains in the water-free substance thereof not less than fifty per cent of milk fat.

The term "half skim cheese" shall mean cheese which contains in the water-free substance thereof less than fifty per cent and not less than twenty-five per cent of milk fat.

The term "skim cheese" shall mean cheese which contains in the water-free substance thereof less than twelve per cent of milk fat.

The term "quarter skim cheese" shall mean cheese which contains in the water-free substance thereof less than twenty-five per cent and not less than twelve per cent of milk fat.

The term "imitation cheese" shall mean any article, substance or compound, other than that produced from pure milk or from the cream from pure milk, which shall be made in the semblance of cheese, and designed to be sold or used as a substitute for cheese made from pure milk or cream: Provided, however, that the use of salt, rennet, lactic acid, or pepsin, and harmless coloring matter for coloring the product of pure milk or cream shall not be construed to render such product an imitation: And provided, further, that nothing in this section shall prevent the use of pure skimmed milk in the manufacture of cheese.

The term "whey" shall mean the product remaining after the removal of fat and casein from milk in the process of cheese making.

The term "oleomargarine" shall mean all manufactured substances, extracts, mixtures or compounds, including mixtures or compounds with butter, heretofore known as oleomargarine, oleo, oleomargarine oil, butterine, lardine, suine, and neutral, and shall include all lard and tallow extracts and all mixtures and compounds of tallow, beef fat, suet, lard, lard oil, intestinal fat and offal fat made in imitation or semblance of butter, or calculated or intended to be sold as butter or for butter.

The term "substitute butter" shall mean and include all compounds of vegetable oils with milk fats or milk solids, and all compounds of milk fats or milk solids with butter, when such compound contains less than eighty per cent of milk fat.

The term "person" shall import both the singular and plural as the case may demand, or as shall be applicable, and shall include individuals, copartnerships, corporations and unincorporated societies and associations. (Id. § 6164, as amended L. 1927, c. 192, § 1.)

61. Insanitary Dairy—What Constitutes.—A dairy shall be deemed insanitary in the following cases:

(a) If the drinking water provided for the cows therein be stagnant, polluted with manure, urine, drainage, or decaying vegetable or animal matter.

(b) If the yards or enclosures in which the cows are confined or kept be filthy or insanitary.

(c) If any part of the yards or enclosures in which the cows are confined or kept, other than pastures, be made depositories of manure in heaps, or otherwise, where it is allowed to ferment and decay.

(d) If a suitable milk house or milk room is not provided and maintained, properly screened to exclude flies and insects, for the purpose of cooling, mixing, bottling, canning, keeping or separating the milk or cream. Such milk house or milk room shall not be located in, or be a part of, any barn or poultry house, and shall not be used for any other purpose whatsoever, and if contained in any building or structure in which any business, occupation or trade, other than handling, bottling or processing milk is conducted or carried on, such milk room shall be separated from the portion or portions of such building or structure in which such business, trade or occupation is conducted or carried on, by a tightly ceiled or plastered partition constructed in such manner as to meet with the approval of and comply with any regulations issued by the Department of Agriculture.

(e) If milk or cream shall be cooled, stored, mixed, bottled, canned or kept in any room or place occupied by any person as a sleeping or living apartment, or occupied by horses, cows, hogs or other animals, or by fowl of any kind.

(f) If any urinal, privy vault, open cesspool, pig pen, stagnant water, accumulation of manure, or other filth shall be permitted within one hundred feet of such milk house, or milk room, or within fifty feet of any cow stalls or stanchions, or other place where milking is done.

(g) If the walls or floor of such milk house or milk room shall become soiled with manure, urine, dirt of (or) other filth.

(h) If an application of lime whitewash to the interior of any cattle stable, barn or milking shed in which cows are kept or milked, or any milk house or milk room in which milk is cooled, stored, mixed, bottled, canned or kept, shall not be made as often as once in one year.

(j) If the pails, cans or other containers of milk, or the strainers or coolers coming in contact with the milk are not thoroughly sterilized with boiling water or live steam each and every time the same are used.

(k) If the person or wearing apparel of the dairyman, or his employees, or other persons coming in contact with milk and its products, are allowed to become soiled, or are not washed from time to time with reasonable frequency.

(l) If the milking stools, milking machines and equipment therein are not kept clean.

(m) If there shall be permitted to exist any other cause or thing calculated or tending to render the milk or its products in such dairy unclean, impure and unhealthy.

It shall be unlawful to sell milk or dairy products from a closed or insanitary dairy. (Rem. C. S. 1922, § 6165, as amended L. 1927, c. 192, § 2.)

62. Unsanitary Creameries, Plants and Factories.—A creamery, milk plant, cheese factory, milk condensing factory or factory of milk products, and any store, market, depot, booth or other place where milk is handled, stored or kept for sale, shall be deemed unsanitary in the following cases:

(a) If milk or cream is received that has reached an advanced state of fermentation, or that shows a stage of putrefactive fermentation.

(b) If milk or cream be received, stored or kept in cans or other containers that have not been sterilized with boiling water or live steam after each delivery.

(c) If utensils and apparatus that come in contact with milk or its products in the process of manufacture are not thoroughly washed and sterilized by means of boiling water or live steam after each using.

(d) If the floor of such creamery, factory, plant, store, market, depot, booth or place is so constructed, or in such condition, as to permit the flowing or soaking of water, milk or other liquids underneath such floor, or among the interstices of such floor in such manner as to permit fermentation and decay to take place.

(e) If the condition of the floor in any such creamery, factory, plant, store, market, depot, booth or other place be such that it may not be readily kept free from dirt and filth.

(f) If drains are not provided that will convey refuse milk, water and sewage to a point at least fifty yards distant from such creamery, factory, plant, store, market, depot, booth or place.

(g) If any cesspool, privy vault, hog yard, slaughterhouse, hen house, manure, or any decaying vegetable or animal matter that will emit or produce foul odors, shall be permitted to exist within such distance as will permit the odors therefrom to reach any such creamery, factory, plant, store, market, booth, depot or other place where milk or milk products are handled, stored or kept for sale.

(h) If such creamery, factory, plant, depot, booth, store, market or other place where milk or milk products are handled, stored, or kept for sale is so constructed, or is so maintained as not to permit access thereto of sufficient light and air to secure good ventilation.

(i) If in any building or buildings used in connection with any creamery, cheese factory, milk plant, milk condensing factory, or factory of milk products any insects, vermin or other species of animal life are permitted.

(j) If upon the floor of any creamery, cheese factory, milk plant, milk condensing factory or factory of milk products, or upon the sides of walls thereof, any milk or its products, or any other filth is allowed to accumulate, ferment or decay.

(k) If the body or wearing apparel of any person employed in any creamery, cheese factory, milk plant, milk condensing factory, or factory of milk products, or coming in contact therein with any milk or milk product, shall be unclean, or shall not be washed from time to time with reasonable frequency.

(l) If there shall be permitted to exist any other cause or thing calculated or tending to render the milk or its products produced, kept, handled, or manufactured in such creamery, plant, factory, store, booth, or depot unclean, impure and unhealthy. (Rem. Supp. 1923, § 6166.)

63. Protection From Flies and Contamination.—No milk, cream, butter, or other milk product which has been prepared for human consumption shall be offered for sale for such consumption unless it shall be kept properly protected from flies, dust, dirt or other injurious contamination by being properly covered with a glass, wooden or metal case or covering. (Rem. C. S. 1922, § 6167.)

64. Cleansing Containers.—Every person, firm or corporation, not a common carrier, who receives from a common carrier in cans, bottles, vessels or any other container, any milk, cream, ice cream, or ice milk, intended for human consumption, which has been transported over any railroad, boat or freight line, or by wagon, automobile, auto truck or other common carrier, shall cause such cans, bottles, vessels or containers to be thoroughly cleansed and sterilized with boiling water or live steam before returning the same to the consignor or to the carrier from whom the same were received. (Id. § 6168.)

65. Empty Bottles, Etc., to be Cleansed.—All cans, bottles, vessels, or other containers received from consumers by any vendor, peddler, or retailer shall be thoroughly cleansed before being returned to the dealer or distributor. (Id. § 6169.)

66. Sanitary Handling of Shipments.—Milk, cream, ice-cream, ice milk and other milk products, when being shipped or transported by freight, express, truck or wagon, or other carrier, shall be handled, kept and maintained during such transportation in a clean and sanitary condition and manner, and shall not be exposed to contamination by dirt, dust, foul odors or other contaminating influences, nor shall such milk, cream, ice cream or ice milk, be allowed to remain in any place where it, or its containers, shall be exposed to the direct rays of the sun. (Id. § 6170.)

67. Separators—Cleaning.—No person shall sell, offer to sell or expose for sale any milk or cream taken from any cream separator not kept thoroughly washed and cleaned, and not regularly washed and cleaned in a thorough manner within three hours after each use thereof. (Id. § 6171.)

68. Isolation of Separators.—No person shall sell, offer to sell or expose for sale any milk or cream taken from any cream separator kept in any stable or other building wherein any animal or fowl is housed or kept, or in any place where the conditions are unsanitary or where the air is foul or contaminated, or in the open air or in any place other than a milk house or milk room as defined in paragraph (d) of section 6165: Provided, that this section shall not be construed to prohibit the keeping of such cream separator in any room which is wholly separated by tightly ceiled or plastered partitions having no openings from that part of the stable or building in which milking cows are housed or kept: And provided, further, that any milk or cream produced or kept at any dairy must at all times while at said dairy be kept in a milk house or milk room as defined in paragraph (d) of section 6165. (Rem. Supp. 1923, § 6172.)

69. Pasteurization Processes.—Process of pasteurization as applied to milk, skimmed milk, cream and milk products is here defined and declared to be a process for the elimination therefrom of organisms harmful to human beings. Such process

as applied to milk shall consist of uniformly heating such milk to a temperature of not less than one hundred and forty-two and one-half degrees Fahrenheit and of holding the same at such temperature for a period of not less than thirty minutes, and immediately thereafter of cooling such milk to a temperature of not above fifty degrees Fahrenheit in a separate tank or container other than that in which it is pasteurized. Such process as applied to skimmed milk, cream or other milk product shall consist of uniformly heating such skimmed milk, cream or milk product to a temperature of not less than one hundred and forty-two and one-half degrees Fahrenheit and of holding the same at such temperature for a period of not less than thirty minutes, or of heating the same to a temperature of one hundred and seventy-six degrees Fahrenheit, without holding: Provided, however, that whenever milk or cream shall be subjected to such process before being used in the manufacture of butter or cheese, and when the process of ripening is to be commenced immediately, it shall not be necessary that such milk or cream be cooled to a lower temperature than is necessary for such ripening or starting: And provided, further, that the heating of milk to above one hundred and ten degrees Fahrenheit shall be considered as intent to pasteurize and that thereafter the process of pasteurization as defined herein must be completed and such milk marked and sold as pasteurized milk. (Id. § 6174, as amended L. 1927, c. 192, § 3.)

70. Pasteurization for Butter and Cheese.—All milk or cream used in the manufacture of pasteurized butter or cheese shall be subjected to the process of pasteurizing in the creamery or cheese factory where such butter or cheese shall be manufactured therefrom, and not elsewhere. (Rem. C. S. 1922, § 6175.)

71. Duplication Prohibited.—No milk that has once been subjected to the process herein described and defined as pasteurization shall be a second time subjected to such process. (Id. § 6176.)

72. Sufficiency of Pasteurizing Apparatus.—Every pasteurizing plant or apparatus by which the process of pasteurization is applied to any milk shall be equipped with a holding device which will insure the holding and maintaining of the milk being subjected to such process at the temperature and for the periods of time required by the provisions of this act. (Id. § 6177.)

73. Registering Thermometer.—Every pasteurizing plant or apparatus by which the process of pasteurizing is applied to any milk, skimmed milk or cream, shall be equipped with a registering thermometer device which will accurately indicate and record the temperature of such milk, skimmed milk or cream. (Id. § 6178.)

74. Approval of Apparatus.—All registering thermometer devices used in the pasteurization of milk or milk products must be such as shall be approved by the Department of Agriculture. (Id. § 6179.)

75. Measuring Bottles—Penalty—Tests and Reports.—All bottles and pipettes used in measuring milk or milk products for making determination of the per cent of fat in or quality of said milk or milk products shall have clearly blown or otherwise permanently marked in the side of the bottle or pipette the word "sealed" and in the side of the pipette or the side or bottom of the bottle, the name, initials, or trade-mark of the manufacturer and his designating number, which designating number shall be different for each manufacturer and may be used in identifying bottles. The designating number shall be furnished by the Commissioner of Agriculture upon application by the manufacturer and upon the filing by the manufacturer of a bond in the sum of one thousand dollars ($1,000.00) with sureties to be approved by the Attorney-General, conditioned upon conformance with the requirements of this section. A record of the bonds furnished, the designating number, and to whom furnished, shall be kept in the office of the Department of Agriculture.

Any manufacturer who sells Babcock or other milk, cream or butter test bottles or milk pipettes, to be used in this State, that do not comply with the provisions of this section shall suffer the penalty of five hundred dollars ($500.00) to be recovered by the Attorney-General in an action against the offender's bondsmen, to be brought in the name of the people of the State. Any dealer who uses, for the purposes of determining the per cent of milk fat in milk or milk products, any bottles or pipettes purchased after this law takes effect that do not comply with the provisions of this section relating thereto, shall be deemed guilty of a misdemeanor.

The Commissioner of Agriculture shall prescribe specifications with which the glassware mentioned in this section shall comply. The unit of graduation for all Babcock or other glassware shall be the true cubic centimeter or the weight of one gram of distilled water at four degrees Centigrade.

Inspectors of the Department of Agriculture are not required to seal Babcock milk, cream or butter test bottles, or milk pipettes marked as in this section provided, but they shall from time to time make tests of individual bottles used by the various firms in the territory over which they have jurisdiction in order to ascertain whether the above provisions are being complied with and they shall report immediately to the

Commissioner of Agriculture violations found. (Id. § 6180, as amended L. 1927, c. 192, § 4.)

76. Operation of Testers.—In all tests of milk or cream received or purchased upon the basis of the amount of butterfat contained therein, and in all tests of any sample of milk or cream so received or purchased, the Babcock tester shall be operated at the proper speed or speeds. The proper speeds for such operations are hereby declared to be as follows:

For tester with diameter of fourteen inches, the speed shall be between eight hundred seventy-five and nine hundred twenty-five revolutions per minute.

For tester with diameter of sixteen inches, the speed shall be between eight hundred twenty-five and eight hundred seventy-five revolutions per minute.

For tester with diameter of eighteen inches, the speed shall be between seven hundred seventy-five and eight hundred twenty-five revolutions per minute.

For tester with diameter of twenty inches, the speed shall be between seven hundred and twenty-five and seven hundred and seventy-five revolutions per minute.

For tester with diameter of twenty-four inches, the speed shall be between five hundred seventy-five and six hundred twenty-five revolutions per minute. (Rem. C. S. 1922, § 6181.)

77. Temperature for Testing Purposes.—In all tests made of milk or cream to determine the amount of milk fat therein the Babcock tester must be read at the proper temperature which is hereby declared to be not less than one hundred and thirty degrees Fahrenheit and not more than one hundred and forty degrees Fahrenheit, and all payments for or sales of milk or cream made on the basis of measurement or weight shall be made according to the true weight and measurement which is hereby declared to be seventeen and six-tenths cubic centimeters for milk and nine grams or eighteen grams for cream. In all tests for cream the cream shall be weighed into the test bottle. (Id. § 6182.)

78. Scale Sensibility.—The sensibility of all scales used for weighing cream samples into the test bottles used in making any test with the Babcock tester shall be not more than thirty milligrams, and the standard weights shall be nine grams and eighteen grams. (Id. § 6183.)

79. Test Samples.—Each and every person whose duty it shall be to take, or who shall take or make any test, measure or grade or take or extract any sample of milk or cream sold or purchased, or to be sold or purchased, by weight, test, measure or grade, shall weigh, test, measure or grade the milk or cream sold or purchased by or from each individual separately. He shall before making any test or grade, or taking or extracting any such sample, thoroughly mix the milk and cream of the entire shipment or delivery from which a sample is to be taken, or extracted, by pouring or stirring until such milk and cream is of uniform and homogeneous consistency and richness, or shall take a sample from each can or other container of the entire shipment to be sampled and tested. (Id. § 6184, as amended L. 1927, c. 192, § 5.)

80. Deceit in Weight, Grade, Measure or Test.—No person, firm or corporation selling, delivering or hauling milk or cream, and no person, firm or corporation receiving or purchasing milk or cream by weight, grade or test, or either, or by measure, grade or test, or either, shall with intent to deceive, defraud or mislead as to the weight, grade, measure or test thereof, manipulate, change or alter such measure, test, grade or weight, or make or return to any person any false, deceitful, in accurate or untrue statement of such weight, grade, test or measure, or use any measure, grading or testing apparatus which does not comply with the standards defined therefor in this act or which has been condemned as inaccurate by the Department of Agriculture. (Rem. C. S. 1922, § 6185, as amended L. 1927, c. 192, § 6.)

81. Unfair Samples.—No person shall take, extract or return to any creamery, milk plant, cheese factory or factory of milk products, any unfair, fraudulent or manipulated sample of any cream or milk purchased, received, hauled, sold or delivered. (Rem. C. S. 1922, § 6186.)

82. Official Testers.—All tests, samples, weights or grades of milk or cream sold, purchased or delivered on the basis of the grade and amount of milk fat or butterfat contained therein, or by weight, shall be performed by a Babcock licensed tester, sampler, weigher or grader. Such Babcock tester, sampler, weigher or grader shall personally operate and conduct each test, taking of sample, determination of weight or grade, and shall be personally responsible to any person injured by any careless, negligent or unskillful operation thereof, and for any fraudulent, intentionally inaccurate or manipulated report or return of any such test, sample, weight or grade thereof: Provided, that it shall be the duty of each and every licensed Babcock tester, sampler, weigher or grader to make and keep for a period of four months in a locked container to which only the Director of Agriculture or his duly authorized agent shall have access, one or more legible carbon copies of the original report of each and every test, weight and grade made by him or her, and that the record or

records of any and all tests, weights and grades shall be subject to examination at any and all times by the Director of Agriculture or his duly authorized agent or agents. Whoever violates the provisions of this section shall be guilty of a misdemeanor and, upon conviction, shall be fined for each and every offense not less than twenty-five dollars ($25.00) nor more than one hundred dollars ($100.00), and the license of the Babcock tester, sampler, weigher or grader revoked. Any person, firm or corporation who shall employ anyone to operate the Babcock test or to weigh, sample or grade milk or cream who does not have a Washington State Babcock license or Cream Grader's license, or a Washington State permit in lieu of such license, or who refuses to allow, or fails to assist in such examination of records by an authorized representative of the Department of Agriculture may be enjoined in such complaint and punished by a like fine. (Rem. Supp. 1923, § 6188, as amended L. 1927, c. 192, § 7.)

83. Babcock Licensed Testers.—Any person may receive from the Department of Agriculture a license as a Babcock licensed tester, sampler, weigher or grader upon application therefor and upon the payment to said department of a license fee of two dollars ($2.00) therefor. Before issuing such license the Department of Agriculture shall inquire into the qualifications of the applicant, and shall require such applicant to submit to examination as to his qualifications, and may require the applicant to submit to it satisfactory proof that he is of good moral character. (Rem. Supp. 1923, § 6189, as amended L. 1927, c. 192, § 8.)

84. Applications and Permits.—Applications for licenses as a Babcock licensed tester, sampler, weigher or grader shall be made upon an application blank to be provided and furnished by the Department of Agriculture, and shall be filed with the Department. Upon receipt of any such application the Department of Agriculture may, if the commissioner shall so direct, issue a permit to the applicant to act as a Babcock licensed tester, sampler, weigher or grader, for such period as may be prescribed and stated in said permit, not to exceed sixty days, but such permit shall not be renewed so as to extend the period beyond sixty days from the filing of the application. (Rem. C. S. 1922, § 6190, as amended L. 1927, c. 192, § 9.)

85. Duration of License.—Every license as a Babcock licensed tester, sampler, weigher or grader shall be valid and in force during the life of the person to whom it is issued unless it shall be sooner revoked. Any license as a Babcock licensed tester, sampler, weigher or grader may at any time be revoked by the Department of Agriculture, upon due notice to the person to whom it is issued, if such person shall fail to comply with the provisions of this act, or shall exhibit in the discharge of his functions any gross carelessness or lack of qualification, or shall fail to comply with the rules and regulations issued and promulgated by the Department of Agriculture under the authority of this act. (Rem. C. S. 1922, § 6191, as amended L. 1927, c. 192, § 10.)

86. Plant and Factory Licenses.—Every creamery, milk plant, shipping station, milk condensing plant, ice cream factory or factory of milk products, or other person receiving or purchasing milk or cream in bulk and not bottled, and by weight or measure or upon the basis of the amount of milk fat contained therein, shall annually obtain a license therefor. Such license shall be issued by the Department of Agriculture upon being satisfied that the building, structure, place or premises where such milk is to be received or purchased is maintained in a sanitary condition in accordance with the provisions of this act; and upon the payment to the department of a license fee of ten dollars ($10.00) therefor. Such license shall be for the period of one year and shall expire on the 30th day of June subsequent to the date of its issue, and may be sooner revoked by the Department of Agriculture, upon reasonable notice to the licensee, if such licensee shall fail to comply with the provisions of this act and the rules and regulations issued and promulgated by the Department of Agriculture under the authority of this act: Provided, however, that the provisions of this section shall not apply to individuals purchasing milk or cream for consumption by themselves or their families, nor to the owners or keepers of hotels, restaurants, boarding houses and eating-houses purchasing milk or cream to be served or consumed therein, nor to bakeries and candy manufacturing plants. (Rem. Supp. 1923, § 6192, as amended L. 1927, c. 192, § 11.)

87. Licensed Ambulatory Dealers.—No person, firm or corporation shall convey, transport or carry any milk, skimmed milk, buttermilk or cream in any wagon, automobile, cart or other vehicle, for the purpose of selling or vending the same within the State or sell or vend any milk, skimmed milk, buttermilk or cream from any such wagon, cart, automobile or other vehicle, within the State, unless such person, firm or corporation shall have first obtained a milk vendor's license therefor. (Rem. C. S. 1922, § 6193, as amended L. 1927, c. 192, § 12.)

88. Vender's License.—Milk vender's licenses shall be issued by the Department of Agriculture upon application and upon the payment therefor of a license fee

of two dollars ($2). Such license shall be for the period of one year, unless sooner revoked, and shall expire on the 30th day of June next subsequent to the issue thereof. Each milk vender's license shall contain the number of the license, and the name, residence and place of business, if any, of the licensee, and no such license shall be sold, assigned or transferred. Any milk vender's license may be at any time revoked by the Department of Agriculture upon reasonable notice to the licensee, if such licensee shall be guilty of violation of or shall fail to comply with this act or any section or provision thereof, or shall violate or refuse or neglect to comply with any lawful regulation or order of the Department of Agriculture, or any officer, agent or inspector thereof. (Rem. Supp. 1923, § 6194.)

89. Licensed Purchasers.—No person, firm or corporation who shall hold a license to purchase milk or cream in bulk as required by section 6192, shall be required to obtain or hold a milk vender's license. (Rem. C. S. 1922, § 6195.)

90. License Regulations.—The Department of Agriculture shall from time to time, prepare, issue and promulgate such rules and regulations governing the issuing of licenses, the making of applications therefor, the determination of the qualifications of such applicants, and for the making of complaints, the giving of notice, and for hearing, and other proceedings for the revocation of licenses, as it shall deem necessary and as shall not be in conflict with the provisions of this act. (Id. § 6196.)

91. Dairy and Plant Inspection.—It shall be the duty of the Department of Agriculture to inspect dairies, milk plants, creameries, cheese factories, milk condensing plants and factories of milk products and all stores, markets, depots, booths, milk rooms, and other places wherein milk or milk products are produced, manufactured, bottled, handled or processed, or in which milk or any milk product designed or intended for sale for human consumption is kept, stored, or sold, and all wagons, automobiles, carts and other vehicles by which any milk or milk product is being transported for sale or with intent to sell, and it shall have power to condemn the same when found to be unsanitary within the standards and definitions of this act. (Id. § 6197.)

92. Enforcement of Laws.—It shall be the duty of the Department of Agriculture to enforce all laws that now exist or which may hereafter be enacted in this State relating to the production, manufacture, sale or distribution of milk or milk products, and to inspect all such articles or imitations thereof, made or offered for sale within the State which he may suspect or have reason to suspect to be impure, unhealthy, adulterated or not in conformity with the standards prescribed by this act, and to prosecute or cause to be prosecuted any person, firm or corporation engaged in the manufacture, keeping, exposing or offering for sale, serving, vending or furnishing any adulterated, counterfeit, or imitation milk product, or of any substitute for or imitation of any milk or milk product, contrary to law. (Id. § 6198.)

93. Revisory Tests.—The Department of Agriculture shall conduct tests at any creamery, milk plant, cheese factory, milk condensing plant or factory of milk products where there is reason to believe that milk or cream purchased or sold upon any basis of test, weight, grade or measure is not being tested, weighed, graded or measured accurately. (Id. § 6199, as amended L. 1927, c. 192, § 13.)

94. Inspection of Testing Apparatus.—All apparatus used for the purpose of testing or grading milk or cream sold, purchased or delivered upon the basis of the amount of milk fat contained therein, or grade thereof, shall be inspected and tested from time to time by the Department of Agriculture and any such apparatus, or any portion thereof, found defective or faulty shall be condemned and be replaced through the department at cost to the dealer. (Rem. C. S. 1922, § 6200, as amended L. 1927, c. 192, § 14.)

95. Performance of Inspection Duties.—The duties of inspection imposed by this act on the Department of Agriculture, and all powers and authorities conferred upon said department in connection with any test, sample, weight or grade, or inspection of any creamery, dairy, plant, factory, store, depot, booth, market, wagon, automobile, cart, vehicle or place, or of any milk or milk product or any substitute therefor, or imitation thereof may be exercised by any commissioner, assistant commissioner, or inspector thereof. (Rem. C. S. 1922, § 6201, as amended L. 1927, c. 192, § 15.)

96. Preservation of Thermometer Records.—All persons, firms or corporations using a thermometer device in connection with the pasteurization of milk or milk products shall preserve and keep on file for a period of not less than two months after being made all records made by such thermometer device, or deliver the same to the Department of Agriculture or to such person as it may direct. Such records shall at all times be open to inspection by the Department of Agriculture and by the State Board of Health and by all other State, county and municipal officers charged by law with the enforcement of laws and ordinances relating to milk or milk products, or relating to the public health. (Rem. C. S. 1922, § 6202.)

97. Statistical Reports.—The Department of Agriculture shall provide blanks for reporting statistics of the production of milk and milk products. The department shall when it deems necessary, but at least annually, on or before the first day of January of each year cause to be mailed to the owners or operators of all creameries, cheese factories, milk plants, milk condensing factories, factories of milk products, and to all milk vendors and milk dealers, one or more of such blanks. All such persons shall during the thirty days next following transmit to said department such blanks properly filled out and signed by such person and showing a full and accurate report of the amount of milk, cream, butter, cheese, ice cream, ice milk, buttermilk, skimmed milk, or other milk produce received, produced, manufactured or distributed during the required period as set forth by the department. The words "milk vendor" or "milk dealer" shall mean any person, firm or corporation who sells, vends, furnishes or delivers milk, skimmed milk, buttermilk or cream from any wagon, automobile, cart or other vehicle. (Id. § 6203, as amended L. 1927, c. 192, § 16.)

98. Dissemination of Dairy Information.—The Department of Agriculture is hereby authorized to gather and compile statistics relative to the dairy industry, and to the production, manufacture and sale of milk, cream, butter, cheese, ice cream, ice milk, condensed milk and other milk products, and to disseminate to the public in such manner as it shall judge most advisable the information contained in all such statistics, and to furnish such other information and do such other things, as it shall judge to be for the general good and tend to promote the development of the dairy industry of the State, and the healthfulness and purity of the products thereof. (Rem. C. S. 1922, § 6204.)

99. Failure to Comply With Regulations.—Any person, firm or corporation who shall fail or refuse to keep any record, or to make and return any report or statement required by this act to be kept or made, or who shall fail or refuse to make and return any such report or statement within the times limited by this act, and any person, firm or corporation who shall refuse to permit the examination of any such record by the Department of Agriculture, or by any officer, agent or inspector thereof, or milk inspector of any city, or any health officer of the State, or any city, county or town therein shall be deemed to be guilty of a violation of this act. (Id. § 6205.)

100. Use of Substitutes in State Institutions.—No oleomargarine, substitute butter, renovated butter, or any other substance designed as an imitation of or substitute for butter or any condensed milk from which the butterfat has been removed and a vegetable or other oil has been substituted therefor shall be used in any of the charitable hospital, medical, reformatory or penal institutions maintained by the State or which receives from the State any money, appropriation or financial assistance whatsoever. (Id. § 6206.)

101. Deceitful Advertising of Substitute Products.—No person, firm or corporation shall use in connection with the offering or exposing for sale, serving, furnishing or delivering of any milk from which the butter fat has been removed and a vegetable or other oil has been substituted therefor, oleomargarine, substitute butter, or other substance designed as a substitute for or imitation of butter, or in any advertisement, or sign or card relating to such oleomargarine, substitute butter or other substance, the words "butter," "creamery," "dairy," or "butterine," or any representation, picture, or likeness of any cow or cow kind. (Id. § 6207.)

102. Imitation Cheeses to be Branded.—Every person, firm or corporation who shall manufacture any imitation cheese or any substitutes for cheese shall at the place of manufacture before removing such imitation cheese or substitute therefrom distinctly and durably brand such cheese with the words "Imitation Cheese" and the name and address of the manufacturer on every box, package or container in which such imitation cheese or substitute is packed, contained or designed to be sold. Such name and address and such words shall be printed in letters of plain, uncondensed Gothic type and not less than one inch in height and in such a manner that said brand cannot readily be obliterated. Failure to brand any such imitation cheese or substitute as provided in this section and the selling of any such imitation cheese or substitute not so branded shall constitute a violation of this act on the part of the manufacurer and on the part of every person selling the same with knowledge that the same is not full cream cheese. (Id. § 6208.)

103. Standards to be Observed.—No person, firm or corporation shall sell, offer or expose for sale, exchange with, furnish or deliver to any other person, firm or corporation for sale for human consumption as or for milk, cream, skimmed milk, condensed milk, or other milk product, any substance, product or compound whatsoever which shall not conform to the standards for such milk or milk product as set forth in this act. (Id. § 6209.)

104. Sale of Impure Products.—No person, firm or corporation shall sell, expose or offer for sale, or exchange with, present or deliver to any creamery, milk plant, cheese factory, milk condensing factory, factory of milk products, or other

buyer or consumer of milk or milk products, any unclean, unwholesome, adulterated, stale or impure milk, cream, butter or other milk product: Provided, that milk, cream or milk products when found to be rancid or in such condition as to be unfit for human consumption may be condemned and destroyed. (Rem. Supp. 1923, § 6210.)

105. Milk From Diseased Cattle.—No person, firm or corporation shall knowingly sell, expose or offer for sale, present, exchange with or deliver to any creamery, consumer, milk plant, cheese factory, milk condensing factory, factory of milk products, or any other buyer or consumer of milk or milk products, any milk, or any cream, skimmed milk, buttermilk, butter, ice cream, ice milk, cheese, condensed milk or other milk product made or manufactured from milk produced from cows affected with any disease, or that was produced within ten days preceding parturition or within five days thereafter: Provided, that nothing in this section shall be construed to prohibit the sale of milk or cream from cows which have reacted to a tuberculin test when such cow or cows exhibit no physical symptoms of disease, and such milk or cream is pasteurized or sterilized as required by the provisions of this act and a permit therefor has been obtained from the Department of Agriculture, or from an inspector thereof. (Rem. C. S. 1922, § 6211.)

106. Malted Milk.—The use of malted milk or substances conforming to the standards by this act for malted milk shall not constitute an adulteration, nor shall anything in this act be construed to prevent the sale, furnishing or serving of malted milk in connection with milk or other milk products, or separately: Provided, the same be sold, furnished or served as and for malted milk and not as pure milk. (Id. § 6212.)

107. Skimmed Milk to be Labeled.—No person, firm or corporation shall sell, exchange, offer or expose for sale, furnish or deliver any milk from which the cream shall have been removed or which does not contain 3.25 per cent milk fat, unless the same be sold, offered or exposed for sale, furnished and delivered as and for skimmed milk, nor unless there shall be attached to the outside of any bottle, can, package, vessel or container in which the same is contained, a tag upon which shall be printed in black letters at least one inch high the words "Skimmed Milk." (Id. § 6213.)

108. Hotels, Etc., Serving Skimmed Milk.—No owner, keeper or manager of any hotel, restaurant, boarding house, eating house, or other place where meals are served or sold for compensation or food is sold to be consumed on the premises, shall sell, serve or furnish either as a part of or in connection with any meal or food served, sold or furnished therein, any skimmed milk unless there shall be at all times be kept and conspicuously displayed in the room where such meals or food is served, sold or furnished, and in full view of the public, a durable sign with the words "Skimmed Milk Sold Here" printed or painted thereon in letters at least one inch high. (Id. § 6214.)

109. Cooling of Milk.—All milk shall be cooled in the dairy where it is produced to a temperature of not more than fifty-five degrees Fahrenheit within thirty minutes after the same is drawn from the cows, and shall not before being delivered to the milk plant, creamery, cheese factory, factory of milk products, or other place where the same is to be distributed, bottled, pasteurized or manufactured be permitted to reach a temperature above sixty degrees Fahrenheit, and all such milk shall thereafter be maintained at a temperature of not exceeding fifty degrees Fahrenheit until delivered to the consumer: Provided, nothing in this section shall be deemed applicable to milk or cream while being subject to the process of pasteurization. (Rem. Supp. 1923, § 6215.)

110. Bottling in Open Air Prohibited.—No person, firm or corporation shall bottle, any milk, skimmed milk, buttermilk or cream in the open air or in, or upon any wagon, automobile, cart or other vehicle, or in any building, structure or room other than a milk room, creamery, milk plant, or other place where milk is regularly kept and stored and which is kept and maintained in a sanitary condition within the meaning of this act, or transfer the same from one container to another in the open air or upon any such wagon, automobile, cart or other vehicle. (Rem. C. S. 1922, § 6216.)

111. Milk Wagons to Display Owner's Address.—All wagons, automobiles, carts and other vehicles, from which milk, skimmed milk, buttermilk, cream, butter, ice cream or ice milk is sold, marketed, peddled or delivered shall have the name and address of the owner thereof plainly painted thereon, and on both sides thereof, in letters not less than three inches in height and not less than one and one-half inches in width. (Id. § 6217.)

112. Removal of Milk Containers From Quarantine.—No person, firm or corporation shall remove from any dwelling house, or other place, in which any contagious or infectious disease exists and which has been quarantined by the health officer of any city, county or other municipality, any bottles or other containers which

have been used for, or which are to be used for containing or storing milk, skimmed milk, buttermilk, cream, ice cream, or ice milk while such dwelling house, or place is subject to quarantine, without first obtaining the permission of such health officer. (Id. § 6218.)

113. Illegal Designation as "Certified" Milk.—No person, firm or corporation shall sell, exchange, offer or expose for sale as certified milk, cream or other milk product, or under any name or designation of which the word "certified" is a part, any milk, cream, milk product, or other substance not certified by the health officer of the city or by the health officer or county medical society of the county where the same is produced, manufactured or sold, according to the rules and regulations demanded by the American Association of Medical Commissions. (Id. § 6219.)

114. Ice-cream Standards.—No owner, manager or keeper of any hotel, restaurant, boarding house, eating house, or other place where meals are served for compensation or food is sold to be consumed therein, shall sell, serve or furnish either as a part of any meal sold, served or furnished therein, or otherwise, any ice cream, nut ice cream, fruit ice cream or ice milk or any substance resembling ice cream or ice milk which does not conform to the standards and requirements prescribed by this act. (Id. § 6220.)

115. Homogenized and Emulsified Cream.—Nothing in this act shall be construed to prevent the use of fresh, wholesome, unsalted butter and skimmed milk or other dairy product, homogenized or emulsified and used in the place of cream: Provided, that the product shall be labeled and sold or served as homogenized cream or emulsified cream, and unless the person served therewith be distinctly informed at the time served of the true nature and character thereof. (Id. § 6221.)

116. Sterilized Containers.—No person, firm or corporation shall fill any bottle or other commercial container with milk, skimmed milk, buttermilk, cream, ice cream, or ice milk untill such bottle or other container has been cleansed and sterilized with live steam or boiling water. (Id. § 6222.)

117. Wagon Awnings Required.—Every person, firm or corporation using in the sale, gathering or distribution of milk, skimmed milk, buttermilk, cream, ice cream or ice milk, any wagon, automobile, cart, or other vehicle, shall between the first day of May and the thirtieth day of September in each year, have and keep over such wagon, automobile, cart, or other vehicle a covering of canvas, or other material, so arranged and of such quality and thickness as to adequately protect the contents of such wagon, automobile, cart or other vehicle from the heat of the sun. (Id. § 6223.)

118. Use of Adulterated Milk.—No person, firm or corporation shall knowingly sell, exchange, or expose or offer for sale, for human consumption any butter, cheese or condensed milk made or manufactured from any milk which is adulterated within the meaning of this act: Provided, however, that nothing in this section shall prevent the use of milk from cows that have reacted to a tuberculin test in the manufacture of butter, cheese or condensed milk when such cow or cows exhibit no physical symptoms of disease, and such milk is pasteurized or sterilized as required by the provisions of this act and a permit therefor has been obtained from the Department of Agriculture, or from an inspector thereof: Provided, further, that the use of rennet, lactic acid or pepsin in the manufacture of cheese and the use of harmless coloring or flavoring matter shall not be deemed a violation of this section. (Id. § 6224.)

119. Use of Words "Washington Creamery Butter"—"Reworked Butter."—No person, firm or corporation shall use the words "Washington Creamery Butter" upon any butter, or imitation thereof, or upon any product, substance or compound resembling butter, or upon any box, package, wrapper, or other container thereof, as a brand, emblem or trade-mark of such butter, imitation, product, substitute or compound, and no person, firm or corporation shall manufacture, sell or offer for sale or have in his possession with intent to sell butter known as reworked butter, unless the package in which the butter is sold has marked on the side of it the words "Reworked Butter" in capital letters one inch high and one-half inch wide with ink which is not easily removed. (Id. § 6225.)

120. Branding Cheeses.—Every person, firm or corporation who shall manufacture any cheese shall at the place of manufacture, and before selling or removing such cheese therefrom, distinctly and durably brand such cheese on the bandage of every such cheese and on the box, package or container in which every such cheese shall be packed or contained, with the name and address of the manufacturer and with words "Full Cream Cheese," "Half Skim Cheese," "Quarter Skim Cheese" or "Skim Cheese," according to the percentage of milk fats and milk solids contained in any such cheese and the definitions and standards established by this act. Such name and address and such words shall be printed in letters of plain uncondensed Gothic type and not less than one-half inch in height and in such a manner that such brand can-

not be readily obliterated or erased. Failure to brand any cheese and the selling of any such cheese not so branded, as provided in this section, shall constitute a violation of this act upon the part of the manufacturer and on the part of every person selling, furnishing, exchanging or delivering the same: Provided, however, that the provisions of this section shall not be construed to apply to cheeses commonly known as "Edam," "Pineapple," "Brickstein," "Limburger," "Swiss" or to other hand-made cheeses not made by ordinary cheddar process. (Id. § 6226, as amended L. 1927, c. 192, § 17.)

121. Unbranded Cheeses.—The vending, exposing or offering for sale or sale, furnishing or exchange of any cheese not branded according to the provisions of section 6226 of this act shall constitute a violation of this act on the part of the person vending, exposing, selling, furnishing, exchanging or offering such article or product. (Rem. C. S. 1922, § 6227, as amended L. 1927, c. 192, § 18.)

122. Adulterated Products.—No person, firm or corporation shall manufacture, sell, offer or expose for sale, furnish, serve or deliver to any other person, firm or corporation for human consumption any milk, cream, butter, cheese, ice cream, ice milk, condensed milk, or other milk product which is adulterated within the meaning and intent of this act, or which shall have been prepared from any milk product that shall be or shall have been adulterated within the intent and meaning of this act. (Rem. C. S. 1922, § 6228.)

123. Adulteration—What Constitutes.—All milk and milk products which do not conform to the definitions and standards set forth in section 6164* shall be deemed to be adulterated within the intent and meaning of this act. (Id. § 6229.)

124. Addition of Foreign Substances.—No persons, firm or corporation shall add to any milk, cream or condensed milk any gelatine, gum or other substance for the purpose of increasing the apparent richness of such milk, cream or condensed milk: Provided, however, that nothing in this act shall be construed as prohibiting the use of harmless coloring matter and common salt (sodium chloride) in butter or cheese, or the use of harmless coloring and flavoring matter in ice cream and ice milk, nor the use of rennet, lactic acid or pepsin in the process of manufacturing cheese. (Id. § 6230.)

125. Addition of Water.—All milk, skimmed milk, buttermilk or cream which is reduced, altered or changed in any respect by the addition of water or other substance, shall be deemed to be adulterated within the meaning of this act. (Id. § 6231.)

126. Impure Milk, What Constitutes.—Any milk which shall not be free from foreign substances, coloring matter or preservatives, pus cells or blood cells or which contains more than 100,000 bacteria or germs of all kinds to the cubic centimeter or which has been infected by or exposed to any contagious or infectious disease, shall be deemed to be impure, unwholesome and adulterated within the meaning of this act.

Any pasteurized milk shall be considered unlawful that contains in excess of 25,000 bacteria per cubic centimeter in the finished product. (Id. § 6232, as amended L. 1927, c. 192, § 19.)

127. Unlawful Designation as "Pasteurized."—No person, firm or corporation shall use the word "pasteurized," or any derivative thereof, in connection with the sale, designation, advertising, labeling, billing or offering for sale of any milk, cream, skimmed milk, ice cream, ice milk, butter, buttermilk, cheese, or other milk products unless the same and all products of milk therein contained or used in the manufacture thereof shall consist exclusively of milk, skimmed milk or cream which has been treated by the process of pasteurization as defined in section 6174.† (Rem. C. S. 1922, § 6233.)

128. Effacing or Removal of Labels.—No person shall efface, erase, cancel, obliterate or remove any mark, tag, label, sign, brand, word or lettering or other designation required by this act, with intent thereby to mislead, defraud or deceive, or for the purpose of concealing the true character or composition of any product, substance or compound, or for the purpose of violating any of the provisions of this act. (Id. § 6234.)

129. Bottling Regulations.—No person, firm or corporation shall bottle any milk, skimmed milk or cream, designed or intended for sale within the State, or transfer such milk, skimmed milk or cream from any can, bottle or container to any other can, bottle or container, in any place, building or structure not a milk room, milk plant, creamery or other place used exclusively for bottling, handling, storing or processing milk. Such milk room, milk plant, creamery or other place shall be a room or place used exclusively for bottling, handling, storing or processing milk, cream or other milk products and shall not be used for any other purpose whatsoever, and shall not be

*See No. 60.
†See No. 69.

located in or be a part of any residence, dwelling house, barn or poultry house, and if contained in any building or structure in which any trade, business or occupation other than that of bottling, handling, storing or processing milk is conducted or carried on, such milk room, milk plant, creamery or other place shall be separated from the portion or portions of such building or structure in which such other trade, occupation or business is carried on, by a tightly sealed or plastered partition constructed in such a manner as to meet with the approval of and comply with the regulations of the Department of Agriculture. Every such milk room, milk plant, creamery or place shall be provided with suitable windows or other openings permitting the entrance of light and air from outside such building or structure without passing through any other portion thereof, and such milk room or other place shall be otherwise constructed, kept and maintained in a sanitary condition and manner within the intent and meaning of section 6166.* (Id. § 6235, as amended L. 1927, c. 192, § 20.)

130. Regulatory Duties of Department.—It shall be the duty of the department of Agriculture to enforce the provisions of this act, and said department is hereby empowered and authorized to make, issue and promulgate from time to time such rules and regulations to carry out the provisions of this act for the enforcement thereof and for the regulation and management of dairies, creameries, milk plants, cheese factories, condensed milk factories and other factories of milk products, and for the regulations of the sale, serving, vending and delivery of milk, cream, butter, cheese, ice cream, ice milk, and other milk products, and for the issuing, granting and revocation of licenses, as it shall deem necessary. (Rem. C. S. 1922, § 6237.)

131. Obstruction of Officials.—No person, firm or corporation shall interfere with, prevent, hinder or obstruct any officer, agent or inspector of the Department of Agriculture, or any officer or inspector of the State Board of Health, or of any city or county within such city or county, in the discharge of his or her duty, or from entering any place which such officer, agent or inspector is entitled by law to enter, or from making any inspection and examination of any such place or any article, substance or compound found therein or from taking and removing such sample of any such article, compound or substance as such officer, agent or inspector shall deem necessary to be taken, or from examining any book or record required by the provisions of this act to be kept in any such place, or to be open for the inspection of such department, or from making and removing copies thereof. (Id. § 6238.)

132. Penalty for Violations of Act.—Any person who shall violate or fail to comply with the provisions of this act, or any section or provision or part of a section or provision thereof, shall, unless otherwise herein provided, be guilty of a misdemeanor. (Id. § 6239.)

133. Prosecutions.—It shall be the duty of the prosecuting attorney of each and every county in this State, upon application of the Department of Agriculture or of any officer, agent or inspector thereof, to attend to the prosecution in the behalf of the State of Washington, of any and all persons whom he shall have reason to believe to have been guilty of any violation of this act in such county. (Id. § 6240.)

134. Jurisdiction of Courts.—Any superior court of this state and any municipal court or justice of the peace shall have jurisdiction of all prosecutions and all proceedings for forfeiture and sale arising under this act. (Id. § 6241.)

135. Combinations to Fix Prices.—No two or more persons, companies or corporations shall by agreement or understanding, tacitly, or otherwise, fix or attempt to fix, the price at which butter, cheese, milk or other products herein mentioned shall be bought or sold; provided, this shall not apply to ordinary purchases or sales between buyer and seller. (Id. § 6242.)

136. Assistance of Law Officers.—It shall be the duty of the Attorney-General of the State, and of the prosecuting attorney in any county, when called upon by the Department of Agriculture, to render any legal assistance in his power to execute the laws and prosecute violations of this act: Provided, however, that the Department of Agriculture may employ special counsel when necessary. (Id. § 6243.)

137. Disposition of Fines.—One-half of all fines collected from prosecutions under the provisions of this chapter shall be paid forthwith to the State Treasurer and be placed to the credit of the general fund, and the remainder shall be forthwith paid into the treasury of the county in which the conviction is had. (Id. § 6244.)

138. Declaration of Police Power.—It is hereby declared that this act is enacted as an exercise of the police power of the State of Washington for the preservation of the public health and each and every section thereof shall be construed as having been intended to effect such purpose and not as having been intended to affect any regulation or restraint of commerce between the several States which may be [by] the Constitution of the United States of America have been reserved to the Congress thereof. (Id. § 6245.)

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*See No. 62.

139. Act Cumulative.—Nothing in this act shall be construed as modifying, altering or repealing sections 6259 to 6265, infra, or any section, part or provision thereof. (Id. § 6247.)

140. Counterfeiting Butter Prohibited.—No person, by himself, his agents or his servants, shall render or manufacture, sell, offer for sale, expose for sale, or shall have in his possession with intent to sell or serve for patrons, guests, boarders or inmates of any hotel, eating-house, restaurant, public conveyance or boarding house or public or private hospital, asylum, school or eleemosynary or penal institution, any article, product or compound made wholly or partly out of any fat, oil or oleaginous substance or compound thereof, not produced directly and wholly at the time of manufacture from unadulterated milk or the cream from the same, with or without harmless coloring matter, which shall be in imitation of yellow butter produced from pure, unadulterated milk or the cream from the same: Provided, that nothing in this chapter shall be construed to prohibit the manufacture and sale of oleomargarine in a separate and distinct form, and in such manner as will advise the consumer of its real character, free from coloration or ingredient that causes it to resemble butter, or the use of the same by patrons, guests, boarders or inmates of any hotel, eating house, restaurant, public conveyance or boarding house, when signs are displayed in a conspicuous place that may be easily read from any part of the room. (Id. § 6248.)

141. Disposition of License Fees, Etc.—All moneys received for licenses or from the sale of any and all goods confiscated by the Dairy Commissioner under this chapter shall be received by said commissioner and deposited the first of every month with the State Treasurer, to be placed in the general fund. (Id. § 6249.)

142. Possession Prima Facie Proof of Guilt—Seizure.—Possession by any person or firm of an article or substance the sale of which is prohibited by this act shall be considered prima facie evidence that the same is kept by such person or firm in violation of the provisions of this chapter, and the commissioner shall be authorized to seize upon and take possession of such articles or substances, and upon the order of any court which has jurisdiction thereof, he shall sell the same for any purpose other than to be used for food, the proceeds to be paid to the State Treasurer and placed to the credit of the general fund. (Id. § 6250.)

143. "Renovated Butter"—Must be Plainly Marked.—No person, firm or corporation shall manufacture, sell or offer for sale or have in his possession with intent to sell butter known as process butter, unless the package in which the butter is sold has marked on the side of it the word "renovated butter," in capital letters one inch high and one-half inch wide with ink which is not easily removed: Provided, that it shall be unlawful for any retailer to sell said butter unless a card is displayed on the package from which he is selling butter with the following words printed thereon so that it may be easily read by the purchaser "renovated butter," or if it is sold in packages on which a wrapper is used the words "renovated butter" shall be plainly printed on each and every wrapper: Provided, further, that all process butter shipped from other States shall be subject to the same regulations as provided in this section. Whoever violates the provisions of this section shall be deemed guilty of a misdemeanor, and upon conviction shall be fined for each and every offense not less than twenty-five dollars ($25) nor more than one hundred dollars ($100) or by imprisonment for not less than one month or more than six months, or by both such fine and imprisonment. (Id. § 6251.)

144. Brands—Cancellation Where Butter Inferior.—The commissioner is hereby authorized and directed to cancel all State brands issued to creameries where the butter manufactured does not score ninety points. (Id. § 6252.)

145. Butter Scores.—The commissioner or instructor shall have the power to score the butter and the score made by them shall be final. (Id. § 6253.)

146. Duty of Commissioner—Enforcement of Law.—It shall be the duty of the Dairy and Food Commissioner to devote his entire time and attention to the dairy interests of the State of Washington, to enforce all laws that now exist or that may be hereinafter enacted in this State regarding the production, manufacture or sale of dairy produce, and personally to inspect any articles of milk, butter, cheese, or imitations thereof, made or offered for sale within the State, which he may suspect or have reason to believe to be impure, unhealthful, adulterated or counterfeit; and to prosecute or cause to be prosecuted any person or persons, firm or firms, corporation or corporations engaged in the manufacture or sale of any adulterated or counterfeit dairy products contrary to law. (Id. § 6255.)

147. Analysis—Duty of Chemists of State Institutions.—It shall be the duty of the chemist of any State institution to correctly analyze, without extra compensation, and without other charge to the State than necessary traveling expenses, any and all substances that the Dairy Commissioner may send to any of them and to report to him without unnecessary delay the result of any analysis so made, and when called

upon by said Dairy Commissioner, any such chemist shall assist him in prosecuting violators of the law, by giving testimony, either expert or otherwise. (Id. § 6256.)

148. Powers of Commissioner and Deputies—Seizure—Samples.—The dairy and Food Commissioner or his deputies shall have power, in the performance of their official duties, to enter any creamery, cheese, or condensed milk factory, store, salesroom, warehouse, or any place or building where he has reason to believe that any dairy products or imitations of dairy products are kept, made, prepared, sold, or offered for sale or exchange; and to open any cask, tub, package or receptacle of any kind, containing or supposed to contain any such article, and to examine, or cause to be examined and analyzed, the contents thereof; he may seize or take any such article for analysis: Provided, that if the person from whom such sample is taken shall request him to do so, he shall at the same time and in the presence of the person from whom such property was taken, seal up two samples of the article seized or taken, one of which shall be for examination or analysis under the direction of said commissioner, and the other of which shall be delivered to the person from whom the article is taken. (Id. § 6257.)

149. Certain Persons Must Assist Commissioner.—All clerks, bookkeepers, express agents, railroad officials, employees, or employees of common carriers shall render to the Dairy and Food Commissioner and his deputies all the assistance in their power in tracing, finding, or discovering the presence of any article named in this chapter. Any refusal or neglect on the part of such clerks, bookkeepers, express agents, railroad officials, employees, or employees of common carriers to render such friendly aid, shall be a misdemeanor, punishable by fine of not less than twenty-five ($25) nor more than one hundred dollars ($100), or by imprisonment for not less than one month or more than six months, or by both such fine and imprisonment for each and every offense. (Id. § 6258.)

150. Registration of Dealers' Brands—Right to Marks.—Any person, firm or corporation engaged in the manufacture, sale or transportation of milk, cream, ice cream or any other dairy product may adopt a mark or marks of ownership to be stamped, marked or otherwise affixed to any can, tub or case used in the manufacture, sale or transportation of any such product and may upon the payment of a fee of fifteen dollars ($15.00) file an application for the exclusive right to use such mark or marks, in the office of the Department of Agriculture, which application shall contain the name and address of the applicant, a description of the mark or marks proposed and the use to be made of the cans, tubs or cases by such applicant. The Department of Agriculture shall refuse such application if such mark or marks of ownership shall be the same or so nearly similar to any mark or marks of ownership theretofore registered as to be misleading. Otherwise such application shall be granted and such fact, together with a description of the mark or marks of ownership, shall be entered in a register to be kept by said Department of Agriculture: Provided, that a mark or marks of ownership must be stamped, embossed or affixed by means of a metal plate, or in the case of wooden containers must be burned therein, and that upon the sale of any cans, tubs or containers so registered the mark or marks of ownership of said person firm or corporation shall become void: And provided, further, that it shall be unlawful for any person, other than the registered owner thereof, to have or keep in his possession for the purposes of sale, barter or use, any such branded, stamped or marked can, tub or container, and the possession of any such branded, stamped or marked cans, tubs or containers by any junk dealer or vendor, shall be prima facie evidence of possession for the purpose of sale, barter or use, and in violation of this act, and when it shall come to the knowledge of the Director of Agriculture or his duly authorized agent that any such branded, stamped or marked can, tub or container is in the possession of any person, firm or corporation other than the registered owner thereof, the said Director of Agriculture or his authorized agent shall have the power to immediately seize and hold all such cans, tubs and containers until it shall be established to the satisfaction of the said Director of Agriculture or his duly authorized agent that such possession is in accordance with the provisions of this act. The said Director of Agriculture or his authorized agent shall upon the establishment of the right of possession of such cans, tubs or containers release the same to the person, firm or corporation entitled to the possession thereof. (Rem. Supp. 1923, § 6259, as amended L. 1927, c. 192, § 22.)

151. Character of Marks.—The mark or marks of ownership so selected and adopted may consist of a name, design or other mark or marks to be used upon the cans or tubs of the applicant. (Rem. C. S. 1922, § 6260.)

152. Prohibition of Use by Others.—No person, firm or corporation shall use or adopt any name, design, mark or marks registered by any other person, firm or corporation under the provisions of this act. (Id. § 6261.)

153. Other Use of Cans or Tubs.—No person shall use any can, tub or case marked as herein provided, for any other purpose than the transportation of the

products herein mentioned to or from the rightful owner of said cans, tubs or cases. (Id. § 6262, as amended L. 1927, c. 192, § 22-a.)

154. Defacement of Marks.—No person other than the owner thereof shall deface any registered mark upon any can, tub or case nor remove the same. (Rem. C. S. 1922, § 6263, as amended L. 1927, c. 192, § 22-b.)

155. Enforcement.—It shall be the duty of any person, firm or corporation receiving milk, cream or other dairy products in cans, tubs or cases, bearing marks which have been registered with the Department of Agriculture, from a shipper or other source, to return such cans, tubs or cases to the rightful owners. Failure to do so shall be considered a violation of this act. The inspectors of the Department of Agriculture shall seize cans, tubs and cases not rightfully used and return them to the person, firm or corporation in whose name they are registered. Any expense in transporting such seized cans, tubs or cases shall be paid by the owner of the cans, tubs or cases: Provided, that the Department of Agriculture, or any person, firm or corporation who shall return such registered cans, tubs or cases shall not be liable for any loss of cans, tubs or cases lost in transportation. (Rem. C. S. 1922, § 6264, as amended L. 1927, c. 192, § 23.)

156. Penalty.—Any person, firm or corporation who shall violate any of the provisions of this act shall be guilty of a misdemeanor. (Rem. C. S. 1922, § 6265.)

157. Act Cumulative.—Nothing in this act shall be construed as effecting or being intended to effect a repeal of sections 6140 to 6154,* both inclusive, of this code, or of any of such sections, or of any part or provision of any such sections, and if any section or part of a section in this act shall be found to contain, cover or effect any matter, topic or thing which is also contained in, covered in or effected by said sections, or by any of them, or by any part thereof, the prohibitions, mandates, directions, and regulations hereof, and the penalties, powers and duties herein prescribed shall be construed to be additional to those prescribed in such sections and not substitution therefor. And nothing in this act shall be construed to forbid the importation, transportation, manufacture, sale, or possession of any article of food which is not prohibited from interstate commerce by the laws of the United States or rules or regulations lawfully made thereunder, if there be a standard of quality, purity and strength therefor authorized by any law of this State, and such article comply therewith and be not misbranded. (Id. § 6266.)

158. Milk Inspectors—Qualifications—Salary.—The board of health or health officer of any city of the first class of the State of Washington shall annually appoint one or more inspectors of milk for their respective cities. All inspectors hereafter appointed shall be graduates of a recognized dairy school or shall have completed a course in dairying in a college where such instruction is given. Each inspector shall be sworn before entering upon the performance of his official duty and shall publish a notice of his appointment for two weeks in a newspaper published in said city, and shall be under the direction and supervision of the board of health of such city. He shall receive such compensation as the city council of such city may determine. (Id. § 6267.)

159. Office and Records—Analysis of Samples.—Such inspector shall keep an office and shall record in books kept for the purpose, the names and places of business of all persons engaged in the sale of milk within the limits of said city. He may with the approval of the city council employ collectors of samples of milk who shall be sworn before entering upon their duties. The inspectors or collectors may enter all places in which milk is stored or kept for sale and all carriages used for the conveyance of milk and may take therefrom samples for analysis. They shall upon request made at the time such sample is taken, seal and deliver to the owner or person from whose possession the milk is taken, a portion of each sample, and a receipt therefor shall be given to the inspector or collector. Inspectors shall cause such samples to be analyzed or otherwise satisfactorily tested as to its quality and purity. Such sample shall be kept by such inspector under ice so that the temperature of said sample shall not be over the degree forty degrees Fahrenheit until such analysis is made, and shall record and preserve as evidence the result thereof, and no evidence of the result of such analysis or test shall be received if the inspector or collector upon request refuses or neglects to seal and deliver a portion of the sample taken as aforesaid, to the owner or person from whose possession it is taken. (Id. § 6268.)

160. Permits to Sell Milk—Unlawful Sale—Penalty.—Whoever in such city in which an inspector of milk is appointed conveys milk in carriages or otherwise for the purpose of selling it in such city shall annually before the first day of June obtain a permit from the inspector of milk of such city to sell within the limits thereof, said permit to be furnished without cost upon the production of a license from the State Dairy and Food Commission. A permit shall be issued only in the name of the

*See Nos. 3a-14.

owner of the carriage or other vehicle. They shall for the purposes of this chapter be conclusive evidence of ownership and shall not be sold, assigned or transferred without the consent of the city council of such city. Each permit shall contain the number thereof, the name, residence, place of business, number of carriage or other vehicle used by the person obtaining a permit, the name of every driver or other person employed by him in carrying or selling milk. Each person obtaining a permit shall before engaging in the sale of milk cause his name, the number of his permit and his place of business to be legibly placed on each side of all carriages or vehicles used by him in the conveyance and sale of milk, and he shall report to the inspector any change of driver or other person who may be employed by him occurring during the term of his permit. And it shall be unalwful for any person under an assumed name or representing himself to be the person named in permit above mentioned to engage in the business of selling or conveying milk or cream, and upon conviction thereof shall be subject to the penalty prescribed in this section.

Whoever without first being permitted to sell milk or dispose of it for sale from carriages or other vehicles or has in his custody or possession with intent to sell, or whoever violates any of the provisions of this section, shall for the first offense be punished by a fine of not less than twenty-five dollars nor more than one hundred dollars, and for a second offense by a fine of not less than fifty dollars, nor more than three hundred dollars, and for a subsequent offense by a fine of fifty dollars and by imprisonment for not less than thirty days nor more than sixty days. (Id. § 6269.)

161. Registration of Places of Business—Penalty.—Every person before selling milk or cream or offering it for sale in booth, store, stand or market place in any such city in which an inspector of milk is appointed, shall register in the book of such inspector his name and proposed place of sale.

Whoever refuses or neglects to register shall be punished by a fine of not less than twenty-five dollars nor more than one hundred dollars. (Id. § 6270.)

162. Selling Impure Milk—Penalty.—Whoever by himself or by his agent or servant or as the agent or servant of another person sells, exchanges or delivers, or has in his custody or possession with intent to sell, exchange or deliver or expose or offer for sale or exchange, impure, infected or adulterated milk or milk to which water or any foreign substance has been added, or milk produced from a cow which has been fed on refuse or unwholesome food, or from a sick or diseased cow, or from a cow kept in an unclean shed, barn or barnyard, or from a cow within fifteen days before or five days after parturition or in any case before fever has left said cow, as pure milk, or milk from which the cream or a part thereof has been removed, and whoever sells, exchanges or delivers or has in his custody or possession with intent to sell, exchange or deliver, skimmed milk containing less than nine and three-tenths per cent of milk solids, exclusive of fat, shall for the first offense be punished by a fine of not less than fifty dollars nor more than one hundred dollars, and for a second offense by a fine of not less than one hundred dollars nor more than three hundred dollars, and for a subsequent offense by a fine of fifty dollars and by imprisonment for not less than sixty days nor more than ninety days. (Id. § 6271.)

163. Definition of Standard Milk—Penalty.—In prosecutions under the provisions of sections 6270 and 6271 of this chapter, milk, normal and of standard quality, is defined as milk, pure, healthy, wholesome and uninfected, free from any foreign substance whatsoever, including coloring matter or preservatives, free from all pus cells, or blood cells, and which does not contain more than 100,000 bacteria or germs of all kinds to the cubic centimeter, and which has not been infected by or exposed to the infections of any contagious or infectious disease and which comes from cows healthy and free from all kinds of disease and kept in a healthy, sanitary condition and fed upon wholesome feed and which contains not less than 11.75 per cent of milk solids and not less than 8.50 per cent of solids exclusive of fat, or not less than 3.25 per cent of fat. Any dealer therein who shall sell milk not normal and up to said standard shall be subject to prosecution and fine as provided in section 6271 of this act. (Id. § 6272, as amended L. 1927, c. 192, § 24.)

164. Selling Milk Not of Standard Quality—Penalty.—Whoever by himself or by his servant or agent or as the servant or agent of another, sells, exchanges or delivers, or has in his custody or possession with intent to sell, exchange or deliver milk which is not of good standard quality, free from infection and from contamination, by any unwholesome substance or substances, shall for the first offense be punished by a fine of not less than fifty dollars, and for the second offense by a fine of not less than one hundred dollars nor more than two hundred dollars, and for a subsequent offense, by a fine of fifty dollars and by imprisonment for not less than sixty days nor more than ninety days. (Rem. C. S. 1922, § 6273.)

165. Sale of Cream Below Standard—Penalty.—No sweet cream shall be sold, offered for sale, exchanged, delivered or shipped, transported or carried for pur-

poses of sale, exchange or delivery, that contains less than eighteen per cent of butterfat, or which contains any pus cells, blood cells or more than 100,000 bacteria or germs of all kinds to the cubic centimeter, and any person who shall adulterate cream or reduce or change it in any respect by the addition of water or any foreign substance with the intention of selling or offering the same for sale or exchange, shall be punished by a fine of not less than $50.00 nor more than $100.00, or imprisonment for not less than thirty nor more than sixty days. (Id. § 6274, as amended L. 1927, c. 192, § 25.)

166. Counterfeiting Seal—Tampering With Samples.—Whoever makes or causes to be made, uses or has in his possession an imitation or counterfeit of seal used by an inspector of milk, collector of samples or other person engaged in the inspection of milk, and whoever changes or tampers with the sample taken or sealed as provided in section 6268, shall be punished by a fine of one hundred dollars or imprisonment for not less than three nor more than six months. (Rem. C. S. 1922, § 6275.)

167. Willful Connivance of Inspector—Penalty.—An inspector of milk or his servant or agent who willfully connives at or assents to the violation of the provisions of this chapter, or whoever hinders, obstructs or interferes with an inspector of milk or his agent, in the performance of his duty, shall be punished by a fine not less than fifty dollars nor more than one hundred dollars, or by imprisonment for not less than thirty nor more than sixty days. (Id. § 6276.)

168. Producers—Liability to Prosecution.—A producer of milk shall not be liable to prosecution for the reason that the milk produced by him is not of good standard quality, unless such milk was taken upon his premises or while in his possession or under his control by an inspector or by a collector of samples or by an agent, and a sealed sample thereof given to him. (Id. § 6277.)

169. Results of Analysis Sent to Dealer.—An inspector of milk or a collector of samples or other State or city officer who obtains a sample of milk for analysis, shall within ten days after obtaining the result of the analysis, send said result to the person from whom the sample was taken or to the person responsible for the condition of such milk. (Id. § 6278.)

170. Inspector Shall Prosecute—Costs.—An inspector shall make a complaint for a violation of any of the provisions of any of the sections of this chapter upon the information of any person who lays before him satisfactory evidence by which to sustain such complaint, and the cost of the prosecution for the violation of any of the provisions of this chapter shall be borne by the city in which said inspector is appointed. (Id. § 6279.)

171. Analysis by Chemists at State Institutions.—It shall be the duty of the chemist of any State institution to correctly analyze without extra compensation and without other charge to cities having milk inspectors any and all cream or milk that such inspector may send to them and to report to said inspector without unnecessary delay the result of any analysis so made: Provided, however, that analysis as to standard of quality of milk and for adulteration, contamination and unwholesomeness may be made by the bacteriologist or chemist employed by any such city, which analysis shall have the same force and effect as though made by an official of a State institution or said chemist. (Id. § 6280.)

172. Penalty.—Whoever violates any of the provisions of the six preceding sections shall be punished by a fine of not less than twenty-five dollars for the first offense and not more than one hundred dollars for each subsequent offense. (Id. § 6281.)

173. Sale in Bottles—Label.—Hereafter no bottled milk or bottled cream shall be offered for sale, sold or otherwise disposed of in cities of the first class in the State of Washington, unless the caps on all such bottles containing the milk or cream indicate and have inscribed thereon the name of the dairy, person, firm or corporation offering the same for sale. (Id. § 6282.)

174. Penalty.—Any person, firm or corporation in the State of Washington selling or offering for sale any bottled milk or bottled cream which do not have inscribed on the caps of the bottles the name of the dairy, person, firm or corporation offering the same for sale, shall be guilty of a misdemeanor. (Id. § 6283.)*

175. Substituting Label—Penalty.—Any person, firm or corporation in the State selling or offering for sale any bottled milk or bottled cream with caps containing the name of some person, firm or corporation other than the owner of the same, for the purpose of inducing or securing a sale, or in any other way wrongfully or fraudulently brand the same as to name, or otherwise, shall be guilty of a misdemeanor. (Id. § 6284.)

NOTE: See also Nos. 17 et seq., 232b-232c, 352, 356, and 362.

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*The title to this act limits the operation of this and the next section to cities of the first class. (Remington.)

Eggs.

176. Classifying and Labeling Eggs.—For the purposes of this act, eggs shall be classified and branded as follows:

(a) Cold storage eggs shall include all eggs which have been in cold storage for more than ninety days, and before being offered for sale shall be branded or stamped with the words "storage."

(b) Preserved eggs shall include eggs in which the natural deterioration has been prevented or retarded by any means, process or treatment whatsoever, and before being offered for sale shall be branded or stamped with the word "preserved."

(c) All eggs imported into the State of Washington from foreign countries shall be sold as such. The case or container in which they are shipped shall have the words "foreign eggs" displayed thereon in letters two inches high. All retailers of said eggs shall sell them from the container in which he received them and shall inform each purchaser that said eggs are foreign eggs. All restaurants, hotels, cafes, bakeries and confectioners using or serving foreign eggs must place a sign in letters not less than four (4) inches in size in some conspicuous place where the consumer entering their place of business can see it, to read "we use foreign eggs."

(d) Incubated eggs shall include all eggs which have been subjected to incubation whether natural or artificial for more than forty-eight hours and it shall be unlawful to expose or offer for sale or sell incubated eggs. (Rem. C. S. 1922, § 6155.)

177. Branding by Venders.—Every person, firm or corporation having in his possession for the purpose of sale or offering for sale or selling any eggs shall classify and brand the same with the classification provided for in section 6155. (Id. § 6156.)

178. "Branded" and "Stamped" Defined.—The term "branded" or "stamped" as used in this act shall mean a mark, imprint or impression made by means of a rubber stamp, stencil or other method upon the package containing eggs offered for sale or upon the receptacle from which eggs are offered for sale and such brand shall be legible and in Gothic letters not smaller than one inch in height, except foreign eggs, and they shall be marked as provided for in paragraph (c) of section 6155. (Id. § 6157.)

179. "Persons" Defined.—The word "person" as used in this act shall mean and include individuals and employees or agents of individuals, firms and members of firms and their employees and agents, corporations and officers of corporations and their employees and agents. (Id. § 6158.)

180. Penalty.—Every person who shall violate any provision of this act shall be guilty of a misdemeanor. (Id. § 6159.)

181. Branding of Imported Eggs.—All eggs imported from foreign countries and offered for sale in the State of Washington shall be sold as such. Each egg offered for sale in this State shall be marked, branded or stamped with the name of the country in which it was produced, and such mark shall be in legible Gothic letters and in durable, indelible ink. (Id. § 6160.)

182. Broken Eggs, Containers to be Marked.—Broken eggs or eggs offered for sale in other than the original form shall be marked or branded as in section 6160, except that such mark or brand shall be stenciled on the can, container, and cover or covers in letters two (2) inches high in black face type and in durable ink or paint, and the words "Eggs From" shall prefix the mark or brand and such words shall be in similar type and ink or paint. (Id. § 6161.)

183. Rules and Regulations.—The State Commissioner of Agriculture* shall make all necessary rules and regulations to carry this act into effect, such rules and regulations shall be filed in the office of the State Commissioner of Agriculture and shall be in effect thirty (30) days after such filing. (Id. § 6162.)

184. Penalty.—Any person violating any of the provisions of this act shall be guilty of a misdemeanor and in case of second or subsequent offense shall be guilty of a gross misdemeanor. (Id. § 6163.)

Feeding Stuffs.

185. Term Defined.—The term "concentrated commercial feeding stuffs" as used in this act shall include linseed meals, coconut meats, gluten feeds, sugar feeds, dried brewer's or distiller's grain, malt sprouts, feeds made from ground cereals or by-products therefrom, including slaughterhouse waste products when sold as feeds, mixed feeds, and mixed meals made from seeds or grains, and all materials of similar

*See No. 34. This law is to be corrected accordingly.

nature used for domestic animals, condimental feeds, stock feeds, and all patented proprietary or trade stock and poultry feeds for which nutritive value is claimed, but it shall not include hay or whole seeds, unmixed meals made from entire grains of wheat, rye, barley, oats, corn, or other cereals, nor wheat flour or other flours. (Rem. C. S. 1922, § 7016.)

186. Dealer's Statement of Brand.—Before any concentrated commercial feeding stuff is sold, offered or exposed for sale in Washington, the manufacturer, importer, dealer, agent, or person who causes it to be sold or offered for sale, by sample or otherwise, within this State, shall file with the Commissioner of Agriculture* a statement that he desires to offer such concentrated commercial feeding stuff for sale in this State, and also a certificate, the execution of which shall be sworn to before a notary public, or other proper official, for registration, stating the name, brand or trade-mark under which the concentrated commercial feeding stuff will be sold, and the minimum percentage of crude fat and crude protein and maximum per cent of crude fibre (allowing one per centum nitrogen to equal 6.25 per centum of protein) which the manufacturer or person offering the concentrated commercial feeding stuffs for sale guarantees it to contain, these constituents to be determined by the methods recommended by the Association of Official Agricultural Chemists of the United States. (Id. § 7017.)

187. Packages to be Labeled Showing Amount and Analysis—Molasses and Alfalfa Mixture.—Any person, company, corporation or agent, that shall sell, offer or expose for sale, any concentrated commercial feeding stuff in this State shall state in the invoice of every bulk shipment, shall affix or cause to be affixed to every package or sample of such concentrated commercial feeding stuff, in a conspicuous place on the outside thereof, a tag or label, which shall be accepted as a guarantee of the manufacturer, importer, dealer, or agent, and which shall have plainly printed thereon, in the English language, the number of net pounds of concentrated commercial feeding stuff in the package or bulk shipment, the name, brand or trademark under which the concentrated commercial feeding stuff is sold, the name and address of the manufacturer, importer, dealer or agent, the guaranteed analysis stating the minimum percentage of crude fat and crude protein and maximum per cent of crude fibre, which shall not exceed ten per cent (10%), determined as described in section 2, and the ingredients from which the concentrated commercial feeding stuff is compounded. The agency distributing to users of such feed in less than carload lots shall deliver to the purchaser of each lot regardless of quantity sold a bill showing current analysis of such feeding stuffs: Provided, that nothing in this act shall be construed to prohibit the manufacture and sale of molasses mixed with alfalfa meal, or cut alfalfa, made from the entire alfalfa hay, not less than ninety per cent (90%) pure for first cutting and not less than ninety-five per cent (95%) pure for second and third cuttings, the crude fibre content of which mixture does not exceed thirty per cent (30%) by weight in a mixture of ten per cent (10%) molasses and ninety per cent (90%) alfalfa. In mixtures containing greater proportions of molasses than ten per cent, the maximum crude fibre content thereof shall be proportionately less. (Id. § 7018, as amended L. 1925, c. 49.)

188. Violations of Act—Official Analysis as Prima Facie Evidence.—Any person, company, corporation, or agent, that shall offer or expose for sale, or sell, any package or sample or any quantity of any concentrated commercial feeding stuff which has not been registered with the Commissioner of Agriculture, as required by section 7017, or which does not have affixed to it the tag or label required by section 7018, or which is found by analysis made by or under the direction of the chemist of Washington Agricultural Experiment Station to contain a smaller percentage of crude fat or protein or larger percentage of crude fibre than stated in the guarantee, or who shall affix a tag or label which is false or inaccurate in any respect, or who shall adulterate any concentrated commercial feeding stuff, or who shall adulterate with any substance injurious to the health of domestic animals, shall be deemed guilty of a misdemeanor, and on conviction thereof shall be fined in the sum of one hundred dollars ($100) for the first offense, and in the sum of five hundred dollars ($500) for each subsequent offense. In all litigation arising from the purchase or sale of any concentrated commercial feeding stuff, in which the composition of the same may be involved, a certified copy of the official analysis, signed by the chemist of the Washington Agricultural Experiment Station, shall be accepted as prima facie evidence of the composition of such concentrated commercial feeding stuff: Provided, that nothing in this act shall be construed to restrict or prohibit the sale of concentrated commercial feeding stuff in bulk to each other by importers, manufacturers or manipulators who mix concentrated commercial feeding stuffs for sale, or as preventing the unrestricted shipment of these articles in bulk to manufacturers or manipu-

*See No. 34. This law is to be corrected accordingly.

lators concentrated commercial feeding stuffs for sale, or to prevent the State Experiment Station, or any person or persons auhorized by the State Experiment Station, from making experiments with concentrated commercial feeding stuffs for the advancement of science in agriculture. (Rem. C. S. 1922, § 7019.)

189. Depleted Food Values Shown.—It shall be unlawful to sell, offer or expose for sale in this State, any corn, barley, oats or any other grain from which the heart, or any of the food value has been extracted, without such statement being shown on each package or bulk shipment, and on the invoice covering such grain. (Id. § 7020.)

190. Deleterious Substances Prohibited.—It shall be unlawful to include in any concentrated commercial feeding stuff, any buckwheat hulls, rice hulls, cottonseed hulls, peanut hulls, oat hulls, peanut shells, corn cobs, cocoanut shells, ground or shredded straw, sawdust, cellulose, dirt, damaged or decayed feed, mill, elevator or other sweepings or dust, marble dust, or any injurious, deleterious, or, for feeding purposes, worthless or damaged ingredient. (Id. § 7021.)

191. Samples of Feeds Offered for Sale.—The Commissioner of Agriculture, or any person deputized by him, is hereby empowered to procure from any lot, or parcel or package of concentrated commercial feeding stuff offered for sale or found in Washington, a sample quantity thereof, not to exceed two pounds, the sample to be divided in two approximately equal parts, each to be sealed, and one part to be delivered promptly to the manufacturer: Provided, that such sample shall be drawn during reasonable business hours, or in the presence of the owner of the concentrated commercial feeding stuff, or some person claiming to represent the owner. (Id. § 7022.)

192. Interference With Procurement of Samples.—Any person who shall prevent, or strive to prevent, the Commissioner of Agriculture, or any person deputized by him, from inspecting and obtaining samples of concentrated commercial feeding stuffs, as provided for in the preceding section, shall be deemed guilty of a misdemeanor, and on conviction thereof shall be fined in the sum of one hundred dollars ($100) for the first offense, and in the sum of five hundred dollars ($500) for each subsequent offense. (Id. § 7023.)

193. Rules and Regulations.—The Commissioner of Agriculture is hereby empowered to prescribe and enforce such rules and regulations relating to concentrated commercial feeding stuffs as he may deem necessary to carry into effect the full intent and meaning of this act, and to refuse the registration of any feeding stuff under a name which would be misleading as to the materials of which it is made, or when the percentage of crude fat or crude protein is below or the percentage of crude fibre is above the standards adopted for concentrated commercial feeding stuffs. (Id. § 7024.)

194. Assistance by Public Law Officers.—It shall be the duty of the State Attorney-General or the prosecuting attorneys of the several counties of this State, to cause proceedings to be commenced against any person or persons whom the Commissioner of Agriculture* shall report to have violated any section of this act, and to prosecute the same in the manner required by law. (Id. § 7025.)

NOTE: See also No. 17 et seq.

Fish.

195. Power to Inspect.—The [State Fish] Commissioner* shall have power to inspect all canneries, boats, nets, wheels, traps and all other appliances, and all proper used in catching, packing, curing, preparing or storing food or shellfish, or in the fish industry, and may enter on any property at any time for any such purpose. (Rem. C. S. 1922, § 5659.)

196. Terms Defined.—Wherever the word "salmon" occurs in this act it shall be construed to include and apply to the sockeye, silver, chinook, steelhead, chum and humpback salmon, and the so-called salmon trout and each and every species of the genus oncorhynchus commonly known as salmon. (Id. § 5667.)

197. Licensee to Make Report.— * * *

And every person, firm or corporation engaged in canning, preserving, salting, smoking, kippering, mild-curing, curing, freezing, preserving in ice or otherwise, or in buying, selling, or otherwise dealing in food or shellfish caught within the waters of the State, or in those over which it has jurisdiction, as canners, fish brokers, wholesalers, or retailers, either as principal, agent or employee, shall on the same dates and for the same periods file reports with the State Treasurer, stating the quantity in

*Now Director of Fisheries and Game. See Rem. C. S. 1922, §§ 10874 and 10893.

pounds of all fish canned, preserved or cured or handled, and all purchases and sales made during the preceding period for which the report is made, the varieties stated separately, together with the name of the person, persons, firms or corporations from whom purchased and the place from which the fish were taken and the appliances with which the same were taken, and at the same time shall remit to the State Treasurer the catch taxes, license charges, and additional fees required by this act; and it shall be the duty of the State Treasurer, upon receiving any such report, to indorse thereon his duplicate receipt for the taxes, charges and fees, if any, accompanying the report, and transmit the report to the Director of Fisheries and Game, and deposit the moneys received in the State treasury to the credit of the fisheries fund.

Every person, firm or corporation engaging in business as a canner, wholesale fish dealer, fish broker, or in the business of freezing, salting, smoking, kippering, or preserving fish in ice or otherwise shall, at the time of procuring a license, execute to the State of Washington a bond in a sum to be fixed by the Director of Fisheries and Game and subject to his approval, conditioned that at the times herein provided he will pay or cause to be paid to the State Treasurer the catch taxes and other charges required to be paid by him as required by law; that he will file the reports required by this act with the State Treasurer on March 31st, July 31st, and November 30th of each year, showing all salmon, species stated separately, other food and shellfish purchased by him, the name and license number of the person from whom purchased, and such other information as may be required by the Director of Fisheries and Game, for ascertaining the amount owing or to be owing to the State of Washington for fish taken from the waters of the State and those over which the State has jurisdiction, and for fish taken in the Pacific ocean off the western territorial limits of the State of Washington and brought into the State of Washington. The Director of Fisheries and Game may require such other provisions to be inserted in said bond as may in his judgment be necessary in order to efficiently administer the laws and to enforce the collection of license fees, taxes and other charges.

Every person, firm or corporation engaged in any branch of the fishing industry, including oysters, clams and shellfish and including any by-product thereof shall on or before the thirty-first day of March of each year report to the Director of Fisheries and Game in writing upon blanks furnished upon request by the Director of Fisheries and Game the amount of capital invested in the business, the quantity and kind of equipment and the value thereof and where situated, the value of the product handled, the number of employees and the wages paid during the preceding year; and any person, firm or corporation who shall fail to make the reports in this paragraph provided and at the same time make payment of the amounts of money due to the State shall be guilty of a gross misdemeanor and the amounts owing by any such persons for license charges and additional charges shall become and constitute a first lien upon the fishing appliances of any such person and also a lien on the real and personal property of the person owing such sum or sums, from and after a notice of such lien on behalf of the State shall have been filed in the office of the county auditor in which the person owing such amount or amounts shall reside; the notice of lien to be filed by the Director of Fisheries and Game shall be sufficient if it shall state the amount for which the lien is claimed and the person owing same. Every person, firm or corporation owning or operating codfish canning or curing establishments or owning or operating establishments for the manufacture of fertilizer oil, meal or other by-product from fish or engaged in the buying, selling or dealing in halibut at wholesale or as a broker, shall make reports to the Director of Fisheries and Game at the times and for the periods in this section provided, stating the quantity of fish with the species bought or sold or handled with the names of the persons from whom purchased and the waters from which taken, and also the quantity and value of all fish or fish by-products handled by them. (Id. § 5705.)

198. Salmon Canned With Sixty Hours.—It shall be unlawful to can or preserve for food any salmon that has been removed from the water for a longer period than sixty hours, unless such fish have been kept artificially chilled. (Id. § 5720.)

199. Taking Fish Except for Food or Bait Prohibited.—It shall be unlawful to take or fish for, or have in possession, any food fish of any kind, character or description, unless the same are to be used for food or bait. (Id. § 5721.)

200. Unlawful to Destroy Food Fish.—It shall be unlawful for any person, firm or corporation wantonly to waste or destroy salmon or other food fishes taken or caught in any of the waters of the State of Washington, and no person engaged in the canning, preserving or curing of food fish shall purchase or engage a greater quantity of fish than he is able to can, preserve or cure within sixty hours after the same are taken from the water, unless such fish have been kept artificially chilled. (Id. § 5722.)

201. Taking or Fishing for Crabs.—It shall be unlawful for any person, firm or corporation to take or have in their possession for the purpose of selling or can-

ning any female crab whatsoever or any male crab measuring less than six and one-quarter inches across its back immediately in front of the points or to take or fish from any of the waters of the State or have in its possession after the same has been taken, for the purpose of selling or canning any crab, during the months of June, July, August and September of each year: . . . (Id. § 5755, as amended L. 1927, c. 298.)

202. **Oysters—Chilled in Transit.**—No person shall, within the State, sell, offer for sale, or have in his possession oysters, except oysters for planting purposes, which shall or may be hereafter shipped into this State unless said oyster shall have been during the entire time consumed in the shipment, kept in a chilled condition, at a temperature not greater than thirty-four degrees F. Any person violating this section shall be guilty of a misdemeanor. (Rem. C. S. 1922, § 5767.)

203. **Penalties.**—Any person who shall violate or who shall fail to observe, obey and comply with the provisions of this act for which no penalty is herein prescribed, shall be guilty of a misdemeanor. (Id. § 5771.)

NOTE: See also No. 41.

Fruit Juice.

See No. 305.

Fruits and Vegetables.*

204. **Definition of Terms.**—The term "director" whenever used in this act shall be held and construed to mean the Director of Agriculture of the State of Washington, and the term "assistant director" and "assistant" shall be held and construed to mean the Assistant Director of Agriculture for the Division of Horticulture; the term "horticultural inspector" and the term "inspector" wherever used in this act shall be held and construed to mean an inspector of the Department of Agriculture, assigned to the Division of Horticulture; the term "nursery stock" wherever used in this act shall be held and construed to mean and include fruit trees, fruit tree stock, nut trees, grape vines, fruit bushes, rose bushes, rose stock, forest and ornamental trees and shrubs (both deciduous and evergreen), bulbs, florists' stock, and cuttings, scions and seedlings of fruit or ornamental trees or shrubs, and all other fruit bearing plants and parts thereof and plant products for propagation or planting; the term "infect" and its derivatives "infecting," "infected" and "infection," wherever used in this act shall be held and construed to mean and include being affected by or infested with the diseases or insect pests to which horticultural plants and products are subject and which are required to be guarded against, controlled, cured, removed, and eradicated as in this act provided; the term "disinfect" and its derivatives shall be held and construed to mean and include the cure, removal or eradication of such diseases or pests by cutting and destroying the infected parts, or the application of fungicides or insecticides specified in this act, or such other effective solutions or emulsions as may be discovered by science and specified and described in the bulletins issued by the Director of Agriculture, and the term "person" wherever used in this act, shall be held and construed to mean and include individuals, partnerships, associations, joint stock companies and corporations. (Rem. C. S. 1922, § 2839, as amended L. 1927, c. 311.)

205. **Powers and Duties.**—The Director of Agriculture shall have the power and it shall be his duty:

(a) To exercise a general supervisory and directory control over the horticultural interests of the State.

(b) To arrange for and hold meetings for the discussion and dissemination of information as to horticultural subjects and for the demonstration of methods of preventing diseases of and pests injurious to horticultural plants, fruits and vegetables, and of curing and removing the same.

(c) To publish and distribute circulars and reports upon horticultural subjects, the pests affecting and the diseases of fruit trees, vines or bushes, ornamental trees or shrubbery, horticultural plants, fruits, vegetables and nursery stock, and the means and methods of controlling, curing, removing, eradicating, and disinfecting for such diseases and pests.

(d) To issue licenses to nurserymen and dealers in nursery stock and their agents, salesmen and solicitors and remove the same for violation of or failure to comply with this act, and to keep in this office a record of all licenses issued, showing the character of the license, name and address of the holder, the date of issue and the date of expiration or revocation.

*See No. 34. This law is to be corrected accordingly.

(e) To furnish to the board of county commissioners of each county, annually, on or before September 1, an estimate of the expenses for the ensuing year of inspecting and disinfecting orchards, vineyards, berry farms, vegetable farms and nurseries, fruit trees, vines or bushels, ornamental trees or shrubbery, horticultural plants, fruit, fruit products, vegetables, and packing houses, warehouses, dry-houses, storerooms, depots, docks and other places where fruits, vegetables or nursery stock are grown, packed, stored, shipped or held for shipment or delivery or offered for sale within said county.

(f) To appoint inspectors to enforce and carry out the provisions of this act, which inspectors may be of two classes, inspectors-at-large and local inspectors: Provided, that not more than twenty inspectors-at-large shall be appointed.

(g) The director may also in his discretion appoint any officer or members of any local fruit protective association to act as inspector, vested with power only to enter premises and inspect orchards and report to the inspector-at-large. Such inspectors shall receive no compensation for services and shall not be required to take the regular examination required of inspector-at-large and local inspectors.

(h) To make, adopt, issue and publish from time to time, and enforce general rules and regulations governing the grading, packing, and the size and dimensions of commercial containers of fruits, vegetables and nursery stock.

(i) To formulate, promulgate and enforce regulations fixing commercial grades of fruits, vegetables and nursery stock and providing for the inspection of the same for either market or seed purposes, and furnishing of certificates of inspection.

(j) To declare, promulgate and enforce quarantine measures for the protection of any agricultural crop, forest trees, forest products or other products not otherwise protected by law against the ravages of destructive or injurious insects or diseases. To adopt, promulgate and enforce rules and regulations for the inspection, grading and certification of growing crops of agricultural or vegetable seed grown in this State and to inspect, grade and certify the same at the request of the grower and to fix and collect fees for such inspection, grading and certification and to pay the fees so collected into the State treasury.

The Director of Agriculture, and under his direction and control, the assistant director and the horticultural inspectors, shall have the power and it shall be their duty:

(a) To enforce the provisions of this act and all laws relating to horticultural interests.

(b) To inspect orchards, vineyards, berry farms, vegetable farms, nurseries, fruit trees, vines, or bushes, ornamental trees, or shrubbery, horticultural plants, fruits, vegetables, nursery stock and horticultural supplies, and packing houses, dry-houses, warehouses, storerooms, depots, docks, cars, vessels, and other places where fruits, vegetables, or nursery stock are packed, stored, shipped, or held for shipment or delivery or offered for sale, and other property liable to be infected with any disease or pest injurious to horticulture, and to require the disinfection of all such property and premises found to be infected and for that purpose shall have free access to such property and premises at all times.

(c) To inspect and examine orchards, vineyards, nurseries, berry farms, vegetable farms, fruits, vegetables, nursery stock and all other horticultural plants and products, at the request of the owner thereof for the purpose of discovering the existence of any disease or pest, and to report to the applicant the result of such investigation and prescribe proper remedies.

(d) To disinfect orchards, vineyards, berry farms, nurseries, fruit trees, vines and bushes, ornamental trees and shrubbery, horticultural plants, fruits, vegetables and nursery stock and packing houses, dry-houses, warehouses, storerooms, depots, docks, cars, vessels and other places where nursery stock, fruits, or vegetables are packed, stored or shipped or held for shipment or delivery, or offered for sale, in case the owner or person having the same in charge shall neglect or refuse so to do, after notice; and in case any infected fruit trees, vines or bushes, ornamental trees or shrubbery, horticultural plants, fruits, vegetables or nursery stock, cannot be successfully disinfected to condemn and destroy the same or cause the same to be destroyed.

(e) To require all partially infected fruit, vegetable and nursery stock shipments to be sorted and repacked and, in case the owner or person having charge of the same shall neglect or refuse so to do after notice, to condemn and destroy the same, together with all dead nursery stock: Provided, that no inspector shall destroy more than ten per cent of any variety of nursery stock in any lot or shipment of fifty or more than trees, vines or shrubs without five days' notice to the shipper, during which time the owner or shipper shall have the right to apply to the chief officer of horticulture.

(f) To issue certificates of inspection to licensed nurserymen and dealers in nursery stock, on stock inspected and approved. (Id. § 2840.)

206. Disinfection.—It shall be the duty of every person owning, leasing or occupying any land or premises on which there is or shall be growing, grown or situate any nursery stock, fruit trees, vines, or bushes, shade trees, ornamental trees, or shrubbery, or any horticultural plants or horticultural plant pests or diseases, and of the owner or lessee of any such nursery stock, trees, fruit trees, vines, bushes, shrubbery or plants growing or situate on premises leased or occupied by him, and of the owner of any such nursery stock, trees, fruit trees, vines, bushes, shrubbery or plants growing, situate or being at any place within the State of Washington, for sale or delivery, and of every grower, shipper, commission merchant, consignee, dealer in and person in charge of any nursery stock, fruit or vegetables about to be shipped, or shipped, or held for delivery or offered for sale, to take and use sufficient methods and means for the prevention of infection by all plant pests and diseases to which such premises, nursery stock, trees, fruit trees, vines, bushes, shrubbery, plants, fruits or vegetables may be subject, and to keep the same free from horticultural plant disease and pests, and in event it is found that any such premises, nursery stock, trees, fruit trees, vines, bushes, shrubbery, plants, fruits or vegetables are infected with any plant disease or pest, to promptly take and use effective means to control, cure, remove, eradicate and disinfect for the same, and in case such premises, nursery stock, trees, fruit trees, vines, bushes, shrubbery, plants, fruits or vegetables cannot be successfully disinfected, to promptly destroy the same, and it shall be the duty of every owner and of the lessee of any premises upon which there are growing any infected fruit, fruit trees, shade or ornamental trees, vines, or bushes, or other vegetation or horticultural plant pests, to thoroughly spray the same with a proper solution or emulsion or otherwise disinfect the same for the control, cure or removal of such infection, except that in any county where black stem rust infection occurs it shall be the duty of every person owning or having charge of any premises on which barberry bushes of the rust-producing varieties are grown, or at any time found growing, to forthwith destroy such bushes. (Rem. Supp. 1923, § 2842, as amended L. 1927, c. 311.)

207. Right of Inspection.—The Commissioner of Agriculture, the assistant commissioner and all horticultural inspectors are authorized and empowered to at any time enter upon any premises where any nursery, orchard, vineyard, berry farm or vegetable farm is situate or whereon any nursery stock, fruit trees, shade trees, ornamental trees or shrubbery or horticultural plants are growing, or upon any premises or into any building, packing house, dry-house, warehouse, storeroom, depot, dock, car, vessel, or other place wherein any nursery stock, fruits, vegetables, or horticultural products are situate, being prepared or packed for shipment, stored, shipped, held for shipment or for delivery upon any shipment or sale, or offered for sale for the purpose of examining and inspecting such premises or property to ascertain whether the same or any thereof are infected, and it shall be unlawful for any person to hinder or prevent or to attempt to hinder or prevent any such officer from entering such premises or inspecting such premises or property or performing any duty required by this act. (Rem. C. S. 1922, § 2847.)

208. Infected Premises—Notice—Shipments—Manufacture.—In case the officer making the inspection provided for in the preceding section shall find that the premises or property inspected is infected, he shall condemn the same and serve upon the owner or upon the person having possession or charge of said premises or of said property a notice in writing that the same is condemned and ordering the disinfection of any and all thereof which is capable of disinfection and the destruction of such property as is incapable of disinfection, which notice shall describe the premises or property ordered to be disinfected or destroyed with reasonable certainty and shall specify the time within which the same shall be so disinfected or destroyed; and shall give notice that unless the premises or property ordered disinfected or destroyed is disinfected or destroyed as directed, in the manner and within the time specified in said notice, the same will be done by the officer giving the notice and the expense thereof charged against the premises and the owner of said premises or property. In case said premises or property is in the possession or charge of any person upon whom service can be made, the officer making the inspection shall serve a copy of such notice upon such person and, in case the premises or property is in possession or charge of any other person than the owner thereof, or service cannot be had upon any person in possession or charge thereof, the officer shall serve said notice upon the owner of said premises or property by mailing or telegraphing him a copy thereof, if his home or post office address are known to the officer or can with reasonable diligence be ascertained. In case personal service of said notice cannot be had upon any person in possession or charge of said premises or property and the name and address of the owner of such premises or property are not known and cannot with reasonable diligence be ascertained, said notice shall be served by posting the same in a conspicuous place upon the premises where the property to be disinfected or destroyed is situated, as the case may be. In case the name and post office address of

the owner are not known and cannot with reasonable diligence be ascertained and in the absence of fraud and gross neglect, service of such notice upon the person in possession or charge of said premises or property shall be construed to be substituted personal service upon the owner, and, in case service of such notice upon a person in possession or charge of such premises or property cannot be had and the name and post office address of the owner is not known and cannot with reasonable diligence be ascertained and in the absence of fraud and gross neglect, such posting of the notice upon the premises shall be construed to be constructive personal service upon the owner of such premises or property. Upon the giving of such notice as hereinabove provided it shall become and be the duty of the owner and person having possession or charge of the premises or property described in the notice to, within the time specified in said notice, disinfect said premises or disinfect or destroy said property, as the case may be: Provided, that in the case of nursery stock, fruit or vegetables about to be shipped or any shipment thereof, or which is offered for sale, or held for the purpose of delivery upon any shipment or sale thereof, if the officer making the inspection shall find that only a part thereof is so affected that it cannot be successfully disinfected, he shall state in such notice that the owner or person in charge thereof has the privilege of separating the same into two or more of the following classes, to wit: such as does not need disinfection, such as can be successfully disinfected, and such as cannot be successfully disinfected, and in such cases it shall be the duty of the owner and person in charge of such property to within the time specified in said notice, disinfect such nursery stock, fruit or vegetables as can be successfully disinfected and destroy such as cannot be successfully disinfected: And provided, further, that in the case of fruit or vegetables that cannot be successfully disinfected the inspector may grant the owner or person in charge thereof the privilege of manufacturing the same into by-products or of shipping the same to a by-product factory located within the State of Washington and issue a permit in writing so to do, and in such case it shall be unlawful for the person receiving such permit to sell or dispose of such infected fruit without having first manufactured the same into a by-product or shipped the same to a by-product factory, or to divert any such shipment when made, and it shall be unlawful for the consignee of any fruit or vegetable shipped to a by-product factory, to sell or dispose of the same without first manufacturing it into a by-product. It shall be unlawful for any person to ship, deliver, sell, barter, give away or otherwise dispose of or part with the possession of, or for any common carrier to transport, any nursery stock, fruit or vegetable which has been found infected and condemned until all of the requirements of said notice and order have been complied with, and permission given in writing so to do by an inspector. It shall be unlawful for any common carrier to ship or transport or receive for shipment any fruit in bulk or as culls unless the same shall be accompanied by a permit to ship to a by-product factory or by an inspector's written statement that same is free from infection. (Id. § 2848, as amended L. 1925, c. 108.)

209. Disinfection or Destruction.—In case the owner or person in charge of any premises or property required to be disinfected or destroyed as in the previous section provided, shall fail or neglect to comply with the notice within the time specified therein, the officer giving the notice shall have the right and it shall be his duty to enter upon the premises to be disinfected or where the personal property required to be disinfected or destroyed is situated and perform the acts required in such notice, or cause the same to be performed at the cost and expense of the owner of such premises or property as the case may be. The officer shall keep an accurate account of such cost and expense and the same shall be a lien upon the premises or personal property so disinfected, which lien may be enforced by the methods hereinafter provided. The liens in this section provided for shall in the case of personal property have precedence over all other liens: Provided, that where infected property has not been sprayed for two years, or which has been sprayed by the county or city for two years for which they have not collected the costs, such property may be declared a public nuisance as provided by law and treated as such. (Rem. C. S. 1922, § 2849, as amended L. 1927, c. 311.)

210. Importation of Infected Fruit.—It shall be unlawful for any person to import into this State, sell, barter, or otherwise dispose of or offer for sale or have in his possession for the purpose of sale or barter any fruit which is or has been infected with peach mildew, peach-twig borer, San Jose scale or other insect pests or the larvæ of the codling moth or peach-twig borer, and the fact that any fruit bears the mark of any such scale insect or is worm eaten by any such larvæ, shall be conclusive evidence that the fruit is infected, within the meaning of this section: Provided, that nothing in this section shall be construed to prevent the grower of such infected fruit grown within the State of Washington from manufacturing the same into a by-product or selling and shipping the same to a by-product factory. (Rem. C. S. 1922, § 2853.)

211. Fruit Boxes, How Marked.—It shall be unlawful for any person growing or packing and selling, offering for sale or shipping in closed boxes or packages, any fruit or vegetables grown in this State, or offered or exposed for sale in the State of Washington, to sell, offer for sale or ship said fruit or vegetables in closed boxes or packages without plainly marking the same on the outside of the box or package with the name of the variety contained therein or with the words "variety unknown," the name of the place or locality where grown and the name of the grower, or in case of sale or shipment through an association or organization of growers the name of such association or organization and the lot number of the grower, and in case of apples, pears, peaches, cantaloupes or grapes, the net weight or the number contained in the package, and the grade of apples, pears, cantaloupes or grapes, and it shall be unlawful for any person to make or place upon such package the name of any other place or locality than the place where such fruit was grown, except the place to which shipped, or to falsely mark any such package as to variety, name of grower, association or organization or place where grown, or to obliterate or change the original marks on any such package or to re-mark the same with the name of any other grower or of any other place than that by or in which the contents were grown, or in case such package is marked with the name of an association or organization of growers to re-mark the same with the name of any other association or organization, and it shall be unlawful for any person having in his possession for sale or offering for sale or selling any fruit grown in this State and shipped in closed package, to repack the same in the boxes or packages of any other grower or shipper or from any other place or to sell or offer for sale in closed packages, or to pack in or offer for sale in marked box or package any fruit other than that originally contained or shipped therein.

In addition to the marks required to be placed upon any closed box or package of fruit, vegetable or nursery stock grown in this State, as hereinabove provided, the grower thereof or association or organization of growers packing the same shall mark upon the outside of such package the grade of the fruit, vegetable or nursery stock contained therein, specifying the grades and markings according to the obligatory grading rules and regulations, issued, published, and adopted by the Director of Agriculture, or a special or private grade or brand duly registered and approved by the Director of Agriculture as provided by law, and it shall be unlawful for any person to re-mark any such closed package to a higher or superior grade than that originally marked by the grower thereof or association or organization packing the same, or for any person other than the grower or association or organization packing such fruit grown in this State to place upon any such closed package not marked with the grade of the contents thereof any mark or brand indicating the grade of such contents: Provided, that nothing in this section shall be construed to apply to canned or dried fruit. (Rem. Supp. 1923, § 2854, as amended L. 1927, c. 311.)

212. Grades and Marks; Condemnation; Unlawful Sales; Regulations; Charges; Hearings.—It shall be unlawful for any grower thereof or association or organization of growers packing apples, or other fruits, vegetables or nursery stock, to mark the package with the grade of the contents, or for any person to ship, sell, barter, or otherwise dispose of or offer for sale, or have in his possession for the purpose of sale, any package of apples, or other fruits, vegetables or nursery stock, grown and packed within the State of Washington unless such contents shall comply with the general obligatory rules and regulations made, adopted and published from time to time by the Director of Agriculture, which general obligatory rules and regulations shall define and establish the standard for the grades.

In case an inspector making an inspection finds that apples, or other fruits, vegetables or nursery stock do not meet the standards as established by the obligatory rules and regulations, he shall condemn and serve notice upon such owner or person having possession of such apples, or other fruits, vegetables or nursery stock and the owner or person having possession of apples, or other fruits, vegetables or nursery stock shall not sell or dispose of the condemned apples, or other fruits, vegetables or nursery stock without written permission from the inspector so to do. It will be prima facie evidence that the owner or person who has possession of such apples, or other fruits, vegetables or nursery stock has violated the provisions of this act unless he show the fruit, vegetables or nursery stock in possession or a release in writing signed by an inspector that he has complied with the provisions of the condemnation.

It shall be unlawful (1) to mark or place upon any package of fruit, vegetables or nursery stock the name of any other place or locality than the place where the same were grown, except the place to which shipped; or to falsely mark any such package as to variety, name of grower, or place where grown, or to represent for purposes of sale that said fruit, vegetables or nursery stock were grown in any locality other than that in which they were actually grown, or by any other person than the

person by which they were actually grown; (2) to mark, brand, advertise, offer for sale, or sell, any fruit, vegetables or nursery stock as graded according to, or by the name of any of the grades promulgated by the Director of Agriculture, unless they conform to such grades; (3) to mark, brand, advertise, offer for sale or sell any fruit, vegetables or nursery stock by the name of any grade that imitates or approaches the name of any of the grades promulgated by the Director of Agriculture; or (4) to have in his possession any packages or fruit, vegetables or nursery stock thus misbranded.

But it shall not be unlawful to sell vegetables, fruit or nursery stock as ungraded, or as graded according to other standards than those adopted by the Director of Agriculture: Provided, the name of such other grades or standards does not closely resemble or imitate the name of any of the official grades unless obligatory grades, rules and regulations have been adopted as in this section provided.

The general obligatory rules and regulations shall be based on the official hearing held as in this section provided, and thereafter the Director of Agriculture is authorized and directed to hold a public hearing in the principal districts affected, to consider proposed changes in these obligatory rules and regulations for any kind of fruit, vegetables or nursery stock only when a petition is submitted to him signed by resident freeholders of the State who are owners of twenty-five per cent or more of the total commercial acreage based on the census of the State Department of Agriculture for the kind of fruit, vegetables or nursery stock for which changes in the rules and regulations are suggested the Director of Agriculture may call a public hearing upon a reasonable showing of such a necessity by the industry requesting such hearing to consider desired changes in said rule and regulations and make, adopt, issue and publish general obligatory rules and regulations governing the packing of apples, other fruit, vegetables or nursery stock and establishing and defining the grades thereof, and in adopting the same the director is authorized to consult and advise with fruit, vegetables or nursery growers, the officers of associations or organizations of apple, other fruit, vegetable or nursery growers or distributors or dealers in apples, other fruits, vegetables or nursery stock. For the conducting of such hearing the Director of Agriculture may prescribe all necessary reasonable rules, but said rules must be such as to insure a fair, full and impartial opportunity for all interested districts to be heard. In establishing the grading obligatory rules herein mentioned the Director of Agriculture shall base them on the necessities and properties shown in said hearing, taking into consideration the tonnage of commercial fruit, vegetables or nursery stock in each district of the State affected by the grading obligatory rules to be established; said rules and regulations so established to become obligatory rules and regulations and be given the same force and effect as though enacted by the legislature of the State of Washington, said obligatory rules and regulations to become effective upon being adopted and promulgated by the Director of Agriculture. (Id. § 2855.)

213. Complaints Against Licensees—Notice—Hearings—Appeals.—Upon complaint in writing, verified under oath by the complainant, being made to the Commissioner of Agriculture, that the holder of any license in this act provided for has violated or failed to comply with the provisions of this act or the laws of the State of Washington relating to horticulture, the commissioner, if in his judgment the complaint justifies a hearing thereon, shall serve upon the holder of such license by registered mail, a copy of such complaint and a notice of the time and place of hearing the same, which hearing shall not be less than ten nor more than thirty days from the date of mailing said notice, and shall be at such place to be determined by the commissioner, as shall be most convenient to all the parties to the hearing: Provided, in case the nursery and principal place of business is within this State then hearing shall take place in the county where the nursery or principal place of business is located for the attendance of witnesses.

The complainant and the person complained of shall have compulsory process to compel the attendance of witnesses at such hearing, to be issued by the commissioner. Hearings may be held by the commissioner in person or by the assistant who shall report in writing a synopsis of the testimony taken and his findings thereon to the commissioner for his decision. If upon such hearing or report it shall appear to the satisfaction of the commissioner that the person complained of has violated or is violating or failing to comply with the provisions of this act or the laws of the State of Washington relating to horticulture, he may revoke the license of such person, and no new license shall issue to such person until it shall be made to appear to the satisfaction of the commissioner that the cause of the complaint has been removed.

From the decision of the commissioner revoking a license, or refusing to issue a new license, an appeal shall lie to the Superior Court of the county whereby the hearing shall have been held. (Rem. C. S. 1922, § 2860.)

214. Certificate of Inspection.—It shall be the duty of every horticultural inspector upon the inspection of any nursery stock, fruit or vegetables found free from disease and pests, to deliver to the owner or person in charge thereof a certificate of inspection over his signature, showing the date of inspection and stating that such nursery stock, fruit or vegetables were not infected, which certificate in case inspection be made at the initial point of shipment or at such place within a reasonable distance as requested by the shipper shall be in triplicate form and it shall be unlawful for any person to substitute for any such nursery stock, fruit or vegetables covered by said certificate, or to ship, sell or dispose of any other nursery stock, fruit or vegetables than that actually inspected and approved under such certificate of inspection; fees as fixed by the Commissioner of Agriculture may be charged for this inspection, the same to be collected at the time of the inspection and paid to the county treasurer of the county in which the services are rendered, and by him placed in the current expense fund of such county to be used to assist in defraying the expenses of horticultural inspection: Provided, that the inspector may issue certificates of general inspection for shipment to points within this State in addition to the regular certificate of inspection. (Id. § 2867.)

215. Penalty—Disposition of Fines.—Every person violating or failing to comply with the provisions of this act or any obligatory rule or regulation shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined in any sum not less than $50, nor more than $500. All fines imposed under the provisions of this act shall, when collected, be paid to the treasurer of the county where imposed to be placed in the current expense fund of such county and to be used to assist in defraying the expenses of horticultural inspection. (Id. § 2868.)

216. Actions to Restrain Violations.—Whenever any person is about to or threatens to violate any provision of this act, or any obligatory rule or regulation, the Commissioner of Agriculture may, with the advice of the prosecuting attorney of the county where such violation is threatened or of the Attorney-General, begin an action in the Superior Court of such county in the name of the State upon the relation of such commissioner to restrain and enjoin such threatened violation, and in case such prosecuting attorney shall fail or refuse to begin such action upon the request of the commissioner, the same may be begun by or under the direction of the Attorney-General. In such action no bond shall be required for the issuance of a restraining order or injunction, but the State shall be liable for any damages occasioned by the unlawful suing out of such restraining order or injunction. (Id. § 2869.)

217. Authority to Seize Infected Fruit, Etc.—The Commissioner of Agriculture, the assistant commissioner and all horticultural inspectors are hereby authorized and empowered to seize and hold for use as evidence any article or thing found in the possession of or used, held for shipment, shipped, offered for sale or sold by any person in violation of any of the provisions of this act or of any law relating to horticulture, and to serve and enforce compliance with any restraining order or writ of injunction or mandate or any other writ issued by any court under the provisions of this act. (Id. § 2870.)

218. Duty of Common Carriers to Assist Commissioner.—It shall be the duty of all clerks, bookkeepers, express agents, railroad officials, employees, or employees of common carriers to render to the Commissioner of Agriculture and his inspectors all the assistance in their power in tracing, finding, or discovering the presence of any article named in this act. Any refusal or neglect on the part of such clerks, bookkeepers, express agents, railroad officials, employees, or employees of common carriers to render such friendly aid to assist in the carrying out of the provisions of this act shall constitute a misdemeanor. (Id. § 2871.)

219. Inspection Authorized—Fee.—The Director of Agriculture, assistant director and all horticultural inspectors are authorized and empowered, upon application for certificate inspection service on certain specified fruits or vegetables to inspect, investigate and certify to shippers and other interested parties, the quality, grade and condition of the fruits or vegetables specified in the application and the cars in which they are loaded, such inspection and investigation to be made under such rules and regulations as the Director of Agriculture may from time to time prescribe, upon the payment of such reasonable fees to be fixed by the director as will as near as may be cover the cost for the services rendered. Such fees are to be collected by the inspectors-at-large who have charge of such inspection and expended by them to assist in defraying the expense of the horticultural inspection. Such inspectors-at-large shall be bonded in a sum of three thousand dollars each running to the State of Washington with a surety approved by the director conditioned for the faithful handing of these funds for the purpose specified in this act. Said inspectors-at-large shall render on or before the tenth day of each month a detailed account to the Director of Agriculture showing the receipts and disbursements for the preceding

month. On the thirtieth of June of each year the inspectors-at-large shall render a complete account of the past year's business to the board of county commissioners of each county in which such certificates have been issued in their district, and should there be in excess of fifteen hundred dollars remaining on hand in any horticultural inspection district after all expenses of such certificate of inspection service have been met, to date, in that district, such amount shall be returned to the contributors to the fund in proportion to the amount of payment made into the fund by each contributor. In case the applicant for such certificate service shall fail, neglect or refuse, to pay such fee within thirty (30) days after the inspection has been made, it shall be the duty of the prosecuting attorney of the county in which the inspection was made to bring action for debt in the name of the inspector-at-large in charge of the inspection on his request. Such certificate so issued shall be received in all courts of the State of Washington as prima facie evidence of the truth of the statements therein contained. (Rem. Supp. 1923, § 2872, as amended L. 1925, c. 67.)

220. **Appeals.**—All questions of fact arising under this act shall be determined by the Commissioner of Agriculture and there shall be no appeal from his decision upon said question of fact. Either grower, horticultural society, association or marketing organization shall have the right to appeal to the Superior Court on questions of law. (Rem. C. S. 1922, § 2873.)

221. **Exercise of Powers and Duties Conferred.**—The Director of Agriculture shall exercise the powers and perform the duties vested in and required to be performed by the Commissioner of Agriculture by this act, when such director is appointed and qualified, and assumes and exercises the duties of his office. (Id. § 2874.)

222. **Agricultural Plants and Products, Etc., to be Preserved and Protected.**—The forest, agricultural, horticultural, ornamental and floral trees, shrubs, and plants in the State of Washington, and the products thereof shall be preserved and protected from the ravages of diseases, insects, and animal and weed pests injurious thereto and destructive thereof. (L. 1927, c. 292, § 1.)

223. **Quarantine Rules and Regulations.**—The Director of Agriculture by and with the approval of the Governor may after investigation establish, maintain and enforce such obligatory quarantine regulations as may be deemed necessary to protect the forest, agricultural, horticultural, ornamental and floral trees, shrubs and plants, and the products thereof in the State of Washington, against contagion or infestation by injurious plant disease insects, or animal or weed pests, by establishing such quarantine at the boundaries of this State or elsewhere within the State, and he may make and enforce, any and all such obligatory rules and regulations as may be deemed necessary to prevent any infected or infested forest, agricultural, horticultural, ornamental and floral trees, shrubs, and plants, and the products thereof in the State of Washington from passing over any quarantine line established and proclaimed pursuant to this act, and all such articles shall, during the maintenance of such quarantine, be inspected by such director or by horticultural or other inspectors thereto appointed, and he and the inspectors so conducting such inspection shall not permit any such article to pass over such quarantine line during such quarantine, except upon a certificate of inspection, signed by such director in his name by such inspector who has made such inspection. All approvals by the Governor given or made pursuant to this act shall be in writing and signed by the Governor in duplicate, and one copy thereof shall be filed in the office of the Secretary of State and the other in the office of said director before such approval shall take effect. (Id. § 2.)

224. **Infested or Infected Fruit; Etc.; Inspection.**—Upon information received by such director of the existence of any infectious plant disease, insect or other animal or weed pest, dangerous to any plant or commodity or to the interests of the plant industry of this State, or that there is a probability of the introduction of any such infectious plant disease, insect or other animal or weed pests into this State or across the boundaries thereof, he shall proceed to thoroughly investigate same and may establish, maintain and enforce quarantine as hereinbefore provided, and may make and enforce such regulations as are in his opinion, necessary to circumscribe and exterminate such infectious plant diseases, insect or other animal or weed pests and prevent the spread thereof. Such director may disinfect, or take such other action with reference to any trees, shrubs, plants, vines, cuttings, grafts, scions, buds, fruit pits, fruit, seeds, vegetables or any crops or crop products, and any containers thereof, and any packing material used therewith infested or infected with, or which, in his opinion may have been exposed to infection or infestation by, any such infectious plant diseases, insect or other animal or weed pests, as in his discretion shall seem necessary to carry out and give effect to the provisions of this act. Such director, his deputies and inspectors are hereby authorized to enter upon any ground or premises to inspect the same or to inspect any tree, shrub, plant, vine, cutting, graft, scion, bud, fruit pit, fruit, seed, vegetable, or other article of horticulture or implement thereof or box or package or packing material pertaining thereto, or connected

therewith or that has been used in packing, shipping or handling the same and to open any such package, and generally to do, with the least injury possible under the conditions to property or business all acts and things necessary to carry out the provisions of this act. The said director shall at once notify the Governor of all quarantine lines established under or pursuant to this act, and if the Governor approve or shall have approved of the same or any portion thereof, the same shall be in effect and the Governor may issue his proclamation proclaiming the boundaries of such quarantine and the nature thereof, and the order, rules or regulations prescribed for the maintenance and enforcement of the same, and may publish said proclamation in such manner as he may deem expedient to give proper notice thereof.

All orders, rules and regulations issued by the Director of Agriculture pursuant to this act shall have the force and effect of law. (Id. § 3.)

225. **Containers to be Marked.**—Each carload, case, box, package, crate, bale or bundle of trees, shrubs, plants, vines, cuttings, grafts, scions, buds, fruit pits, or fruit or vegetables or seed, imported or brought into this State, shall have plainly and legibly marked thereon in a conspicuous manner and place the name and address of the shipper, owner or owners, or person forwarding or shipping the same, and also the name of the person, firm, or corporation to whom the same is forwarded or shipped, or his or its responsibile agents, also the name of the country, State or Territory where the contents were grown, and a statement of the contents therein. (Id. § 4.)

226. **Infested Fruit, Etc., to be Shipped in Sealed Containers.**—When any shipment of nursery stock, trees, vines, plants, shrubs, cuttings, grafts, scions, fruit, fruit pits, vegetables, or seed, or any other horticultural or agricultural product passing through any portion of the State of Washington in transit, is infested or infected with any species of injurious insects, their eggs, larvæ, pupæ or animal or plant disease, or weed pest, which would cause damage, or be liable to cause damage to the forests, orchards, vineyards, gardens, or farms of the State of Washington, or which would be, or liable to be, detrimental thereto or to any portion of said State, or to any of the forests, orchards, vineyards, gardens or farms within said State, and there exists danger of dissemination of such insects or disease or weed pests while such shipment is in transit in the State of Washington, then such shipment shall be placed within sealed containers, composed of metallic or other material, so that the same cannot be broken or opened, or be liable to be broken, or opened, so as to permit any of the said shipment, insects, their eggs, larvæ, or pupæ or animal or plant disease to escape from such sealed containers and the said containers shall not be opened while within the State of Washington. (Id. § 5.)

227. **Duties of Carrier of Quarantined Fruit, Etc.**—Whenever the Director of Agriculture declares, promulgates and issues quarantine measures, orders or regulations against any part or portion of this State or any other State or country or section thereof, for the protection of any forest, agricultural, horticultural, ornamental or floral trees, shrubs, or plants, and there shall be received in this State, any forest, agricultural, horticultural, ornamental or floral trees, shrubs or plants, or the raw products thereof, from any part or portion of this State, or any other State or country or section thereof, against which the quarantine has been issued as to such commodity, it shall be the duty of the person or the official of the carrier having such shipment in charge for delivery, unless the same is accompanied by a certificate of inspection and approval by a horticultural inspector of this State, showing that the same was inspected and approved at the initial point of shipment, to notify the horticultural inspector stationed nearest to the point where said shipment is received, of the receipt of such shipment giving the name of the consignor and consignee and stating that such shipment is ready for inspection and delivery. Said notification shall be either by telephone or telegraph, and confirmed by written notice delivered personally to said inspector or to some person of suitable age and discretion at his residence or office, or by mail addressed to said inspector at his place of residence or at his office; and it shall be unlawful for any such agent or person having such shipment in charge to deliver the same to the consignee or to any other person until the same shall have been inspected by a horticultural inspector: Provided, however, that such agent shall not be required to hold such shipment more than forty-eight hours after notifying the inspector as aforesaid, except in case the notice is given by mail, in which event, such shipment shall be held for such period beyond said forty-eight hours as is ordinarily required for delivery of mail to the address of the inspector. Upon delivery to the consignee of a shipment accompanied by a certificate of inspection as aforesaid, the agent or person making the delivery shall retain the certificate of inspection showing his authority for releasing the same. (Id. § 6.)

228. **Penalties.**—Every person who shall violate or fail to comply with any rule or regulation adopted and promulgated by the Director of Agriculture in accordance with and under the provision of this act shall be guilty of a misdemeanor, and

for a second and each subsequent violation or failure to comply with the same rule or regulation, shall be punished by imprisonment in the county jail for not less than thirty days or more than one year, or by a fine of not less than $100.00, or more than $1,000.00 or both such fine and imprisonment. (Id. § 7.)

229. Construction of Act.—This act shall not be construed as repealing or limiting any of the provisions of existing laws relating to the establishment and enforcement of quarantines within the State, but shall be deemed to be supplemental thereto. (Id. § 8.)

230. Declaration of Public Interest.—The production and marketing of farm products is hereby declared to be a matter of public interest and a proper subject for investigation, encouragement, development, regulation and control by the State. (Rem. C. S. 1922, § 2875.)

231. Director of Farm Markets—Duties and Powers.—It shall be the duty of the director to investigate and promote, in the interest of the State, economical and efficient distribution of all farm products, for this purpose co-operating to the fullest extent practicable with the United States Department of Agriculture and with other agencies of the Federal Government of this State and of other States engaged in similar activities. He shall have power:

(a) To maintain a market news service by publication of bulletins and through newspapers, giving information as to prices, available supplies of different farm products, demand in local and foreign markets, freight rates, and any and all other such matters of interest to producers and consumers.

(b) To aid and assist producers and consumers in establishing economical and efficient systems and methods of distribution, in promoting more direct business relations through the organization of co-operative societies of sellers and buyers, and in every practicable way to reduce the waste, expense and cost of marketing, that the producer may secure more adequate returns and the consumer a lower cost of food products.

(c) To investigate the methods of commission merchants and of all others who buy, sell, handle on commission or otherwise, or deal in farm products, to the end that distribution of such commodities in this manner may be efficiently and economically and honestly accomplished. In such investigation, he may hear complaints and suggestions and shall have power to visit the place of business of any individual, firm, corporation or association, and examine under oath such individuals and the officers and employees of such firms, corporations and associations for the purpose of obtaining accurate information. If the director shall find legislation necessary for the regulation of such distribution of farm products, he shall recommend to the Governor not later than the fifteenth of November of each even numbered year.

(d) To investigate the feasibility of direct dealing between producers and consumers through the agency of the parcel post and the employment of mail order methods.

(e) To receive applications for farm help and for employment in farm work, assisting in bringing the job and the man together without expense to either employer or laborer, and to this end to co-operate with the authorities of the United States, the State or municipalities that may be engaged in similar work.

(f) To investigate transportation of farm products, methods, delays and charges, and advise and assist producers in relation thereto. (Id. § 2876.)*

232. Annual Reports.—The director shall prepare and submit to the Director of the Agricultural Experiment Station, on or before the first of December of each year a report of his department and such other facts, suggestions or recommendations as he may deem of value to the people. (Id. § 2877.)

NOTE: See also Nos. 31, 354-355 and 361.

Grain.

232a. Grades to be Fixed—Changes—Hearings—Copies of Grades—Duties of Warehousemen.—The Director of the Department of Agriculture shall fix and establish standard grades to apply to all grain and hay, bought or handled by the public or terminal warehouses, or bought according to State grades in this State. The director shall adopt as State grade standards all grades for grain now or hereafter established by the United States Department of Agriculture. Standards for grain not provided for by the United States Department of Agriculture, and standards for hay shall be established or changed only after a public hearing, notice thereof to be given by publication in three newspapers of the State, at least ten days prior to such hearing. The director may authorize the weighing and grading upon request of any

*See Nos. 31 and 41.

interested party, of commodities of commerce, other than grain or hay, such as grain or hay products, rice, beans, and other similar articles, nitrates and other fertilizers, sulphur and other chemicals used in the arts or in manufacturing, when same are received from or delivered to any rail or water carrier in the State in commercial transportation, and may authorize the certification of the weights and grades thereof. Fees for such service, sufficient to cover the cost thereof, shall be fixed by the director. Grades may be established or changed by the director and rules and regulations governing warehousemen be promulgated after a public hearing, notice thereof to be given by publication once each week for two successive weeks in at least three newspapers of general circulation in the State, two of which, at least, shall be in eastern Washington. All interested persons desiring to be heard shall be permitted to give testimony and such other witnesses may be subpœnaed as the director may deem necessary, which witnesses shall be entitled to the same fees and mileage as are provided for witnesses in civil actions. The director shall after such hearing make and issue reasonable rules and regulations governing the dockage which shall be made on inferior grades and in all executory contracts thereafter entered into where the price or amount to be paid therefor depends upon terminal weight or grade, such rules and regulations shall control the dockage in so far as the same affects the price to be paid, had such rules and regulations shall become part of the contract of sale unless expressly agreed to the contrary in such executory contract.

In shall be the duty of the chief inspector, immediately after the establishment of grades for grain, hay, grain and hay products and peas, and the promulgation of rules and regulations fixing dockage, as herein provided, to supply each public and terminal warehouseman, which the records in his office show is then or thereafter engaged in operating such warehouses, with a copy of such grades, rules and regulations. It shall be the duty of every public or terminal warehouseman to keep such copy on file in a convenient place in every such warehouse and, if an office is maintained in connection with such warehouse, a copy of such grades, rules and regulations shall be kept on file in such office and a placard notice posted in a conspicuous place in every such warehouse and such office, reading as follows: "A Copy of Washington Grades, Rules and Regulations is on File Here for Information of Interested Parties."

Every such warehouseman shall exhibit such copy of grades, rules and regulations to any interested party applying therefor at any such warehouse or office and permit such interested party to examine and consult such copy. In all contracts hereinafter entered into for the sale of unscoured wheat, pertaining to the classes soft red winter, common white, and white club wheat, under the official grain standards of the United States Department of Agriculture, and under rules adopted in Washington by the Public Service Commission where the price or amount to be paid depends upon the weight or grade, no discount or differential shall be made on account of test weight per bushel if the grain delivered under said contract weighs not less than fifty-eight pounds to the measured bushel: Provided, however, that the grain so delivered grades numbered two or better under the standards above described. For wheat weighing in excess of fifty-nine pounds to the measured bushel and grades number two or better, there shall be paid a premium over the price at country point for said grade at a rate of not less than eight-tenths of one per cent for each pound test weight over the minimum of said grade when test weight is the determining factor and in case of delivery on contract of grain of lower grade on account of test weight per bushel the discount or differential shall be at a rate not to exceed eight-tenths of one per cent of the price for said grade at country point for each pound test below the minimum test weight for the grade on which the contract is based unless the test weight be below fifty-five and at a rate not to exceed one and six-tenths per cent of the price at country point for each pound test below fifty-five down to and including wheat having a test weight of fifty-one pounds per measured bushel. The discount on mixed wheat may not exceed two per cent below the purchase price paid at country point for the same grade of the class of wheat which predominates in the mixture. Said discounts, together with the rules and regulations above provided, shall become part of every contract of sale of wheat of the classes named. (Rem. Supp. 1923, § 6989.)

NOTE: See also Nos. 31 and 41.

Hops.

See Nos. 41 and 366.

Ice.

See No. 359.

Meat—Meat Products.

232b. **Breaking Quarantine—Sale of Products of Quarantined Animals Prohibited.**—It shall be unlawful for the owner or owners of any domestic animal quarantined, or their agents or employes, to break such quarantine or to move, or to allow to be moved, any such animal from within the quarantined area, or across the quarantine line, as established, or to sell, exchange or in any other way part with the products of such animals, without first obtaining a permit in writing from the Director of Agriculture, or his duly authorized representative. Any owner or owners of any quarantined animal or any agent of such owner or owners, who fails to comply with or violates any such quarantine or who negligently allows any such quarantined animal to escape from quarantine, and any other person who removes any quarantined animal from such quarantine shall be guilty of a misdemeanor. (L. 1927, c. 165, § 3.)

232c. **Indemnity or Quarantine Optional—Appraisal—Sale—Certificate as to Price Paid—Supervision of Slaughter—Post Mortem—Meat Inspection Regulations—Report—Reimbursement of Owner—Maximum Payment—No Indemnity if Imported Into State—Proceeds of Sale of Slaughtered Imported Animals—No Indemnity to U. S., State or Municipal Corporations—Compensation of Appraisers.**—If, on the completion of any examination and test as provided in the preceding section, the inspector or veterinarian making the examination and test, shall believe that the animal is infected with tuberculosis, the owner of the animal shall have the option of indemnity or quarantine; if he selects indemnity the owner and inspector shall appraise the suspected animal, and in the appraisal of such animal due consideration shall be given to its breeding, dairy or meat value. In the event of their failing to agree upon the value, the inspector shall apply to the judge of the Superior Court of the county where the animal is located to appoint a third appraiser, and the decision of the majority of the appraisers shall be final.

The owner, or his agent, of any bovine animal thus appraised shall market the animal within thirty days from date of appraisal and shall obtain from the purchaser a report in quadruplicate, upon blank forms to be furnished by the inspector, certifying to the amount of money actually paid for the animal or animals. The animal or animals shall be slaughtered under the supervision of veterinary inspector of the Department of Agriculture, or the United States Bureau of Animal Industry, or a veterinarian duly licensed to practice veterinary medicine, surgery and dentistry in this State. The veterinary inspector or veterinarian shall hold a post mortem examination and determine whether or not the animal shall be passed to be used for food. The post mortem examination must conform with the meat inspection regulations of the United States Bureau of Animal Industry. Upon the receipt of said report, in quadruplicate, certifying to the amount of money actually paid for the animal or animals, and if the owner has complied with all lawful quarantine laws and regulations, the Department of Agriculture shall cause to be paid to the owner or owners of the animals one-third of the difference between the appraised value of each animal so slaughtered and the value of the salvage thereof: Provided, that in no case shall any payment by the Department of Agriculture be more than twenty-five dollars ($25.00) for any grade female, or more than fifty dollars ($50.00) for any pure bred registered bull or female, and in no case shall any indemnity be paid for grade bulls or for steers, and that no indemnity shall be paid for animals slaughtered on account of tuberculosis to any person who has not owned such animal for six months, prior to the date such examination or test is made, and the State shall not be required to pay the owner of any animal imported into this State within six months prior to the inspection and test the sums hereinabove provided for but the owner of such animal shall receive the proceeds of the sale of such slaughtered animal: And, provided further, that the right to indemnity shall not exist nor shall payment be made for any animal owned by the United States, this State, or any county, city, town or township in this State. Every appraiser appointed by the judge of the Superior Court as hereinabove provided shall receive his actual and necessary traveling expenses and a per diem of three dollars ($3.00) for the time actually spent to be paid by the State. The expenses of herding, caring for, feeding, transporting and slaughtering animals under the provisions of this section shall be paid by the owner thereof. (Id. § 12.)

Oysters.

See No. 195 et seq.

Potatoes.

See No. 354.

Vinegar.

See Nos. 305 and 357.

Water.

233. **Furnishing Impure Water.**—Every owner, agent, manager, operator or other person having charge of any waterworks furnishing water for public or private use, who shall knowingly permit any act or omit any duty or precaution by reason whereof the purity of healthfulness of the water supplied shall become impaired, shall be guilty of a gross misdemeanor. (Rem. C. S. 1922, § 2543.)

Sanitation.

See Nos. 44 et seq., 58 et seq., 232b et seq., and 308 et seq.

PART III.

Special Drug Laws.

Abortifacients—Contraceptives.

234. **Selling Drugs, Etc.**—Every person who shall manufacture, sell or give away any instrument, drug, medicine, or other substance, knowing or intending that the same may be unlawfully used in procuring the miscarriage of a woman, shall be guilty of a gross misdemeanor. (Rem. C. S. 1922, § 2450.)

235. **Evidence.**—In any prosecution for abortion, attempting abortion, or selling drugs unlawfully, no person shall be excused from testifying as a witness on the ground that said testimony would tend to incriminate himself. (Id. § 2451.)

236. **Obscene Literature.**—Every person who—

(1) Shall sell, lend, or give away, or have in his possession with intent to sell, lend, give away or show any obscene or indecent book, magazine, pamphlet, newspaper, story paper, writing, picture, drawing, photograph, or any article or instrument of indecent or immoral character; or who shall design, copy, draw, photograph, print, utter, publish or otherwise prepare such a book, picture, drawing, paper or other article; or write or print any circular, advertisement or notice of any kind, or give oral information stating when, where, how or of whom such an indecent or obscene article or thing can be purchased or obtained; or,

(2) Shall sell, lend, give away or have in his possession with intent to sell, lend, give away or show any book, pamphlet, magazine, newspaper or other printed paper devoted to the publication, or largely made up of criminal news, police reports, accounts of criminal deeds, or pictures and stories of deeds of bloodshed, lust or crime; or,

(3) Shall exhibit within the view of any minor any of the books, papers or other things, hereinbefore enumerated; or,

(4) Shall hire, use or employ, or having custody or control of his person shall permit any minor to sell, give away, or in any manner distribute any article hereinbefore mentioned; or,

(5) Shall cause to be performed or exhibited, or engage in the performance or exhibition of any obscene, indecent or immoral show, act or performance;

Shall be guilty of a gross misdemeanor. (Id. § 2459.)

237. **Indecent Articles, Etc.**—Every person who shall expose for sale, loan or distribution, any instrument or article, or any drug or medicine, for the prevention of conception, or for causing unlawful abortion; or shall write, print, distribute, or exhibit any card, circular, pamphlet, advertisement or notice of any kind, stating

when, where, how, or of whom such article or medicine can be obtained, shall be guilty of a misdemeanor. (Id. § 2460.)

Insecticides and Fungicides.*

238. Insecticide and Fungicide Board—Duties.—There is hereby created a board to be known as the State Insecticide and Fungicide Board, which board shall consist of the Commissioner of Agriculture or the assistant commissioner, the Director of the Agricultural Experiment Station at Pullman and three members of the Agricultural Experiment Station to be appointed by the director, one of whom shall be an entomologist, one a plant pathologist and one a chemist. It shall be the duty of the said board to analyze and report upon any insecticides and fungicides offered for sale to be used in the control and removal of insect pests and fungus and bacterial diseases to which horticultural plants are subject. It shall be the duty of all horticultural inspectors to from time to time procure and submit to such board samples of such insecticides and fungicides offered for sale. (Rem. C. S. 1922, § 2844.)

239. Insecticides and Fungicides, Adulteration Prohibited—Labels.—It shall be unlawful for any person to offer for sale in the State of Washington any horticultural insecticide or fungicide which is adulterated or misbranded within the meaning of this act. The term "insecticide" as used in this act shall include any substance or mixture of substances intended to be used for preventing, destroying, repelling, or mitigating any insects which may infest vegetation. The term "Paris green" as used in this act shall include the product sold in commerce as Paris green and chemically known as the acetoarsenite of copper. The term "lead arsenate" as used in this act shall include the product or products sold in commerce as lead arsenate and consisting chemically of products derived from arsenic acid (H_3AsO_4) by replacing one or more hydrogen atoms by lead. That the term "fungicide" as used in this act shall include any substance or mixture of substances intended to be used for preventing, destroying, repelling or mitigating any and all fungi that may infect vegetation or be present in any environment whatsoever.

It shall be unlawful for any manufacturer, firm, corporation or person to sell, offer or expose for sale in this State, an insecticide, fungicide, or any materials to be used for preventing, destroying, repelling or mitigating insects, fungi, bacteria or other plant pests, unless such material shall have affixed to each and every package or container, in a conspicuous place on the outside thereof, a plainly printed statement as follows:

(1) The name, brand or trade-mark under which it is sold.

(2) The purpose for which it is to be used.

(3) Direction for its application.

(4) The name and principal address of the manufacturer or person responsible for placing the commodity on the market.

(5) The net weight of the contents of the package.

(6) The correct statement of the character and name of each insecticidal or fungicidal ingredient used and the minimum per centum of such active ingredients and the maximum per centum of the inert ingredients contained in the package.

It shall be unlawful for any person, firm or corporation to sell, offer for sale or to apply to trees or plants by boring holes or otherwise for compensation any material as a horticultural insecticide or fungicide which relies for its effectiveness on being transferred throughout the tree or plant by the sap thereof without having demonstrated to the satisfaction of the State Insecticide and Fungicide Board the effectiveness thereof and without furnishing the purchaser thereof a printed statement describing the material in the same manner as listed above for other insecticides or fungicides sold in closed packages. (Rem. Supp. 1923, § 2845.)

240. Adulterations—Misbranding.—For the purpose of this act an article shall be deemed to be adulterated—

In the case of Paris green: First, if it does not contain at least fifty per centum of arsenious oxide; second, if it contains arsenic in water-soluble form equivalent to more than three and one-half per centum of arsenious oxide; third, if any substance has been mixed and packed with it so as to reduce or lower or injuriously affect its quality or strength.

In the case of lead arsenate: First, if it contains more than fifty per centum of water; second, if it contains total arsenic equivalent to less than twelve and one-half per centum of arsenic oxid (As205); third, if it contains arsenic in water-soluble

*For the penalty for violating the sections hereunder, see No. 215.
See No. 34. This law is to be corrected accordingly.

form equivalent to more than seventy-five one-hundredths per centum or arsenic oxid (As205); fourth if any substances have been mixed and packed with it so as to reduce, lower, or injuriously affect its quality or strength; Provided, however, that extra water may be added to lead arsenate (as described in this paragraph) if the resulting mixture is labeled lead arsenate and water, the percentage of extra water being plainly and correctly stated on the label.

In the case of insecticides or fungicides, other than Paris green and lead arsenate: First, if its strength or purity fall below the professed standard or quality under which it is sold; second, if any substance has been substituted wholly or in part for the article; third, if any valuable constituent of the article has been wholly or in part abstracted; fourth, if it is intended for use on vegetation and shall contain any substance or substances which, although preventing, destroying, repelling, or mitigating insects, shall be injurious to such vegetation when used.

The term "misbranded" as used herein shall apply to all insecticides, Paris green, lead arsenates, or fungicides, or articles which enter into the composition of insecticides, or fungicides, the package or label of which shall bear any statement, design or device regarding such article or the ingredients or substances contained therein which shall be false or misleading in any particular, and to all insecticides, Paris greens, lead arsenates, or fungicides which are falsely branded as to the State, Territory, or country in which they are manufactured or produced.

For the purpose of this act an article shall be deemed to be misbranded—

In the case of insecticides, Paris greens, lead arsenates, and fungicides: First, if it be an imitation or offered for sale under the name of another article; second, if it be labeled or branded so as to deceive or mislead the purchaser, or if the contents of the package as originally put up shall have been removed in whole or in part and other contents shall have been placed in such package; third, if in package form, and the contents are stated in terms of weight or measure they are not plainly and correctly stated on the outside of the package.

In the case of insecticides (other than Paris greens and lead arsenates) and fungicides: First, if it contains arsenic in any of its combinations or in the elemental form and the total amount of arsenic present (expressed as per centum of metallic arsenic) is not stated on the label; second, if it contains arsenic in any of its combinations or in the elemental form and the amount of arsenic in water-soluble forms (expressed as per centum of metallic arsenic) is not stated on the label, third, if it consists partially or completely of an inert substance or substances which do not prevent, destroy, repel, or mitigate insects or fungi and does not have the names and percentage amounts of each and every one of such inert ingredients plainly and correctly stated on the label: Provided, however, that in lieu of naming and stating the percentage amount of each and every inert ingredient the producer may at his discretion state plainly upon the label the correct names and percentage amounts of each and every ingredient of the insecticide or fungicide having insecticidal or fungicidal properties, and make no mention of the inert ingredients, except in so far as to state the total percentage of inert ingredients present. (Rem. C. S. 1922, § 2846.)

Pharmacy, Poisons and Narcotics.

241. Powers and Duties of Director of Licenses.—The Director of Licenses shall have the power, and it shall be his duty:

(1) To exercise all the powers and perform all the duties now vested in, and required to be performed by, . . . the State Board of Pharmacy,* . . except the receiving of fees. (Rem. C. S. 1922, § 10854.)

241a. Director of Licenses—Powers and Duties.—The Director of Licenses shall have the power, and it shall be his duty: . . .

(3) To exercise all the powers and perform all the duties relating to the issuance of licenses to itinerant vendors or peddlers of any medicine, drug, nostrum, ointment, or preparation for the treatment of disease or injury, now vested in and required to be performed by the Board of Pharmacy of the State of Washington, except the receiving of fees; . . . (Id. § 10862.)

241b. Applications for Licenses—Filing With State Treasurer.—All applications for the licenses mentioned in the preceding section and for renewals thereof shall be filed with the State Treasurer, together with the fee required by law to be paid in advance, and it shall be the duty of the State Treasurer, on the next business day after the receipt of any such application and fee, to transmit the application, accompanied by his duplicate receipt for the fee, to the Department of Licenses, and to deposit in the State treasury to the credit of the proper funds the

*See also No. 41. This law is to be corrected accordingly.

balance of moneys received as advance fees for licenses and renewals remaining on hand at the close of the preceding business day, after making all corrections and refunding all over-payments. Upon the receipt of any such application for a license or a renewal thereof, accompanied by the Treasurer's duplicate receipt for the advance fee, the Director of Licenses shall cause to be prepared and issue to the applicant the license or renewal applied for, signed by the Director of Licenses and attested by the secretary under the seal of the Department of Licenses. (Id. § 10863.)

242. **Pharmacists to be Registered.**—It shall hereafter be unlawful for any person to compound or dispense drugs, medicines or poisons, or to institute any pharmacy, store or shop for wholesaling or retailing, compounding or dispensing drugs, medicines or poisons, unless such person shall be a registered pharmacist or shall place in charge of said pharmacy store or shop a registered pharmacist except as hereinafter provided. (Id. § 10126.)

243. **Registered Pharmacist—Certificate.**—No person shall be granted a certificate of registered pharmacist or registered assistant pharmacist by the Director of Licenses except by examination, by graduation, by having been registered by examination in another State as hereinafter provided, or by being a duly licensed physician and surgeon of the State of Washington. (Rem. Supp. 1923, § 10126-1.)

244. **Application.**—A person making application to the State of Washington for a certificate of registered pharmacist shall be over twenty-one (21) years of age, or as registered assistant pharmacist shall be over eighteen (18) years of age, and shall satisfy the Director of Licenses that he or she is able to read, write and speak the English language, and shall furnish affidavits from not less than two reputable citizens that he or she is of good moral character, not addicted to the use of alcoholic liquors or to the use of any narcotic drug or drugs. (Id. § 10126-2.)

245. **Certificate by Examination, Requirements.**—To be granted a certificate of registered pharmacist by the Director of Licenses by examination, a person shall furnish suitable evidence that he or she is a graduate of a college of pharmacy maintaining not less than a two-year course, recognized by the Director of Licenses, or that he or she shall have had prior to the taking effect of this act, and not otherwise, at least fifteen years' continuous experience in the practice of pharmacy wherein the prescriptions of medical practitioners were compounded and was so engaged in this State at the time this act took effect: Provided, however, that experience gained before the age of fifteen years shall not be counted or computed, or that he or she is a regularly licensed physician and surgeon in the State of Washington, and shall pass an examination in the subjects of pharmacy, materia medica, chemistry, toxicology and posology, compounding of prescriptions, identification of drugs, and the laws relating to the practice of pharmacy in the State of Washington, with a general average of not less than seventy-five per cent (75%) and a grade of not less than sixty per cent (60%) in any one subject: Provided, that physicians and surgeons as herein defined shall be required to pass an examination only in the subjects of pharmacy, compounding of prescriptions, and the laws relating to the practice of pharmacy in the State of Washington with a grade in each subject and a general average as defined in this action: Provided, that before a certificate of registered pharmacist is issued, graduates of two-year courses of recognized colleges of pharmacy shall be required to present evidence of having had at least twenty-four (24) months of practical experience in a pharmacy and graduates of three-year courses of recognized colleges of pharmacy shall be required to furnish evidence of having had at least twelve (12) months of practical experience in a pharmacy. Graduates of four and five-year courses of recognized colleges of pharmacy or of colleges of medicine shall not be required to present evidence of practical experience as defined by this act. Practical experience shall be defined as experience in a pharmacy where drugs and medicines are compounded and dispensed, and where prescriptions of regularly licensed physicians are compounded. Recognized colleges of pharmacy as defined by this act shall be such colleges, schools or departments of pharmacy whose entrance requirements and courses of study are approved by the Director of Licenses. (Id. § 10126-3, as amended L. 1927, c. 253, § 1.)

246. **Certificate by Graduation, Requirements.**—To be granted a certificate of registered pharmacist by the Director of Licenses, by graduation, a person shall furnish evidence of having had twelve months' practical experience in a pharmacy, as that term is defined in section 3 of this act, and of having graduated from not less than a three-year course of the University of Washington College of Pharmacy or the Washington State College School of Pharmacy. (Rem. Supp. 1923, § 10126-4, as amended L. 1927, c. 253, § 2.)

247. **Registration of Pharmacists of Other States.**—The Director of Licenses shall grant a certificate of registered pharmacist to any person who furnished proof that he or she is a registered pharmacist by examination in good standing in another

State; Provided, that the applicant meets the qualifications set forth in section two (2) of this act, the education and experience requirements of section three (3) of this act, and passes an examination in the laws relating to the practice of pharmacy in the State of Washington with a grade of not less than eighty-five per cent (85%): Provided, that any person not possessed with the requisites or requirements for graduation from a college of pharmacy and for registration as a pharmacist, as in this act provided, upon the furnishing of suitable evidence that he or she was registered as a pharmacist by examination in another State, which by its laws extends reciprocal privileges to persons registered in this State, and was actively engaged in the practice of pharmacy in such State at least ten years or more next preceding the taking effect of this act, may have the right to register as a pharmacist in this State, provided he or she pass a satisfactory oral examination in practical pharmaceutical subjects, and provided he or she meets all other conditions for registration as a pharmacist as provided by law. (Rem. Supp. 1923, § 10126-5 as amended L. 1927, c. 253, § 3.)

248. Physicians and Surgeons.—The Director of Licenses shall on application issue a certificate of registered pharmacist without examination to a regularly licensed physician and surgeon of the State of Washington, provided that a physician and surgeon to be entitled to registration as a pharmacist without examination under the provisions of this act shall make application to the Director of Licenses within six (6) months of the taking effect of this act. (Rem. Supp. 1923, § 10126-6.)

249. Assistant Pharmacist.—To be granted a certificate of registered assistant pharmacist, a person shall meet all the conditions set forth in section 10126-2, and all the conditions set forth in section 10126-3 or section 10126-4 except that he or she shall not be required to furnish evidence of having had practical experience in a pharmacy as defined by this act. Registered assistant pharmacists shall be granted certificates of registered pharmacists without further payment of fee upon furnishing evidence to the Director of Licenses that he or she has completed the required term of practical experience in a pharmacy as provided in section 10126-3 and is over twenty-one (21) years of age. (Id. § 10126-7.)

250. Fee.—A fee of ten dollars ($10.00) shall be paid by all persons making application for certificate as registered pharmacist or registered assistant pharmacist. (Id. § 10126-8.)

251. Temporary Permits.—The Director of Licenses shall have power to grant permits to practice pharmacy as registered pharmacists or as registered assistant pharmacists to persons making application for examination, such permits to be valid only from date of issuance to the date of the next regular examination, provided that if the applicant fails to pass the examination his permit may be extended to the date of the next examination at the discretion of the Director of Licenses. (Id. § 10126-9.)

252. Permits to Take Examination.—Unregistered persons who furnish affidavits from two or more registered pharmacists of the State of Washington that they have five or more years' continuous experience in pharmacy prior to the enactment of this act and who are actually engaged in pharmacy in the State of Washington at the time of the enactment of this act, shall have opportunity of passing the examination as provided in section 10126-3 for registered pharmacists within one year after the date this act takes effect: Provided, that time spent by such applicant in the medical department of the army, navy, or marine corps of the United States during the World War shall for the purpose of this act be considered time spent in a pharmacy. (Id. § 10126-10.)

253. Rules and Regulations.—The Director of Licenses shall have power to make rules and regulations not in conflict with this act for its proper enforcement. (Id. § 10126-11.)

254. Registry of Apprentices.—It shall be the duty of registered pharmacists who take into their employ an apprentice for the purpose of becoming a registered pharmacist to report to the board* within three months thereafter such facts regarding his or her schooling and preliminary qualifications as the board may require for the purpose of registration, and to satisfy himself that such apprentice does possess those qualifications demanded, by the board. The board shall furnish proper blanks for this purpose, and may issue to such apprentice a certificate of registration as a registered apprentice, and the date of the certificate shall be proof of the time when practical experience began with the apprentice named therein; and the fee for such registration shall be one dollar. Every registered pharmacist shall report to the State Board of Pharmacy* the names of all clerks and apprentices employed in their respective pharmacy at least once during each year, and at such time as the State Board of Pharmacy shall determine. (Rem. C. S. 1922, § 10131.)

255. Board—Officers—Powers and Duties—Meetings—By-Laws.—The State Board of Pharmacy* shall annually elect a president and a secretary from the number of its own members, who shall be elected for the term of one year, and shall perform the duties prescribed by the board.

It shall be the duty of the board to examine all applicants for registration, submitting application in proper form; to grant certificates of registration to such persons as may be entitled to the same under the provisions of this act; to cause prosecutions of all persons violating the provisions of this act; to report annually to the Governor and to the Washington State Pharmaceutical Association upon the condition of pharmacy in the State, which said report shall furnish a record of the proceedings of said board for the year, as well as the names of all persons registered under this act; and also an itemized account of all moneys received and disbursed by them as said board, which account shall be audited by the Washington State Pharmaceutical Association annually.

The board shall hold meetings for the examination of applicants for registration and the transaction of such other business as shall pertain to its duties at least once in six months: Provided, that the president of the Board of Pharmacy may call special meetings of said board not more than twice in any one year for the purpose of transacting such business as may properly come before it, and said board shall give thirty days' public notice of the time and place of all of its meetings.

The said board shall have power to make such by-laws, rules and regulations, not inconsistent with the laws of the State, as may be necessary to carry into effect the provisions of this act.

The board shall have power to investigate all alleged violations of the provisions of this act, or any other law of this State regulating the dispensing or sale of drugs, medicines or poisons, or the practice of pharmacy, which may come to its notice, and whenever there appears reasonable cause therefor to take and hear testimony with reference to the same.

The board shall keep a book of registration in which shall be entered the names and places of business of all persons registered under this act, together with a record of the conditions justifying such registration. Three members of said board shall constitute a quorum for the transaction of all business that may properly come before the board. (Id. § 10133.)

256. Who Entitled to Registration.—All persons hitherto registered, either as pharmacists, assistant pharmacists or physicians, under the laws of this State, shall be entitled to all rights and privileges of registration under this chapter: Provided, that physicians to be entitled to the benefits of this chapter must make application for registration hereunder within thirty days of the taking effect of this act. (Id. § 10134.)

257. Registration Fee—Shopkeeper's License.—Every person claiming registration as a graduate in pharmacy or as a licentiate of some other State Board, shall, before a certificate be granted, pay the secretary of State Board of Pharmacy* the sum of eight dollars, and every applicant for registration by examination under this chapter shall pay the secretary the sum of ten dollars before the examination be attempted: Provided, that in case the applicant fails to pass a satisfactory examination he shall have the privilege of a second examination without any charge any time within one year.

Every shopkeeper not a pharmacist, desiring to secure the benefits and privileges of this chapter, is hereby required to secure a shopkeeper's license, and he or she shall pay the sum of six dollars for the same, and annually thereafter the sum of six dollars for renewal of same. (Id. § 10135.)

258. Annual Renewal of Registration—Fee—Certificate to be Displayed.—Every registered pharmacist and assistant pharmacist who desires to continue the practice of his profession shall annually on or before the first day of June of each year pay to the secretary of said board* a renewal registration fee, the amount of which shall be fixed by the board, and which in no case shall exceed two dollars for a pharmacist and one dollar for an assistant, in return for which payment he shall receive the renewal of such registration. Every certificate of registration and every renewal shall be conspicuously exposed in the pharmacy or shop to which it applies. Any registered pharmacist, assistant pharmacist or shopkeeper who shall fail or neglect to conspicuously expose such certificates as are herein provided, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined not less than five nor more than ten dollars, and the costs of the action. (Id. § 10136.)

259. Compensation of Board—Bond by Secretary.—Each member of the State Board of Pharmacy* shall receive a compensation of five dollars a day for

*See Nos. 41 and 241.

each day in which he is actually and necessarily engaged in attendance upon meetings of the board and in going to and returning from the place of meeting, and all necessary expenses incurred in attending such meeting; all such compensation and expenses and all other expenses incident to the execution of the provisions of this act shall be paid by the State Treasurer upon warrants drawn by the State Auditor, upon the presentation of proper vouchers to be approved by a majority of said board, as in the case of State officers.

The secretary of said board shall receive a compensation to be determined by said board not to exceed one hundred dollars per annum.

All money received or collected by said board or any member or officer thereof during any month shall be turned over before the tenth day of the succeeding month, to the State Treasurer together with a verified statement showing the sources from which such money was derived. The secretary of said board shall give a surety bond to be approved by and deposited with the Auditor of the State, in the sum of one thousand ($1,000) dollars. The cost of said bond shall be paid by the State. (Id. § 10137.)

260. Penalties for Violations—Exceptions.—Any person not a registered pharmacist and not having in his employ a registered pharmacist within the full meaning of this chapter, who shall retail, compound or dispense medicines, or who shall take, use or exhibit the title of registered pharmacist, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined in any sum not to exceed fifty dollars.

Every place in which physicians' prescriptions are compounded shall be deemed to be a pharmacy, or a drug store, and the same shall be under the personal supervision of a licensed pharmacist.

Any person who shall permit the compounding and dispensing of prescriptions or vending of drugs, medicines or poisons in his store or place of business, except under the supervision of a registered pharmacist, or any registered pharmacist or shopkeeper registered under this chapter while continuing in business, who shall fail or neglect to procure annually his renewal of registration, or any person who shall willfully make any false representations to procure registration for himself or any other person, or who shall violate any of the provisions of this chapter willfully and knowingly, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined in any sum not to exceed fifty dollars: Provided, that nothing in this chapter shall operate in any manner to interfere with the business of any physician in regular practice, or prevent him from supplying to his patients such medicines as he may deem proper, nor with the making or selling proprietary medicine or medicines placed in sealed packages, nor with the exclusive wholesale business of any dealer except as hereinafter provided, nor prevent shopkeepers from dealing in and selling the commonly used medicines, or patent and proprietary medicines, if such medicines are sold in the original packages of the manufacturer, or in packages put up by a registered pharmacist in the manner provided by the State Board of Pharmacy* such shopkeeper shall have obtained a license as hereinafter provided. (Id. § 10138.)

261. Adulteration—Penalty.—Every proprietor of a wholesale or retail drug store shall be held responsible for the quality of all drugs, chemicals or medicines sold or dispensed by him except those sold in original packages of the manufacturer and except those articles or preparations known as patent or proprietary medicines. Any person who shall knowingly, willfully or fraudulently falsify or adulterate any drug or medicinal substances or preparations authorized, or recognized by the Pharmacopœia of the United States or used or intended to be used in medical practice, or shall willfully, knowingly or fraudulently offer for sale, sell or cause the same to be sold for medicinal purposes, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine in any sum not less than seventy-five nor more than one hundred and fifty dollars or by imprisonment in the county jail for a period of not less than one month nor more than three months, and any person convicted a third time for violation of any of the provisions of this section may suffer both fine and imprisonment. In any case he shall forfeit to the State of Washington all drugs or preparations so falsified or adulterated. (Id. § 10139.)

262. Poisons and Liquors—Record of Sales.—The proprietor of every drug store shall keep in his place of business a record in which shall be entered all sales of the compounds and salts of arsenic, baring, chronium, gold, mercury (calomel excepted), silver, the caustic hydrates of sodium, and potassium, the concentrated mineral acids, hydrocyanic acids and their salts, yellow phosphorus, Paris green, the essential oils of almonds, pennyroyal, tansy and savin, croton oil, creosote, chloroform, chloral hydrate, cantharides, or any aconite, belladonna, bitter al-

*See Nos. 41 and 241.

monds, colchicum, cotton root, coccolus indicus, conium, cannabis indica, digitalis, hyoscyamus, ignatia, lobella, nux vomica, opium, physostigma, phytolacca, strophanthus, stramonium, veratrum viride, or any of the poisonous alkaloids or alkaloidal salts or any other poisonous principles derived from the foregoing, or veratrine or any other poisonous alkaloids or their salts, or any poisonous compound, combination or preparation thereof, also all wines and spirituous or malt liquors. Said record shall state the quantity purchased, the date for what purpose used, buyers' name and address, and said record at all times during business hours shall be subject to the inspection of the prosecuting attorney or any duly authorized agent of the Board of Pharmacy:* Provided, that no such wines, spirituous or malt liquors shall be sold for any other than medicinal, scientific, mechanical or sacramental purposes, and no other license shall be necessary under any ordinance of any municipality for pharmacists to make said sale in compliance with the provisions of this chapter.

He shall not deliver any of said poisons without satisfying himself that the purchaser is aware of its poisonous nature and that the said poison is to be used for a legitimate purpose. (Id. § 10140.)

263. Peddler's License.—Any itinerant vendor or any peddler of any medicine, drug, nostrum or ointment or preparation, for the treatment of disease or injury, shall pay a license fee of not less than one dollar nor more than twenty-five dollars per month into the treasury of the board,* subject to regulations formulated by said Board of Pharmacy. It shall be lawful for said board to issue license to such itinerant vendor or peddler on application made to the State Board of Pharmacy, such license to be signed by the president and attested by the secretary with the seal of the board. And such itinerant vendor or peddler, or who shall vend or sell or offer to sell any such medicine, drug, nostrum, or ointment or preparation without having a license so to do as herein provided shall be guilty of a misdemeanor, and upon conviction thereof, shall be fined in any sum not less than twenty dollars, and not exceeding fifty dollars, for such offense, and each sale, or offer for sale, shall constitute a separate offense. (Id. § 10141.)

264. Duty of Prosecuting Attorney—Fines to School Fund.—All suits for the recovery of the several penalties prescribed in this chapter shall be prosecuted in the name of the State of Washington in any court having jurisdiction, and it shall be the duty of the prosecuting attorney of the county wherein such offense is committed to prosecute all persons violating the provisions of this chapter upon the filing of proper complaint. All penalties collected under the provisions of this chapter shall inure to the school fund of the county in which suit was prosecuted and judgment obtained. (Id. § 10142.)

265. Refusal or Revocation of License—Procedure.—When, upon investigation, the State Board of Pharmacy* becomes convinced that anyone registered under the laws of this State or applying for examination and registration, either a licentiate, as an assistant pharmacist or as a registered apprentice, is guilty of a felony, misdemeanor, gross immorality or sells or gives away morphine, cocaine or any other narcotic to any person addicted to the use of such drugs or is addicted to the liquor or drug habit to such a degree as to render him or her unfit for the practice of pharmacy, or is guilty of selling, disposing of or giving away spirituous, fermented, malt or other intoxicating liquors contrary to law and not in good faith, the Board of Pharmacy may examine and refuse to register, or revoke, cancel and suspend the registration of such licentiate, assistant pharmacists or registered apprentice. In any case of the refusal or revocation of a license by said Board of Pharmacy under the provisions of this chapter, said board shall file a brief and concise statement of the grounds and reasons for such refusal or revocation in the office of the secretary of said board, which said statement, together with the decision of said board in writing, shall remain of record in said office. Before a license can be revoked by said Board of Pharmacy under the provisions of this chapter, a complaint of some person under oath must be filed in the office of the secretary of said Board of Pharmacy, charging the acts of misconduct and facts complained of against the applicant, licentiate, assistant pharmacist or registered apprentice accused, in ordinary and concise language, and thereupon said board shall cause to be served upon such accused applicant, licentiate, assistant pharmacist or registered apprentice a written notice and copy of such complaint, which said notice shall contain a statement of the time and place of hearing of the matters and things set forth and charged in such complaint, and said notice shall be so served at least ten days prior to the time of such hearing. Such accused applicant, licentiate, assistant pharmacist or registered apprentice may appear at such hearing, and defend against the accusation of such complaint, personally and by counsel, and may have the sworn

*See Nos. 41 and 241.

testimony of witnesses taken and present other evidence in his behalf at such hearing, and said board may receive the arguments of counsel at such hearing. (Id. § 10143.)

266. Decisions of Appeals From Board.—In any case of the refusal or revocation of a license by said board* under the provisions of this chapter, the applicant whose application shall be so refused, and the licentiate, assistant pharmacist and licensed apprentice whose license shall be so revoked by said board, shall have the right to appeal from the decision so refusing or revoking such license within thirty days after the filing of such decision in the office of the secretary of said board, as hereinbefore in this act provided. Such appeal shall be to the Superior Court in and for the county in which was held the last general meeting of said board, prior to the refusal of such license, in the case of such refusal; and to the Superior Court in and for the county in which the hearing was had upon which such license was revoked, in case of such revocation. In any case the person desiring to take such appeal shall serve, or cause to be served, upon the secretary of said board a written notice of such appeal, which shall contain a statement of the grounds of such appeal and shall file in the office of such secretary an appeal bond, with good and sufficient surety, to be approved by said State Board of Pharmacy of the State of Washington, conditioned for the speedy prosecution of such appeal, and the payment of such costs as may be adjudged against him upon such appeal. Said secretary of the State Board of Pharmacy shall, within ten (10) days after the service of such notice of appeal and the filing and approval of said appeal bond, transmit to the clerk of the Superior Court to which such appeal is taken, a certified copy, under the seal of said board, of the decision of said board, and the grounds thereof, in the case of the refusal of a license; and in addition thereto a certified copy under such seal of the complaint in the case of the revocation of a license, together with the bond and notice of appeal. The clerk of such court shall thereupon docket such appeal causes, and they shall stand for trial in all respects as ordinary civil actions, and like proceedings be had thereon. Upon such appeal said cause shall be tried de novo. Either party may appeal from the judgment of said Superior Court to the Supreme Court of the State in like manner as in civil actions within sixty (60) days after the rendition and entry of such judgment in said Superior Court. If such judgment shall be in favor of the party appealing from the decision of said board, and in case said examining board does not appeal from said judgment within sixty (60) days, then, and in that case, said board shall, at the end of sixty (60) days, and immediately upon the expiration thereof, issue to such successful party the usual license to practice pharmacy in this State, and in addition thereto, shall reinstate upon the records of said board the name of such successful applicant, and in case of the revocation of his license by such board. In case of such appeal to the Supreme Court by said board, no such license shall be issued nor reinstatement be required until the final determination of said cause, and as hereinafter provided. In case the final decision of the Supreme Court be against examining board, then and in that case said court shall make such order in the premises as may be necessary, and said board shall act accordingly: Provided, that in no case shall an appeal bond be required of said board nor shall any costs be adjudged or taxed against the same. (Id. § 10144.)

267. Registration of Ownership of Pharmacy.—Within ninety days from and after the passage of this act, the owner of each and every drug store, pharmacy or dispensary, shall file with the Secretary of the State Board of Pharmacy* on a blank therefor provided, a declaration of ownership and location, and shall then receive from the board a duly signed registration of location which declaration of ownership and location so filed as aforesaid shall be deemed presumptive evidence of ownership of the pharmacy, drug store or business mentioned therein. It shall be the duty of the owner to notify the board of any change of location and ownership, and shall keep the registration of location certificate properly exhibited in said drug store. Failure to conform with this provision shall be deemed a misdemeanor, and upon conviction thereof shall be fined not less than ten dollars nor more than fifty dollars. (Id. § 10145.)

268. General Penal Provisions.—Any person who shall violate any of the provisions of this chapter and for which a penalty is not hereinbefore provided for shall be deemed guilty of a misdemeanor and upon conviction thereof, shall be fined in any sum not exceeding fifty dollars, or may be imprisoned in the county jail not exceeding six months. (Id. § 10146.)

269. Selling Poison Without Labeling and Recording the Sale.—It shall be unlawful for any person to sell at retail or furnish any of the poisons named in the schedules hereinafter set forth, without affixing or causing to be affixed to the bottle, box, vessel or package, a label containing the name of the article and the word "poison" distinctly shown, with the name and place of business of the seller, all printed

*See Nos. 41 and 241.

in red ink, together with the name of such poison printed or written thereon in plain, legible characters, which schedules are as follows, to wit:

SCHEDULE "A."

Arsenic, cyanide or [of] potassium, hydrocyanic acid, cocaine, morphine, strychnia and all other poisonous vegetable alkaloids and their salts, oil of bitter almonds, containing hydrocyanic acid, opium and its preparations, except paregoric and such others as contain less than two grains of opium to the ounce.

SCHEDULE "B."

Aconite, belladonna, cantharides, colchicum, conium, cotton root, digitalis, ergot, hellebore, henbane, phytolacca, strophanthus, oil of tansy, veratrum viride and their pharmaceutical preparations, arsenical solutions, carbolic acid, chloral hydrate, chloroform, corrosive sublimate, creosote, croton oil, mineral acids, oxalic acid, Paris green, salts of lead, salts of zinc, white hellebore or any drug, chemical or preparation which, according to standard works on medicine or materia medica, is liable to be destructive to adult human life in quantities of sixty grains or less. Every person who shall dispose of or sell at retail or furnish any poisons included under Schedule A shall, before delivering the same, make or cause to be made an entry in a book kept for that purpose, stating the date of sale, the name and address of the purchaser, the name and the quantity of the poison, the purpose for which it is represented by the purchaser to be required and the name of the dispenser, such book to be always open for inspection by the proper authorities, and to be preserved for at least five years after the last entry. He shall not deliver any of said poisons to any minor, intoxicated person, or person known to be of unsound mind, or to any person without satisfying himself that the purchaser is aware of its poisonous character and that the said poison is to be used for a legitimate purpose.

The foregoing portions of this section shall not apply to the dispensing of medicines, or poisons on physicians' prescriptions. Wholesale dealers in drugs, medicines, pharmaceutical preparations or chemicals shall affix or cause to be affixed to every bottle, box, parcel or outer inclosure of an original package containing any of the articles enumerated under said Schedule A, a suitable brand in red ink with the word "poison" upon it. Every person who shall violate any of the provisions of this section shall be guilty of a misdemeanor. (Id. § 2508.)

270. Narcotic Drugs—Habitual Use.—The habitual use of opium, morphine, cocaine, alkaloid cocaine, cocoa leaves or alpha or beta eucaine, their derivatives and other habit-forming drugs hereinafter named is detrimental and dangerous to the individual and to public safety, health and morals. (Rem. Supp. 1923, § 2509-1.)

271. Definitions.—The term narcotic drugs wherever used in this act shall be deemed and construed to mean and include opium, morphine, cocaine, alkaloid cocaine, cocoa leaves, or alpha or beta eucaine, heroin, codeine, dionin, cannabis americana, cannabis indica and other salts, derivatives, mixtures or preparations of any of them.

The term narcotic addict whenever used in this act shall be deemed and construed to mean and include any person who habitually uses a narcotic drug or drugs.

The masculine term shall be deemed and construed to mean and include the feminine gender and the singular terms shall be deemed and construed to include the plural. (Id. § 2509-2.)

272. Sale or Disposal—Physician's Prescription—Druggists' Records—Regulation of Dealers, Manufacturers, Etc.—Penalties.—It shall be unlawful for any person to sell, furnish, or dispose of, or have in his possession with intent to sell, furnish, or dispose of any narcotic drug or drugs, except upon the written and signed prescription of a physician regularly licensed to practice medicine and surgery who has complied with the regulations of, and is duly registered under the laws of the State of Washington, and the laws of the Congress of the United States. All such prescriptions shall be written with ink or indelible pencil, must be signed by the physician issuing the same, and must contain the name and address of the person for whom prescribed and the nature of the ailment, the date written, the office address and federal registry number of the physician, all of which data must be placed on such prescriptions by the physician writing the same, or caused to be placed thereon before his or her signature is affixed thereto.

All such prescriptions shall be filled but once, and the dispenser of such drugs in pursuance of such prescriptions shall cause the person procuring the drug or drugs to be prescribed to place his or her signature and address upon the back of such pre-

scriptions, and shall keep all such prescriptions on a separate file and preserve them for not less than two years from and after the date of the last prescription placed on such file, shall make duplicate copy of such prescription and preserve same, and such prescriptions shall at all times during business hours be available for inspection, and such duplicate copy shall be removed by any prosecuting attorney or peace officer, any representative of the Department of Licenses, or any deputy or inspector of the State Department of Agriculture.

It shall be unlawful for any person to supply such narcotic drugs, or preparations containing such drugs upon telephone orders, or for any person to order such narcotic drugs, or preparation containing such narcotics by telephone. Provided, that nothing in this section shall be construed as prohibiting any wholesale dealer in drugs from selling or furnishing in compliance with the Acts of the Congress of the United States and the rules and regulations now in force or hereafter promulgated thereunder relating to the importation, manufacture and sale of narcotic drugs, to any other wholesale or retail dealer, nor prevent such wholesale dealer from selling, in compliance with the Acts of the Congress of the United States and the rules and regulations now in force or hereafter promulgated thereunder relating to the importation, manufacture and sale of narcotic drugs, to any physician, dentist, surgeon or veterinarian, duly registered under the Acts of the Congress of the United States and the rules and regulations now in force or hereafter promulgated thereunder relating to the importation, manufacture and sale of narcotic drugs; nor prevent any retail druggists from selling, in compliance with the Acts of the Congress of the United States and the rules and regulations now in force or hereafter promulgated thereunder relating to the importation, manufacture and sale of narcotic drugs to any physician, dentist, surgeon or veterinary duly registered under said Acts of Congress and the rules and regulations now in force or hereafter promulgated as aforesaid; nor prevent any physician, dentist, surgeon, or veterinarian, so registered, from administering, for legitimate medical purposes, in the course of his professional practice only, to his patient, any of the articles enumerated in this section in quantities proportioned to the needs of such patient nor prevent the manufacture, sale, and dispensing of preparations and remedies containing not more than two grains of opium, nor more than one-fourth grain of morphine, nor more than one grain of codeine, nor more than one-eighth grain of heroin, or any derivative or preparation of them, in one fluid ounce, or if a solid or semi-solid in one avoirdupois ounce; or liniments, ointments, or other preparations incapable of being used as a beverage intended for external use only, except liniments and ointments or other preparations which contain cocaine or any of its salts or derivatives, or alpha or beta eucaine or their salts or derivatives; Provided, further, that such remedies and preparations are such as are exempt by federal law, rules and regulations and are sold, distributed and dispensed in good faith as medicines and not for the purpose of evading the intentions and provisions of this act and that all sales of such drugs, medicines or preparations which contain such exempt quantities of narcotic drugs, whether sold and dispensed upon prescriptions or otherwise, shall be duly registered and recorded in a suitable register showing in parallel columns the signature of the person procuring the same, the date of sale, address of purchaser, name of drug or preparation, quantity sold or dispensed, and if pursuant to a prescription the serial number of such prescription, and such record shall be preserved for a period of not less than two years from and after the date of the last entry made therein, and at all times during business hours be available for inspection by any prosecuting attorney or peace officer, any representative of the Department of Licenses, or any deputy or inspector of the State Department of Agriculture. Nothing in this act contained shall make unlawful or prevent the purchase by the State University and the State College of Washington or the proper departments of each said State institution, of any narcotic drugs and the use of the same for experimental purposes only in such institutions, the same to be purchased, owned, held, possessed and used in compliance with and in conformity to the Acts of Congress of the United States and the rules and regulations now in force or hereafter to be promulgated thereunder.

It shall be deemed a violation of this act for any person to have in his or her possession any narcotic drug, or any preparation or compound containing same in unexempt quantities, unless the same shall have been obtained pursuant to this act and to the laws of the Congress of the United States and the rules and regulations now in force or hereafter promulgated thereunder, and proof of the possession of any such narcotic drug, except by a licensed physician, licensed manufacturer or licensed druggist, shall be prima facie evidence of an intent to unlawfully sell, furnish or dispose of the same.

Any person violating any of the provisions of this section and any person who shall falsely make, forge or alter or knowing the same to have been falsely made, forged or altered shall present to any druggist a physician's prescription with intent

by means thereof to procure from such druggist any narcotic drug as defined in this act shall be guilty of a felony, and upon conviction thereof shall be punished by imprisonment in the State Penitentiary for not less than one year nor more than ten years. Upon a conviction of any registered pharmacist, dentist, physician or veterinarian for violating any of the provisions of this section, the certificate of registration or license of such offender shall not be eligible for re-registration for a period of ten years from and after the date of the revocation of his or her certificate or license. (Id. § 2509-3.)

273. Habitual Use—Penalty.—Every person who habitually uses any narcotic drug as defined in this act shall be deemed guilty of a gross misdemeanor. (Id. § 2509-4.)

274. Prosecutions—Defenses.—In any prosecution for the violation of the provisions of this act, it shall not be necessary for the indictment, complaint or information to set forth any negative allegation, nor for the plaintiff to prove that the defendant does not come within any of the exceptions herein contained; but such exceptions shall be considered as a matter of defense, and the burden shall be upon the defendant to show that he comes within such exceptions. (Id. § 2509-5.)

275. Examination of Suspects—Quarantine.—State, county and municipal health officers, or their authorized deputies, who are licensed physicians, within their respective jurisdictions are hereby directed and empowered, when in their judgment it is necessary to protect the public safety, health and morals, to make examinations of persons reasonably suspected of being habitual users of any narcotic drug and to require persons whom they have reason to suspect to be habitual users of any narcotic drug to report for treatment to an approved physician, and to continue treatment at his own expense until cured, or to submit to treatment, provided at public expense, until cured, and also to isolate or quarantine habitual users of such narcotic drugs or their derivatives. Such officer, deputy or physician shall make a written finding that such person is an habitual user of a narcotic drug, which finding shall be filed in his office: Provided, that such habitual users shall not be isolated or quarantined until the State Board of Health shall first, by general regulation, determine that the quarantine or isolation of all habitual users is necessary: Provided, further, that any person suspected as herein set forth may have present at the time of his examination, a physician of his or her own choosing: And Provided, further, that the suspected person shall be informed by the health officer of his or her rights under this act. (Id. § 2509-6.)

276. Examination of Convicts and Inmates—Clinics—Physician's Report.—Any person convicted under the provisions of section 2509-4 or any person who shall be confined or imprisoned in any State, county, or city prison in the State and who may be reasonably suspected by the health officer of being a narcotic addict shall be examined for and if found to be an habitual user of said drugs, or any of them, shall be treated therefor at public expense by the health officers or their deputies who are licensed physicians. The prison authorities of any State, county, or city prison are directed to make available to the health authorities, such portion of any State, county, or city prison as may be necessary for a clinic or hospital wherein all persons who may be confined or imprisoned in any such prison, and who are habitual users of said drugs or their derivatives, may be isolated and treated at public expense until cured, or, in lieu of such isolation any such person may, in the discretion of the board of health, be required to report for treatment to a licensed physician, or submit to treatment provided at public expense, as provided in section 2509-6. Nothing herein contained shall be construed to interfere with the service of any sentence imposed by a court as a punishment for the commission of crime: Provided, that licensed physicians treating any narcotic addict shall, upon beginning said treatment, immediately report the same to the health officer in charge in that jurisdiction, such report to be on forms prescribed by the State Board of Health, and such report shall give the name of the person receiving such treatment and such other information as shall be deemed necessary by the State Board of Health. (Id. § 2509-7.)

277. Rules for Treatment—Disclosure of Names.—The State Board of Health is hereby empowered and directed by resolution duly entered on the minutes of its proceedings to make such rules and regulations as shall in its judgment be necessary for the carrying out of the provisions of this act, including rules and regulations providing for the control and treatment of persons isolated or quarantined under the provisions of section 2509-5, and such other rules and regulations, not in conflict with the provisions of this act concerning the control, care, treatment and quarantine of persons addicted to the habitual use of narcotic drugs, as it may from time to time deem advisable. All such rules and regulations so made shall be in force and binding on all county and municipal health officers and other persons effected by this act: Provided, that such regulations shall prescribe reasonable safeguards against the disclosure, except to officers and physicians charged with the enforcement of this act,

of the names of any narcotic addicts who faithfully comply with the provisions of this act and the lawful regulations of the State Board of Health, and whoever shall violate any of such safeguarding regulations shall be guilty of a gross misdemeanor. (Id. § 2509-8.)

278. Violation—Penalty.—Any person who shall violate lawful rules or regulations made by the State Board of Health pursuant to the authority herein granted, or who shall fail or refuse to obey any lawful order issued by any State, county or municipal health officer, pursuant to the authority granted in this act, shall be deemed guilty of a gross misdemeanor. (Id. § 2509-9.)

279. Habitual User's Appeal—Jurisdiction—Parole and Discharge.—Any person committed to quarantine under the provisions of sections 2509-6 or 2509-7, feeling aggrieved at the finding of the health officer that he or she is an habitual user of such drugs, or at the finding that he or she be committed to quarantine, shall have the right of appeal from such finding to the Superior Court of the State of Washington for the county in which said person is quarantined. Said appeal shall be taken within ten (10) days after said health officer shall have made his finding and shall be taken by serving written notice of appeal upon said health officer and by filing the same in the office of the clerk of the Superior Court, and the procedure governing appeals from judgments of justices of the peace to the Superior Court shall govern all such appeals: Provided, that the person appealing shall be held in quarantine during the pendency of such appeal. Within five (5) days after such appeal shall have been filed, the Superior Court shall, without a jury, examine or cause to be examined the person taking the appeal, and take such evidence as it may deem necessary for the determination of the truth of the charges against the appellant or of the findings of such health officer. The prosecuting attorney of the county shall represent the health or quarantine officer in all such appeals and the appellant shall have the right to be represented by counsel.

The findings and judgment of said Superior Court upon said appeal shall be conclusive. Any person committed to quarantine under the provisions of this act may be paroled, or discharged from quarantine at any time by the committing health officer or his successor in charge, whenever said person is cured of such narcotic habit, or whenever said officer shall deem it no longer necessary for the public health, safety and morals, to continue the quarantine of said individuals. Any person held in quarantine deeming himself cured may make application for discharge to the health officer ordering commitment, or his successor, upon which application findings in writing shall be made within five days therefrom. In the event that the application is denied the applicant may appeal to the Superior Court in the manner herein provided from the findings of the quarantine officer in charge that he or she is not cured of such habit, Provided, however, that said appeal shall not lie until after said person shall have been in quarantine for a period of at least six months. If upon such hearing the appeal shall be disallowed by the court, the appellant shall be returned to quarantine. If such appeal be allowed, the appellant shall be discharged therefrom. Nothing in sections 2509-6, 2509-7, 2509-8, 2509-9 and 2509-10 shall affect, prevent, or interfere with prosecutions instituted under sections 2509-3 or 2509-4. (Id. § 2509-10.)

280. Quarantine Districts—Clinics.—For the purpose of carrying out the provisions of this act the State Board of Health shall have the power and authority from time to time to divide the State into such number of quarantine districts consisting of one or more counties, or municipalities, or parts of counties or municipalities, as it shall deem expedient, and to establish at such place, or places, as it shall deem necessary, quarantine stations and clinics for the detention and treatment of persons found to be habitual users of narcotic drugs, and to establish any such quarantine station and clinic in connection with any county or city jail, or in any hospital or other public or private institution having or which may be provided with, such necessary detention, segregation, isolation, clinic and hospital facilities as may be required and prescribed by the board, and to enter into arrangements for the conduct of such quarantine stations and clinics with the public officers or persons, associations, or corporations in charge of or maintaining and operating such institutions. (Id. § 2509-11.)

281. Act Cumulative.—The provisions of this act shall be cumulative with and additional to the existing laws and regulations and nothing herein contained shall abridge or limit the powers of health authorities as construed by the Supreme Court of the State of Washington, except as herein otherwise provided. (Id. § 2509-12.)

282. Act Not Retroactive.—Nothing contained in any of the provisions of this act shall apply to any offense committed or act done at any time before the date when this act shall take effect. Such an offense shall be punished according to, and such act shall be governed by, the provisions of law existing when it is done or committed, in the same manner as if this act had not been passed. (Id. § 2509-13.)

283. **Opium Joints.**—Every person who shall open, conduct or maintain, as owner or employee, any place where opium, morphine, alkaloid cocaine or alpha or beta eucaine or any derivative, mixture or preparation of any of them, shall be in any manner used by persons resorting thereto for the purpose; and every person who shall visit or resort to such place for the purpose of using in any manner any of said drugs, shall be guilty of a gross misdemeanor. (Rem. C. S. 1922, § 2670.)

283a. **Keeper of Concert and Liquor Saloons.**—Every person who . . .

(3) Shall suffer or permit any such person to play any game of skill or chance, in any such place, or in any place adjacent thereto, or to be or remain therein, or admit or allow to remain in any reputed house of prostitution or assignation, or in any place where opium or any preparation thereof, is smoked, or where any narcotic drug is used, any person under the age of twenty-one years; . . . Shall be guilty of a gross misdemeanor, . . . (Id. § 2445.)

284. **Prescriptions by Pharmacists.**—Registered pharmacists of this State may fill prescriptions of legally licensed dentists of this State for any drug necessary in the practice of dentistry, other than narcotics. (Rem. Supp. 1923, § 10030-24.)

285. **Certain Places or Resort Declared Nuisances—Penalty.**—Houses of ill fame, kept for the purposes, in which are embraced all squaw dance houses, or squaw brothels, otherwise called mad houses; all houses, rooms, saloons, booths, scows, boats, or other structures used as a place of resort, where women are employed to draw custom, dance, or for purposes of prostitution; all public houses, or places of resort where gambling is carried on or permitted; all houses or places within any city, town, or village, or upon any public road or highway, where drunkenness, gambling, fighting, or breaches of the peace are carried on or permitted; all opium dens or houses, or places or resort where opium smoking is permitted, are nuisances, and may be abated, and the owners, keepers, or persons in charge thereof, and persons carrying on such unlawful business, shall be punished as provided in this chapter. (Rem. C. S. 1922, § 9924.)

286. **Punishment and Abatement.**—Whoever is convicted of erecting, causing, or contriving a public or common nuisance, as described in this title, or at common law, when the same has not been modified or repealed by statute, where no other punishment therefor is specially provided, shall be punished by a fine not exceeding one thousand dollars, and the court, with or without such fine, may order such nuisance to be abated, and issue a warrant as hereinafter provided. (Id. § 9925.)

287. **Poison—Authority to Purchase and Distribute—Tax Levy.**—The board of county commissioners of any county in the State desiring to co-operate with the State College of Washington in the extermination of rodents is hereby authorized to purchase poisons, grain and other supplies, or to prepare poisoned grain or other baits, and to furnish the same at cost to owners, occupants, agents in charge, or lessees of land infested with rodents, and for that purpose shall levy a tax of not to exceed one-half of one mill on all the taxable property within the county. The proceeds from the collection of such taxes shall be placed in a special rotating fund, which fund is hereby created. The purchases of all poisons, grain and other supplies shall be made from said rotating fund and the proceeds of the sale of such poisons, grain and supplies shall be placed therein. The balance in such fund on December 31st of each year shall be transferred to the county current expense fund: Provided, that in the year 1921 the board shall be authorized, by resolution to that end, to purchase said poisons, grain and supplies with any moneys in the hands of the county treasurer, and the fund or funds from which said purchases have been made shall be reimbursed from said rotating fund from time to time as moneys are paid therein. (Id. § 2793.)

288. **Powers and Duties of State College.**—The State College of Washington shall be authorized and directed to supervise the extermination of rodents by any land owner, occupant, agent in charge, or lessee, to prepare poisons and baits for that purpose, and to enter upon any farm, rights of way, grounds, or premises for the purpose of ascertaining rodent conditions or for the purpose of exterminating the same as in this act provided. (Id. § 2794.)

289. **Distribution of Poisons.**—No baits containing phosphorus or phosphorus compounds shall be employed in the extermination of rodents. All poisons and poisoned baits prepared and distributed under authority of the board of county commissioners shall be placed in containers plainly labeled to show the character and purpose of the contents thereof. (Id. § 2800.)

NOTE: See also Nos. 15 and 16a.

Venereal Disease Drugs.

290. Advertising Cures of Venereal Diseases.—Every person who shall advertise, either in his own name, or in the name of another person, copartnership or pretended copartnership, association, corporation or pretended corporation, in any newspaper, pamphlet, circular, periodical or in any other written or printed paper, and every owner, publisher, editor or manager of any newspaper, pamphlet, circular, periodical or other written or printed paper, who shall publish, or permit to be published or inserted, an advertisement in any newspaper, pamphlet, circular, periodical or other written or printed paper, owned or controlled by him, or of which he is the editor or manager, and every person who shall distribute, circulate, display or cause to be distributed, circulated or displayed, any newspaper, pamphlet, circular, periodical, or other written or printed paper containing any advertisement for the treatment or care of venereal diseases, the restoration of lost manhood, or of lost vitality or lost vigor, or monthly regulators for women, or the treatment of diseases of the sexual organs, or diseases caused by sexual vice, self-abuse or any disease of like cause, or the sale of any medicine, drug, compound, mixture, appliance, or any means whatever, whereby sexual diseases of men or women may be cured or relieved, shall be guilty of a gross misdemeanor. (Rem. C. S. 1922, § 2462.)

291. Use of Certain Words Prima Facie Evidence.—Any advertisement in any newspaper, periodical, pamphlet, circular or other written or printed paper, containing the words, "lost manhood," "lost vitality," "lost vigor," "monthly regulator for women," or words synonymous therewith, shall be prima facie evidence of intent to violate this act by the person or persons so advertising, or causing to be advertised, or publishing or permitted to be published, or distributing, circulating and displaying or causing to be distributed, circulated or displayed, any such advertisement. (Id. § 2462-1.)

Intoxicating Liquors.

292. Construction of Act.—This entire act shall be deemed an exercise of police power of the State, for the protection of the economic welfare, health, peace and morals of the people of the State and all of its provisions shall be liberally construed for the accomplishment of that purpose. (Rem. C. S. 1922, § 7306.)

293. "Intoxicating Liquor" Defined.—The phrase "intoxicating liquor" whenever used in this act, shall be held and construed to include whiskey, brandy, gin, rum, wine, ale, beer and any spirituous, vinous, fermented or malt liquor, and every other liquor or liquid containing intoxicating properties, which is capable of being used as a beverage, whether medicated or not, and all liquids whether proprietary, patented or not which contain any alcohol, which are capable of being used as a beverage. (Id. § 7307.)

294. "Person" Defined.—The word "person," wherever used in this act, shall be held and construed to mean and include natural persons, firms, copartnerships and corporations, and all associations of natural persons, whether acting by themselves or by a servant, agent or employee. (Id. § 7308.)

295. Manufacture, Sale or Gift Prohibited.—It shall be unlawful for any person to manufacture, sell, barter, exchange, give away, furnish or otherwise dispose of any intoxicating liquor, or to keep any intoxicating liquor, with intent to sell, barter, exchange, give away, furnish or otherwise dispose of the same, except as in this act provided. (Id. § 7309, as amended L. 1927, c. 98.)

296. Soliciting Orders or Advertising.—It shall be unlawful for any person to take or solicit orders for the purchase or sale of any intoxicating liquor, either in person or by sign, circular, letter, poster, handbill, card, price list, advertisement or otherwise, or to distribute, publish or display any advertisement, sign or notice, naming, representing, describing, or referring to the quality or qualities of any intoxicating liquor, or giving the name or address of any person manufacturing or dealing in intoxicating liquor, or stating where any such liquor may be obtained. (Rem. C. S. 1922, § 7311.)

297. Druggists—Alcohol—Sale for Medicinal Purposes, Etc.—Record—Permits—Transportation.—Nothing in this act shall be construed to prohibit a registered druggist or pharmacist, actually engaged in the wholesale drug business in this State, from selling alcohol to a retail druggist, a hospital or manufacturer, licensed to purchase the same under the provisions of this act, or from selling alcohol for export and shipping the same to places outside the State, or to prohibit a registered druggist or pharmacist, actually engaged in the retail drug business in this State, from selling alcohol to any person holding a permit to purchase the same, issued under the provisions of this act, or to prohibit an ordained clergyman, priest or rabbi actually engaged in ministering to a religious congregation in this State, from administering

intoxicating liquor for sacramental purposes only; but it shall be unlawful for a registered druggist or pharmacist engaged in the wholesale drug business only, to sell alcohol to any other person than a retail druggist, a hospital, or a manufacturer, licensed to purchase the same under the provision of this act, and it shall be unlawful for any person other than a registered druggist or pharmacist to sell alcohol for any purpose whatsoever, and it shall be unlawful for any druggist or pharmacist, or any other person, to dilute or adulterate alcohol, or compound it with any other other substance in such proportions that it shall be capable of being used as a beverage, and sell, barter, exchange, give away, furnish, or otherwise dispose of the same, or to permit any alcohol to be diluted or adulterated, or compounded with any other substance, and drunk on the premises where sold. It shall be the duty of every druggist or pharmacist, engaged in the retail drug business, selling any alcohol for any of the purposes above provided, or to any person holding a permit to purchase the same, to keep, in a well-bound book provided by him for that purpose, a true and correct record of each sale made, and to enter in such record, at the time of every sale of alcohol made by him, or in or about his place of business, the date of sale, the name of the purchaser, his place of residence (stating the street name and house number, if such there be, and the city or town, and county of such residence), the quantity and price of the alcohol, the purpose for which it was sold, the date and number of the permit upon which it was sold, and the name of the county in which said permit was issued, and the initials of the persons making the sale, and to require the purchaser to sign the record in the book. Such record of sales, shall be open to inspection by any prosecuting attorney, city attorney, justice of the peace, sheriff, constable, marshal, police officer, mayor or commissioner of any city or town, or member of a city or town council. It shall be unlawful for any druggist or pharmacist, or any other person, to destroy, mutilate or in any way alter any such record or an entry therein, or to permit or procure the same to be destroyed, mutilated or altered, or to refuse inspection thereof to any person entitled to such inspection, or to sell or to ship to any person holding a permit to purchase the same, any alcohol in excess of the quantity specified in such permit, or to sell any alcohol without obtaining the signature of the purchaser, in case delivery is made to the purchaser, or entering the name of the carrier to whom the alcohol was delivered for transportation, in the record of the sale, or to deliver any package containing alcohol so sold, without securely affixing thereto in a conspicuous place on the outside thereof, and original permit for the purchase of the same, issued to the purchaser, by a county auditor of this State, within thirty days prior to the date of such sale, and in case of delivery to the purchaser, without defacing and canceling such original permit, so that it cannot be used again, and receiving from the purchaser the duplicate permit, of like number, date and tenor as the original, dated on the date of the sale, and signed by the purchaser in the same handwriting as the signature of the applicant upon the original permit, and witnessed by the person making the sale, but in case delivery is to be made by a common carrier, or person engaged in the business of transporting goods, wares and merchandise, it shall be lawful for the druggist or pharmacist, selling alcohol upon a permit to purchase the same, after securely affixing the original permit to the package containing the alcohol, in a conspicuous place on the outside thereof, to deliver such package to such common carrier for transportation to the person named in the permit, without defacing or canceling such permit, and in such case it shall be unlawful for such carrier to deliver such package to any other person than a forwarding common carrier, or the person named in the original permit attached to such package; or for any such common carrier or forwarding carrier to deliver such package to the person named in the permit, without defacing and canceling such original permit so that it cannot be used again, and receiving, from the person named in the permit, the duplicate permit of like number, date and tenor as the original, dated on the day of delivery, and signed by the person named in the permit in the same handwriting as the signature of the applicant, upon the original permit, and witnessed by the person making the delivery. It shall be unlawful for any druggist or pharmacist, who has been or shall be convicted of any violation of the provisions of this act, to within two years thereafter, sell alcohol for any purpose whatsoever, and upon a second conviction of any such violation such druggist or pharmacist shall, in addition to the penalty provided by this act for such violation, forfeit his right to sell drugs or practice pharmacy, as the case may be, and it shall be the duty of the justice of the peace or judge of the Superior Court, before whom such second conviction is had, to so adjudge and to transmit a certified copy of such judgment to the Board of Pharmacy, and such board shall forthwith, upon the receipt of such copy, cancel the license of such druggist or pharmacist, and no other license shall be issued to such druggist or pharmacist within two years from the date of such cancellation. It shall be the duty of every druggist and pharmacist, and of every common carrier, to keep on file all duplicate permits for the purchase of alcohol, received upon the

delivery thereof to the persons named in such permits, and such duplicate permits shall be open to inspection by any prosecuting attorney, city attorney, justice of the peace, sheriff, constable, marshal, police officer, mayor or commissioner of any city or town council, and it shall be unlawful for any druggist or pharmacist or common carrier, or any other person, to destroy, mutilate, or in any way alter any such duplicate permit, or to permit or procure the same to be destroyed, mutilated or altered or to refuse inspection thereof, to any person entitled to such inspection. (Id. § 7312.)

298. Physicians' Prescriptions.—Nothing in this act shall be construed to prohibit a licensed physician from administering alcohol, but it shall be unlawful for any licensed physician to administer diluted or adulterated alcohol, or alcohol compounded with any other substance, in such proportions that it shall be capable of being used as a beverage, and, it shall unlawful for any licensed physician to issue a prescription for alcohol to be diluted or adulterated, or compounded with any other substance, in such proportions that it shall be capable of being used as a beverage, and it shall be unlawful for any druggist or pharmacist to knowingly fill any prescription for any diluted or adulterated alcohol or alcohol compounded with any other substance, in such proportion that it shall be capable of being used as a beverage. (Id. § 7313.)

299. Application for Shipment by Druggists.—Every registered druggist or pharmacist actually engaged in the wholesale drug business in this State and desiring to import alcohol for sale under the provisions of this act, and every registered druggist or pharmacist actually engaged in the retail drug business in this State and desiring to import or purchase alcohol for sale or for use in compounding and manufacturing drugs and medicines, under the provisions of this act, and every person actually engaged in maintaining and conducting a hospital, containing not less than twenty beds for patients, and desiring to import or purchase alcohol for use in such hospital for medicinal, surgical, massage, antiseptic or other hospital purposes only, under the provisions of this act, and every person actually engaged in the business of manufacturing products containing alcohol, other than intoxicating liquors, or products requiring the use of alcohol in their process of manufacture, and desiring to import or purchase alcohol for use in manufacturing such products, under the provisions of this act, shall file with the county auditor, of the county in which his place of business is situated, an application for a license so to do, and every person desiring to purchase alcohol from a retail druggist for mechanical, chemical, scientific, medicinal, or hygienic purposes, under the provisions of this act, shall make and file with the county auditor of the county in which he resides, an application in writing for a permit so to do. Every such application for a license to import or purchase alcohol shall be in writing in duplicate and be signed and verified under oath by the applicant, that the statements therein contained are true, and shall state: the name and place of residence of the applicant; the name under which he is engaged in business; the exact location of his place of business (giving the street name and number, if any there be, and the city or town and county); the nature of the business in which the applicant is engaged, whether wholesale, retail, maintaining a hospital or manufacturing, and, in case of a hospital, the number of beds for patients therein, and in case of manufacturing, the products manufactured; that it is necessary from time to time to import or purchase alcohol; the quantities and frequency of such importations or purchases; that such alcohol is not to be used, sold or disposed of in violation of law, but is to be obtained for sale or used in compliance with the provisions of this act; that the applicant, or the officers, or agents or servants in charge of the business of a corporation applicant, or the members of a copartnership applicant, have not, within two years prior to the date of the application, been convicted of any violation of the provisions of this act; and, in case the application is made on behalf of a corporation or a copartnership, shall state the names and places of residence of the managing officers of the corporation, or of the members of the copartnership, as the case may be, and the official position or other connection therewith of the person signing and verifying the application. Applications for licenses to import or purchase alcohol for wholesale, retail or manufacturing purposes or any of them may be combined, and licenses granted for one or more of such purposes: Provided, that a license to import or purchase alcohol for sale, shall not be granted to an applicant engaged in manufacturing only. Every such application for a permit to purchase alcohol from a retail druggist for mechanical, chemical, scientific, medicinal or hygienic purposes, shall be signed and verified under oath by the applicant, that the statements contained therein are true, and shall state the name and place of residence of the applicant (giving the street name and house number, if any there be, and the city or town and county), the quantity of alcohol which he desires to purchase, the purpose for which he desires to purchase and use the same, and the facts showing his reasonably necessary use therefor. (Id. § 7320.)

299a. Hearing of Application—Issuance of License—Appeals—Permits.—Upon the filing of an application for a license to import or purchase alcohol, or to import intoxicating liquor for sacramental purposes, as provided in the preceding sections, and the payment of a fee of three dollars, it shall be the duty of the county auditor to give the application a serial number and set it for hearing at a time not less than ten or more than twenty days from the date of filing, to notify the applicant of the time and place of the hearing, and to transmit the duplicate application, with the serial number and time and place of hearing indorsed thereon, to the prosecuting attorney of the county, and it shall be the duty of the prosecuting attorney to investigate the facts stated in the application, and attend the hearing and inform the auditor of the result of such investigation. At the hearing the applicant shall appear and offer such proof in support of the application as the auditor may reasonably require, and the prosecuting attorney may offer such proof in opposition to granting the application as the auditor may deem material, which proof may be affidavit or other documentary evidence, and the auditor shall have power to administer oaths and examine witnesses under oath. If at the hearing it shall appear to the auditor that the applicant, or any officer, agent or servant in charge of the business of a corporation applicant, or member of a copartnership applicant, has been convicted of a violation of any of the provisions of this act within two years prior to the date of the application, or that the person signing the application has willfully made any false statement therein, the application shall be denied. If it shall appear to the auditor that the statements contained in the application are true, and that the license is sought in good faith and for a lawful purpose, he shall issue a license in the name of the applicant and bearing the serial number of the application, granting to the licensee the right, for the period of one year from the date of the license, to have issued to him from time to time, and at such intervals only as are specified in the license, permits for the importation or purchase, and transportation of alcohol for the purpose or purposes to be specified in the license, or for the importation and transportation of intoxicating liquor, for sacramental purposes only, of such kind as may be specified in the license, as the case may be, in such quantities, to be specified in the license, as the auditor may determine and reasonably required by the licensee for the purposes specified. Every such license shall be signed by the auditor or his authorized deputy, be sealed with his official seal, and bear the date of its issue, and be issued in duplicate and one of such duplicates shall be filed in the auditor's office with the application therefor, and such license shall remain in force for the period of one year from the date of issue, unless sooner revoked by order of court or by the county auditor, upon notice to the licensee and a finding made that the licensee has ceased to do business at the place specified in the application, or in case of a clergyman, priest or rabbi, has ceased to minister to the congregation specified, or that the licensee, or some officer, agent or servant in charge of the business of a corporation licensee, or some member of a copartnership licensee, has been convicted of a violation of this act. Any applicant feeling himself aggrieved by the refusal of a county auditor to grant a license, or by the restrictions, as to quantities or intervals of importation or purchase contained in any license granted, or any licensee feeling himself aggrieved by any revocation of his license by the county auditor, or any prosecuting attorney believing that any license has been wrongfully issued, or that such license does not contain the proper restrictions as to the quantities or intervals of importation or purchase, or that the auditor has wrongfully refused to revoke a license, may, at any time within ten days from the date of the decision of the auditor, appeal therefrom to the Superior Court of the county, by filing with the auditor, and serving upon the applicant or licensee, or prosecuting attorney, as the case may be, a notice in writing setting forth the decision appealed from, and all such appeals shall be heard de novo and summarily determined as the court may in the exercise of a sound discretion decide. Upon the filing of an application for a permit to purchase alcohol from a retail druggist, and the payment of a fee of ten cents, the county auditor, if he shall be satisfied of the truth of the statements made in the application, and that the applicant is of good moral character, shall issue to the applicant an original and duplicate permit of like number and date as the application, which permit shall be for such quantity of alcohol as the auditor, in the exercise of a sound discretion, shall determine is reasonably necessary for the needs of the applicant, for the purposes stated in the application. If the county auditor shall have reason to believe that the applicant has made any false statement in the application, or that the application is not made in good faith, and for a legitimate purpose, he may require the applicant to be identified and vouched for by some reputable citizen of the county. (Id. § 7322.)

299b. Alcohol and Sacramental Liquors—Permits for Importation.—So long as any license, issued under the provisions of the preceding section, shall remain in

force, the county auditor shall, from time to time and at such intervals only as are specified in the license, and upon the filing of a request therefor in writing signed and verified under oath by the licensee and stating the number of the license and the amount of alcohol, or other intoxicating liquor as the case may be, remaining on hand of previous importations or purchases, and the payment of a fee of ten cents for each permit, issue to the licensee permits for the importation or purchase and transportation of alcohol, or the importation and transportation of intoxicating liquor for sacramental purposes only, as the case may be, in accordance with the terms of the license, and shall indorse the numbers of the permits issued on the request, with the date of issue, and file the same with the original application and the duplicate license. Blank forms of permits shall be printed on paper of such quality, color, size and shape, and with such style of type, as may be determined from time to time, and with at least once in each calendar year, by the State Bureau of Inspection and Supervision of Public Offices, is best calculated to prevent counterfeiting and forgery, and shall be uniform throughout the State except as to the name of the county where issued, and shall be printed by the State Printer, in triplicate on sheets of paper with perforations, and designated "Office Copy," "Original," and "Duplicate," respectively, and bound in book form, in such quantities as may be ordered upon the requisition of the respective county auditors, at the expense of the respective counties, and at the rates provided by law for State printing of like kind, character and quantity, and shall be in substantially the following form:

"Office Copy" "Original" "Duplicate"

"State of Washington, } ss.
County of....., }

License No. .....
Permit No. .....

Authority is hereby granted.....doing business at No. ....., ... street, city (or town) of ....., county of ....., State of Washington, to import or purchase and have transported ..... gallons of alcohol (or "Authority is hereby granted Rev. ....., residing at No. ....., ... street, city (or town) of ....., county of ....., State of Washington, to import and have transported ..... quarts (or gallons) of ..... (kind of liquor) ....."). This permit shall be used for only one shipment, shall be affixed in a conspicuous place to the package containing the shipment, shall be canceled upon delivery of the shipment to the person above named, and shall be void thirty days from date.

Dated the ..... day of ....., 19.....

[SEAL] .....
County Auditor.

By.....
Deputy.

At the bottom of the "Office Copy" there shall be printed "Received the original and duplicate of this permit this ..... day of ....., 19.....

.....
Licensee."

At the bottom of the "original permit" there shall be printed in red ink, the following:

"WARNING: IT IS UNLAWFUL for any person or common carrier to transport on, or attach to, this permit any liquor of any other kind than, or in any quantity in excess of, that specified in this permit, or to deliver the package to which this permit is attached to any other person than the consignee named herein, or to the consignee without defacing and canceling this original permit and receiving the duplicate hereof signed by the consignee."

At the bottom of the "duplicate permit" there shall be printed in red ink the following:

"WARNING: This is a duplicate permit to be signed and surrendered by the consignee herein named upon the receipt of the package to which the original hereof is attached. IT IS UNLAWFUL for any person or common carrier to transport on, or attach to, this duplicate permit any alcohol or other intoxicating liquor"; and below shall be printed: "Received the above described shipment this ..... day of ....., 19.....

.....
"Consignee."

All permits, both original and duplicate, shall be signed by the county auditor issuing the same, or by his authorized deputy, and bear the serial number of the license upon which they are issued, the serial number of the individual permit, the date of

issue, and the official seal of the auditor. Permits for the purchase of alcohol for mechanical, chemical, scientific, medicinal or hygienic purposes, from a retail druggist, shall be in substantially the form of permits for the importation, or purchase, of alcohol, as hereinabove set forth, except that they shall not bear the license number, or contain the word "import." (Id. § 7323.)

300. Alcohol Sales by Wholesale Druggists—Transportation.—It shall be unlawful for any wholesale druggist licensed to import alcohol under the provisions of this act, to sell alcohol to any person other than a retail druggist, hospital or manufacturer licensed to purchase the same under the provisions of this act, or to sell or ship any alcohol to any such licensed retail druggist, hospital or manufacturer, without affixing in a conspicuous place on each package containing the alcohol so sold, an original permit, issued by a county auditor as in this act provided, authorizing the purchase, or to sell or ship any quantity of alcohol in excess of that specified in the permit affixed to the package so sold or shipped, or to deliver to the purchaser any package of alcohol sold without defacing and canceling the original permit affixed thereto so that the same cannot be used again, and receiving the duplicate permit of like number, date and tenor as the original, signed by the purchaser: Provided, that nothing herein contained shall be construed to prohibit a wholesale druggist from selling alcohol for export and shipping the same to a place outside the State, and it shall be unlawful for any common carrier or person engaged in the business of transporting goods, wares and merchandise to knowingly transport for delivery in this State any intoxicating liquor other than alcohol or any alcohol, without having an original permit, issued by a county auditor, as in this act provided, authorizing the transportation thereof, affixed in a conspicuous place on the package containing such intoxicating liquor or alcohol, or to knowingly transport intoxicating liquor of any other kind, than, or any quantity of intoxicating liquor or alcohol in excess of, that specified in the permit affixed to the package so transported, or to deliver such package of intoxicating liquor or alcohol, to any other person than a forwarding common carrier or the consignee named in the permit affixed to such package, or to deliver such package to the consignee, without defacing and canceling the original permit affixed thereto so that the same cannot be used again and receiving the duplicate permit, of like number, date and tenor, as the original, signed by the consignee, and it shall be unlawful for any person, other than a forwarding common carrier, to knowingly receive from any common carrier or person engaged in the business of transporting goods, wares and merchandise, any intoxicating liquor other than alcohol or any alcohol, without the package containing the same has affixed thereto, in a conspicuous place, the orginal permit for the transportation thereof properly defaced and canceled, or without delivering the duplicate permit signed by the consignee named therein, or for any other person than the consignee named therein to sign and deliver such duplicate permit. It shall be the duty of every wholesale druggist and of every common carrier to keep on file all duplicate permits for the importation or purchase, and transportation, of alcohol or intoxicating liquor, received upon the delivery thereof to the consignee, and such duplicate permit shall be open to inspection by any prosecuting attorney, city attorney, justice of the peace, sheriff, constable, marshal, police officer, mayor or commissioner of any city or town, or member of a city or town council. It shall be unlawful for any wholesale druggist or pharmacist, or common carrier, or any other person, to destroy, mutilate or in any way alter any such duplicate permit, or to permit or procure the same to be destroyed, mutilated or altered, or to refuse inspection thereof to any person entitled to such inspection. (Id. § 7324.)

301. Permits, License Necessary.—It shall be unlawful for any county auditor, deputy county auditor or other person, to issue a permit for the importation or purchase, and transportation of alcohol, or intoxicating liquor for sacramental purposes, except upon and in accordance with the terms of a license duly issued authorizing the issuance of such permit except permits for the purchase of alcohol for mechanical, chemical, scientific, medicinal or hygienic purposes, from a retail druggist, as herein above provided. (Id. § 7325.)

302. False Statements in Application.—It shall be unlawful for any person to willfully make any false statement in any application filed with any county auditor for the purpose of obtaining a permit to import or purchase, and transport alcohol, or intoxicating liquor for sacramental purposes, or to sign any other than his true name upon any such application, or upon any duplicate permit for the importation or purchase, and transportation of alcohol, or intoxicating liquor for sacramental purposes, for the purpose of obtaining any shipment thereof from a common carrier, or any purchase of alcohol from a wholesale or retail druggist, and every person convicted of a violation of any of the provisions of this section shall be guilty of a felony. (Id. § 7326.)

303. False Statements to Physicians.—It shall be unlawful for any person to make any false statement to a physician for the purpose of obtaining alcohol. (Id. § 7327.)

304. Unbroken Packages in Interstate Commerce.—The provisions of this act relating to the shipment or having in possession of intoxicating liquor shall not apply to shipments transported by any common carrier of unbroken packages of intoxicating liquor in continuous transit through this State from a point outside of the State to another point outside of the State. (Id. § 7331.)

305. Vinegar, Cider, Fruit Juice, Denatured Alcohol.—The provisions of this act shall not be construed to prohibit the manufacture of vinegar, sweet cider, or unfermented fruit juice for domestic consumption or for sale, nor to prohibit the manufacture and sale of denatured alcohol. (Id. § 7332.)

306. Penalties in Cases Not Specified.—Every person convicted of a violation of the provisions of this act, for which the punishment is not specifically prescribed, shall be punished by a fine of not more than two hundred and fifty dollars or by imprisonment in the county jail for not more than ninety days or by both such fine and imprisonment.

Every person convicted of the sale, barter or exchange of intoxicating liquor or of the keeping or transporting of any such liquor with intent to sell, barter or exchange the same shall be punished by a fine of not less than $250 nor more than $500 and by imprionment [imprisonment] in the county jail for not less than sixty days nor more than six months. Every person convicted a second time of the sale, barter, or exchange of intoxicating liquor or of the keeping or transporting of any such liquor with intent to sell, barter, or exchange the same shall be punished by a fine of not less than $500 nor more than $1,000, and by imprisonment in the county jail for not less than four months nor more than one year.

Every person convicted of the manufacture of intoxicating liquor for the purpose of sale, barter or exchange thereof shall be punished by a fine of not less than $500 nor more than $1,000, and by imprisonment in the county jail for not less than ninety days nor more than six months. Every person convicted a second time of the manufacture of intoxicating liquor for the purpose of sale, barter or exchange thereof shall be punished by a fine of not less than $1,000 nor more than $2,000, and by imprisonment in the county jail for not less than six months nor more than one year.

The provisions and penalties of this section are independent of those of section 7328, relating to the offenses of "jointist" and "bootlegger," which shall remain in full force and effect.

Every justice of the peace shall have jurisdiction to hear and determine any offense in this section prescribed and to impose any punishment in this section provided except in cases where previous conviction under this section is charged. (Id. § 7338.)

307. Penalty for Subsequent Conviction—Evidence of Prior Convictions.—Every person convicted the second time of a violation of any provision of this act, for which the punishment is not specifically prescribed, shall be punished by a fine of not less than two hundred nor more than five hundred dollars and by imprisonment in the county jail for not less than thirty days nor more than six months and every person convicted the third time of a violation of any provision of this act shall, for such third and each subsequent conviction, be punished by imprisonment in the penitentiary for not less than one nor more than five years. Every prosecuting attorney, and every justice of the peace, having knowledge of any previous conviction or convictions of any person accused of violating this act, shall in preparing a complaint, information or indictment, for subsequent offenses, allege such previous conviction or convictions therein, and a certified transcript from the docket of any justice of the peace, or a copy of the record of any court of record, certified by the clerk thereof under the seal of the court, shall be sufficient evidence and proof of such previous conviction or convictions. (Id. § 7339.)

PART IV.

Miscellaneous Laws.

Convict-Made Goods.

308. Disinfection; Labeling.—No person, firm or corporation shall within this State, sell or offer, keep, expose, or display for sale any goods, wares or merchandise, made wholly or in part by convict labor in any penitentiary, prison, reformatory or other establishment outside the State of Washington in which convict labor

is employed, unless such commodity has first in accordance with the rules and regulations of the State Department of Health, been properly disinfected and unless such convict-made goods, wares or merchandise offered, kept, exposed or displayed for sale are permanently, plainly and legibly labeled with the words, "These goods are convict-made" in plain, bold letters, followed by the name of the penitentiary, prison, reformatory or other establishment in which the goods, wares or merchandise were made; Provided, that when advertised in any periodical or publication the wording herein required shall appear in type and/or letters conforming in size and shape to those used in the general text of said periodical or publication. (L. 1927, c. 294, § 1.)

309. Penalty.—Any person, firm or corporation who shall sell or keep, offer, expose or display for sale any convict-made goods, wares or merchandise which shall not have been first disinfected as in this act required, or without exhibiting the label in this act required in the manner provided herein, shall be guilty of a misdemeanor and upon conviction shall be punished by a fine of not less than fifty dollars nor more than five hundred dollars or by imprisonment in the county jail for not less than thirty days nor more than six months, or by both such fine and imprisonment. (Id. § 2.)

False Advertising.

310. False Advertising.—Any person, firm, corporation or association who, with intent to sell or in any wise dispose of merchandise, securities, service, or anything offered by such person, firm, corporation or association, directly or indirectly, to the public for sale or distribution, or with intent to increase the consumption thereof, or to induce the public in any manner to enter into any obligation relating thereto, or to acquire title thereto, or an interest therein, makes. publishes, disseminates, circulates or places before the public, or causes, directly or indirectly, to be made, published, disseminated, circulated, or placed before the public in this State, in a newspaper or other publication, or in the form of a book, notice, handbill. poster, bill, circular, pamphlet, or letter, or in any other way, an advertisement of any sort regarding merchandise, securities, service, or anything so offered to the public, which advertisement contains any assertion, representation or statement of fact which is untrue, deceptive, or misleading, shall be guilty of a misdemeanor: Provided, that the provisions of this act shall not apply to any owner, publisher, agent, or employee of a newspaper for the publication of such advertisement published in good faith and without knowledge of the falsity thereof. (Rem. C. S. 1922, § 2622-1.)

Flag Desecration.

311. Uniform Flag Law—Definition of Flag, Etc.—The words flag, standard, color, ensign or shield, as used in this act, shall include any flag, standard, color, ensign or shield, or copy, picture or representation thereof, made of any substance or represented or produced thereon, and of any size, evidently purporting to be such flag, standard, color, ensign or shield of the United States or of this State, or a copy, picture or representation thereof. (Rem. C. S. 1922, § 2675-1.)

312. Advertising—Use of Flag.—No person shall, in any manner, for exhibition or display:

(a) Place or cause to be placed any word, figure, mark, picture, design, drawing or advertisement of any nature upon any flag, standard, color, ensign or shield of the United States or of this State, or authorized by any law of the United States or of this State; or

(b) Expose to public view any such flag, standard, color, ensign or shield upon which shall have been printed, painted or otherwise produced, or to which shall have been attached, appended, affixed or annexed any such word, figure, mark, picture, design, drawing or advertisement; or

(c) Expose to public view for sale, manufacture, or otherwise, or to sell, give, or have in possession for sale, for gift or for use for any purpose, any substance, being an article of merchandise, or receptacle, or thing for holding or carrying merchandise, upon or to which shall have been produced or attached any such flag, standard, color, ensign or shield, in order to advertise, call attention to, decorate, mark or distinguish such article or substance. (Id. § 2675-2.)

313. Desecration of Flag.—No person shall publicly mutilate, deface, defile, defy, trample upon or by word or act cast contempt upon any such flag, standard, color, ensign or shield. (Id. § 2675-3.)

314. Application of Act.—This Statute shall not apply to any act permitted by the statutes of the United States or of this State, or by the United States Army

and Navy regulations, nor shall it apply to any printed or written document or production, stationery, ornament, picture or jewelry whereon shall be depicted said flag, standard, color, ensign or shield with no design or words thereon and disconnected with any advertisement. (Id. § 2675-4.)

315. Penalty.—Any violation of this act shall be a gross misdemeanor. (Id. § 2675-5.)

316. Construction of Act.—This act shall be so construed as to effectuate its general purpose and to make uniform the laws of the States which enact it. (Id. § 2675-6.)

317. Citation of Act.—This act may be cited as the Uniform Flag Law. (Id. § 2675-7.)

Tobacco—Tobacco Products.

318. Keeper of Concert and Liquor Saloons.—Every person who— . . .

(4.) Shall sell or give, or permit to be sold or given to any person under the age of twenty-one years any intoxicating liquor, cigar, cigarette, cigarette paper or wrapper, or tobacco in any form; . . .

Shall be guilty of a gross misdemeanor.

It shall be no defense to a prosecution for a violation of this section that the person acted, or was believed by the defendant to act, as agent or representative of another.

Any person between the ages of eighteen and twenty-one years who shall by affirmative misrepresentation of age, purchase, or shall have in his or her possession, any cigar, cigarette, cigarette paper or wrapper, or tobacco in any form, shall be guilty of a misdemeanor. (Rem. C. S. 1922, § 2445.)

Trade-Marks, Etc.

319. Counterfeiting Trade-Mark, Brand, Etc.—Every person who shall use or display or have in his possession with intent to use or display, the genuine label, trade-mark, term, design, device, or form of advertisement of any person, corporation, association or union, lawfully filed for record in the office of the Secretary of State, or the exclusive right to use which is guaranteed to any person, corporation, association or union, by the laws of the United States, without the written authority of such person, corporation, association or union, or who shall willfully forge or counterfeit or use or display or have in his possession with intent to use or display any representation, likeness, similitude, copy or imitation of any genuine label, trade-mark, term, design, device, or form of advertisement, so filed or protected, or any die, plate, stamp or other device for manufacturing the same, shall be guilty of a gross misdemeanor. (Rem. C. S. 1922, § 2596.)

320. Displaying Goods With False Trade-Mark.—Every person who shall knowingly sell, display or advertise, or have in his possession with intent to sell, any goods, wares, merchandise, mixture, preparation or compound having affixed thereto any label, trade-mark, term, design, device, or form of advertisement lawfully filed for record in the office of the Secretary of State by any person, corporation, association or union, or the exclusive right to the use of which is guaranteed to such person, corporation, association or union under the laws of the United States, which label, trade-mark, term, design, device or form of advertisement shall have been used or affixed thereto without the written authority of such person, corporation, association or union, or having affixed thereto any forged or counterfeit representation, likeness, similitude, copy or imitation thereof, shall be guilty of a misdemeanor. (Id. § 2597.)

321. When Deemed Affixed.—A label, trade-mark, term, design, device or form of advertisement shall be deemed to be affixed to any goods, wares, merchandise, mixture, preparation or compound whenever it is in any manner placed in or upon either the article itself, or the box, bale, barrel, bottle, case, cask or other vessel or package, or the cover, wrapper, stopper, brand, label or other thing in, by or with which the goods are packed, inclosed or otherwise prepared for sale or distribution. (Id. § 2598.)

322. Fraudulent Registration of Trade-Mark.—Every person who shall for himself, or on behalf of any other person, corporation, association or union, procure the filing of any label, trade-mark, term, design, device or form of advertisement, with the Secretary of State by any fraudulent means, shall be guilty of a misdemeanor. (Id. § 2599.)

323. Form and Similitude, Defined.—A plate, label, trade-mark, term, design, design, device or form of advertisement is in the form and similitude of the genuine

instrument imitated if the finished parts of the engraving thereupon shall resemble or conform to the similar parts of the genuine instrument. (Id. § 2600.)

324. **Counterfeiting Trade-Marks Prohibited.**—Whenever any person, or any association or union of workingmen has heretofore adopted or used, or shall hereafter adopt or use, and has filed as hereinafter provided any label, trade-mark, term, design, device or form of advertisement for the purpose of designating, making known, or distinguishing any goods, wares, merchandise or other product of labor, as having been made, manufactured, produced, prepared, packed or put on sale by such person or association or union of workingmen or by a member or members of such association or union, it shall be unlawful to counterfeit or imitate such label, trade-mark, term, design, device or form of advertisement, or to use, sell, offer for sale, or in any way utter or circulate any counterfeit or imitation of any such label, trade-mark, term, design, device or form of advertisement. (Id. § 11537.)

325. **Penalty.**—Whoever counterfeits or imitates any such label, trade-mark, term, design, device or form of advertisement, or sells, offers for sale, or in any way utters or circulates any counterfeit or imitation of any such label, trade-mark, term, design, device or form of advertisement, or keeps or has in his possession, with intent that the same shall be sold or disposed of, any goods, wares, merchandise or other product of labor to which or on which any such counterfeit or imitation is printed, painted, stamped or impressed; or knowingly sells or disposes of any goods, wares, merchandise or other product of labor contained in any box, case, can or package, to which or on which any such counterfeit or imitation is attached, affixed, printed, painted, stamped or impressed; or keeps or has in his possession, with intent that the same shall be sold or disposed of, any goods, wares, merchandise or other product of labor, in any box, case, can or package, to which or on which any such counterfeit or imitation is attached, affixed, printed, painted, stamped or impressed shall be punished by a fine of not more than one hundred dollars, or by imprisonment for not more than three months. (Id. § 11538.)

326. **Filing and Recording.**—Every such person, association or union, that has heretofore adopted or used, or shall hereafter adopt or use, a label, trade-mark, term, design, device or form of advertisement, as provided in section 11537, may file the same for record in the office of the Secretary of State by leaving two copies, counterparts or facsimiles thereof, with said secretary, and by filing therewith a sworn application specifying the name or names of the person, association or union on whose behalf such label, trade-mark, term, design, device or form of advertisement shall be filed, the class of merchandise and a description of the goods to which it has been, or is intended to be appropriated, stating that the party so filing, or on whose behalf such label, trade-mark, term, design, device or form of advertisement shall be filed, has the right to the use of the same, that no other person, firm, association, union or corporation has the right to such use either in the identical form or in any such near resemblance thereto as may be calculated to deceive, and the facsimile or counterparts filed therewith are true and correct. There shall be paid, for such filing and recording, a fee of two dollars. Said secretary shall deliver to such person, association or union so filing or causing to be filed any such label, trade-mark, term, design, device or form of advertisement, so many duly attested certificates of the recording of the same as such person, association or union may apply for, for each of which certificates said secretary shall receive a fee of one dollar. Any such certificate of record, shall, in all suits and prosecutions under this act, be sufficient proof of the adoption of such label, trade-mark, term, design, device or form of advertisement. Said Secretary of State shall not record for any person, union or association, any label, trade-mark, term, design, device or form of advertisement that would probably be mistaken for any label, trade-mark, term, design, device or form of advertisement theretofore filed by and on behalf of any other person, union or association. (Id. § 11539.)

327. **Fraudulent Filing, Etc.—Penalty.**—Any person who shall, for himself, or on behalf of any other person, association or union, procure the filing of any label, trade-mark, term, design or form of advertisement in the office of the Secretary of State, under the provisions of this act, by making any false or fraudulent representations or declaration, verbally or in writing, or by any fraudulent means, shall be liable to pay any damages sustained in consequence of any such filing, to be recovered by or on behalf of the party injured thereby, in any court having jurisdiction, and shall be punished by a fine not exceeding one hundred dollars or by imprisonment not exceeding three months. (Id. § 11540.)

328. **Enjoining Use, Etc.**—Every such person, association or union adopting or using a label, trade-mark, term, design, device or form of advertisement, as aforesaid, may proceed by suit to enjoin the manufacture, use, display or sale of any counterfeits or imitations thereof, and all courts of competent jurisdiction shall grant injunctions to restrain such manufacture, use, display or sale, and may award the com-

plainant in any such suit damages resulting from such manufacture, use, sale or display, as may be by the said court deemed just and reasonable, and shall require the defendants to pay to such person, association or union all profits derived from such wrongful manufacture, use, display or sale; and such court shall also order that such counterfeits or imitations in the possession or under the control of any defendant in such case be delivered to an officer of the court, or to the complainant, to be destroyed. (Id. § 11541.)

329. Penalty for Unauthorized Use.—Every person who shall use or display the genuine label, trade-mark, term, design, device or form of advertisement of any such person, association or union, in any manner, not being authorized so to do by such person, union or association, shall be deemed guilty of a misdemeanor, and shall be punished by imprisonment for not more than three months, or by a fine of not more than one hundred dollars. In all cases where such association or union is not incorporated, suits under this act may be commenced and prosecuted by an officer or member of such association or union on behalf of and for the use of such association or union. (Id. § 11542.)

330. Penalty for Use of Name or Seal.—Any person or persons who shall, in any way, use the name or seal of any such person, association or union or officer thereof, in and about the sale of goods or otherwise, not being authorized to so use the same, shall be guilty of a misdemeanor, and shall be punishable by imprisonment for not more than three months, or by a fine of not more than one hundred dollars. (Id. § 11543.)

331. Penalty for Defacing or Removing Trade-Mark, Etc.—Any person using the trade-mark so adopted and filed by any other person, or any imitation of such trade-mark, or any counterfeit thereof; or who shall, in any manner mutilate, deface, destroy or remove such trade-mark from any goods, wares, merchandise, article or articles, or from any package or packages containing the same, or from any empty or second-hand package which has contained the same or been used therefor, with the intention of using such empty or second-hand package, or of the same being used to contain goods, wares, merchandise, article or articles of the same general character as those for which they were first used; and any person who shall use any such empty or second-hand package for the purpose aforesaid, without the consent in writing of the person whose trade-mark was first applied thereto or placed thereon shall, upon conviction thereof, be fined in any sum not less than one hundred dollars, or by imprisonment for not more than three months, and the goods, wares, merchandise, article or articles, contained in any such second-hand package or packages shall be forfeited to the original user of such package or packages whose trade-mark was first applied thereto or placed thereon. The violation of any of the above provisions as to each particular article or package shall be held to be a separate offense. (Id. § 11544.)

332. "Person" Defined.—The word "person," in this act, shall be construed to include a person, copartnership, corporation, association or union of workingmen. (Id. § 11545.)

333. Marking Casks, Etc.—Description of Marks to be Filed and Published.—All persons engaged in the manufacture, bottling, or selling of ale, porter, lager beer, soda, mineral water, or other beverages in casks, kegs, bottles or boxes, with their names or other marks of ownership stamped or marked thereon, may file in the office of the Secretary of State, and also in the office of the auditor of the county in which such articles are manufactured, bottled or sold, a description of names or marks so used by them, and cause the same to be printed for six successive weeks in a weekly newspaper, printed in the English language, in counties where no daily newspaper is printed, or published; and in counties where a daily newspaper is printed and published, the same shall be published in a daily newspaper of general circulation, printed in the English language, six times a week for six successive weeks, in counties where such articles are manufactured, bottled or sold. (Id. § 11546.)

334. Unlawful to Use, Sell or Destroy—Penalty.—It is hereby declared to be unlawful for any person or persons hereafter, without the written consent of the owner or owners thereof, to fill with ale, porter, lager beer or soda, mineral water or other beverages, for sale or to be furnished to customers, any such casks, barrels, kegs, bottles or boxes so marked or stamped, or to sell, dispose of, buy or traffic in, or wantonly destroy any such cask, barrel, keg, bottle or box so marked, stamped, by the owner or owners thereof, after such owner or owners shall have complied with the provisions of section 11546. Any person or persons who shall violate any of the provisions of this act shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined five dollars for each and every cask, barrel, keg or box, and fifty cents for each and every bottle so by him, her or them filled, bought, sold, used, trafficked in or wantonly destroyed, together with costs of suit for first offense, and ten dollars for each and every cask, barrel, keg and box and one dollar for each and

every bottle so filled, bought, sold, used, trafficked in, or wantonly destroyed, together with the costs of suit for each subsequent offense. (Id. § 11547.)

335. **Use or Possession Prima Facie Evidence.**—The using by any person other than the rightful owner thereof, without such written permission, of any such cask, barrel, keg, bottle or box, for the sale therein of ale, porter, lager beer, soda, mineral waters or other beverages, or to be furnished to customers, or the buying, selling or trafficking in any such barrel, keg, bottle or box, by any person other than the owner, without such written permission, or the fact that any junk dealer or dealers in casks, barrels, kegs, bottles, or boxes, shall have in his or her possession any such cask, barrel, keg, bottle or box, so marked or stamped and registered as aforesaid, without such written permission, shall and is hereby declared to be prima facie evidence that such use, buying, selling, trafficking in or possession is unlawful within the meaning of this act. (Id. § 11548.)

335a. **Fees for Special Services.**—The Secretary of State shall collect the fees herein prescribed for his official services: . . . (4) For filing and recording trade-mark, five dollars. . . . (Id. § 10993.)

NOTE: See also No. 150 et seq.

Trading Stamps.

336. **Redeemable Cash Value to be Printed on Face.**—No person shall sell or issue any stamps, trading stamp, cash discount stamp, check, ticket, coupon or other similar device, which will entitle the holder thereof, on presentation thereof, either singly or in definite number, to receive, either directly from the vendor or indirectly through any other person, money or goods, wares or merchandise, unless each of said stamps, trading stamps, cash discount stamps, checks, tickets, coupons or other similar devices shall have legibly printed or written upon the face thereof the redeemable value thereof in cents. (Rem. C. S. 1922, § 5837.)

337. **Must Redeem at Cash Value.**—Any person who shall sell or issue to any person engaged in any trade, business or profession, any stamp, trading stamp, cash discount stamp, check, ticket, coupon, or other similar device which will entitle the holder thereof, on presentation thereof either singly or in definite number, to receive either directly from the vendor or indirectly through any other person, money or goods, wares or merchandise, shall upon presentation, redeem the same either in goods, wares or merchandise, or in cash, good and lawful money of the United States, at the option of the holder thereof, and any number of such stamps, trading stamps, cash discount stamps, checks, tickets, coupons, or other similar devices shall be redeemed as hereinbefore set forth, at the value in cents printed upon the face thereof, and it shall not be necessary for the holder thereof to have any stipulated number of the same before demand for redemption may be made, but they shall be redeemed in any number, when presented, at the value in cents printed upon the face thereof, as hereinbefore provided. (Id. § 5838.)

338. **Distributor Liable.**—Any person engaged in any trade, business or profession who shall distribute, deliver or present to any person dealing with him, in consideration of any article or thing purchased, any stamp, trading stamp, cash discount stamp, check, ticket, coupon or other similar device, which will entitle the holder thereof, on presentation thereof, either singly or in definite number, to receive, either directly from the person issuing or selling the same, as set forth in section 5838, or indirectly through any other person, shall, upon the refusal or failure of the said person issuing or selling same to redeem the same, as set forth in section 5838, be liable to the holder thereof for the face value thereof, and shall upon presentation redeem the same, either in goods, wares or merchandise, or in cash, good and lawful money of the United States of America, at the option of the holder thereof, and in such case any number of such stamps, trading stamps, cash discount stamps, checks, tickets, coupons or other similar devices, shall be redeemed as hereinbefore set forth, at the value in cents printed upon the face thereof, and it shall not be necessary for the holder thereof to have any stipulated number of the same before demand for redemption may be made, but they shall be redeemed in any number, when presented at the value in cents printed upon the face thereof, as hereinbefore provided. (Id. § 5839.)

339. **Penalty.**—Any person, firm or corporation who shall violate any of the provisions of this chapter shall be deemed guilty of a misdemeanor, and shall be fined not less than one hundred dollars nor more than one thousand dollars for each offense. (Id. § 5840.)

340. **Licenses for Stamps.**—Every person, firm or corporation who shall use, and every person, firm or corporation who shall furnish to any other person, firm, or corporation to use, in, with, or for the sale of any goods, wares or merchandise, any

stamps, coupons, tickets, certificates, cards, or other similar devices which shall entitle the purchaser receiving the same with such sale of goods, wares or merchandise to procure from any person, firm, or corporation any goods, wares, or merchandise, free of charge or for less than the retail market price thereof, upon the production of any number of said stamps, coupons, tickets, certificates, cards, or other similar devices, shall before so furnishing, selling, or using the same obtain a separate license from the auditor of each county wherein such furnishing or selling or using shall take place for each and every store or place of business in that county, owned or conducted by such person, firm or corporation from which such furnishing or selling, or in which such using, shall take place. (Id. § 8359.)

341. County License.—In order to obtain such license the person, firm, or corporation applying therefor shall pay to the county treasurer of the county for which such license is sought the sum of six thousand dollars, and upon such payment being made to the county treasurer he shall issue his receipt therefor which shall be presented to the auditor of the same county, who shall upon the presentation thereof issue to the person, firm or corporation making such payment a license to furnish or sell, or a license to use, for one year, the stamps, coupons, tickets, certificates, cards, or other similar devices mentioned in section 8359. Such license shall contain the name of the grantee thereof, the date of its issue, the date of its expiration, the town or city in which and the location at which the same shall be used, and such license shall be used at no place other than that mentioned therein. (Id. § 8360.)

342. How Redeemed.—No person, firm, or corporation shall furnish or sell to any other person, firm, or corporation to use, in, with, or for the sale of any goods, wares, or merchandise, any such stamps, coupons, tickets, certificates, cards, or other similar devices for use in any town, city or county in this State other than that in which such furnishing or selling shall take place. (Id. § 8361.)

343. Penalty.—Any person, firm, or corporation violating any of the provisions of this act shall be guilty of a gross misdemeanor. (Id. § 8362.)

Weights and Measures.

344. State Standards.—The weights and measures, received from the United States under a resolution of Congress approved June 14, 1836, and such new weights and measures as shall be received from the United States as standard weights and measures in addition thereto or renewal thereof, and such as shall be supplied by the State in conformity therewith and certified by the National Bureau of Standards, shall be the State standards, by which all county and municipal standards of weights and measures shall be tried, approved and sealed.

All weights, measures, scales, scale beams, patent balances, steelyards, automatic or computing scales, or other instruments for weighing or measuring, by which any merchandise, commodity, or thing is bought or sold by weight or measure, or offered or exposed for sale, shall conform to the State standards herein prescribed.

Any weight, measure, scale, scale beam, patent balance, steelyard, automatic or computing scale or other instrument or device for weighing or measuring which does not conform to such State standards is hereby declared to be a false weight or measure. (L. 1927, c. 194, § 1.)

345. Duties of Director of Agriculture.—The Director of Agriculture through and by means of the Division of Weights and Measures shall take charge of the State standards, cause them to be kept in a safe and suitable place in the office of the Division of Weights and Measures, from which they shall not be removed except for repairs or for certification, and shall take all other necessary precautions for their safe-keeping; shall maintain the State standards in good order and shall submit them at least once in ten years to the National Bureau of Standards for certification; shall at least once in five years try and prove by the State standards all weights, measures and other apparatus which may belong to any county or city, and shall seal such when found to be accurate, by stamping on them with seals which he shall have and keep for that purpose, the letter "W" and the last two figures of the year in which the same are sealed; shall have and keep a general supervision of the weights, measures and weighing and measuring devices offered for sale, sold or in use in the State; shall, upon the written request of any citizen, firm, corporation or educational institution in the State, test or calibrate weights, measures, weighing or measuring devices and instruments or appliances used as standards in this State; shall at least once annually, test all scales, weights, measures, weighing or measuring devices or instruments used in determining the quantities of the receipts or disbursements of supplies for the maintenance of which moneys are appropriated by the Legislature, and report in writing his findings to the director of business control or the supervising board, and to the executive officer, of the institution concerned, and at the request of such

director, board or executive officer, shall appoint in writing one or more employees, then in the actual service of each institution, who shall act as special deputies for the purpose of checking the receipts or disbursement of supplies; shall keep a complete record of the standards, balances and other apparatus belonging to the State and take receipt for the same from his successor in office; shall annually, on the first day of October, make to the Governor a report of the work done by his office; shall inspect all standards and apparatus used by the State and cities having a population of more than fifty thousand, at least once in two years, and keep a record of the same; shall at least once in two years visit the various cities in the State having a population of fifty thousand, in order to inspect the work of the city sealers, and in the performance of such duties may inspect the weights, measures and weighing or measuring devices or instruments of any citizen, firm or corporation, except track scales used by common carriers by railroad, and shall have the same powers as the city sealer of weights and measures; shall issue, from time to time, regulations for the guidance of State and city sealers, which regulations shall govern the procedure to be followed by such officers in the discharge of their duties. (Id. § 2.)

346. Same.—The Director of Agriculture, and the council or other governing body of each city having a population of more than fifty thousand, shall procure and keep at all times a complete set of weights, measures, weighing and measuring devices and other apparatus, of such materials and construction as the Director of Agriculture may direct. All such weights, measures, devices and other apparatus having been tried and accurately proven by the Director of Agriculture through and by means of the Division of Weights and Measures, shall be sealed and certified to by the director; and shall then be deposited with and preserved by the city sealer as public standards for such city, and by the director for use as public standards in any county in the State.

Whenever the council or other governing body of any such city shall neglect for six months so to do, the city clerk or comptroller of said city, on notification and request by the Director of Agriculture or the Supervisor of Weights and Measures, shall provide such standards and cause the same to be tried, proved, sealed and deposited at the expense of such city. (Id. § 3.)

347. Powers.—The Director of Agriculture, the Supervisor of Weights and Measures, and the duly appointed and deputized sealers, testers and inspectors of the Division of Weights and Measures, shall have the power to inspect, test, try, and ascertain if they are correct, all weights, scales, beams, and other instruments or mechanical devices for ascertaining the quantity of any article by weight, and all measures, and other instruments or mechanical devices for ascertaining the size or dimensions of any article, or the quantity thereof, by measurement, and all tools, appliances and accessories connected with any such weighing or measuring instrument or device, kept for the purpose of sale or sold, or used or employed by any person or corporation, or any agent, lessee or employee, in ascertaining the weight, size, quantity, extent, dimension or area of any article for distribution or consumption, offered for sale, or sold or purchased, or stored or transported, except track scales used by common carriers by railroad; and shall have the power to and shall, from time to time, weigh or measure packages or amounts of commodities of whatsoever kind kept for the purpose of sale, offered for sale, or sold, or purchased, or in the process of delivery, in order to determine whether the same contain the amount represented, and whether they are being offered for sale or sold, or have been purchased, in the manner provided by law; and may, for the purposes above mentioned and in the performance of official duty, without formal warrant, enter into or upon any stand, place, building or premises, and stop any vendor, peddler, junk dealer or the person in charge of any coal wagon, wood wagon, ice wagon or delivery wagon, or any dealer whatsoever, and require him, if necessary, to proceed to some specified place, for the purpose of making proper tests. Whenever any such officer finds a violation of any statute relating to weights or measures, he shall cause the person violating such statute to be prosecuted. Whenever any such officer inspects, tests and tries any weight, measure or weighing or measuring instrument or device and ascertains that it is correct and corresponds, or causes it to correspond, with the standards in his possession, he shall seal or mark such weight, measure or weighing or measuring intrument or device with appropriate devices to be approved by the Director of Agriculture, and shall condemn and seize and may destroy any incorrect weight, measure or weighing or measuring instrument or device which cannot be repaired, and shall mark or tag any such weight, measure or weighing or measuring instrument or device found to be incorrect and that may be repaired with the words "condemned for repairs" in a manner prescribed by the Director of Agriculture. The owner or user of any weight, measure or weighing or measuring instrument or device which shall have been so marked or tagged "comdemned for repairs," shall have the same repaired or corrected within ten days and shall not use or dispose of the same in any way, but shall hold the same subject to the orders of the officer condemning the same. (Id. § 4.)

348. City Sealers.—There shall be in each city of the first class having a population of more than fifty thousand, a city sealer of weights and measures, to be appointed by the mayor, or other chief executive officer, from a list to be furnished by, and under the rules of, the Civil Service Board, where such board exists; otherwise he shall be appointed by the mayor or other chief executive officer by and with the advice and consent of the council or other governing body. He shall perform in said city the duties and shall have like powers as the Director of Agriculture acting by and through the Division of Weights and Measures: Provided, however, that in every case where any city of the first class has heretofore made, or may hereafter make provision by charter or ordinance for the enforcement of proper legal weights and measures, vesting general supervision and direction in any official at the head of any department of such city, such official for the purpose of this act, shall be ex-officio sealer of weights and measures in such city, and he and his subordinates shall have the duties and powers of city sealers of weights and measures, and the powers of such cities relative to weights and measures shall be additional to the powers granted such city by law and charter: And provided, further, that the Director of Agriculture and the officers of the Division of Weights and Measures shall exercise no powers and discharge no duties in any city of the first class having its own sealer of weights and measures, except as in this act hereinabove provided. (Id. § 5.)

349. Penalties.—Any person, who, by himself, or his servant or agent or as the servant or agent of another, shall use or retain in his possession a false weight or measure or weighing or measuring device, or any weight or measure or weighing or measuring device which has not been sealed by or under the direction of the Director of Agriculture or a city sealer within one year, in the buying or selling of any commodity, or thing, or in the storage thereof, or in the transportation thereof, except track scales used by common carriers by railroad; or who shall dispose of any condemned weight, measure or weighing and measuring device contrary to law, or remove any tag placed thereon by any authorized officer under the provisions of this act; or any person who, by himself, or by his servant or agent, or as the servant or agent of another, shall sell or offer or expose for sale, or purchase or store or transport less than the quantity he represents, or sell or offer or expose for sale or purchase, store, or transport any such commodities in a manner contrary to law; or any person who by himself or by his servant or agent or as the servant or agent of another shall sell or offer for sale, or have in his possession for the purpose of selling, any device or instrument to be used to or calculated to falsify any weight or measure, shall be guilty of a misdemeanor upon the first conviction, but upon a second and each subsequent conviction he shall be guilty of a gross misdemeanor. (Id. § 6.)

350. Special Policemen.—The Director of Agriculture, the Supervisor of Weights and Measures and all duly appointed sealers, testers and inspectors of the Division of Weights and Measures and all duly appointed and qualified city sealers of weights and measures, are hereby made special policemen, and are authorized and empowered to arrest, without warrant, any violator of the statutes in relation to weights and measures, and to seize for use as evidence, and without warrant, any false weight, measure or weighing or measuring device or packages or amounts of commodities found to be used, retained or offered or exposed for sale, or sold, or purchased, stored or transported contrary to the provisions of this act. (Id. § 7.)

351. Obstructing Officers, Penalty.—Any person who shall hinder or obstruct, in any way, the Director of Agriculture, the Supervisor of Weights and Measures, any duly appointed and deputized sealer, tester, or inspector of the Division of Weights and Measures, or any city sealer, in the performance of his official duties, shall be guilty of a misdemeanor. (Id. § 8.)

352. Standard Package or Container of Butter.—A standard package or container of butter in this State shall contain sixteen (16) ounces net weight or thirty-two (32) ounces net weight, and a standard package or container need have no statement of the net weight of its contents, but it shall be unlawful to offer for sale or sell butter in any package or container where the net weight thereof is more or less than the standards herein prescribed without having said package or container labeled in plain English words or figures with the correct net weight of its contents expressed in pounds and ounces together with the name of the manufacturer or jobber. (Id. § 9.)

353. Bread to be Sold by Weight.—It shall unlawful for any person to manufacture, sell or offer or expose for sale, any bread except in the following weights, which shall be the net weights twelve hours after baking: one pound, one and one-half pounds, two pounds, three pounds, four pounds and five pounds, or other pound weights: Provided, that variations at the rate of one ounce per pound over, and one ounce per pound under, the above specified unit weights are permitted in individual

loaves, but the average weight of not less than twelve loaves of any one unit of any one kind shall not be less than the weight hereinabove prescribed. (Id. § 10.)

354. Standard Sack of Potatoes.—A standard sack of potatoes in this State shall contain one hundred (100) pounds net weight, and a standard sack of potatoes need have no statement of the weight of its contents, but it shall be unlawful to sell or offer for sale potatoes by the sack, in sacks containing more or less than the standard of one hundred (100) pounds, unless each such sack shall be labeled in plain English words and figures with its true net weight. (Id. § 11.)

355. Standard Berry Box.—A standard berry box for selling or offering for sale blackberries, currants, strawberries, cranberries, blueberries, gooseberries, cherries and similar berries in packages containing less than one bushel, shall be a dry quart containing 67.2 cubic inches or a dry pint containing 33.6 cubic inches, and it shall be unlawful to sell or offer for sale or use for the purpose of selling or offering for sale any of the berries named in this section, berry boxes of any other interior capacity than 67.2 or 33.6 cubic inches, unless the same be labeled in plain English words or figures with the correct interior capacity expressed thereon in cubic inches: Provided, that nothing in this section shall be construed to prevent the sale or offering for sale of any of the articles therein mentioned by weight. (Id. § 12.)

356. Standard Milk Bottles, Etc.—It shall be unlawful for any person, firm or corporation to sell milk, cream or buttermilk in this State, in bottles unless such bottles contain either one-half pint, one pint, one quart, one-half gallon or one gallon standard liquid measure. (Id. § 14.)

357. Standard Bottle for Sale of Vinegar.—Standard bottles for selling or offering for sale vinegar in this State shall contain one-half pint, one pint, one quart, one-half gallon or one gallon standard liquid measure and whenever vinegar is sold or offered for sale in such standard bottles no statement of the net measure of the contents thereof need be given thereon, but it shall be unlawful for any person, firm or corporation to offer for sale or sell vinegar in this State in bottles containing more or less than the standard amount in this section, unless such bottles shall be labeled in plain English words and figures with the true net measurement thereof stated in liquid ounces. (Id. § 15.)

358. Purchases to be on Basis of Net Weight; Seals.—It shall be unlawful for any person, firm or corporation to buy at wholesale in this State any article or commodity upon the basis of weight or measure unless the same be bought upon the basis of the true net weight or measure, and unless the scales, measures or weighing or measuring devices used by the buyer in determining the quantity bought shall bear the seal of a State or city sealer of weights or measures and conform to the standards provided by this act. (Id. § 16.)

359. Sale of Ice by Weight Regulated.—It shall be the duty of every vendor of ice in this State, at the time of the actual delivery of any ice sold, to weigh the quantity of ice delivered and for that purpose to use a steelyard balance or other weighing device for weighing such ice, which shall have been duly adjusted and sealed by a duly appointed State or city sealer of weights and measures in accordance with the provisions of this act, and all ice delivered to a consumer within this State shall be sold by avoirdupois weight unless it is otherwise specially agreed upon between the buyer and the seller, and each and every pair of ice tongs used in the delivery of ice in this State shall have conspicuously stamped thereon the true and exact avoirdupois weight of such tongs. (Id. § 17.)

360. Commodities to be Sold by Weight.—It shall be unlawful for any vendor, or his servant, agent or other employee, in this State, to offer for sale, or sell, or sell and deliver any commodity ordinarily and usually sold in bulk or quantity by weight or measure, unless the same be weighed, or measured, as the case may be, upon or by an officially tested and approved weighing or measuring device, and unless that portion of such commodity so offered for sale or sold by weight or measure shall be the true net weight or measure. (Id. § 18.)

361. Standard Containers for Cranberries.—A standard wholesale package or container for cranberries in this State shall contain one thousand nine hundred forty-two (1,942) cubic inches or the equivalent of one-third of a United States cranberry barrel, and need have no statement of its cubical contents, but shall be marked in plain letters, not less than one-quarter inch in height, "One-third United States Cranberry Barrel," or the net weight of the contents thereof, but it shall be unlawful for any person, firm or corporation to offer cranberries for sale at wholesale in this State, in packages or containers, the cubical contents of which are less than the standard defined, unless each such package or container be marked in plain letters and figures, not less than one-quarter inch in height, with the cubical contents of the container in inches, or the net weight of the contents. (Id. § 20.)

362. Capacity Officially Stamped on Milk Cans.—It shall be the duty of every person, firm or corporation using milk cans or other vessels for the shipping, sale

or dispensing of milk to have the liquid capacity, United States standard, of every such can or vessel measured and plainly sealed or stamped thereon by a duly authorized officer of the Division of Weights and Measures or a city sealer in the manner provided in this act, and it shall be unlawful for any person, firm or corporation to own and use milk cans or other vessels for shipping, selling or dispensing milk, or ship, sell or dispense milk by measurement for consideration in a can or vessel that has not been officially sealed and its liquid capacity plainly stamped thereon, and upon conviction of a violation of this section the person so convicted shall, in addition to other penalties provided by law, forfeit all unsealed milk cans or vessels found in his possession: Provided, that this shall not apply where milk is sold by weight and on butter fat content. (Id. § 21.)

363. Standard Apple Box.—The standard size of an apple box in this State, shall be eighteen inches long, eleven and one-half inches wide, and ten and one-half inches deep, inside measure, and the standard size of a pear box in this State, shall be eighteen inches long, eleven and one-half inches wide, and eight inches deep, inside measure; and it shall be unlawful for any person to offer for sale or sell apples or pears in this State, by the box, unless the box containing the same conform to the above standard: Provided, that apples or pears may be packed and sold in special boxes if the net weight and contents are stamped thereon in plain letters and figures not less than one-half inch in height, and marked "Special Box." (Id. § 22.)

364. General Penalty.—Every person found guilty of violating or failing to comply with any of the provisions of this act for which no specific penalty is prescribed herein, shall be deemed guilty of a misdemeanor, and for each subsequent offense he shall be deemed guilty of a gross misdemeanor. (Id. § 24.)

365. Using False Weights and Measures.—Every person who shall injure or defraud another by using, with knowledge that the same is false, a false weight, measure or other apparatus for determining the quantity of any commodity or article of merchandise, or by knowingly misrepresenting the quantity thereof bought or sold; or who shall retain in his possession any weight or measure, knowing it to be false, unless it appears beyond a reasonable doubt that it was so retained without intent to use it or permit it to be used in violation of the foregoing provisions of this section, shall be guilty of a gross misdemeanor. (Rem. C. S. 1922, § 2637.)

366. Hops, Fixing Tare, Weight of Bales, Etc.—The amount of tare to be deducted from the gross weight of each bale of hops grown and hereafter sold in this State is hereby fixed at five pounds per bale. Five yards of baling cloth is the maximum quantity to be used in making the bale, and the standard weight of each yard of baling cloth is hereby fixed at from twenty-four to thirty ounces. The standard weight for a bale of hops is hereby fixed at from one hundred and seventy-five to two hundred and ten pounds. Any vendor of hops using heavier sacking than that specified in this section, or using any extraneous matter in the baling thereof, shall have the same deducted as additional tare. (Id. § 11621.)

NOTE: See also Nos. 7, 16, 24, 29, 35, 41, 58 et seq., 201, and 204 et seq.

PART V.

Cases.

1. General Food and Drug Law.

Cheese—Application of Law—Action for Libel: General Market Co. v. Post-Intelligencer Co., Inc., 96 Wash. 575, 165 Pac. 482 (1917).

Department of Agriculture—Act Creating It Constitutional: *Carstens et al v. De Sellem et al., 82 Wash. 643, 144 Pac. 934 (1914).

"Drink"—Does Not Include Liquors Containing 2% or More Alcohol: See State ex rel. Christie & Miller v. Meek, 26 Wash. 405, 67 Pac. 76 (1901).

Meat—Unwholesome: State v. Poole, 64 Wash. 47, 116 Pac. 468 (1911); State v. Seattle & Puget Sound Packing Co. et al., 82 Wash. 460, 144 Pac. 694 (1914); State v. Grays Harbor Commercial Co., 124 Wash. 227, 214 Pac. 13 (1923). See also: Flessher v. Carstens Packing Co., 81 Wash. 241, 142 Pac. 694 (1914); Same, 84 Wash. 697, 152 Pac. 17 (1915).

2. Special Food Laws.

Beverages—Essences, Extracts, Etc.: See State v. Bailey, 67 Wash. 336, 121 Pac. 821 (1912).

Beverages—Liquors—Adulteration: State ex rel. Christie & Miller v. Meek, 26 Wash. 405, 67 Pac. 76 (1901).

Beverages—Soft Drinks—License: Plumas v. Town of Cosmopolis, 128 Wash. 697, 223 Pac. 1052 (1924).

Butter—Weight: *City of Spokane v. Arnold, 73 Wash. 256, 131 Pac. 815 (1913).

Eggs—Imported Eggs—to be Sold as Such—Use to be Declared: *Parrott & Co. v. Benson et al., 114 Wash. 117, 194 Pac. 986 (1921). *Amos Bird Co. v. Thompson et al., 274 Fed. 702 (1921).

Feeding Stuffs: *State v. Robinson Co., 84 Wash. 246, 146 Pac. 628 (1915); *Fisher Flouring Mills Co. et al. v. Brown et al., 109 Wash. 680, 187 Pac. 399 (1920). See also: A. H. Andrews & Son v. Harper et al., 137 Wash. 353, 242 Pac. 27 (1926).

Fish—Crabs—Possession in Closed Season Prohibited: State v. Ripley et al., 104 Wash. 299, 176 Pac. 343 (1918).

Fish—Frozen Fish—Tonnage Tax: State v. Diamond Ice & Storage Co., 105 Wash. 122, 177 Pac. 634 (1919).

Fish, Fruits, Vegetables, Etc.—Canning, Etc.—Hours of Labor for Women: *State v. Somerville, 67 Wash. 638, 122 Pac. 324 (1912).

Fish Market: Asia v. Pool, 47 Wash. 515, 92 Pac. 351, 15 Ann. Cas. 104 (1907).

Fish—Salmon—Dealing in Closed Season Prohibited: *State v. Belknap, 104 Wash. 221, 176 Pac. 5, 182 Pac. 570 (1918), certiorari denied in Same, 251 U. S. 553, 40 S. Ct. 118, 64 L. Ed. 411 (1919).

Fish—State Fisheries Board—Power to Make Rules: *Vail v. Seaborg et al., 120 Wash. 126, 207 Pac. 15 (1922).

Fruit—Destruction of Infected Fruit: *Shafford v. Brown et al., 49 Wash. 307, 95 Pac. 270 (1908).

Fruit—Horticultural Act Constitutional: *Carstens et al. v. De Sellem et al., 82 Wash. 643, 144 Pac. 934 (1914); *Los Angeles Berry Growers' Co-operative Ass'n v. Huntley et al., 84 Wash. 155, 146 Pac. 373 (1915).

Fruit—Inspector: *State ex rel. Egbert v. Blumberg, 46 Wash. 270, 89 Pac. 708 (1907).

Grain—Inspection: Wright v. Lilly, Bogardus & Co., 18 Wash. 77, 50 Pac. 786 (1897); *Puget Sound Warehouse Co. v. Northern Pacific Railway Co., 58 Wash. 322, 108 Pac. 955 (1910); Reardan Union Grain Co. v. Smith, 87 Wash. 316, 151 Pac. 772 (1915).

Grain—Standards, Etc.—Warehousemen's Act Constitutional: *State ex rel. Reitmeier v. Oakley et al., 129 Wash. 553, 225 Pac. 425 (1924).

Hawkers & Peddlers of Fruits, Vegetables, Butter, Eggs, Etc.—License: *In re Camp, 38 Wash. 393, 80 Pac. 547 (1905); *City of Seattle v. Ford, 44 Wash. Dec. 98 (1927).

Meat—Slaughterhouse: City of Spokane v. Robison, 6 Wash. 547, 33 Pac. 960 (1893); Wilcox v. Henry, 35 Wash. 591, 77 Pac. 1055 (1904); Grant v. Rosenburg, 112 Wash, 361, 192 Pac. 889, 196 Pac. 626 (1920); Hughson et al. v. Wingham, 120 Wash. 327, 207 Pac. 2, 27 A. L. R. 327 (1922).

Milk—Intended for Food—Added Water: City of Seattle v. Erickson, 55 Wash. 675, 104 Pac. 1128, 25 L. R. A. (N. S.) 1027 (1909).

Milk—Monopoly: State v. Erickson, 54 Wash. 472, 103 Pac. 796 (1909); State v. Scollard et al., 126 Wash. 335, 218 Pac. 224, 32 A. L. R. 1082 (1923). *Erickson v. Hodges, 179 Fed. 177, 102 C. C. A. 443 (1910).

Milk—Samples for Analysis—Result to be Reported to Dealer: State v. Burnam, 71 Wash. 199, 128 Pac. 218 (1912).

Milk—Skim Milk Powder: Royal Dairy Products Co. v. Spokane Dairy Products Co., 129 Wash. 424, 225 Pac. 412 (1924).

Milk—Standard—Manager of Dairy Liable, When: State v. Burnam, 71 Wash. 199, 128 Pac. 218 (1912).

Oleomargarine: State v. Allen, 14 Wash. 103, 44 Pac. 421 (1896); State v. Henderson, 15 Wash. 598, 47 Pac. 19 (1896). See also: *Renovated Butter.*

Plant Quarantine—Importations: *State v. Oregon-Washington Railroad & Navigation Co., 128 Wash. 365, 223 Pac. 600 (1924), reversed in *Oregon-Washington Railroad & Navigation Co. v. Washington, 270 U. S. 87, 46 S. Ct. 279, 70 L. Ed. 482 (1926).

Potatoes—Subject to Horticultural Law: *Los Angeles Berry Growers' Co-operative Ass'n v. Huntley et al., 84 Wash. 155, 146 Pac. 373 (1915).

Renovated Butter: *Hathaway et al. v. McDonald et al., 27 Wash. 659, 68 Pac. 376, 91 Am. St. Rep. 889 (1902). See also: Makins Produce Co. v. Callison, 67 Wash. 434, 121 Pac. 837 (1912); Armour & Co. v. Jesmer et al., 76 Wash. 475, 136 Pac. 689 (1913).

3. Special Drug Laws.

Itinerant Vendors: *City of Walla Walla v. Ferdon, 21 Wash. 308, 57 Pac. 796 (1899).

Narcotics: State v. Smith, 103 Wash. 267, 174 Pac. 9 (1918); State v. Curtis et al., 127 Wash. 273, 220 Pac. 769 (1923); State v. Lee, 127 Wash. 377, 220 Pac. 753 (1923); Same, 130 Wash. 707, 226 Pac. 1119 (1924); State v. Radford, 135 Wash. 120, 236 Pac. 804 (1925); State v. Shimoaka, 251 Pac. 290 (1926); State v. Young, 42 Wash. Dec. 271 (1927). See also: Waldo v. Poe, 14 Fed. (2d) 749 (1926).

Narcotics—Opium Smoking: *Ah Lim v. Territory, 1 Wash. 156, 24 Pac. 588, 9 L. R. A. 395 (1890).

Pharmacy: *City of Seattle v. Gibson, 96 Wash. 425, 165 Pac. 109 (1917). See also: City of Seattle v. Foster, 47 Wash. 172, 91 Pac. 642 (1907); State v. Krook, 58 Wash. 23, 107 Pac. 1032 (1910); City of Seattle v. Hewetson, 95 Wash. 612, 164 Pac. 234 (1917); State v. Billingsley, 99 Wash. 445, 169 Pac. 845 (1918); State v. Northern Pacific Railway Co. et al., 110 Wash. 69, 188 Pac. 3 (1920).

Poisons—Wood Alcohol: State v. Takano, 94 Wash. 119, 162 Pac. 35 (1916).

Serum: Pecheos et al. v. Johnson, 106 Wash. 163, 179 Pac. 78 (1919).

4. Civil Action to Recover Damages for Injury Alleged to Have Been Caused by Consumption or Use of Product.

Bottle—Explosion: Weiser v. Holzman et al., 33 Wash. 87, 73 Pac. 797, 99 Am. St. Rep. 932 (1903).

Chemical—Explosion: Conrad v. Graham & Co., 54 Wash. 641, 103 Pac. 1122, 132 Am. St. Rep. 1137 (1909).

Feeding Stuffs: A. H. Andrews & Son v. Harper et al., 137 Wash. 353, 242 Pac. 27 (1926).

Food: Mazetti et al. v. Armour & Co. et al., 75 Wash. 622, 135 Pac. 633, 48 L. R. A. (N. S.) 213, Ann. Cas. 1915 C, 140 (1913); Flessher v. Carstens Packing Co., 81 Wash. 241, 142 Pac. 694 (1914); Same, 84 Wash. 697, 152 Pac. 17 (1915); Wiser v. Northwestern Improvement Co., 86 Wash. 433, 150 Pac. 619 (1915); Flessher v. Carstens Packing Co., 93 Wash. 48, 160 Pac. 14 (1916). See also: Makins Produce Co. v. Callison, 67 Wash. 434, 121 Pac. 837 (1912); Los Angeles Olive Growers' Association v. Pacific Grocery Co., 119 Wash. 293, 205 Pac. 375 (1922); Royal Dairy Products Co. v. Spokane Dairy Products Co., 129 Wash. 424, 225 Pac. 412 (1924).

Fruit Tree Remedy: Kramer et al. v. Carbolineum Wood Preserving Co., 105 Wash. 401, 177 Pac. 771 (1919).

Wood Alcohol: See State v. Takano, 94 Wash. 119, 162 Pac. 35 (1916).

5. Miscellaneous.

Cigarettes: *State v. Winsor, 50 Wash. 407, 97 Pac. 446 (1908).

False Advertising: State v. Massey, 95 Wash. 1, 163 Pac. 7 (1917).

Gift Enterprise: Dwyer & Co. v. City of Seattle et al., 116 Wash. 449, 199 Pac. 740 (1921); Society Theatre et al. v. City of Seattle et al., 118 Wash. 258, 203 Pac. 21 (1922).

Trade-Marks: Woodcock v. Guy, 33 Wash. 234, 74 Pac. 358 (1903); *State v. Montgomery, 57 Wash. 192, 106 Pac. 771 (1910); Groceteria Stores Co. v. Tibbett, 94 Wash. 99, 162 Pac. 54, L. R. A. 1917 C, 955 (1916). See also: Martell et al. v. St. Francis Hotel Co., 51 Wash. 375, 98 Pac. 1116, 16 Ann. Cas. 593 (1909); Eastern Outfitting Co. v. Manheim et al., 59 Wash. 428, 110 Pac. 23, 35 L. R. A. (N. S.) 251 (1910); Rosenburg et al. v. Fremont Undertaking Co., 63 Wash. 52, 114 Pac. 886 (1911); Wright Restaurant Co. et al. v. Seattle Restaurant Co. et al., 67 Wash. 690, 122 Pac. 348 (1912); Wright Restaurant Co. et al. v. Wright et al., 74 Wash. 230, 133 Pac. 464 (1913); San Francisco Oyster House v. Mihich et al., 75 Wash. 274, 134 Pac. 921 (1913); Pacific Coast Condensed Milk Co. v. Frye & Co., 85 Wash. 133, 147 Pac. 865 (1915); New York Life Insurance Co. et al. v. Orpheum Theater & Realty Co. et al., 100 Wash. 573, 171 Pac. 534 (1918); Diamond Drill Contracting Co. v. International Diamond Drill Contracting Co. et al., 106 Wash. 72, 179 Pac. 120 (1919);

John Vittucci Co. v. Merline, 130 Wash. 483, 228 Pac. 292 (1924); Seattle Taxicab Co. v. DeJarlais et al., 135 Wash. 60, 236 Pac. 785 (1925); Electric Supply Co. v. Hess et al., 139 Wash. 20, 245 Pac. 27 (1926).

Trading Stamps: *Fleetwood v. Read, 21 Wash. 547, 58 Pac. 665, 47 L. R. A. 205 (1899); *Oilure Manufacturing Co. v. Pidduck-Ross Co., 38 Wash. 137, 80 Pac. 276 (1905); *Leonard v. Bassindale, 46 Wash. 301, 89 Pac. 879 (1907); *Sperry & Hutchinson Co. v. City of Tacoma et al., 68 Wash. 254, 122 Pac. 1060, L. R. A. 1915 B, 241 (1912); *State v. Pitney, 79 Wash. 608, 140 Pac. 918, Ann. Cas. 1916 A, 209 (1914) and *Same, 80 Wash. 699, 141 Pac. 883 (1914), affirmed in *Pitney v. State of Washington, 240 U. S. 387, 36 S. Ct. 385, 60 L. Ed. 703 (1916). *Sperry & Hutchinson Co. v. City of Tacoma, Wash., et al., 190 Fed. 682 (1911); *Same 199 Fed. 853 (1912); Same, 205 Fed. 641 (1913); *Little et al. v. Tanner et al., 208 Fed. 605 (1913), reversed in Tanner v. Little, 240 U. S. 369, 36 S. Ct. 379, 60 L. Ed. 691 (1916).

Weights and Measures: *City of Seattle v. Goldsmith, 73 Wash. 54, 131 Pac. 456 (1913); *City of Spokane v. Arnold, 73 Wash. 256, 131 Pac. 815 (1913); Armour & Co. v. Jesmer et al., 76 Wash. 475, 136 Pac. 689 (1913); City of Seattle v. Yocum, 94 Wash. 194, 162 Pac. 56 (1917). See also: *State ex rel. Washington Mill Co. v. Great Northern Railway Co., 43 Wash. 658, 86 Pac. 1056, 117 Am. St. Rep. 1084 (1906); Wright v. Computing Scale Co. et al., 47 Wash. 107, 91 Pac. 571 (1907).

WEST VIRGINIA.*

PART I.

General Food and Drug Law.

1. **Chemical Examination of Drugs or Provisions.**—The prosecuting attorney of each county in this State shall have power, and it will be his duty under this act, to enter during the usual hours of business into any creamery, factory, store, salesroom, drug store or laboratory, or any place where he has reason to believe food, drink or drugs are made, prepared or sold or offered for sale, and to open any case, tub, jar, bottle or package containing or supposed to contain any articles of food, drink or drugs, and examine or cause to be examined and analyzed the contents thereof. It shall be the duty of the chemist of the State Agricultural Department to analyze any of the above enumerated articles that may be sent him by the prosecuting attorney, and certify the result of said analysis to said prosecuting attorney: Provided, that if less than a whole package shall be taken under this section the sample as taken shall be sealed and prepared in every manner for shipment to the person who shall make the analysis hereinafter provided for. No package taken and prepared for shipment shall be opened before it has been received by the analyst aforesaid. If a whole package be taken it shall not be opened before it has been received by the analyst aforesaid. (Code 1923, c. 150, § 20b(1).)

2. **Manufacture or Sale of Adulterated Food or Drugs.**—No person shall, within this State, manufacture for sale, offer for sale, or sell any drug or article of food which is adulterated within the meaning of this act. The term "drug" as used in this act, shall include all medicines for internal or external use, antiseptics, disinfectants and cosmetics. The term "food" as used herein shall include all articles used for food, drink, confectionery or condiment by man, whether simple, mixed or compound. (Id. § 20b(2).)

3. **What Constitutes Adulteration.**—Any article shall be deemed to be adulterated within the meaning of this act: (a) In cases of drugs; one, if when sold under or by a name recognized in the United States Pharmacopœia official at the time, if it differs from the standard of strength, quality or purity laid down therein; two, if when sold under or by a name not recognized in the United States Pharmacopœia official at the time, but which is found in some other pharmacopœia or other standard work of materia medica, it differs materially from the standard of strength, quality or purity laid down in such work; three, if its strength, quality or purity falls below the professed standard under which it is sold. (b) In case of food, drink, confectionery or condiment; one, if any substance or substances have been mixed with it, so as to lower or depreciate or injuriously affect its quality, strength or purity; two, if any inferior or cheaper substance or substances have been substituted wholly or in part for it; three, if any valuable or necessary constituent or ingredient has been wholly or in part abstracted from it; four, if it is an imitation of, or is sold under the name of another article; five, if it consists wholly or in part of diseased, decomposed, putrid, infected, tainted or rotten animal or vegetable substance or article, whether manufactured or not, or in the case of milk, if it is the product of a diseased animal; six, if it is colored, coated, polished or powdered, whereby damage or inferiority is concealed, or if by any means it is made to appear better or of greater value than it really is; seven, if it contains any added substance or ingredients which are poisonous or injurious to the health; eight, if it is sold under a coined name and does not contain some ingredient suggested by such name or contains only an inconsiderable quantity; nine, if the package containing it or any label thereon shall bear any statement regarding it or its composition which shall be false or misleading in any particular, provided, that the provisions of this act shall not apply to mixtures or compounds recognized as ordi-

*CITATIONS: "Code 1923" refers to Barnes' West Virginia Code, 1923, published by the Federal Publishing Company. "Stats. 1925" refers to Barnes' West Virginia Statutes, 1925, containing the West Virginia laws of 1923 and 1925, printed by the Tribune Printing Company. "L." refers to the session laws of the year cited.

nary articles or ingredients of articles of food or drink, if each and every package sold or offered for sale is distinctly labeled in words of the English language as mixtures or compounds, with the name and per cent of each ingredient therein; the word "compound" or "mixture" shall be printed in type not smaller in either height or width than one-half the largest type upon any label on the package and the formula shall be printed in letters not smaller in either height or width than one-fourth the largest type upon any label on the package, and said compound or mixture must not contain any ingredient injurious to the health. (Id. § 20b(3).)

4. **In the Case of Drugs.**—(1) If it be an imitation of, or offered for sale under the name of another article. (2) If the contents of the package as originally put up shall have been removed in whole or in part, and other contents shall have been placed in such package, or if the package fails to bear a statement on the label of the quantity or proportion of any alcohol, morphine, opium, cocaine, heroin, alpha or beta eucaine, chloroform, cannabis indica, chloral hydrate, ascentanilide [acetanilide] or any derivative or preparation of any such substance contained therein. Provided, that nothing in this paragraph shall be construed to apply to the dispensing of prescriptions written by regular licensed practicing physicians, veterinary surgeons and dentists, and kept on file by the dispensing pharmacist, nor to such drugs as are recognized in the United States Pharmacopœia and the National Formulary, which are sold under the name by which they are recognized. (Id. § 20b(4).)

5. **Penalties for Manufacture or Sale.**—Whoever by himself or his agents, violates any of the provisions of this act, shall upon conviction be punished by a fine of not less than fifty nor more than one hundred dollars, or by imprisonment in the county jail not less than twenty days nor more than sixty days, or both for each subsequent offense. (Id. § 20b(5).)

6. **Definition of Person.**—The word "person" as used in this act shall include persons, corporations and co-partnerships. (Id. § 20b(6).)

7. **Expenses of Chemical Examinations.**—Any person guilty of violating any of the provisions of this act, shall be adjudged to pay, in addition to the penalties hereinbefore provided for, all necessary costs and expenses incurred in inspecting and analyzing any such adulterated food, drink, or drugs of which said party may have been guilty of adulterating, or selling, or keeping for sale or offering for sale, including a fee of twenty dollars to the prosecuting attorney; the costs incurred by reason of the examination of such food, drink or drugs shall be paid, when collected into the county treasury. (Id. § 20b(8).)

Miscellaneous General Provisions.

7a. **Functions of Department; Food, Drink and Drugs.**—. . . It [the State Department of Health] shall inspect and examine food, drink and drugs offered for sale or public consumption in such manner as shall be deemed necessary, and shall report all violations of all laws of this State relating to pure food, drink and drugs to the prosecuting attorney of the county in which such violations occur, and lay before such prosecuting attorney the evidence in its knowledge of such violations. The Commissioner of Health or any member of the Public Health Council, may make complaint and cause proceedings to be instituted against any person or persons or corporation for a violation of any of the health laws of this State, without the sanction of the prosecuting attorney of the county in which proceedings are instituted, if said officer fail or refuses to discharge his duty, and in no such cases shall they be required to give security for costs. . . . (Code 1923, c. 150, § 2.)

8. **Sale of Unwholesome Drugs or Provisions.**—If a person knowingly sell or expose for sale, any diseased, corrupted or unwholesome drugs or provisions, whether food or drink, without making the same known to the buyer, he shall, upon conviction thereof, be confined in jail not more than six months and fined not exceeding one hundred dollars. (Id. § 19.)

9. **Tests.**—Whenever the State Board of Health has reason to believe that any food, drink or drug, sold or offered for sale, is diseased, corrupted, unwholesome or adulterated, it shall take or cause to be taken by its authorized agent, a specimen thereof and test or analyze the same. And if the result of such test or analysis in the case indicates that the said food, drink or drug is diseased, corrupted, unwholesome or adulterated the same shall be prima facie evidence of such fact in prosecutions under this act. If the board, deeming it necessary, shall cause such food, drink or drug to be analyzed, the result of such analysis shall be recorded and kept in evidence, and a certificate of such results, sworn to by the person making the analysis, who shall also state under oath in his certificate that he was the first thereunto duly authorized by the State Board of Health, and state also the reason-

able cost of such analysis, shall be admissible in evidence in prosecution under this act. The expense of such analysis, not exceeding fifteen dollars in any one case, shall be included in the cost of such prosecutions and taxed in favor of said board of health. (Id. § 19a.)

10. Fraudulent Adulteration of Provisions.—If a person fraudulently adulterate, for the purpose of sale, anything intended for food or drink, or if he knowingly sell or barter anything intended for food or drink, which is not what it is represented to be, or what it is sold for, he shall be confined in jail not more than one year, and fined not exceeding five hundred dollars; and the adulterated or other articles shall be forfeited and destroyed. (Id. § 20.)

11. Cornering Market in Foods or Other Necessities of Life.—It shall be unlawful for any person or body of persons buying or selling any foodstuffs, fuel or any article or articles pertaining to necessities of life who, either in his individual capacity or as an officer, agent, or employee of a corporation, or member of a partnershp, to store any such foodstuffs, fuel, article or articles for the purpose of cornering the market or affecting the market price thereof, or for the purpose of limiting the supply thereof to the public, whether temporarily or otherwise. Any person violating any of the provisions of this act shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be punished by a fine of not less than one hundred dollars nor more than one thousand dollars, and may, in the discretion of the court, be confined in the county jail not exceeding one year. (Code 1923, c. 15 D, § 97.)

11a. Regulations; Pure Food.—The State Board of Health shall make such rules and regulations not inconsistent with law as in their judgment are necessary to carry out the intent of this act,* which rules and regulations shall take effect when approved by the Attorney-General and the Governor. The said hotel inspector shall assist in the enforcement of any orders made by the State Board of Health, and of the laws of the State respecting pure food, so far as they relate to hotels and restaurants. (Code 1923, c. 15N, § 2.)

NOTE: See also Nos. 27a et seq., 36 and 99.

PART II.

Special Food Laws.

Apples.

12. Grading and Packing Apples.—The standard grades or classes for apples grown in West Virginia, when packed in closed packages shall be as follows:

(a) West Virginia Fancy.—West Virginia Fancy shall consist of hand-picked apples of one variety which are well formed, uniform in size, firm, and mature, and which are free from decay, dirt, disease, bruises, insect, or mechanical injury, and other blemishes or defects, except those necessarily caused in proper packing. Each apple shall have the amount of color hereinafter specified for apples of its grade. In order to allow for proper variations incident to commercial grading and handling, not more than ten per cent by weight of the apples in any container may be below the requirements of this grade.

(b) West Virginia Grade A.—West Virginia Grade A shall consist of apples of one variety which are firm and mature, free from decay and practically free from dirt, disease, insect or mechanical injury, and other blemishes or defects, except those necessarily caused in proper packing. Each apple shall have the proper amount of color, hereinafter specified, for apples of this grade.

In order to allow for variations properly incident to commercial grading and handling, not more than ten per cent by weight of the apples in any container may be below the requirements of this grade.

(c) West Virginia Grade B.—West Virginia Grade B shall consist of apples of one variety which are firm and mature, free from decay, worm holes, and serious bruises, and which are not materially deformed, or materially discolored. In order to allow for variations properly incident to commercial grading and handling, not more than ten per cent of the weight of the apples in any container may be below the requirements of this grade.

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*Relating to hotels and restaurants.

(d) West Virginia Grade C.—West Virginia Grade C shall consist of apples which do not meet the requirements of West Virginia B Grade.

(e) Orchard Run Grade.—West Virginia Orchard Run shall consist of apples of one variety from which all apples not meeting the requirements of West Virginia Grade B have been removed. No lot from which apples meeting the requirements of West Virginia Grade A or better have been removed shall be designated as West Virginia Orchard Run. In order to allow for variations incident to commercial grading and handling, not more than ten per cent by weight of the apples in any container may be below the requirements of this grade.

(f) Unclassified.—Any apples not represented as meeting the requirements of the grades herein described shall be designated as "unclassified."

(g) Minimum Size.—The minimum size of any of the apples in any container shall be plainly labeled, stenciled, or otherwise marked on the container. In order to allow for variations properly incident to commercial grading and handling, not more than five per cent of the apples in any container may be below the minimum size specified.

(h) Facing.—The apples forming the facing or exposed surface in any container shall fairly represent the average of the apples in the container; that is, not more than one-half of the apples in the container may be smaller than, or inferior to, those in such face or exposed surface.

(i) Color.—In order that the requirements of the grade specified may be met each apple shall have color to the extent of the percentage of its surface stated below for its variety.

Solid Red Varieties—

W. Va. Fancy	W. Va. Grade A.
50% Wealthy	25%
50% Missouri Pippin	25%
50% Ben Davis	15%
50% Geniton	15%
50% Northern Spy	15%
50% Oldenburg	15%
50% Rome	15%
50% Wagner	15%
50% Willow Twig	15%
50% York Imperial	15%
25% Gravenstein	10%
25% Jeffries	10%
25% Twenty-Ounce	10%
25% Wolf River	10%

Red Cheeked or Blushed Varieties—

W. Va. Fancy	W. Va. Grade A.
Blushed Cheek Hyde King	Tinge of Color
Blushed Cheek Maiden Blush	Tinge of Color
Blushed Cheek Red Cheeked	Tinge of Color
Blushed Cheek Pippin	Tinge of Color
65% Aiken Red	25%
65% Arkansas Black	25%
65% Baldwin	25%
65% Black Ben Davis	25%
65% Gano	25%
65% King David	25%
65% Red June	25%
65% Spitzenburg	25%
65% Winesap	25%
Other solid red varieties	25%

Striped or Partial Red Varieties—

W. Va. Fancy	W. Va. Grade A.
50% Alexander	25%
50% Arkansas	25%
50% Delicious	25%
50% Fameuse	25%
50% King	25%
50% Lawyer	25%
50% Jonathan	25%
50% McIntosh	25%
50% Stayman	25%

Blushed Cheek Winter Banana .....Tinge of Color
Other Red Cheeked or Blushed Varieties .....Tinge of Color
Yellow or Green Varieties—
W. Va. Fancy and W. Va. Grade A.
Rhode Island Greening .....Characteristic Color
Albermarle Pippin .....Characteristic Color
Other Yellow or Green Varieties .....Characteristic Color

(j) Definitions of Grade Terms.—The grade terms used in this act are hereby defined as follows: "Well formed" means having the shape characteristic of the variety. "Uniform in size" means that there shall not be more than one-half inch variation between the maximum and minimum diameters of the apples in any container. "Practically free" means that the appearance or the keeping quality of the fruit shall not be injured to any extent readily apparent in the process of grading or sorting. "Materially deformed" means sufficiently deformed to cause a loss of twenty-five per cent or more by volume in paring. "Materially discolored" means having more than fifty per cent of the surface sufficiently discolored to injure the appearance of the fruit. "Colored" means the color characteristic of the variety when mature. "Mature" means having reached the stage of maturity which will insure proper completion of the ripening process. "Minimum size" means the transverse diameter of the smallest fruit at right angles to a line running from the stem to the blossom end. Minimum size shall be stated in terms of whole or quarter inches, as two inches, two and one-quarter inches, two and one-half inches, and so on, in accordance with the facts. The word "minimum" may be abbreviated thus: "min."

(k) The marks and brands required by this act may be accompanied by any additional marks or brands desired; provided such marks or brands are not inconsistent with the provisions of this act. Apples packed and branded in accordance with the provisions of the act of Congress approved August third, nineteen hundred and twelve, or any subsequent act of Congress, shall be exempt from the provisions of this act.

Every closed package containing apples grown and packed in the State of West Virginia, which is sold, offered or exposed for sale by any person, shall bear upon the outside of one end in plain letters and figures the name and address of the person by whose authority the apples were packed and the package marked with the true name of the variety, the grade or class of the apples therein contained, and the minimum size of the fruit in the package.

If the true name of the variety be not known to the packer, or to the person under whose authority the packing is done, then such variety shall be marked "unknown." Every package of apples which is repacked shall bear the name and address of the person under whose authority such repacking is done, such name and address to be preceded by the words "repacked by."

(l) It shall be unlawful for any person within this State to sell, offer, or expose for sale, apples which are misbranded or adulterated within the meaning of this act.

For the purpose of this act apples shall be deemed to be misbranded: First, if the package shall fail to bear the statements required by this act. Second, if the package shall be falsely branded or shall bear any statement, design or device regarding such apples which is false or misleading, or if the package bears a statement, design or device indicating that the apples therein contained are a given grade, and said apples when packed or repacked do not conform to said grade.

For the purposes of this act, apples shall be deemed to be adulterated if their quality or grade when packed or repacked does not conform to the marks upon the package.

Any person who misbrands or adulterates apples within the meaning of this act, or who violates any of the provisions of this act, shall be guilty of a misdemeanor, and on conviction thereof shall be fined not more than fifty dollars for the first offense, and not less than twenty-five nor more than two hundred for each subsequent violation.

No person shall be prosecuted under the provisions of this act when such person can establish satisfactory evidence to the effect that he was not a party to the packing and grading of such apples illegally packed or misbranded, and that he had no knowledge that same were illegally packed or misbranded or when he can establish a guaranty, signed by the person from whom he received such apples, to the effect that same are not misbranded or adulterated within the meaning of this act. Such guaranty, or satisfactory evidence to afford protection, shall contain

the true name and address of the party or parties from whom said apples were received, or who made the sale or shipment of such apples to such person.

(m) The word "person" as used herein shall be construed to include both singular and plural individuals, corporations, copartnerships, companies, societies, and associations. The act, omission or failure of any officer, agent, servant, or employee acting in the scope of his employment shall be deemed to be the act, omission or failure of his principal. The words "closed package" shall mean a box, barrel, or other package, the contents of which cannot be easily inspected when such package is closed.

This act shall not apply to apples actually transported to storage within the State until the same are sold, offered or exposed for sale, packed or transported for sale, nor shall the provisions of this act as regards transportation apply to common carriers.

(n) The enforcement of this act shall be vested in the State Department of Agriculture, and its officers, agents and employees are authorized and empowered to enter upon the lands of any person within this State for the purpose of inspecting the package of apples and securing evidence in relation to violations of this act, and the said Department of Agriculture shall promulgate such rules and regulations as may be necessary in construing and enforcing this act; provided, however, that any such grades or classes for apples packed in closed packages which may hereafter be prescribed by any act of Congress may be established and promulgated by the State Department of Agriculture in lieu of the grades and classes herein provided. (Stats. 1925, c. 15D, § 85.)

12a. Demonstration Community Packing House.—There is hereby established a demonstration community packing house to be located in the principal apple growing section of the State, for the purpose of demonstrating the most approved methods of picking, sorting and packing apples, peaches, and similar fruit, and for the purpose of teaching any citizen of West Virginia approved methods of picking, sorting and packing said fruit in barrels, boxes or other containers, and for the purpose of carrying the provisions and purposes of this act into effect a committee is hereby created consisting of the dean of the College of Agriculture of West Virginia University, the Commissioner of Agriculture, the president of the State Horticultural Society, the chairman of the horticultural committee of the State Federation of Farm Bureau, and horticulturist of the West Virginia Agricultural Experiment Station. It shall be the duty of the State Board of Control to procure a site, erect buildings and pre-cooling room, and provide the equipment and necessary space for the aforesaid demonstration. It shall be the duty of the State Board of Control when said building and school are provided and equipped as above stated to turn it over to the College of Agriculture of the West Virginia University for operation and the carrying out of the purposes and intents herein set forth. Any appropriation hereafter made to carry out the provisions and purposes of this act shall be expended through the State Board of Control. (Code 1923, c. 15 D, § 96a.)

NOTE: See also No. 103.

Bakeries.

See No. 30.

Beverages.

See Nos. 7a-10, 40 et seq., and 67 et seq.

Cider.

See No. 43.

Confectionery.

See No. 3.

Dairy Products—Substitutes for Dairy Products.

13. Imitation of Butter and Cheese.—Any person who manufactures, sells or offers for sale, any substance purporting to be, or having the semblance of, butter or cheese, which substance is not made wholly from pure cream or pure milk, unless each package, roll or parcel thereof, and each vessel containing one or more packages of the same, has been distinctly, legibly and durably printed, stamped or marked thereon, the true and appropriate name of each substance, and also the fact that it is not wholly made from pure cream, or pure milk, as the case may

be; or any person who sells to a consumer, any such substance not so marked or stamped, or without delivering to the consumer a written or printed statement, that it is not wholly made of pure cream, or pure milk, as the case may be, shall be fined not less than ten dollars nor more than one hundred dollars, and at the discretion of the court, be confined in jail until the fine and costs are paid, not exceeding, however, three months. But nothing contained in this act, shall be so construed as to prevent the use of skimmed milk, salt, rennet or harmless coloring matter, in the manufacture of butter and cheese. (Code 1923, c. 150, § 20a.)

14. Sale of Milk from Cow Affected with Tuberculosis.—Milk produced by a cow which has reacted to a tuberculin test, or is affected with a dangerously transmissible disease, shall not be sold as food for human beings or other animals, unless it has been previously heated to at least one hundred and seventy-eight degrees Fahrenheit or heated to one hundred and forty degrees F. and held at that point for at least twenty minutes, except when a special examination has been made under the direction of the commissioner and written permission to use such milk has been given by him. (Code 1923, c. 15D, § 27.)

15. Enforcement of Quarantine Act.—Any person, firm or corporation that shall violate any of the provisions of this act shall be guilty of a misdemeanor, and upon conviction thereof shall, for the first offense, be sentenced to pay a fine of not more than one hundred dollars. For each subsequent offense such person, firm or corporation shall be sentenced to pay a fine of not more than five hundred dollars, and in addition thereto, such person, or each of the members of the firm or each of the directors of the corporation, as the case may be, with guilty knowledge of the fact, may be sentenced to undergo imprisonment in the jail of the proper county for a period of not less than ten nor more than ninety days, or either or both, at the discretion of the court. It shall be the duty of the prosecuting attorney in the county in which offenses are committed against the provisions of this act, to prosecute the same upon information furnished by the commissioner or his agents. The commissioner shall be charged with the enforcement of this act and shall have the power to make all needful rules and regulations for the enforcement thereof, and shall have authority to accept on the part of the State the laws, rules and regulations of the United States Bureau of Animal Industry for the prevention, control and erradication of contagious, infectious or otherwise communicable diseases among domestic animals and poultry. (Id. § 28.)

16. Milk.—It shall be unlawful for any person, firm or corporation, by himself, herself, itself, or themselves, or by his, her, its or their agents, servants, or employees, to manufacture, offer or expose for sale or exchange or have in his possession with intent to sell, offer or expose for sale or exchange either in bulk or in containers, sealed or unsealed, under any name whatever, any condensed, evaporated, concentrated, powdered, dried or desiccated milk, cream or skim milk to which has been added or with which has been blended or compounded, any fats or oils, other than milk fats, producing what is known as filled milk.

Any person, firm or individual violating the provisions of this section shall be guilty of a misdemeanor and upon conviction thereof shall be fined not less than twenty-five dollars and not more than one hundred dollars for first offense, and not less than one hundred dollars and not more than two hundred and fifty dollars for each subsequent offense.

It shall be unlawful for any person, firm or corporation, by himself, herself, itself, or themselves, or by his, her, its or their agents, servants or employees, to manufacture, offer or expose for sale or exchange, or have in his possession with intent to sell, offer or expose for sale or exchange, any milk or milk products that do not conform to the following standards or definitions:

(a) Milk is the whole, fresh, clean lacteal secretion obtained by the complete milking of one or more healthy cows, properly fed and kept, excluding that obtained within fifteen days before and five days after calving, or such longer period as may be necessary to render the milk practically colostrum-free, and shall contain not less than three (3) per cent of milk fat and not less than eight and one-half (8½) per cent of solids, not fat, and eleven and one-half (11½) per cent total solids.

(b) Pasteurized milk is milk that has been subjected to a temperature not lower than 145 degrees Fahrenheit for not less than thirty (30) minutes. Unless it is bottled hot, it is promptly cooled to 50 degrees Fahrenheit, or lower.

(c) Skim milk is milk from which a part or all of the cream has been removed and contains not less than nine (9) per cent of milk solids.

(d) Buttermilk is the product that remains when fat is removed from milk or cream, sweet or sour, in the process of churning. It contains not less than eight (8) per cent of milk solids not fat.

(e) Condensed milk, evaporated milk, concentrated milk, is the product resulting from the evaporation of a considerable portion of the water from the whole, fresh, clean lacteal secretion obtained by the complete milking of one or more healthy cows properly fed and kept, excluding that obtained within fifteen days before and five days after calving, and contains, all tolerances being allowed for, not less than twenty-five and five-tenths per cent of total solids and not less than seven and eight-tenths per cent of milk fat.

(f) Sweetened condensed milk, sweetened evaporated milk, sweetened concentrated milk, is the product resulting from the evaporation of a considerable portion of the water from the whole, fresh, clean lacteal secretion obtained by the complete milking of one or more healthy cows, properly fed and kept, excluding that obtained within fifteen days before and five days after calving, to which sugar (sucrose) has been added. It contains, all tolerances being allowed for, not less than twenty-eight per cent of total milk solids and not less than seven and eight-tenths per cent of milk fat.

(g) Condensed skimmed milk, evaporated skimmed milk, concentrated skimmed milk, is the product resulting from the evaporation of a considerable portion of the water from skimmed milk, and contains, all tolerances being allowed for, not less than twenty per cent of milk solids.

(h) Sweetened condensed skimmed milk, sweetened evaporated skimmed milk, sweetened concentrated skimmed milk, is the product resulting from the evaporation of a considerable portion of the water from skimmed milk, to which sugar (sucrose) has been added. It contains, all tolerances being allowed for, not less than twenty-eight per cent of milk solids.

(i) Dried milk is the product resulting from the removal of water from milk, and contains, all tolerances being allowed for, not less than twenty-six per cent of milk fat, and not more than five per cent of moisture.

(j) Dried skim milk is the product resulting from the removal of water from skimmed milk, and contains, all tolerances being allowed for, not more than five per cent of moisture.

(k) Cream, sweet cream, is that portion of milk rich in milk fat, which rises to the surface of milk on standing, or if separated from it by centrifugal force. It is fresh, clean. It contains not less than eighteen per cent of milk fat.

Whipping cream is cream which contains not less than thirty per cent of milk fat.

(l) Butter is the clean, non-rancid product made by gathering in any manner the fat of fresh or ripened milk or cream into a mass, which also contains a small portion of the other milk constituents, with or without salt, and contains not less than eighty per cent of milk fat and not more than sixteen per cent moisture. The addition of vegetable butter coloring is permitted.

(m) Cheese is the sound, solid, and ripened product made from milk or cream by coagulating the casein thereof with rennett [rennet] or lactic acid with or without the addition of ripening ferments and seasoning, and contains in the water-free substance, not less than fifty per cent of milk fat. The addition of harmless coloring matter is permitted.

(n) Ice cream is a frozen substance made from pure, wholesome milk products sweetened with sugar and may contain not to exceed one-half of one per cent of gelatine, vegetable gum or other wholesome stabilizer.

When wholesome and harmless flavoring extracts are used, ice cream shall contain not less than eight per cent of milk fats and ten per cent of milk solids not fats. When eggs, fruits, nuts, chocolate or cake are used, such reduction in the percentage of milk fat and milk solids not fat shall be allowed as may be caused by the addition of such ingredients.

Any person, firm or corporation violating the provisions of this section shall be guilty of a misdemeanor, and, on conviction thereof, shall be fined not less than twenty-five dollars and not more than fifty dollars for the first offense, and not less than fifty dollars and not more than two hundred dollars for each subsequent offense. (Stats. 1925, c. 150, § 35.)

16a. Functions of Department; Milk, Milk Products.—. . . The public health council shall make regulations to provide clean and safe milk and fresh milk products, and when promulgated these regulations shall be the minimum requirements to be enforced by local authorities throughout the State. (Code 1923, c. 150, § 2.)

NOTE: See also Nos. 1, 3, 28b, 29, 67 et seq., and 100-101.

Eggs.

16b. Community Egg Packing House; Demonstration.—There is hereby established a community egg marketing, packing, grading and poultry feeding and fattening demonstration, to be located in the poultry section of the State for the purpose of demonstrating the most approved methods of marketing, handling, and storing of poultry and poultry products, and for the purpose of teaching any citizen of West Virginia approved methods of marketing, grading, candling and packing eggs and the feeding, killing and dressing of poultry. (L. 1927, c. , § 1.)

16c. Enforcement.—For carrying out the provisions and purposes of this act a committee is hereby created consisting of the dean of the College of Agriculture of West Virginia University, the director of Agricultural Extension, the Commissioner of Agriculture and the secretary of the West Virginia Farm Bureau Federation, with power to select a location and sites for the aforesaid demonstration plant. It shall be the duty of the State Board of Control to provide necessary buildings and equipment on the location and site selected by the committee for conducting the aforesaid demonstration. It shall be the duty of the State Board of Control when said buildings and school are provided and equipped as above stated, to turn it over to the College of Agriculture of the West Virginia University for operation and carrying out of the purposes and intents herein set forth. Any appropriations hereafter made to carry out the provisions and purposes of this act shall be expended through the State Board of Control. (Id. § 2.)

Feeding Stuffs.

17. Definition of Commercial Feeding Stuffs.—The term "commercial feeding stuffs" shall be held to include all feeding stuffs used for feeding live stock and poultry, except whole seeds or grains, the unmixed meals made directly from the entire grains of corn, wheat, rye, barley, oats, buckwheat, flaxseed, kaffir, and milo; whole hays, straws, cottonseed hulls and corn stover unmixed with other materials together with all other materials containing sixty per cent or more or [of] water. (Code 1923, c. 15D, § 98.)

18. Label of Feeding Stuffs.—Every lot or parcel of commercial feeding stuffs sold, offered or exposed for sale or distributed within the State shall have affixed thereto a tag or label, in a conspicuous place on the outside thereof, containing a legible and plainly printed statement in the English language, clearly and truly certifying:

(a) The net weight of the contents on the package, lot or parcel;

(b) The name, brand or trade-mark.

(c) The name and principal address of the manufacturer or person responsible for placing the commodity on the market;

(d) The minimum per centum of crude protein;

(e) The minimum per centum of crude fat;

(f) The maximum per centum of crude fiber;

(g) The specific name of each ingredient used in its manufacture.

The crude protein, crude fat and crude fiber shall be determined by the methods in force at the time by the Association of Official Agricultural Chemists of the United States. (Id. § 99.)

19. Filing Copy of Such Analysis; Tankage, Meat and Meal.—Before any manufacturer, importer, jobber, firm, association, corporation or person shall sell, offer or expose for sale or distribute in this State any commercial feeding stuffs, he or they shall file with the Commissioner of Agriculture a certified copy of the statement specified in section two [99] for each brand of commercial feeding stuffs; said certified copy to be accompanied when the Commissioner of Agriculture shall so request by a sealed package containing at least one pound of the commercial feeding stuffs to be sold, offered or exposed for sale, or distributed in this State; and the company or person furnishing said sample shall thereupon make affidavit that the said sample is representative of the commercial feeding stuffs offered for registration. Tankage, meat meal or meat scraps cannot be sold in this State through dealers, or otherwise, except under the regulation of government inspection of tankage, meat meal or meat scraps, and that each container shall have a prescribed label from the Bureau of Animal Industry in compliance with the act of Congress of June thirtieth, one thousand nine hundred and six. (Id. § 100.)

20. Tags and Cards for Retailers.—Whenever any commercial feeding stuffs, as defined in section one [98] is offered or exposed for sale in bulk or otherwise

stored, the manufacturer, importer, jobber, firm, association, corporation or person keeping the same for sale shall keep on hand cards upon which shall be printed the statement required by the provisions of section two [99] and when such feeding stuffs are sold at retail in bulk or in packages belonging to the purchaser, the manufacturer, jobber, firm, association, corporation or person shall furnish the purchaser, upon request, with a card or cards upon which appears the statement required by the provisions of section two [99]. (Stats. 1925, c. 15D, § 101.)

21. **Refusal or Cancellation of Feed Registration.**—The Commissioner of Agriculture shall have power to refuse to register any commercial feeding stuffs under a name, brand or trade-mark which would be misleading or deceptive or which would tend to mislead or deceive as to the materials of which it is composed, or when the specific name of each and all ingredients used in its manufacture are not stated. He shall also have the power to refuse to register more than one commercial feeding stuffs under the same name or brand when offered by the same manufacturer, jobber, importer, firm, association, corporation or person. Should any commercial feeding stuffs be registered in this State and it is afterward discovered that such registration is in violation of any of the provisions of this act, the Commssioner of Agriculture shall have the power to cancel such registration. The Commissioner of Agriculture shall have the power to refuse to allow any manufacturer, importer, jobber, firm, association, corporation or person to lower the guaranteed analysis or change the ingredients of any brand of his or their commercial feeding stuffs during the term for which registered unless satisfactory reasons are presented for making such change or changes. (Code 1923, c. 15D, § 102.)

22. **Single Registration.**—Whenever a manufacturer, importer, jobber, firm, association, corporation or person manufacturing or selling a brand of commercial feeding stuffs shall have filed the statement required by section three [100], as required by section four [101] of this act, no other agent, importer, jobber, firm, association, corporation or person shall be required to file such statement. (Stats. 1925, c. 15D, § 103.)

23. **Examination and Analysis of Feeding Stuffs.**—The Commissioner of Agriculture is authorized in person, or by deputy, to have free access to all places of business, mills, buildings, carriages, cars, vessels, and parcels of whatsoever kind used in the manufacture, transportation, importation, sale or storage of any commercial feeding stuffs, and shall have the power and authority to open any parcel containing or supposed to contain any commercial feeding stuffs; and upon tender and full payment of the selling price, to take therefrom samples for analysis. And said commissioner shall annually cause to be analyzed at least one sample of every commercial feeding stuffs that is found, sold, offered or exposed for sale, or distributed in this State. The methods of analysis shall be those in force at the time by the Association of Official Agricultural Chemists of the United States. The said commissioner shall publish annually in pamphlet or bulletin form, the result of all analyses and other examinations required by this section, for the guidance of purchasers of commercial feeding stuffs in this State. (Code 1923, c. 15D, § 104.)

24. **Prosecutions Under Feeding Stuff Act.**—If it appears that any of the provisions of this act have been violated, the Commissioner of Agriculture shall certify the facts to the proper prosecuting attorney, and furnish that officer with a copy of the results of the analysis or other examination of such feeding stuffs, duly authenticated by the analyst or other officer making the determination under oath of such officer; provided, that if it shall appear from any such examination that any of the provisions of this act have been violated, the said commissioner shall cause notice to be given to the manufacturer or dealer from whom said sample was taken. Any party so notified, shall be given an opportunity to be heard in his defense under such rules and regulations as may be prescribed by the Commissioner of Agriculture, before the facts shall be certified to the proper prosecuting attorney. In all prosecutions arising under the provisions of this act, certificates of the analyst or other officer making the examinations or analysis, when duly sworn to by such officer, shall be prima facie evidence of the fact or facts therein certified. (Id. § 105.)

25. **Penalties.**—Any manufacturer, importer, jobber, firm, association, corporation or person who shall sell, offer or expose for sale, or distribute in this State, any commercial feeding stuffs without having attached thereto or furnished therewith such labels or tags as required by this act, or who shall use the required labels or tags, or who shall impede, obstruct, hinder or otherwise prevent or attempt to prevent said commissioner or his authorized agent in the performance of his duty in connection with the provisions of this act, or who shall sell or expose for sale or distribute in this State any commercial feeding stuffs as defined in section

one [98] without complying with the requirements of the provisions of this act; or who shall sell, offer, or expose for sale or distribute in this State any commercial feeding stuffs which contain a smaller per centum of crude protein or crude fat, or a larger per centum of crude fiber than is certified to be contained therein, or who shall fail to properly state the specific name of each and every ingredient used in its manufacture, shall be deemed guilty of a violation of the provisions of this act and upon conviction thereof shall be fined not more than one hundred dollars for the first violation, and not less than one hundred dollars for each subsequent violation. (Stats. 1925, c. 15D, § 106.)

26. Regulations.—The Commissioner of Agriculture is hereby empowered to enforce the provisions of this act, and to prescribe and enforce such rules as he may deem necessary to carry into effect the full intent and meaning of this act. (Id. § 107.)

27. Grain Foods of Domestic Manufacture.—Any commercial feeding stuffs, manufactured and prepared from pure grain at any mill in this State and sold by the manufacturer thereof, shall not be required to be registered and tagged. (Code. 1923, c. 15D, § 109.)

Flour—Meal.

See No. 103.

Fruits, Vegetables, Etc.

27a. Bureau of Markets; Creation; Chief.—There is hereby established in the State Department of Agriculture a Bureau of Markets. The head of such bureau shall be known as the Chief of the Bureau of Markets. The Commissionner of Agriculture may appoint, subject to the approval of the Governor, the Chief of the Bureau of Markets and the Board of Control shall fix his compensationn at a salary not to exceed twenty-four hundred dollars per annum. (Code 1923, c. 15 D, § 57.)

27b. Duties and Powers of Chief.—Acting under the general direction of the Commissioner of Agriculture and co-operating with the Bureau of Markets of the Federal Department of Agriculture, it shall be the duty of the Chief of the Bureau of Markets to investigate the cost of food production and marketing in all its phases; to aid and assist in the organization of co-operative societies among producers and consumers for the purpose of securing more direct business relations between them, of promoting and conserving the interests of producers, and reducing the cost of living to consumers, to hear complaints and suggestions, take testimony of witnesses and obtain evidence, and, for the exercise of such powers may issue subpœnas and compel the attendance of witnesses and the production of evidence; to advise and assist in the location and establishment of local markets whenever it is determined that public necessity or the welfare of the community requires such markets provided he shall be satisfied that such markets will be successfully operated by a co-operative company; to have power to make rules and regulations for the grading, packing, handling, storage and sale of all foodstuffs within the State, not contrary to law, and to enforce such rules and regulations by actions or proceedings in any court of competent jurisdiction. (Id. § 58.)

27c. Establishment of Auction Markets.—The Chief in the Bureau of Markets may cause to be established at such points in the State as may be deemed advisable, auction markets, and for such purposes may lease premises therefor. Upon the establishment of such a market the Chief in the Bureau of Markets shall cause a notice to be published in such manner as he deems proper stating that such market has been established and that farm products may be consigned to a licensed auctioneer at such market for sale at public auction by such licensed auctioneer of the Bureau of Markets at such market, as hereinafter provided. The Chief of the Bureau of Markets shall have power to make regulations, not inconsistent with law, for operating the facilities in such auction markets, leasing space therein and otherwise regulating the management thereof. (Id. § 59.)

27d. Auctioneers; License; Bond; Commission; Sale by Owner; Inspection Charges.—Upon the establishment of an auction market, the Commissioner of Agriculture may issue a license to such persons as qualify, as hereinafter provided, in the city, town or village in which such market is located, authorizing them to act as official auctioneers for the Bureau of Markets, in the sale of such goods consigned to them. Such license may be issued upon written application to the Commissioner of Agriculture, stating the full name of the person applying for such license, his address, and such other facts as to his character, responsibility and experience, as the commissioner shall require. The issuance of such license shall be in discretion of the

Commissioner of Agriculture and shall be without charge. The commissioner shall require a person licensed as an auctioneer pursuant to this section to execute and deliver to him a bond with satisfactory sureties in such sum as the commissioner may determine, not less than one thousand dollars, conditioned for the faithful performance of his duties and the faithful accounting to a consignor of all moneys to which such consignor may be entitled after the deduction of commissions and other expenses authorized by this act. Such auctioneers shall receive no compensation from the State but shall be entitled to charge commissions for the sale of farm produce in accordance with the schedules of the Bureau of Markets. Every shipper consigning food produce to such licensed auctioneer for sale shall be charged in addition to the commission of the licensed auctioneer, as above provided, an additional commission of three per centum of the gross amount received for such produce, which shall be paid into the State treasury and applied to the support of the Bureau of Markets.

The Commissioner of Agriculture shall adopt, and may from time to time amend, a schedule of commissions which official auctioneers shall be authorized to charge for the sale of farm produce at public auction under the jurisdiction of the Bureau of Markets. Such commissions may vary according to the quality and character of the produce; provided, however, that nothing herein contained shall prevent any owner of farm produce from selling in person or by order without charge. The commissioner shall also establish a schedule of charges for inspection by the Bureau of Markets. (Id. § 60.)

27e. Inspection of Farm Products.—The Bureau of Markets shall have power to inspect and determine the grade and condition of farm produce at collecting centers, receiving centers and shipping points. (Id. § 61.)

27f. Market Zones; Care of Products; Auction Sales.—The Commissioner of Agriculture may, in the establishment of an auction market, also prescribe the zone from which farm produce may be consigned thereto. The Chief of the Bureau of Markets shall make arrangement for the proper place and be responsible for the safeguarding of food produce consigned to auction markets. Farm produce so consigned to an auction market shall be received by the licensed auctioneer or auctioneers of the Bureau of Markets, who shall proceed to sell such produce at public auction as auctioneers for the consignor at the best price obtainable therefor. If for any reason such an auctioneer be unable to sell it at auction at a satisfactory price, such unsold portion may be distributed and sold at private sale at the best price obtainable therefor. After such sale, such auctioneer shall deduct his commissions and other authorized charges and promptly transmit the balance to the consignor. (Id. § 62.)

27g. Market Bulletins.—So far as may be practicable the Chief in the Bureau of Markets shall publish a daily bulletin, setting forth the quotations for which produce has been sold for the preceding day in all the principal markets of the State, including the auction market, and also giving advice as to the available supplies of the principal farm produce, and as to the demand in the several markets for local as well as foreign produce. He shall also prepare from time to time bulletins as to the most efficient methods of standardization, packing and transportation, and cause notice thereof to be distributed in such manner as the Commissioner of Agriculture may determine. He shall also investigate the source of supply of food produce and prepare and publish lists of the names and addresses of producers and consignors and supply the same to persons applying therefor. (Id. § 63.)

27h. Delays in Transportation; Restraint of Trade; Facilitating Ready Market.—The Commissioner of Agriculture in pursuance of the purposes of this act may investigate delays in transportation, and may cause to be initiated proper proceedings to prevent restraint of trade and of unlawful combinations to fix prices on agricultural products when notified by producers, that food products produced within the State seem likely to spoil for lack of ready market, make such suggestions to such producers or take such steps as seem advisable for facilitating the sale thereof. (Id. § 64.)

27i. Crimes by Auctioneers.—Any licensed auctioneer doing business at an auction market established under the provisions of this act, who shall impose false charges for handling or services in connection with farm produce; or fail to account for such farm produce promptly and properly and to make settlements therefor, within intent to defraud; or make false or misleading statement or statements as to market conditions with intent to deceive; or directly or indirectly purchases for his own account goods received by him upon consignment; or make false statements as to grade, conditions, markings, quality or quantity of goods shipped or packed in any manner with intent to deceive; or makes any charge for commissions, or otherwise, in excess of those authorized by the Department of Agriculture, is guilty of a misdemeanor and upon conviction thereof shall be fined not more than one hundred dollars for the first offense and not less than one hundred dollars for each subsequent

offense, and the commissioner shall forthwith revoke the license granted to such auctioneer and direct his bond to be forfeited. (Id. § 65.)

27j. Collection of Agricultural Information Under Market Act.—In pursuance of the purposes of this act, it shall be the duty of the Commissioner of Agriculture to obtain all facts and statistics bearing upon the subject of agriculture and he may call upon all State and county officials having in possession such information whose duty it shall be without delay to supply information requested under schedules provided by the Commissioner of Agriculture. (Id. § 66.)

NOTE: See also Nos. 12, 12a, and 102-103.

Meat—Meat Products.

28. Killing for Sale Young Calves.—Whoever by himself or his agents, kills for the purpose of sale, any calf less than four weeks old, or sells, or has in his possession with the intent to sell, the meat of any calf which he knows to have been killed when less than four weeks old, shall be fined not less than five dollars, nor more than fifteen dollars or imprisonment not more than sixty days, or both. (Code 1923, c. 150, § 20b(7).)

28a. Duties and Powers of Commissioner in Such Cases.—It shall be the duty of the Commissioner of Agriculture, hereinafter known as the "commissioner," . . . to enforce the laws of the State relating to diseases of animals and poultry, and the manufacture, preparations, storage, sale and offering for sale, of the food and food products derived from diseased animals and poultry. . . . (Code 1923, c. 15 D, § 10.)

28b. Selling Diseased Animal or Permitting it to Stray.—Without express permission in writing from the commissioner, or his agent, it shall be unlawful for any person to sell or offer for sale, or to give away, or to allow to stray, any animal affected with any disease enumerated in section six of this act, or with any disease now or hereafter adjudged and proclaimed by the United States Bureau of Animal Industry to be of a transmissible character, or any animal that has reacted to any tuberculin or mallein test, or with such permission to sell or offer for sale, or to give away, any such animal, without notifying the purchaser or any prospective purchaser or the person to whom the animal shall be sold or given, that the animal is affected or has reacted as aforesaid, or that it has been in a herd affected with such a disease within one year, except when for immediate slaughter in accordance with the meat inspection regulations of the United States Department of Agriculture; or to dispose of to another in any manner any animal that may be in quarantine until such time as the quarantine shall have been raised by the proper officer, or to dispose of the meat or milk of any animal that may be affected with such contagious infectious or communicable disease for use as food or for other purposes except in such manner as shall be provided by the commissioner; provided, however, that nothing in this section shall be construed as interfering with the provisions of the State or national pure food or meat inspection laws except that the milk from tuberculous cows may be sold under such regulations for its sterilization before use as the commissioner may prescribe. (Id. § 24.)

NOTE: See also No. 29.

Vinegar.

28c. Definitions.—All vinegar made by fermentation without distillation must carry in solution only the extractive matter derived exclusively from the fruit, grain, sugar or syrup from which it was derived and fermented; all vinegars herein defined must comply with the provisions of this act.

The terms "cider vinegar" and "apple vinegar" or words of similar import, shall be construed to mean the product made exclusively from the expressed juice of fresh apples, or parts of fresh apples, by alcoholic and subsequent acetous fermentations without distillation.

The term "evaporated apple products," vinegar or "vinegar made from evaporated apple products," or words of similar import, shall be construed to mean the product made by the alcoholic and subsequent acetous fermentations without distillation of the aqueous extract obtained from clean, sound, dried apples, dried chopped apples, dried apple skins or cores, dried apple pomace or boiled cider.

The terms "wine vinegar" and "grape vinegar" or words of similar import, shall be construed to mean the product made exclusively from the expressed juice of fresh whole grapes by alcoholic and subsequent acetous fermentations without distillation.

The term "malt vinegar" or words of similar import, shall be construed to mean the product made by the alcoholic and subsequent acetous fermentations, without distillation, of an infusion of barley fruit or cereals whose starch has been converted by malt.

The term "sugar vinegar" or words of similar import, shall be construed to mean the product made by the alcoholic and subsequent acetous fermentations, without distillation, of solutions of sugar, syrup, molasses or refiner's syrup.

The terms "glucose vinegar' or "corn sugar vinegar" or words of similar import, shall be construed to mean the product made by the alcoholic and subsequent acetous fermentations, without distillation, of solutions of corn sugar or glucose prepared from corn starch. (L. 1927, c. , § 1.)

28d. Same.—The terms "spirit vinegar" and "distilled vinegar" or words of similar import, shall be construed to mean the product made by the acetous fermentation of dilute distilled ethyl alcohol. (Id. § 2.)

28e. What Constitutes Adulteration.—Vinegar as defined in sections one and two which fails to comply with such definitions or which contain any substance or ingredient not derived exclusively from the fruit grain, sugar or syrup from which it was made, except as provided in section six, shall be deemed, for the purposes of this act only, as adulterated. (Id. § 3.)

28f. Same.—All vinegar, whether made by fermentation or by the process of distillation with subsequent acetification which contains less than four grams of acetic acid in one hundred cubic centimeters of the vinegar at twenty degrees centigrade, shall be deemed adulterated. (Id. § 4.)

28g. Same.—The product made by the destructive distillation of wood known as pyroligneous acid, or acetic acid derived from other sources than hereinbefore provided or a product in which any such acid shall be used, mixed, or compounded, shall not be sold, offered or had in possession for sale as vinegar. (Id. § 5.)

28h. Vinegar Reduced With Water to be Marked.—Packages containing vinegar, as defined in sections one and two which has been reduced with water must be plainly marked, "Reduced to.....per cent acid strength," indicating the acidity to which it has been reduced. (Id. § 6.)

28i. Containers to be Marked.—Each cask, barrel or other container of vinegar as defined in sections one and two shall be plainly marked with the name of the manufacturer and place where such vinegar was made or the name and place of business of the distributor thereof, preceded by the words "manufactured for" or "distributed by" or some equivalent phrase, and the kind of vinegar contained therein, in the terms above defined, and no person shall falsely mark any package containing any vinegar so defined, with any other brand or designation or with any additional words, marks or description which shall be false or deceptive in any particular whatever. (Id. § 7.)

28j. Sale of Adulterated Vinegar, Etc., Prohibited.—No person, firm or corporation shall manufacture, sell, offer, or have in possession for sale, in this State:

(1) Any vinegar defined in sections one and two which does not comply with the definitions therein set forth and the provisions of this act.

(2) Any adulterated or misbranded vinegar.

(3) Any vinegar or product or product made in imitation of any vinegar defined in sections one and two.

(4) Any vinegar to which any artificial coloring matter has been added of any kind whatever unless sold in containers plainly labeled to show the content of such artificial coloring matter therein. (Id. § 8.)

28k. Penalty.—Violation of this act shall be a misdemeanor and punished by a fine of not less than five dollars nor more than one hundred dollars for the first offense, and not less than five dollars nor more than two hundred dollars for all subsequent offenses. (Id. § 9.)

28l. When Act Effective.—This act shall take effect November one, thousand nine hundred and twenty-seven. (Id. § 10.)

NOTE: See also No. 43.

Sanitation.

29. Department of Health.— . . . (2) Commissioner of Health. The commissioner shall be appointed by the Governor, by and with the consent of the Senate, and shall be a physician skilled in sanitary science, and experienced in public health administration. The term of office of the Commissioner of Health shall be four years; he shall after the first day of July, one thousand nine hundred and nineteen, receive an annual salary of forty-eight hundred dollars and actual expenses incurred in the performance of official business; which salary shall be in full for all services. The Commissioner of Health shall be the administrative head of the State Department of Health and he shall be ex-officio a member of its public health council. His duties shall be to administer the laws and regulations of the department; to prepare rules and regulations for the consideration of the public health council; and with the approval of said council to appoint, remove and fix the compensation of the directors of divisions and all other employees; but said com-

pensation shall be within the limitations of appropriations therefor; to advise with the public health council, keep himself informed as to the worth of each local health officer within the State; aid each health officer in the performance of his duties; assist each local health officer in making an annual sanitary survey of the territory within his jurisdiction, and in maintaining therein a continuous sanitary supervision; adjust questions of jurisdiction arising between local health officers within the State; study the cause of excessive mortality or morbidity from any disease in any portion of the State; promote efficient registration of births, deaths and notifiable diseases; inspect and report from time to time the sanitary condition of institutions, schools and schoolhouses, public conveyances, dairies, creameries, slaughterhouses, workshops, factories, labor camps, hotels and places where offensive trades or industries are conducted; inspect and report the sanitary condition of streams, sources of water supply and sewerage facilities; endeavor to enlist the co-operation of all physicians, and volunteer health organizations in the improvement of public health; promulgate information to the general public in all matters pertaining to the public health. He shall perform all executive duties now required by law of the State Board of Health and other customary duties incident to his position as chief executive officer, and shall provide for offices and equipment necessary for the transaction of the business of the State Department of Health, out of funds appropriated for the State Department of Health. He shall submit annually to the Governor on or before the first day of November, or as soon thereafter as practicable, a report of the operations of the department, with any recommendations he may have to make, which report shall be printed and distributed as soon as practicable thereafter in the same manner as other public documents of the State. The commissioner whenever required by the Governor shall report to him as to any designated subject or matter, and furnish such information as may be required. The Commissioner of Health may direct any official or employee of the State Department of Health to assist in the study, control, suppression and prevention of diseases in any part of the State, and necessary expenses shall be paid while in the performance of such duty. . . .

(4) Inspectors, Examiners and Employees.—Inspectors, examiners or other persons appointed by the Commissioner of Health may be appointed at such time or times as by him deemed necessary; and they shall act as representatives of the Commissioner of Health, and under his direction shall secure the enforcement of the provisions of the public health laws and regulations, and shall have the right of entry into any workshop, public school, factory, dairy, creamery, slaughterhouse, hotel, or other place of business or employment, or any common carrier or public utility when in the discharge of official duties. Any person interfering with or attempting to interfere with an inspector, examiner or any other duly authorized employee of the commissioner in the discharge of his duties under this section shall be guilty of a misdemeanor and upon conviction fined not exceeding one hundred dollars. . . . (Code 1923, c. 150, § 1.)

30. Venereal Diseases.—(18)—Employment of infected person. It shall be unlawful for any person having a venereal disease in an infectious stage, to be engaged as a barber in any barber shop in the State, or to be engaged in any capacity in any bakery in the State, or to be employed at any hotel, restaurant, eating house, lunch counter, or other public place, as a cook, or cook's helper, or as a waiter, or in any other capacity whatever, where liable to come in contact with food about to be served; and it shall be the duty of every physician or other person reporting a case of venereal disease hereunder required, to state in said report whether or not said person so reported is so engaged, and if so, to give the place where such party is so employed; and it shall be the duty of the local health officer upon receipt of a report showing a person is so engaged to at once notify the party to discontinue such employment; and if said party so notified fails or refuses to discontinue such employment within twenty-four hours after notice, then the party or parties employing said infected person shall be notified of the fact, and if such employer fails or refuses to take steps to have such infected person discontinue work within twenty-four hours after receiving notice from the health officer, he shall be guilty of a misdemeanor, and every twenty-four hours thereafter that such infected party continues in the employment of said employer shall be a separate offense upon the part of said employer. In the meantime said health officer may, if the infected party is not under treatment, have the infected person arrested, detained and quarantined, or otherwise dealt with as may seem best to said health officer. . . . (Id. § 32.)*

NOTE: See also Nos. 14, 15 and 16a. For hotel and restaurant sanitation, see Code 1923, c. 15N.

*For definitions and penalty, see No. 39.

PART III.

Special Drug Laws.

Antiseptics.

See No. 2.

Anti-toxin, Vaccine, Tuberculin, Etc.

31. Functions of Department.— . . . The State Department of Health shall provide, at its discretion, vaccine lymph, diphtheria anti-toxin, tetanus anti-toxin, and other forms of serum or vaccine preventives of disease that it may deem necessary, and distribute same free of charge to county and municipal health officers, to be used for the benefit of the poor and indigent, and in other cases where it may be urgently necessary to check contagions and control epidemics. . . . (Code 1923, c. 150, § 2.)

32. Diphtheria Anti-toxine.—The State of West Virginia shall purchase and furnish free of charge to each county within the State, a sufficient supply of diphtheria anti-toxine, to the indigent poor, the amount of which shall be determined by the county health officer of each county, and deposited in such drug stores or any other store within said county as said county health officer may designate, and such anti-toxine shall be kept at said drug stores or any other store at all times and in sufficient quantities to be delivered to any licensed physician by said drug stores or any other store, and by said physicians to be used upon persons infected with diphtheria, or to prevent the same, without cost to the patient so treated. (Id. § 21a.)

33. Its Purchase and Distribution.—The anti-toxine mentioned in the preceding section shall be bought by the State Commissioner of Health and by him distributed to the various drug stores or any other store designated by the county health officers of the various counties of this State, and such county health officers shall designate such drug stores or any other store as they may think proper as depositories for said anti-toxine, and the State Commissioner of Health shall deliver to the drug stores or any other store aforesaid, so named as depositories, so much anti-toxine as may be reasonably necessary for use in each of said counties for the purposes aforesaid, and take a receipt from the proprietor of such drug stores or any other store for the same. And the auditor of the State shall pay the actual cost of such anti-toxine and the cost of the delivery of the same to such drug stores or any other store, upon the presentation of the original invoices thereof, duly verified by affidavit, and approved by the State Health Commissioner, and shall in addition thereto pay to the drug stores or any store for delivery of the same to the physicians aforesaid, ten per cent commission of the original cost of said anti-toxine so delivered to the physicians aforesaid. And the Legislature at each session thereof shall make appropriations for the payment of said anti-toxine and the commissions thereon. (Id. § 21b.)

33a. Appointment; Duties.—The Governor shall appoint three properly qualified agents residing respectively, at Charleston, Kanawha county; at Martinsburg, Berkeley county, and at Wheeling, Ohio county, whose duties shall be to furnish by mail or otherwise, every citizen of this State who may apply therefor, with genuine vaccine matter and with directions how to use it, free of charge. And the medical superintendent of the West Virginia Hospital for the Insane, at Weston, shall act as agent, without compensation. (Code 1923, c. 15F, § 1.)

33b. Compensation.—The sum of one hundred and fifty dollars annually is hereby appropriated for the payment of such agents, fifty dollars to each agent respectively; the same to be paid semi-annually on order of the Governor. (Id. § 2.)

33c. Term of Office.—The terms of office of said agents shall be for four years. (Id. § 3.)

34. Sale of Diagnostic Materials.—Each sale in this State of tuberculin for cattle, or of mallein for horses, jacks or mules, and each injection or test made with tuberculin or mallein, shall be reported in writing to the commissioner within one week after such sale or test. Each such report shall be signed by the person who shall have made the sale or test and shall give the name of the purchaser of the tuberculin or mallein, with the amount sold, the date of sale, the name and address of the owner of the cattle or horses or mules or jacks tested, the locality where such test has been made, a description of the animal or animals tested, and a

complete statement of the actual result of such test. It shall be unlawful for any person, whose duty it is hereby made to make such report, to fail or refuse to do so. It shall be unlawful for any person to manufacture for sale, or sell or offer for sale, any biological products intended for diagnostic or therapeutic purposes with animals unless such product is officially approved by the Bureau of Animal Industry of the United States. (Code 1923, c. 15D, § 26.)*

Caustic Poisons.

35. Caustic Poisons.—After January first, one thousand nine hundred and twenty-six, it shall be unlawful to sell or expose for sale in this State concentrated lye, or similar substance, unless the same be plainly labeled, in large, legible letters, "caustic poison," and with skull and cross-bones, both in red. Any person violating this act shall be guilty of a misdemeanor, and, on conviction thereof, shall be punished by a fine of not less than fifty nor more than five hundred dollars. (Stats 1925, c. 150, § 20b(9).)

Cosmetics.

See No. 2.

Disinfectants.

See No. 2.

Pharmacy, Poisons and Narcotics.

36. Practice of Pharmacy.—(1) It shall be unlawful for any person not a registered pharmacist within the meaning of this act, who does not employ a registered pharmacist within the meaning of this act, to conduct any pharmacy, drug store, apothecary shop or store for the purpose of retailing, compounding or dispensing medicines or poisons, except as hereinafter provided.

(2) It shall be unlawful for the proprietor of any store or pharmacy to permit any person except a registered pharmacist or registered assistant pharmacist to compound or dispense the prescriptions of physicians or to retail or dispense the poisons named in schedule "A," "B," and "C" herein, except as an aid to and under the supervision of a registered pharmacist or registered assistant pharmacist; provided, that in any village of not more than five hundred inhabitants where there is no person licensed as a pharmacist within less than two miles of such village, the board of pharmacy may grant to any person who is licensed as assistant pharmacist a permit to conduct a drug store or pharmacy in such village, which permit shall not be valid in any other village than the one for which it was granted, and shall cease and determine when the population of the village, for which such permit was granted, shall become greater than five hundred.

(3) The Board of Pharmacy shall consist of five members, who shall be voters of this State, licensed as pharmacists and actively engaged in the practice of pharmacy, appointed by the Governor by and with the advice and consent of the Senate, each for the term of five years; one member to be appointed each year as the terms of office of the present members shall respectively expire. Any person appointed in the recess of the Senate shall serve until the next meeting of the Senate; vacancies shall be filled by appointment by the Governor for the unexpired term; a majority of the board shall constitute a quorum for the transaction of business; the president and secretary shall have power to administer oaths in all matters relating to the examination and registration of pharmacists and assistant pharmacists.

(4) Annually the board shall organize by the election of a president, a vice-president and a secretary, all of whom shall be members of the board, who shall hold their offices for one year and until their successors are elected; the secretary shall give a bond in such sum as may be prescribed by the board, conditioned upon the discharge of the duties of his office according to law; the board shall hold two meetings each year at such times and places as it may provide by rule, for the examination of candidates, and for the discharge of such other business as may legally come before it, and such additional meetings as may be necessary.

(5) The board shall have a common seal, and shall have power to adopt such rules and by-laws, not inconsistent with law, as may be necessary for the regulation of its proceedings and for the discharge of the duties imposed under this statute; the Attorney-General, when requested by the president or secretary of the board,

*For penalty, see No. 15.

shall conduct all prosecutions under this act, and in such prosecutions shall have all the rights and privileges of a prosecuting attorney in any county; the board shall have power to employ an attorney to conduct prosecutions or assist in the conduct of prosecutions under this act.

(6) The board shall keep a record of its proceedings and a register of all persons to whom certificates of license as pharmacists and assistant pharmacists and permits have been issued, and of all renewals thereof; and the books and register of the board, or a copy of any part thereof certified by the secretary and attested by the seal of the board, shall be accepted as competent evidence in all the courts of the State.

(7) Within sixty days after this act takes effect, the secretary of the board shall make a report to the Secretary of State of all registered pharmacists and registered assistant pharmacists licensed in this State, giving date of license, name of the person, and his residence; on or before the fifteenth day of each month, the secretary of the board shall certify to the Secretary of State all changes in said list, required by the addition of new licenses, renewals, deaths, forfeiture of licenses or for other cause, in the preceding month; the Secretary of State shall enter in an appropriate book, known as "list of pharmacists," the facts shown by such reports, which reports shall be filed and preserved in his office.

(8) The board shall make annually to the Governor, before the first day of November, a written summary of its proceedings and a statement of its receipts and disbursements, and of all persons licensed to practice as pharmacists and assistant pharmacists in this State.

(9) The secretary shall receive such salary as may be prescribed by the board, and his necessary expenses while engaged in the performance of his official duties; the other members shall receive five dollars for each day actually employed in the discharge of their official duties, and their necessary expenses while engaged therein; but no money shall be paid to any officer or member under this section until he has made a full itemized statement and attested the same.

(10) All fees collected by the secretary for the examination of pharmacists and assistant pharmacists, and for the issuing of the permits authorized by this act, and for the renewal of certificates of registration and permits, and all other funds collected under this act, shall be paid by him into the State treasury monthly through the State Board of Control, not later than twenty days after the close of each month. The compensation and expenses of the officers and members of the board, and all expenses incurred by the board in carrying into execution the provisions of this act, shall be paid out of money appropriated therefor, and out of fees collected in accordance with section sixteen of this act, which fees are hereby appropriated out of the State treasury, upon the warrant of the auditor, issued upon requisition made through the State Board of Control and signed by the president and secretary of the Board of Pharmacy. (Amended L. 1927.)

(11) In order to be hereafter licensed as a pharmacist within the meaning of this act, an applicant shall be a citizen of the United States, not less than twenty-one years of age, and shall present to the Board of Pharmacy satisfactory evidence that he (or she) is a graduate of a recognized school of pharmacy as defined by the Board of Pharmacy, and in addition thereto he (or she) shall have had at least two years' practical experience in a drug store under the instruction and supervision of a registered pharmacist, and shall pass a satisfactory examination by or under the direction of the Board of Pharmacy. In order to be licensed as an assistant pharmacist within the meaning of this act, an applicant shall be not less than eighteen years of age and shall have attended and successfully passed the final examinations of at least one year in a recognized college of pharmacy as defined by the Board of Pharmacy, and in addition thereto shall have had at least two years' experience in a drug store under the instruction and supervision of a registered pharmacist and shall pass a satisfactory examination by or under the direction of the Board of Pharmacy; provided, however, that in the case of a person who has attended a recognized school of pharmacy, the actual time of attending such school of pharmacy may be deducted from the time of experience required of pharmacists, but in no case shall less than two years' experience in a drug store under the instruction and supervision of a registered pharmacist be required for registration as a licensed pharmacist. (Amended and re-enacted L. 1925, c. 21. See Stats. 1925, c. 150, § 29b (11).)

(12) Every person now registered as a pharmacist within this State shall within ninety days after this act takes effect make application to the Board of Pharmacy for a renewal of such license, and if the Board of Pharmacy shall find that such applicant has been legally registered within this State, it shall issue to him a renewal of such license, and for such service shall be entitled to charge and col-

lect the sum of one dollar; every license and permit and every renewal thereof issued to registered pharmacists or registered assistant pharmacists, shall be for a period of two years.

(13) The Board of Pharmacy may issue license to practice as pharmacists or assistant pharmacists in this State without examination, to such persons as have been legally registered or licensed as pharmacists or assistant pharmacists in other States; provided, that the applicant for such license shall present satisfactory evidence of qualification equal to those required from licentiates in this State, and that he was registered or licensed by examination in such other State, and that the standard of competence required in such other State is not lower than that required in this State, and, provided, also, that the board is satisfied that such other State accords similar recognition to the licentiates of this State; and, provided, further, that the board may, in the interval between examinations, issue temporary permits to graduates in pharmacy, or registered pharmacists of other States, applying for same, until the next meeting of the board, but the said permit shall not be renewed nor more than one permit granted to the same person. Applicants for license under this section shall, with their applications, forward to the secretary of the board, the same fees as are required for other candidates for license.

(14) Every certificate or license to practice as pharmacist or assistant pharmacist, and every permit to an assistant pharmacist to conduct a drug store in villages of not more than five hundred inhabitants, and every renewal of such license or permit, shall be conspicuously exposed in the pharmacy or drug store or place of business of which the pharmacist or assistant pharmacist or other person to whom it is issued is the owner or manager, or in which he is employed.

(15) Every licensed pharmacist or assistant pharmacist who desires to continue in the practice of his profession, shall within thirty days next preceding the expiration of his license or permit, file with the board an application for the renewal thereof, which application shall be accompanied by the fee hereunder prescribed; if the board shall find that the applicant has been legally licensed in this State and is entitled to renewal of license, or to a renewal of such permit, it shall issue to him a certificate attesting that fact; if any pharmacist or assistant pharmacist shall fail for a period of ninety days after the expiration of his license, to make application to the board for its renewal, his name shall be erased from the register of licensed pharmacists or assistant pharmacists, and such person in order to again become registered as a licensed pharmacist or assistant pharmacist, shall be required to pay the same fee as in the case of examination.

(16) The Board of Pharmacy shall be entitled to charge and collect the following fees: For examination of an applicant for license as a pharmacist, ten dollars; for the examination of an applicant for license as an assistant pharmacist, five dollars; for renewing the license of a pharmacist, two dollars; for renewing the license of an assistant pharmacist, one dollar; for issuing a permit to an assistant pharmacist to conduct a drug store in villages of not more than five hundred inhabitants, five dollars; in case any applicant fails to pass a satisfactory examination, he shall be permitted to present himself for re-examination at any board meeting within twelve months next succeeding and no charge shall be made for such examination; all fees shall be paid before any applicant is admitted to examination or his name placed upon the register of pharmacists or assistant pharmacists, or before any license or permit, or any renewal thereof, shall be issued by the board. (Amended L. 1927.)

(17) Every applicant for registration as a pharmacist or assistant shall present to the Board of Pharmacy satisfactory evidence that he is a person of good moral character and not addicted to drunkenness or the use of narcotic drugs, and all persons whether registered pharmacists or not shall be held responsible for the quality of all drugs, chemicals and medicines they may sell or dispense, with the exception of those sold in original packages of the manufacturer and those known as "patent medicines."

(18) Any person who shall knowingly, adulterate or cause to be adulterated any drugs, chemicals or medicinal preparations, or knowingly sell any adulterated drugs, chemicals or medicinal preparations, shall be deemed guilty of a misdemeanor and upon conviction thereof, be fined not exceeding one hundred dollars, and if he be a registered pharmacist or assistant pharmacist, his name shall be stricken from the register.

(19) It shall be unlawful for any person not legally licensed as a pharmacist, unless he has in his employ a registered pharmacist, to take, use, or exhibit the title of pharmacist or licensed or registered pharmacist, or the title of druggist or apothecary, or any other title or description of like import, or to label, mark, or advertise his or any other place of business as a "drug store" or by the use of

the word "drugs" or any other compounds or derivative of the same, or by any other word or sign indicating or intended to indicate that drugs or pharmaceutical supplies are either sold or offered for sale. And it shall be unlawful for any person not legally licensed as an assistant pharmacist to take, use or exhibit the title of assistant pharmacist, or any title or description of like import.

Any person who shall violate any provision of this section shall be guilty of a misdemeanor, and, upon conviction thereof, shall for each such offense be confined in the county jail not to exceed six months, or fined not exceeding two hundred dollars, or both so fined and imprisoned, at the discretion of the court; and each day such violation shall continue shall be deemed a separate offense. (Amended L. 1925, c. 21. See Stats. 1925, c. 150, § 29b (20).)

(20) Sale of Poisons; Prohibition.—No person, firm or corporation shall dispense or sell at retail any of the poisons enumerated in the following schedules except as hereinafter provided.

(21) Schedule A.—Arsenic and its preparations, corrosive sublimate, red precipitate, biniodide of mercury, cyanide of potassium, hydrocyanic acid, strychnia, carbolic acid and essential oil of bitter almonds.

(22) Schedule B.—Aconite, belladonna, colchicum, conium, nux vomica, henbane, savin, ergot, cotton root, cantharides, creosote, digitalis and their pharmaceutical preparations, croton oil, chloroform, sulphate of zinc, sulphate of copper, acetate of lead, mineral acids and oxalic acid.

(23) Label; Inquiry of Purchaser; Record.—Whenever any of the said poisons are sold the box, vessel or paper in which the same is put up shall be distinctly labeled with device bearing the death's head and cross-bones, and also the name of the article and the word "poison," and the name and place of business of the seller; the seller shall also ascertain upon due inquiry that the purchaser is aware of the poisonous character of the drug and that it is to be used for legitimate and lawful purposes; he shall also before delivering any of the poisons named in schedule "A" to the purchaser, cause an entry to be made in a book kept for that purpose, which entry shall show the date of the sale, the name and residence of the purchaser, the name and quantity of the poison sold, the purpose for which is to be used as represented by the purchaser, and the name of the dispenser, such book to be always subject to the inspection of the proper authorities and to be preserved for at least five years, from the date of the last entry.

(24) Prescription Under Preceding Paragraphs.—The provisions of the last four sections shall not apply to the dispensing of drugs in not unusual quantities, on the prescription of physicians.

(25) Schedule C; Prescription.—Cocaine, alpha or beta eucaine, opium, morphine, heroin, chloral hydrate or any salt or compound of any of the foregoing substances or any preparations or compound containing any of the foregoing substances or their salts or compound, except upon the original written order or prescription of a lawfully authorized practitioner of medicine, dentistry, or veterinary medicine, which order or prescription shall be dated and contain the name of the person for whom prescribed, or if ordered by a practitioner of veterinary medicine, shall state the kind of animal for which ordered, and shall be signed by the person giving the prescription or order; such written order or prescription shall be permanently retained on file by the person, firm or corporation who shall compound or dispense the articles ordered or prescribed, and it shall not be again compounded or dispensed except upon the written order of the original prescriber for each and every subsequent compounding or dispensing.

(26) Limitation of Preceding Paragraph.—No copy or duplicate of such written order or prescription shall be made or delivered to any person, but the original shall at all times be open to inspection by the prescriber and properly authorized officers of the law; provided, however, that the provisions of schedule "C" shall not apply to preparations containing not more than one-half grain of opium, or not more than one-half grain of codein, or not more than one-eighth grain of morphine, or not more than one-twelfth grain of heroin, or not more than one-thirty-second grain of cocaine, or not more than one-thirty-second grain of alpha or beta eucaine, or not more than two grains of chloral hydrate in each dose; provided, also that the provisions of schedule "C" shall not apply to preparations containing opium and recommended and sold in good faith for diarrhœa and cholera, each bottle or package of which is accompanied by specific directions for use and a caution against habitual use, nor to powder of ipecac and opium, commonly known as Dover's powder, nor to liniments or ointments when plainly labeled "for external use only"; and provided, further, that the provisions of schedule "C" shall not apply to sales at wholesale, by jobbers, wholesalers and manufacturers to retail druggists, to regular practitioners of medicine, dentistry or veterinary medicines, nor to sales made to manufacturers

of proprietary or pharmaceutical preparations for use in the manufacture of such preparations, nor to sales to hospitals, colleges, scientific or public institutions.

(27) When Prescription Unlawful.—It shall be unlawful for any practitioner of medicine, dentistry or veterinary medicine to furnish to or prescribe for the use of any habitual user of the same any cocaine, heroin, alpha or beta eucaine, opium, morphine, chloral hydrate or any salt or compound of any of the foregoing substances or their salts or compounds. And it shall also be unlawful for any practitioner of dentistry to prescribe any of the foregoing substances for any person not under his treatment in the regular practice of his profession, or for any practitioner of veterinary medicines to prescribe any of the foregoing substances for the use of any human being; provided, however, that the provisions of this section shall not be construed to prevent any lawfully authorized practitioner of medicine from furnishing or prescribing in good faith for the use of any habitual user of narcotic drugs, who is under his professional care, such substances as he may deem necessary for his treatment, when such prescriptions are not given or substances furnished for the purpose of evading the provisions of this act. Any person who shall violate any of the provisions of sections one, two, nineteen, twenty, twenty-one, twenty-two, twenty-three, twenty-four, twenty-five, twenty-six and twenty-seven shall be guilty of a misdemeanor, and upon conviction, for the first offense shall be fined not less than twenty-five dollars nor more than fifty dollars; and upon conviction for a second offense, shall be fined not less than fifty dollars nor more than one hundred dollars; and upon conviction of a subsequent offense, shall be fined not less than one hundred dollars nor more than two hundred dollars and may be imprisoned in the county jail for not more than six months, and, if a licensed pharmacist, physician, dentist or veterinary surgeon, his license shall be revoked. It shall be the duty of all judges of the Circuit and Criminal Courts of this State at every regular term thereof to charge regularly impaneled grand juries to diligently inquire into and investigate all cases of the violations of the provisions of this act, and to make a true presentment of all persons guilty of such violations. It shall be the duty of the Board of Pharmacy to cause the prosecution of all persons violating the provisions of this act.

(28) Construction of Act.—Nor shall this act be construed to authorize any person to carry on the business of druggist without first having obtained a license therefor, or to sell, offer or expose for sale any of the liquors, drinks, mixtures or preparations mentioned in section one of chapter thirty-two* of the code of West Virginia, except for medical, mechanical or scientific purposes; and no sale of any such liquors, drinks, mixtures or preparations, shall be made by any druggist or registered pharmacist for medical purposes, except upon the written prescription of a practicing physician in good standing in his profession and not of intemperate habits, specifying the name of the person and the quantity of such liquor to be furnished him; but no druggist or registered pharmacist who is a practicing physician shall himself or by his agent or clerk sell any such liquors, drinks, mixtures or preparations upon his own prescriptions. Any person carrying on or in the business of a druggist who shall, in violation of this act, sell any such liquors, drinks, mixtures or preparations, shall be guilty of a misdemeanor and for such offense be fined not less than twenty-five dollars nor more than one hundred dollars. In any prosecutions against persons carrying on or interested in the business or [of] a druggist for selling any such liquors, drinks, mixtures or preparations contrary to law, if the sale be proved, it shall be presumed that such sale was unlawful unless the contrary be shown.

(29) Exemptions.—This act shall not apply to the sale of patent or proprietary medicines, nor to such ordinary drugs or dyestuffs, as are usually sold in a country store, but the term "ordinary drugs" shall not be held to include any of the poisons named in schedules "A," "B," and "C," nor any intoxicating liquors, but nothing in this act shall be construed to interfere with any legally qualified practitioner of medicine, dentistry or veterinary medicine, who is not the proprietor of a store for the dispensing or retailing of drugs, or who is not in the employ of such proprietor, in the compounding of his own prescriptions, or to prevent him from supplying to his patients such medicines as he may deem proper, if such supply is not made as a sale.

(30) Revocation of License on Conviction.—It shall be the duty of the clerk of the court in which, or of the justice of the peace before whom, any conviction is had to transmit forthwith a certified copy of the record entry of such convictions to the Board of Pharmacy, who shall upon a second conviction revoke his license and strike his name from the register, and it shall be unlawful for such per-

*Chapter 32A. See No. 40 et seq.

son to practice the business of pharmacy, conduct a drug store, or act as a registered pharmacist or assistant registered pharmacist in this State. (Code 1923, c. 150, § 29b.)

37. **Sale of Cocaine, Alpha or Beta Eucaine; Prescription.**—(1) No person shall sell, give away or otherwise dispense cocaine, alpha or beta eucaine, or any mixture of either, except on the prescription of a licensed physician in good standing in his profession, not of intemperate habits or addicted to the use of any drug, and any person violating the provisions of this section shall be guilty of a felony and upon conviction thereof shall be imprisoned in the penitentiary of this State not less than one nor more than ten years for each offense. Provided, that nothing herein contained shall be construed to prohibit the sale of cocaine or alpha or beta eucaine by any licensed manufacturing pharmacist or chemist or wholesale or retail druggist to other licensed manufacturing pharmacist or chemist or wholesale or retail pharmacist or druggist, or to hospitals, colleges and scientific or public institutions, or to licensed physicians, dentists, or veterinary surgeons; nor to the use of cocaine or alpha or beta eucaine by any licensed physician, dentist or veterinary surgeon in the regular course of his practice.

(2) If any person, except a licensed physician, dentist or veterinary surgeon, manufacturing pharmacist or chemist, or wholesale or retail pharmacist or druggist, have in his possession cocaine or alpha or beta eucaine or any mixture of either with intent to sell, give away or otherwise dispense the same, he shall be deemed guilty of a felony and punished by confinement in the penitentiary of this State not less than one nor more than ten years; and possession of cocaine or alpha or beta eucaine or any mixture of either, except by a licensed physician, dentist, veterinary surgeon, manufacturing chemist, pharmacist, wholesale or retail pharmacist or druggist or on the prescription of a licensed physician in good standing in his profession, not of intemperate habits or addicted to the use of any drug, shall be prima facie evidence of an intent to sell, give away or otherwise dispense the same: Provided, that nothing herein contained shall be construed to apply to any hospital, college or scientific or public institution.

(3) Every prescription for the use of cocaine, alpha or beta eucaine or any mixture containing any of the foregoing drugs or substances, must be signed by a licensed physician in good standing in his profession, not of intemperate habits, nor addicted to the use of any drug, giving the name and address of the patient for whom the same shall be prescribed, which shall be written plainly upon the prescription; also the amount and quantity of said substance prescribed shall be plainly set forth in said prescription; and said prescription shall be filled only once, and said prescription shall be filed by the druggist who filled the same in the same manner that prescriptions for spirituous liquors are filed, and shall at all times be open to the inspection of the prosecuting attorney, the county court and the grand jury of the county in which said prescription was filled, and any person violating any of the provisions of this section shall be guilty of a misdemeanor and upon conviction thereof shall be fined not less than twenty-five nor more than two hundred dollars and may in the discretion of the court be confined in the county jail in addition to said fine for a period not exceeding six months. (Id. § 29c.)

37a. **Itinerant Physicians or Vendors of Drugs or Appliances.**—Any itinerant physician desiring to practice medicine in this State, or any itinerant vendor of any drug, nostrum, ointment, or appliance of any kind, intended for the treatment of disease or injuries; or who shall by writing or printing, or in any other method, publicly profess to cure or treat diseases, injuries or deformities, by any drug, nostrum, manipulation, or other expedient, shall before doing so, pay to the sheriff of every county in which he desires to practice, a special tax of fifty dollars for each month or fraction of a month he shall so practice in such county, and take his receipt in duplicate therefor. He shall present said receipts to the clerk or the County Court of such county, who shall file and preserve one of them in his office, and shall endorse on the other the words, "A duplicate of this receipt has been filed in my office," and sign the same; and if any such physician or vendor of patent medicines shall practice or attempt to practice in any such county without having paid such tax and filed such receipt with the clerk of the County Court, and obtained his endorsement on the other as aforesaid, or if he shall practice or attempt to practice for a longer time than that for which he has paid such tax as aforesaid, he shall be guilty of a misdemeanor, and shall be fined not less than one hundred nor more than five hundred dollars. Any person who shall travel from place to place, and by writing, printing or otherwise, publicly profess to cure or treat diseases, injuries or deformities, shall be held and deemed to be an itinerant physician and subject to the taxes, fine and penalties prescribed in this section. (Id. § 14.)

37b. Giving by Third Person to convict of Liquors, Food, Clothing, or Dangerous Instrumentality.—If any person shall secretly, or otherwise, convey to any convict in the penitentiary, or outside of the penitentiary, in charge of a guard or other officer, or being a "trusty," in the employment of the State, either inside or outside of the penitentiary, or while escaping or attempting to escape, knowing him to be a convict, spirituous liquors or intoxicating drinks of any kind whatever, or any money or other thing of value, or any written or printed matter or article of merchandise, diet or clothing, or any medicine, drug, poison, explosive, or any weapon utensil or instrument of any kind whatsoever, or receive from any convict any article manufactured at the penitentiary, or belonging to the State, or shall counsel any convict to escape, or aid in any insubordination to the authority of said penitentiary, he or she, upon conviction, shall be confined in the jail not less than three nor more than twelve months, and pay a fine not exceeding five hundred dollars: Provided, that this section shall not apply to persons delivering articles to convicts or receiving articles from convicts, by order of the warden. Proof that the convict, at the time any offense enumerated in this section was committed, was dressed in whole or in part in prison clothes, shall be sufficient evidence of the knowledge on the part of the person charged with committing the offense that such person was a convict. All articles for convicts shall be delivered to the guard or other officer on duty at the office gate, and may, in the discretion of the Board of Directors, and in the absence of the Board of Directors, in the discretion of the warden, be delivered to the convict. (Code 1923, c. 163, § 44.)

37bb. Miscellaneous Offenses.—If any person shall . . . shall without the permission of the superintendent of any such hospital, give or sell to any such patient, whether on the premises thereof or elsewhere, any money, firearms, intoxicating drink, drugs, cigarettes, tobacco, or any other article whatever; or, shall receive from the hands of any such patient any thing of value, whether belonging to state or not; . . . he shall be guilty of a misdemeanor and, on conviction thereof, shall be fined not less than ten nor more than one hundred dollars, or be imprisoned not exceeding six months, or, in the discretion of the court, be both fined and imprisoned. If any person shall aid or abet the commission of any of the foregoing offenses or aid or abet an attempt to commit the same, he shall be guilty the same as if he were the principal, and be punished as above provided. In the trial of an indictment for committing any of the above named offenses, the accused may be found guilty of an attempt to commit the same, or of aiding or abetting another in committing or in an attempt to commit the same. . . . (Code 1923, c. 58, § 30.)

37c. Exemption From Jury Service.—. . . Druggists, . . . shall be exempt from serving on juries. (Code 1923, c. 116, § 2.)

NOTE: See also Nos. 1, 4 and 58.

Venereal Disease Drugs.

38. Venereal Disease Advertisement.—Whosoever publishes, delivers or distributes or causes to be published, delivered or distributed in any manner whatsoever in the State of West Virginia, any advertisement concerning a venereal disease, lost manhood, lost vitality, impotency, sexual weakness, seminal emissions, varicocele, self-abuse or excessive sexual indulgence and calling attention to a medicine, article or preparation that may be used therefor, or to a person or persons from whom or an office or place at which information, treatment or advice relating to such disease, infirmity, habit or condition may be obtained, is guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not less than one hundred dollars, nor more than three hundred dollars, or imprisoned in the county jail not to exceed six months, or both in the discretion of the court.

Nothing in this act shall be construed as to prevent legitimate and legal public notices, placards, etc., issued under the direction of the State Health Department or as to prevent sending out literature by either the State Department of Health or the United States Public Health Service.

A justice of the peace shall have jurisdiction to try persons charged with the violation of this act. (Code 1923, c. 150, § 13.)

39. Venereal Diseases.—(1) Definition and nature.—Syphilis, gonorrhœa, and chancroid, herein designated as venereal diseases, are hereby declared to be infectious, contagious, communicable, and dangerous to the public health. . . .

(23). Offense by druggist. No druggist or other person, not a licensed physician under the laws of the State, shall prescribe, recommend, or sell, to any person any drugs, medicines, or other substances, to be used for the cure or alleviation of syphilis, gonorrhœa or chancroid, no matter whether said drugs, medicines or substances are patented, or proprietary, or otherwise; nor shall such druggist or other person, compound or mix any drugs, medi-

cines or other compounds for any of said purposes aforesaid, from any written formula or order, not written for the person for whom the drugs or medicines are compounded, and not signed by a physician licensed to practice, under the laws of the State. All drugs, medicines or substances that are commonly known to the medical profession as being commonly used for such purposes as aforesaid for the cure or alleviation of said diseases whether the name is on the bottles, or labels or not, shall be construed as coming within the prohibition above; and all drug stores shall be at all times open to the inspection of any local health officer, or to any party designated by the director of the Bureau of Venereal Diseases of the State, to see whether the provisions of this section are being carried out by said druggists or stores. A sale by a clerk shall also be considered as a sale by the owner or proprietor, and both may be prosecuted hereunder, for a misdemeanor. . . .

(25) General Penalty; Jurisdiction of Justices; Complaints.—Any person violating any provision of this chapter, where no other punishment is provided, shall be punished by a fine of not less than ten nor more than one hundred dollars, and may in addition thereto, at the discretion of the judge or justice trying the case, be imprisoned in jail for a period of not to exceed thirty days.

Justices of the peace shall have jurisdiction to try and determine all offenses arising under any provision of this chapter, and the provisions of sections two hundred and twenty-one to two hundred and thirty of chapter fifty of the code of West Virginia are to be applicable to proceedings hereunder.

Any citizen of the State may make a complaint before a justice of any offense hereunder, and all proceedings are to be in the name of the State, and security for costs shall not be required, nor shall costs be adjudged against complainant unless it appears that no reasonable grounds for making complaint existed, and only then when it is made to appear that complainant acted in bad faith. (Id. § 32.)

Intoxicating Liquors.

40. What Term "Liquors" Embraces.—The word "liquors" as used in this act shall be construed to embrace all malt, vinous or spirituous liquors, wine, porter, ale, beer or any other intoxicating drink, mixture or preparation of like nature; and all malt or brewed drinks, whether intoxicating or not, shall be deemed malt liquors within the meaning of this act; and all liquids, mixtures or preparations, whether patented or not, which will produce intoxication, and all beverages containing so much as one-half of one per centum of alcohol by volume, shall be deemed spirituous liquors, and all shall be embraced in the word "liquors," as hereinafter used in this act. (Code 1923, c. 32A, § 1.)

41. Manufacture and Sale Prohibited.—Except as hereinafter provided, the manufacture, sale, keeping or storing for sale in this State, or offering or exposing for sale of liquors or absinthe or any drink compounded with absinthe, are forever prohibited in this State, except liquors manufactured prior to July first, one thousand nine hundred and fourteen, and stored in United States bonded warehouses in the custody of the United States collector of internal revenue, and the said liquors when tax paid in transit from such warehouses to points outside of this State. (Id. § 2.)

42. Punishment and Indictment for Manufacture, Sale or Storage.—Except as hereinafter provided, if any person acting for himself, or by, for or through another shall sell, keep, store, offer, or expose for sale; or solicit or receive orders for any liquors, or absinthe or any drink compounded with absinthe, he shall be deemed guilty of a misdemeanor for the first offense hereunder and upon conviction thereof shall be fined not less than one hundred dollars nor more than five hundred dollars, and imprisoned in the county jail not less than two nor more than six months; and upon conviction of the same person for the second offense under this act, he shall be guilty of a felony and be confined in the penitentiary not less than one nor more than five years; and it shall be the duty of the prosecuting attorney in all cases to ascertain whether or not the charge made by the grand jury is the first or second offense; and if it be a second offense, it shall be so stated in the indictment returned, and the prosecuting attorney shall introduce the record evidence before the trial court of the conviction of said first offense, and shall not be permitted to use his discretion in charging said second offense, or in introducing evidence and proving the same on trial; and any person, except a common carrier, who shall act as the agent or employee of such seller, or person so keeping, storing, offering or exposing for sale said liquors, or act as the agent or employee of the purchaser of such liquor, shall be deemed guilty of such selling, keeping, storing, offering or exposing for sale, as the case may be.

An indictment for any first offense under this section shall be sufficient if in the form or effect following:

State of West Virginia,

County of ....., to wit:

In the Circuit Court of ..... county:

The grand jurors in and for the body of the said county of ..... upon their oaths do present that A. B., within one year next prior to the finding of this indictment, in the said county of ....., did unlawfully sell, offer, keep, store and expose for sale and solicit and receive orders for liquors, and absinthe and drink compounded with absinthe, against the peace and dignity of the State (Id. § 3.)

43. Exceptions; Permits.—The provisions of this act shall not be construed to prevent any one from manufacturing (other than by "moonshine still"), from fruit grown exclusively in this State, non-intoxicating wine for his own domestic consumption; or to prevent the manufacture, from fruit grown exclusively within this State, of vinegar and non-intoxicating cider for use or sale; or to prevent the manufacture and sale of pure grain alcohol, at wholesale, to druggists, hospitals, sanitariums, laboratories and manufacturers for medicinal, pharmaceutical, scientific and mechanical purposes, or of wine for sacramental purposes by religious bodies, or to prevent the sale and keeping and storing for sale by druggists of wine for sacramental purposes, by religious bodies, or any United States Pharmacopœia or National Formulary preparation in conformity with the West Virginia pharmacy law, or any preparation which is exempted by the provisions of the national pure food law, and the sale of which does not require the payment of a United States liquor dealer's tax; or to prevent the sale by druggists, through pharmacists, of pure grain alcohol for medicinal, scientific, pharmaceutical and mechanical purposes, or to prevent the use of such alcohol by physicians, dentists and veterinarians in the practice of their profession; or to prevent the medication and sale of pure grain alcohol according to formulæ and under regulations of the national prohibition act; or to prevent the purchase and use in the manufacture of medicinal preparations and compounds by wholesale druggists only of sherry wine in quantities not exceeding twenty-five wine gallons during any period of ninety days; provided that no one shall manufacture, sell, keep for sale, purchase or transport any liquors, as defined in section one of this act and as herein excepted, without first obtaining a permit from the commissioner so to do. Forms of application and permits shall be prepared by the commissioner and a fee for each permit issued shall be collected by him as follows: (a) All manufacturers of liquors and wholesale dealers therein shall pay a fee of fifty dollars for each permit; (b) All purchasers in wholesale quantities of ethyl alcohol in any form, whether pure, medicated, or denatured, for use as herein provided, shall pay a fee of ten dollars for each permit; (c) All purchasers in wholesale quantities of liquors as defined in section one, for sale at retail, except duly licensed druggists, shall pay a fee of two dollars for each permit; (d) All persons except duly licensed druggists registering stills and given permits to use the same for lawful purposes shall pay a fee of five dollars for each permit. No fee shall be required for a permit to obtain wine for sacramental or religious rites.

Permits shall be issued for the calendar year and shall expire on the thirty-first day of December next following the issuance thereof. All moneys received by the commissioner under this section shall belong to the State and shall be by him immediatey paid into the State treasury ;and, provided, further, that such liquors are manufactured, sold, kept for sale, transported and used under permits issued by the Federal Prohibition Commissioner and in accordance with regulations issued in pursuance of the "national prohibition act."

It shall be lawful for a druggist to sell wine for sacramental purposes of religious bodies, to any person, not a minor, and who is not of intemperate habits, or addicted to the use of narcotic drugs, who shall, at the time and place of such sale, make an affidavit in writing, signed by himself before such druggist, or a registered pharmacist at the time and place in the employ of such druggist, stating the quantity and the time and place and fully for what purpose and by whom such wine is to be used; that affiant is not of intemperate habits nor addicted to the use of any narcotic drug; and that such wine is not to be used as a beverage, or for any purpose other than that stated in such affidavit. Such affidavit shall be filed and preserved by such druggist and be subject to inspection at all times by any State, county or municipal officer, and a record thereof made by such druggist in the record book mentioned in this section, showing the date of the affidavit, by whom made, the quantity of such wine and when, where, for what purpose, and by whom to be used. Only one sale shall be made upon such affidavit, and only in

the county where the same is made, and no greater quantity than is therein specified. For the purpose of this act, any druggist or registered pharmacist making such sale shall have authority to administer such oath.

If any druggist, owner of a drug store, registered pharmacist, clerk or employee shall, upon such affidavit or otherwise, knowingly sell or give any such wine to any person who is of intemperate habits or addicted to the use of any narcotic drug, or knowingly sell or give the same to any one to be used for any purpose other than that named in said affidavit, or who shall sell or give any wine without such affidavit, he shall be deemed guilty of a misdemeanor and punished by a fine of not less than one hundred nor more than five hundred dollars, and confined in the county jail not less than thirty days nor more than six months. In any prosecution against a druggist, owner of drug store, registered pharmacist, clerk or employee, for selling or giving liquor contrary to law, if a sale or gift be proven, it shall be presumed that the same was unlawful in the absence of satisfactory proof to the contrary and the presentation of such affidavit by the defendant at the time of the trial for such sale or gift, shall be sufficient to rebut the presumption arising from the proof of such sale or gift: Provided, the jury shall believe, from all the evidence in the case, that such sale or gift was made in good faith under the belief that such affidavit or statements therein were true; and, provided, further, that such druggist, owner of a drug store, registered pharmacist, clerk or employee shall have complied with all other provisions of this act relating to the sale or gift.

An indictment against any druggist, registered pharmacist, clerk or employee, for any offense committed under the provisions of this section, shall be sufficient, if in the form and effect following:

State of West Virginia,

County of ....., to-wit:

In the Circuit Court of said county:

The grand jurors in and for the body of the said county of ....., upon their oaths, do present that A. B., within one year next prior to the filing of this indictment, in the said county of ....., did unlawfully sell, give, offer, expose, keep and store for sale and gift, liquors, against the peace and dignity of the State. (Stats. 1925, c. 32A, § 4.)

44. False Affidavit.—If any person who is of intemperate habits or addicted to the use of any narcotic drug shall make the affidavit mentioned in the preceding section, or if any person making such affidavit shall use as a beverage, or for any purpose, or at any place other than that stated in such affidavit, or shall knowingly permit another to do so, said wine, or any part thereof, or shall knowingly make any false statement in such affidavit, he shall be guilty of a misdemeanor and upon conviction be punished by a fine of not less than one hundred nor more than five hundred dollars, and be confined in the county jail not less than two nor more than six months for the first offense hereunder; and for the second offense he shall be deemed guilty of a felony and punished by confinement in the penitentiary not less than one nor more than five years. (Code 1923, c. 32A, § 5.)

45. Unlawful Keeping or Use of Liquor; in Home; Carrier.—It shall be unlawful for any person to keep or have, for personal use or otherwise, or to use, or permit another to have, keep or use, intoxicating liquors at any restaurant, store, office building, club, place where soft drinks are sold (except a drug store may have and sell alcohol and wine as provided by sections four and twenty-four), fruit stand, newsstand, room, or place where bowling alleys, billiard or pool tables are maintained, livery stable, boathouse, public building, park, road, street or alley. It shall also be unlawful for any person to give or furnish to another intoxicating liquors, except as otherwise hereinafter provided in this section. Any one violating this section shall be guilty of a misdemeanor, and upon conviction thereof shall be fined not less than one hundred dollars, nor more than five hundred dollars, and be imprisoned in the county jail not less than two nor more than six months; provided, however, that nothing contained in this section shall prevent one, in his home, from having and there giving to another intoxicating liquors when such having or giving is in no way a shift, scheme or device to evade the provisions of this act; but the word "home" as used herein, shall not be construed to be one's club, place of common resort, or room of a transient guest in a hotel or boarding house. And, provided, further, that no common carrier, for hire, nor other person, for hire, or without hire, shall bring or carry into this State, or carry from one place to another within this State, intoxicating liquors for another, even when intended for personal use; except a common carrier may, for hire, carry pure grain alcohol and wine, and such preparations as may be sold by druggists for the special purposes and in the manner as set forth in sections four and twenty-four; and,

provided, further, however, that in case of search and seizure, the finding of any liquors shall be prima facie evidence that the same are being kept and stored for unlawful purposes. (Id. § 7.)

46. **Advertisements.**—If any person shall advertise or give notice by signs, billboard, newspapers, periodicals or otherwise for himself or another of the sale or keeping for sale of liquors, or shall circulate or distribute any price lists, circulars or order blanks advertising liquors or publish any newspaper, magazine, periodical or other written or printed papers, in which such advertisements or notices are given, or shall permit any such notices, or any advertisement of liquors (including billboards) to be posted upon his premises, or premises under his control, or shall permit the same to so remain upon such premises, he shall be guilty of a misdemeanor and be fined not less than one hundred nor more than five hundred dollars. (Id. § 8.)

47. **Duties and Powers of Commissioner and Agents.**—It shall be the duty of the commissioner, his deputies and agents, to superintend the enforcement of all provisions of this act, and of laws of this State affecting the manufacture, sale, keeping, exposing or offering for sale, or giving or soliciting or receiving orders for liquors, or laws connected in any way with the liquor traffic, to diligently inform themselves of all violations of such laws and either make report thereof to the prosecuting attorney of the proper county, who shall forthwith prosecute the same as provided by law, or said commissioner, his agents or deputies, shall make complaint of any violation of such laws before the proper court or committing justice, and conduct the prosecution thereof in any court in the State having jurisdiction of such matters; and for the purpose of enforcing such laws, the said commissioner, his agents and deputies, shall have all the powers now vested in the prosecuting attorneys of this State and the Attorney-General thereof, and of sheriffs, their deputies, and constables and police officers of the State. And any deputy or agent employed or appointed by the commissioner in the capacity of a detective or police officer shall have the right to carry firearms and concealed weapons without taking out a State license therefor: Provided, such deputy or agent shall give bond before the clerk of the Circuit Court of the county of his residence conditioned as required in section seven of chapter one hundred and forty-eight [Code 1923]: Provided, further, that nothing in this act shall be construed to take from such prosecuting attorneys or the Attorney-General, or his assistants, any of the powers now conferred upon them by law, except as herein provided, or to relieve any of the said officers from any duty imposed upon him by any statute of this State. (Id. § 16.)

48. **Records of Transportation Companies; Use as Evidence.**—All express companies, railroad companies and transportation companies within this State are hereby required to keep books in which shall be entered immediately upon receipt thereof the name of every person to whom liquors are shipped; the amount and kind received; the date when delivered, and by whom, and to whom delivered; after which record shall be a blank space, in which the consignee shall be required to sign his name in person to such record, which book shall be open to the inspection of any State, county or municipal officer of this State, at any time during business hours of the company; except that in the absence or sickness of a duly licensed druggist, having authority to sell pure grain alcohol and wine for the purposes prescribed by law, a registered pharmacist in the employ of such druggist duly designated by such druggist, in writing personally signed by him, to the agent of the transportation company, may sign such druggist's name to the record of shipments of alcohol for medicinal, pharmaceutical, scientific and mechanical purposes, or wine for sacramental purposes by religious bodies, such registered pharmacist being required to write immediately beneath such druggist's name his own name and his connection with such druggist. Such books shall constitute prima facie evidence of the facts therein stated, and be admissible as evidence in any court in this State having jurisdiction, or in any manner empowered with the enforcement of the provisions of this act. Any employee, or agent of any express, railroad company or transportation company knowingly failing or refusing to comply with the provisions of this section, shall be guilty of a misdemeanor and punished by a fine of not less than fifty nor more than one hundred dollars, and may be imprisoned in the county jail not less than thirty days nor more than six months: Provided, however, that nothing herein contained shall permit, or be construed as permitting or authorizing any common carrier or transportation company to bring or carry into this State, to carry from one place to another within the State, intoxicating liquors for another, even when intended for personal use, other than pure grain alcohol and wine, and such preparations for druggists as may be sold by them for the special purposes and in the manner set forth in sections four and

twenty-four. All acts or parts of acts inconsistent herewith are hereby repealed. (Id. § 19.)

49. **Construction of Statute.**—This entire act shall be deemed an exercise of the police powers of the State for the protection of public health, peace and morals, and all of its provisions shall be liberally construed for the attainment of that purpose. (Id. § 23.)

50. **Sales by Manufacturers and Wholesale Druggists.**—The manufacture of alcohol and wine, and the sale of the same by the manufacturer and by wholesale druggists, shall be under the supervision of the commissioner and under such rules and regulations as he may from time to time prescribe. (Id. § 24.)

51. **Personal Liability of Corporate Officer or Employee.**—If any corporation or association shall violate any of the provisions of this act, any officer, agent or employee thereof acting for it in any such unlawful act, or authorizing the same to be done, shall be personally guilty thereof the same as though such officer, agent or employee himself had committed the offense, and shall be subject to all of the fines, penalties and imprisonments therefor. (Id. § 27.)

52. **Bringing Into State or Carriage of More Than Quart of Liquor Per Month; Liability of Carrier.**—It shall be unlawful for any person to bring or carry into the State or carry from one place to another within the State, or to have or carry in or on any passenger train or other vehicle of conveyance, in any manner whatsoever, whether in his personal baggage or otherwise, any quantity of intoxicating liquors, whether such liquors are intended for personal use or any other purpose, and whether or not any such person shall be an intrastate or interstate passenger. If any person shall bring, or carry into the State, or from one place to another within the State, or shall have or carry in or on any passenger train or other vehicle of conveyance, in any manner whatsoever, whether in his personal baggage or otherwise, any quantity of intoxicating liquors, whether the same is intended for personal use or for any other purpose, and whether any such person shall be an intrastate or interstate passenger or not, he shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be fined not less than one hundred dollars nor more than five hundred dollars, and imprisoned in the county jail not less than two nor more than six months. And upon conviction of the same person for the second offense under this act, he shall be guilty of a felony, and be confined in the penitentiary not less than one nor more than five years; and it shall be the duty of the prosecuting attorney in all cases, to ascertain whether or not the charge made by the grand jury is the first or second offense; and if it be a second offense, it shall be so stated in the indictment returned, and the prosecuting attorney shall introduce the record of the first conviction as evidence before the trial court of said second offense, and shall not be permitted to use his discretion in charging said second offense, or in introducing evidence and proving the same on the trial.

It shall be unlawful for any carrier operating in this State knowingly to carry for a passenger, or for any of its employees, or knowingly to permit any person or employee to carry into this State, or from one place to another within this State, or knowingly to permit any passenger or employee to have or carry in or on any of its trains, any quantity of intoxicating liquors as baggage. If any carrier shall knowingly carry for a passenger, or knowingly permit a passenger to carry into the State, or from one place to another within the State, or knowingly permit any passenger or any person in its employ to have or carry in or on any of its trains, any quantity of intoxicating liquors as personal baggage, the carrier shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined not less than two hundred dollars nor more than one thousand dollars. And a court of equity, upon showing that a carrier has knowingly carried for a passenger or an employee, or knowingly permitted a passenger to carry into the State, or from one place to another within the State, any quantity of intoxicating liquors as personal baggage, or through the want of due caution and care, has carried for a passenger or employee, or permitted a passenger or employee to carry into the State, or from one place to another within the State, any quantity of intoxicating liquors as personal baggage, shall have jurisdiction to entertain such suit and to enter such decree and take such proceedings as are provided for in section seventeen [Code 1923, c. 32A]. (Id. § 31.)

53. **Purchase or Sale of Liquor to be Brought Into or Carried Within the State, or Causing Such Transportation.**—It shall be unlawful for any person to order, purchase, sell, or cause intoxicating liquors, to be transported into the State, or from one place to another within the State, in any manner, except pure grain alcohol, for medicinal, pharmaceutical, scientific and mechanical purposes, and wine for sacramental purposes to be used by religious bodies, as now provided by

law. If any such person shall order, purchase, sell or cause intoxicating liquors, in any quantity, to be transported into the State, or from one place to another within the State, in any manner, except for the purposes herein specified, he shall be deemed guilty of a misdemeanor for the first offense; and upon conviction of the same person for the second offense hereunder, he shall be guilty of a felony, and the punishment of each offense hereunder shall be the same as that prescribed for offenses arising under section thirty-one of this act. (Id. § 31a.)

54. **Furnishing Liquor by Non-Resident to Person Intending to Carry it Into This State.**—It shall be unlawful for any non-resident vendor, dealer, or other person, to sell or furnish intoxicating liquors, with the exception of persons coming within the purview of section thirty-one-a, to any person who intends to, and does, transport or carry such liquors into this State contrary to the laws thereof, when such non-resident vendor, dealer or other person knows, or has cause to believe, that such liquors are intended to be so unlawfully transported and carried into this State. Any non-resident vendor, dealer or other person, so offending, shall be deemed an aider and abettor to any person so purchasing or receiving and unlawfully carrying or transporting such liquors into this State, and such non-resident vendor, dealer or other person, shall be held equally guilty with the person carrying such liquors, who shall be deemed the principal in the offense, and the principal and abettor may be charged in the complaint or indictment, either jointly or separately. The first offense hereunder shall be a misdemeanor, and the second offense shall be a felony, and each offense shall be punished as provided in section thirty-one of this act. (Id. § 31b.)

55. **Receiving Liquor from Carrier or Possession Thereof; Liability.**—It shall be unlawful for any person in this State to receive, directly or indirectly, intoxicating liquors from a common, or other carrier. It shall also be unlawful for any person in this State to possess intoxicating liquors, received directly or indirectly from a common or other carrier in this State. This section shall apply to such liquors intended for personal use, as well as otherwise, and to interstate, as well as intrastate, shipments or carriage. Any person violating this section shall be guilty of a misdemeanor and upon conviction shall be fined not less than one hundred dollars nor more than two hundred dollars, and in addition thereto may be imprisoned not more than three months; provided, however, that druggists may receive and possess pure grain alcohol, wine and such preparations as may be sold by druggists for the special purpose and in the manner as set forth in sections four and twenty-four. (Id. § 34.)

PART IV.

Miscellaneous Laws.

False Advertising.

56. **False Advertising.**—Any person, firm, corporation or association, or their agents or employees, who with intent to sell, or in any wise dispose of merchandise, securities, service, or anything offered by such person, firm, corporation or association, directly or indirectly, to the public for sale or distribution, or with intent to increase the consumption thereof, or to induce the public in any manner to enter into any obligation relating thereto, or to acquire title thereto, or an interest therein, causes, directly or indirectly, to be made, published, disseminated, circulated, or placed before the public in this State, in a newspaper or other publication, or in the form of a book, notice, handbill, poster, bill, circular, pamphlet or letter, or in any other way, an advertisement of any sort regarding merchandise, securities, service, or anything so offered to the public, which advertisement contains any assertion, representation or statement of fact which is untrue, and deceptive, knowing or having reason to believe that such assertion, representation or statement is untrue or deceptive, shall be guilty of a misdemeanor and on conviction thereof, shall be punished by a fine of not less than ten dollars nor more than one hundred dollars, and such violation, by an agent or employee, shall be deemed an offense as well by the principal or employer, and they may be indicted for the same, either jointly or severally. (Code 1923, c. 145, § 36.)

Flag Desecration.

57. **Desecration of Flag.**—Any person who for exhibition or display shall place or cause to be placed, any words, figures, marks, pictures, designs, drawings, or any advertisement of any nature, upon any flag, standard, color or ensign of the United States or upon the State flag of this State, or shall expose or cause to be exposed to public view any such flag, standard, color or ensign, upon which shall have been printed, painted or otherwise placed or to which shall be attached, appended, affixed or annexed, any words, figures, marks, pictures, designs, drawings, or any advertisement of any nature or kind or who shall expose to public view, manufacture, sell, expose for sale, give away, or have in possession for sale or to give away, or for use for any purpose any article or substance, being an article of merchandise or a receptacle of merchandise or article or thing for carrying or transporting merchandise, upon which shall have been printed, painted, attached or otherwise placed, a representation of any such flag, standard, color or ensign, to advertise, call attention to, decorate, mark or distinguish the article or substance on which so placed, or who shall publicly mutilate, deface, defile, or defy, trample upon or cast contempt either by words or acts, upon any such flag, standard, color or ensign, shall be deemed guilty of a misdemeanor, and shall, upon conviction, be fined not less than five nor more than one hundred dollars, and may, at the discretion of the court or justice trying the case, be confined in the county jail for a period not exceeding thirty days. Any justice of the peace of the county wherein the offense was committed shall have concurrent jurisdiction of such offense with the circuit or other courts of said county. The words, "flag, standard, color or ensign of the United States," as used in this act, shall be construed to include any flag, standard, color, ensign, or any representation or picture of a flag, standard, color or ensign, made of or upon any substance whatever, and of any size whatever, showing the national colors, the stars and stripes. This act shall not apply to any act permitted by the statutes of the United States or of this State, or by the regulations of the United States army and navy, or of the National Guard of this State, nor shall this act be construed to apply to the regular issue of a newspaper or other periodical, or to any book, certificate, diploma, warrant or commission, on which shall be printed said flag, disconnected from any advertisement, or to the vignette of any political ballot. (Code 1923, c. 18, § 43a.)

Tobacco—Tobacco Products.

58. **Cigars, Cigarettes, Tobacco and Opium.**—(1) It shall be unlawful for any person, firm or corporation to manufacture, or to sell, offer or expose for sale, or give away, or furnish, or cause to be given away or furnished to any person under the age of twenty-one years, any cigarette, or cigarette paper, or any other paper prepared to be filled with smoking tobacco for cigarette use; and it shall be unlawful for any person, firm or corporation to sell, offer, give away or furnish, or cause to be given away or furnished, to any person under the age of sixteen years any cigar, pipe or tobacco in any form.

(2) It shall be unlawful for any person under the age of twenty-one years to smoke, or to have about his person, or premises, any cigarette or cigarette paper, or any other form prepared to be filled with smoking tobacco for cigarette use. Any person violating the provisions of this section shall be punished by a fine of not exceeding five dollars; provided, that the court or justice trying the case may remit the penalty for violation of this section, upon the disclosure by the person charged with the offense of the name of the person, firm or corporation from whom he obtained any such cigarette or cigarette paper.

(3) It shall be the duty of every constable, policeman, town sergeant, sheriff or his deputy when he finds any person under the age of twenty-one years smoking a cigarette, or with a cigarette or a cigarette paper in his possession, to immediately inquire of such person where and of whom he obtained such cigarette or cigarette paper, and upon failure of any person to give such information when requested by such officer, the officer shall arrest such person and take him before a justice or other officer having jurisdiction, to be dealt with as provided in section two of this act [1913, c. 16; see (2) herewith]. Upon information of such person to said officer of the violation of any of the provisions of sections one and two of this chapter [see (1) and (2)], he shall immediately report such information to the prosecuting attorney of the county, who shall have the person giving such information, along with any other witnesses having any knowledge

of the transaction, summoned before the grand jury at its next session for investigation. Any officer failing to perform the duties required of him by this section shall be fined not exceeding five dollars for each offense. Justices of the peace and police judges are hereby given concurrent jurisdiction with the circuit and criminal courts of this State of offenses under this chapter.

(4) Every person who shall smoke or use a cigarette or cigarettes in any school building or any building or such parts thereof as may be used for school purposes, or on any lands used for school purposes, shall be guilty of a misdemeanor and upon conviction shall be punished for each offense by a fine of not less than one nor more than five dollars.

(5) It shall be unlawful for any person, firm or corporation to sell, or give away, or in any other manner to supply or furnish any person in this State opium in any form; but the provisions of this section shall not apply to any sale of opium by a registered pharmacist upon the written prescription of a practicing physician in good standing in his profession, nor to any reputable physician dispensing opium in the regular course of his practice.

(6) Any person, firm or corporation violating any of the provisions of this act, where punishment is not otherwise provided, shall be liable to a fine of not less than ten dollars, nor more than twenty-five dollars for the first offense, and for each subsequent offense shall be liable for a fine of not less than twenty-five dollars nor more than three hundred dollars, and on failure to pay the fine and costs of prosecution, shall be required to work the same out on the public roads. (Code 1923, c. 150, § 20e.)

Trade-Marks, Etc.

59. **Counterfeiting or Unlawful Use.**—Whenever any person, firm or corporation, or any association or union of workingmen, has heretofore adopted or used, or shall hereafter adopt or use any label, trade-mark, term, design, device or form of advertisement for the purpose of designating, making known, or distinguishing any goods, wares, merchandise, or other product of labor, as having been made manufactured, produced prepared packed or put on sale by such person, firm, corporation or association or union of workingmen, or by a member or members of such association or union, and shall register the same as provided in section three of this act, it shall be unlawful to knowingly counterfeit or imitate such label, trade-mark, term, design, device or form or advertisement, or to knowingly use, sell, offer for sale, or in any way utter or circulate any counterfeit or imitation of any such label, trade-mark, term, design, device or form of advertisement. (Code 1923, c. 62E, § 1.)

60. **Penalty Therefor.**—Whoever so knowingly counterfeits or imitates any such registered label, trade-mark, term, design, device or form of advertisement; or knowingly sells, or offers for sale, or in any way utters or circulates any counterfeit or imitation of any such registered label, trade-mark, term, design, device or form of advertisement; or knowingly keeps or has in his possession, with intent that the same shall be sold or disposed of, any goods, wares, merchandise or other product of labor to which or on which any such counterfeit or imitation is printed, painted, stamped or impressed; or knowingly sells or disposes of any goods, wares, merchandise or other product of labor contained in any box, case, can or package to which or on which any such counterfeit or imitation is attached, affixed, printed, painted, stamped or impressed or knowingly keeps or has in his possession, with intent that the same shall be sold or disposed of, any goods, wares, merchandise or other product of labor in any box case, can or package, to which or on which any such counterfeit or imitation is attached, affixed, printed, stamped or impressed, shall be punished by a fine of not more than five hundred dollars or by imprisonment for not more than three months, or by both such fine and imprisonment. (Id. § 2.)

61. **Registration.**—Every such person, firm, corporation, association or union that has heretofore adopted or used, or shall hereafter adopt or use, a label, trade-mark, term, design, device or form of advertisement as provided in section one of this act, shall register the same by filing the same for record in the office of the Secretary of State by leaving two copies, counterparts or facsimiles thereof, with said secretary and by filing therewith a sworn application specifying the name or names of the person, association or union on whose behalf such label, trade-mark, term, design, device or form of advertisement shall be filed; the class of merchandise and a description of the goods to which it has been or is intended to be appropriated, stating that the party so filing, or on whose behalf such label, trade-mark, term, design, device or form of advertisement shall be filed, has the

right to the use of the same; that no other person, firm, association, union or corporation has the right to such use, either in the identical form or in any such near resemblance thereto as may be calculated to deceive, and that the facsimiles or counterparts filed therewith are true and correct. There shall be paid for such filing and recording a fee of one dollar. Said secretary shall deliver to such person, association, or union, so filing or causing to be filed any such label, trade-mark, term, design, device or form of advertisement so many duly attested certificates of the recording of the same as such person, firm, corporation, association or union may apply for, for each of which certificates said secretary shall receive a fee of one dollar. Any such certificates of record shall in all suits and prosecutions under this act be sufficient proof of the adoption of such labels, trade-marks, term, designs, devices or form of advertisement. Said Secretary of State shall not record for any person, union or association, any label, trade-mark, term, design, device, or form of advertisement that would probably be mistaken for any label, trade-mark, term, design, device or form of advertisement theretofore filed by or on behalf of any other person, firm, corporation, union or association. But the said secretary shall file and record under this act any label, trade-mark, term, design, device or form of advertisement, which may have been previously filed by any person, firm, corporation or any association or union of workingmen, provided the person, firm, corporation, association or union seeking to file and record under this act is the same person, firm, corporation, association or union that previously filed or recorded the same label, trade-mark, term, design, device or form of advertisement. (Id. § 3.)

62. **Fraud Therein.**—Any person who shall for himself, or on behalf of any other person, firm, corporation, association or union, procure the filing of any label, trade-mark, term, design or form of advertisement, in the office of the Secretary of State under the provisions of this act, by making any known false or fraudulent representations, or declaration, verbally or in writing, or by any fraudulent means, shall be liable to pay any damages sustained in consequence of any such filing, to be recovered by or on behalf of the party injured thereby in any court having jurisdiction, and shall be published by a fine not exceeding five hundred dollars or by imprisonment not exceeding three months, or by both such fine and imprisonment. (Id. § 4.)

63. **Remedies for Unlawful Use.**—Every such person, firm, corporation, association or union adopting or using any such registered label, trade-mark, term, design, device or form of advertisement as aforesaid, may proceed by suit for damages to enjoin the manufacture, use, display or sale of any counterfeits or imitations thereof, and all courts of competent jurisdiction shall grant injunctions to restrain such manufacture, use, display or sale, and award the complainant in any such suit damages resulting from such manufacture, use, sale, or display, as may be by the said court deemed just and reasonable, and shall require the defendants to pay such person, association or union, all profits derived from such wrongful manufacture, use, sale or display and such court shall also order that such counterfeits or imitations in the possession or under the control of any defendant in such cause be delivered to an officer of the court, or to the complainant, to be destroyed. (Id. § 5.)

64. **Criminal Liability for Such Use.**—Every person, firm, corporation, association or union, who shall knowingly use or display the genuine label, trade-mark, term, design, device or form of advertisement of any such person, firm, corporation, association or union when registered as aforesaid, in any manner, not being authorized so to do by such person, firm, corporation, association or union, shall be deemed guilty of a misdemeanor and shall be punished by imprisonment for not more than three months or by a fine of not more than five hundred dollars. In all cases where such association or union is not incorporated suits under this act may be commenced and prosecuted by any officer or member of such association or union on behalf of and for the use of such association or union. (Id. § 6.)

65. **Penalty for Unlawful Use of Name or Seal.**—Any person, firm, corporation, association, or union, who shall in any way knowingly use the name or seal of any such person, firm, corporation, association or union, or officer thereof, in and about the sale of goods or otherwise, not being authorized to so use the same, shall be guilty of a misdemeanor and shall be punished by imprisonment for not more than three months or by a fine of not more than five hundred dollars. (Id. § 7.)

66. **Application of Existing Law.**—Nothing contained in this act shall be construed as affecting or impairing any right or remedy at law or in equity now existing for the protection of any label, trade-mark, term, design, device or form

of advertisement, whether or not the same is registered under the provisions hereof. (Id. § 8.)

67. **Trade-Marks of Dealers in Liquids; Adoption; "Bottlers."**—Any person, firm or corporation, manufacturing, producing, selling or dealing in milk, cream, buttermilk, mineral waters or other liquids, in bottles, and who sell the contents, but do not sell the bottles, shall be called and known as bottlers and as such may adopt a trade-mark in the manner and with effect hereinafter provided. (Id. § 17.)

68. **Manner of Adoption of Such Trade-Marks.**—Every such bottler desiring to adopt a trade-mark may do so by the execution of a writing in form and effect as follows:

"Notice is hereby given that I (or we, etc., as the case may be), have adopted the following trade-mark to be used in my (or our, etc.) business as a bottler. (Here insert the words, letters, figures, etc., constituting the trade-mark, or if it be any device other than words, letters, or figures, etc., insert a facsimile thereof.) Dated this ..... day of ....., A. D. ..... A. B.

The said writing shall be acknowledged or proved for record in the same manner as deeds are acknowledged or proved for record, and shall be recorded in the office of the clerk of the county court of the county where the principal office or place of business of such bottler may be, and also in the office of the Secretary of State and a copy thereof shall be published at least once in each week, for four successive weeks in some newspaper printed in such county, or if there be no such paper printed therein, then in some newspaper of general circulation in such county. (Id. § 18.)

69. **Infringement of Such Trade-Marks.**—Every trade-mark so adopted shall from the date thereof be the exclusive property of the person, firm or corporation adopting the same, and any other person, firm or corporation knowingly using, or attempting to use, such trade-mark, without the written consent of the proprietor thereof shall be guilty of a misdemeanor and fined not less than twenty nor more than two hundred dollars for each offense, and shall moreover be liable to the proprietor by reason of such use of said trade-mark; and such use, or attempt to use, shall be restrained by a writ of injunction which shall be granted and awarded, upon the application of the proprietor of such trade-mark, by any Court of Chancery having jurisdiction of the parties. (Id. § 19.)

70. **Unlawful Use of Marked Bottles by Others.**—It is hereby declared to be a misdemeanor for any person, firm, or corporation hereafter, without the permission of the proprietor of such trade-mark, to refill with milk, cream, buttermilk, mineral waters, or other liquids, any such bottles so marked, or sell or use bottles so marked, or to have in his possession for the purpose of buying, selling or using for bottling milk, cream, buttermilk, mineral waters, or other liquids, any bottles so marked. And upon conviction thereof, the offender shall be fined not exceeding one hundred dollars, and may in the discretion of the court be sentenced to confinement in the county jail for a term not exceeding thirty days. And if it be alleged in the indictment on which he is convicted, and admitted, or by the jury found, that he has been before sentenced in this State for a like offense, he shall be sentenced to be confined in the county jail for a term not exceeding one year. (Id. § 20.)

71. **Evidence in Prosecutions.**—In any legal proceedings, civil or criminal before any court or justice of the peace the fact that such trade-mark is stamped, impressed, blown or otherwise wrought in any such bottle, shall be prima facie proof that such bottle is the property of the proprietor of such trade-mark. In any prosecution for a violation of any provision of this act, the fact that the defendant filled with milk, cream, buttermilk, mineral waters, or other liquids, or sold or disposed of, or bought, or trafficked in any such bottles so marked, without the permission of the proprietor of such trade-mark, shall be prima facie proof that he did so unlawfully. (Id. § 21.)

72. **Searches and Seizures.**—The proprietor of any such trade-mark, or any agent of such proprietor, having reason to believe that any such bottle so marked, is hidden, secreted, or unlawfully held by any person whomsoever, at any place, in this State, may go before any justice of the peace of the county, and make oath that he has reason to believe that certain bottles, bearing certain trade-marks, are unlawfully hidden, secreted, or held at a certain place, naming the place, by a certain person, naming the person, if the name be known, and describing the trade-mark, whereupon it shall be the duty of the justice before whom such oath is made, to issue a search warrant directed to any constable or other proper officer, to search the place where such bottles are alleged to be, and if upon such search any such bottles shall be found to take possession of the same and to bring the person, or persons, in whose control, or possession any such trade-marked

bottles may be found, before such justice to be dealt with according to law. And all such bottles so found shall be delivered by the officer to the proprietor of the trade-mark on them; provided, that none of the foregoing sections shall be construed to affect the right of any dealer to continue to use any bottles upon which is not marked or into which no mark has been blown, which he may now have in his possession. (Id. § 22,)

73. **Existing Trade-Marks; Liquors.**—All of the provisions of this act shall apply to trade-marks whether the same shall have been heretofore, or shall be hereafter, adopted as provided for by any former act of the Legislature, or under this act; provided, however, that the word "liquids" as used in this act shall not be construed to mean or embrace intoxicating liquors, as intoxicating liquors are defined by the prohibitory laws of this State, (Id. § 23.)

Trading Stamps.

74. **Business Requiring License.**—No person without a State license therefor, shall: . . .

(1) Sell, offer, or expose, for sale to merchants trading stamps, premium stamps, or certificates of like nature or character, or undertake with merchants to redeem such stamps or certificates in money or goods; or . . .

Provided, that nothing in this chapter contained, and no license or payment under the provision hereof, shall be taken to legalize any act which otherwise may be in violation of law, or exempt any person from any penalty prescribed for such violation. (Code 1923, c. 32, § 1.)

75. **Trading Stamps.**—On every license to sell merchants trading stamps, premium stamps, or stamps or certificates of like nature or character, or undertake with merchants to redeem such stamps or certificates in money or goods, five hundred dollars. (Id. § 101.)

76. **Penalty and Tax Where Business Conducted Without License.**—If any person shall conduct any business or occupation, or exercise any right or privilege without the license required by law therefor, he shall, in addition to paying the tax, be required to pay a penalty of ten per centum of the annual tax for each month, or fraction [fractional] part thereof, for such time as he was in default. Such penalty shall be deemed license tax, and shall be assessed and collected in the manner prescribed in this chapter as to other license taxes, except that the license certificate issued therefore and the report thereof made to the auditor shall state separately the amount of the license tax proper and the penalty. It shall be the duty of the officer who issues the certificate of license to state therein the full amount of the tax thereof and of the penalty separately; and it shall be the duty of the officer charged with the collection of the tax on such license to collect the full amount thereof and of the penalty. It shall be the duty of the auditor to charge the officer with the full amount of such tax and penalty. If any such officer shall violate this section he shall be subject to a fine not exceeding one hundred dollars; and, in addition thereto, the officer whose duty it was to collect such tax and penalty shall be liable for the amount thereof he failed to collect that might have been collected by due diligence. (Id. § 121.)

Weights and Measures.

77. **State Standards.**—The weights and measures received from the United States under a resolution of Congress approved June fourteen, one thousand eight hundred and thirty-six, and such new weights and measures as shall be received from the United States as standard weights and measures in addition thereto or in renewal thereof, and such as shall be supplied by the State in conformity therewith and certified by the National Bureau of Standards, shall be the State standards of weights and measures. Said State standards may be kept at the State University in its physical laboratory, or elsewhere at the discretion of the State Commissioner of Labor, who shall be ex-officio Commissioner of Weights and Measures. (Code 1923, c. 59, § 1.)

78. **Office and Working Standards.**—In addition to the State standards of weights and measures provided for in this act, there shall be supplied by the State at least one complete set of copies of these standards, to be known as office standards; and such other weights, measures and apparatus as may be found necessary to carry out the provisions of this act, to be known as working standards. Such weights, measures and apparatus shall be verified by the State Commissioner, or his deputy or inspectors, at his discretion, upon the initial receipt of such

weights, measures and apparatus and at least once in each year thereafter, the office standards by direct comparison with the State standards, the working standards by comparison with the office standards. When found accurate upon these tests the office and working standards shall be sealed by stamping on them the letters "W. V." and the last two figures of the year with seals which the State Commissioner shall have and keep for that purpose. The office standards shall be used in making all comparisons of weights, measures and weighing and measuring devices submitted for test in the office of the commissioner, and the State standards shall be used only in verifying the office standards and for scientific purposes. (Id. § 2).

79. **Commissioner of Weights and Measures; Employees.**—The State Commissioner of Labor shall be ex-officio Commissioner of Weights and Measures, and he shall be authorized to appoint and fix the salaries of such deputies and inspectors, not to exceed two in number, as may be required to carry out the purpose of this act within the limits of such appropriations as may be made by the Legislature for the maintenance of the work of the Bureau of Labor; provided, the salaries of each of said deputies or inspectors shall not exceed eighteen hundred dollars per annum. (Id. § 3.)

80. **Bond of Commissioner.**—The State Commissioner of Labor shall forthwith, on his appointment, give bond in the penal sum of five thousand dollars, with sureties to be approved by the Attorney-General, for the faithful performance of the duties of his office as State Commissioner of Weights and Measures, and for the safekeeping of the standards entrusted to his care and for the surrender thereof immediately to his successor in office or to the person appointed by the Governor to receive them. (Id. § 4.)

81. **Care of Standards; Reports; Assistant Commissioner.**—The Commissioner of Weights and Measures shall take charge of the standards adopted by this act as the standards of the State, and cause them to be kept in a safe and suitable place, from which they shall not be removed except for repair or for certification, and he shall take all other necessary precautions for their safekeeping. He shall maintain the State standards in good order and shall submit them at least once in ten years to the National Bureau of Standards for certification. He shall keep a complete record of the standards, balances, and other apparatus belonging to the State and take a receipt for same from his successor in office. He shall annually, on the first day of January, make to the Governor a report of all work done by his office. The director of the physical laboratory of the West Virginia University shall, by virtue of his appointment to that position by the State Board of Regents, become the Assistant Commissioner of Weights and Measures. It shall be his duty, upon the request of the commissioner, to make or cause to be made at said physical laboratory all such tests, calibrations and determinations as may be necessary for the carrying out of this act. (Id. § 5.)

82. **Power of Commissioner to Administer Oaths and Compel Testimony.**—In this exercise of his powers and the performance of his duties under this act, the Commissioner of Weights and Measures shall have the power to administer oaths and issue subpœnas to compel the attendance of witnesses and the production of books, papers, accounts and documents. In case of disobedience on the part of any person or persons to comply with any proper order of the commissioner, or any subpœna issued in behalf of said commissioner, or on the refusal of any witness to testify with reference to any matters upon which such witness may be lawfully interrogated, it shall be the duty of the Circuit Court of any circuit, upon application of the commissioner, to compel obedience by attachment proceedings for contempt as in the case of disobedience of the requirements of a subpœna issued from such court or a refusal to testify therein. (Id. § 6.)

83. **Inspection and Sealing of Weights and Measures.**—The Commissioner of Weights and Measures, or his assistant commissioner, deputy, or inspectors, at his direction shall at least once in five years try and prove by the office standards all standard weights, measures and other apparatus which may belong to any county or city, required to appoint a sealer and to purchase and keep standards of weights and measures by the provisions of this act, and shall seal such when found to be accurate by stamping on them the letters "W. Va.," and the last two figures of the year with seals which he shall have and keep for that purpose.

The State Commissioner or his assistant, deputy or inspectors, at his direction, shall inspect all standard weights, measures and other apparatus used by such counties and cities at least once in two years, and shall keep a record of the same. He, or his deputy, or inspectors, at his direction, shall at least once in two years visit these cities and counties for the purpose and in order to inspect the work of the local sealers, and in the performance of such duties they may inspect the weights,

measures, balances, or any other weighing or measuring appliances of any person, and shall have the same powers as the local sealer of weights and measures. The rules and regulations for the guidance of county and city sealers of weights and measures issued by the Bureau of Weights and Measures of Washington, D. C., known as circular No. two, or any subsequent rules and regulations issued by such bureau of weights and measures, shall be the rules and regulations governing the inspectors and county and city sealers in the performance of their duties. (Id. § 7.)

84. Supervision by Commissioner; Tests on Request or at State Institutions.—The State Commissioner of Weights and Measures shall have and keep a general supervision of the weights and measures, and weighing or measuring devices offered for sale, sold, or in use in the State. He or his assistant commissioner, deputy, or inspectors, at his direction, shall, upon the written request of any citizen, firm or corporation, or educational institution in the State, test or calibrate weights, measures and weighing or measuring devices used as standards in the State. He, or his assistant commissioner, deputy, or inspectors, at his discretion, shall at least once annually test all scales, weights and measures used in checking the receipts or disbursements of supplies in every institution for the maintenance of which moneys are appropriated by the Legislature and he shall report in writing his findings to the State Board of Control and to the executive officer of the institution concerned, and, at the request of such board or executive officer, the Commissioner of Weights and Measures shall appoint, in writing, one or more employees then in the actual service of the institution who shall act as special deputies for the purpose of checking the receipts and disbursements of supplies. (Id. § 8.)

85. General Powers and Duties of Commissioner.—The State Commissioner shall have the power, and it shall be his duty, either personally or by deputy or through the agency of a county or city sealer of weights and measures, to inspect, test, try and ascertain if they are correct, all weights, measures, and weighing or measuring devices kept, offered or exposed for sale, sold or used or employed by any proprietor, agent, lessee, or employee in proving the size, quantity, extent, area, or measurement of quantities, things, produce, or articles for distribution or consumption purchased or offered or submitted by such person or persons for sale, hire, or award; and he shall have the power to and shall from time to time weigh or measure and inspect packages or amounts of commodities of whatsoever kind kept for the purpose of sale, offered or exposed for sale, or sold or in the process of delivery, in order to determine whether the same contain the amounts represented, and whether they be offered for sale or sold in a manner in accordance with law. He shall at least twice a year and as much oftener as he may deem necessary see that all weights, measures and weighing or measuring devices are correct. He and his authorized deputies may for the purpose above mentioned, and in the general performance of their official duties, enter and go into or upon, and without formal warrant, any stand, place, building, or premises, or stop any dealer whatsoever, and require him, if necessary, to proceed to some place which the State Commissioner may specify, for the purpose of making the proper tests. Whenever the State Commissioner finds a violation of the statutes relating to weights and measures, he shall cause the violator to be prosecuted. (Id. § 9.)

86. Sealing of Correct Weights and Measures.—Whenever the State Commissioner compares weights, measures, or weighing or measuring instruments and finds that they correspond, or causes them to correspond, with the standards in his possession he shall seal or mark such weights, measures, or weighing or measuring instruments with appropriate devices. (Id. § 10.)

87. Condemnation of Incorrect Weights and Measures.—The State Commissioner shall condemn and seize and may destroy incorrect weights, measures or weighing or measuring devices which, in his best judgment, are not susceptible of satisfactory repair, but such as are incorrect and yet may be repaired, he shall mark or tag as "condemned for repairs." The owner or users of any weights, measures, or weighing or measuring devices of which such disposition is made, shall have the same repaired or corrected within ten days, and said owner or users may neither use nor dispose of the same in any way, but shall hold the same at the disposal of the commissioner. Any weights, measures, or weighing or measuring devices which have not been repaired as required above, shall be confiscated by the commissioner. (Id. § 11.)

88. Powers and Duties of Deputies and Inspectors.—The powers and duties given to and imposed upon the State Commissioner of Weights and Measures by sections six, nine, ten and eleven, are hereby given to and imposed upon his

deputies and inspectors also, when acting under his instructions and at his direction. (Id. § 12.)

89. County Sealers.—Except in counties where the county commissioners shall appoint a sealer of weights and measures as hereinafter provided, the sheriff of the county shall be ex-officio county sealer of weights and measures in each county, and no fee shall be charged by him or by the county for the inspection, testing or sealing or the repairing or adjusting of weights, measures, or measuring devices. Whenever the county commissioners of any county shall deem it necessary, they may appoint and fix the salary of one sealer and one or more deputy sealers of weights and measures. Such sealer or deputies, when not appointed merely for some temporary purpose, shall hold office for a term of four years from the date of their appointment, unless removed for just cause, and all deputies shall have the same power and may perform the same duties as the county sealer when acting under his instructions and at his direction. (Id. § 13.)

90. City Sealers; Deputy Sealers; Regulations.—There may be a city sealer of weights and measures in cities of not less than twenty-five thousand population, according to the latest official statement of United States census, to be appointed by the mayor from a list to be furnished by the Civil Service Board, and under the rules of such board, where such board exists; otherwise, he shall be appointed by the mayor, by and with the advice and consent of the common council, and shall hold office for a term of two years and receive a salary to be determined by the appointive power. The county commissioners of any county or the mayor of any such city may appoint one or more deputy sealers of weights and measures. All deputies appointed shall have the same power and perform the same duties as the county or city sealer when acting under his instructions and his direction, and no fee shall be charged by any county or city for the testing, trying, adjusting or repairing of any weights or measures, or weighing and measuring device.

The commissioner shall issue from time to time regulations for the guidance of the county and city sealers and the said regulations shall govern the procedure to be followed by the aforesaid officers in the discharge of their duties. (Id. § 14.)

91. Combined Territory for One Set of Standards and One Sealer.—Nothing in sections thirteen and fourteen of this act shall be construed to prevent two or more counties or a county and any city therein, from combining the whole or any part of their districts, as may be agreed upon by the county commissioners of the counties, or such county commissioners and the mayor and common council of the city employing one set of standards and one sealer, upon the written consent of the State Commissioner of Weights and Measures. A county sealer or city sealer appointed in pursuance of an agreement for such combination shall, subject to the terms of his appointment, have the same authority, jurisdiction, and duties as if he had been appointed by each of the authorities who are parties to the agreement. (Id. § 15.)

92. Bond of County or City Sealer.—Each county or city sealer of weights and measures or deputy sealer of weights and measures, under the provisions of section thirteen and fourteen of this act, shall forthwith upon his appointment give bond in the penal sum of one thousand dollars, with sureties to be approved by the appointing power, for the faithful performance of the duties of his office. (Id. § 16.)

93. Procurement and Certification of Standards.—The county commissioners of each county and the common council of each city required to appoint a sealer under the provisions of this act shall procure at the expense of the county or city, and shall keep at all times a set of weights and measures and other apparatus as complete and of such material and construction as the State Commissioner of Weights and Measures may direct. All such weights, measures, and other apparatus having been tried and accurately proven by the State Commissioner shall be sealed and certified to by him as hereinbefore provided, and shall then be deposited with and preserved by the county or city sealer as public standards for such county or city. Whenever the county commissioner of such county or the common council or [of] such city shall neglect for six months so to do, the county clerk of said county, or the city clerk or recorder of said city, on notification and request by the Commissioner of Weights and Measures, shall provide such standards and cause the same to be tried, sealed and deposited at the expense of the county or city. (Id. § 17.)

94. Powers and Duties of Sealers.—Where not otherwise provided by law, the county or city sealer shall have the same powers and shall perform the same duties within his county or city as are granted to and imposed upon the State

Commissioner of Weights and Measures provided for in sections nine, ten and eleven of this act. (Id. § 18.)

95. **Records and Reports of Sealers.**—The county or city sealer shall keep a complete record of all his official acts, and shall make an annual report, duly sworn to, on the first day of November, to the State Commissioner of Weights and Measures on blanks furnished by the commissioner. (Id. § 19.)

96. **Commissioner, Deputies and Sealers Made Special Policemen; Arrests and Seizures.**—The Commissioner of Weights and Measures, his assistant, deputy and inspectors, and the county and city sealers and deputy sealers of weights and measures, are hereby made special policemen and are authorized and empowered to arrest, without formal warrant, any violator of the statutes in relation to weights and measures, and to seize for use as evidence, with formal warrant, any false or unsealed weight, measure or weighing and measuring device or package or amount of commodity found to be used, retained, or offered or exposed for sale or sold in violation of the law. (Id. § 20.)

97. **Obstruction of Officers.**—Any person who shall hinder or obstruct in any way the Commissioner of Weights and Measures, his deputy, or inspectors, or any county or city sealer or deputy sealer of weights and measures, in the performance of his official duty shall be guilty of a misdemeanor, and, upon conviction thereof in any court of competent jurisdiction, shall be punished by a fine of not less than two hundred dollars, or by imprisonment in the county jail for not less than three months, or by both such fine and imprisonment. (Id. § 21.)

98. **Impersonation of Officers.**—Any person who shall impersonate in any way the Commissioner of Weights and Measures, his deputy, or inspectors, or any county or city sealer or deputy sealer of weights and measures, by the use of his seal or counterfeit of his seal, or otherwise, shall be guilty of a misdemeanor, and upon conviction thereof, in any court of competent jurisdiction, shall be punished by a fine of not less than one hundred nor more than five hundred dollars or by imprisonment for not more than one year, or by both such fine and imprisonment. (Id. § 22.)

99. **Labeling Packages With Quantity.**—It shall be unlawful to keep for the purpose of sale, offer or expose for sale, or sell any commodity in package form unless the net quantity of the contents be plainly and conspicuously marked on the outside of the package, in terms of weights, measures, or numerical count: Provided, however, that reasonable variations or tolerances and also exemptions as to small packages shall be established by rules and regulations made by the Commissioner of Weights and Measures, and, provided, further, that this section shall not be construed to apply to medicinal articles and to those commodities in packages the manner of sale of which is specifically regulated by the provisions of other sections of this act.

The word "package" as used in this section shall be construed to include the package, carton, case, basket, can, box, barrel, half barrel, hamper, keg, drum, jug, jar, crock, bag, pail, wrapping parcel, package, bottle, phial, or other receptacle put up by the manufacturer; or when put up prior to the order of the commodity, by the vendor; which may be labeled, branded, or stenciled or otherwise marked, or which may be suitable for labeling, branding, or stenciling, or marking otherwise, making one complete package of the commodity. The word "package" shall be construed to include both the wholesale and the retail package; provided, that a box or carton used for shipping purposes containing a number of similar packages which are individually marked, as hereinbefore provided, will not be required to bear the weight or measure of contents; and, provided, further, that all commodities in packages, boxes, cans, bottles or other containers in the hands of merchants, both wholesale and retail, at the time of the passage of this act, shall be and are hereby exempt from the provisions of the same. (Id. § 23.)

100. **Butter.**—It shall be unlawful for any person to sell or offer for sale any butter or renovated or process butter or oleomargarine in any other manner than by weight. Whenever such butter, renovated or process butter or oleomargarine, is sold, offered or exposed for sale in the form of prints, bricks or rolls, each print, brick or roll shall bear a definite, plain and conspicuous statement of its true net weight, on the principal label, where there be such a label, otherwise, on the outside wrapper of said print, brick or roll. When such statement is made part of the printed matter on the label, wrapper or carton of any such print, brick or roll, the statement as to net weight shall be in gothic type not less than one-quarter of an inch square.

The prints, bricks, or rolls referred to in this section shall be construed to include those prints, bricks, or rolls put up by the manufacturer or producer; or when put up prior to the order of the commodity, by the vendor; provided, how-

ever, that this section shall not apply to farmers who manufacture and sell their own butter. (Id. § 24.)

101. Bottles for Milk or Cream.—Bottles used for the sale of milk or cream shall be of the capacity of one-half gallon, three pints, one quart, one pint, one-half pint, and one gill, when filled to within one-fourth of an inch of the cap seat or stopple in the case of those bottles having an inside diameter immediately below this cap seat or stopple of over two inches. The following variations on individual bottles or jars may be allowed, but the average contents of not less than twenty-five bottles selected at random from at least four times the number tested must not be in error more than one-quarter of these tolerances; six drams above and six drams below on the half gallon, five drams above and five drams below on the three pints; four drams above and four drams below on the quart; three drams above and three drams below on the pint; two drams above and two drams below on the gill. Bottles or jars used for the sale of milk or cream shall have clearly blown or otherwise permanently marked in the side of the bottle, the capacity of the bottle and the word "sealed"; and the side or bottom of the bottle the name, initial, or trade-mark of the manufacturer and a designating number, which designating number shall be different for each manufacturer and may be used in identifying the bottles. The designating number shall be furnished by the State Commissioner of Weights and Measures upon application by the manufacturer, and upon the filing by the manufacturer of a bond in the sum of one thousand dollars with sureties to be approved by the Attorney-General conditioned upon their conformance with the requirements of this section. A record of the bonds furnished, and the designating numbers and to whom furnished shall be kept in the office of the Commissioner of Weights and Measures.

Any manufacturer who sells or offers to sell milk or cream bottles to be used in this State that do not comply as to size and markings with the provisions of this section shall suffer a penalty of five hundred dollars, to be recovered by the Attorney-General in an action against the defender's bondsmen to be brought in the name of the State of West Virginia. Any dealer who uses, for the purpose of selling milk or cream, jars or bottles, purchased after this law takes effect that do not comply with the requirements of this section as to markings and capacity, shall be deemed guilty of using a false and insufficient measure.

Sealers of weights and measures are not required to seal bottles or jars for milk or cream marked as in this section provided, but they shall have the power to and shall from time to time make tests on individual bottles used by various firms in the territory over which they have jurisdiction in order to ascertain if the above provisions are being complied with, and they shall immediately report violations found to the State Commissioner of Weights and Measures. (Id. § 25.)

102. Barrels for Fruit and Vegetables.—The standard barrel for fruits, vegetables and produce shall be of the following dimensions when measured without distention of its parts: Diameter of head inside of staves, seventeen and one-eight inches; distance between heads, inside measurements, twenty-six inches; the outside bilge or circumference not less than sixty-four inches; and the thickness of staves not more than four-tenths of an inch; provided, that any barrel of a different form having the same distance between heads and a capacity of seven thousand and fifty-six cubic inches shall be a standard barrel. (Id. § 26.)

103. Particular Measures and Weights.—A bushel, half-bushel, peck, half-peck, quarter-peck, quart and pint of the respective articles hereinafter mentioned shall be the amount of weight, avoirdupois, as shown by the following table:

COMMODITY	Bu.	½ Bu.	Peck		½ Peck		¼ Peck		Quart		Pint	
	Lbs.	Lbs.	Lb.	Oz.	Lb.	Oz.	Lb.	Oz.	Lb.	Oz.	Lb.	Oz.
Apples (green)	48	24	12	...	6	...	3	...	1	8	...	12
Apples (dried)	24	12	6	...	3	...	1	8	...	12	...	6
Alfalfa seed	60	30	15	...	7	8	3	12	1	14	...	*12
Apple seed	40	20	10	...	5	...	2	8	1	4	...	10
Beans (dried shell)	60	30	15	...	7	8	3	12	1	14	...	15
Beans (castor)	46	23	11	8	5	12	2	14	1	7	...	11½
Beans (unshelled)	38	19	9	8	4	12	2	6	1	3	...	9½
Beans (stringed)	24	12	6	...	3	...	1	8	...	12	...	6
Beans (limas)	56	28	14	...	7	...	3	8	1	12	...	14
Beans (soy)	58	29	14	8	7	4	3	10	1	13	...	14½
Beans, scarlet pole	50	25	12	8	6	4	3	2	1	9	...	12½

*L. 1923, Chapter 45, which amends and re-enacts § 27, Code 1923, reads "15."

COMMODITY	Bu.	½ Bu.	Peck		½ Peck		¼ Peck		Quart		Pint	
	Lbs.	Lbs.	Lb.	Oz.	Lb.	Oz.	Lb.	Oz.	Lb.	Oz.	Lb.	Oz.
Beets	56	28	14	...	7	...	3	8	1	12	...	14
Blackberries	48	24	12	...	6	...	3	...	1	8	...	12
Blue grass seed	14	7	3	8	1	12	...	14	...	7	...	3½
Blue grass seed Eng.	22	11	5	8	2	12	1	6	...	11	...	5½
Broom corn seed	57	28½	14	4	7	2	3	9	1	12½	...	14¼
Buckwheat	48	24	12	...	6	...	3	...	1	8	...	12
Barley	48	24	12	...	6	...	3	...	1	8	...	12
Bran	20	10	5	...	2	8	1	4	...	10	...	5
Cabbage	50	25	12	8	6	4	3	2	1	9	...	12½
Canary seed	60	30	15	...	7	8	3	12	1	14	...	15
Carrots	50	25	12	8	6	4	3	2	1	9	...	12½
Cement	100	50	25	...	12	8	6	4	3	2	1	10
Charcoal	20	10	5	...	2	8	1	4	...	10	...	5
Cherries (with stems)	56	28	14	...	7	...	3	8	1	12	...	14
Cherries (without stems)	64	32	16	...	8	...	4	...	2	...	1	...
Chestnuts	50	25	12	8	6	4	3	2	1	9	...	12½
Clover seed	60	30	15	...	7	8	3	12	1	14	...	15
Coal	80	40	20	...	10	...	5	...	2	8	1	4
Coke	40	20	10	...	5	...	2	8	1	4	...	10
Corn (cracked)	50	25	12	8	6	4	3	2	1	9	...	12½
Corn (ear dry)	68	34	17	...	8	8	4	4	2	2	1	1
Corn (ear green)	72	36	18	...	9	...	4	8	2	4	1	2
Corn (shelled)	56	28	14	...	7	...	3	8	1	12	...	14
Corn (sweet)	50	25	12	8	6	4	3	2	1	9	...	12½
Corn meal	48	24	12	...	6	...	3	...	1	8	...	12
Corn meal (bolted)	46	23	11	8	5	12	2	14	1	7	...	11½
Cotton seed	32	16	8	...	4	...	2	...	1	...	...	8
Cotton seed (S. I.)	44	22	11	...	5	8	2	10	1	6	...	11
Cranberries	36	18	9	...	4	8	2	4	1	2	...	9
Cucumbers (green)	50	25	12	8	6	4	3	2	1	9	...	12½
Currants	40	20	10	...	5	...	2	8	1	4	...	10
Flax seed	56	28	14	...	7	...	3	8	1	12	...	14
Gooseberries	40	20	10	...	5	...	2	8	1	4	...	10
Grapes (with stems)	48	24	12	...	6	...	3	...	1	8	...	12
Grapes	60	30	15	...	7	8	3	12	1	14	...	15
Hair (washed)	4	2	1	...	...	*8½	...	4	...	2	...	1
Hair (unwashed)	8	4	2	...	1	...	...	8	...	4	...	2
Hemp seed	44	22	11	...	5	8	2	12	1	6	...	11
Herds grass	45	22½	11	4	5	10	2	13	1	6½	...	11¼
Hickory nuts	50	25	12	8	6	4	3	2	1	9	...	12½
Hominy	60	30	15	...	7	8	3	12	1	14	...	15
Horse radish	50	25	12	8	6	4	3	2	1	9	...	12½
Huckleberries	52	26	13	...	6	8	3	4	1	10	...	13
Hungarian grass	50	25	12	8	6	4	3	2	1	9	...	12½
Kaffir corn	56	28	14	...	7	...	3	8	1	12	...	14
Kale	15	7½	3	12	1	14	...	15	...	7½	...	3¾
Lime (unslaked)	70	35	17	8	8	12	4	6	2	3	1	1½
Lime (slaked)	40	20	10	...	5	...	2	8	1	4	...	10
Malt	34	17	8	8	4	4	2	2	1	1	...	8½
Millet	50	25	12	8	6	4	3	2	1	9	...	12½
Millet (Japan)	35	17½	8	12	4	6	2	3	1	1½	...	8¾
Oats	32	16	8	...	4	...	2	...	1	...	...	8
Onions	55	27½	13	12	6	14	3	7	1	11½	...	13¾
Onions (bottom sets)	32	16	8	...	4	...	2	...	1	...	...	8
Onions (top sets)	28	14	7	...	3	8	1	12	...	14	...	7
Orchard grass	14	7	3	8	1	12	...	14	...	7	...	3½
Osage orange seed	33	16½	8	4	4	2	2	1	1	½	...	8¼
Parsnips	42	21	10	8	5	4	2	10	1	5	...	10½
Peaches	48	24	12	...	6	...	3	...	1	8	...	12
Peaches (dried)	33	16½	8	4	4	2	2	1	1	½	...	8¼
Peanuts	23	11½	5	12	2	14	1	7	...	11½	...	5¾

*L. 1923, Chapter 45, which amends and re-enacts § 27, Code 1923, reads "8."

COMMODITY	Bu.	½ Bu.	Peck		½ Peck		¼ peck		Quart		Pint	
	Lbs.	Lbs.	Lb.	Oz.	Lb.	Oz.	Lb.	Oz.	Lb.	Oz.	Lb.	Oz.
Pears	50	25	12	8	6	4	3	2	1	9	...	12½
Peas (dry)	60	30	15	...	7	8	3	12	1	14	...	15
Peas (green, shelled)	50	25	12	8	6	4	3	2	1	9	...	12½
Peas, (green, unsh'l'd)	30	15	7	8	3	12	1	14	...	15	...	7½
Peas (wrinkled)	56	28	14	...	7	...	3	8	1	12	...	14
Plums	60	30	15	...	7	8	3	12	1	14	...	15
Potatoes (Irish)	56	28	14	...	7	...	3	8	1	12	...	14
Potatoes (sweet)	50	25	12	8	6	4	3	2	1	9	...	12½
Quinces	48	25*	12	...	6	...	3	...	1	8	...	12
Rape seed	50	25	12	8	6	4	3	2	1	9	...	12½
Raspberries	48	24	12	...	6	...	3	...	1	8	...	12
Red Top grass seed	14	7	3	8	1	12	...	14	...	7	...	3½
Rice corn (shelled)	56	28	14	...	7	...	3	8	1	12	...	14
Rice corn (unshelled)	45	22½	11	4	5	10	2	13	1	6½	...	11¼
Rutabagas	50	25	12	8	6	4	3	2	1	9	...	12½
Rye	56	28	14	...	7	...	3	8	1	12	...	14
Rye meal	50	25	12	8	6	4	3	2	1	9	...	12½
Salt (coarse)	70	35	17	8	8	12	4	6	2	3	1	1½
Salt (fine)	50	25	12	8	6	4	3	2	1	9	...	12½
Sand	130	65	32	8	16	4	8	2	4	1	2	½
Shorts	20	10	5	...	2	8	1	4	...	10	...	5
Sorghum seed	57	28½	14	4	7	2	3	9	1	12½	...	14¼
Spelt or speltz	40	29	10	...	5	...	2	8	1	4	...	10
Spinach	15	7½	3	12	1	14	...	15	...	7½	...	†63¾
Strawberries	48	24	12	...	6	...	3	...	1	8	...	12
Timothy seed	45	22½	11	4	5	10	2	13	1	6½	...	11¼
Tomatoes	56	28	14	...	7	...	3	8	1	12	...	14
Turnips	55	27½	13	12	6	14	3	7	1	11½	...	13¾
Walnuts	50	25	12	8	6	4	3	2	1	9	...	12½
Wheat	60	30	15	...	7	8	3	12	1	14	...	15

One barrel of flour shall contain one hundred and ninety-six pounds, one-half barrel ninety-eight pounds, one-quarter barrel forty-nine pounds, one-eighth barrel twenty-four and one-half pounds, and one-sixteenth barrel twelve and one-quarter pounds, net weight.

One barrel of lime shall contain two hundred pounds.

A ton shall contain two thousand pounds.

The standard barrel for fruit, vegetables and produce shall be of the following dimensions: Inside staves at ends, seventeen and one-eighth inches; distance between heads, inside, twenty-six inches; circumference over bilge, sixty-four inches, and capacity seven thousand and fifty-six cubic inches. (Stats. 1925, c. 59, § 27.)

104. Sale to be by Net Weight.—Whenever any commodity is sold on a basis of weight, it shall be unlawful to employ any other weight in such sale than the net weight of the commodity; and all contracts concerning goods sold on a basis of weight shall be understood and construed accordingly. Whenever the weight of a commodity is mentioned in this act, it shall be understood and construed to mean the net weight of the commodity. (Code 1923, c. 59, § 28.)

105. Offenses.—Any person who, by himself or by his servant or agent, or as the servant or agent of another person, shall knowingly offer or expose for sale, sell, use in the buying or selling of any commodity or thing or for hire or award, or retain in his possession a false weight or measure or weighing or measuring device which has not been sealed by a sealer or deputy sealer of weights and measures within one year, or shall dispose of any measure, or weighing or measuring device contrary to law, or remove any tag placed thereon, by a sealer or deputy sealer of weights and measures; or who shall sell or offer or expose for sale less than the quantity he represents, or shall take or attempt to take more than the quantity he represents, when as the buyer, he furnishes the weights, measures, or weighing device by means of which the amount of commodity is determined; or who shall keep for the purpose of sale, offer or expose for sale, or sell any commodity in a manner contrary to law; or who shall violate any provisions of this act for which a specific penalty has not been provided; or who shall sell or offer

*L. 1923, Chapter 45, which amends and re-enacts § 27, Code 1923, reads "24."

†L. 1923, Chapter 45, which amends and re-enacts § 27, Code of 1923, reads "3¾."

for sale, or use or have in his possession for the purpose of selling or using, any device or instrument to be used to or calculated to falsify any weights or measures, shall be guilty of a misdemeanor, and shall be punished by a fine of not less than ten nor more than one hundred dollars, or by imprisonment for not more than sixty days, or by both such fine and imprisonment, upon a first conviction in any court of competent jurisdiction, and upon a second or subsequent conviction in any court of competent jurisdiction he shall be punished by a fine of not less than ten, nor more than five hundred dollars, or by imprisonment in the county jail for not more than sixty days, or by both such fine and imprisonment. (Id. § 29.)

106. **Definition of Terms.**—The word "person" as used in this act, shall be construed to impart [import] the plural and singular, as the case demands, and shall include corporations, companies, societies and associations.

The words "weights, measures or weighing or measuring devices" as used in this act, shall be construed to include all weights, scales, beams, measures of every kind, instruments and mechanical devices for weighing or measuring and any appliances and accessories connected with any or all such instruments.

The words "sell" or "sale" as used in this act shall be construed to include barter and exchange. (Id. § 30.)

107. **Jurisdiction of Justices.**—Justices of the peace shall have jurisdiction to hear and determine any action which may be brought for a violation of the provisions of this act, where the property in question is two hundred dollars and less. In cases of over two hundred dollars shall hold the accused for indictment to the grand jury. (Id. § 32.)

NOTE: See also No. 12.

PART V.

Cases.

1. Special Food Laws.

Beverages—Essence of Cinnamon: State v. Muncey, 28 W. Va. 494 (1886).

Beverages—Tincture of Ginger: Miles v. State, 5 W. Va. 524 (1872).

Beverages—Title to Empty Bottles: See Cline Cola Beverage Co. v. Raleigh Coca Cola Bottling Works, 99 W. Va. 596, 130 S. E. 252 (1925).

Meat—Unwholesome: Seibright v. State, 2 W. Va. 591 (1867).

Oleomargarine: *State v. Myers, 42 W. Va. 822, 26 S. E. 539, 35 L. R. A. 844, 57 Am. St. Rep. 887 (1896); *State v. Bruce, 55 W. Va. 384, 47 S. E. 146 (1904), overruling State v. Myers, ante.

Restaurant—License: *Houvouras et al. v. City of Huntington, 90 W. Va. 245, 110 S. E. 692 (1922); *State ex rel. Haddad v. City of Charleston et al., 92 W. Va. 57, 114 S. E. 378, 27 A. L. R. 323 (1922).

2. Special Drug Laws.

Itinerant Vendors—License: State v. Ragland, 31 W. Va. 453, 7 S. E. 424 (1888).

Narcotics: State v. Weir, 71 W. Va. 93, 76 S. E. 138 (1912); State v. Sutter, 71 W. Va. 371, 76 S. E. 811, 43 L. R. A. (N. S.) 399 (1912).

Pharmacy: State v. Enoch, 26 W. Va. 253 (1885); State v. Horner, 52 W. Va. 373, 43 S. E. 89 (1902).

3. Civil Action to Recover Damages for Injury Alleged to Have Been Caused by Consumption of Product.

Drugs: Peters v. Johnson, Jackson & Co., 50 W. Va. 644, 41 S. E. 190, 57 L. R. A. 428, 88 Am. St. Rep. 909 (1902).

Food: See Hood v. Bloch Bros., 29 W. Va. 244, 11 S. E. 910 (1886).

4. Miscellaneous.

Cigarettes: *State v. Goetze, 43 W. Va. 495, 27 S. E. 225, 64 Am. St. Rep. 871 (1897). *In re Minor, 69 Fed. 233 (1895).

False Advertising: State v. Wohlmouth, 78 W. Va. 404, 89 S. E. 7 (1916).

Trading Stamps: *Sperry & Hutchinson Co. v. Melton, 69 W. Va. 124, 71 S. E. 19, 34 L. R. A. (N. S.) 433 (1911); *Sperry & Hutchinson Co. v. Hill, 76 W. Va. 680, 86 S. E. 748 (1915). *Sperry & Hutchinson Co. v. Blue, 202 Fed. 82, 120 C. C. A. 354 (1912).

Weights and Measures: Hatfield v. County Court of Mingo County, 80 W. Va. 165, 92 S. E. 245 (1917). See also: *State v. Peel Splint Coal Co., 36 W. Va. 802, 15 S. E. 1000, 17 L. R. A. 385 (1892); Buchanan v. Louisville Coal & Coke Co., 98 W. Va. 470, 127 S. E. 335 (1925).

WISCONSIN.*

PART I.

General Food and Drug Law.

1. **Appointment; Term; Supplies; Assistants and Report.**—The Dairy and Food Commissioner shall be appointed by the Governor, by and with the advice and consent of the Senate, for a term of two years from the date of his appointment and until his successor qualifies. Such commissioner may, with the advice and consent of the Governor, appoint assistants, who shall be experts in dairy products, and chemists who shall be practical analytical chemists; he may also, with such advice and consent appoint agents for the inspection of milk dairies, factories, cheese factories, foods and drugs, and creameries, and to assist in the work of the Dairy and Food Commission at such times and for such periods of time as may be required in the enforcement of the dairy and food laws or other laws required to be enforced by the said commissioner and Ex Officio Superintendent of Weights and Measures. All such appointees shall have all the powers that are conferred by law upon any agent, inspector or assistant of the Dairy and Food Commissioner. The commissioner shall be furnished with a suitable office in the Capitol, and with such supplies and printing as may be necessary. He shall as soon as practicable after the thirtieth day of June in each even-numbered year make a report to the Governor and give therein an itemized statement of all expenses incurred by him, and of all fines collected, with such statistics and other information and suggestions as he may regard of value. (Stats. 1925, § 98.01.)

2. **Powers and Duties of Commissioner; Legal Assistance.**—It shall be the duty of the commissioner to enforce the laws regarding the production, manufacture and sale, offering or exposing for sale or having in possession with intent to sell, of any dairy, food or drug product, the adulteration or misbranding of any article of food or drink, or condiment or drugs and personally or by his assistants, inspectors or agents, to inspect any milk, butter, cheese, lard, syrup, coffee, tea or other article of food, drink, condiment or drug made or offered for sale within this State which he may suspect or have reason to believe to be impure, unhealthful, misbranded, adulterated or counterfeit, or in any way unlawful, and to prosecute or cause to be prosecuted any person, firm or corporation engaged in the manufacture or sale, offering or exposing for sale or having in possession with intent to sell, of any adulterated dairy product or of any adulterated, misbranded, counterfeit, or otherwise unlawful article or articles of food or drink or condiment or drug. The district attorney of the county in which a violation of any such law has occurred shall, when called upon by the commissioner, his assistants, inspectors or agents, to do so, give all the aid he can to secure the execution of the law and shall prosecute cases arising under the provisions of this chapter or other provisions of these statutes relating to the manufacture, sale, offering or exposing for sale, of any adulterated dairy product or any adulterated, misbranded or otherwise unlawful foods, drinks, condiments or drugs. Such commissioner shall have power to appoint, with the approval of the Governor, special counsel to prosecute or assist in the prosecution of any case arising under the provisions of these statutes imposing a penalty for adulterating dairy products, or foods, drinks, condiments or drugs, or practicing deception or frauds in the manufacture and sale thereof. The cost of such special counsel shall be charged to the appropriation for the Dairy and Food Commissioner and Ex Officio State Superintendent of Weights and Measures. All fines collected in prosecutions begun or caused to be begun by the Dairy and Food Commissioner, his assistants, inspectors or agents, shall be paid into the State treasury. (Id. § 98.02.)

3. **Access to Buildings; Samples.**—The commissioner, his agent or assistant shall have free access to any barn or stable where any cow is kept or milked,

*CITATIONS: "Stats. 1925" refers to the Wisconsin Statutes, 1925, published by authority of the legislature. (Stats. 1925, § 35.18.) "L." refers to the session laws of the year cited.

or to any factory building, dairy or premises where any dairy product is manufactured, handled or stored, when the milk from such cow or such product is to be sold or shipped, and may enforce such measures as are necessary to secure perfect cleanliness in and around the same and of any utensils used therein, and to prevent the sale of milk from cows diseased or fed upon unwholesome food. Either of them may enter any place or building in which there is reason to believe that any food, drink or drug is made, prepared, sold or offered for sale, and may open any package or receptacle of any kind containing, or which is supposed to contain, any article of food, drink or drug, and examine or analyze the contents thereof. Any such article or a sample thereof may be seized or taken for the purpose of having it analyzed; but if the person from whom it is taken shall so request, at the time of taking, the officer shall then and in the presence of such person securely seal up two samples of such article, one of which shall be for analysis under the direction of the commissioner, the other shall be delivered to the person from whom the sample or article was obtained. (Id. § 98.04.)

4. Submission of Articles for Analysis; Evidence.—The State Board of Health, medical officers of local boards of health, town and village boards or common councils may submit to the commissioner samples of water or other drinks, of food or drugs for analysis, and the same shall be examined and reports made of the analysis thereof to the body or officer submitting the same as soon as practicable; such reports shall fully specify the results of the analysis and be signed by such commissioner; they shall be accepted in all courts and places as prima facie evidence of the properties or condition of the articles analyzed. (Id. § 98.14.)

5. Exhibits by Commissioner; Aid to Farm Institutes, Etc.—The Governor may authorize the commissioner or his assistants, chemists or inspectors, when not engaged in the performance of other official duties, to make such public exhibits as will tend to inform the public of the character of the work of the Dairy and Food and Weights and Measures Department, and to give such aid in farmers' institutes, dairy and food and farmers' conventions and the Agricultural Department of the State University as may be deemed advisable. (Id. § 98.15.)

6. Obstructing Dairy and Food Officers; Penalty.—Any person who shall obstruct the Dairy and Food Commissioner of this State or either of his assistants, chemists or inspectors in the performance of their duty by refusing him entrance to any place he is authorized to enter or by refusing to deliver to him a sample of any article of food, drink or drug made, sold, offered or exposed for sale by the person to whom request therefor is made, if the value thereof is tendered, shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not less than twenty-five dollars nor more than one hundred dollars or by imprisonment in the county jail not less than ten days nor more than sixty days. (Id. § 352.44.)

7. Drugs and Foods; Adulteration; Sale; Definitions.—Any person who shall, by himself, his servant or agent, or as the servant or agent of any other person, sell, exchange, deliver or have in his possession, with intent to sell, exchange, offer for sale or exchange any drug or article of food which is adulterated, or any candy containing intoxicating liquor, shall be fined not less than twenty-five dollars, nor more than one hundred dollars, or be imprisoned in the county jail not less than thirty days nor more than four months. The term "drug," as used in this section, shall include all medicines for internal or external use, antiseptics, disinfectants and cosmetics. The term "food," as used herein shall include all articles used for food or drink or condiment by man, whether simple, mixed or compound, and all articles used or intended for use as ingredients in the composition thereof or in the preparation thereof. (Id. § 352.01.)

8. Adulteration; What Constitutes.—An article shall be deemed to be adulterated within the meaning of section 352.01:

(1) DRUGS.—In the case of drugs: First, if, when sold, or offered or exposed for sale or had in possession with intent to sell, under or by a name recognized in the United States Pharmacopœia or National Formulary, it differs from the standard of strength, quality or purity laid down in the latest edition thereof, current at the time when such drug is sold or offered or exposed for sale or had in possession with intent to sell; second, if its strength, quality or purity falls below the professed standard under which it is sold; third, if it contains wood alcohol except when intended for external use only and so labeled.

(2) FOOD.—In the case of food: First, if any substance or substances have been mixed with it, so as to lower or depreciate or injuriously affect its strength, quality or purity; second, if any inferior or cheaper substance or substances have been substituted wholly or in part for it; third, if any valuable or necessary ingredient has been wholly or in part abstracted from it, or if it is below that standard

of quality, strength or purity represented to the purchaser or consumer; fourth, if it is an imitation of, or sold or offered or exposed for sale under the name of another article; fifth, if it consists of or is manufactured, wholly or in part, from a diseased, contaminated, filthy, decomposed, tainted or rotten animal or vegetable substance or any animal or vegetable substance produced, stored, transported, or kept in a condition that tends to render the article diseased, contaminated or unwholesome, or if it is any part of the product of a diseased animal, or the product of an animal that has died otherwise than by slaughter; sixth, if it is mixed, colored, coated, polished, powdered or stained, whereby damage or inferiority is concealed, or so that it tends to deceive or mislead the purchaser or consumer, or if by any means it is made to appear better or of greater value than it really is, or if it is colored or flavored in imitation of the genuine color or flavor of another substance; seventh, if it contains any added substance or ingredient which is poisonous, injurious or deleterious to health, or any deleterious substance not a necessary ingredient in its manufacture; provided, that any article of food which is not adulterated under the provisions of the fourth, fifth, sixth and seventh specifications of this section, and which does not contain any filler or ingredient which debases without adding food value, shall not be deemed adulterated in the case of mixtures or compounds sold under their own distinct names or under coined names, if the same be so labeled, branded or tagged as plainly to show their true character and composition. And provided, further, that nothing in sections 352.01 and 352.02 shall be construed as requiring or compelling proprietors or manufacturers of proprietary foods to disclose their trade formulas, except as far as may be necessary to secure freedom from adulteration, imitation or fraud. (Id. § 352.02.)

9. Food Products; Definitions; Standards.—See Nos. 19, 43-45, 84, 100-101, 103-104, 106, 108, 113-119.

10. Foods; False Branding of Weight, Measure, Count or Contents; Prosecution.—(1) Any person, who by himself, or by his servant or agent, or as the servant or agent of another, shall manufacture or solicit or take orders for delivery, or sell, exchange, deliver or have in possession with intent to sell, exchange or expose, or offer for sale or exchange any article of food within the meaning of section 352.01 which is misbranded within the meaning of this section shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not less than twenty-five dollars nor more than one hundred dollars, or by imprisonment in the county jail not less than ten days nor more than sixty days.

(2) The term "misbranded," as used herein, shall apply:

(a) To articles of food, or articles which enter into the composition of food, which, or the package or label of which shall bear any statement, design or device regarding such article or the ingredients or substances contained therein which shall be false or misleading in any particular;

(b) To articles of food in package form which do not bear plainly and conspicuously marked on the outside thereof the name and address of the manufacturer, packer or dealer;

(c) To articles of food in package form if the actual quantity of the contents be not plainly and conspicuously marked on the outside of the package in terms of weight, measure or numerical count; reasonable variations, however, shall be permitted from the stated weight, measure or numerical count, and the Dairy and Food Commissioner shall establish tolerances for the same by rules and regulations; and

(d) To articles of food in package form if the contents of the package as originally put up shall have been removed in whole or in part and other contents shall have been placed in such package.

(3) The term "label," as used in this section and in section 352.02, or in any other section of the statutes, relating to the adulteration or misbranding of food, unless otherwise specifically described and provided therein, shall apply to any printed, pictorial, or other matter upon or attached to any package of a food product or any container thereof.

(4) The term "package" as applied to articles of food shall mean a closed receptacle of any kind in which an article of food is kept in stock and which with its contents is sold to the public.

(5) The Dairy and Food Commissioner, by himself, or by his assistants, chemists, inspectors and agents, is hereby authorized to enforce the provisions of this section and for this purpose all the powers conferred upon the said commissioner, his assistants, chemists, inspectors and agents, by sections 98.02, 98.04, 98.15, or by any other provision of the statutes are hereby conferred upon said Dairy and Food Commissioner, his assistants, chemists, inspectors and agents, so far as the same may be applicable.

(6) The provisions of paragraphs (c) and (d) of subsection 2 of this section shall not apply to foods in package form when dispensed for consumption on the premises, or when the numerical count of the enclosed units is less than six, or when the net weight of the contents of the package is less than three ounces avoirdupois; or in case of liquids when the contents of the package are less than one fluid ounce; or to fruits and vegetables when such fruits and vegetables are sold by the standard barrel, standard crate, standard box or basket or other standard receptacle as provided in section 125.13.* (Id. § 352.08.)†

11. Label on Poisonous Medicine.—Any person who shall by himself, his servant or agent or as the servant or agent of any other person, sell, exchange, deliver, or have in his possession with intent to sell or exchange or expose or offer for sale or exchange any medicine known as patent or proprietary, or of which the formula is kept secret by the manufacturer, which contains morphine, strychnine, cocaine or poisonous or narcotic alkaloid or drug, in any quantities which the State Board of Health shall deem harmful to the life or health of the public, unless the presence of the same be distinctly shown by a label upon the bottle or package and upon the outer wrapper thereof, shall be punished as provided in section 352.07.‡ (Id. § 352.10.)

12. Sale of Certain Foods Regulated and Restricted.—No person, firm or corporation shall, by himself, or by his agents or servants, manufacture, sell, ship, consign, offer for sale, expose for sale or have in his possession with intent to sell for use or consumption within the State, any article of food within the meaning of section 352.01, which contains formaldehyde, sulphurous acid or sulphites, boric acid or borates, salicylic acid or salicylates, saccharin, dulcin, glucin, beta naphtol, abrastol, asaprol, fluorides, fluoborates, fluosilicates or other fluorine compounds, or any other preservative injurious to health; provided, however, that nothing contained in this section shall prohibit the use of common salt, saltpetre, wood smoke, sugar, vinegar and condimental preservatives, such as turmeric, mustard, pepper and other spices. Nor shall any person, firm or corporation, by himself, or by his agents or servants, manufacture, sell, ship, consign, offer for sale, expose for sale or have in his possession with intent to sell for use or consumption within the State any article of food within the meaning of section 352.01, containing any added substance, article or ingredient possessing a preservative character or action other than the articles named in the proviso of this act, unless the presence, name and proportionate amount of said added substance, article or ingredient shall be plainly disclosed to the purchaser. (Id. § 352.12.)

13. Violation of Section 352.12.—Every person, firm or corporation and every officer, agent, servant or employee of such person, firm or corporation who violates any of the provisions of section 352.12 shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be fined not less than twenty-five dollars nor more than one hundred dollars or be imprisoned in the county jail not less than thirty days nor more than sixty days. (Id. § 352.13.)

14. Benzoic Acid in Foods.—(1) It shall be unlawful to sell, offer or expose for sale or have in possession with intent to sell for use or consumption in this State, any article of food as defined in section 352.01, which contains added benzoic acid or benzoates; provided, that when in the preparation of food products for shipment they are preserved by any external application of benzoic acid or benzoates in such a manner that the preservative is necessarily removed mechanically, or by maceration in water, or otherwise, and directions for the removal of said preservative shall be printed on the covering or the package, the provisions of this section shall be construed as applying only when said products are ready for consumption.

(2) Any person who, by himself, his servant or agent, or as the servant or agent of any other person, or as the servant or agent of any firm or corporation, shall violate any of the provisions of this section shall upon conviction thereof be punished by a fine of not less than twenty-five dollars nor more than one hundred dollars or by imprisonment in the county jail not less than thirty days nor more than sixty days. (Id. § 352.14.)

15. Insanitary By-Products; Sale, Prohibited.—No person shall by himself his servant, or agent, or as the servant or agent of any other person, or as the

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*See No. 226.

†See No. 92.

‡See No. 28.

servant or agent of any firm or corporation, manufacture for sale any article of food for man from any insanitary milk or from any insanitary cream. (Id. § 352.32.)*

NOTE: See also Nos. 63 and 67.

Miscellaneous General Provisions.

16. Violation of Law Relating to Health.—Any person who shall wilfully violate any law relating to the public health, for which violation no other penalty is prescribed or any order or regulation of any board of health, lawfully made and duly published, shall be punished by imprisonment in the county jail not more than three months or by fine not exceeding one hundred dollars. (Stats. 1925, § 352.47.)

17. Powers and Duties of Commissioner of Agriculture.—It shall be the duty of the Commissioner of Agriculture and he shall have the power:

(1) To promote the interests of agriculture, dairying, horticulture, manufactures, and the domestic arts, and to that end may make and modify rules, regulations and orders for the prompt and efficient exercise and discharge of his powers and duties and those of the Department of Agriculture and of its several branches and divisions, which rules, regulations and orders shall have the force of law. . . .

(8) To enforce the law relating to concentrated commercial feeds. . . . (Id. § 93.07.)

NOTE: See also Nos. 85 et seq., and 176a.

PART II.

Special Food Laws.

Bakery Products.

See Nos. 21, 22, 125 et seq. and 233.

Baking Powder.

18. Baking Powder to be Labeled With Name of Each Ingredient in English.—Any person who shall, by himself, his servant or agent or by the servant or agent of any other person, make or manufacture baking powder or any mixture or compound intended for use as a baking powder, or sell, exchange or deliver, or have in his possession with the intent to sell or exchange, or expose or offer for sale or exchange such baking powder, or any mixture or compound intended for use as a baking powder, unless each receptacle or package in which the same is kept for sale or sold, has securely affixed in a conspicuous place upon the side thereof, and plainly separated from other reading matter, a white or light colored label, upon the outside face of which label shall be printed in English language, with black ink, in type not smaller than eight-point, bold-faced gothic capitals, the name and address of the manufacturer of such baking powder, and the words: "This baking powder is composed of the following ingredients and none other," and immediately thereafter upon the same label, in color, style and manner above specified, the name of each ingredient contained in such baking powder; using the name by which each ingredient is commonly known, shall be punished as provided in section 352.07;† provided, that for the purposes of this section, alum in any form or shape or any aluminum salt shall be designated by the term alum. (Stats. 1925, § 352.09.)

Beverages.

19. Food Products; Definitions; Standards.—In all prosecutions arising under the provisions of these statutes relating to the manufacture or sale of an adulterated, misbranded or otherwise unlawful article of food,‡ the following

*For penalty, see No. 57.
†See No. 28.
‡See No. 7 et seq.

definitions and standards for food products shall be the legal definitions and standards, to wit: . . .

(31) WINE.—Wine is the product made by the normal alcoholic fermentation of the juice of sound, ripe grapes, and the usual cellar treatment, and contains not less than seven nor more than sixteen per cent of alcohol, by volume, and, in one hundred cubic centimeters at twenty degrees Centrigrade, not more than one-tenth (0.1) gram of sodium chlorid nor more than two-tenths (0.2) gram potassium sulphate; and for red wine not more than fourteen-hundredths (0.14) gram, and for white wine not more than twelve-hundredths (0.12) gram of volatile acids produced by fermentation and calculated as acetic acid. Red wine is wine containing the red coloring matter of the skins of grapes. White wine is wine made from white grapes or the expressed fresh juice of other grapes.

Dry wine is wine in which the fermentation of the sugars is practically complete and which contains, in one hundred cubic centimeters at twenty degrees Centigrade, less than one gram of sugars and for dry red wine not less than sixteen-hundredths (0.16) gram of grape ash and not less than one and six-tenths (1.6) grams of sugar-free grape solids, and for dry white wine not less than thirteen hundredths (0.13) gram of grape ash and not less than one and four-tenths (1.4) grams of sugar-free grape solids.

Fortified dry wine is dry wine to which brandy has been added, but which conforms in all other particulars to the standard of dry wine.

Sweet wine is wine in which the alcoholic fermentation has been arrested, and which contains, in one hundred cubic centimeters at twenty degrees Centigrade, not less than one gram of sugars, and for sweet red wine not less than sixteen-hundredths (0.16) gram of grape ash, and for sweet white wine not less than thirteen-hundredths (0.13) gram of grape ash.

Fortified sweet wine is sweet wine to which wine spirits have been added.

Sparkling wine is wine in which the after-part of the fermentation is completed in the bottle, the sediment being disgorged and in its place supplied by wine or sugar liquor, and which contains, in one hundred cubic centimeters at twenty degrees Centigrade, not less than twelve-hundredths (0.12) gram of grape ash.

Modified wine, ameliorated wine, corrected wine, is the product made by the alcoholic fermentation, with the usual cellar treatment, of a mixture of the juice of sound, ripe grapes with sugar (sucrose), or a syrup containing not less than sixty-five per cent of sugar (sucrose), and in quality not more than enough to raise the alcoholic strength after fermentation to eleven per cent by volume.

Raisin wine is the product made by the alcoholic fermentation of an infusion of dried or evaporated grapes, or a mixture of such infusion or of raisins with grape juice.

Cider, hard cider, is the product made by the normal alcoholic fermentation of apple juice, and the usual cellar treatment, and contains not more than seven per cent by volume of alcohol, and in one hundred cubic centimeters of the cider, not less than two grams nor more than twelve grams of solids, not more than eight grams of sugars, in terms of reducing sugars, and not less than twenty centigrams nor more than forty centigrams of cider ash.

Sparkling cider, champagne cider, is cider in which the after-part of the fermentation is completed in closed containers, with or without the addition of cider or sugar liquor, and contains, in one hundred cubic centimeters, not less than twenty centigrams of cider ash. (Stats. 1925, § 352.03.)

20. **Regulation of Soda Water Business.**—(1) On and after January 1, 1918, no person, firm or corporation shall engage in the business of manufacturing or bottling any soda water beverage in this State without first obtaining a license therefor from the commissioner as hereinafter provided. Such license shall be granted under such reasonable rules and regulations as the commissioner may from time to time prescribe pertaining to the proper handling and storing of such beverages and the construction and sanitary condition of buildings and to the proper cleaning and sterilizing of all machinery, bottles or other containers used in and about the factory and all containers in which the product is sold and he may prescribe such standards of purity for all ingredients used in the manufacture of such beverages as will insure a pure and unadulterated product.

(2) Each application for such license shall be made upon an application blank furnished by the commissioner upon request and shall state the applicant's name and address and the exact location of the factory for which such license is requested and such other information as the commissioner may reasonably require and the commissioner shall furnish to the applicant the rules and regulations incident to securing a license.

(3) Each application shall be accompanied by a fee of five dollars payable to the commissioner, and no license shall be issued until such fee is so paid. In case license is refused, the fee accompanying the application shall be returned by the commissioner to the applicant with notification of refusal.

(4) Licenses to engage in the manufacture or bottling of any soda water beverage shall expire on the thirty-first day of December next following the date of issue but may be renewed without inspection on or before the first of January of each year upon the application of the licensee and upon the payment of five dollars to the commissioner. This act shall not apply to any person, firm or corporation, or to any manufacturing plant engaged wholly or partially in the manufacture of malt liquors or beverages.

(5) Licenses to engage in the manufacture or bottling of any soda water beverage shall be deemed void and shall be surrendered to the commissioner when the person, firm or corporation to whom it was granted discontinues to use the building, room or apartment wherein such beverage is manufactured or bottled, or when another person, firm or corporation becomes owner, manager or operator of such establishment.

(6) The commissioner is authorized, after reasonable notice, to revoke any license if the licensee fails to comply with any of the provisions of this section or with any rule or regulation promulgated and issued by the commissioner relating to manufacture or bottling of such beverages, and he shall restore to full force and effect any license when the licensee fully complies with all of the provisions of this section and the said rules and regulations.

(7) Any person engaged in the manufacture or bottling of any soda water beverage whose license has been refused or revoked, being dissatisfied with such order of the commissioner, may commence an action in the Circuit Court for the county in which such person resides against the commissioner to restore such license on the ground that the refusal or revocation of the license is unlawful or unreasonable, and the procedure in such action shall be as prescribed by subsection (10) of section 98.06.*

(8) The term "soda water beverage" as used in this section means and includes all such beverages commonly known as soft drinks, as soda water, carbonated or uncarbonated or sweetened and flavored, and mineral and spring waters, carbonated or uncarbonated; and shall not include strong, spirituous, vinous, malt, ardent or intoxicating liquors.

(9) No soft drink or other nonalcoholic beverage, except apple cider, not manufactured in this State shall be sold or offered for sale within this State unless the same is first inspected and registered with the Dairy and Food Commissioner. Such inspection of one sample of each such soft drink or nonalcoholic beverage and registration shall be made annually, and an inspection fee of twenty-five dollars for each such soft drink or other nonalcoholic beverage having a distinguishing flavor or name shall be paid by the manufacturer to the Dairy and Food Commissioner for each inspection. The provisions of this subsection shall not apply to soft drinks or other nonalcoholic beverages manufactured in states where no inspection or license for their sale is required. (Id. § 98.12.)†

NOTE: See also Nos. 7, 103, 171-172, 199 et seq., and 226.

Bread.

21. Milk Bread.—(1) It shall be unlawful to advertise or offer for sale or sell any bread or rolls as or for milk bread or milk rolls, or as made or prepared with milk, unless all of the fluid used in the preparation of such bread or rolls was milk, or unless in lieu of milk there was added to the ingredients used in the preparation of such bread or rolls milk solids and milk fat in the proportion of not less than ten ounces of milk solids, not fat, and three and one-quarter ounces of milk fat for every six pounds of water used. It shall be the duty of the Dairy and Food Commissioner to enforce the provisions of this section.

(2) Any person violating the provisions of this section shall be deemed guilty of a misdemeanor and upon conviction shall be punished by a fine of not less than twenty-five nor more than one hundred dollars, or by imprisonment in the county jail not to exceed thirty days or both. (Stats. 1925, § 125.22.)

22. Bread, How Labeled; Penalty.—(1) Bread, other than wheat or rye bread or milk bread or bread made from a mixture of rye and wheat flour or meal without

*See No. 61.

†For penalty see No. 67.

the addition of materials imparting color that is sold as and for what it is, and bread advertised as having special, nutritive, healthful or curative properties, or as being preventative of ailments, shall, if a descriptive name is used, be true to its name. When offered for sale in loaves, such bread shall be labeled, banded or wrapped, or otherwise enclosed, and the label, band or wrapper shall state the name of the maker of such bread and plainly and distinctly the ordinary names of all the ingredients, other than water used in the manufacture of such bread, in the order of their preponderance by weight, and it shall be unlawful to make any statement regarding bread which shall be false, exaggerated, deceptive or misleading in advertising or in any distributed printed or written matter.

(2) Any person who shall by himself, his servant or agent, or as the servant or agent of any other person, firm or corporation, violate or fail to comply with any provisions of this section shall be demed guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not less than twenty-five dollars nor more than one hundred dollars or by imprisonment in the county jail not less than five days nor more than thirty days or by both such fine and imprisonment, and upon a second conviction shall be punished by a fine of not less than one hundred dollars nor more than five hundred dollars or by imprisonment in the county jail not less than thirty days nor more than sixty days, or by both such fine and imprisonment.* (Id. § 352.075, added L. 1927, c. 230, § 1.)

NOTE: See also Nos. 125 et seq. and 233.

Buckwheat Flour Compound.

23. Adulteration.—No person shall manufacture for sale within this State, or offer or expose for sale, have in possession with intent to sell, or sell or exchange any ground buckwheat containing any product of wheat, corn, rice or other foreign substance, unless each and every package thereof shall be distinctly branded or labeled in letters not less than one-half inch in length with the name of the maker and factory, and the location of such factory, and the words "Buckwheat Flour Compound," together with the words, "This buckwheat flour compound contains the following ingredients and none other," and immediately after the latter words shall appear in the same size letters the true names of each and every ingredient of such mixture or compound: Provided, that sections 352.58 to 352.62 shall not be construed as prohibiting the manufacture and sale of selfrising buckwheat flour when labeled or branded as such and when the same consists only of pure buckwheat flour, salt, sodium, bicarbonate and calcium acid phosphate, cream of tartar or tartaric acid. (Stats. 1925, § 352.58.)

24. Labels.—Any brand or label herein required shall be an inseparable part of the general or distinguishing label, and such label shall be that principal and conspicuous sign under which it is sold and any other label or printed matter upon the package shall not be in contravention of the requirements of sections 352.58 to 352.62. (Id. § 352.59.)

25. Presumption.—The having in possession of any buckwheat flour compound, which is not branded or labeled as hereinbefore required and directed upon the part of any person engaged in the public or private sale of such article, shall, for the purpose of sections 352.58 to 352.62 be deemed prima facie evidence of intent to sell the same. (Id. § 352.60.)

26. Sale, What.—The taking of orders or the making of agreements or contract by any person, firm or corporation or by any agent or representative thereof, for the future delivery of buckwheat flour compound shall be deemed a sale within the meaning of sections 352.58 to 352.62. (Id. § 352.61.)

27. Violations of Sections 352.58 to 352.62.—Any person who shall violate any of the provisions of sections 352.58 to 352.62 shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not less than twenty-five dollars nor more than one hundred dollars, or by imprisonment in the county jail for a period of not less than thirty nor more than ninety days, or by both such fine and imprisonment, in the discretion of the court. (Id. § 352.62.)

NOTE: See also No. 104.

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*Effective one hundred and twenty days after passage and publication. (L. 1927, c. 230, § 2.)

Canned Goods.

28. Labels on Canned Goods.—(1) Any person who shall, himself, or by his servant or agent, or as the servant or agent of any other person, sell, exchange, deliver, or have in his possession with intent to sell, or exchange or expose for sale, or offer for sale or exchange any canned fruits, vegetables, meats, fish or shellfish, unless each can containing such article shall bear a label on which shall be printed the true name of the contents and the name and address of the producer or packer, canning the same, or the dealer who sells the same, shall be guilty of a misdemeanor, and upon conviction thereof, shall be fined not less than twenty-five dollars, nor more than one hundred dollars, or be imprisoned in the county jail not less than thirty days nor more than sixty days.

(2) Any person who shall, himself, or by his servant or agent, or as the servant or agent of any other person, sell, exchange, deliver, or have in his possession with intent to sell or exchange, or expose for sale, or offer for sale or exchange any canned fruits, vegetables, meats, fish, or shellfish containing any artificial coloring, or any bleaching compound, or any article the sale of which as an article of food or as a constituent of an article of food is made a misdemeanor by any statute of this State, shall be guilty of a misdemeanor, and upon conviction thereof, shall be fined not less than twenty-five dollars, nor more than one hundred dollars, or be imprisoned in the county jail not less than thirty days nor more than sixty days. (Stats. 1925, § 352.07.)

NOTE: See also Nos. 61, 85 et seq., 101 et seq., 108, and 118.

Catsup.

See No. 118.

Chocolate.

See No. 117.

Cider.

See Nos. 19, 20, 103 and 171.

Cocoa.

See No. 117.

Cocoa Butter.

See No. 84.

Coffee.

See Nos. 2 and 117.

Cold Storage.

29. Definitions.—For the purpose of this chapter "cold storage" shall mean the storage or keeping of articles of food at or below a temperature above zero of forty-five degrees Fahrenheit in a cold storage warehouse; "cold storage warehouse" shall mean any place artificially cooled to or below a temperature above zero of forty-five degrees Fahrenheit, in which articles of food are placed and held for forty days or more; "articles of food" shall mean fresh meat as defined in section 352.03* and fresh meat products and all eggs, butter and butter substitutes. (Stats. 1925, § 111.01.)

30. License.—No person, firm or corporation shall maintain or operate a cold storage warehouse without a license so to do issued by the Dairy and Food Commissioner. Any person, firm or corporation desiring such license shall make written application to the Dairy and Food Commissioner for that purpose, stating the location of the warehouse. The Dairy and Food Commissioner thereupon shall cause an examination to be made of said warehouse and, if it be found by him to be in proper sanitary condition and otherwise properly equipped for its intended use, he shall issue a license authorizing the applicant to operate the same as a cold

*See No. 108.

storage warehouse during one year upon payment to the State Treasurer by the applicant of a license fee as follows: For a warehouse located in a city of the first class, forty dollars; for a warehouse located in a city of the second class, thirty dollars; for a warehouse located in a city of the third class, twenty dollars; and for a warehouse located in a city of the fourth class, ten dollars. (Id. § 111.02.)

31. **Sanitation.**—In case any cold storage warehouse, or any part thereof, shall at any time be deemed by the Dairy and Food Commissioner to be in an insanitary condition, or not properly equipped for its intended use, he shall notify the licensee of such condition and upon the failure of the licensee to put such cold storage warehouse in a sanitary condition or to properly equip the same for its intended use, within a time to be designated by the Dairy and Food Commissioner, he shall revoke such license. (Id. § 111.03.)

32. **Records and Reports.**—Every such licensee shall keep accurate records of the articles of food received in and of the articles of food withdrawn from his cold storage warehouse, and the Dairy and Food Commissioner shall have free access to such records at any time. Every such licensee shall submit a monthly report to the Dairy and Food Commissioner, setting forth in itemized particulars the quantities and kinds of articles of food received in, delivered from and remaining in his cold storage warehouse. Such monthly reports shall be filed on or before the fifth day of each month, and the reports so rendered shall show the articles of food taken in, and delivered from his cold storage warehouse during the preceding month, the conditions existing on the last day of the preceding month reported and a summary of such reports shall be prepared by the Dairy and Food Commissioner and shall be open to public inspection on or before the tenth day of each month. (Id. § 111.04.)

33. **Inspection.**—The Dairy and Food Commissioner shall inspect and supervise all cold storage warehouses and make such inspection of articles of food therein as he may deem necessary to secure the proper enforcement of this chapter, and he shall have access to all cold storage warehouses at all reasonable times. The Dairy and Food Commissioner may appoint such persons as he deems qualified to make any inspection under this chapter. (Id. § 111.05.)

34. **Purity of Foods.**—No person, firm or corporation, as owner shall knowingly place, receive or keep in any cold storage warehouse any articles used for food or drink or condiment by man, whether simple, mixed or compound, nor any article used or intended for use as ingredients in the composition thereof, or in the preparation thereof, if diseased, tainted, infested or contaminated with maggots or any other form of insect organism or with animal excreta or if otherwise unfit for human consumption, or which may not reasonably be expected to keep wholesome for human consumption, unless said articles bear a label or brand in accordance with forms to be prescribed by the Dairy and Food Commissioner showing plainly the fact that the said articles are not intended for human consumption and are not to be sold or used as and for such, and the date when such articles were received in cold storage, and unless the aforesaid articles shall be stored separate and apart from all foods intended for human consumption. (Id. § 111.06.)

35. **Marking Dates of Reception and Removal of Foods.**—No person, firm or corporation shall place, receive or keep in any cold storage warehouse in this State articles of food unless the same shall be plainly marked, stamped or tagged, either upon the container in which they are packed, or upon the article of food itself, with the date when placed therein; and no person, firm or corporation shall remove, or allow to be removed, such article of food from any cold storage warehouse unless the same shall be plainly marked, stamped or tagged, either on the container in which it is enclosed or upon the article of food itself, with the date of such removal, and such marks, stamps and tags shall be prima facie evidence of such receipt and removal and of the dates thereof. All articles of food in any cold storage warehouse at the time this chapter goes into effect shall, before being removed therefrom, be plainly marked, stamped or tagged with the date when this chapter goes into effect and the date of removal therefrom. It shall be unlawful for any person, firm or corporation, except the ultimate consumer or purchaser of such article of food, to remove, alter, mutilate or conceal such dates of entry and removal from cold storage. When any package containing such article of food shall be broken and the contents thereof sold by items, or when the said dates are marked, stamped or tagged upon the article of food itself in bulk, then the seller shall, at the request of the purchaser, correctly state the information required by this section to be placed upon the original package or upon the article of food itself in bulk, upon a tag to be attached to such item before delivering the same to the purchaser. The container from which such article of food is sold

shall be in plain view of the purchaser or on demand produced for inspection by the purchaser. (Id. § 111.07.)*

36. Time Limitation on Storage.—No person, firm or corporation shall hereafter keep or permit to remain in any cold storage warehouse any article of food which has been held in cold storage either within or without the State, for a longer aggregate period than twelve months, except with the consent of the Dairy and Food Commissioner as hereinafter provided. The Dairy and Food Commissioner may upon application during the twelfth month, extend the period of storage beyond twelve months for any particular article of food, provided the same is found upon examination to be in proper condition for further cold storage. The length of time for which such further storage is allowed shall be specified in the order granting the permission and shall not exceed thirty days. A report on each case in which such extension of storage may be permitted, including information relating to the reason for the action of the Dairy and Food Commissioner, the kinds and amounts of the articles of food for which the storage period was extended, and the length of time for which this continuance was granted, shall be filed, open to public inspection, in the office of the Dairy and Food Commissioner, and shall be included in his annual report. (Id. § 111.08.)

37. Limitation on Storage Other Than Cold Storage.—(1) It shall be unlawful to sell, or offer for sale, any article of food which has been held for a period of forty days or over in cold storage either within or without the State, except as and for "cold storage goods," and without notifying persons purchasing, or intending to purchase the same, that it has been so held. When articles of food which have been held in cold storage for a period of forty days or over are displayed for sale in any store or other place where such articles are sold, a placard, plainly and conspicuously marked "cold storage goods" shall be displayed on the bulk mass of said articles of food, and if articles of food which have been held in cold storage for a period of forty days or more are sold in any store or other place but not exposed to view, a placard setting forth the kind of goods and the fact that they are cold storage shall be conspicuously displayed in the place of sale. It shall be unlawful to sell, offer for sale, represent or advertise as fresh any article of food which has been held in cold storage for a period of forty days or over. It shall be unlawful to sell or to offer for sale, to display, advertise, or to represent in any manner whatsoever for the purpose of selling, any eggs other than cold storage that have been held for a period of forty days or over, either within or without the State, without notifying the persons purchasing or intending to purchase the same, that they are held eggs.

(2) Every person who shall sell any article of food which has been held in cold storage for a period of forty days or over shall keep an accurate record of all such articles sold, showing designation or lot number under which such articles have been held in cold storage, date when sold, kind and quantity sold, and name and address of person to whom sold, and such records shall be open and accessible to the Dairy and Food Commissioner and his agents at all reasonable times, provided, however, that nothing herein shall be construed as requiring persons who sell at retail and directly to consumers only to keep the aforesaid records. (Id. § 111.09.)

38. Foods Removed to be Returned to Storage. It shall be unlawful to return to any cold storage warehouse any article of food which has been once released from storage for the purpose of placing it on the market for sale. Provided, however, that the Dairy and Food Commissioner may, upon application, permit eggs and butter to be returned to any cold storage warehouse, provided the same is found upon examination to be in proper condition for further cold storage. Such return shall be unlawful unless all prior stampings, markings and taggings upon such article shall remain thereon. It shall be unlawful to transfer any article of food from one cold storage warehouse to another, except with the consent of the Dairy and Food Commissioner, and such transfer shall be unlawful unless all prior stampings, markings and taggings upon such article shall remain thereon. (Id. § 111.10.)

39. Rules and Regulations.—The Dairy and Food Commissioner may make all necessary rules and regulations to carry this chapter into effect. Such rules and regulations shall be filed in his office, and shall not take effect until sixty days after such filing. (Id. § 111.11.)

40. Penalty.—Any person, firm or corporation violating any provision of this chapter shall be deemed guilty of a misdemeanor and upon conviction thereof shall be punished for the first offense by a fine of not less than fifty dollars nor more than one hundred dollars and for the second or any subsequent offense by a

*See No. 92.

fine of not less than one hundred dollars nor more than one thousand dollars or by imprisonment of not more than six months, or by both such fine and imprisonment in the discretion of the court. (Id. § 111.12.)

41. Interpretation.—This chapter shall be so interpreted and construed as to effect its general purpose to make uniform the law of those States which enact it. (Id. § 111.13.)

42. Citation.—This chapter may be cited as the "Uniform Cold Storage Act." (Id. § 111.14.)

NOTE: See also Nos. 85 et seq. and 120.

Condiments.

43. Food Products; Definitions; Standards.—In all prosecutions arising under the provisions of these statutes relating to the manufacture or sale of an adulterated, misbranded or otherwise unlawful article of food,* the following definitions and standards for food products shall be the legal definitions and standards, to wit: . . .

(21) SPICES—Spices are aromatic vegetable substances used for the seasoning of food and from which no portion of any volatile oil or other flavoring principle has been removed, and which are clean, sound and true to name.

Allspice, pimento, is the dried fruit of the Pimenta pimenta (L) Karst., and contains not less than eight per cent of quercitannic acid as calculated from the total oxygen absorbed by the aqueous extract; not more than six per cent of total ash, not more than five-tenths (0.5) per cent of ash insoluble in hydrochloric acid, and not more than twenty-five per cent of crude fibre.

Anise is the fruit of Pimpinella anisum L.

Bay leaf is the dried leaf of Lauris nobilis L.

Capers are the flower buds of Capparis spinosa L.

Caraway is the fruit of Carum carvi L.

Red pepper is the red, dried, ripe fruit of any species of Capsicum.

Cayenne pepper, cayenne, is dried ripe fruit of Capsicum frutescens L., Capsicum baccatum L., or some other small-fruited species of Capsicum, and contains not less than fifteen per cent of nonvolatile ether extract; not more than six and five-tenths (6.5) per cent of total ash; not more than five-tenths (0.5) per cent of ash insoluble in hydrochloric acid; not more than one and five-tenths (1.5) per cent of starch, and not more than twenty-eight per cent of crude fibre.

Paprika is the dried ripe fruit of Capsicum annuum L., or some other large-fruited species of Capsicum, excluding seeds and stems.

Celery seed is the dried fruit of Apium graveolens L.

Cinnamon is the dried bark of any species of the genus Cinnamomum from which the outer layers may or may not have been removed.

True cinnamon is the dried inner bark of Cinnamomum zeylanicum Breyne.

Cassia is the dried bark of various species of Cinnamomum other than Cinnamomum zeylanicum, from which the outer layers may or may not have been removed.

Cassia buds are the dried immature fruit of species of cinnamomum.

Ground cinnamon, ground cassia, is a powder consisting of cinnamon, cassia, or cassia buds, or a mixture of these species, and contains not more than six per cent of total ash and not more than two per cent of sand.

Cloves are the dried flower buds of Caryophyllus aromaticus L., which contains not more than five per cent of clove stems; not less than ten per cent of volatile ether extract; not less than twelve per cent of quercitannic acid as calculated from the total oxygen absorbed by the aqueous extract; not more than eight per cent of total ash; not more than five-tenths (0.5) per cent of ash insoluble in hydrochloric acid, and not more than ten per cent of crude fibre.

Coriander is the dried fruit of Coriandum sativum L.

Cumin seed is the fruit of Cuminum cyminum L.

Dill seed is the fruit of Anethum graveolens L.

Fennel is the fruit of Foeniculum foeniculum (L.) Karst.

Ginger is the washed and dried or decorticated and dried rhizone of Zingiber zingiber (L.) Karst., and contains not less than forty-two per cent of starch; not more than eight per cent of crude fibre, not more than six per cent of total ash, not more than one per cent of lime, and not more than three per cent of ash insoluble in hydrochloric acid.

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*See No. 7 et seq.

Limed ginger, bleached ginger, is whole ginger coated with carbonate of lime, and contains not more than ten per cent of ash, not more than four per cent of carbonate of lime, and conforms in other respects to the standard for ginger.

Horse-radish is the root of Roripa armoracia (L.) Hitchcock, either by itself or ground and mixed with vinegar.

Mace is the dried arillus of Myristica fragrans Houttuyn, and contains not less than twenty, not more than thirty per cent of nonvolatile ether extract, not more than three per cent of total ash, and not more than five-tenths (0.5) per cent of ash insoluble in hydrochloric acid, and not more than ten per cent of crude fibre.

Macassar mace, Papua mace, is the dried arillus of Myristica argentea Warb.

Bombay mace is the dried arillus of Myristica malabarica Lamarck.

Marjoram is the leaf, flower, and branch of Marjorana marjorana (L.) Karst.

Mustard seed is the seed of Sinapis alba L. (white mustard), Brassica nigra (L.) Koch (black mustard), or Brassica juncea (L.) Cosson (black or brown mustard).

Ground mustard is a powder made from mustard seed, with or without the removal of the hull, and a portion of the fixed oil, and contains not more than two and five-tenths (2.5) per cent of starch and not more than eight per cent total ash.

Prepared mustard, German mustard, French mustard, mustard paste, is a paste composed of a mixture of ground mustard seed or mustard flour with salt, spices, and vinegar, and, calculated free from water, fat and salt, contains not more than twenty-four per cent of carbohydrates, calculated as starch, determined according to the official methods, not more than twelve per cent of crude fibre, not less than thirty-five per cent of protein, derived solely from the materials named.

Nutmeg is the dried seed of the Myristica fragrans Houttuyn, deprived of its tests with or without a thin coating of lime, and contains not less than twenty-five per cent of nonvolatile ether extract, not more than five per cent of total ash, not more than five-tenths (0.5) per cent of ash insoluble in hydrochloric acid, and not more than ten per cent of crude fibre.

Macassar nutmeg, Papua nutmeg, male nutmeg, long nutmeg, is the dried seed of Myristica argentea Warb, deprived of its testa.

Black pepper is the dried immature berry of Piper nigrum L. and contains not less than six per cent of nonvolatile ether extract, not less than twenty-five per cent of starch, not more than seven per cent of total ash, not more than two per cent of ash insoluble in hydrochloric acid, and not more than fifteen per cent of crude fibre. One hundred parts of the nonvolatile ether extract contain not less than three and twenty-five hundredths (3.25) parts of nitrogen. Ground black pepper is the product made by grinding the entire berry, and contains several parts of the berry in their normal proportions.

Long pepper is the dried fruit of Piper longum L.

White pepper is the dried mature berry of Piper nigrum L. from which the outer coating or the outer and inner coatings have been removed, and contains not less than six per cent of nonvolatile ether extract, not less than fifty per cent of starch, not more than four per cent of total ash, not more than five-tenths (0.5) per cent of ash insoluble in hydrochloric acid, and not more than five per cent of crude fibre. One hundred parts of the nonvolatile ether extract contains not less than four parts of nitrogen.

Saffron is the dried stigma of Crocus sativus L.

Sage is the leaf of Salvia officinalis L.

Savory, summer savory, is the leaf, blossom, and branch of Satureja hortensis L.

Thyme is the leaf and tip of blooming branches of Thymus vulgaris L. (Stats. 1925, § 352.03.)

NOTE: See also No. 85 et seq., and No. 114.

Confectionery.

44. Food Products; Definitions; Standards.—In all prosecutions arising under the provisions of these statutes relating to the manufacture or sale of an adulterated, misbranded or otherwise unlawful article of food,* the following defintions and standards for food products shall be the legal definitions and standards, to wit: . . .

(19) CANDY.—Candy is the product made from a saccharine substance or substances with or without the addition of harmless coloring, flavoring, or filling materials, and contains no terra alba, barytes, talc, chrome yellow, or other mineral

*See No. 7 et seq.

substances, or poisonous colors or flavors, or other ingredients deleterious or detrimental to health, or any vinous, malt, or spirituous liquor or compound or narcotic drug. (Stats. 1925, § 352.03.)

NOTE: See also Nos. 7, 85 et seq., 117, and 128 et seq.

Dairy Products—Substitutes for Dairy Products.

45. Food Products; Definitions; Standards.—In all prosecutions arising under the provisions of these statutes relating to the manufacture or sale of an adulterated, misbranded or otherwise unlawful article of food,* the following definitions and standards for food products shall be the legal definitions and standards, to wit: . . .

(5) MILK.—Milk is the fresh, clean, lacteal secretion obtained by the complete milking of one or more healthy cows, properly fed and kept, excluding that obtained within eight days before and four days after calving, and contains not less than eight and one-half (8.5) per cent of solids not fat, and not less than three per cent of milk fat.

Modified milk is milk modified in its composition so as to have a definite and stated percentage of one or more of its constituents.

Skim milk is milk from which a part or all of the cream has been removed, and contains not less than nine per cent of milk solids.

Pasteurized milk is milk that has been heated below boiling but sufficiently to kill most of the active organisms present and immediately cooled to fifty degrees Fahrenheit or lower.

Sterilized milk is milk that has been heated at the temperature of boiling water or higher for a length of time sufficient to kill all organisms present.

Condensed milk, evaporated milk, concentrated milk, is the product resulting from the evaporation of a considerable portion of water from milk, and contains not less than twenty-six and fifteen hundredths per cent of milk solids, and not less than eight per cent of milk fat, with an allowable tolerance or variation therefrom as to the per cent of milk solids and the per cent of milk fat, which shall in no case be lower, all tolerances or variations being allowed, than the standards therefor latest promulgated by the United States Department of Agriculture.

Sweetened condensed milk, sweetened evaporated milk, sweetened concentrated milk, is the product resulting from the evaporation of a considerable portion of the water from milk, and to which sugar (sucrose) has been added, and contains not less than twenty-eight per cent of milk solids, and not less than eight per cent of milk fat, with an allowable tolerance or variation therefrom as to the per cent of milk solids and the per cent of milk fat, which shall in no case be lower, all tolerances or variations being allowed, than the standards therefor latest promulgated by the United States Department of Agriculture.

Condensed skim milk is skim milk from which a considerable portion of water has been evaporated.

Buttermilk is the product that remains when butter is removed from milk or cream in the process of churning.

Goat's milk, ewe's milk, et cetera, are the fresh, clean lacteal secretions, free from colostrum, obtained by the complete milking of healthy animals other than cows, properly fed and kept, and conform in name to the species of animals from which they are obtained.

(6) CREAM.—Cream is that portion of milk, rich in milk fat, which rises to the surface of milk on standing, or is separated from it by centrifugal force, is fresh and clean, and contains not less than eighteen per cent of milk fat.

Evaporated cream, clotted cream, is cream from which a considerable portion of water has been evaporated.

(7) MILK FAT.—Milk fat, butter fat, is the fat of milk and has a Reichert-Meissl number of not less than twenty-four and a specific gravity of not less than nine hundred five thousandths (0.905) at forty degrees Centigrade compared with water at the same temperature.

(8) BUTTER.—Butter is the clean, nonrancid product made by gathering in any manner the fat of fresh or ripened milk or cream into a mass, which also contains a small portion of the other milk constituents, with or without salt or added coloring matter, and contains not less than eighty-two and five-tenths (82.5) per cent of milk fat with an allowance or tolerance of not to exceed two and five-tenths (2.5) per cent of said butter or mass so that in no case or event shall the milk fat content of said butter or mass be less than eighty (80.0) per cent.

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*See No. 7 et seq.

Renovated butter, process butter, is the product made by melting butter and reworking, without the addition or use of chemicals or any substances except milk, cream, or salt, and contains not more than sixteen per cent of water and at least eighty-two and five-tenths (82.5) per cent of milk fat with an allowance or tolerance of not to exceed two and five-tenths (2.5) per cent of said renovated butter or process butter so that in no case or event shall the milk fat content of said renovated butter or process butter be less than eighty (80.0) per cent.

(9) CHEESE.—(a) Cheese is the sound, solid, and ripened fruit produce made from milk or cream by coagulating the casein thereof with rennet, pepsin, or lactic acid, with or without the addition of ripening ferments and seasoning or added coloring matter; and contains, in the water-free substance, not less than fifty per cent of milk fat; and cheese known as American or Cheddar cheese is not more than thirty-eight per cent of moisture with an allowance or tolerance of not to exceed one per cent in excess so that in no case or event shall the moisture content of said cheese exceed thirty-nine per cent; and cheese known as Brick cheese not more than forty-two per cent of moisture with an allowance or tolerance of one per cent in excess so that in no case shall the moisture content of said cheese exceed forty-three per cent; except that Emmenthaler cheese, commonly known as domestic Swiss cheese, shall contain in the water-free substance not less than forty-three per cent of milk fat.

(b) Process cheese is the food product produced by mixing, blending and uniting with the aid of heat, cheese of one or more lots of different quality, make, flavor, age, size, weight, shape, of like or different milk fat or moisture content, so as to produce a uniform mass readily makable into desired forms, shapes, sizes and weights; and may contain added seasoning, added harmless coloring matter, harmless emulsifying agents as disodium phosphate, sodium citrate, sodium and potassium tartrate or mixtures of the same or other harmless emulsifying chemicals in quantities not exceeding three per cent; and contains in the water-free substance not less than fifty per cent of milk fat; and process American cheese not more than thirty-nine per cent of moisture with an allowance or tolerance of one per cent in excess, so that in no case shall the moisture content of said process American cheese exceed forty per cent; and process Brick cheese not more than forty-two per cent of moisture with an allowance or tolerance of one per cent in excess, so that in no case shall the moisture content of said process Brick cheese exceed forty-three per cent; and process Emmenthaler cheese or process domestic Swiss cheese shall contain not more than forty per cent of moisture with an allowance or tolerance of one per cent in excess so that in no case shall the moisture content of said process Emmenthaler cheese or process domestic Swiss cheese exceed forty-one per cent; except that process Emmenthaler cheese or process domestic Swiss cheese shall contain in the water-free substance not less than forty-three per cent of milk fat.

(c) Skim milk cheese is the sound, solid and ripened product, made from skim milk or milk from which any of the fat originally contained therein has been removed by coagulating the casein thereof with rennet, pepsin, or lactic acid, with or without the addition of ripening ferments and seasoning.

(d) Goat's milk cheese, ewe's milk cheese, et cetera, are the sound, ripened products made from the milks of the animals specified by coagulating the casein thereof with rennet, pepsin, or lactic acid, with or without the addition of ripening ferments and seasoning.

(10) ICE CREAM.—(a) Ice cream is a frozen product made from cream, or milk and cream, and sugar, and may contain added milk solids, added milk fat, eggs, natural flavoring, edible gelatin or harmless vegetable gum, and shall contain not less than twelve per cent of milk fat, nor more than one-half of one per cent of the said gelatin or gum, or a mixture of the said gelatin and gum. The volume of ice cream after being melted shall be not less than one-half the volume of the ice cream as manufactured and sold.

(b) Fruit ice cream is a frozen product made from cream, or milk and cream, sugar and sound, clean, mature fruit, and may contain added milk solids, added milk fat, eggs, natural flavoring, harmless color, edible gelatin or harmless vegetable gum, and shall contain not less than ten per cent of milk fat, nor more than one-half of one per cent of the said gelatin or gum, or a mixture of the said gelatin and gum. The volume of fruit ice cream after being melted shall be not less than one-half the volume of the fruit ice cream as manufactured and sold.

(c) Nut ice cream is a frozen product made from cream, or milk and cream, sugar, and sound, nonrancid nuts, and may contain added milk solids, added milk fat, eggs, natural flavoring, harmless color, edible gelatin or harmless vegetable gum, and shall contain not less than ten per cent of milk fat, nor more than one-half of one per cent of the said gelatin or gum, or a mixture of the said gelatin

and gum. The volume of nut ice cream after being melted shall be not less than one-half the volume of the nut ice cream as manufactured and sold.

(d) Chocolate or cocoa ice cream and caramel ice cream are frozen products made from cream, or milk and cream, sugar, chocolate or cocoa, caramel, and may contain added milk solids, added milk fat, eggs, natural flavoring, edible gelatin or harmless vegetable gum, and shall contain not less than ten per cent of milk fat, nor more than one-half of one per cent of the said gelatin or gum, or a mixture of the said gelatin and gum. The volume of chocolate or cocoa ice cream or caramel ice cream after being melted shall be not less than one-half the volume of the chocolate or cocoa ice cream or caramel ice cream as manufactured and sold.

(e) Orange ice cream, lemon ice cream and wintergreen ice cream are frozen products made from cream, or milk and cream, sugar and orange flavoring, lemon flavoring or wintergreen flavoring, and may contain added milk solids, added milk fat, eggs, harmless color, edible gelatin or harmless vegetable gum, and shall contain not less than twelve per cent of milk fat, nor more than one-half of one per cent of the said gelatin or gum, or a mixture of the said gelatin and gum. The volume of orange ice cream, lemon ice cream, caramel ice cream or wintergreen ice cream after being melted shall not be less than one-half the volume of the orange ice cream, lemon ice cream, caramel ice cream, or wintergreen ice cream as manufactured and sold.

(f) Maple ice cream is a frozen product made from cream, or milk and cream, sugar, and maple sugar, or maple syrup, and may contain added milk solids, added milk fat, eggs, harmless color, edible gelatin or harmless vegetable gum, and shall contain not less than ten per cent of milk fat, nor more than one-half of one per cent of the said gelatin or gum, or a mixture of the said gelatin and gum. The volume of maple ice cream after being melted shall be not less than one-half the volume of the maple ice cream as manufactured and sold.

(g) Custard ice cream (New York ice cream) is a frozen product made from cream, or milk and cream, sugar, eggs or egg powder or egg yolk; and may contain added milk solids, added milk fat, a natural flavoring, edible gelatin or harmless color, and shall contain not less than twelve per cent of milk fat and five egg yolks or their equivalent in egg powder or egg yolk powder in each gallon, nor more than one-half of one per cent of said gelatin or gum, or a mixture of said gelatin or gum. The volume of custard ice cream (New York ice cream) after being melted shall be not less than one-half the volume of the custard ice cream (New York Ice cream).

(11) WHEY.—Whey is the product remaining after the removal of fat and casein from milk in the process of cheese making.

Whey cream is that portion of whey rich in milk fat which is separated from whey by centrifugal force, is fresh and clean and contains not less than eighteen per cent of milk fat.

Kumiss is the product made by the alcoholic fermentation of mare's milk or cow's milk. (Stats. 1925, § 352.03.)

46. Milk; Cream; Sale of Adulterated; Penalty.—Any person who shall by himself, his servant or agent or as the servant or agent of any other person, or as the servant or agent of any corporation, sell or offer for sale, furnish or deliver, or have in his possession with intent to sell or offer for sale or furnish or deliver to any creamery, cheese factory, corporation or person, any adulterated milk or any adulterated cream shall be guilty of a misdemeanor, and upon conviction thereof, shall be punished by a fine of not less than twenty-five dollars nor more than one hundred dollars or be imprisoned in the county jail not less than thirty days nor more than sixty days. (Id. § 352.24.)

47. Standard Pure Milk.—(1) In all prosecutions under section 352.24, or any other section of these statutes or the laws amendatory thereof or supplementary thereto relating to the sale of adulterated milk or adulterated cream, the term adulterated milk shall mean: Milk containing less than three per centum of milk fat, or milk containing less than eight and one-half per centum of milk solids, not fat, or milk drawn from cows within eight days before or four days after parturition, or milk from which any part of the cream has been removed, or milk of any kind which has been diluted with water or any other fluid, or milk to which has been added or into which has been introduced any coloring matter or chemical or preservative or deleterious or filthy substance or any animal fats or animal or vegetable oils or any foreign substance whatsoever; or milk drawn from cows kept in a filthy or unhealthy condition, or milk drawn from any sick or diseased cow, or cow having ulcers or other running sores, or milk drawn from cows fed unwholesome food, or milk in any stage of putrefaction, or milk contaminated by being kept in stables containing cattle or other animals.

(2) In all such prosecutions the term adulterated cream shall mean cream containing less than eighteen per centum of milk fat, or cream taken from milk drawn from cows within eight days before or four days after parturition, or cream from milk to which has been added or introduced any coloring matter or chemical or preservative or deleterious or filthy substance or any animal fats or animal or vegetable oils or any foreign substance whatsoever, or cream from milk drawn from cows kept in a filthy or unhealthy condition, or cream from milk drawn from any sick or diseased cow or cow having ulcers or other running sores, or cream from milk drawn from cows fed unwholesome food, or cream contaminated by being kept in stables containing cattle or other animals, or cream to which has been added or into which has been introduced any coloring matter or chemical or preservative or deleterious or filthy substance or any foreign substance whatsoever, or cream in any stage of putrefaction.

(3) Nothing in this section shall be construed to prohibit the sale of pasteurized milk or cream to which viscogen or sucrate of lime has been added solely for the purpose of restoring the viscosity, if the same be distinctly labeled in such manner as to advise the purchaser of its true character.

(4) Nothing in this section shall be construed as prohibiting the sale of milk commonly known as "skimmed milk," when the same is sold as and for "skimmed milk."

(5) Nothing in this section shall be construed to prohibit the sale of milk from cows known as "reactors," when such reacting cow or cows show no external evidence of disease to a competent veterinarian designated by the Department of Agriculture to examine the same, and when such milk is pasteurized or sterilized in accordance with the standards or methods prescribed or to be prescribed by the Dairy and Food Commissioner, but such reacting cow or cows shall be examined every six months at the expense of the owner, by a veterinarian approved by the Department of Agriculture, and a report of the inspection shall be filed by the owner with the State Veterinarian. Such inspections may be made fifteen days prior to or after each six-month period.

(6) Milk drawn from cows within eight days before or four days after parturition, or milk to which has been added or into which has been introduced any coloring matter or chemical or preservative or deleterious or filthy substance or milk drawn from cows kept in a filthy or unclean condition, or milk drawn from any sick or diseased cow or cow having ulcers or other running sores, or milk drawn from cows fed unwholesome food, or milk contaminated by being kept in stables containing cattle or other animals and cream from any such milk, or cream in any stage of putrefaction are hereby declared to be unclean and unsanitary milk or unclean and unsanitary cream, as the case may be. (Id. § 352.25.)

48. Adding Antiseptics to Milk, Etc.—Any person who shall sell or offer for sale, consign or have in possession with intent to sell any milk, cream, butter, cheese or other dairy products, or who shall deliver to any creamery or cheese factory milk or cream to be manufactured into butter or cheese to which milk, cream, butter, cheese or other dairy products, boracic acid, salicylic acid or compounds containing them, or other antiseptics injurious to health have been added, shall be punished by fine not exceeding one hundred dollars nor less than twenty-five dollars. (Id. § 352.26.)

49. Insanitary Milk and Cream.—No person by himself or agent shall offer for sale, furnish or deliver, or have in possession with the intent to sell, or offer for sale, or furnish or deliver, milk or cream drawn from sick or diseased cow or cows kept in filthy and insanitary condition, or cows fed on refuse or slops from distilleries or vinegar factories, unless such refuse or slop be mixed with other dry sanitary grain or food to a consistency of a thick mush. (Id. § 352.27.)

50. Use of Preservative Prohibited.—No person by himself or agent shall offer for sale or furnish or deliver or have in possession with the intent to sell, offer for sale, or furnish or deliver, any milk or cream having therein or containing in any amount any foreign substance or coloring matter or any chemical or preservative, whether for the purpose of increasing the quantity of milk or cream or for improving its appearance, or for preserving the condition of sweetness thereof, or for any purpose whatever; provided, that nothing in sections 352.27, 352.28 and 352.29 shall be construed to prohibit the sale of pasteurized milk or cream, to which viscogen or sucrate of lime has been added solely for the purpose of restoring the viscosity, if the same be distinctly labeled in such manner as to advise the purchaser of its true character. (Id. § 352.28.)

51. Violations of Sections 352.27 and 352.28.—Any person violating any of the provisions of sections 352.27 and 352.28 shall, upon conviction, be fined not less than twenty-five dollars nor more than one hundred dollars for each and every

offense, or be confined in the county jail not less than thirty days nor more than sixty days. (Id. § 352.29.)

52. **Definitions; "Milk" and "Cream."**—(1) For the purposes of this act, the term "milk" shall mean the fresh, clean, lacteal secretion obtained by the complete milking of one or more healthy cows, properly fed and kept, excluding that obtained within eight days before and four days after calving, and contains not less than eight and one-half per cent of solids not fat, and not less than three per cent of milk fat; and the term "cream" shall mean that portion of milk, rich in milk fat, which rises to the surface of milk on standing, or is separated from it by centrifugal force, is fresh and clean, and contains not less than eighteen per cent of milk fat.

(2) Milk which shall be drawn from cows that are kept in barns or stables which are not reasonably well lighted and ventilated, or that are kept in barns or stables that are filthy from an accumulation of animal feces and excreta or from any other cause; or milk which shall be drawn from cows which are themselves in a filthy condition; or milk kept or transported in dirty, rusty, or open-seamed cans or other utensils; or milk that is stale, putrescent, or putrid; or milk to which has been added any unclean or unwholesome foreign substance; or milk which has been kept exposed to foul or noxious air or gases in barns occupied by animals, or kept exposed in dirty, foul or unclean places or conditions, is hereby declared to be insanitary milk.

(3) Cream produced from any such aforesaid insanitary milk; or cream produced by the use of a cream separator which separator had not been thoroughly washed, cleansed, and scalded after previous use in the separation of cream from milk; or cream produced by the use of a cream separator placed or stationed in any unclean or filthy room or place or in any building containing a stable wherein are kept cattle or other animals, unless such cream separator is so separated and shielded by partition from the stable portion of such building as to be free from all foul or noxious air or gases which issue or may issue from such place or stable; or cream that is stale, putrescent, or putrid; or cream that is kept or transported in dirty, rusty, or open-seamed cans or other utensils; or cream which has been kept exposed to foul or noxious air or gases in barns occupied by animals, or in dirty, foul, or unclean places or conditions, is hereby declared to be insanitary cream. (Id. § 352.30.)

53. **Insanitary Milk and Cream; Sale, Delivery, Prohibited.**—No person shall by himself, his servant, or agent, or as the servant or agent of any other person, or as the officer, servant, or agent of any firm or corporation, sell or offer for sale, furnish or deliver, or have in possession or under his control with intent to sell or offer for sale, or furnish, or deliver to any person, firm, or corporation as food for man, or to any creamery, cheese factory, milk condensing factory, or milk or cream dealer, any insanitary milk or any insanitary cream. (Id. § 352.31.)

54. **Insanitary By-Products; Sale, Prohibited.**—No person shall by himself, his servant, or agent, or as the servant or agent of any other person, or as the servant or agent of any firm or corporation, manufacture for sale any article of food for man from any insanitary milk or from any insanitary cream. (Id. § 352.32.)

55. **Premises, Utensils; Insanitary Conditions Prohibited.**—(1) All premises and utensils used in the handling of milk, cream, and by-products of milk, and all premises and utensils used in the preparation, manufacture, or sale, or offering for sale of any food product for man from milk or cream or the by-products of milk, which shall be kept in an unclean, filthy, or noxious condition are hereby declared to be insanitary.

(2) It shall be unlawful for any person, firm, or corporation engaged in selling, or furnishing milk, cream, or any by-products of milk, intended for use as food for man; and it shall be unlawful for any person, firm, or corporation, engaged in selling or furnishing milk, cream, or any by-product of milk, to any creamery, cheese factory, milk condensing factory, or to any place where such milk, cream, or by-products of milk are manufactured or prepared into a food product for man and for sale as such; and it shall be unlawful for any milk dealer or an employee of such milk dealer or any person, firm, or corporation, or the employee of such person, firm or corporation who operates a creamery, cheese factory, milk condensing factory, or who manufactures or prepares for sale any article of food for man from milk, cream, or by-products of milk, or who manufactures, reworks or packs butter for sale as a food product, to maintain his premises and utensils in an insanitary condition. (Id. § 352.33.)

56. **Cans, Bottles, Vessels; Cleansing.**—Any person, firm, or corporation, who receives in cans, bottles, or other vessels any milk, or cream, or other dairy product to be manufactured into food for man, or for the purpose of resale when such cans, bottles, or vessels are to be returned, shall cause the said cans,

bottles, or other vessels to be thoroughly washed and cleansed, and shall return or cause the same to be delivered to a common carrier for shipment to the owner thereof, within seventy-two hours after the contents of such container is removed. (Id. § 352.34.)

57. Violations of Sections 352.30 to 352.35.—Any person who by himself, his servant, or agent, or as the servant or agent of any other person, or as the officer, servant or agent of any firm or corporation, who violates any provision of sections 352.30 to 352.35 shall, upon conviction thereof, be punished by a fine of not less than twenty-five dollars nor more than one hundred dollars for each and every offense, or shall be imprisoned in the county jail not less than thirty days nor more than sixty days. (Id. § 352.35.)

58. Cleanliness of Dairy Cows.—Any person owning or managing a dairy, the product of which is sold for family use, who shall feed his cows upon unwholesome food or keep them in unclean stables or handle the milk with unclean utensils shall be deemed guilty of a misdemeanor and upon conviction thereof be fined not less than twenty-five dollars nor more than one hundred dollars for the first offense, and not less than one hundred dollars nor more than two hundred dollars for each subsequent offense. (Id. § 352.45.)

59. Statistics Relating to Dairy Industries.—(1) The commissioner shall compile at least once in two years statistics relating to the dairy industry in this State, and for such purpose may forward to the owner or manager of any creamery, cheese factory, condensery, or to any other person, firm, or corporation dealing in or manufacturing dairy products, blanks calling for specific information relating to such industry, and in case of cheese factories, the information shall be detailed so as to show the number of pounds each of American, Swiss, limburger and brick cheese made in each factory. These blanks shall, within sixty days from receipt thereof, be filled out and returned to the commissioner and all questions thereon propounded and all information required by such blanks, so far as it is within the power of such person, firm, or corporation to answer or furnish the same, shall be answered and furnished. All local assessors, upon request of the commissioner, shall collect and furnish information relating to dairy statistics as said commissioner may require. The commissioner may take other necessary steps to secure full and complete information and statistics relating to the dairy industry, and to promote the welfare of that industry.

(2) Any person, firm or corporation who is the owner or manager of any creamery, cheese factory or condensery, and any person, firm or corporation dealing in or manufacturing dairy products failing to comply with subsection (1), shall be punished by a fine of not less than five dollars nor more than twenty-five dollars, or imprisonment in the county jail not more than ten days. (Id. § 98.03.)

60. Buttermaker's and Cheesemaker's License.—(1) For the purpose of this section the term "buttermaker" and "cheesemaker" shall respectively mean and include a person employed or who may be employed in any butter or cheese factory who has charge of and supervision over the actual process of manufacturing butter or cheese, and shall not include a person employed in a butter or cheese factory for the purpose of aiding or assisting in the manufacture of such product. This act shall not affect a person making up a product produced on his own farm, nor shall it be deemed unlawful for a licensed cheesemaker employed in a licensed cheese factory to make butter or whey cream butter for the use or consumption only of the patrons thereof.

(2) On and after the first day of January, 1916, no person shall engage in the manufacture of butter or cheese as a buttermaker or cheesemaker unless he shall have first secured a license from the Dairy and Food Commissioner. Such license for butter or cheesemakers shall be issued by the Dairy and Food Commissioner under such rules and regulations as he shall prescribe relating to the qualifications of applicants for securing licenses. Such qualifications shall include among other things: Previous record in operating and keeping in sanitary condition the butter or cheese factory in which he has been employed.

(3) Application for a butter maker's or cheesemaker's license shall be made upon an application blank furnished by the Dairy and Food Commissioner. Upon receipt of any such application the Dairy and Food Commissioner shall issue a permit to such applicant to carry on the work of a buttermaker or cheesemaker. Such permit shall have the full force and effect of a license to carry on the work of a buttermaker or cheesemaker only until a license shall have been issued to the applicant or until such applicant shall have been notified of the denial of such application. At the time such permit is issued, the Dairy and Food Commissioner shall also furnish to the applicant the rules and regulations incident to securing a

license and also suggestions relating to the proper method of operating butter or cheese factories.

(4) Each application for such license shall be accompanied by a fee of one dollar payable to the Dairy and Food Commissioner, and no license shall be issued until such fee is paid the Dairy and Food Commissioner. In case license is refused, the fee accompanying the application shall be returned by the Dairy and Food Commissioner to the applicant with notification of refusal.

(5) Each buttermaker's or cheesemaker's license shall be subject to revocation by the Dairy and Food Commissioner upon reasonable written notice that the licensee has violated any of the rules and regulations prescribed by the commissioner, or has violated any of the laws of the State relating to milk or cream, or milk or cream products.

(6) Each buttermaker's or cheesemaker's license shall expire on the first day of January next succeeding the date of its issue. (Id. § 98.05.)*

61. **Condensary, Cannery and Butter and Cheese Factory Licenses.**—(1) No person shall operate a condensary, cannery or butter or cheese factory or a receiving station without a license therefor from the commissioner. Such license shall be granted under such reasonable rules and regulations as the commissioner may from time to time prescribe. Upon receiving an application for such license the commissioner shall issue a permit to the applicant to operate, and such permit shall have the effect of a license only until a license shall have been issued to the applicant, or until such applicant shall have been notified of the denial of his application.

(2) As soon as convenient after the filing of such application, the commissioner shall cause an investigation to be made of the conditions of such condensary, cannery or butter or cheese factory or receiving station for the purposes of determining whether a license should be granted.

(3) Each application for such license shall be made upon an application blank furnished by the commissioner upon request, and shall give such information as the commissioner may reasonably require, and the commissioner shall furnish to the applicant the rules and regulations incident to securing a license.

(4) Each application for a license to operate a butter or cheese factory or a receiving station shall be accompanied by a fee of two dollars, and for a cannery or condensary by a fee of twenty-five dollars, payable to the commissioner, and no license shall be issued until such fee is paid. In case a license is refused, the fee shall be returned by the commissioner to the applicant with notice of refusal.

(5) License to operate a receiving station or a butter factory or cheese factory shall expire on the first day of January next following the date of issue, but may be renewed without inspection on or before the first day of January of each year upon application of the licensee and upon payment of two dollars to the commissioner; where a butter and cheese factory are operated together in one plant only one license and fee shall be required.

(6) License to operate a condensary or canning factory shall expire on the thirty-first day of March next following the date of issue, but may be renewed, without inspection, on or before the first day of April of each year, upon the application of the licensee, and upon the payment of twenty-five dollars to the commissioner.

(7) No permit, license or renewal shall be transferrable.

(8) License to operate shall be deemed void, and shall be surrendered to the commissioner, when the person to whom granted discontinues the use of the building for which such license was granted.

(9) The commissioner is authorized, after reasonable notice, to suspend or revoke any license if the licensee fails to comply with any of the provisions of this section, or with any rule or regulation promulgated by the commissioner, and he shall restore such license when the licensee fully complies with all of the provisions of this section and the said rules and regulations.

(10) The owner or operator of any receiving station or depot or any butter or cheese factory or cannery or condensary, being dissatisfied with any order of the commissioner to close the same or revoking or refusing a license to operate it, may commence an action in the Circuit Court for the county in which such station, depot, factory, cannery or condensary is located against the commissioner to vacate and set aside such order on the ground that the order is unlawful, or unreasonable. The complaint shall be served with the summons. The answer or demurrer shall be served within ten days after service of the complaint. All such action shall have precedence over any civil cause of a different nature, and the

*For penalty, see No. 67.

court shall always be deemed open for the trial thereof, and the same shall be tried and determined as other civil actions. No injunction shall issue suspending or staying any order of the commissioner, except upon application to the court or the presiding judge thereof, notice to the commissioner and a hearing.

(11) For the purpose of this section the term "receiving station" shall mean and include any building or place used in buying or receiving and shipping milk or cream, and shall not mean, include or apply to the gathering or collecting of milk or cream by wagon or other similar vehicle, or by automobile or other similar motor vehicle, or to the distribution of milk or cream to its ultimate consumer. (Id. § 98.06.)*

62. Milk, Adding Foreign Fats.—(1) It shall be unlawful for any person, firm or corporation, by himself, his servant or agent, or as the servant or agent of another, to manufacture, sell or exchange, or have in possession with intent to sell or exchange, any condensed or evaporated milk which shall not conform at least to the minimum standards set forth in subsection (5) of section 352.03,† and which if contained in hermetically sealed cans does not bear stamped or labeled thereon, the name and address of the manufacturer, or jobber thereof, or dealer therein.

(2) It shall be unlawful for any person, firm or corporation, by himself, his servant or agent, or as the servant or agent of another, to manufacture, sell or exchange, or have in possession with intent to sell or exchange, any milk, cream, skim milk, buttermilk, condensed or evaporated milk, powdered milk, condensed skim milk, or any of the fluid derivatives of any of them to which has been added any fat or oil other than milk fat, either under the name of said products or articles or the derivatives thereof or under any fictitious or trade name whatsoever. Nothing in this section shall be construed to prohibit the manufacture, sale, exchange or possession with intent to sell, of proprietary foods containing milk or skim milk in powdered form, when said proprietary foods are plainly labeled so as to show their composition and the fact that they are to be sold and used exclusively as prescribed by physicians in the feeding of invalids, infants and young children.

(3) It shall be unlawful for any person, firm or corporation, by himself, his servant or agent, or as the servant or agent of another, to sell or exchange, or expose for sale or exchange, or have in possession with intent to sell or exchange, any condensed or evaporated or powdered skim milk in containers holding less than ten pounds avoirdupois net weight and each said container shall bear the name and address of the manufacturer, distinctly branded, indented, labeled or printed thereon, together with the words "condensed skim milk" or "powdered skim milk," as the case may be, in Roman letters of a size at least as large as any other words or letters appearing on said brand, indentation or label.

(4) The commissioner, by himself or by his assistants, chemists, inspectors or agents, shall be charged with the enforcement of the provisions of this section.

(5) Nothing in this section shall be construed to prohibit the shipment into this State from a foreign State and the first sale thereof in this State in the original package intact and unbroken, of any of the products or articles, the manufacture, sale or exchange of which or possession of which, with intent to sell or exchange, is prohibited hereby.

(6) Should any subsection or subsections or any part of a subsection or subsections of this section become or be declared to be inoperative or void for any cause or reason whatsoever, the remainder of the subsections or of such subsections shall be and remain in full force and effect. (Id. § 98.07.)*

63. Special Dairy and Food Inspectors.—(1) Special dairy and food inspectors may be appointed by the commissioner for any factory or plant which buys or receives milk or cream to be manufactured into butter or cheese, or to be condensed, or to be sold as market milk or cream, or for a group of such factories or plants or for any organization organized for the purpose of selling butter or cheese upon petition therefor signed by more than two-thirds of the regular patrons of such factory or plant, or by the officers of such factory or plant, or of the organization representing such group of factories or plants, and upon receiving satisfactory proof that such special dairy and food inspectors will be compensated in full for all services rendered and traveling expenses incurred upon and pursuant to such appointment as provided in this section. If the inspector is appointed pursuant to petition signed by the officers of an organization, such compensation and expenses shall be paid by such organization; if appointed pursuant to petition signed by patrons, each patron of the factory or plant shall pay such proportion

*For penalty see No. 67.
†See No. 45.

of the total amount of such compensation and expenses as the amount of milk or cream delivered thereto by him bears to the total amount delivered thereto by all the patrons. The State shall not be liable for any such compensation.

(2) Each such special dairy and food inspector shall have all powers conferred by law upon dairy and food inspectors and shall at all times be under the supervision of the commissioner and he shall make such reports to the Dairy and Food Commissioner as the said commissioner may require. He shall supervise and inspect the weighing and testing of and shall inspect all milk or cream or butter or cheese delivered to such factory or plant, or group of factories or plants, and for such purpose may use any or all weighing or testing apparatus in such factory or plant. In addition to the duties herein specifically prescribed he shall perform such duties as the patrons or organizations compensating him or the commissioner may direct. (Id. § 98.08.)

64. Babcock Test; Samples; Paying Check.—(1) In the use of the Babcock test, the standard milk measures or pipettes shall have a capacity of seventeen and six-tenths cubic centimeters, and the standard test tubes or bottles for milk shall have a capacity of two cubic centimeters for each ten per cent marked on the necks thereof; cream shall be tested by weight and the standard unit for testing shall be eighteen grams, and it is hereby made a misdemeanor to use any other standards of milk or cream measure where milk or cream is purchased by or furnished to creameries or cheese factories and where the value of said milk or cream is determined by the per cent of butter fat contained in the same, or wherever the value of milk or cream is determined by the per cent of butter fat contained in the same by the Babcock test.

(2) In sampling cream or milk from which composite tests are to be made to determine the per cent of butter fat contained therein, no such sample or sampling shall be lawful unless a sample be taken from each weighing and the quantity thus used shall be proportioned to the total weight of the cream or milk tested.

(3) Every person, corporation or company operating a creamery when using the Babcock test as a standard and manufacturing butter to determine the value of any milk or cream received or bought by such person, corporation or company, shall, when paying for such milk or cream, include in every statement or check issued to any patron in payment thereof a statement of the number of pounds of butter fat and the number of pounds of butter made for the period of time for which payment is made. (Id. § 98.09.)*

65. Standardization of Babcock Pipettes.—(1) All bottles and pipettes used in measuring milk or milk products for making determination of the per cent of fat in said milk or milk products shall have clearly blown or otherwise permanently marked in the side of the bottle or pipette the word "Sealed," and in the side of the pipette or the side or bottom of the bottle the name, initials or trade-mark of the manufacturer and his designating number, which designating number shall be different for each manufacturer and may be used in identifying bottles. The designating number shall be furnished by the State Superintendent of Weights and Measures upon application by the manufacturer and upon the filing by the manufacturer of a bond in the sum of one thousand dollars with sureties to be approved by the Attorney-General, conditioned upon conformance with the requirements of this section. A record of the bonds furnished, the designating number, and to whom furnished, shall be kept in the office of the State Superintendent of Weights and Measures.

(2) Any manufacturer who sells Babcock milk, cream or butter test bottles or milk pipettes, to be used in this State, that do not comply with the provisions of this section shall suffer the penalty of five hundred dollars to be recovered by the Attorney-General in an action against the offender's bondsmen, to be brought in the name of the people of the State. Any dealer who uses, for the purpose of determining the per cent of milk fat in milk or milk products, and bottles or pipettes purchased after this law takes effect that do not comply with the provisions of this section relating thereto, shall be deemed guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not less than twenty-five dollars nor more than one hundred dollars, or by imprisonment in the county jail not less than ten days nor more than three months.

(3) The State Superintendent of Weights and Measures shall prescribe specifications with which the glassware mentioned in this section shall comply. The unit of graduation for all Babcock glassware shall be the true cubic centimeter or the weight of one gram of distilled water at four degrees centigrade.

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*For penalty, see No. 67.

(4) Sealers of weights and measures are not required to seal Babcock milk, cream or butter test bottles or milk pipettes marked as in this section provided, but they shall from time to time make tests of individual bottles used by the various firms in the territory over which they have jurisdiction in order to ascertain whether the above provisions are being complied with and they shall report immediately to the State Superintendent of Weights and Measures violations found. (Id. § 98.10.)*

66. To Under-read or Over-read Unlawful.—It shall be unlawful for any person, by himself, his servant or agent or as the servant or agent of another to falsely manipulate or under-read or over-read or make any false determination by the Babcock test or any other contrivance used for determining the quality or value of milk or cream delivered to a creamery, cheese factory or condensed milk factory, or when sold or purchased. (Id. § 98.11.)*

67. Penalties.—(1) Every violation of any of the provisions of sections 98.05[1], 98.06[2] and 98.12[3] or any lawful rule or regulation issued by the commissioner, shall be punished by a fine of not less than twenty-five dollars nor more than one hundred dollars, or by imprisonment for not less than ten days nor more than thirty days and the revocation of the license of the convicted person.

(2) Every violation of any of the provisions of sections 98.07[4] and 98.13[4] shall be punished by a fine of not less than fifty dollars nor more than one hundred dollars, or by imprisonment of not less than thirty days nor more than sixty days or by both.

(3) Every violation of any of the provisions of sections 98.09,[5] 98.10[6] and 98.11[7] shall be punished by a fine of not less than twenty-five dollars nor more than one hundred dollars, or by imprisonment of not less than thirty days nor more than sixty days. (Id. § 98.13.)

68. Butter and Cheese Manufacturers; Accounts Must be Accessible; Penalties.—Any butter or cheese manufacturer who shall knowingly use or allow any other person to use for the benefit of himself or any other person than he who is entitled to the benefit thereof any milk or cream from the milk brought to him, without the consent of the owner thereof, or who shall refuse or neglect to keep or cause to be kept a correct account (which shall be open to the inspection of any person furnishing milk to him and to the Dairy and Food Commissioner of this State, his chemists, assistants, inspectors and agents) of the amount of milk daily received, or of the number of pounds of butter, and the number and aggregate weight of cheese made by him each day, or of the number of cheese cut or otherwise disposed of and the weight of each, shall be guilty of a misdemeanor and upon conviction be punished by a fine of not less than twenty-five dollars nor more than one hundred dollars, or by imprisonment in the county jail not less than ten days nor more than sixty days. (Id. § 343.34.)

69. Operation of Creameries and Cheese Factories—By-Products Pasteurized.—(1) Every operator of a cheese factory, butter factory or receiving station and every owner or manager of any other place or plant where milk or cream is received and skim milk, whey or buttermilk therein produced is distributed as food for man or domestic animals, shall, before said distribution, pasteurize said buttermilk, whey or skim milk at a temperature of at least one hundred and forty-five degrees Fahrenheit, and hold at the above temperature for at least twenty-five minutes, or when not held at the above temperature for at least twenty-five minutes shall be heated to a temperature of at least one hundred and eighty-five degrees Fahrenheit, or otherwise pasteurized as prescribed by rules or regulations of the State Live Stock Sanitary Board. The provisions of this subsection shall not apply to any cheese factory or butter factory or any of the aforesaid places or establishments that pasteurize in the manner hereinbefore described, the milk or cream prior to manufacture, or at which all milk or cream delivered comes from herds which have passed a clean tuberculin test, upon certification of this fact by the Commissioner of Agriculture. The Dairy and Food Commissioner shall enforce the provisions of this subsection.

(2) Milk from quarantined herds. Whenever any herd of cattle or any district shall be quarantined because of the existence therein of communicable animal

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*For penalty see No. 67.
[1] See No. 60.
[2] See No. 61.
[3] See No. 20.
[4] See Nos. 62 and 67.
[5] See No. 64.
[6] See No. 65.
[7] See No. 66.

disease, the Commissioner of Agriculture may order that no milk or milk product from such herd or district shall be utilized in any creamery or cheese factory unless such milk or milk product has been pasteurized or sterilized in accordance with the standards or methods prescribed by the Dairy and Food Commissioner.

(3) Milk from tested herds. Whenever a majority of the patrons of any co-operative cheese factory or creamery, at a regular meeting of the association, shall vote to have their cows tuberculin tested, no milk shall, after a date to be fixed by the association, be accepted at such factory or creamery, except it comes from cows which have successfully passed such test.

(4) Penalty. Every violation of this section shall be punished by a fine of not less than twenty dollars nor more than two hundred dollars, or by imprisonment in the county jail not less than thirty days nor more than one year or by both. (Id. § 94.09, as amended L. 1927, c. 48.)

70. **Labeling Products From Tested Herds.**—(1) Whenever an entire county has been tested for bovine tuberculosis, and so long as all the owners of cattle therein shall comply with the law and the rules for the eradication of said disease, the Department of Agriculture shall authorize the county clerk to issue to those engaged in the sale or manufacture of dairy products derived solely from such cattle a permit to label or mark said products as derived from cows which are free from said disease. The form of labels and marks shall be prescribed by the Commissioner of Agriculture. Every applicant for a permit shall file with the county clerk at the time the application is made a sworn statement to the effect that all products to be labeled or marked are derived from cows that have successfully passed the tuberculin test.

(2) Whenever all milk or cream delivered to any cheese factory or creamery shall come from tested herds, the owner or operator thereof may file a sworn statement with the Department of Agriculture that to his best knowledge and belief all milk and cream received or used at his cheese factory or creamery comes from cows which have successfully passed the tuberculin test, and if the Commissioner of Agriculture is satisfied of the truth of said statement he shall issue to such cheese factory or creamery a permit to label or mark its dairy products in the manner above provided.

(3) All permits issued under this section shall be for the period ending December thirty-first of the year for which issued. All applications for permits under subsection (2) of this section shall be accompanied by a fee of ten cents for each cow to be included in the permit.

(4) Any permit may be revoked by the Commissioner of Agriculture if there has been a material misstatement in the application, or if any of the requirements for the issuance of such permit is wanting at any time. No person shall use or cause to be used any such label or mark without a permit therefor.

(5) Any person who shall misuse or imitate the official label or mark furnished by the Commissioner of Agriculture, or shall make any material misstatement in the application for a permit or a renewal thereof, shall be punished by a fine of not less than twenty-five dollars nor more than one hundred dollars, or by imprisonment in the county jail not more than thirty days or by both. (Stats. 1925, § 94.10.)

71. **Fraud in Labeling Cheese.**—Any person who shall sell, offer for sale, ship or consign cheese labeled with a false brand or label as to the quality of the article, or shall use any stencil or label furnished by the Dairy and Food Commissioner of this State and bearing the words "Wisconsin full cream cheese," otherwise than upon the bandage on the side of full cream cheese and upon the package containing the same, shall be punished by fine of not more than fifty dollars nor less than twenty-five dollars. (Id. § 343.408.)

72. **Moist Cheese, Penalty for Making or Selling.**—Any firm or corporation who shall, by themselves, their servant or agent, and any person who shall, by himself, his servant or agent, or as the servant or agent of another person, or as the servant or agent of any firm or corporation, manufacture for sale or exchange, sell, exchange, offer for sale or exchange, or have in possession with intent to sell or exchange any cheese or process cheese which contains more than the permitted amount of moisture as provided in subsection (9) of section 352.03* shall be fined not less than twenty-five nor more than one hundred dollars, or be imprisoned in the county jail not less than thirty days nor more than four months. (Id. § 352.06.)

73. **Imitation Cheese and Butter.**—Any person who shall by himself, his agent or servant manufacture, buy, sell, offer, ship, consign, expose or have in possession for sale, any cheese manufactured from or by the use of skim milk to

*See No. 45.

which there has been added any fat which is foreign to such milk, or who shall by himself, his agent or servant manufacture, buy, sell, offer, ship, consign, expose or have in possession for sale, within this State, any skimmed milk cheese or cheese manufactured from milk from which any of the fat originally contained therein has been removed, except such last mentioned cheese is ten inches in diameter and nine inches in height, or who shall, by himself, his agent or servant, render or manufacture, sell or solicit or accept orders for, ship, consign, offer or expose for sale or have in possession, with intent to sell, any article, product or compound made wholly or partly out of any fat, oil or oleaginous substance or compound thereof, not produced from unadulterated milk or cream from the same, and without the admixture or addition of any fat foreign to said milk or cream, which shall be in imitation of yellow butter produced from such milk or cream with or without coloring matter, shall for the first offense be punished by fine of not more than five hundred dollars, nor less than fifty dollars, and for each subsequent offense, by imprisonment in the county jail not to exceed sixty days nor less than ten days, or by fine of not more than five hundred dollars nor less than one hundred dollars, or by both such fine and imprisonment. Nothing in this section shall be construed to prohibit the manufacture or sale of oleomargarine in a separate and distinct form and in such manner as will advise the consumer of its real character, and free from coloration or ingredient that causes it to look like butter. (Id. § 352.36.)

74. Oleomargarine.—(1) It shall be unlawful for any person, firm or corporation, by himself, his servant or agent, or as servant or agent of another, to manufacture, sell or solicit or accept orders for, ship, consign, offer or expose for sale or have in possession with intent to sell, any article, product or compound which is or may be used as a substitute for butter and which is made by combining with milk or milk fats or any of the derivatives of either any fat, oil or oleaginous substance or compound thereof other than milk fat.

(2) Any person violating this section shall, for the first offense, be punished by a fine of not less than fifty dollars nor more than five hundred dollars, and for each subsequent offense, by imprisonment in the county jail not less than ten days nor more than six months or by a fine of not less than one hundred dollars nor more than five hundred dollars, or by both such fine and imprisonment. (Id. § 352.365.)

75. Notice of Sale of Imitation Butter.—Any person who shall sell or offer for sale to any person who asks, sends or inquires for butter, any oleomargarine, butterine or any similar substance made in imitation or semblance of pure butter, not made entirely from the milk of cows, with or without coloring matter, or who shall expose for sale oleomargarine, butterine or any similar substance not marked and distinguished on the outside of each tub, package or parcel thereof by a placard with the word "oleomargarine," and not having also upon every open tub, package or parcel thereof a placard with the word "oleomargarine," such placard in each case to be printed in plain, uncondensed Gothic letters not less than one inch long, and not containing any other words thereon, or who shall sell oleomargarine, butterine or any similar substance from any dwelling, store, office or public mart, without having conspicuously posted thereon the placard or sign, in letters not less than four inches in length, "oleomargarine sold here," or "butterine sold here," which placard or sign shall be approved by the Dairy and Food Commissioner of this State, or who shall sell or deliver from any cart, wagon or other vehicle, upon the public streets or ways, oleomargarine, butterine or any similar substance, without having on the outside of both sides of said cart, wagon or other vehicle a placard, in uncondensed Gothic letters not less than three inches in length, "licensed to sell oleomargarine," or who shall furnish or cause to be furnished in any hotel, boarding house, restaurant or at any lunch counter, oleomargarine, butterine or any similar substance to any guest or patron thereof, without first notifying such guest or patron that the substance so furnished is not butter, shall be punished as provided in section 352.36. (Id. § 352.37.)

76. Renovated Butter.—No person shall, himself, or by his agent or servant, sell, offer or expose for sale, or have in his possession with intent to sell, or exchange or deliver renovated butter, or butter which has been melted and its rancidity removed or masked, and which has been regranulated, colored and prepared in imitation or in semblance of genuine creamery butter, unless the substance shall have the words "Renovated Butter" conspicuously stamped, labeled or marked in one or two lines and in plain Gothic letters, at least three-eighths of an inch square, so that the words cannot be easily defaced, upon two sides of each and every tub, firkin, box or package containing said renovated butter; or, if such butter is exposed for sale uncovered, or not in a case or package, a placard containing said words in the same form as above described in this section shall be attached to the

mass in such manner as to be easily seen and read by the purchaser; and when renovated butter is sold from such package or otherwise at retail, in print, roll or other form, before being delivered to the purchaser, it shall be wrapped in wrappers plainly stamped on the outside thereof with the words "Renovated Butter," printed or stamped thereon in one or two lines and in plain Gothic letters at least three-eighths of an inch square, and such wrapper shall contain no other words or printing thereon, and said words "Renovated Butter" so stamped or printed on the said wrapper shall not be in any manner concealed, but shall be in plain view of the purchaser at the time of the purchase. (Id. § 352.38.)

77. **Violations of Section 352.38.**—Any person who shall violate any of the provisions of section 352.38 shall be guilty of a misdemeanor and upon conviction thereof, be fined not less than twenty-five nor more than one hundred dollars. (Id. § 352.39.)

78. **Whey Cream and Butter.**—No person shall by himself, his agent or servant sell, offer or expose for sale or have in his possession with intent to sell or exchange or deliver any butter manufactured in whole or in part from whey cream, unless such butter shall have the words "whey butter" conspicuously stamped, labeled or marked in plain Gothic letters at least three-eighths of an inch square, so that the words cannot be easily defaced, upon two sides of each and every tub, firkin, box or package containing said whey butter; or if such butter is exposed for sale uncovered or not in a case or package, a placard containing said words in the form described in this section shall be attached to the mass in such a manner as to be easily seen and read by the purchaser. Any person who violates any of the provisions of this section shall be guilty of a misdemeanor and upon conviction thereof, shall be fined not less than twenty-five dollars nor more than one hundred dollars. (Id. § 352.40.)

79. **Frauds; Substitute for Butter; Advertisement; Prosecution.**—(1) No person, firm or corporation shall use in any way in connection or association with the sale or exposure for sale or advertisement of any substance designed to be used as a substitute for butter, the word "butter," "creamery," or "dairy" except as required by sections 352.36, 352.38, 352.40, or the name or representation of any breed of dairy cattle, or any combination of such word or words and representation, or any other words or symbols or combination thereof commonly used in the sale of butter.

(2) It shall be the duty of the Dairy and Food Commissioner of Wisconsin to enforce the provisions of this section when upon complaint or otherwise, such Dairy and Food Commissioner has reason to believe that the same has been violated.

(3) Any person who violates any of the provisions of this section shall be guilty of a misdemeanor and upon conviction thereof, shall be fined not less than twenty-five dollars nor more than one thousand dollars. (Id. § 352.41.)

80. **Butter Substitute.**—(1) No State, county, municipal or other institution supported in whole or in part by public funds, shall furnish to its inmates or patrons or use in the preparation of their food, any oleomargarine or other similar substitute for butter which is made by combining with milk or milk fats any fat oil, oleaginous substance other than milk fat.

(2) Every officer or employee of any institution supported in whole or in part by public funds who shall knowingly be a party to any violation of this section and every person who shall knowingly sell or offer for sale to any such institution, its officers or agents, any oleomargarine or other similar substitute for butter, shall for each offense be punished by a fine of not to exceed one hundred dollars, or by imprisonment in the county jail for not to exceed thirty days, or by both such fine and imprisonment. (Id. § 352.42.)

81. **Unfair Discrimination in Purchase of Dairy Products.**—(1) Any person, firm or corporation, foreign or domestic, engaged in the business of buying milk, cream or butter fat for the purpose of manufacture, that shall discriminate between different sections, communities, towns, villages or cities of this State, or between persons, firms or corporations in any locality of this State, by paying for such commodity at a higher price or rate in one section, community, town, village or city, or to any person, firm or corporation in any locality of this State, than is paid for the same commodity by said person, firm or corporation, foreign or domestic, in another section, community, town, village or city, or to another person, firm or corporation in any locality of this State, shall be guilty of unfair discrimination, which is hereby prohibited and declared unlawful; provided, that it shall be a justification for such a discrimination in price if the difference is merely commensurate with an actual difference in the quality or quantity of the commodity purchased or in transportation charges or other expense of marketing involved in said purchase.

(2) Proof of any justification, as described in subsection 1 of this section, may be made by the defendant but no such justification need be negatived in the information or complaint, and, if so negatived, no proof in relation to the matter so negatived shall be required on the part of the informant or complainant.

(3) Whenever the Dairy and Food Commissioner is credibly informed that this section has been violated, he shall make investigation and shall report the results of his investigation to the Attorney-General and the Secretary of State. He shall co-operate with the Attorney-General in the securing of evidence of violations of this section. (Id. § 133.09.)*

82. Penalty.—Any person, firm or corporation, and any officer, agent or receiver of any firm, company, association or corporation, or any member of the same or any individual, violating any of the provisions of the preceding section shall be deemed guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not less than five hundred dollars nor more than five thousand dollars, or be imprisoned in the county jail not to exceed one year, or by both such fine and imprisonment. (Id. § 133.10.)

83. Contracts; Void.—All contracts or agreements made in violation of any of the provisions of sections 133.09 to 133.16, inclusive, shall be void. (Id. § 133.11.)

83a. Prosecutions.—It shall be the duty of the district attorneys in their respective counties to enforce the provisions of sections 133.09 to 133.11, inclusive, by appropriate actions in courts of competent jurisdiction. (Id. § 133.12.)

83b. Domestic Corporations; Complaints to Secretary of State; Procedure.—If a complaint shall be made to the Secretary of State that any corporation authorized to do business in this State is guilty of unfair discrimination within the terms of the preceding sections, it shall be the duty of the Secretary of State to refer the matter to the Attorney-General, who shall, if the facts justify it in his judgment, co-operate with the district attorney and cause proceedings to be commenced in the proper court against such corporation and its officers and members. (Id. § 133.13.)

83c. Forfeiture.—If any such corporation, foreign or domestic, authorized to do business in this State, is found guilty of such unfair discrimination, such finding shall cause a forfeiture of all the privileges and rights conferred by the laws of this State upon corporations and shall bar its rights to do business in this State. (Id. § 133.14.)

83d. Ouster.—If any corporation having been found guilty of a violation of any of the provisions of sections 133.09 to 133.16, inclusive, shall continue or attempt to do business in this State, it shall be the duty of the Attorney-General, by a proper action in the name of the State of Wisconsin, to oust such corporation from all business of every kind and character in this State. (Id. § 133.15.)

83e. Cumulative Remedies.—Nothing in sections 133.09 to 133.16, inclusive, shall be construed as repealing any other law of this State, but the remedies herein provided shall be cumulative to all other remedies provided by law in and for such cases. (Id. § 133.16.)

83f. Neglect of Milch Cow.—Any person owning or having the possession, care or custody of a cow giving milk, who shall wantonly neglect or fail to milk, or to have such cow milked or otherwise relieved of her milk, for such length of time as will cause her to suffer pain by reason of the swelling of her udder, shall be fined in any sum not exceeding ten dollars. (Id. § 343.471.)

NOTE: See also No. 1 et seq.; No. 17; No. 21; No. 29 et seq.; No. 85 et seq.; No. 120 et seq.; No. 176a; No. 199 et seq.; Nos. 224 and 231.

Edible Oils, Cocoa Butter, Etc.

84. Food Products; Definitions; Standards.—In all prosecutions arising under the provisions of these statutes relating to the manufacture or sale of an adulterated, misbranded or otherwise unlawful article of food,† the following definitions and standards for food products shall be the legal definitions and standards, to wit: . . .

(23) OLIVE OIL.—Olive oil is the oil obtained from the sound, mature fruit of the cultivated olive tree (Olea europea L.), and subjected to the usual refining processes; is free from rancidity; has a refractive index at twenty-five degrees Centigrade not less than one and forty-six hundred sixty ten-thousandths (1.4660) and not exceeding one and forty-six hundred eighty ten-thousandths (1.4680); and an iodin number not less than seventy-nine and not exceeding ninety.

*See No. 92.
†See No. 7 et seq.

Virgin olive oil is olive oil obtained from the first pressing of carefully selected hand-picked olives.

Cottonseed oil is the oil obtained from the seeds of cotton plants (Gossypium hirsutum L., G. barbadense L., G. Herbaceum L.) and subjected to the usual refining processes; is free from rancidity; has a refractive index at twenty-five degrees Centigrade not less than one and forty-seven hundred ten-thousandths (1.4700) and not exceeding one and forty-seven hundred twenty-five ten-thousandths (1.4725); and an iodin number not less than one hundred four and not exceeding one hundred ten.

"Winter-yellow" cottonseed oil is expressed cottonseed oil from which a portion of the stearin has been separated by chilling and pressure, and has an iodin number not less than one hundred ten and not exceeding one hundred sixteen.

Peanut oil, arachis oil, earthnut oil, is the oil obtained from the peanut (Arachis hypogaca L.) and subjected to the usual refining processes; is free from rancidity; has a refractive index at twenty-five degrees Centigrade not less than one and forty-six hundred ninety ten-thousandths (1.4690) and not exceeding one and forty-seven hundred seven ten-thousandths (1.4707); and an iodin number not less than eighty-seven and not exceeding one hundred.

"Cold drawn" peanut oil is peannut oil obtained by pressure without heating.

Sesame oil, gingili oil, teel oil, is the oil obtained from the seed of the sesame plants (Sesamum orientale L. and S. radiatum Schum. and Thonn.) and subjected to the usual refining processes; is free from rancidity; has a refractive index at twenty-five degrees Centigrade not less than one and forty-seven hundred four ten-thousandths (1.4704) and not exceeding one and forty-seven hundred seventeen ten-thousandths (1.4717); and an iodin number not less than one hundred three and not exceeding one hundred twelve.

"Cold drawn" sesame oil is sesame oil obtained by pressure without heating.

Poppy seed oil is the oil from the seed of the poppy (Papaver somniferum L.) subjected to the usual refining processes and free from rancidity.

White poppy seed oil, "cold drawn" poppy seed oil is poppy seed oil of the first pressing without heating.

Cocoanut oil is the oil obtained from kernels of the cocoanut (Cocos nucifera L.) and subjected to the usual refining processes and free from rancidity.

Cochin oil is cocoanut oil prepared in Cochin (Malabar).

Ceylon oil is cocoanut oil prepared in Ceylon.

Copra oil is cocoanut oil prepared from copra, the dried kernels of the cocoanut.

Rapeseed oil, colza oil, is the oil obtained from the seeds of the rape plant (Brassica napus L.) and subjected to the usual refining processes and free from rancidity.

"Cold drawn" rapeseed is rapeseed oil obtained by the first pressing without heating.

Sunflower oil is the oil obtained from the seeds of the sunflower (Helianthus annuus L.) and subjected to the usual refining processes and free from rancidity.

"Cold drawn" sunflower oil is sunflower oil obtained by the first pressing without heating.

Maize oil, corn oil, is the oil obtained from the germ of the maize (Zea mays L.) and subjected to the usual refining processes and free from rancidity.

Cocoa butter, cacao butter, is the fat obtained from roasted, sound cocoa beans, and subjected to the usual refining processes; is free from rancidity; has a refractive index at forty degrees Centigrade not less than one and forty-five hundred sixty-six ten-thousandths (1.4566) and not exceeding one and forty-five hundred ninety-eight ten-thousandths (1.4598); an iodin number not less than thirty-three and not exceeding thirty-eight; and a melting point not lower than thirty degrees Centigrade nor higher than thirty-five degrees Centigrade.

Cottonseed oil stearin is the solid product made by chilling cottonseed oil and separating the solid portion by filtration, with or without pressure, and having an iodin number not less than eighty-five and not more than one hundred. (Stats. 1925, § 352.03.)

Eggs.

See Nos. 29 et seq. and 85 et seq.

Farm Products, Etc.

85. Definitions.—The following terms, wherever used in sections 99.01 to 99.30, inclusive, or in any standard, order or regulation made thereunder, shall have the meaning as indicated, unless a different meaning is given in the context:

"Department" shall mean the Department of Markets.

"Commissioner" shall mean the Commissioner of Markets.

"Production" shall include mining, manufacturing, agriculture, horticulture, dairying and live stock, poultry or bee raising.

"Marketing" as applied to food products or farm products, shall include packing, storing, loading, offering or shipping to a point within the State, if any of these acts is for a commercial purpose, or selling.

"Marketing," as applied to receptacles, shall mean using such receptacles in the course of marketing food products or farm products.

"Possession," as applied to receptacles, shall mean possessing such receptacles in the course of possessing food products or farm products for commercial purposes.

"Possession," wherever the term is used in sections 99.10 and 99.11 shall mean possession after the product or receptacle is ready for marketing.

"Products" shall include all articles and commodities in general use.

"Food products" shall include all articles and commodities used for food, drink, confectionery or condiment.

"Farm products" shall include all products of agriculture, horticulture, dairying and of live stock, poultry or bee raising.

"Grade" shall include, in the case of food products or farm products, grade according to quality, quantity, type, variety, size, weight, dimensions or shape of the product, and, in the case of receptacles, grade according to quality, type, size, weight, content, dimensions or shape of the receptacle.

"Co-operative association" shall include any corporation which adopts or uses the principles of a co-operative basis as defined in section 185.01 as the same may be amended from time to time, except banks, building and loan associations, insurance companies and public utilities subject to the jurisdiction of the railroad commission.

"Business" shall include any business, except that of banks, building and loan associations, insurance companies and public utilities subject to the jurisdiction of the railroad commission.

"Documents" shall include books, papers, accounts, records and correspondence.

"Person" shall include individuals, partnerships, corporations and associations and shall import the singular or plural.

"Publish" shall mean as defined in section 35.65.* (Stat. 1925, § 99.01.)

85a. Department of Markets.—(1) There is hereby created a Department of Markets, in charge of a Commissioner of Markets.

(2) The department shall keep its office in the State Capitol and shall be provided with the necessary rooms, office furniture, stationery and other supplies by the Superintendent of Public Property.

(3) The department shall be provided with a seal bearing the inscription "Wisconsin Department of Markets" to be affixed to such instruments as the commissioner may require. (Id. § 99.02.)

85b. Commissioners.—(1) The commissioner shall be appointed by the Governor, by and with the advice and consent of the Senate. His term of office shall be four years and until his successor qualifies. The commissioner shall receive an annual salary not exceeding five thousand dollars and shall be reimbursed for actual and necessary traveling expenses incurred in the discharge of his official duties.

(2) The commissioner shall have a general understanding of matters relating to the distribution of products. He shall devote his entire time to the performance of his duties. He shall not hold any stock or interest whatsoever in any commission business, wholesale or retail produce business, cold storage, warehouse or transportation company or serve on or under any political committee or as manager of any political campaign for any candidate or party.

(3) The commissioner, before entering upon the duties of his office, shall file with the State Treasurer an official bond in such sum as the Governor may deem necessary, conditioned for the faithful performance of the duties of his office. The expense of this bond shall be paid from the appropriation of the department.

(4) The commissioner, in addition to other methods of removal provided by law, may be removed by joint resolution of the legislature adopted by an aye and nay vote of at least a majority of the members elected to each house. (Id. § 99.03.)

85c. Assistants.—(1) The commissioner shall appoint and fix the compensation of such assistants, clerks and other employees as may be necessary in carrying out the provisions of sections 99.01 to 99.30, inclusive. Such assistants, clerks and

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*"Publication in a single issue of the State paper shall constitute full publication. . . . " (Stats. 1925, § 35.65.)

other employees shall be reimbursed for actual and necessary traveling expenses incurred in the discharge of their official duties.

(2) The Governor, upon the recommendation of the commissioner may require from any employee in the department a bond in such sum as may be deemed necessary for the faithful performance of his duties. The expense of such bond shall be paid from the appropriation of the department. (Id. § 99.04.)

85d. Attorney.—(1) The present attorney for the department shall be added to the staff of the Attorney-General as an Assistant Attorney-General but he shall devote his entire time to the work of the department, except where the commissioner consents to a departure from this requirement. His successor shall be appointed by the commissioner, subject to the approval of the Attorney-General.

(2) The provisions of section 99.04 shall apply to this appointment in respect to compensation and reimbursement. (Id. § 99.05.)

85e. Transition.—The officials and employees of the former Division or Markets are hereby made the officials and employees of the Department of Markets, to serve until the expiration, if any, of their original terms. The property and documents of the former Division of Markets are hereby made the property and documents of the Department of Markets. The existing standards, orders, and regulations made by the former Division of Markets are hereby continued as the standards, orders and regulations of the Department of Markets. The proceedings begun and causes of action arisen under former sections 1495-1 to 1495-37, inclusive, are hereby continued as proceedings and causes of action under sections 99.01 to 99.30, inclusive. The unexpended appropriation of the former Division of Markets is hereby made available to the Department of Markets. (Id. § 99.06.)

85f. Powers.—The department may: (1) Obtain and furnish information relating to prices, profits and costs involved in the production or distribution of products and to the supply, demand, sales, purchases, deliveries, receipts, offers, acceptances, storage and commercial movement of products and to any other factors affecting the market value of products or market conditions.

(2) Obtain and furnish information regarding the sources of supply of products necessary for the people of the State and the location of markets for Wisconsin products.

(3) Obtain and furnish information relating to economy and efficiency in the distribution of products.

(4) Obtain and furnish information relating to the selection of proper shipping routes, adoption of advisable shipping methods, avoidance of delays incident to transportation and to other distribution problems connected with transportation.

(5) Obtain and furnish lists of persons engaged in the production or distribution of products. (Id. § 99.07.)

85g. Co-operative Associations.—(1) The department may give assistance in the organization, operation or reorganization of co-operative associations.

(2) The department, may, by general or special order, require any co-operative association doing business in this State to file with the department a verified copy of its by-laws and of any exclusive contract of sale or agency between the association and its members or patrons.

(3) The department may, by general order, prescribe uniform systems of accounting for co-operative associations doing business in this State and may, by general or special order, require any such association to render reports, in form indicated by the department, to show the nature and volume of business, resources, liabilities, profits, losses and any other facts bearing upon the financial condition of the association.

(4) The department may investigate the management of any co-operative association doing business in this State and may make the facts, relating to said management, available to the members of the association; provided, that a request for such investigation has been filed with the department, signed by the whole board of directors or by at least twenty per cent of the members (in the case of associations of less than five hundred members) and by at least one hundred members (in the case of associations of five hundred or more members). The department shall fix and cause to be collected a reasonable, uniform fee for such investigations, not to exceed ten dollars per day.

(5) The department may, by general or special order, require any co-operative association doing business in this State or in the process of organization to file with the department a report of its promotion expenses. (Id. § 99.08, amended L. 1927, c. 383.)

85h. Public Markets.—(1) The department may give assistance in the organization, operation or reorganization of such public markets as are authorized by law.

(2) The department may, by general order, prescribe uniform systems of accounting for public markets and may, by general or special order, require any such market

to render reports, in form indicated by the department, to show the nature and volume of business, resources, liabilities, profits, losses, and any other facts bearing upon the financial condition of the market. (Stats. 1925, § 99.09.)

86. Standards and Regulations.—(1) The department, after public hearing may establish standards for the grade of food products and farm products and for receptacles therefor and may prescribe regulations governing the marks or tags which may be required upon food products or farm products or upon receptacles therefor, for the purpose of showing the name, address or serial number of the person producing or marketing the product or receptacle, the grade of the product or receptacle, the quality, quantity, type, variety, size, weight, dimensions or shape of the product or the quality, type, size, weight, content, dimensions or shape of the receptacle.

(2) No standard or regulation under this section, which is repugnant to any requirement made mandatory under Federal law, shall apply to products or receptacles which are being shipped from the State in interstate commerce.

(3) No standard shall apply to products or receptacles coming from outside the State but such products or receptacles may be required to be marked or tagged to indicate that they came from outside the State and to show any other fact regarding which marking or tagging may be required under this section; provided, that such products or receptacles, at the time when marking or tagging is required, have ceased to be in interstate commerce.

(4) No standard established under this section for the grade of any food product or farm product shall affect the right of any person to dispose of such product without conforming to the standard, but such person may be required to mark or tag such product, in such manner as the department may direct, to indicate that it is not intended to be marketed as of a grade contained in the standard and to show any other fact regarding which marking or tagging may be required under this section.

(5) No standard or regulation shall be established or prescribed under this section which is in conflict with any standard or regulation contained in or heretofore promulgated under authority of any other statute of the State.

(6) No standard or regulation shall be established or prescribed by the Department of Markets under this section in any case where any other State department, commission or official has authority to establish such a standard or prescribe such a regulation, unless the Department of Markets establishes the standard or prescribes the regulation jointly with such other department, commission or official. No standard or regulation shall be established or prescribed by any other State department, commission or official in any case where the Department of Markets has authority to establish such a standard or prescribe such a regulation under this section, unless such other department, commission or official establishes the standard or prescribes the regulation jointly with the Department of Markets. The Governor shall act as arbiter in case of disagreement or conflict of authority between the Department of Markets and any other State department, commission or official under this section.

(7) No standard established under this section shall become effective until at least thirty days after the text thereof is published.

(8) Whenever any standard or regulation under this section has become effective, no person marketing or having in his possession for commercial purposes any product or receptacle to which the standard is applicable shall represent such product or receptacle, unless in a manner authorized by the department, as being of any grade other than a grade contained in such standard, except as to products or receptacles included in subsections 2 and 3 of this section; and no person marketing or having in his possession for commercial purposes any product or receptacle to which the standard is applicable shall represent such product or receptacle as being of a grade contained in the standard, when as a matter of fact such product or receptacle is below the requirements of such grade and no person shall market or have in his possession for commercial purposes any product or receptacle unless the marking or tagging thereon conforms to the regulation prescribed under this section; and no person shall market or have in his possession for commercial purposes any product or receptacle, to which any such marking or tagging regulation is applicable, if such marking or tagging thereon is false or misleading; provided, that representing a product or receptacle as being of a grade contained in the standard, when as a matter of fact such product or receptacle is below the requirements of such grade, shall not be a violation of this section, if the product or receptacle bears the official certificate of an inspector licensed under section 99.12; provided, further, that possession, under this section, shall not include possession by a carrier or other bailee.

(9) Whenever the department finds that any person marketing or having in his possession any product or receptacle to which the standard is applicable has intentionally violated any provision of subsection (8) of this section, the department, after opportunity for hearing has been given such person, may, by special order, revoke the right of such person to represent any product or receptacle to which the standard is applicable as being of any grade contained in the standard and may, in said order, require such person to mark or tag such product or receptacle as provided in subsection (4) of this section. The department may, without hearing, suspend such right for a period not exceeding ten days, pending investigation. The department may restore such right to any person from whom it has been revoked, where the person gives satisfactory evidence warranting such restoration. (Id. § 99.10.)

87. Inspector's Certificate.—(1) The department, as a means of enforcing the standard for the grade of any food product or farm product or for any receptacle therefor, may, by general order, after public hearing, require any such product or receptacle to bear the official certificate of an inspector licensed under section 99.12.

(2) Whenever the department has required any product or receptacle to bear the official certificate of an inspector licensed under section 99.12, no person marketing or having in his possession for commercial purposes any such product or receptacle shall remove, mutilate or alter the official certificate thereon or represent such product or receptacle, unless in a manner authorized by the department, as being of any grade other than the grade designated by the official certificate thereon, except as to products or receptacles included in subsections (2) and (3) of section 99.10; and no person shall market or have in his possession for commercial purposes any such product or receptacle unless such product or receptacle bears the official certificate of an inspector licensed under section 99.12, except as to products or receptacles included in subsections (2), (3) and (4) of section 99.10; provided, that such a product or receptacle may be marketed or had in possession without an official certificate issued at the point of shipment of such product or receptacle is destined for shipment to a point within the State, where the shipper has arranged for the issuance of an official certificate; provided, further, that possession under this section, shall not include possession by a carrier or other bailee. (Id. § 99.11.)

88. Licensing of Inspectors.—(1) The department, upon presentation of satisfactory evidence that the applicant is competent, may issue a license to any person to certify the grade of food products or farm products or of receptacles therefor, for which standards have become effective under section 99.10. The purpose of such certification may be either to enforce the standard or merely to furnish to an interested party an official statement of the grade. A certificate issued under this section, unless superseded by a finding as provided in subsection (4) of this section, shall be accepted in any court of this State as prima facie evidence of the facts to which the certificate relates.

(2) No fee shall be charged the licensee for any license issued under this section.

(3) The department may—by general order, after public hearing—fix and cause to be collected a reasonable, uniform fee for certification where necessary for the adequate enforcement of an order issued under section 99.11. The department shall fix and cause to be collected a reasonable, uniform fee for certification where the purpose of such certification is merely to furnish to an interested party an official statement of the grade.

(4) Any person affected by a certification made under this section may appeal to the department from such certification within a reasonable time to be prescribed in regulations issued by the department. The department shall thereupon make an investigation to determine the true grade of the product or receptacle and shall issue a finding thereof. Such a finding shall be accepted in any court of this State as prima facie evidence of the facts to which the finding relates.

(5) The department shall charge and collect a reasonable fee for any appeal taken under this section but shall refund such fee if the appeal is sustained.

(6) The department, after opportunity for hearing has been given the licensee, may, by special order, revoke any license issued under this section, whenever the department finds that such licensee is incompetent or has made material false statements in order to obtain a license or has knowingly or carelessly issued any false or improper certificate of grade or has accepted money or other consideration, directly or indirectly, as compensation for any neglect or improper performance of duty or has violated any provision of sections 99.01 to 99.30, inclusive, or any regulation made thereunder. The department may, without hearing, suspend such right for a period not exceeding ten days, pending investigation. The department may

restore the license of any person whose license has been revoked, where the person gives satisfactory evidence warranting such restoration.

(7) No person shall certify or attempt to certify that the grade of any food product or farm product or of any receptacle therefor conforms or does not conform to the standard established under section 99.10, unless such person holds an unrevoked and unsuspended license issued under this section. No person shall influence or attempt to influence any licensee to neglect or improperly perform his duty. No licensee shall knowingly issue any false or improper certificate of grade or accept money or other consideration, directly or indirectly, as compensation for any neglect or improper performance of his duty.

(8) The provisions of chapter 16 of the statutes shall not apply to inspectors licensed under this section who receive no salary or are handled merely upon a fee basis. (Id. § 99.12.)

89. Uniform Labels and Trade-Marks.—(1) The department may adopt uniform labels and trade-marks for brands of Wisconsin products, and shall, upon request, permit the use of such labels and trade-marks by any person engaged in the production or distribution of products who complies with regulations issued by the department for the use of such labels or trade-marks.

(2) The Secretary of State shall, upon application of the commissioner, record any such label or trade-mark under sections 132.01 to 132.14, inclusive.* The department shall be entitled to protect such label or trade-mark under said sections and in any other manner authorized by law. (Id. § 99.13.)

89a. Methods of Competition and Trade Practices.—(1) Methods of competition in business and trade practices in business shall be fair. Unfair methods of competition in business and unfair trade practices in business are hereby prohibited.

(2) The department, after public hearing, may issue general orders forbidding methods of competition in business or trade practices in business which are determined by the department to be unfair. The department, after public hearing, may issue general orders prescribing methods of competition in business or trade practices in business which are determined by the department to be fair.

(3) The department, after public hearing, may issue a special order against any person, enjoining such person from employing any method of competition in business or trade practice in business which is determined by the department to be unfair. The department, after public hearing, may issue a special order against any person, requiring such person to employ the method of competition in business or trade practice in business which is determined by the department to be fair. (Id. § 99.14.)

89b. Damage for Violation.—Any person who shall suffer pecuniary loss because of a violation by any other person of any order issued under section 99.14 may sue such person for damages therefor in any court of competent jurisdiction and shall recover twice the amount of such pecuniary loss, together with costs, including a reasonable attorney's fee. (Id. § 99.15.)

90. Distribution Methods and Practices.—(1) The methods of distribution and practices in the distribution of food products and fuel shall be free from needless waste and needless duplication which tend to increase the cost of such products to the consuming public. Methods of distribution and practices in the distribution of food products and fuel, wherever, such waste or duplication tends to increase the costs of such products to the consuming public, are hereby prohibited.

(2) The department, after public hearing, may issue general orders forbidding methods of distribution or practices in distribution which are found by the department to cause waste or duplication as defined herein. The department, after public hearing, may issue general orders prescribing methods of distribution or practices in distribution which are found by the department to avoid waste or duplication as defined herein.

(3) The department, after public hearing, may issue a special order against any person, enjoining such person from employing any method of distribution or practice in distribution which is found by the department to cause waste or duplication as defined herein. The department, after public hearing, may issue a special order against any person, requiring such person to employ the method of distribution or practice in distribution which is found by the department to avoid waste or duplication as defined herein. (Id. § 99.16.)

91. Relief of Food Scarcity.—The department, with the consent of the Governor, may, after public hearing, issue general or special orders to avert, relieve or terminate a scarcity of food products or fuel in this State. (Id. § 99.17.)

92. Enforcement of Trade Statutes.—The department, at the request of the Attorney-General or of any district attorney, may assist in the enforcement of any of the following statutes relating to trade: 111.07 to 111.10, 133.01 to 133.05,

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*See No. 196 et seq.

133.09 to 133.24, 134.01, 226.07 to 226.09, 286.32, 286.36, 294.04, 343.33, 343.413, 343.681, 348.40, 352.08. (Id. § 99.18.)*

93. **Power to Secure Evidence.**—(1) The commissioner or any official, employee or agent of the department, authorized by him may, in relation to any matter within the department's powers, issue subpœnas to compel the attendance of witnesses and the production of documents, administer oaths and take testimony.

(2) Any witness who appears in response to a subpœna issued under this section and every officer who serves such a subpœna shall be entitled to the same fees as are allowed to witnesses and officers in civil actions in courts of record. Such fees shall be audited and paid by the State in the same manner as other expenses are audited and paid and shall be charged to the appropriation of the department. No witness subpœnaed at the instance of any party other than the department shall be entitled to payment of fees by the State, unless the department certifies that the testimony of such witness was material to the hearing or proceeding.

(3) No person shall, without reasonable cause, fail to comply with a subpœna issued under this section, nor, without reasonable cause, refuse to be sworn or to be examined or to answer a proper question or produce a pertinent document, when ordered to do so by the official, employee or agent conducting the investigation or proceeding.

(4) If any person shall, without reasonable cause, fail to comply with a subpœna issued under this section or, without reasonable cause, refuses to be sworn or to be examined or to answer a proper question or produce a pertinent document, when ordered to do so by the official, employee or agent conducting the investigation or proceeding, the commissioner or any official, employee or agent of the department authorized by him may apply to the Circuit Court of any county or to the judge thereof for an order requiring such person to comply with the subpœna or to be sworn or to be examined or to answer the question or produce the document; and it shall be the duty of the Circuit Court or the judge thereof to issue such an order and to punish disobedience thereof as contempt of court. (Id. § 99.19.)

94. **Reports to Department; Inspections.**—(1) The department may, by general or special order, require persons engaged in business to file with the department, at such time and in such manner as the department may direct, sworn or unsworn reports or sworn or unsworn answers in writing to specific questions, as to any matter upon which the department may demand information through subpœna process.

(2) The commissioner or any official, employee or agent authorized by him may have access to and may copy any document, or any part thereof, which is in the possession or under the control of any person engaged in business, provided that the contents of such document, or of such part thereof, are relevant to any matter upon which the department may demand information through subpœna process.

(3) The commissioner or any official, employee or agent authorized by him may, for purposes within the department's powers, have access during usual business hours to any storehouse, warehouse, cold storage plant, packing house, stock yard, railroad yard, railroad car, or any other building or place, where products are kept or stored for commercial purposes.

(4) The commissioner or any official, employee or agent authorized by him may, for purposes within the department's powers, open any receptacle, inspect the contents thereof, and, upon payment or tender of the market value, take samples of any product contained therein.

(5) No person shall refuse, neglect or fail to render any report or answer required under this section at such time and in such manner as the department may prescribe. No person shall refuse, neglect or fail to submit, for the purpose of inspection or copying, any document demanded under this section. No person shall willfully make any false entry or statement in any report or answer required or document demanded under this section. No person shall willfully fail to make full and true entries and statements in any report or answer required or document demanded under this section. No person shall, for the purpose of embarrassing the department in the conduct of any investigation, hearing or proceeding, remove out of the jurisdiction of the State or mutilate or alter any document. No person shall, except through judicial process, resist or obstruct any official, employee or agent of the department in the exercise of his lawful authority. (Id. § 99.20.)

94a. **Preliminary Investigation.**—(1) The department may, at any time, conduct such preliminary investigation as is necessary and proper to determine whether a hearing or proceeding ought to be begun under sections 99.01 to 99.30, inclusive.

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*See Nos. 10, 35 et seq., 81 et seq., 176, 212 and 234.

(2) The authority contained in sections 99.19 and 99.20 may be used in the conduct of a preliminary investigation under this section. (Id. § 99.21.)

94b. Immunity; Perjury.—Except as to a hearing or proceeding under section 99.18 or as to an investigation preliminary thereto, no person shall be excused from testifying or rendering a report or answer or producing or submitting a document, in response to a demand made under section 99.19 or section 99.20, upon the ground or for the reason that the testimony or report or answer or document required of him may tend to incriminate him or subject him to a penalty or forfeiture; but no natural person shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter or thing concerning which he shall have testified or rendered a report or answer or produced or submitted a document, in response to a demand made under section 99.19 or section 99.20, and no testimony so given or report or answer so rendered or document so produced or submitted shall be received against him in any criminal action, investigation or proceeding; provided, that no natural person so testifying shall be exempt from prosecution and punishment for perjury committed by him in so testifying or for misrepresentation or concealment committed by him in so rendering a report or answer or so producing or submitting a document. (Id. § 99.22.)

94c. Plenary Power.—The department may adopt such measures and make such regulations as are necessary and proper for the enforcement of the provisions of sections 99.01 to 99.20, inclusive. (Id. § 99.23.)

94d. Hearings; Orders; Service; Procedure; Revocation.—(1) The department shall publish notice of any public hearing, except under subsection (3) of section 99.14 or under subsection (3) of section 99.16.

(2) The department, in any matter arising under subsection (3) of section 99.14 or under subsection (3) of section 99.16, shall serve a complaint, prepared in the name of the department, upon the person against whom the complaint is made and shall accompany such complaint by notice of public hearing to be held in the matter not sooner than ten days after such service. The person against whom the complaint is made shall be entitled to be heard in person, or by agent or attorney, and shall have subpœna process to compel the attendance of witnesses.

(3) The department shall publish all general orders.

(4) The department shall serve a copy of any special order upon the person against whom the order is issued.

(5) A complaint, notice of hearing, subpœna, special order or any other process issued by the department may be served by any person authorized by the commissioner either (a) by delivering a copy thereof to the person to be served, or to a member of the partnership to be served, or to the president, secretary or other executive officer or a director of the corporation to be served; or (b) by leaving a copy thereof at the principal office or place of business of such person, partnership or corporation; or (c) by registering and mailing a copy thereof addressed to such person, partnership or corporation at his or its principal office or place of business. The verified return by the person serving such process setting forth the manner of service or the return post office receipt for such process mailed as aforesaid shall be proof of the service of the same.

(6) The department shall make its own rules of procedure and practice not inconsistent with any provision of sections 99.01 to 99.30, inclusive, or with any other provision of law governing such procedure or practice.

(7) The department may revoke or amend any standard, order or regulation made under sections 99.01 to 99.30, inclusive; provided, that public hearing has been held and notice thereof given in the same manner as is prescribed for the making of such standard, order or regulation. The revocation or amendment of any standard, order or regulation shall not affect any civil or criminal liability for offenses committed, penalties or forfeitures incurred, or rights of action accrued under such standard, order or regulation before the revocation or amendment thereof, whether or not in the course of prosecution or action at the time of such revocation or amendment; and any prosecution or action founded upon any such standard, order or regulation as it existed prior to the time of revocation or amendment, whether such prosecution or action was instituted before that time or not, shall proceed to judgment in the same manner and to the like purpose and effect as if the standard, order or regulation had not been revoked or amended. (Id. § 99.24.)

94e. Records; Report.—(1) The commissioner shall keep a record of all standards, orders and regulations made under sections 99.01 to 99.30, inclusive, and shall authorize copies thereof to be printed. Any such authorized copy, stamped with the official seal of the department, shall be competent evidence of the standard, order or regulation in any court of this State, without further proof of authentication.

(2) The commissioner, on or before the first day of December in each even numbered year, shall submit to the Governor a report of the work of the department for the preceding biennium, together with such recommendations as may be deemed of value to the people of the State. (Id. § 99.25.)

94f. **Rehearing.**—(1) Any person affected by a standard, order or regulation made under sections 99.01 to 99.30, inclusive, may file with the department an application for rehearing upon such standard, order or regulation; provided, that such application shall be filed not later than thirty days after such standard, order or regulation becomes effective. The department shall, within thirty days after such application, take action thereon, allowing or denying the rehearing.

(2) The pendency of any application for rehearing shall not stay or suspend the operation of the standard, order or regulation. (Id. § 99.26.)

94g. **Judicial Review; Provisions Not Interdependent.**—(1) The provisions for judicial review of any standard, order or regulation made under sections 99.01 to 99.30, inclusive, shall be as prescribed in sections 196.41 to 196.47, inclusive, so far as those sections are applicable. The department's findings of fact, if supported by evidence before it, shall be presumptive, in the absence of fraud.

(2) The pendency of any proceeding for review shall not stay or suspend the operation of the standard, order or regulation.

(3) The legislature intends that the provisions contained in sections 99.01 to 99.30, inclusive, shall be independent of each other and that the invalidity, for any reason, of any provision shall not affect the validity of any other provision. (Id. § 99.27.)

94h. **Revocation of Corporate Authority.**—(1) Any corporation organized under the laws of this State which shall violate any order issued under section 99.14 shall, upon proof thereof, in any court of competent jurisdiction, have its charter or authority to do business in this State canceled and annulled.

(2) Upon complaint being made to the Attorney-General and evidence presented to him which shall satisfy him that any such corporation has violated any order issued under section 99.14, he shall forthwith bring an action in the name of the State in any Circuit Court of this State, to have the charter or authority of such corporation to do business in this State canceled and annulled, and, upon due proof being made thereof to the satisfaction of the court, judgment shall be entered therefor.

(3) Any foreign corporation which shall violate any order issued under section 99.14 shall, upon proof thereof, in any court of competent jurisdiction, have its license or authority to do business in this State canceled and annulled.

(4) Upon complaint being made to the Attorney-General and evidence presented to him which shall satisfy him that any such foreign corporation has violated any order issued under section 99.14, he shall forthwith bring an action in the name of the State in any Circuit Court of this State to have the license or authority of such corporation to do business in this State canceled and annulled, and, upon due proof being made thereof to the satisfaction of the court, judgment shall be entered therefor. (Id. § 99.28.)

95. **Penalty Upon Persons.**—(1) Any person, acting either personally or through an agent or as agent of another, who violates any provision of subsection (8) of section 99.10, subsection (2) of section 99.11, or subsection (7) of section 99.12, or who willfully violates or refuses, neglects or fails to obey any order or regulation made under any section other than sections 99.14, 99.16 or 99.17 shall forfeit for each and every such offense a sum not to exceed two hundred dollars.

(2) Any person, acting either personally or through an agent or as agent of another, who willfully violates any provision of subsection (3) of section 99.19 or subsection (5) of section 99.20, or who willfully violates or refuses, neglects or fails to obey any order or regulation made under sections 99.14, 99.16 or 9917 shall be guilty of a misdemeanor and for each and every such offense shall, upon conviction thereof, be punished by a fine of not more than five thousand dollars or by imprisonment in the county jail for not more than one year, or by both such fine and imprisonment.

(3) Whenever any corporation commits any offense, for which punishment is provided by this section, such offense shall be deemed to be also that of the individual directors, officers or agents of such corporation who shall have authorized, ordered or done any of the acts constituting in whole or in part such offense; and such offense shall be deemed a misdemeanor and, upon conviction thereof, any such director, officer or agent shall be punished as provided in this section. (Id. § 99.29, amended L. 1927, c. 383.)

95a. **Enforcement Provisions.**—(1) It shall be the duty of district attorneys to prosecute cases arising under sections 99.01 to 99.30, inclusive. The department may be represented in any such case by its attorney. It shall be the duty of county

agricultural agents, upon request of the commissioner, to assist in carrying out the provisions of sections 99.01 to 99.30, inclusive.

(2) In any criminal or civil action under sections 99.01 to 99.30, inclusive, any exception, exemption, proviso, excuse or qualification contained in any provision of any such section or in any standard, order or regulation thereunder, may be proved by the defendant, but need not be specified or negatived in the information or complaint, and, if so specified or negatived, no proof in relation to the matter so specified or negatived shall be required on the part of the informant or complainant. (Id. § 99.30.)

Feeding Stuffs.

96. Concentrated Commercial Feed.—(1) Definition. The term "concentrated commercial feed," as used in this section, shall include linseed meals, cotton seed meals, cocoanut meals, oil meals of all kinds, gluten meals, pea meals, gluten feeds, maize feeds, starch feeds, sugar feeds, molasses feeds, hominy feeds, cerealin feeds, distillers' grains, dried brewers' grains, malt sprouts, alfalfa meal, dried beet pulp, corn, wheat, rye, and buckwheat bran, middlings or shorts, rice meals, oat feeds, barley feeds, corn and oat feeds, dried blood, tankage, ground beef or fish scraps, mixed feeds of all kinds, also condimental stock foods, patented and proprietary stock foods claimed to possess nutritive as well as medicinal properties, and all other materials intended for feeding to domestic animals; but shall not include hays and straws, the whole seeds nor the unmixed meals made directly from the entire grains of wheat, rye, barley, oats, Indian corn, buckwheat, sorghum, broom corn, millet, and flax seed.

(2) Exception.—This section does not prohibit persons engaged in the business of manufacturing flours and malt from selling at the place where made, their own manufacture of mill feeds or malt sprouts without complying with its provisions, except as provided in subsections (3) and (10) of this section.

(3) Sale; labeling.—Every person who shall sell, offer or expose for sale or for distribution in this State any concentrated commercial feed shall furnish with each car or other amount shipped in bulk, and shall affix to every package of such feed in a conspicuous place on the outside thereof, a plainly printed statement clearly and truly certifying the number of net pounds in the car or package sold or offered for sale, the name or trade-mark under which the article is sold, the name of the manufacturer or shipper, the place of manufacture, the place of business, and the minimum percentages it contains of crude protein, and of crude fat, and the maximum percentage of crude fibre which it contains, and the specific name of each ingredient used in its manufacture. The crude protein, crude fat, and crude fibre shall be determined by the methods adopted by the Association of Official Agricultural Chemists of North America. Whenever any such feed is sold at retail in bulk or in containers belonging to the purchaser, the agent or dealer shall furnish to the purchaser such a statement. Unless marked or labeled as before provided every person engaged in the business of selling mixtures consisting entirely of ground corn, ground oats, ground rye, or ground barley shall mark plainly in a conspicuous place on the outside of every sack or package of such mixtures the name and place of business of the seller, and substantially the proportions of ground corn, ground oats, ground rye or ground barley which said mixture contains. Whenever such mixtures of whole ground grains are sold in bulk or in containers belonging to the purchaser, the seller shall furnish to the purchaser a signed statement setting forth such facts.

(4) Weed seed to be killed.—It shall be unlawful for any manufacturer or other person to sell, offer, or expose for sale, or for distribution in this State any concentrated commercial feed, which shall contain any weed seed in which the germ and life has not been destroyed. Any person violating this subsection shall be punished by a fine of not less than one hundred dollars and not more than five hundred dollars. This subsection shall not be deemed to make unlawful any sale by a retailer, who was not able, by reasonable diligence to ascertain before such sale, the presence in any such material sold of such obnoxious seed.

(5) Duty before offering for sale.—Before any person shall sell, offer or expose for sale in this State any concentrated commercial feed, he shall for each and every feed bearing a distinguishing name or trade-mark, file annually during the month of December with the Commissioner of Agriculture a certified copy of the statement specified in subsection (3), said certified copy to be accompanied, when the commissioner shall so request, by a sealed glass jar or bottle containing at least one pound of the feed, and a satisfactory affidavit that said sample corresponds closely with such feed, in the percentage of protein and fat.

(6) Annual license for sale of; fee.—Every manufacturer, importer and seller of concentrated commercial feed shall pay annually to the Commissioner of Agriculture a license fee or tonnage tax as provided in subsection (7) or in subsection (8) of this section, but no person shall comply in whole or in part with both subsections during any year. Before a manufacturer, importer or seller of any concentrated commercial feed shall sell such material, he shall pay the license fee or tonnage tax prescribed herein. The commissioner shall report annually to the State Board of Public Affairs the amount received and a detailed statement of the expenses incurred in administering the concentrated commercial feed law. The sale of concentrated commercial feed to each other by importers, manufacturers, or manipulators who mix concentrated commercial feed for sale is not restricted or prohibited nor is the free unrestricted shipment of these articles to manufacturers or manipulators who mix concentrated commercial feed for sale prohibited.

(7) License fee.—Every manufacturer, importer and seller of concentrated commercial feed shall pay annually during the month of December to the Commissioner of Agriculture a license fee or tonnage tax as follows: For flour mills having a daily capacity of not more than two hundred barrels of flour, five dollars for each brand of flour mill offal having a distinguishing name, trade-mark or guaranteed analysis; for flour mills having a daily capacity of more than two hundred barrels and not more than six hundred barrels of flour, ten dollars for each such brand of flour mill offal; for flour mills having a daily capacity of more than six hundred barrels and not more than two thousand barrels of flour, fifteen dollars for each such brand of flour mill offal; for flour mills having a daily capacity of more than two thousand barrels of flour, twenty dollars for each such brand of flour mill offal; for all other concentrated commercial feed, excepting flour mill feeds, a license fee as follows: For mills having a daily capacity of not more than fifty tons of feed, five dollars for each brand of feed; for mills having a daily capacity of more than fifty tons and not more than one hundred tons of feed, ten dollars for each such brand of feed; for mills having a daily capacity of more than one hundred tons and not more than two hundred tons of feed, fifteen dollars for each such brand of feed; for mills having a daily capacity of more than two hundred tons, twenty dollars for each such brand of feed. A statement under oath showing the capacity of each mill shall be filed with the Commissioner of Agriculture annually during the month of December. Any person may sell a feed not manufactured by him upon registering said feed under a distinguishing name, trade-mark or guaranteed analysis and upon payment of fifteen dollars for each brand of feed sold under a distinguishing name, trade-mark or guaranteed analysis.

(8) Tonnage tax.—On or before January twentieth of each year every manufacturer, importer and seller of any concentrated commercial feed in place of complying with the preceding subsection, may file a sworn statement with the Commissioner of Agriculture setting forth the number of tons of feed sold in Wisconsin during the preceding calendar year, together with the list of his agents or dealers throughout the State of Wisconsin with their addresses, and also a permit to said commissioner to examine his books in order to verify, if desired, the tonnage sold; and apply for a license to sell concentrated commercial feed, and shall pay a license fee of five cents per net ton of concentrated commercial feed sold during the preceding calendar year, but no license fee shall be less than ten dollars.

(9) License; expiration of.—Upon compliance with all the requirements of law on the part of the applicant the Commissioner of Agriculture shall issue to him a certificate of registration of each brand, which certificate shall constitute a license for the sale of said brands, and which shall be in force for the calendar year in which said license certificate shall be issued.

(10) Analysis; sample, how procured.—The Commissioner of Agriculture shall annually cause to be analyzed at least one sample of every concentrated commercial feed sold in this State. Said sample may be taken from any such commercial feed which may be in the possession of any manufacturer, importer, agent or dealer in this State, but shall be taken in the presence of the possessor and if the feed be in packages, shall be taken from not less than five packages or ten per cent of all the packages, and shall be thoroughly mixed. The sample shall be divided into two equal parts and placed in glass vessels, and carefully sealed and a label placed on each, stating the name of the person from whose stock the sample was drawn and the time and place of drawing, and said label shall be signed by the person taking the sample, and by the possessor at the drawing of said samples; one of said duplicate samples shall be retained by the commissioner and the other by the person whose stock was sampled. The result of the analysis of the sample, together with such additional information as circumstances advise, shall be published from time to time.

(11) Penalty.—Any person who shall sell, offer or expose for sale, or distribution, in this State, any concentrated commercial feed without complying with the requirements of this section, or any such feed which contains substantially a smaller percentage of protein, or fat, which contains substantially more fibre than is certified to be contained, or who shall fail properly to state the specific name of each and every ingredient used in its manufacture, or who shall impede, obstruct or hinder said Commissioner of Agriculture, or his authorized deputy, in the performance of his duties under this section shall be punished by a fine of not more than a hundred dollars for the first offense and not less than one hundred dollars for each subsequent offense. (Stats. 1925, § 96.56.)

97. **Adulteration; Sale; False Labeling; Penalties.**—Any person who shall adulterate any kind of meal or ground grain or other feed with milling or manufacturing offals, or any other substance whatsoever, for the purpose of sale, unless the true composition, mixture or adulteration thereof is plainly marked or indicated upon the package containing the same, or in which it is offered for sale; or who shall sell or offer for sale any meal, ground grain or other feed which has been so adulterated unless the true composition, mixture, or adulteration is plainly marked or indicated upon the package containing the same, or in which it is offered for sale; or who shall sell or offer for sale any concentrated commercial feed under a misleading or false name shall be punished by a fine of not less than five hundred nor more than one thousand dollars, or by imprisonment in the county jail not more than one year, or by both such fine and imprisonment. (Id. § 96.57.)

98. **Seed, Feed and Fertilizer Laboratories.**—The laboratories of the seed, feed, and fertilizer inspection services shall be maintained at the Agricultural Experiment Station of the College of Agriculture at the University of Wisconsin. (Id. § 96.58.)

99. **Mixed Stock-Foods; Ingredients Must be Printed on Sack.**—(1) All mixed or compounded animal stock foods offered for sale in this State either in bulk or in small packages shall have been printed upon sack or package in plain letters all of the different ingredients of which it is composed.

(2) Any person who shall violate this section shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not less than ten nor more than fifty dollars.

(3) It shall be the duty of the State Dairy and Food Commissioner to enforce the provisions of this section. (Id. § 343.409.)

NOTE: See also No. 17.

Fish.

See Nos. 28 and 108.

Flavoring Extracts.

100. **Food Products; Definitions; Standards.**—In all prosecutions arising under the provisions of these statutes relating to the manufacture or sale of an adulterated, misbranded or otherwise unlawful article of food,* the following definitions and standards for food products shall be the legal definitions and standards, to wit: . . .

(22) FLAVORING EXTRACTS.—A flavoring extract is a solution in ethyl alcohol of proper strength of the sapid and odorous principles derived from an aromatic plant, or parts of the plant, with or without its coloring matter, and conforms in name to the plant used in its preparation.

The "flavoring extracts" herein described are intended solely for food purposes and are not to be confounded with similar preparations described in the Pharmacopœia for medicinal purposes. The term "flavoring extract" includes solutions sold for food purposes as "flavors," "flavorings," "essences," and "tinctures."

Almond extract is the flavoring extract prepared from oil of bitter almonds, free from hydrocyanic acid, and contains not less than one per cent by volume of oil of bitter almonds.

Oil of bitter almonds, commercial, is the volatile oil obtained from the seed of the bitter almond (Amygdalus communis L.), the apricot (Prunus armeniaca L.), or the peach (Amygdalus persica L.).

Anise extract is the flavoring extract prepared from oil of anise, and contains not less than three per cent by volume of oil of anise.

Oil of anise is the volatile oil obtained from the anise seed.

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*See No. 7 et seq.

Celery seed extract is the flavoring extract prepared from celery seed or the oil of celery seed, or both, and contains not less than three-tenths (0.3) per cent by volume of oil of celery seed.

Oil of celery seed is the volatile oil obtained from celery seed.

Cassia extract is the flavoring extract prepared from oil of cassia and contains not less than two per cent by volume of oil of cassia.

Oil of cassia is the lead-free volatile oil obtained from the leaves or bark of Cinnamomum cassia Bl., and contains not less than seventy-five per cent by weight of cinnamic aldehyde.

Cinnamon extract is the flavoring extract prepared from oil of cinnamon, and contains not less than two per cent by volume of oil of cinnamon.

Oil of cinnamon is the lead-free volatile oil obtained from the bark of the Ceylon cinnamon (Cinnamomum zeylanicum Breyne), and contains not less than sixty-five per cent by weight of cinnamic aldehyde and not more than ten per cent by weight of eugenol.

Clove extract is the flavoring extract prepared from oil of cloves, and contains not less than two per cent by volume of oil of cloves.

Oil of cloves is the lead-free volatile oil obtained from cloves.

Ginger extract is the flavoring extract prepared from ginger and contains in each one hundred cubic centimeters the alcohol-soluble matters from not less than twenty grams of ginger.

Lemon extract is the flavoring extract prepared from oil of lemon, or from lemon peel, or both, and contains not less than five per cent by volume of oil of lemon.

Oil of lemon is the volatile oil obtained by expression or alcoholic solution, from the fresh peel of the lemon (Citrus limonum L.), has an optical rotation at twenty-five degrees Centigrade of not less than sixty degrees in a one-hundred-millimetre tube, and contains not less than four per cent by weight of citral.

Terpeneless extract of lemon is the flavoring extract prepared by shaking oil of lemon with dilute alcohol, or by dissolving terpeneless oil of lemon in dilute alcohol, and contains not less than two-tenths (0.2) per cent by weight of citral derived from oil of lemon.

Terpeneless oil of lemon is oil of lemon from which all or nearly all of the terpenes have been removed.

Nutmeg extract is the flavoring extract prepared from oil of nutmeg, and contains not less than two per cent by volume of oil of nutmeg.

Oil of nutmeg is the volatile oil obtained from nutmegs.

Orange extract is the flavoring extract prepared from oil of orange, or from orange peel, or both, and contains not less than five per cent by volume of oil of orange.

Oil of orange is the volatile oil obtained, by expression or alcoholic solution, from the fresh peel of the orange (Citrus aurantium L.) and has an optical rotation at twenty-five degrees Centigrade of not less than ninety-five degrees in a one-hundred-millimetre tube.

Terpeneless extract of orange is the flavoring extract prepared by shaking oil of orange with dilute alcohol, or by dissolving terpeneless oil of orange in dilute alcohol, and corresponds in flavoring strength to orange extract.

Terpeneless oil of orange is oil of orange from which all or nearly all of the terpenes have been removed.

Peppermint extract is the flavoring extract prepared from oil of peppermint, or from peppermint, or both, and contains not less than three per cent by volume of oil of peppermint.

Peppermint is the leaves and flowering tops of Mentha piperita L.

Oil of peppermint is the volatile oil obtained from peppermint, and contains not less than fifty per cent by weight of menthol.

Rose extract is the flavoring extract prepared from otto of roses, with or without red rose petals, and contains not less than four-tenths (0.4) per cent by volume of otto of roses.

Otto of roses is the volatile oil obtained from the petals of Rosa damascena Mill., R. centifolia L., or R. moschata Herrm.

Savory extract is the flavoring extract prepared from oil of savory, or from savory, or both, and contains not less than thirty-five hundredths (0.35) per cent by volume of oil of savory.

Oil of savory is the volatile oil obtained from savory.

Spearmint extract is the flavoring extract prepared from oil of spearmint, or from spearmint, or both, and contains not less than three per cent by volume of oil of spearmint.

Spearmint is the leaves and flowering tops of Mentha spicata L.

Oil of spearmint is the volatile oil obtained from spearmint.

Star anise extract is the flavoring extract prepared from oil of star anise, and contains not less than three per cent by volume of oil of star anise.

Oil of star anise is the volatile oil distilled from the fruit of the star anise (Illicium verum Hook).

Sweet basil extract is the flavoring extract prepared from oil of sweet basil, or from sweet basil, or both, and contains not less than one-tenth (0.1) per cent by volume of oil of sweet basil.

Sweet basil, basil, is the leaves and tops of Ocymum basilicum L.

Oil of sweet basil is the volatile oil obtained from basil.

Sweet marjoram extract, marjoram extract, is the flavoring extract prepared from the oil of marjoram, or from marjoram, or both, and contains not less than one per cent by volume of oil of marjoram.

Oil of marjoram is the volatile oil obtained from marjoram.

Thyme extract is the flavoring extract prepared from oil of thyme, or from thyme, or both, and contains not less than two-tenths (0.2) per cent by volume of oil of thyme.

Oil of thyme is the volatile oil obtained from thyme.

Tonka extract is the flavoring extract prepared from tonka bean, with or without sugar or glycerin, and contains not less than one-tenth (0.1) per cent by weight of coumarin extracted from the tonka bean, together with a corresponding proportion of the other soluble matters thereof.

Tonka bean is the seed of Coumarouna odorata Aublet [Dipteryx odorata (Aubl.) Willd.].

Vanilla extract is the flavoring extract prepared from vanilla bean, with or without sugar or glycerin, and contains in one hundred cubic centimetres the soluble matters from not less than ten grams of the vanilla bean.

Vanilla bean is the dried, cured fruit of a Vanilla plainfolia Andrews.

Wintergreen extract is the flavoring extract prepared from oil of wintergreen, and contains not less than three per cent by volume of oil of wintergreen.

Oil of wintergreen is the volatile oil distilled from the leaves of the Gaultheria procumbens L. (Stats. 1925, § 352.03.)

NOTE: See also No. 171.

Flour.

See Nos. 23 et seq., 96, 104 and 226.

Fruits—Fruit Products.

101. Food Products; Definitions; Standards.—In all prosecutions arising under the provisions of these statutes relating to the manufacture or sale of an adulterated, misbranded or otherwise unlawful article of food,* the following definitions and standards for food products shall be the legal definitions and standards, to wit: . . .

(13) FRUITS.—Fruits are the clean, sound, edible, fleshy fructifications of plants, distingushed by their sweet, acid, and ethereal flavors.

Dried fruit is the clean, sound product made by drying mature, properly prepared, fresh fruit in such a way as to take up no harmful substance, and conforms in name to the fruit used in its preparation; sun-dried fruit is dried fruit made by drying without the use of artificial means; evaporated fruit is dried fruit made by drying with the use of artificial means.

Evaporated apples are evaporated fruit made from peeled and cored apples, and contain not more than twenty-seven per cent of moisture determined by the usual commercial method of drying for four hours at the temperature of boiling water.

Canned fruit is the sound product made by sterilizing clean, sound, properly matured and prepared fresh fruit, by heating, with or without sugar (sucrose) and spices, and keeping in suitable, clean, hermetically sealed containers, and conforms in name to the fruit used in its preparation.

Preserve is the sound product made from clean, sound, properly matured and prepared fresh fruit and sugar (sucrose) syrup, with or without spices or vinegar, and conforms in name to that of the fruit used, and in its preparation not less than forty-five pounds of fruit are used to each fifty-five pounds of sugar.

Honey preserve is preserve in which honey is used in place of sugar (sucrose) syrup.

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*See No. 7 et seq.

Glucose preserve is preserve in which a glucose product is used in place of sugar (sucrose) syrup.

Jam, marmalade, is the sound product made from clean, sound, properly matured and prepared fresh fruit and sugar (sucrose), with or without spices or vinegar by boiling to a pulpy or semi-solid consistence, and conforms in name to the fruit used, and in its preparation not less than forty-five pounds of fruit are used to each fifty-five pounds of sugar.

Glucose jam, glucose marmalade, is jam in which a glucose product is used in place of sugar (sucrose).

Fruit butter is the sound product made from fruit juice and clean, sound, properly matured and prepared fruit, evaporated to a semi-solid mass of homogeneous consistence, with or without the addition of sugar and spices or vinegar, and conforms in name to the fruit used in its preparation.

Glucose fruit butter is fruit butter in which a glucose product is used in place of sugar (sucrose).

Jelly is the sound, semi-solid, gelatinous product made by boiling clean, sound, properly matured and prepared fresh fruit with water, concentrating the expressed and strained juice, to which sugar (sucrose) is added, and conforms in name to the fruit used in its preparation.

Glucose jelly is jelly in which a glucose product is used in place of sugar (sucrose).

Modified fruits are fruit products obtained from clean, sound, properly matured fruits that have been sulphured and brined and from which substantially all brine and sulphur dioxide have been subsequently removed together with that portion of the fruit juices unavoidably removed by said treatment, and which have also been treated and preserved by or in a sugar syrup or sugar solution with or without added harmless color or flavor and conform in name with the fruit or fruits used in their preparation, and which food products shall not contain sulphur dioxide in excess of thirty-five thousandths of one per cent by weight. (Stats. 1925, § 352.03.)

102. Fruit Products.—(1) Definitions; standards.—For the purposes of this act the following definitions and standards are hereby classified:

(a) Fruits are the clean, sound, edible, fleshy fructifications of plants, distinguished by their sweet, acid, and ethereal flavors.

(b) Preserve is the sound product made from clean, sound, properly matured and prepared fresh fruit and sugar (sucrose) syrup, with or without spices or vinegar, and conforms in name to that of the fruit used, and in its preparation not less than forty-five pounds of fruit are used to each fifty-five pounds of sugar.

(c) Honey preserve is preserve in which honey is used in place of sugar (sucrose) syrup.

(d) Glucose preserve is preserve in which glucose product is used in place of sugar (sucrose) syrup.

(e) Jam, marmalade, is the sound product made from clean, sound, properly matured and prepared fresh fruit and sugar (sucrose), with or without spices or vinegar by boiling to a pulpy or semisolid consistence, and conforms in name to the fruit used and in its preparation not less than forty-five pounds of fruit are used to each fifty-five pounds of sugar.

(f) Glucose jam, glucose marmalade, is jam in which a glucose product is used in place of sugar (sucrose).

(g) Fruit butter is the sound product made from fruit juice and clean, sound, properly matured and prepared fruit, evaporated to a semisolid mass of homogeneous consistence, with or without the addition of sugar and spices or vinegar, and conforms in name to the fruit used in its preparation.

(h) Glucose fruit butter is fruit butter in which a glucose product is used in place of sugar (sucrose).

(i) Jelly is the sound, semisolid, gelatinous product made by boiling clean, sound, properly matured and prepared fresh fruit with water, concentrating the expressed and strained juice, to which sugar (sucrose) is added, and conforms in name to the fruit used in its preparation.

(j) Glucose jelly is jelly in which a glucose product is used in place of sugar (sucrose).

(2) MIXED FRUITS; SALE; LABEL.—It shall be unlawful to sell, offer or expose for sale, or have in possession with intent to sell any mixed preserves, jams, fruit butters or jellies which contain more than one fruit, or the juices of more than one fruit prepared with sugar, glucose or honey or any two of them or all of them, unless each receptacle containing the same is labeled as follows:

(a) The names of all fruits and fruit juices contained in the product shall be stated on the label in continuous list in the order of their preponderance in type of the

same size and style; provided, that if any fruit or fruits or the juices of any fruit or fruits shall be used in the preparation of any of the said products in the proportion of less than twenty-five per cent by weight of the total amount of fruit or fruit juices contained therein, such fruit or fruits or fruit juices shall be designated on the label as a flavor and the word "flavor" shall be printed in type of the same size, color and style as may be employed in the printing of the name of the fruit or fruits.

(b) There shall be printed on the principal label, in continuous list in the order of their preponderance, the names sugar, glucose and honey or any two thereof which are used in the product as sweetening agents; provided, however, that in all such products in which glucose shall be used in excess of seventy-five per cent of the total amount by weight of such sweetening agents, there shall also be conspicuously printed on the principal label the percentage by weight of glucose contained in the mixed product.

(3) PENALTY.—Any person who, by himself, his servant or agent or as the servant or agent of any other person, or as the servant or agent of any firm or corporation, shall violate any of the provisions of this act shall upon conviction thereof be punished by a fine of not less than twenty-five dollars nor more than one hundred dollars, or by imprisonment in the county jail not less than thirty days nor more than sixty days. (Id. § 352.04.)

NOTE: See also Nos. 10, 28, 85 et seq., 103, 120 et seq., 222, 226 and 232.

Fruit Juices.

103. Food Products; Definitions; Standards.—In all prosecutions arising under the provisons of these statutes relating to the manufacture or sale of an adulterated, misbranded or otherwise unlawful article of food,* the following definitions and standards for food products shall be the legal definitions and standards, to wit: . . .

(27) FRUIT JUICES; FRESH.—Fresh fruit juices are the clean, unfermented liquid products obtained by the first pressing of fresh, ripe fruits, and correspond in name to the fruits from which they are obtained.

Apple juice, apple must, sweet cider, is the fresh fruit juice obtained from apples, the fruit of Pyrus malus, has a specific gravity at twenty degrees Centigrade not less than one and four hundred fifteen ten-thousandths (1.0415) nor greater than one and six hundred ninety ten-thousandths (1.0690); and contains in one hundred cubic centimetres at twenty degrees Centigrade not less than six grams, and not more than twenty grams of total sugars, in terms of reducing sugars, not less than twenty-four centigrams nor more than sixty centigrams of apple ash, which contains not less than fifty per cent of potassium carbonate.

Grape juice, grape must, is the fresh fruit juice obtained from grapes (Vitis species), has a specific gravity at twenty degrees Centigrade not less than one and four hundred ten-thousandths (1.0400) and not exceeding one and one thousand two hundred forty ten-thousandths (1.1240); and contains, in one hundred cubic centimeters at twenty Centigrade, not less than seven grams nor more than twenty-eight grams of total sugars, in terms of reducing sugars, not less than twenty centigrams and not more than fifty-five centigrams of grape ash, and not less than fifteen milligrams nor more than seventy milligrams of phosphoric acid (P_2O_5).

Lemon juice is the fresh fruit juice obtained from lemon, the fruit of Citrus Limonum Risso, has a specific gravity at twenty degrees Centigrade not less than one and thirty thousandths (1.030) and not greater than one and forty thousandths (1.040); and contains not less than ten per cent of solids, and not less than seven per cent of citric acid.

Pear juice, pear must, sweet perry, is the fresh fruit juice obtained from pears, the fruit of Pyrus communis or P. Sinensis.

(28) STERILIZED.—Sterilized fruit juices are the products obtained by heating fresh fruit juices sufficiently to kill all the organisms present and correspond in name to the fruits from which they are obtained.

(29) CONCENTRATED.—Concentrated fruit juices are clean, sound fruit juices from which a considerable portion of the water has been evaporated, and correspond in name to the fruits from which they are obtained.

(30) SWEET.—Sweet fruit juices, sweetened fruit juices, fruit syrups, are the products obtained by adding sugar (sucrose) to fresh fruit juices, and correspond in name to the fruits from which they are obtained.

*See No. 7 et seq.

Sterilized fruit syrups are the products obtained by the addition of sugar (sucrose) to fresh fruit juices and heating them sufficiently to kill all the organisms present, and correspond in name to the fruits from which they are obtained. (Stats. 1925, § 352.03.)

Glucose.

See No. 115.

Grain, Flour, Meal, Rice.

104. Food Products; Definitions; Standards.—In all prosecutions arising under the provisions of these statutes relating to the manufacture or sale of an adulterated, misbranded or otherwise unlawful article of food,* the following definitions and standards for food products shall be the legal definitions and standards, to wit: . . .

(12) GRAIN.—Grain is the fully matured, clean, sound, air-dry seed of wheat, maize, rice, oats, rye, buckwheat, barley, sorghum, millet or spelt.

Meal is the clean, sound product made by grinding grain.

Flour is the fine, clean, sound product made by bolting wheat meal and contains not more than thirteen and one-half (13.5) per cent of moisture, not less than one and twenty-five hundredths (1.25) per cent of nitrogen, not more than one per cent of ash, and not more than fifty hundredths (0.50) per cent of fibre.

Graham flour is unbolted wheat meal.

Gluten flour is the clean, sound product made from flour by the removal of starch, and contains not less than five and six-tenths (5.6) per cent of nitrogen and not more than ten per cent of moisture.

Maize meal, corn meal, Indian corn meal, is meal made from sound maize grain, and contains not more than fourteen per cent of moisture, not less than one and twelve hundredths (1.12) per cent of nitrogen, and not more than one and six-tenths (1.6) per cent of ash.

Rice is the hulled, or hulled and polished grain of Oryza sativa.

Oatmeal is meal made from hulled oats, and contains not more than twelve per cent of moisture, not more than one and five-tenths (1.5) per cent of crude fibre, not less than two and twenty-four hundredths (2.24) per cent of nitrogen, and not more than two and two-tenths (2.2) per cent of ash.

Rye flour is the fine, clean, sound product made by bolting rye meal, and contains not more than thirteen and one-half (13.5) per cent of moisture, not less than one and thirty-six hundredths (1.36) per cent of nitrogen, and not more than one and twenty-five hundredths (1.25) per cent of ash.

Buckwheat flour is bolted buckwheat meal and contains not more than twelve per cent of moisture, not less than one and twenty-eight hundredths (1.28) per cent of nitrogen, and not more than one and seventy-five hundredths (1.75) per cent of ash. (Stats. 1925, § 352.03.)

105. Coloring Grain.—Any person who shall fumigate any barley, wheat or other grain by the use of sulphur or other substance, or shall in any way or by the use of any chemical, material or process affect the color or healthfulness of such grain, or who shall sell or offer for sale any such grain knowing that the same has been so fumigated or the color or the healthfulness thereof so affected shall be punished by imprisonment in the county jail not more than one month or by fine not exceeding fifty dollars. (Id. § 352.23.)

105a. Duties of Commission; Weighing, Grading, Regulations.—(1) The grain and warehouse commission shall weigh all grain which is milled or received for milling, bought or sold in the city of Superior, and all grain received for storage, stored or shipped, either by boat or railway from any and all public warehouses, as defined by or declared to be such warehouses under the provisions of section 126.06 of the statutes.

(2) Said commission shall inspect and grade all grain grown in this State, and any other grain, upon request, which is milled or received for milling, bought or sold in the city of Superior, and shall inspect and grade all grain received for storage, stored or shipped, either by boat or railway, from any and all warehouses, as defined and declared to be such warehouses under the provisions of section 126.06 of the statutes. Provided, however, that whenever the Secretary of Agriculture of the United States has established grades or any standards of quality and condition of any grain, seed or other agricultural product under the United States grain standards act, such grades, standards of quality and conditions shall become the grades, standards, and quality and conditions of this State.

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*See No. 7 et seq.

(3) Said commission is authorized to make analyses, upon request, of any grain or cereal products which may be offered for their inspection. For the purpose of making such analyses, inspection, weighing and grading of grain or cereal products, said commission shall have the power, and it shall be their duty, to appoint a chief inspector and one or more deputy inspectors, weighmaster and one or more deputy weighmasters, a chief chemist and one or more deputy chemists, and to adopt and publish rules and regulations governing inspection, weighing and grading of grain delivered into or shipped out of any such elevators and warehouses in said city. And there is further granted to said commission full power and authority to make such further regulations as will enable them to fully comply with all the provisions of sections 126.01 to 126.55, inclusive, of the statutes, including the granting of licenses to elevators and warehouses hereinafter provided for, and the establishment and collection of charges and fees for the analyzing, inspection, weighing and grading of grain. (Id. § 126.05.)

105b. **"Superior Grades."**—The grain and warehouse commission shall before the fifteenth day of September in each year, establish a grade for all kinds of grain bought, sold or handled, by public warehouses, which shall be known as "Superior Grades," and the grade so established shall be published in some daily newspaper in the city of Superior and in any other city in which a public warehouse is located; provided, however, that whenever the Secretary of Agriculture of the United States has established grades, weights and measures, or any standards of quality and condition of any grain, seed and other agriculture products under the United States grain standards act such grades, standards of quality and condition, weights and measures shall become the grades, standard of quality and conditions, weights and measures of this State. (Id. § 126.38.)

NOTE: See also Nos. 23 et seq., 85 et seq., 96, 222, 226, 228, and 229. For other provisions of the grain inspection law, see Stats. 1925, § 126.01 et seq.

Honey.

106. **Food Products; Definitions; Standards.**—In all prosecutions arising under the provisions of these statutes relating to the manufacture or sale of an adulterated, misbranded or otherwise unlawful article of food,* the following definitions and standards for food products shall be the legal definitions and standards, to wit: . . .

(20) HONEY.—Honey is the nectar and saccharine exudations of plants gathered, modified, and stored in the comb by honey bees. (Apis mellifica and A. dorata); is lævo-rotatory, contains not more than twenty-five per cent of water, not more than twenty-five hundredths (0.25) per cent of ash, and not more than eight per cent of sucrose.

Comb honey is honey contained in the cells of comb.

Extracted honey is honey which has been separated from the uncrushed comb by centrifugal force or gravity.

Strained honey is honey removed from the crushed comb by straining or other means. (Stats. 1925, § 352.03.)

Ice.

107. **Impure Ice.**—No person or corporation shall sell or offer for sale or cause the same to be done within this State, for domestic, culinary or drinking purposes, any ice which contains mud, decayed vegetation, animal or foreign matter or malarial substance. Every person or corporation offering ice for sale shall have posted on his or its wagons, in a conspicuous manner, the name of the place from which the ice so offered for sale was cut, harvested or manufactured, and all persons or corporations dealing in or handling impure ice, to be used for cooling purposes only, shall have their wagon so labeled. Any person who or corporation which violates any of the provisions of this section shall be deemed guilty of a misdemeanor and upon conviction thereof shall be punished by a fine not less than fifty dollars or more than one hundred dollars. (Stats. 1925, § 352.46.)

Jelly, Jam and Preserve.

See Nos. 101-102.

*See No. 7 et seq.

Maple Sugar and Maple Syrup.

See Nos. 115-116.

Meal.

See No. 104.

Meat—Meat Products.

108. Food Products; Definitions; Standards.—In all prosecutions arising under the provisions of these statutes relating to the manufacture or sale of an adulterated, misbranded or otherwise unlawful article of food,* the following definitions and standards for food products shall be the legal definitions and standards, to wit:

(1) MEATS.—Meat, flesh, is any clean, sound, dressed, and properly prepared edible part of animals in good health at the time of slaughter, and if it bears a name descriptive of its kind, composition, or origin, it corresponds thereto. The term "animals," as herein used, includes not only mammals, but fish, fowl, crustaceans, mollusks, and all other animals used as food.

Fresh meat is meat from animals recently slaughtered and properly cooled until delivered to the consumer.

Salted, pickled, and smoked meats are unmixed meats preserved by salt, sugar, vinegar, spices, or smoke, singly or in combination, whether in bulk or in suitable containers.

(2) MANUFACTURED.—Manufactured meats are meats not included in subsection (1), whether simple or mixed, whole or comminuted, in bulk or in suitable containers, with or without the addition of salt, sugar, vinegar, spices, smoke, oils, or rendered fat. If they bear names descriptive of kind, composition, or origin, they correspond thereto, and when bearing such descriptive names, if force or flavoring meats are used, the kind and quantity thereof are made known.

Sausage, sausage meat, is a comminuted meat from neat cattle or swine, or a mixture of such meats, either fresh, salted, pickled or smoked, with added salt and spices and with or without the addition of edible animal fats, blood and sugar, or subsequent smoking. It contains no larger amount of water than the meats from which it is prepared contain when in their fresh condition, and if it bears a name descriptive of kind, composition or origin, it corresponds to such descriptive name. All animal tissues used as containers, such as casings, stomachs, etc., are clean and sound and impart to the contents no other substance than salt.

Blood sausage is sausage to which has been added clean, fresh blood from neat cattle or swine in good health at the time of slaughter.

Canned meat is the cooked, fresh meat of fowl, neat cattle or swine, preserved in hermetically sealed packages.

Corned meat, cured meat, is meat, cured or pickled with dry salt or in brine, with or without the addition of sugar or syrup and saltpeter.

Potted meat is comminuted and cooked meat from those parts of the animal ordinarily used for food in the fresh state, with or without salt and spices, and enclosed in suitable containers hermetically sealed.

Meat loaf is a mixture of comminuted cooked meat, with or without spices, cereals, milk and eggs, and pressed into a loaf. If it bears a descriptive name, it corresponds thereto.

Mince, mince meat, is a mixture of not less than ten per cent of cooked, comminuted meat, with chopped suet, apple and other fruit, salt and spices, and with sugar, syrup, or molasses, and with or without vinegar, fresh, concentrated, or fermented fruit juices or spirituous liquors.

(3) EXTRACTS.—Meat extract is the product obtained by extracting fresh meat with boiling water and concentrating the liquid portion by evaporation after the removal of fat, and contains not less than seventy-five per cent of total solids, of which not over twenty-seven per cent is ash, and not over twelve per cent is sodium chloride (calculated from the total chlorin present), not over six-tenths per cent is fat, and not less than eight per cent is nitrogen. The nitrogenous compounds contain not less than forty-eight per cent of meat bases and not less than ten per cent of kreatin and kreatinin.

Fluid meat extract is identical with meat extract except that it is concentrated to a lower degree and contains not more than seventy-five and not less than fifty per cent of total solids.

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*See No. 7 et seq.

Bone extract is the product obtained by extracting fresh, trimmed bones with boiling water and concentrating the liquid portion by evaporation after removal of fat, and contains not less than seventy-five per cent of total solids.

Fluid bone extract is identical with bone extract except that it is concentrated to a lower degree and contains not more than seventy-five and not less than fifty per cent of total solids.

Meat juice is the fluid portion of muscle fibre, obtained by pressure or otherwise, and may be concentrated by evaporation at a temperature below the coagulating point of the soluble proteids. The solids contain not more than fifteen per cent of ash, not more than two and five-tenths (2.5) per cent of sodium chloride (calculated from the total chlorin present), not more than four nor less than two per cent of phosphoric acid (P_2O_5), and not less than twelve per cent of nitrogen. The nitrogenous bodies contain not less than thirty-five per cent of coagulable proteids and not more than forty per cent of meat bases.

Peptones are products prepared by the digestion of proteid material by means of enzymes or otherwise, and contain not less than ninety per cent of proteoses and peptones.

Gelatin (edible gelatin) is the purified, dried, inodorous product of the hydrolysis, by treatment with boiling water, of certain tissues, as skin, ligaments, and bones, from sound animals, and contains not more than two per cent of ash and not less than fifteen per cent of nitrogen.

(4) LARD.—Lard is the rendered, fresh fat from hogs in good health at time of slaughter, is clean, free from rancidity, and contains, necessarily incorporated in the process of rendering, not more than one per cent of substances other than fatty acids and fats.

Leaf lard is lard rendered at moderately high temperatures from the internal fat of the abdomen of the hog, excluding that adherent to the intestines, and has an iodin number not greater than sixty.

Neutral lard is lard rendered at low temperatures. (Stats. 1925, § 352.03.)

109. Sausage; Sausage Mixture.—(1) Sale. No person by himself, his servant or agent, or as the servant or agent of any other person, or as the servant or agent of any firm or corporation, shall sell, offer or expose for sale or have in possession with intent to sell any product as and for sausage, unless the same complies with the following definition and standard, to wit:

Sausage, sausage meat, is a comminuted meat from neat cattle or swine, or a mixture of such meats, either fresh, salted, pickled or smoked, with added salt and spices and with or without the addition of edible animal fats, blood and sugar, or subsequent smoking. It contains no larger amount of water than the meats from which it is prepared contain when in their fresh condition, and if it bears a name descriptive of kind, composition or origin, it corresponds to such descriptive name. All animal tissues used as containers, such as casings, stomachs, etc., are clean and sound and impart to the contents no other substance than salt. Nothing in this act shall be construed as prohibiting the sale of sausage mixed with not to exceed four per cent of cereals or potato flour and not to exceed ten per cent of added water, as and for "sausage with cereals" or "sausage with potato flour" as the case may be.

(2) PENALTY.—Any person who by himself or his servant or agent, or as the servant or agent of any other person, or as the servant or agent of any firm or corporation, shall violate any of the provisions of this act shall upon conviction thereof be punished by a fine of not less than twenty-five dollars, nor more than one hundred dollars, or by imprisonment in the county jail not less than thirty days nor more than sixty days. (Id. § 352.05.)

110. Sale, Etc., of Diseased Meat; Killing Diseased Animal, Etc.—Any person who shall sell or expose for sale, or give away for use as food, or can or pack for the purpose of transportation to and sale in any market or place any unwholesome, stale, emaciated, blown, tainted, putrid or measly meat, or the flesh of any diseased animal or of any animal not slaughtered for the purpose of food, knowing or having good reason to believe that such meat is as above described, or that such flesh is the flesh of a diseased animal or of an animal not slaughtered for such purpose, and any person or corporation owning or operating any slaughterhouse or packing establishment in this State who shall receive for the purpose of killing, or kill, any diseased animal, or render the carcass of any animal that shall die by disease or in consequence of exposure, or that shall not have been slaughtered for food, knowing or having good reason to believe that such animal was diseased, or had died from disease or in consequence of exposure, or had not been slaughtered for food, such person shall be punished by imprisonment in the county jail not exceeding six months nor less than ten days, or by fine of not more than one hundred dollars nor less than ten dollars or both, and such cor-

poration shall be fined not more than five hundred dollars nor less than ten dollars. (Id. § 352.43.)

111. Adulteration of Meats.—Any person who by himself or his agent shall offer or expose for sale, take orders for, or sell, or have in his possession with intent to sell for use or consumption within the State any sausage or chopped meat compound containing any artificial coloring, or chemical preservative or antiseptic, except common salt, saltpetre, spices or wood smoke shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be fined not less than twenty-five dollars nor more than one hundred dollars. (Id. § 352.57.)

111a. Sale of "Kosher" Meat Regulated; Penalty.—(1) Under this section "kosher" means prepared in accordance with the Jewish ritual and sanctioned by Hebrew orthodox religious requirements.

(2) No person shall, with intent to defraud, sell or expose for sale any meat or meat preparation, whether the same be raw or prepared for human consumption, and falsely represent the same to be kosher, and as having been prepared under and of a product or products sanctioned by the orthodox Hebrew religious requirements; nor shall any person falsely represent any food product or the contents of any package or container to be so constituted and prepared, by having or permitting to be inscribed thereon the word "kosher" in any language; nor shall any person sell or expose for sale in the same place of business both kosher and nonkosher meat or meat preparations, either raw or prepared for human consumption, unless he indicates on his window signs and all display advertising, in block letters at least four inches in height, "kosher and nonkosher meat sold here;" nor shall any person expose for sale in any show window or place of business both kosher and nonkosher meat or meat preparations, either raw or prepared for human consumption, unless he displays over each kind of meat or meat preparation so exposed a sign in block letters at least four inches in height reading "kosher meat," or "nonkosher meat," as the case may be.

(3) No person, with intent to defraud, shall sell or expose for sale in any restaurant or other place where food products are sold for consumption on the premises, any article of food or food preparations and falsely represent the same to be kosher and as having been prepared in accordance with the orthodox Hebrew religious requirements; nor shall any person sell or expose for sale in any such restaurant or other place both kosher and nonkosher food or food preparations for consumption on the premises when not prepared in accordance with the Jewish ritual and not sanctioned by the Hebrew orthodox religious requirements unless he displays on his window signs and display advertising in block letters at least four inches in height "kosher and nonkosher food served here."

(4) Any person who violates any provisions of this section shall be guilty of a misdemeanor and upon conviction shall be punished by a fine of not less than twenty-five nor more than two hundred dollars. (Id. § 352.66, added L. 1927, c. 372.)

112. Slaughterhouses.—(1) No person shall erect or maintain any slaughterhouse, or conduct the business of slaughtering, upon the bank of a watercourse; nor, unless under Federal inspection, within one-eighth mile of a public highway, dwelling, or business building; or put a carcass or offal into a watercourse nor upon the banks of a watercourse flowing through any city, village or organized town of two hundred or more inhabitants. Violation of this subsection shall be punished by fine of not less than ten nor more than one hundred dollars, or by imprisonment not exceeding six months. The executive of the municipality shall cause immediate removal of a building or business violating this section, and if he knowingly permit it to be operated, he shall forfeit not less than fifteen nor more than fifty dollars. The provisions of this section relative to location near a public highway, dwelling or business building shall not apply to central or co-operative slaughterhouses in cities having a full-time health officer. Such slaughterhouses shall be open to inspection at all times and must be operated in compliance with all State and local regulations.

(2) Slaughterhouses not subject to Federal inspection and supervision shall be inspected and supervised, as to location, construction and operation, by the State Board of Health, and said board shall cause each such slaughterhouse to be inspected at least once a year. The local health officer, upon complaint or upon the request of the State board, shall make such inspection of slaughterhouses as may be necessary. Violation of the rules and regulations of the State board shall be promptly reported by the local health officer. The State board may inspect slaughterhouses under Federal inspection, and shall enforce State law as to all slaughterhouses and make such order as may be necessary to correct insanitary conditions. Each order shall specify the time within which it shall be complied with, and shall be served in person or by registered mail.

(3) The owner, operator or person in charge may appeal in writing from the order, and shall be heard by the board at its next regular meeting.

(4) The location and construction of any building used as a slaughterhouse not already reported to the State Board of Health and not under Federal inspections, shall be reported, by the owner, if a resident of the State, otherwise by the operator, to said board within ten days after first used.

(5) Anyone who shall prevent or attempt to prevent an authorized official from entering at any time any slaughterhouse or its premises for inspection, or who shall fail to comply with any order of the rules of the State Board of Health, or who shall violate this section except subsection (1), shall be fined not less than ten nor more than five hundred dollars, or imprisoned not less than five days nor more than six months. (Stats. 1925, § 146.11.)

112a. Rendering Plants.—Subsections (2), (3), (4) and (5) of section 146.11 shall apply to rendering plants or similar institutions where carcasses or offal of animals or similar material is handled, and in counties of one hundred thousand population or more subsection (1) of section 146.11 shall apply also. (Id. § 146.12.)

112b. Poultry Dealers to Keep Record of Purchases; Penalties.—(1) It is unlawful for any poultry dealer to purchase any live or dead poultry without registering annually with the county clerk.

(2) Every poultry dealer shall keep a record of all purchases of poultry made by him showing in detail the place and date of purchase, the name and address of the person from whom the purchase was made, together with a general description of the kind of poultry purchased. Such record shall be kept in permanent form and be open to inspection at all reasonable times to any district attorney, assistant district attorney, sheriff, deputy sheriff or any police officer.

(3) Any poultry dealer, his servant or agent, violating any of the provisions of this section shall, upon the first conviction, be punished by a fine of from ten to one hundred dollars. Upon a second or subsequent conviction by a fine of from twenty-five to five hundred dollars or be imprisoned in the county jail for not more than ninety days, or by both such fine and imprisonment.

(4) Any person selling poultry to a poultry dealer who gives falsely his name or address to such dealer, his agent or servant, shall be imprisoned in the county jail for not less than thirty days nor more than one year. (Id. § 175.10, added L. 1927, c. 274.)

112c. Live Stock Sanitary Board.—. . . (4) It shall be the duty of the State Live Stock Sanitary Board to protect the health of domestic animals of the State; to determine and employ the most efficient and practical means for the prevention, suppression, control and eradication of communicable diseases among domestic animals, and for these purposes it may establish, maintain, enforce and regulate such quarantine and such other measures relating to the movement and care of animals and their products, the disinfection of suspected localities and articles, and the disposition of animals, as the board may deem necessary; and to adopt from time to time all necessary regulations. . . . (Stats. 1925, § 94.01.)

112d. Slaughter on Premises.—The slaughter of diseased animals on the premises of the owner shall be made under the supervision and direction of the Director of Live Stock Sanitation or an assistant. If upon inspection of the carcass it is found, according to rules of inspection of the United States Bureau of Animal Industry, to be unfit for human food, he shall destroy it or cause it to be buried and covered with a sufficient quantity of lime to destroy it. The hide shall be disinfected and otherwise cared for according to said rules. If the carcass is fit to be used for human food it may be disposed of in accordance with the provisions made by the board. (Id. § 94.18.)

NOTE: See also Nos. 2, 28, 29 et seq., 85 et seq., and 143 et seq.

Molasses.

113. Food Products; Definitions; Standards.—In all prosecutions arising under the provisions of these statutes relating to the manufacture or sale of an adulterated, misbranded or otherwise unlawful article of food,* the following definitions and standards for food products shall be the legal definitions and standards, to wit: . . .

(16) MOLASSES.—Molasses is the product left after separating the sugar from massecuite, melada, mush sugar, or concrete, and contains not more than twenty-five per cent of water and not more than five per cent of ash.

Refiners' syrup, treacle, is the residual liquid product obtained in the process of refining raw sugars, and contains not more than twenty-five per cent of water and not more than eight per cent of ash. (Stats. 1925, § 352.03.)

Olive Oil.

See No. 84.

Pickles.

See No. 118.

Rice.

See No. 104.

Salt.

114. Food Products; Definitions; Standards.—In all prosecutions arising under the provisions of these statutes relating to the manufacture or sale of an adulterated, misbranded or otherwise unlawful article of food,* the following definitions and standards for food products shall be the legal definitions and standards, to wit: . . .

(33) SALT.—Table salt, dairy salt, is fine-grained crystalline salt containing, on a water-free basis, not more than one and four-tenths (1.4) per cent of calcium sulphate ($CaSO_4$), nor more than five-tenths (0.5) per cent of calcium and magnesium chlorids ($CaCl_2$ and $MgCl_2$), nor more than one-tenth (0.1) per cent of matters insoluble in water. (Stats. 1925, § 352.03.)

NOTE: See also No. 222.

Spices.

See No. 43.

Sugars, Glucose.

115. Food Products; Definitions; Standards.—In all prosecutions arising under the provisions of these statutes relating to the manufacture or sale of an adulterated, misbranded or otherwise unlawful article of food,* the following definitions and standards for food products shall be the legal definitions and standards, to wit: . . .

(15) SUGAR.—Sugar is the product chemically known as sucrose (saccharose) chiefly obtained from sugar cane, sugar beets, sorghum, maple and palm.

Granulated, loaf, cut, milled and powdered sugars are different forms of sugar, and contain at least ninety-nine and five-tenths (99.5) per cent of sucrose.

Maple sugar is the solid product resulting from the evaporation of maple sap, and contains, in the water-free substance, not less than sixty-five hundredths (0.65) per cent of maple sugar ash.

Masseucuite, melada, mush sugar, and concrete are products made by evaporating the purified juice of a sugar-producing plant, or a solution of sugar, to a solid or semi-solid consistence, and in which the sugar chiefly exists in a crystalline state. . . .

(18) STARCH SUGAR.—Starch sugar is the solid product made by hydrolizing starch or a starch-containing substance until the greater part of the starch is converted into dextrose. Starch sugar appears in commerce in two forms, anhydrous starch sugar and hydrous starch sugar. The former, crystallized without water of crystallization, contains not less than ninety-five per cent of dextrose and not more than eight-tenths (0.8) per cent of ash. The latter, crystallized with water of crystallization, is of two varieties—seventy sugar, also known as brewer's sugar, contains not less than seventy per cent of dextrose and not more than eight-tenths (0.8) per cent of ash; eighty sugar, climax or acme sugar, contains not less than eighty per cent of dextrose and not more than one and one-half (1.5) per cent of ash.

The ash of all these products consists almost entirely of chlorids and sulphates.

Glucose, mixing glucose, confectioner's glucose, is a thick, syrupy, colorless product made by incompletely hydrolizing starch or a starch-containing substance, and decolorizing and evaporating the product. It varies in density from forty-one to forty-five degrees Baume at a temperature of one hundred degrees Fahrenheit, and conforms in density, within these limits, to the degrees Baume is claimed to show, and for a density of forty-one degrees Baume contains not more than

*See No. 7 et seq.

twenty-one per cent and for a density of forty-five degrees not more than fourteen per cent of water. It contains on a basis of forty-one degrees Baume not more than one per cent of ash, consisting chiefly of chlorids and sulphates. (Stats. 1925, § 352.03.)

Syrups.

116. Food Products; Definitions; Standards.—In all prosecutions arising under the provisions of these statutes relating to the manufacture or sale of an adulterated, misbranded or otherwise unlawful article of food,* the following definitions and standards for food products shall be the legal definitions and standards, to wit: . . .

(17) SYRUP.—Syrup is the sound product made by purifying and evaporating the juice of a sugar-producing plant without removing any of the syrup.

Sugar-cane syrup is syrup made by the evaporation of the juice of the sugar-cane or by the solution of sugar-cane concrete, and contains not more than thirty per cent of water and not more than two and five-tenths (2.5) per cent of ash.

Sorghum syrup is syrup made by the evaporation of sorghum juice or by the solution of sorghum concrete, and contains not more than thirty per cent of water and not more than two and five-tenths (2.5) per cent of ash.

Maple syrup is syrup made by the evaporation of maple sap or by the solution of maple concrete, and contains not more than thirty-two per cent of water and not less than forty-five hundredths (0.45) per cent of maple syrup ash.

Sugar syrup is the product made by dissolving sugar to the consistence of a syrup, and contains not more than thirty-five per cent of water. (Stats. 1925, § 352.03.)

NOTE: See also Nos. 2 and 113.

Tea, Coffee, Cocoa, Chocolate, Etc.

117. Food Products; Definitions; Standards.—In all prosecutions arising under the provisions of these statutes relating to the manufacture or sale of an adulterated, misbranded or otherwise unlawful article of food,* the following definitions and standards for food products shall be the legal definitions and standards, to wit: . . .

(24) TEA.—Tea is the leaves and leaf buds of different species of Thea, prepared by the usual trade processes of fermenting, drying, and firing; conforms in variety and place of production to the name it bears; and contains not less than four nor more than seven per cent of ash.

(25) COFFEE.—Coffee is the seed of Coffea arabica L. or Coffea liberica Bull., freed from all but a small portion of its spermoderm, and conforms in variety and place of production to the name it bears.

Roasted coffee is coffee which by the action of heat has become brown and developed its characteristic aroma. and contains not less than ten per cent of fat and not less than three per cent of ash.

(26) COCOA BEANS.—Cocoa beans are the seeds of the cocao tree, Theobroma cacao L.

Cocoa nibs, cracked cocoa, is the roasted, broken cocoa bean freed from its shell or husk.

Chocolate, plain chocolate, bitter chocolate, chocolate liquor, bitter chocolate coatings, is the solid or plastic mass obtained by grinding cocoa nibs without the removal of fat or other constituents except the germ, and contains not more than three per cent of ash insoluble in water, three and fifty-hundredths (3.50) per cent of crude fibre, and nine per cent of starch, and not less than forty-five per cent of cocoa fat.

Sweet chocolate, sweet chocolate coatings, is chocolate mixed with sugar (sucrose), with or without the addition of cocoa butter, spices, or other flavoring materials, and contains in the sugar- and fat-free residue no higher percentage of either ash, fibre, or starch than is found in the sugar- and fat-free residue of chocolate.

Cocoa, powdered cocoa, is cocoa nibs, with or without the germ, deprived of a portion of its fat and finely pulverized, and contains percentages of ash, crude fibre, and starch corresponding to those in chocolate after correction for fat removed.

Sweet cocoa, sweetened cocoa, is cocoa mixed with sugar (sucrose), and contains not more than sixty per cent of sugar (sucrose), and in the sugar- and fat-

*See No. 7 et seq.

free residue no higher percentage of either ash, crude fibre, or starch than is found in the sugar- and fat-free residue of chocolate. (Stats. 1925, § 352.03.)

NOTE: See also No. 2.

Vegetables—Vegetable Products.

118. Food Products; Definitions; Standards.—In all prosecutions arising under the provisions of these statutes relating to the manufacture or sale of an adulterated, misbranded or otherwise unlawful article of food,* the following definitions and standards for food products shall be the legal definitions and standards, to wit: . . .

(14) VEGETABLES.—Vegetables are the succulent, clean, sound, edible parts of herbaceous plants used for culinary purposes.

Dried vegetables are the clean, sound products made by drying properly matured and prepared vegetables in such a way as to take up no harmful substance, and conform in name to the vegetables used in their preparation; sun-dried vegetables are dried vegetables made by drying without the use of artificial means; evaporated vegetables are dried vegetables made by drying with the use of artificial means.

Canned vegetables are sound, properly matured and prepared fresh vegetables, with or without salt, sterilized by heat, with or without previous cooking in vessels from which they take up no metallic substance, kept in suitable, clean, hermetically sealed containers, are sound and conform in name to the vegetables used in their preparation.

Pickles are clean, sound, immature cucumbers, properly prepared, without taking up any metallic compound other than salt, and preserved in any kind of vinegar, with or without spices; pickled onions, pickled beets, pickled beans, and other pickled vegetables are vegetables prepared as described above, and conform in name to the vegetables used.

Salt pickles are clean, sound, immature cucumbers, preserved in a solution of common salt, with or without spices.

Sweet pickles are pickled cucumbers or other vegetables in the preparation of which sugar (sucrose) is used.

Sauerkraut is clean, sound, properly prepared cabbage, mixed with salt, and subjected to fermentation.

Catchup (ketchup, catsup) is the clean, sound product made from the properly prepared pulp of clean, sound, fresh, ripe tomatoes, with spices and with or without sugar and vinegar; mushroom catchup, walnut catchup, et cetera, are catchups made as above described, and conform in name to the substances used in their preparation. (Stats. 1925, § 352.03.)

NOTE: See also Nos. 28, 85 et seq., 120 et seq., *222*, *226*, and *232*.

Vinegar.

119. Food Products; Definitions; Standards.—In all prosecutions arising under the provisions of these statutes relating to the manufacture or sale of an adulterated, misbranded or otherwise unlawful article of food,* the following definitions and standards for food products shall be the legal definitions and standards, to wit: . . .

(32) VINEGAR.—Vinegar, cider vinegar, apple vinegar, is the product made by the alcoholic and subsequent acetous fermentations of the juice of apples, is lævo-rotatory, and contains not less than four grams of acetic acid, not less than one and six-tenths (1.6) grams of apple solids, of which not more than fifty per cent are reducing sugars, and not less than twenty-five hundredths (0.25) gram of apple ash in one hundred cubic centimeters at twenty degrees Centigrade; and the water soluble ash from one hundred cubic centimeters at twenty degrees Centigrade of the vinegar contains not less than ten milligrams of phosphoric acid (P_2O_5), and requires not less than thirty cubic centimeters of decinormal acid to neutralize its alkalinity.

Wine vinegar, grape vinegar, is the product made by the alcoholic and subsequent acetous fermentations of the juice of grapes and contains in one hundred cubic centimeters at twenty degrees Centigrade, not less than four grams of acetic acid, not less than one gram of grape solids, and not less than thirteen-hundredths (0.13) gram of grape ash.

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*See No. 7 et seq.

Malt vinegar is the product made by the alcoholic and subsequent acetous fermentations, without distillation, and of an infusion of barley malt or cereals whose starch has been converted by malt, is dextro-rotatory, and contains, in one hundred cubic centimeters at twenty degrees Centigrade, not less than four grams of acetic acid, and not less than two grams of solids, and not less than two-tenths (0.2) gram of ash; and the water-soluble ash from one hundred cubic centimeters at twenty degrees Centigrade of the vinegar contains not less than nine milligrams of phosphoric acid (P_2O_5), and requires not less than four cubic centimeters of decinormal acid to neutralize its alkalinity.

Sugar vinegar is the product made by the alcoholic and subsequent acetous fermentations of solutions of sugar, syrup, molasses, or refiners' syrup, and contains in one hundred cubic centimeters at twenty degrees Centigrade, not less than four grams of acetic acid.

Glucose vinegar is the product made by the alcoholic and subsequent acetous fermentations of solutions of starch sugar or glucose, is dextro-rotatory, and contains, in one hundred cubic centimeters at twenty degrees Centigrade, not less than four grams of acetic acid.

Spirit vinegar, distilled vinegar, grain vinegar, is the product made by the acetous fermentation of dilute distilled alcohol, and contains, in one hundred cubic centimeters at twenty degrees Centigrade, not less than four grams of acetic acid. (Stats. 1925, § 352.03.)

NOTE: See also No. 171.

Water.

See Nos. 144a and 168a.

Wine.

See No. 19.

Sanitation.

120. **Foods; Manufacture; Sale; Sanitary Regulations.**—(1) It shall be unlawful to manufacture or prepare for sale food as defined in section 352.01,* unless in the process of its manufacture for sale or its preparation for sale it is securely protected from filth, flies, dust or other contamination, or other unclean, unhealthful or unsanitary conditions. It shall be unlawful to store or offer or expose for sale or sell food as defined in section 352.01,* unless it is securely protected from filth, flies, dust or other contamination, or other unclean, unhealthful or unsanitary conditions.

(2) The Dairy and Food Commissioner is hereby authorized and empowered, by himself, or by his assistants, chemists, inspectors or agents, to enforce the provisions of this section, and for this purpose, he or any of his assistants, chemists, inspectors or agents shall have power to enter and inspect every building, room, basement or cellar, which may be occupied or used for the manufacture or preparation for sale, storage, exposing or offering for sale or selling food as herein defined; and the Dairy and Food Commissioner and his assistants, chemists, inspectors and agents shall have all the power conferred by the statutes upon him or them or any of them for the enforcement of the dairy and food and drug laws of this State insofar as the same may be applicable in the enforcement of the provisions of this section.

(3) The district attorney of the county in which a violation of any such law has occurred shall, when called upon by the Dairy and Food Commissioner or any of his assistants, chemists, inspectors or agents to do so, give all the aid he can to secure the execution of the law and shall prosecute cases arising under the provisions of this section. All fines collected in prosecutions begun or caused to be begun by the Dairy and Food Commissioner or any of his assistants, chemists, inspectors or agents shall be paid into the State treasury.

(4) Any person, who by himself, or his servant or agent, or as the servant or agent of any other person, or as the servant or agent of any firm or corporation, shall violate any of the provisions of this statute or who shall obstruct the Dairy and Food Commissioner of this State or any of his assistants, chemists, inspectors or agents in the performance of his duty by refusing entrance to any place he is authorized to enter shall be guilty of a misdemeanor and upon conviction therof shall be punished by fine of not less than twenty-five dollars nor more than one hundred dollars or by imprisonment in the county jail not less than thirty days nor more than ninety days. (Stats. 1925, § 352.15.)

*See No. 7.

121. **Displayed Food Products to be Covered.**—The display or storing of fruits, vegetables, or other food products on the sidewalk, or outside the place of business is hereby prohibited, unless such fruits, vegetables or other food products are securely covered by glass, wood or metal cases, or enclosed in tight boxes, bags or barrels, and all such cases and containers raised at least two feet above the sidewalk. The provisions of this section shall not apply to fruits or vegetables which are peeled or skinned before being used, or which are stored in tight barrels, boxes or crates. (Id. § 352.16.)

122. **Displayed Dairy Products to be Covered.**—No dairy or other food product which has been prepared for eating shall be displayed or offered for sale, unless properly protected from flies, dust, dirt or other injurious contamination, by being suitably covered with a glass, wood or metal case or covering. (Id. § 352.17.)

123. **Health Officer to Assist in Enforcement.**—It shall be the duty of the health officer in each town, incorporated village and city, co-ordinately with the Dairy and Food Commissioner, by himself, his assistants, or inspectors to enforce the provisions of section 352.16 to 352.19. (Id. § 352.18.)

124. **Violation of Sections 352.16 to 352.19.**—The owner, manager or other person having charge of any grocery store, fruit store or other establishment where fruit, vegetables or other food products are sold, or offered for sale, who violates any of the provisions of sections 352.16 to 352.19 shall be punished by a fine of not less than ten dollars or more than fifty dollars for each offense, or by imprisonment in the county jail not to exceed sixty days, or by both such fine and imprisonment in the discretion of the court. (Id. § 352.19.)

125. **Cleanliness in Bakeries.**—All buildings occupied as biscuit, bread and cake bakeries shall be so drained and provided with such a system of plumbing as shall conduce to the proper and healthful condition thereof. All rooms used for the manufacture of flour or meal food products, if deemed necessary by the authorities mentioned in section 352.54, shall have an impermeable floor of hardwood properly saturated with linseed oil. The side walls and ceiling of such rooms shall be plastered or wainscoted and shall be whitewashed at least once in six months. The furniture and utensils in such rooms shall be so arranged that the same and floor may at all times be kept clean and in a healthful and sanitary condition. Such food products shall be kept in dry and airy rooms, so arranged that the floors, shelves and all other facilities for storing same can be easily and perfectly cleansed. All such bakeries shall be provided with proper wash rooms, soap, towels and water-closets, with ventilation separate and apart from the bake room or the rooms where the manufacturing of such food products is conducted; and no water-closet, earth closet, privy or ash pit shall be within or communicate directly with the bake room of any such bakery. The sleeping places for the persons employed in bakeries shall be separate from the room or rooms where such food products are manufactured or stored. (Id. § 352.53.)

126. **Power of Boards of Health.**—The board of health of the city, village or town in which a bakery is situated or in which the business regulated in the preceding and next following sections is carried on may enforce the provisions thereof and may cause copies of the same to be printed and posted in all bakeries and places in which such business is carried on within their respective jurisdictions. The owner, his agent or the lessee of any property affected by the provisions of this and section 352.53 shall, within sixty days after personal service upon him of notice in writing requiring any alteration to be made in or upon such property or premises pursuant to section 352.53, comply with such notice by making the alteration therein required to be made. (Id. § 352.54.)

127. **Violations of Sections 352.53 and 352.54.**—Any person who shall violate any provisions of sections 352.53 and 352.54 or refuse to comply with any requirement of such board of health or of the authority vested with the enforcement of such provisions shall be punished by a fine of not less than twenty dollars nor more than fifty dollars for a first offense, and for a second offense by a fine of not less than fifty dollars nor more than one hundred dollars or by imprisonment in the county jail for not more than ten days, and for a third offense and every succeeding offense by a fine of not less than two hundred and fifty dollars or by imprisonment in the county jail for not more than six months, or by both such fine and imprisonment. (Id. § 352.55.)

127a. **Sale of Bakery Products Regulated; Definitions; Penalty.**—The sale and delivery of bakery products shall be so conducted as to prevent the distribution of contamination, infection or disease among consumers and to protect the food supply of the State against waste.

(2) For the purpose of this section the term "person" shall mean and include any and all persons, firms or corporations engaged in the business of manufacturing, buying, selling or dealing in bakery products within the State. The term "bakery products" shall mean and include bread, rolls, crackers, cakes, pies or any other food products of which flour or meal is the principal ingredient. The term "deliver" shall include the placing of bakery products into any store, or upon the premises or in the custody of any person.

(3) No person, or the servant or agent of any person, shall directly or indirectly, return or accept the return or exchange of any bakery products that have been delivered or received for the purpose of sale, nor shall any consideration be given by any person in lieu of the return or exchange of such bakery products. The provisions of this subsection shall not prevent the return or exchange by any person of bakery products having marked defects as to preparation or quality that would cause persons desiring to purchase such articles of average quality to reject such defective articles, nor shall it prevent the giving of any consideration in lieu of an exchange of such defective bakery products.

(4) The delivery, keeping on the premises for sale or storing of bakery products in containers or under conditions which do not protect them against contamination, dust, vermin, insects, animals at large or other means, is prohibited.

(5) It shall be unlawful for any person to willfully destroy any bakery products that are fit for human or animal consumption, by burning them or in any way deliberately causing them to become unfit for food.

(6) Any person violating any of the provisions of this section shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not less than twenty-five dollars, nor more than one hundred dollars, or by imprisonment in the county jail not to exceed thirty days, or by both fine and imprisonment.

(7) It shall be the duty of the Dairy and Food Commissioner to enforce the provisions of this section. (Id. § 352.56; L. 1927, c. 327.)

128. **Bakeries and Confectioneries; Buildings Used for.**—All buildings occupied for bakeries and confectionery establishments, and all buildings or rooms connected with, or part of such bakeries or confectionery establishments and used for storage of goods that are intended to be used in the preparation of the products of such establishments or for storage of the products of such establishments shall be well drained, and all plumbing therein, if any, shall be constructed in accordance with well established sanitary principles and of good workmanship; and the rooms thereof used for the manufacture, storage, or sale of bread and other food products, or for the storage of goods that are intended to be used in the preparation of such bread and other food products, shall be light, dry, and airy. The room or rooms used for the manufacture or storage of bread and other food products in bakeries and confectionery establishments shall have floors and side walls so constructed as to exclude rats, mice, and other vermin. Said floors shall have a smooth surface and be impermeable and may be constructed of wood, cement, or tile laid in cement. (Stats. 1925, § 98.16.)

129. **Water-Closets and Ash Pits; Gases and Odors.**—No water-closet, earth closet, privy, urinal or ash pit shall be within the bake room or any other room used in the manufacture of bread or other food products in any bakery or confectionery establishment. All water-closets, urinals or privies connected with, part of, or within any building used as a bakery or confectionery shall be so arranged that gases or odors out of said closets, urinals, or privies cannot enter into any room used in the production or storage of food in any bakery or confectionery, and such closets, privies, or urinals shall be equipped with efficient natural or mechanical means of removing all odors or gases into the outer air. (Id. § 98.17.)

130. **Toilet Facilities; Cleansing of Persons and Quarters.**—All bakeries and confectioneries shall be provided with ample toilet facilities apart from the utensils used in the preparation of said foods to enable the workmen employed therein to keep their persons clean. Said bakeries and confectioneries shall also be provided with a separate place to enable the workmen to change their clothes and keep the same in a proper condition. The walls and ceilings of such rooms used for the manufacture or storage of bread or other food products, or for the storage of goods that are intended to be used in the preparation of such bread or other food products, shall be whitewashed at least as often as once in six months, or in lieu of such whitewashing, walls or ceilings may be painted once in two years and scrubbed at least once in six months; and the floors and side walls shall at all times be free from moisture and kept in a good state of repair. The floors, utensils, and furniture of such room as are used for the manufacture, storing, or sale of said food products and the wagons used for the delivery of said food products shall at all times be kept in a sanitary, clean condition. The furniture and utensils

of such rooms shall also be so arranged so that the same can be easily and perfectly cleaned. The air within such bakery or confectionery establishment shall at all times be kept pure and free from noxious odors and harmful gases. (Id. § 98.18.)

131. **Rooms Not to be Used for Habitation.**—No room used as a bakery or confectionery shall be used as a habitation or sleeping place by any person, and such rooms used as bakeries or confectioneries shall not be used for any purpose except those incidental to the manufacture, storage, or sale of the products of such bakery or confectionery establishments and those incidental to the preparation of foods for sale and consumption in restaurants duly licensed under Chapter 160 of the statutes* and operated in connection with such bakery or confectionery. (Id. § 98.19, as amended L. 1927, c. 272.)

132. **Clothing.**—All persons engaged in the manufacture of bread or other food products in bakery or confectionery establishments shall provide themselves with caps and slippers or shoes and an external suit of washable material, and wear these garments while engaged in the preparation, packing, or handling of food in or about bakeries or confectioneries, said garments to be used for that purpose only and to be kept at all times in a clean condition. (Stats. 1925, § 98.20.)

133. **Filth, Disease, Decay and Vermin.**—No food shall be prepared, handled, or cared for in any unclean manner or near any filthy object in any bakery or confectionery establishment, nor by any person wearing filthy clothing, nor by any person afflicted with a loathsome or venereal disease. No goods that are decayed or have been contaminated by exposure to disease or filth, nor any goods to which vermin have had access, or which vermin have partly consumed or devoured, nor goods which have become unclean in any manner shall be used in the preparation of any product of a bakery or confectionery establishment. No person shall befoul any room or any utensil used in the preparation of food in any bakery or confectionery establishment. (Id. § 98.21.)

134. **Same; Exposure for Sale.**—No bread, confectionery, or other food product of a bakery or confectionery establishment, shall be exposed in or about such establishment so that dust of a street or other filth, flies, or other insects or vermin may settle upon it; and while such bread, confectionery, or other food products of bakery or confectionery establishments are distributed in wagons, carts, baskets, boxes, or other containers of such bakery or confectionery establishments, they shall be well covered and protected from dust, filth, or insects, and shall not be handled in any unclean manner while being distributed. (Id. § 98.22.)

135. **Height of Rooms.**—No new bakery or confectionery establishment shall be established or operated in a room the floor of which is more than five feet below the level of the street, sidewalk or adjacent ground, nor in any room the ceiling of which is less than eight feet high from the floor and no bakeshop nor confectionery shall be reopened in such a room where the same has not been used for a period of over six months. (Id. § 98.23.)

136. **Communicable Diseases.**—No person shall work or be employed in or about any bakery or confectionery establishment for the manufacture of food products during the time in which a case of contagious or infectious disease exists in the house in which such person resides, and not thereafter until such house has been properly disinfected; provided, that such persons may be employed if the local board of health issue a certificate in writing that no danger of public contagion or infection would result from the employment of said person in such establishment. (Id. § 98.24.)

137. **Alterations Required by Law; Limitation of Time.**—(1) If in the opinion of the commissioner it is necessary to have some action taken or that alterations, additions, or changes are required in or upon any premises occupied and used, or for which application for license to be occupied and used as bakeries or confectioneries, has been filed, in order to conform to the provisions of law for the regulation of bakeries and confectionery establishments, he shall serve a written notice, either personally or by registered mail upon the owner of, manager, or officer operating such bakery or confectionery establishment, requiring such action to be taken or such alterations, changes, or additions to be made within thirty days. Provided, however, that if the required alterations cannot be made with reasonable diligence within thirty days, the commissioner shall extend the time for making such alterations, changes, or additions such reasonable time as may be required to complete the additions, changes or alterations if due diligence is used, such extension of time in no case to exceed ninety days from receipt of notice, however.

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*Comprising Stats. 1925, sections 160.01 to 160.10, relating to hotels and restaurants. Omitted herein.

(2) It shall be the duty of every occupant, whether owner or lessees of any premises used as a bakery or confectionery establishment for the manufacture of food products to carry out the provisions of sections 98.16 to 98.30, inclusive, and make, or cause to be made, all changes, additions, and alterations necessary therefor. (Id. § 98.25.)

138. Bakery Inspection; Salary of Inspector.—It shall be the duty of the commissioner and boards of health, both State and local, to see that the provisions of sections 98.16 to 98.30, inclusive, are enforced. The commissioner, his agents and inspectors shall inspect and ascertain the sanitary condition of the bakery and confectionery establishments of the State and of such rooms, buildings, or apartments for which application for license to establish or operate a bakery or confectionery establishment therein has been filed, and shall examine such plans and specifications for buildings, rooms, or apartments to be occupied and used as bakery or confectionery establishments, as may be submitted to them with reference to the laws for their sanitary regulation, and shall require such action to be taken as may be needed to have bakery and confectionery establishments conform to the provisions of law. It is further provided that the commissioner and the State Board of Health may employ jointly experts, inspectors or other assistants. (Id. § 98.26.)

139. Licenses; Revocation.—No building, room, or apartment shall be used for the purpose of establishing or operating a bakery or confectionery establishment for the manufacture of bread and other food products, unless a license is secured as provided in sections 98.16 to 98.30, inclusive. Application for a license shall be made to the commissioner, by any person, firm, or corporation desiring to establish or conduct a bakery or confectionery for the manufacture of bread, confectionery, and other food products of such establishments. Such application shall be made in such form as the commissioner may determine. Blank applications therefor shall be prepared and furnished by the commissioner. Said application shall describe the construction and condition of the building, rooms, or apartments in regard to the provisions of law for the regulation of such bakery and confectionery establishments in which it is desired to establish or operate such bakery or confectionery establishment; and if said building or room conforms to the provisions of law, the commissioner shall grant a license permitting the use of such building, room or apartments for the purpose of establishing and conducting a bakery and confectionery therein to the person, firm or corporation having made application. The license so issued shall be deemed void, and shall be surrendered to the commissioner, when the person, firm, or corporation to whom it was granted discontinues using the building, room, or apartment to which it applied as a bakery or confectionery establishment, or when another person, firm, or corporation becomes owner, manager, or operator of such bakery or confectionery establishment. Such license may also be revoked by an order of the court upon a second or any subsequent conviction of any violation of or failure to comply with any provisions of sections 98.16 to 98.30, inclusive. All licenses shall expire on the twenty-eighth day of February following the date of issue and shall be renewed upon the application of the licensee. (Id. § 98.27.)

140. Definition of Terms.—(1) The terms "bakery" and "bakeshop" as used in sections 98.16 to 98.30, inclusive, are defined to be any room or place where bread, crackers, cakes, pies, macaroni, spaghetti, or any other food product of which flour or meal is the principal ingredient are baked, cooked, or dried, or prepared or mixed for baking, cooking, or drying for sale as food; provided, however, that the terms "bakery" and "bakeshop" shall not be deemed to include any restaurant, hotel, cafe, boarding house, or other public eating place wherein such products are prepared to be used, and are used exclusively at meals, and served in such restaurants, hotel, cafe, boarding house, or other public eating place.

(2) The term "new bakery" as used in said sections is defined to be a bakery established in a room not theretofore used for baking purposes, or in a room constructed for baking purposes after July 10, 1907; provided that any bakery or bakeshop established before July 10, 1907, the ceiling of which is less than eight feet high from the floor, and which has not been out of use continuously for a period of over six months, need not be altered so as to make the ceiling eight feet from the floor.

(3) The term "confectionery" and "confectionery establishment" as used in said sections are defined to be any room or place where candy, sweetmeats, or any other food products, of which sugar, molasses, chocolate, or nutmeats are the principal ingredients, are prepared, mixed, cooked, dried, formed, coated, or cooled to be sold as food, and any room or place where food, the principal ingredients of which are sugar, milk, cream, or fruit, are chilled or frozen or prepared or

mixed for chilling or freezing, and any room used for any process incidental thereto.

(4) The term "new confectionery" as used in said sections is defined to be a confectionery established in a room not theretofore used for confectionery purposes, or in a room constructed for confectionery purposes after July 10, 1907; provided, that any confectionery established before and which has not been out of use continuously for a period of over six months immediately preceding said date, and the ceiling of which is less than eight feet high from the floor, shall not be required to be altered to make the ceiling eight feet high from the floor. (Id. § 98.28.)

141. Bakeries; Confectioneries.—(1) All stores and other places where products of a bakery or baking establishment or of a confectionery or confectionery establishment are sold or exposed or offered for sale, and all cases, pans, boxes, baskets or containers used for storing, shipping, or delivering any such products, shall at all times be kept in clean and sanitary condition.

(2) All show cases, shelves, counters, in or upon which any such products are kept or stored for the purpose of sale, shall at all times be well ventilated and kept free from dust and dirt.

(3) The inspectors and agents of the commissioner shall have authority and are authorized to inspect any place where any such products are sold or offered for sale and are charged with the duty of enforcing the provisions of this section.

(4) Any person, who shall violate any provision of this section, shall be punished by fine of not less than five dollars nor more than fifty dollars or by imprisonment in the county jail for a period of not to exceed thirty days or by both such fine and imprisonment. (Id. § 98.29.)

142. Penalties for Violations of Sections 98.16 to 98.20.—Any person who shall use any room, building, or apartment for the purpose of establishing or operating a bakery or confectionery establishment therein without first securing a license permitting him so to do, or who, by himself or his servant or agent, or as the servant or agent for any firm or corporation, shall violate or fail to comply with any of the provisions of sections 98.16 to 98.20, or of sections 98.23 and 98.25, thirty days after notice in writing shall have been served upon him personally, or sent through registered mail to him by the commissioner, requiring such person to take such action or to make or cause to be made such changes, repairs, or alterations in such bakery or confectionery establishment as may be necessary to have such bakery or confectionery establishment conform to the provisions of law for their sanitary regulation, or if the required changes, repairs, or alterations could in the exercise of reasonable diligence not be made or completed within thirty days, after such additional time as may have been necessary to complete the required action, change, repairs, or alterations has expired, not to exceed ninety days, however, from the receipt of notice in any case; or who by himself or his servant or agent, or as the servant or agent of any firm or corporation shall violate or fail to comply with the provisions of section 98.24, after one day's notice in writing has been served upon him by the commissioner to discontinue his employment in or about such bakery or confectionery establishment; or who by himself or his servant or agent, or as the servant or agent of any firm or corporation, shall violate or fail to comply with the provisions of sections 98.21 and 98.22, shall be deemed guilty of a misdemeanor, and shall be punished by a fine of not less than twenty, nor more than one hundred dollars, or by imprisonment in the county jail for not more than ninety days, or both. (Id. § 98.30.)

143. Handling Foods.—It shall be unlawful for any person, firm or corporation operating any hotel, cafe, restaurant, dining car or other public eating place, or operating any bakery, meat market, dairy or other establishment where food products to be consumed by others are handled, knowingly to employ or keep in their employ any person handling food products who has a communicable disease or any venereal disease in a communicable form. Whenever required by the local health officer or any officer of the State Board of Health any person employed in the handling of foods who is suspected of having a venereal disease in the communicable form shall submit to an examination by such officer or by some physician designated by such officer. The expense of such examination, if any, shall be paid by the person examined if found to have such disease. Any person knowingly affected with a communicable disease or any venereal disease in a communicable form who handles food products to be consumed by others and any persons knowingly employing or permitting such person to handle food products to be consumed by others shall be punished as provided by section 143.09. (Id. § 143.08.)

144. **Penalty.**—Violation of sections 143.07* or 143.08 shall be punished by a fine of not more than five hundred dollars or by imprisonment in the county jail for not more than one year, or both. (Id. § 143.09.)

144a. **Districts; Deputy State Health Officers.**—. . . (2) The deputy State Health Officer shall have jurisdiction throughout his district; and he shall have in pursuit of his official duties right of entry into any workshop, factory, dairy, creamery, slaughterhouse or other place of business or employment. He shall carry out the instructions of the State Board of Health and make such investigations and reports as the board may require. He shall, when required by the board with the help of local health officers, inspect and report upon the sanitary conditions of streams and sources of public water supplies, . . . dairies, creameries, slaughterhouses, workshops and factories, and of all places where offensive industries are conducted. . . . (Id. § 140.07.)

NOTE: See also No. 1 et seq.; the beverage law, No. 20; the bread law, No. 22; the cold storage law, No. 29 et seq.; the dairy law, No. 45 et seq.; the meat law, No. 112. For hotel and restaurant sanitation, see Stats. 1925, sections 160.01 to 160.10.

PART III.

Special Drug Laws.

Abortifacients.

See No. 169.

Antiseptics.

See Nos. 7 and 171.

Cosmetics.

See No. 7.

Dangerous Caustic or Corrosive Substances.

144b. **Sale Regulated; Adulteration and Misbranding Defined.**—(1) This section shall be known and may be cited as the "State caustic alkali or acid law," and as used herein, unless the context or subject matter otherwise requires:

(a) The term "dangerous caustic or corrosive substance" means each and all of the following acids, alkalis, and substances: (1) Hydrochloric acid and any preparation containing free or chemically unneutralized hydrochloric acid (HCl), in a concentration of ten per centum or more; (2) Sulphuric acid and any preparation containing free or chemically unneutralized sulphuric acid (H_2SO_4) in a concentration of ten per centum or more; (3) Nitric acid or any preparation containing free or chemically unneutralized nitric acid (HNO_3) in a concentration of five per centum or more; (4) Carbolic acid (C_6H_5OH), otherwise known as phenol, and any preparation containing carbolic acid in a concentration of five per centum or more; (5) Oxalic acid and any preparation containing free or chemically unneutralized oxalic acid ($H_2C_2O_4$) in a concentration of ten per centum or more; (6) Any salt of oxalic acid and any preparation containing any such salt in a concentration of ten per centum or more; (7) Acetic acid or any preparation containing free or chemically unneutralized acetic acid ($HC_2H_3O_2$) in a concentration of twenty per centum or more; (8) Hypochlorous acid, either free or combined, and any preparation containing the same in a concentration so as to yield ten per centum or more by weight of available chlorine, excluding calx chlorinate, bleaching powder, and chloride of lime; (9) Potassium hydroxide and any preparation containing free or chemically unneutralized potassium hydroxide (KOH), including caustic potash and Vienna paste, in a concentration of ten per centum or more; (10) Sodium hydroxide and any preparation containing free or chemically unneutralized sodium hydroxide (NaOH), including caustic soda and lye, in a concentration of ten per centum or more; (11) Silver nitrate, sometimes known as lunar caustic, and any preparation containing silver nitrate ($AgNO_3$) in a concentration of five per centum or more, and (12) Ammonia water and any preparation yielding free or chemically uncombined ammonia (NH_3), including ammonium hydroxide and hartshorn, in a concentration of five per centum or more.

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*See No. 170.

(b) The term "misbranded parcel, package, or container" means a retail parcel, or container of any dangerous caustic or corrosive substance for household use, not bearing a conspicuous, easily legible label or sticker, containing (1) the name of the article; (2) the name and place of business of the manufacturer, packer, seller, or distributor; (3) the word "POISON," running parallel with the main body of reading matter on said label or sticker, on a clear, plain background of a distinctly contrasting color, in uncondensed Gothic capital letters, the letters to be not less than 24 point size, unless there is on said label or sticker no other type so large, in which event the type shall be not smaller than the largest type on the label or sticker, and (4) directions for treatment in case of accidental personal injury by the dangerous caustic or corrosive substance.

(2) No person shall sell, barter, or exchange, or receive, hold, pack, display, or offer for sale, barter, or exchange, any dangerous caustic or corrosive substance in a misbranded parcel, package, or container, said parcel, package, or container being designed for household use. Provided, that household products for cleaning and washing purposes, subject to this section and labeled in accordance therewith, may be sold, offered for sale, held for sale and distributed by any dealer, wholesale or retail.

(3) Any person violating the provisions of this section shall upon conviction thereof be punished by a fine of not more than two hundred dollars, or by imprisonment for not more than ninety days, or both.

(4) The Dairy and Food Commissioner shall enforce this section, and for that purpose the provisions of section 98.02* shall apply insofar as appropriate, and the said commissioner is hereby authorized to approve and register such brands and labels intended for use under the provisions of this section as may be submitted to him for that purpose and as may in his judgment conform to the requirements of law; provided, however, that in any prosecution under this section the fact that any brand or label involved in said prosecution has not been submitted to him for approval, or if submitted, has not been approved by him, shall be immaterial. (Stats. 1925, § 146.19, added L. 1927, c. 211, § 1.)

144c. When Act Effective.—This act shall take effect January 1, 1928. (L. 1927, c. 211, § 2.)

Disinfectants.

See No. 7.

Distribution of Samples.

145. Depositing Deleterious Drugs on Doorstep, Etc.—Any person who shall by himself, his servant or agent or as the servant or agent of any other person leave, throw or deposit or have in his possession with intent to leave, throw or deposit upon the doorstep or premises owned or occupied by another or who shall deliver to any child under the age of fifteen years, when not accompanied by an adult, any patent or proprietary medicine or any preparation, pill, tablet or drug that contains poison or other ingredients deleterious to health, as a sample or in any quantity whatever for the purpose of advertising or otherwise, shall be deemed guilty of a misdemeanor and shall be punished as provided in section 352.07.† (Stats. 1925, § 352.11.)

NOTE: See also No. 158.

Ginseng.

146. Ginseng Protected.—(1) Cutting. No person shall between the first day of January and the first day of August cut, root up, gather or destroy ginseng growing in a wild or uncultivated state, except it be on his land.

(2) Evidence.—The purchase or sale of green ginseng between the first day of January and the first day of August shall be prima facie evidence of a violation of this section.

(3) Purchase With Knowledge.—No person shall purchase ginseng, knowing the same to have been cut, rooted up, or gathered between the first day of January and the first day of August.

(4) Evidence.—In any prosecution under this section proof that ginseng purchased had been illegally obtained by the vendor shall be prima facie evidence of a violation of this section by the purchaser.

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*See No. 2.
†See No. 28.

(5) Penalty.—Any person who violates this section shall be fined not less than five dollars nor more than twenty dollars, together with costs of prosecution. One-half of the fine shall be paid to the prosecutor. (Stats. 1925, § 96.14.)

Insecticides and Fungicides.

147. Insecticides and Fungicides, Adulteration or Misbranding.—(1) It shall be unlawful for any person to manufacture, sell or offer for sale, within the State of Wisconsin any insecticide or fungicide which is adulterated or misbranded within the meaning of sections 96.50 to 96.54.

(2) It shall be unlawful for any person to misrepresent the value of any treatment applied to trees, shrubs, vines, or other plant material, or to any animal, for preventing, destroying, repelling or mitigating any insect, fungus, or bacterial disease, or for accelerating its growth or productive power.

(3) The Commissioner of Agriculture shall promulgate uniform rules and regulations for enforcing this section, including the collection and examination of insecticides and fungicides, manufactured or offered for sale in this State for the purpose of determining whether such articles are adulterated or misbranded within the meaning of this section and including the establishment of chemical and other standards to which insecticides and fungicides not specifically covered by this section, shall conform. (Stats. 1925, § 96.50.)

148. Definition of Terms.—The term "insecticide" as used in sections 96.50 to 96.54 shall include any substance or mixture of substances intended to be used for preventing, destroying, repelling or mitigating any insects which may infest vegetation, man or other animals, or households, or be present in any environment whatsoever. The term "Paris green" shall include the product sold in commerce as Paris green and chemically known as the aceto-arsenite of copper. The term "lead arsenate" shall include the product or products sold in commerce as lead arsenate and consisting chemically of products derived from arsenic acid (H_3AsO_4) by replacing one or more hydrogen atoms by lead. The term "fungicide" shall include any substance or mixture intended to be used for preventing, destroying, repelling or mitigating any fungus that may infest vegetation or be present in any environment whatsoever. (Id. § 96.51.)

149. Adulteration Defined.—For the purpose of sections 96.50 to 96.54, any article shall be deemed to be adulterated:

(1) In the case of Paris green: First, if it does not contain at least fifty per cent of arsenious oxide; second, if it contains arsenic in water-soluble forms equivalent to more than three and one-half per cent of arsenious oxide; third, if any substance has been mixed and packed with it so as to reduce or lower or injuriously affects its quality or strength.

(2) In the case of paste lead arsenate: First, if it contains more than fifty per cent of water; second, if it contains total arsenic equivalent to less than twelve and one-half per cent of arsenic oxid (As_2O_5); third, if it contains arsenic in water-soluble forms equivalent to more than seventy-five one-hundredths per cent of arsenic oxid; fourth, if any substances have been mixed and packed with it so as to reduce, lower or injuriously affect its quality or strength; that extra water may be added to paste lead arsenate if the resulting mixture is labeled lead arsenate and water, the percentage of extra water being plainly and correctly stated on the label.

(3) In the case of dry or powdered lead arsenate: First, if it contains total arsenic equivalent to less than twenty-five per cent of arsenic oxide; second, if it contains arsenic in water-soluble forms equivalent to more than one and one-half per cent of arsenic oxide; third, if any substances have been mixed and packed with it so as to reduce, lower, or injuriously affect its quality or strength.

(4) In case of insecticides or fungicides, other than Paris green and lead arsenate: First, if its strength or purity fall below the professed standard or quality under which it is sold; second, if any substance had been substituted wholly or in part for the article; third, if any valuable constituent of the article has been wholly or in part abstracted; fourth, if it is intended for use on vegetation and shall contain any substance or substances which, although preventing, destroying, repelling or mitigating insects, or fungi, shall be injurious to such vegetation when used; fifth, if it fails to conform to standards promulgated by the Commissioner of Agriculture. (Id. § 96.52.)

150. Misbranding Defined.—(1) The term "misbranded" as used herein shall apply to all insecticides, Paris greens, lead arsenates or fungicides, and articles which enter into the composition of insecticides or fungicides, the package or label of which shall bear any statement, design or device regarding such article

or the ingredients or substances contained therein which shall be false or misleading in any particular, and to all insecticides, Paris greens, lead arsenates or fungicides which are falsely branded as to the State, Territory or country in which they are manufactured or produced.

(2) For the purpose of sections 96.50 to 96.54, an article shall be deemed to be misbranded:

(a) In the case of insecticides, Paris greens, lead arsenates and fungicides: First, if it be an imitation or offered for sale under the name of another article; second, if it be labeled or branded so as to deceive or mislead the purchaser, or if the contents of the package as originally put up shall have been removed in whole or in part and other contents shall have been placed in such package; third, if the quantity of the contents be not plainly and correctly stated on the outside of the package.

(b) In the case of insecticides (other than Paris green and lead arsenates) and fungicides: First, if it contains arsenic in any of its combinations or in the elemental form, and the total amount of arsenic present (expressed as per cent of metallic arsenic) is not stated on the label; second, if it contains arsenic in any of its combinations or in the elemental form and the amount of arsenic in water-soluble forms (expressed as per cent of metallic arsenic) is not stated on the label; third, if it consists partially or completely of an inert substance or substances which do not effectively prevent, destroy or repel insects or fungi, and does not have the names and percentage amounts of each and every one of such inert ingredients, and the fact that they are inert plainly and correctly stated on the label; provided, that in lieu of naming and stating the percentage amount of each and every inert ingredient, the producer may at his discretion state plainly upon the label the correct names and percentage amounts of each and every ingredient of the insecticide or fungicide having insecticidal or fungicidal properties, and make no mention of the inert ingredients, except in so far as to state the total percentage of inert ingredients present. (Id. § 96.53.)

151. **Immunity by Wholesaler's Guaranty.**—(1) No dealer or agent shall be prosecuted under the provisions of sections 96.50 to 96.54, when he can establish a guaranty signed by the wholesaler, jobber, manufacturer or other person residing in the United States, from whom he purchased such articles, to the effect that the same is not adulterated or misbranded within the meaning of sections 96.50 to 96.54. Said guaranty, to afford protection, shall contain the name and address of the person making the sale of such articles to such dealer or agent, and in such case said person shall be amenable to the fines and other penalties, which would otherwise attach to the dealer or agent.

(2) Any insecticide or fungicide that is condemned as being adulterated or misbranded, shall be confiscated and disposed of by destruction, or in such other manner as the inspector may direct. (Id. § 96.54.)

152. **Penalty.**—Any person who shall violate any of the provisions of sections 96.50 to 96.54 or any rule or regulation of the Commissioner of Agriculture promulgated under it shall be fined not to exceed two hundred dollars for the first offense; and, upon conviction for each subsequent offense, be punished by a fine not exceeding three hundred dollars, or imprisonment for not to exceed one year, or by both such fine and imprisonment. (Id. § 96.55.)

Medicinal Stock Food.

See No. 96.

Pharmacy, Poisons and Narcotics.

153. **Board.**—(1) The State Board of Pharmacy consists of five resident pharmacists, at the time of appointment actually engaged in practice, appointed by the Governor, one each year for a term of five years.

(2) Annual meeting shall be held in April, at which president and secretary-treasurer shall be elected for terms of one year. Meetings for examinations and other business shall be held at least quarterly. Time and place of meetings shall be fixed by president and secretary. Thirty days' public notice shall be given of examinations.

(3) The secretary-treasurer need not be a member. He shall keep a record of the proceedings and a register of the names and places of business of persons registered under this chapter, which shall be prima facie evidence of the facts. He shall give such bond and receive such salary as the board determines. Members and officers shall receive their actual and necessary expenses.

(4) The board may adopt by-laws, and shall cause prosecution of violations of this chapter. It shall report annually, to the Governor and the Wisconsin Pharmaceutical Asociation, its proceedings, registrations, and receipts and disbursements. (Stats. 1925, § 151.01, amended L. 1927, c. 448.)

154. Examination and Registration of Pharmacists; Use of Certain Titles Regulated.—(1) All candidates for entrance to examination for registration as pharmacists must file application with the secretary of the board and pay the required fee of ten dollars, at least ten days before the date of examination, five dollars of which shall be refunded if such applicants fail to pass the examination; must be at least twenty-one years of age; must be of good moral character and temperate in habits; and if not citizens of the United States must have filed and proven their intentions of becoming citizens; and must be graduates of a standard, recognized high school, or must have acquired the equivalent of a high school education in some other institution of equal rank or standing, or must have passed an examination for the equivalent of high school given by a State university or by a State department or bureau of education issuing a qualifying certificate for the necessary high school units recognized by the University of Wisconsin, or any other equivalent of a high school education recognized by the University of Wisconsin.

(2) Every such applicant for examination and registration as pharmacist must, in addition, file with the secretary proof satisfactory to the board, of having had at least four years of pharmaceutical training consisting of:

(a) Graduation from a school or college of pharmacy or a department of pharmacy of a university, which is recognized by the board and which requires for graduation at least a three-year course, consisting of not less than three nine-month terms. Credit for actual time of attendance at the school, college or department of pharmacy of a university shall be given on the required four years of pharmaceutical training; the remainder of the four years must be practice and experience in a retail pharmacy or drug store under the direction and supervision of a registered pharmacist, which practice and experience shall be predominantly work directly related to the selling of drugs, preparing and compounding of pharmaceutical preparations and physicians' prescriptions, and keeping of records and making of reports required under State and Federal statutes.

(b) If the applicant has graduated from a four-year course in a school, college or department of pharmacy of a university, recognized by the board, he or she may be credited with three years on the required four years of pharmaceutical training; the remaining one year of the required four years of pharmaceutical training must have been practice and experience acquired in a retail pharmacy or drug store under the direction and supervision of a registered pharmacist, and such practice and experience must have been predominantly work directly related to the selling of drugs, preparing and compounding of pharmaceutical preparations and physicians' prescriptions and keeping of records and making of reports required under State and Federal statutes.

(c) Provided, however, that exemption from the requirement of being a graduate in pharmacy in order to be examined for registered pharmacists shall be granted to persons who, before this section becomes effective, have been employed for at least one year in a retail pharmacy or drug store under a registered pharmacist, and who have registered as apprentices or who register as apprentices within ninety days after this section becomes effective and who file proofs satisfactory to the board of having acquired four years of pharmaceutical training and experience under the direction and supervision of a registered pharmacist, or to persons registered as assistant pharmacists prior to the time this section becomes effective, who file proofs satisfactory to the board of having acquired four years of pharmaceutical training and experience under the direction and supervision of a registered pharmacist; provided, further, that all such persons prove that they have acquired the requisite fitness and knowledge by successfully passing an examination before the board within four years from the date on which this applicant is qualified to be examined. If they cannot or do not qualify by successfully passing an examination within said four years, they shall, in keeping with public welfare, be required thereafter to first become graduates of a recognized school, college or department of pharmacy of a university recognized by the board before again being permitted entrance to examination for registration as pharmacists.

(3) Applicants filing proofs, satisfactory to the board, of qualifications and training as outlined in the preceding subsection shall, after having passed examination by the board, be granted certificates as registered pharmacists. Proof satisfactory to the board covering experience, preliminary education, college of pharmacy graduation, and character herein required shall be filed with the secretary of the board. Every registered pharmacist may continue to be such by annually, at such time as the board may determine, renewing his certificate upon paying the fee of two

dollars. Failure to obtain such renewal for sixty days after the secretary of such board shall have given a second notice of the expiration of his registration, shall terminate the right of any person to be a registered pharmacist within the meaning of this section, and such right can only be acquired by compliance wtih the provisions concerning original registration, again applying for and passing an examination satisfactory to the board.

(4) Candidates for entrance to examination and registration as assistant pharmacists must file applications with the secretary of the board and pay the required fee of five dollars, at least ten days before the examination, two dollars of which shall be refunded if such applicants fail to pass the examination; must be at least eighteen years of age, and must be graduates of a standard recognized high school, or must have acquired the equivalent of a high school education in some other institution of equal rank or standing, or must have passed an examination for the equivalent of high school given by a State university or by a State department or bureau of education issuing a qualifying certificate for the necessary high school units recognized by the University of Wisconsin, or any other equivalent of a high school education recognized by the University of Wisconsin; must be of good moral character and temperate in habits; shall file proof satisfactory to the board of having had at least three years of legal practice and experience in a retail pharmacy or drug store under the direction and supervision of a registered pharmacist, which practice and experience shall be predominantly work directly related to selling drugs and preparing and compounding pharmaceutical preparations and physicians' prescriptions, provided that not to exceed two years may be credited for time spent in a school, college or department of pharmacy of a university recognized by the board, or for pharmaceutical experience acquired in a hospital where a licensed pharmacist is regularly employed for compounding prescriptions; or in the hospital corps of the United States Army or United States Navy, under the direction and supervision of a registered pharmacist. Provided, however, that of the three years of pharmaceutical training and experience required, each applicant shall have had no less than one year of practice and experience in a retail pharmacy or drug store under the direction and supervision of a registered pharmacist which shall be predominantly work directly related to selling drugs and preparing and compounding pharmaceutical preparations and physicians' prescriptions and shall have passed a satisfactory examination before the board.

(5) Every registered assistant pharmacist may continue to be such by annually, at such time as the Board of Pharmacy may determine, making application thereto for the renewal of his certificate and paying the prescribed fee of one dollar. Failure to obtain such renewal for sixty days after the secretary of such board shall have given a second notice of the expiration of his registration, shall terminate the right of any person to be a registered assistant pharmacist within the meaning of this section, and such right can only be acquired by compliance with the provisions concerning original registration, again applying for and passing an examination satisfactory to the board. The issuance of either of the certificates provided for in this section shall entitle the person to whom it is issued to be registered in the proper class.

(6) The board may in its discretion register as a pharmacist or assistant pharmacist, without examination, any person who is duly registered in some other State, provided that the said person shall produce satisfactory evidence of having had the required secondary and professional education and training and is possessed of good character and habits demanded of applicants for registration as pharmacists and assistant pharmacists under the laws of this State, and upon payment of ten dollars, excepting that persons of good character and habits who have become registered as pharmacists or assistant pharmacists in some other State prior to the date on which this section becomes effective shall be required to meet only the requirements which existed in this State at the time when they became registered in such other State, and provided also that the State from which the applicant applies shall, under like conditions, grant reciprocal registration as a pharmacist without examination to pharmacists duly registered in this State.

(7) The board, upon notice and hearing, may revoke the registration of one guilty of felony or gross immorality, or who is addicted to alcoholic liquors or narcotic drugs to such extent as to make him unfit to practice pharmacy, or whose registration was secured by fraud.

(8) No person shall use the title "pharmacist" or "assistant pharmacist" unless duly registered as such under the provisions of this chapter, nor shall any person, firm or corporation use or display the title "drug store," "pharmacy," "apothecary," or any other title having the same or a similar meaning for such place of business, unless such place of business be one where drugs are sold in accordance with the provisions of section 151.04.

(9) No drug store, pharmacy, apothecary shop, or any similar place of business shall be kept open for the transaction of business until it has been registered with and a permit therefor has been issued by the State Board of Pharmacy; provided, however, that this section shall not be construed to apply to any store or stores open for the sale of proprietary or so-called patent medicines. Every pharmacy and store conducted under the supervision of a registered pharmacist shall be annually registered on the first day of June with the State Board of Pharmacy, on application forms provided for that purpose by the board, on request, and the board shall thereupon issue a suitable certificate of registration which shall be conspicuously displayed in the respective place of business. Applications for registration as a pharmacy or drug store shall include information regarding the names of all pharmacists, assistant pharmacists and registered apprentices who are employed therein. Only places in charge of a registered pharmacist may use the title "pharmacy," "pharmacist," "apothecary" or "drug store," and each must be under the separate management of a registered pharmacist, who shall not engage to manage or supervise more than one such place, but nothing contained in this section shall prevent a person from owning and conducting more than one pharmacy, provided each be under the separate supervision of a registered pharmacist. For the registration of every place herein required to be registered, there shall be paid an annual registration fee of one dollar, payable on the first day of June of each year. Any person failing to register his place of business as herein required, failing to have in charge of each pharmacy a registered pharmacist who does not manage or supervise more than one pharmacy, or who otherwise fails to comply with the provisions of this section, shall, upon conviction, be fined the sum of not more than fifty dollars for each separate offense. (Id. § 151.02.)

155. Permit.—In rural districts with no registered pharmacist or assistant pharmacist within three miles, the board may issue to merchants permit to sell for one year drugs and medicines specified therein, upon payment of fee fixed by the board, not exceeding five dollars. (Stats. 1925, § 151.03.)

156. Practice.—(1) Certificates of registration, renewals, and permits shall be conspicuously exposed in the place of business.

(2) No person shall retail, compound or dispense drugs, medicines or poisons, except Paris green, in packages labeled "Paris green, poison," nor permit it, in a town, village or city of five hundred or more inhabitants, unless he be a registered pharmacist, nor institute nor conduct a place therefor without a registered pharmacist in charge, except that a registered assistant pharmacist may do so under the personal supervision of a registered pharmacist, and may have charge during the pharmacist's necessary absence, not to exceed ten days. If the inhabitants are less than five hundred, only a registered assistant pharmacist is required.

(3) This shall not interfere with the dispensing of drugs, medicines or other articles by physicians, nor with the sale of proprietary medicines in sealed packages, labeled to comply with the Federal pure food and drug law, with directions for using, and the name and location of the manufacturer, nor with the sale of alum, ammonia, borax, bay rum, bicarbonate of soda, cream of tartar, concentrated lye, olive oil, sal ammoniac, sal soda, sulphur, copperas, epsom salts, Glauber salts, castor oil, glycerine, senna leaves, indigo blue, vitriol, turpentine, wood alcohol and denatured alcohol. (Id. § 151.04.)

157. Penalty.—(1) Anyone who violates sub-section (1) of section 151.04 shall forfeit ten dollars for each failure, and anyone who willfully makes a false representation to procure registration or permit for himself or another, or who violates this chapter, shall forfeit fifty dollars for each offense.

(2) It is the duty of each member and officer of the board to institute actions for violations of this chapter or of section 146.02* and the district attorney shall promptly prosecute upon notice from any source. (Id. § 151.05.)

158. State Narcotic Law.—(1) Subsections (1) to (29) of this section shall be known and may be cited as the "State Narcotic Law." No person except those registered by federal authority so to do shall sell, furnish or deliver any cocaine, opium, morphine, heroin, alpha or beta eucaine, or any salt or combination of the same, or any mixture, preparation or compound containing any cocaine, or more than two grains of opium, one grain of codeine, one-fourth grain of morphine, one-eighth grain of heroin, one-eighth grain of alpha or beta eucaine in one ounce, fluid or avoirdupois ounce except in pursuance of a written order of the person to whom such article is sold, bartered, exchanged or given, on a form to be issued in blank for that purpose by the Commissioner of Internal Revenue or upon the original prescription of an authorized practitioner of medicine, dentistry or veterinary medicine, for a person or animal under his treatment, which prescription shall contain the signature

*See No. 158.

of the prescriber and the name of the person for whom prescribed, and if a veterinary prescription, also the kind of animal. It shall be dated and kept on file by the dispenser for two years, and shall not be again filled except upon order from the prescriber.

(3) Each druggist or pharmacist who fills a prescription for a narcotic drug shall securely attach to the container thereof a label, giving the name and address of the store where the prescription is filled, the date of filling, the name of the person for whom prescribed, the name of the physician, dentist or veterinarian who issued it; and the narcotic drug so delivered shall always be kept in its container until used. No prescription shall be refilled, nor shall a copy of the same be made, except for the purpose of record by the druggist filling the same, such record to be opened at all times to inspection by officers of the Department of Public Health, the Board of Registration in Pharmacy, the Board of Registration in Medicine, authorized agents of said departments and boards, and by the police authorities and police officers of towns, villages, or cities.

(4) No practitioner of veterinary medicine shall prescribe any narcotic drug for the use of a human being, nor shall any physician or dentist prescribe, dispense, administer, sell, give or deliver any narcotic drug to any person, except when the drug is obviously and in good faith then and there needed for the treatment and cure of a disease or ailment, and not needed for any condition or disease directly due to any drug habit, or resulting solely from the failure of an habitual user of narcotic drugs to procure the particular narcotic drug to the use of which he is addicted.

(5) A physician may personally administer any narcotic drug at such time and under such circumstances as he in good faith and in the legitimate practice of medicine believes to be necessary for the alleviation of pain and suffering or for the treatment or alleviation of disease; such physician shall keep a record of all such drugs dispensed or distributed showing the amount dispensed or distributed, the date, and the name and address of the patient to whom such drugs are dispensed or distributed, except such as may be dispensed or distributed to a patient upon whom such physician shall personally attend, and such record shall be kept for a period of two years subject to inspection as provided in this section.

(6) A physician acting in accordance with proper medical practice may prescribe or dispense narcotics for the relief of acute pain, or for any acute condition, such as influenza, renal calculi, broken limbs, and such incurable diseases, such as cancer, advanced tuberculosis and other diseases well recognized as coming within this class. It shall be a violation of this section for any physician to prescribe narcotic drugs to a patient suffering from narcotic drug addictions, except only in such cases where the drug addict is being treated by such physician for the cure of narcotic drug addiction under confinement in institution.

(7) Whoever for the purpose of evading or assisting in the evasion of any provision of this section, falsely represents that he is a physician, dentist or veterinarian, or that he is a manufacturer of or jobber in drugs, or wholesale druggist, or pharmacist, actively engaged in business as such, or that he is a superintendent or official in immediate charge of an incorporated hospital, college or scientific institution, or a person registered under the act of Congress approved December 17, 1914, as amended, or whoever not being an authorized physician, dentist or veterinarian makes or alters a prescription or written order for any narcotic drug, or knowingly issues or utters a prescription or written order falsely made or altered, or whoever falsely utters any other matter, either in writing or orally to any physician, dentist, pharmacist or veterinarian for the purpose of securing a prescription, or the delivery of a narcotic drug shall be punished as provided in subsection 27 of this section.

(8) The possession by any person of a United States certificate of registration issued under and by virtue of the act of Congress approved December 17, 1914, as amended, shall be prima facie evidence of an intent to sell, furnish, give or deliver a narcotic drug.

(9) Whoever not being a manufacturer or jobber of drugs, wholesale druggist, registered pharmacist, registered physician, registered veterinarian, registered dentist, nurse acting under direction of a physician, or employee of an incorporated hospital, acting under the direction of its superintendent, or official in immediate charge, or a common carrier or messenger, when transporting any narcotic drug between persons mentioned in this subsection, in the same package in which the drug was delivered to him for transportation, is found in possession thereof, except by reason of a physician's prescription, lawfully and properly issued, shall be guilty of a violation of this section.

(10) Common carriers engaged in transporting narcotic drugs to any employee acting within the scope of his employment, or any person who is lawfully

in possession for the purpose of delivery of any such drug, or to the person who delivers any such drug, which has been prescribed or dispensed by a physician, dentist or veterinarian registered under the laws of the State where he resides, who has been employed to prescribe for the particular patient receiving such drug or to a nurse under the supervision of a physician or to a person, who as an officer or duly appointed agent of any incorporated society for the suppression of vice, has the same in his possession for the purpose of assisting in the prosecution of violations of this section shall not be considered to have violated the provisions of this section.

(11) No manufacturer or jobber in drugs, wholesale druggist, or registered pharmacist shall be liable to prosecution if he fills any prescription or written order for a narcotic drug in good faith, unless he knows or has reasonable cause to suspect that the prescription or order was in violation of this section.

(12) No physician, dentist or veterinarian and no druggist or pharmacist, either wholesale or retail shall solicit by public advertisement or otherwise the application to him for prescription for or sales of narcotic drugs, nor shall he publicly advertise any treatment, the principal element of which consists in the administering. dispensing, furnishing, giving or delivery of a narcotic drug, except that a wholesale druggist or manufacturing pharmacist or private sanitarium may advertise in journals and publications intended for circulation among the medical profession and drug trade generally.

(13) No person not being a physician, dentist, nurse or veterinarian, registered under the laws of this State or of the State where he resides, or a registered embalmer, manufacturer or dealer in embalming supplies, wholesale druggist, manufacturing pharmacist, registered pharmacist, manufacturer of surgical instruments, official of any government having possession of the articles hereinafter mentioned by reason of his official duties, nurse acting under the direction of a physician, employee of an incorporated hospital acting under the direction of its superintendent or officer in immediate charge, or a carrier or messenger engaged in the transportation of such articles, shall have in his possession a hypodermic syringe, hypodermic needle or any instrument adapted for the use of narcotic drugs by subcutaneous injection except upon written order of a licensed physician and surgeon, dentist or veterinarian. No such syringe, needle or instrument shall be delivered or sold to or exchanged with any person except a registered pharmacist, physician, dentist, veterinarian, registered embalmer, manufacturer or dealer in embalming supplies, wholesale druggist, manufacturing pharmacist, a nurse under the written order of a physician, or an employee of an incorporated hospital, upon the written order of its superintendent or officer in immediate charge except upon written order of a licensed physician and surgeon, dentist or veterinarian.

(14) Each building, place or tenement which is resorted to by habitual users of narcotic drugs for the purpose of using such drugs or which is used for the illegal keeping for sale of the same shall be deemed a common nuisance; and whoever keeps or knowingly maintains such a common nuisance shall be punished by imprisonment of not less than three months.

(15) It shall be a violation of this section for any practitioner of medicine, dentistry, or veterinary medicine, to administer to himself, as a habitual user narcotic drugs, merely to satisfy his craving for the same, or furnish to or prescribe for the use of narcotic drugs with the purpose that the narcotic drugs be returned to him.

(16) The possession or sale of smoking preparations, of hemp or loco weed, of a pipe or pipes used for smoking opium, or the usual attachments or attachment thereto or other contrivances used for smoking opium, shall be a violation of this section and shall be seized by a peace officer and such drugs and pipes shall be destroyed by such officer.

(17) The State Board of Pharmacy may revoke the registration of any registered pharmacist or assistant pharmacist upon conviction of the second offense for violating any provisions of this section.

(18) No person shall take or use narcotic drugs habitually, excessively, or except in pursuance to a prescription for such permitted use as is prescribed in subsections (5) and (6) of this section. The possession of narcotic drugs by persons not authorized by law to have such possession, or their possession of a hypodermic syringe and hypodermic needle used in the administration of drugs shall be prima facie evidence of the unlawful use of such drugs. Any person violating the provisions of this section shall be guilty of a misdemeanor and upon conviction shall be punished by a fine of not more than one hundred dollars, or by commitment to an institution for the treatment of drug addicts, for a period not less than six months, or until such person shall be cured of his addiction to the use of narcotic drugs, but not exceeding one year; nothing herein contained shall be construed as in any manner restricting or limiting the rights of individuals as declared

in subsection (2) of section 147.19 of the statutes,* provided, however, that upon the certificate of the superintendent of the institution to which such person has been committed, that such person has been cured of his addiction to the use of narcotic drugs, such person shall be released, and such commitment terminated. Any person so committed who has been confined in such institution for at least six months, and who has been refused a certificate of cure and release by the superintendent of such institution, may obtain a trial of the question of the cure of his addiction to the use of drugs in the same manner and with the same effect as is provided for the re-trial of insane persons by section 51.11.†

(19) The State Board of Control shall make provisions for the public treatment of narcotic drug addicts at one of the State institutions to which the commitment provided in subsection (18) of this section shall be made from counties, villages, and cities of the second, third, and fourth classes. Provision shall also be made by counties containing cities of the first class for the public treatment of narcotic drug addicts in local institutions, to which all commitments in pursuance of subsection (18) of this section in cities of the first class shall be made. The State shall compensate such counties for the treatment of narcotic drug addicts at the same rate and in the same manner as other inmates in the same institutions.

(20) Any person resident in the State, who may be addicted to the use of narcotic drugs, may upon his agreement to remain in such institution for a period of six months, or longer if necessary for his cure, and his written application stating his addiction, supported by the certificate of at least two physicians, who shall have been duly licensed to practice and shall have had at least two years' experience in the practice of their profession, based upon personal examination of such person, be admitted as a voluntary patient to any institution provided by the State for the treatment of drug addicts, or if such person is a resident of a city of the first class to such institution provided by such city. Such person, if so admitted to either of such institutions, if not indigent, shall be required to pay such sum for his maintenance and at such times as the State Board of Control or such city of the first class may by rule, by-law or ordinance prescribe. Otherwise all voluntary patients shall have the same standing, and be subject to the same laws, rules and regulations as drug addicts, except that they shall have the right to leave such institution at any time if in the judgment of the superintendent they are in a fit condition, on giving five days' notice to the superintendent of their desire to do so. Any such voluntary submission to admission and treatment shall operate as a bar to any prosecution for any violation of subsection (18) of this section, theretofore committed by such voluntary patient.

(21) No practitioner of medicine, dentistry or veterinary medicine, for the purpose of evading this section, shall furnish to or prescribe for the use of any habitual user of the same any cocaine, heroin, alpha or beta eucaine, opium, morphine, chloral hydrate, or any salt, or compound of any of the foregoing substances, or any preparations containing any of the foregoing substances or their salts or compounds. No practitioner of dentistry shall prescribe any of the foregoing substances for any person not under his treatment in regular practice, nor shall any practitioner of veterinary medicine prescribe any of the foregoing substances for the use of a human being.

(22) This section shall not apply to preparations containing less than two grains of opium in one fluid ounce when sold in good faith for diarrhœa, colic, or cholera, each bottle or package being accompanied by specific directions for use, nor to powder of ipecac and opium, nor to liniments, ointments and other preparations sold in good faith for external application, when plainly labeled "for external use only," nor to such sales made to physicians, druggists, manufacturers, hospitals or other public institutions which make lawful use of such narcotics. Provided, further, that any manufacturer, producer, compounder, or vendor (including dispensing physicians) of the preparations and remedies mentioned in this subsection shall keep a record showing the amount and kind, the date, and the name and address of the recipients of all sales, exchanges, or gifts of such preparations and remedies.

(23) No person shall sell or deliver any of the poisonous salts or compounds of antimony, arsenic, chronium, lead, mercury, silver, tin or zinc, the concentrated mineral acids; oxalic, carbolic or hydrocyanic acids or their salts, formaldehyde, yellow phosphorus, the essential oils, of almond, pennyroyal, rue, savin or tansy; croton oil, creosote, chloroform, cantharides, aconite, belladonna, bitter almonds, colchicum, cotton root, cannabis indica, digitalis, ergot, hyoscyamus, lobelia, nux vomica, physostigma, strophanthus, stramonium, veratrum viride, or any of the

*Relates to the practice of Christian Science, etc. Omitted herein.
†Omitted herein.

poisonous alkaloids or glucosides derived from the foregoing or in any other virulent poison, unless it be upon the prescription of authorized practitioners of medicine, dentistry, or veterinary medicine, except as follows:

(a) The dispenser shall ascertain that the applicant is aware of the poisonous character and desires it for a lawful purpose.

(b) He shall plainly label the container with the name of the substance, the word "Poison," and the name and address of the dispenser.

(c) Bfore delivery except of Paris green and sulphate of copper, he shall record in a book kept for that purpose, the name of the article, the quantity, the purpose, the date, the name and address of the person for whom procured, and the name of the individual personally dispensing the same; and said book shall be preserved by the owner thereof for at least three years after the date of the last entry therein, and shall be open to inspection by authorized officers.

(d) If the applicant be under fourteen years of age, he must have the written order of an adult person.

(24) (a) Subsection (4) shall not apply to manufacturers and wholesalers selling at wholesale to licensed pharmacists or others, but the container shall be labeled with the name of the substance, the word "Poison," and the name and address of the manufacturer or wholesaler.

(b) A "Poison" label is not required when a single container or when one-half ounce fluid or avoirdupois does not contain more than an adult medicinal dose nor in the case of liniments, ointments or other external preparations sold in good faith as such, and plainly labeled "for external use only," nor in the case of pills, tablets or lozenges, when the dose recommended does not contain more than one-quarter of an adult medicinal dose.

(25) No person seeking to procure any such substance shall make fraudulent representations for the purpose of evading the law.

(26) Except as authorized by law, no person shall put any drug, medicine or chemical or any compound or combination thereof in any public place, or, without the consent of the owner or occupant upon any private premises, nor cause it to be done.

(27) Any person who shall violate any of the provisions of section 146.02, if not otherwise specifically provided, shall be guilty of felony and upon conviction shall be punished by a fine of not less than one hundred dollars nor more than one thousand dollars, or by imprisonment in the house of correction or State prison or other State or county institution for not less than one year nor more than five years.

(28) No practicing physician or surgeon shall write or cause to be written any narcotic prescription or recipe except in ink or indelible pencil and in characters, figures or ciphers in the English or Latin language, generally in use among medical practitioners and for every violation hereof the offender shall forfeit not less than five nor more than twenty-five dollars.

(29) It shall be the duty of the police and sheriffs throughout the State and members of the State Board of Pharmacy to enforce the provisions of section 146.02; and it shall be the duty of the district attorney in each county to prosecute violations thereof on complaint or on knowledge of such violations. (Id. § 146.02, as amended L. 1927, c. 336.)

159. Keeping or Leasing Place to Smoke Opium.—Any person who opens or maintains, to be resorted to by other persons, any place where opium or any of its preparations is sold or given away to be smoked at such place, and any person who, at such place, sells or gives away any opium or any of its preparations to be there smoked or otherwise used, and any person who visits or resorts to any such place for the purpose of smoking opium or any of its preparations, and any person who shall knowingly lease or let to another any house or other building, or any room therein, for the purpose of use as a place in which opium or any of its preparations are to be smoked or otherwise used, and any person who shall knowingly lease his premises or any part thereof to be used for such purpose shall be punished by imprisonment in the county jail not more than one year or by fine not exceeding five hundred dollars. (Stats. 1925, § 348.471.)

160. Label on Poisonous Medicine.—Any person who shall by himself, his servant or agent or as the servant or agent of any other person, sell, exchange, deliver, or have in his possession with intent to sell or exchange or expose or offer for sale or exchange any medicine known as patent or proprietary, or of which the formula is kept secret by the manufacturer, which contains morphine, strychnine, cocaine or poisonous or narcotic alkaloid or drug, in any quantities which the State Board of Health shall deem harmful to the life or health of the public, unless the presence of the same be distinctly shown by a label upon the bottle or

package and upon the outer wrapper thereof, shall be punished as provided in section 352.07.* (Id. § 352.10.)

161. **Pharmaceutical Experiment Station.**—The Board of Regents of the State University are authorized and directed to establish, equip and maintain in the Department of Pharmacy of the State University a pharmaceutical experiment station. The duties of the said station shall be:

(1) To co-operate with the Bureau of Plant Industry of the Department of Agriculture in the maintenance of the northern station for the cultivation of medicinal plants and to disseminate such information as may lead to the proper cultivation of medicinal plants and the production of high grade vegetable drugs in this State; and

(2) To serve the public at large by co-operation with both pharmacists and physicians in securing for the sick the best medicines that pharmaceutical science and art can provide, and further by co-operation with the State Board of Pharmacy, the State Board of Health, and the Dairy and Food Commission to bring about these results. (Id. § 36.22.)

NOTE: See also Nos. 11, 171 and 172.

Serums, Tuberculin, Etc.

162. **Hog Cholera Serums.**—(1) The Regents of the University of Wisconsin shall cause to be prepared by the Agriculture [Agricultural] College and the Department of Veterinary Science thereof, serums or vaccines which will produce immunity in hogs against the disease known as cholera, and for such purposes shall cause the Agricultural College to obtain such additional assistance and install such additional equipment, materials, appliances and apparatus as may be necessary.

(2) The regents shall, through the Agricultural College, furnish to any bona fide resident of this State, who is engaged in the raising of hogs, and who makes request therefor, such serums and vaccines as may be necessary to immunize his hogs against cholera, and shall charge and collect therefor at actual cost.

(3) It is further provided that hog cholera virus (disease-producing blood) which is used in certain methods of vaccination shall not be administered by any person or persons except a legally qualified veterinarian and shall be used only in herds where the disease has recently occurred or in adjacent herds. Provision is hereby made for the use of virus in other cases only upon the previous written approval of the State Veterinarian. Furthermore every person in control of premises on which hogs have died from cholera are required promptly to burn the carcasses with fire or bury and cover the same with lime or a large quantity of ashes. Any person violating any of the provisions of this subsection shall be punished as provided in subsection (4) of this section.

(4) Any person who shall sell, give away, maliciously waste or otherwise misuse or misapply any serums or vaccines furnished to him under the provisions of this section, and any person who shall willfully misrepresent himself or who shall in any wise misrepresent or falsify for the purpose of obtaining any serums or vaccines from the Agricultural College under this section, or any person who shall violate any of the provisions of this section shall be deemed guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not less than ten dollars nor more than five hundred dollars or by imprisonment in the county jail for not less than ten nor more than ninety days, or by both such fine and imprisonment. (Stats. 1925, § 36.21.)

163. **Tuberculin Supplied.**—The Live Stock Sanitary Board shall furnish and distribute tuberculin and circulars containing the rules and regulations for applying the tuberculin test upon application to all persons authorized to make such test. (Id. § 94.23.)

164. **Labeling of Tuberculin.**—All tuberculin sold, given away or used within this State, shall bear a label stating the name and address of the person, firm or institution making it, and the date of preparation. (Id. § 94.24.)

165. **Report of Sale.**—Every person who shall sell, furnish, give away or supply tuberculin shall, on the day thereof, report to the State Live Stock Sanitary Board, giving the name and address of the person to whom sold, furnished or supplied, the amount thereof, and the date of delivery. (Id. § 94.25.)

166. **Notice to Purchaser.**—Persons buying or procuring tuberculin shall not use or dispose of it, until assured in writing by the person from whom the tuberculin is received, that its sale or delivery to said person has been reported to the State Live Stock Sanitary Board. (Id. § 94.26.)

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*See No. 28.

167. Penalty.—Any person who violates any provisions of this chapter shall be deemed guilty of a misdemeanor, and except as otherwise provided, shall upon conviction, be punished by a fine of not less than twenty-five nor more than one hundred dollars, or by imprisonment in the county jail not less than ten nor more than sixty days. (Id. § 94.50.)

168. Label on Vaccine Virus, Etc.—Any person who or corporation which shall sell or gratuitously distribute any vaccine virus, therapeutical serum, modified toxins or similar products with the intention that they shall be used in the prophylaxis or treatment of contagious disease, without having his or its name stamped in plain English letters thereon or on the package or bottle containing the same, shall be deemed guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not less than twenty-five dollars nor more than one hundred dollars. (Id. § 352.51.)

168a. **State Laboratory of Hygiene.**—(1) The State Hygienic Laboratory heretofore established in connection with the University is continued and shall be known as the "State Laboratory of Hygiene." . . .

(4) The purpose of this laboratory shall be to undertake the examination of water supplies for domestic purposes, . . . The examination of water supplies . . . may also include the examination of water to ascertain its suitability for manufacturing and commercial purposes, as determined by the rules and regulations herein provided for.

(5) There may be established and operated in connection with the State Laboratory of Hygiene, an institute for the preparation of vaccine for administering the Pasteur treatment for the prevention of hydrophobia. . . . (Id. § 36.225.)

Venereal Disease Drugs.

169. Sexual and Venereal Diseases; Advertising; Treatment of; Penalty.—Any person who shall advertise in any manner, either in his own name or under the name of another person, firm or pretended firm, association, corporation or pretended corporation, in any newspaper, pamphlet, circular or other written or printed paper, the treatment and curing of venereal diseases, the restoration of "lost manhood" or who shall advertise in any manner that he is a specialist in diseases of the sexual organs or diseases caused by sexual weakness, self-abuse, or excessive sexual indulgence or in any diseases of a like nature or produced by like causes, or who shall advertise in any manner any medicine, drug, compound or any means whatever, whereby sexual and venereal diseases of men and women may be cured or relieved or abortion or miscarriage produced, and the owner, publisher or manager of any newspaper who shall publish any such advertisement or permit or allow any such advertisement to be inserted and published in any newspaper owned or controlled by him or in which he has an interest, and any person, firm or corporation who shall sell, offer for sale, keep for sale, give away or otherwise dispose of any newspaper, pamphlet, circular, or other written or printed paper containing any such advertisement, shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not less than twenty-five nor more than one hundred dollars. (Stats. 1925, § 351.39.)

170. Venereal Disease.—No person not a physician licensed in this State shall give, sell, prescribe or recommend any drugs, or other substance for syphilis, gonorrhœa or chancroid, or compound any such except on written prescription bearing date and signed by a physician licensed in this State. (Id. § 143.07 (11).)*

No person having the supervision or control of any public place shall display or permit to be displayed any written matter relating to venereal disease, except governmental publications. (Id. § 143.07 (12).)*

Intoxicating Liquors.

171. Prohibition Enforcement.—(1) Definitions. (a) The term "physician" includes only physicians engaged in the actual practice of medicine.

(b) The word "permit" means a formal written authorization by the commissioner setting forth therein the things that are authorized.

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*For penalty see No. 144.

(c) The word "druggist" means a proprietor of a retail drug store, and also the registered pharmacist in personal charge of the pharmacy in any bona fide hospital.

(d) The word "commissioner" means the State Prohibition Commissioner, and unless the contrary intent is apparent includes his deputies.

(e) The term "peace officer" includes sheriffs, undersheriffs, deputy sheriffs, police officers, marshals, deputy marshals, and constables.

(f) The term "sell" or "sold" or "sale" includes the transfer, gift, barter, trade, or exchange, or any shift, device, scheme or transaction whatever whereby intoxicating liquors may be obtained.

(g) The term "magistrate" includes the judges of the several courts of record, and judges of any municipal court in vacation as well as term time, court commissioners, police justices, and all justices of the peace.

(h) The term "application" means a formal written request, supported by a verified statement of facts showing that the commissioner may grant the request.

(i) "Fermented malt liquor" means a beverage made by the alcoholic fermentation of an infusion in potable water, of barley, malt and hops, with or without unmalted grains or decoricated and degerminated grains.

(j) "Vinous liquor" as herein used, means a fermented liquor containing alcohol and where such alcohol is produced by fermentation but not preceded by any malting process.

(k) The term "regulation" means any reasonable rule prescribed by the commissioner for carrying out the provisions of this chapter.

(l) The word "liquor" or the phrase "intoxicating liquor" and the word "alcohol" means the same as in the "National Prohibition Act."

(m) The words "nonintoxicating liquor" includes all liquors, liquids or compounds, whether medicated, proprietary, patented, or not and by whatever name called, fit for use for beverage purposes, containing alcohol in any degree, not defined to be "intoxicating liquors."

(n) The "National Prohibition Act" is Title II of the act of Congress enacted October 28, 1919, commonly known as the "Volstead Act" and includes any amendment to the same and lawful regulations thereunder.

(2) Prohibition Commissioner, powers and duties.—(a) The office of State Prohibition Commissioner, created by chapter 556 of the laws of 1919, is continued.

(b) Such commissioner shall keep his office at the Capitol and shall be provided by the Superintendent of Public Property with suitable rooms, furniture, supplies, and other necessary equipment. He shall be appointed by the Governor by and with the advice and consent of the Senate and hold his office for the term of four years from the date of his appointment and until his successor shall be appointed and qualified. He shall receive a salary of four thousand dollars per year and his actual and necessary expenses incurred in the discharge of his duties. He shall take and file the official oath and execute and file an official bond in the sum of twenty-five thousand dollars, to be approved by the Governor.

(c) The commissioner may appoint necessary deputy prohibition commissioners, employ necessary clerks, fix their compensation and file such appointments with the Secretary of State with a statement showing the compensation so fixed, prior to the employee or appointee entering upon his duties. Such compensation shall be audited, and paid on the certificate of the commissioner in the same manner as compensations are audited and paid other State officials and employees. The provisions of chapter 16 of the statutes shall not apply to appointments under this section.

(d) Said deputies shall perform the duties herein specified and such other duties as the commissioner may direct. Each deputy shall file such bond as the commissioner may require.

(e) The commissioner shall have a suitable seal, and permits issued by him shall have a clear impression of said seal. Other documents may be authenticated by a printed copy of the impression of said seal.

(f) It shall be the duty of district attorneys and peace officers to co-operate with the commissioner in the enforcement of this chapter.

(g) Any district attorney, peace officer, or the commissioner who shall know or be credibly informed that any offense has been committed against any of the provisions of this chapter shall make complaint against the person so offending within his respective jurisdiction to a proper magistrate and for every willful neglect or refusal so to do every such officer shall be subject to removal from office. No such officer shall be required to give any security for costs.

(h) The commissioner and his deputies shall have the same power to make arrests and serve process under the provisions of this chapter as sheriffs and shall receive the same fees. Such fees shall be paid into the State treasury and be credited to the general fund.

(i) The commissioner is authorized and empowered to make reasonable regulations for the enforcement of this chapter, and such regulations shall have the force of law when published in the official paper.

(j) The commissioner or any peace officer may examine any vehicle he has good reason to believe is being used in unlawfully transporting liquors and may open and examine any package contained therein or any package in the possession of a carrier which he has good reason to believe contains contraband liquors, but if no such liquors are found the package shall be restored to its original condition.

(3) Dealing in intoxicating liquor prohibited.—After this act becomes operative, the manufacture, sale or transportation of intoxicating liquors, as herein defined, within, the importation thereof into, or the exportation thereof from the State of Wisconsin, except as may be herein or hereafter provided, is hereby prohibited.

(4) Exception.—Liquor for nonbeverage purposes and wine for sacramental purposes may be manufactured, purchased, sold, transported, imported, exported, delivered, and possessed by complying with the "National Prohibition Act" and by obtaining a permit from the commissioner. Nothing in this chapter shall prohibit the sale of warehouse receipts covering distilled spirits on deposit in Government bonded warehouses.

(5) What not subject to this act.—(a) The articles enumerated in this subsection shall not, after having been manufactured and prepared for the market, be subject to the provisions of this chapter if they correspond with the following description and limitations, namely:

1. Denatured alcohol or denatured rum produced and used as provided by the "National Prohibition Act."

2. Medicinal preparations manufactured in accordance with formulas prescribed by the United States Pharmacopœia, National Formulary or the American Institute of Homeopathy, that are unfit for use for beverage purposes.

3. Patented, patent, and proprietary medicines that are unfit for use for beverage purposes.

4. Toilet, medicinal, and antiseptic preparations and solutions that are unfit for use for beverage purposes.

5. Flavoring extracts and syrups that are unfit for use as a beverage.

6. Vinegar and preserved sweet cider.

(b) A person who manufactures any of the articles mentioned in this subsection may purchase and possess liquor for that purpose, but he shall secure permits to manufacture such articles and to purchase such liquor, give the bonds, keep the records and make the reports specified in this chapter, and as directed by the commissioner. No such manufacturer shall sell, use, or dispose of any liquor otherwise than as an ingredient of the articles authorized to be manufactured therefrom. No more alcohol shall be used in the manufacture of any of the articles named in subdivisions 2, 3, 4 and 5 of this subsection than the quantity necessary for extraction or solution of the elements contained therein and for the preservation of the article.

(c) No person shall knowingly sell any of the articles mentioned in subdivisions 1, 2, 3, 4 and 5 of this subsection for beverage purposes, nor sell any of the same under circumstances from which the seller might reasonably deduce the intention of the purchaser to use them for such purposes.

(6) Permit to manufacture nonintoxicating liquor.—(a) A manufacturer of any beverage containing less than one-half of one per centum of alcohol by volume may, on making application and giving such bond as the commissioner shall prescribe, be given a permit to develop in the manufacture thereof by the usual methods a liquid such as beer, ale, porter, or wine, containing more than one-half of one per centum of alcohol by volume, but before any such liquid is withdrawn from the factory or otherwise disposed of the alcoholic contents thereof shall, under such regulations as the commissioner may prescribe, be reduced below one-half of one per centum of alcohol. Such liquid may be removed and transported, under bond and under such regulations as the commissioner may prescribe, from one bonded plant or warehouse to another for the purpose of having alcohol extracted therefrom. Any such liquids may be developed, under permit, by persons other than the manufacturers of beverages containing less than one-half of one per centum of alcohol by volume, and sold to such manufacturers for conversion into such beverages.

(b) In any case where the manufacturer is charged with violating paragraph (a) of this subsection the burden of proof shall be on such manufacturer to show that such liquids so manufactured, sold, or withdrawn contained less than one-half of one per centum of alcohol by volume.

(7) Permits to manufacture and sell liquors.—(a) No one shall manufacture for sale, sell, purchase, transport or prescribe any liquor without first obtaining a permit from the commissioner so to do, except that a person may, without a permit, purchase or use liquor, for medicinal purposes when prescribed by a physician as herein provided, and except that any person who in the opinion of the commissioner is conducting a bona fide hospital or sanatorium engaged in the treatment of persons suffering from alcoholism, may, under such regulations and conditions as the commissioner shall prescribe, purchase and use, in accordance with the methods in use in such institution, liquor to be administered to the patients of such institutions under the direction of a physician employed by such institution.

(b) Permits to manufacture, prescribe, sell, or transport liquor, may be issued for one year, and shall expire on the thirty-first day of December next succeeding the issuance thereof. No permit shall be issued to any person who within one year prior to the application therefor shall have violated the terms of any permit issued under this chapter or any law of the United States or of this State regulating traffic in liquor. No permit shall be issued to any one to sell liquor at retail, unless the sale is to be made through a pharmacist upon a physician's prescription. No one shall be given a permit to prescribe liquor unless he is a physician. No permit shall be issued until an application shall have been made therefor.

(c) The commissioner may prescribe the form of all permits and applications and the facts to be set forth therein. Before any permit is granted the commissioner may require a bond in such form and amount as he may prescribe to insure compliance with the terms of the permit and the provisions of this chapter.

(d) In the event of breach of any of the conditions contained in said bond, the same shall be forfeited to the State and the person so offending shall be liable to all other penalties herein prescribed. Action for forfeiture of such bond shall be instituted in the name of the State by the Attorney-General.

(e) No person to whom a permit may be issued to manufacture, transport, import, or sell wines for sacramental purposes or like religious rites shall sell or furnish any such to any person not a rabbi, minister of the Gospel, priest, or an officer duly authorized for the purpose by a church or congregation, nor to any such except upon an application duly subscribed by him, which application, authenticated as regulations may prescribe, shall be filed and preserved by the seller. The head of any conference or diocese or other ecclesiastical jurisdiction may designate any rabbi, minister, or priest to supervise the manufacture of wine to be used for the purposes and rites in this subsection mentioned, and the person so designated may, in the discretion of the commissioner, be granted a permit to supervise such manufacture.

(f) All permits in force at the time of the passage and publication of this chapter shall remain effective until December 31, 1921, upon the payment of the fee herein provided.

(g) Nothing herein contained shall prohibit the commissioner or any peace officer, or special agent, employed by the State, or any subdivision thereof, from purchasing or transporting liquor to be used as evidence.

(8) Fees for permit.—(a) Every application for a permit shall be accompanied by a fee of ten dollars and the written approval or disapproval of the district attorney of the county in which the permit is to be used. A separate permit and bond shall be required for each place of business. No fee shall be required for a permit to obtain wine for sacramental or religious rites, nor shall any fee be required of a dentist to enable him to secure alcohol for the purpose of sterilizing his instruments.

(b) The commissioner shall be satisfied that necessity exists for the granting of such permit, and in addition to the application and the recommendation of the district attorney may require additional proof of such applicant.

(c) All moneys derived from the issuance of permits shall be paid to the State Treasurer and shall go into the general fund.

(8m) Physician's permit.—Nothing in this chapter shall be construed to require any physician or druggist to procure more than one permit. A physician's permit shall authorize and permit the person to whom issued, subject to this chapter and rules and regulations prescribed by the commissioner:

(a) To prescribe liquor;

(b) To procure liquor to be administered to patients for medicinal purposes in cases of emergency;

(c) To obtain liquor to be used in compounding medicines;
(d) To procure alcohol to be used for sterilizing instruments.

(8n) Druggist's permit.—A druggist's permit shall, subject to this chapter and rules and regulations prescribed by the commissioner, authorize and permit the person to whom issued:

(a) Use liquor in the preparation of United States Pharmacopœia or National Formulary compounds and medicated prescriptions which are unfit for beverage purposes;

(b) Sell liquor to persons holding permits for nonbeverage purposes in quantities of less than five wine gallons;

(c) Sell alcohol in quantities not exceeding one pint medicated per one of the formulæ provided in the regulations promulgated under the National Prohibition act;

(d) Sell liquor on physicians' prescriptions in accordance with the regulations promulgated under the National Prohibition Act.

(9) Physicians' prescriptions.—Prescriptions for intoxicating liquors may be issued only as provided in the "National Prohibition Act," by physicians holding a permit under this chapter; provided, that no licensed physician shall issue any prescription for intoxicating liquor for the use of any minor unless he shall at the same time deliver to the parent or guardian of said minor a certificate in writing stating that in his judgment intoxicating liquor is necessary for the health of said minor. Provided, further, that said liquor cannot be obtained except upon presentation by said parent or guardian of said minor of said certificate attached to said prescription.

(10) Revocation of permits.—Permits granted hereunder may be revoked by the commissioner upon notice and hearing pursuant to regulations therefor provided by the commissioner.

(11) Record of manufacture, etc.—No person shall manufacture for sale, purchase for sale, sell, or transport any liquor without making at the time a permanent record as required by the "National Prohibition Act."

(12) Permits, how transferred.—Permits and licenses mentioned in this chapter may be transferable on proper application as to the locations, but shall not be transferable as to the persons. Permits issued to individuals shall not pass to personal represenatives [representatives].

(13) Liquor to be labeled.—All persons manufacturing liquor for sale under the provisions of this chapter shall label the same as provided in the "National Prohibition Act."

(14) Carrier to be notified of liquor shipments.—It shall be unlawful for a person to use or induce any carrier, or any agent or employee thereof, to carry any package or receptacle containing liquor without notifying the carrier of the true nature and character of the shipment. No carrier shall transport, nor shall any person receive, liquor from a carrier unless there appears on the outside of the package containing such liquor, the following information: Name and address of the consignor or seller, name and address of the consignee, kind and quantity of liquor contained therein, and number of permit to purchase and ship the same, together with the name and address of the person using the permit.

(15) Unlawful to accept package falsely labeled.—It shall be unlawful for any consignee to accept or receive any package containing any liquor upon which appears a statement known to him to be false, or for any carrier or other person to consign, ship, transport or deliver any such package, knowing such statement to be false.

(16) Unlawful to give carrier false order.—It shall be unlawful to give any carrier or any officer, agent, or person acting or assuming to act for such carrier, an order requiring the delivery to any person of any liquor or package containing liquor consigned to, or purporting or claimed to be consigned to, a person, when the purpose of the order is to enable any person not an actual bona fide consignee to obtain such liquor.

(17) Unlawful to advertise liquor.—(a) No person shall advertise, manufacture, sell or possess for sale, any still, utensil, contrivance, machine preparation, compound, tablet, substance, formula, direction or receipt advertised, designed or intended for use in the unlawful manufacture of intoxicating liquor.

(b) No person shall advertise liquor by any means or methods, or the manufacture, sale, keeping for sale or furnishing of the same, or where, how, from whom, or at what price the same may be obtained. No person shall permit any sign or billboard containing such advertisement to remain upon his premises. But nothing herein shall prohibit manufacturers and wholesale druggists holding permits to sell liquor, from furnishing price lists with description of liquor for sale, to persons permitted to purchase liquor, or from advertising alcohol in business

publications or trade journals circulating generally among manufacturers of lawful alcoholic perfumes, toilet preparations, flavoring extracts, medical preparations and like articles. Nothing in this chapter shall apply to newspapers published in foreign countries when mailed to this country.

(18) Not to solicit or receive liquor, etc.—No person shall solicit, receive, or knowingly permit his employee to solicit or receive, from any person, any order for liquor, or give any information of how liquor may be obtained in violation of this chapter. . . .

(21) Liquors lawfully acquired.—Liquors lawfully acquired for private use and not for unlawful sale, kept in the owner's private dwelling occupied by him as such, may be used by him, his family and bona fide guests in such dwelling: Provided, however, that no intoxicating liquors be given away or dispensed in such a manner as to constitute such private dwelling a public nuisance. Liquor acquired for medicinal purposes on prescription may be used only by the person for whom and as prescribed. . . .

(29) License fees; nonintoxicating liquors.—(a) Each town board, village board and common council shall grant licenses to such persons as they deem proper for the sale of nonintoxicating liquors to be consumed on the premises where sold and to manufacturers of nonintoxicating liquors who are not required to obtain a permit from the State Prohibition Commissioner, and to wholesalers, retailers, and distributors of nonintoxicating liquors for which a license fee of not less than five dollars nor more than fifty dollars to be fixed by the board or council shall be paid, except that where nonintoxicating liquors are sold, not to be consumed on the premises, the license fee shall be five dollars. Such license shall be issued by the town, village or city clerk, shall designate the specific premises for which granted and shall expire the thirtieth day of June thereafter. The full license fee shall be charged for the whole or a fraction of the year. No such liquor shall be manufactured, sold at wholesale or retail or sold for consumption on the premises, or kept for sale at wholesale or retail, or for consumption on the premises where sold without such license.

(b) It shall be the duty of the treasurer of each town, village or city in the State, wherein a fee is collected for license as herein provided, to remit to the State Treasurer within sixty days after such fee is collected, ten per cent of the total amount collected.

(c) It shall be the duty of the State Treasurer to require all town, village and city treasurers to file as of July first in each year, detailed statement of all license fees received by him during the preceding year, and he shall collect the proportionate percentage due to the State.

(30) Not to have bar, curtains, etc.—No person having a license for the sale of nonintoxicating liquors to be sold for consumption upon the premises where sold, shall maintain a standing bar or counter of any description at which any such drinks or liquors are consumed, in the place or room covered by such license, and no stall, booth or other inclosure of any kind in or connected with such place or room shall be maintained, and the windows and doors of any such place or room shall be unobstructed by screens, blinds, paint or other articles so that a clear and unobstructed view of the interior of said place or room from the outside may at all times be had. No such person shall have in his possession on or about said premises any intoxicating liquor. The provisions of this subsection shall not apply to any bona fide registered pharmacist who is the owner of a retail drug store who may hold a Class A permit and a Federal permit to purchase and dispense intoxicating liquor on the prescription of a physician. . . .

(31) Qualifications of licensee, or permittee.—No license or permit shall be granted to any person, unless to a domestic corporation, not a citizen of the United States and of this State and a resident of the town, village or city in which such license is applied for, nor to any person who has been convicted of a felony, unless such person has been pardoned. No license shall be granted to any person who has been convicted of a violation of any of the provisions of this chapter, or of any of the provisions of the "National Prohibition Act," within the period of one year from the date of conviction.

(32) Penalties; appearance bonds; seizures.—(a) Any person violating any of the provisions of this chapter for which a specific penalty is not prescribed, shall for the first offense be fined in addition to the costs of the action not less than one hundred nor more than one thousand dollars, or by imprisonment in the county jail not less than one month, nor more than six months, and for a second or subsequent offense shall be fined in addition to the costs of the action not less than two hundred dollars nor more than two thousand dollars, and be imprisoned in the county jail not less than one month, nor more than one year.

(b) In addition to the penalties provided by paragraph (a) the court in rendering judgment for the violation of any of the provisions of this chapter by a pharmacist or physician;

1. May for the first offense suspend the permit of such defendant for a period not exceeding six months, and

2. Shall for the second offense suspend the permit of such defendant for a period of six months, and

3. May for a third or subsequent offense revoke, or for such period as the court may see fit, suspend defendant's certificate as a pharmacist, or his license to practice medicine, as the case may be, and the court rendering such judgment shall forthwith cause a certified copy of the same to be filed with the State Board of Pharmacy or the State Board of Medical Examiners, as the case may require.

(c) At the time of the return of the warrant issued for the violation of any of the provisions of this chapter, the defendant shall give a bond in such sum as shall be fixed by the court, but not less than in the penal sum of five hundred dollars, with sufficient sureties, payable to the State for his appearance, as shall be required by the court from time to time until said proceedings shall finally be determined. Said bond shall further be conditioned that he will not sell, vend, deal, barter or traffic in, any intoxicating liquors or non-intoxicating liquors in violation of any law of this State or of the United States.

(d) There shall be no property rights in any liquor unlawfully possessed, or in any device for the unlawful manufacture of liquor, or in any vehicle or conveyance used to unlawfully transport liquor, and all such liquors, devices, vehicles and conveyances are contraband subject to seizure, sale, or other disposition by the commissioner, his deputies or any peace officer for the benefit of the State. The possession of any still or other contrivance used or capable of being used for the distillation of alcoholic liquors without a permit, as provided in the "National Prohibition Act," or the possession of any mash from which distilled liquor is customarily made, or the possession of any privately manufactured distilled liquors without such permit is hereby prohibited, and the possession of any such still, mash, or liquor shall be prima facie evidence of unlawful manufacture of liquor.

(33) How construed.—(a) This chapter shall be deemed an exercise of the power reserved by and granted to the State by the Eighteenth Amendment to the Constitution of the United States and also an exercise of the police power of the State for the protection of the public health, peace, safety and morals of its people. It shall be liberally construed to the end that the use of intoxicating liquors as a beverage be prevented. In the event of any conflict between the provisions of this chapter and the "National Prohibition Act" or the lawful regulations thereunder, the national act and regulations shall prevail.

(b) It is the intent of this act that its provisions are separable and the holding of any provision thereof unconstitutional shall not affect the remainder thereof.

(34) Action when barred.—Conviction of a person under the "National Prohibition Act" shall bar a prosecution under this chapter on the same state of facts.

(35) Records, documents, evidence.—All records and documents required to be kept under this chapter shall be open at all reasonable hours for inspection and may be copied by the commissioner, his deputies or any peace officer. A verified copy of any such record or document shall be evidence in any proceeding under this chapter. . . . (Stats. 1925, § 165.01.)

172. **Prescriptions by Intoxicated Person.**—Any physician or other person, while in a state of intoxication, who shall prescribe any poison, drug or medicine to another person shall be punished by imprisonment in the county jail not more than one year or by fine not exceeding five hundred dollars. (Id. § 352.21.)

PART IV.

Miscellaneous Laws.

Convict-Made Goods.

173. **Labels on Prison-Made Goods.**—All goods, wares and merchandise made by convict labor in any penitentiary, prison, reformatory or other establishment in which convict labor is employed in any State, except this State, and imported, brought or introduced into this State shall, before being exposed for sale,

be branded, labeled or marked as herein provided, and shall not be exposed for sale in this State without such brand, label or mark. Such brand, label or mark shall contain at the head or top thereof the words "convict-made," followed by the year and name of the penitentiary, prison, reformatory or other establishment in which it was made, in plain English lettering, of the style and size known as great primer roman condensed capitals. The brand or mark shall in all cases, where the nature of the article will permit, be placed upon the same, and only where such branding or marking is impossible shall a label be used, and where a label is used it shall be in the form of a paper tag, which shall be attached by wire to each article, where the nature of the article will permit, and placed securely upon the box, crate or other covering in which such goods, wares or merchandise may be packed, shipped or exposed for sale. Said brand, mark or label shall be placed upon the outside of and upon the most conspicuous part of the finished article and its box, crate or covering. (Stats. 1925, § 132.13.)

174. **Enforcement of Law.**—It shall be the duty of the Commissioner of Labor Statistics and the district attorneys of the several counties to enforce the foregoing section, and when, upon complaint or otherwise, such commissioner has reason to believe that the same has been violated he shall advise the district attorney of the county wherein such alleged violation has occurred, of the fact, giving the information in support of his conclusions, and such district attorney shall at once institute the proper legal proceedings to compel compliance therewith. (Id. § 132.14.)

175. **Penalty for Selling Such Goods, Etc.**—A person knowingly having in his possession for the purpose of sale or offering for sale any convict-made goods, wares or merchandise manufactured in any State except this, without the brand, mark or label required by law, or who removes or defaces such brand, mark or label shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine not less than one hundred dollars nor more than five hundred dollars. (Id. § 343.652.)

False Advertising.

176. **Fraudulent Advertising.**—No person, firm, corporation or association shall, with intent to sell or in any wise dispose of merchandise, securities, service, or anything offered by such person, firm, corporation or association, directly or indirectly, to the public for sale or distribution, or with intent to increase the consumption thereof, or to induce the public in any manner to enter into any obligation relating thereto, or to acquire title thereto, or an interest therein, make, publish, disseminate, circulate, or place before the public, or cause, directly or indirectly, to be made, published, disseminated, circulated, or placed before the public, in this State, in a newspaper or other publication, or in the form of a book, notice, handbill, poster, bill, circular, pamphlet, or letter, or in any other way, an advertisement of any sort regarding merchandise, securities, service, or anything so offered to the public, which advertisement contains any assertion, representation or statement of fact which is untrue, deceptive or misleading.

(2) It shall be deemed deceptive advertising, within the meaning of this section, for any person, firm or corporation, engaged in the business of buying or selling new or second-hand furs, wearing apparel, jewelry, furniture, pianos, phonographs, or other musical instruments, motor vehicles, stocks, or generally any form of property, real, personal or mixed, or in the business of furnishing any kind of service or investment, to advertise such articles, property or service for sale, in any manner indicating that the sale is being made by a private party or householder not engaged in such business. And every such firm, corporation, or association, engaged in any such business, in advertising goods, property or service for sale, shall affirmatively and unmistakably indicate and state that the seller is a business concern and not a private party.

(3) Any person, firm, corporation or association engaged in any business mentioned in subsection (2) or in any other kind of business, whether conducting such business in a store, business block, residence, or other building, shall at all times keep a conspicuous sign posted on the outside of his establishment and another conspicuous sign in the salesroom, which sign shall clearly state the name of the association, corporation, or individual who actually owns said merchandise, property, or service which are being offered to the public and not the name of any other person; Provided, however, that the exterior sign shall not be required where the seller has no control over the exterior of the premises where such business is conducted.

(4) Any person, firm, corporation, or association violating any provision of this section shall be guilty of a misdemeanor, and upon conviction thereof shall

be punished by a fine of not less than fifty dollars nor more than two hundred dollars or be imprisoned in the county jail not less than thirty days nor more than sixty days or by both such fine and imprisonment; and each sale, advertisement or representation in contravention of the provisions of this section shall be deemed a distinct offense and shall subject the offender to such punishment.

(5) The treasury agent shall enforce the provisions of this section. (Stats. 1925, § 343.413, as amended L. 1927, c. 67.)*

176a. **Dairy and Food Products; False Advertising.**—(1) No person, firm, corporation or association shall, with intent to sell, or increase the consumption thereof, or create an interest therein, make, publish, disseminate, circulate, or place before the public in this State, or cause, directly or indirectly to be made, published, disseminated, or placed before the public in this State, in a newspaper or other publication, or in the form of a book notice, handbill, poster, bill, circular or pamphlet, or in any other manner, an advertisement of any sort regarding articles of food, which advertisement contains any assertion, representation or statement which is untrue, deceptive or misleading.

(2) It shall be unlawful to advertise any dairy or other food product which is of a grade or quality inferior to or less valuable than the usual and ordinary grade established by common understanding or law for such product, or from which a more valuable portion has been removed, without plainly and conspicuously stating that the article advertised is below and inferior to the usual and ordinary grade.

(3) Any person, who by himself or his agent, or as the agent or servant of any other person, firm, corporation or association, shall violate any provision of this section, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be punished by a fine of not less than fifty dollars, nor more than two hundred dollars, or by imprisonment in the county jail for not less than thirty days nor more than sixty days, or both such fine and imprisonment.

(4) It shall be the duty of the Dairy and Food Commissioner to enforce the provisions of this section. (Stats. 1925, § 352.085, added L. 1927, c. 80.)

Flag Desecration.

177. **Improper Use of State or United States Flag or Other Symbol of Authority.**—No person shall, in any manner, for exhibition or display:

(1) Place or cause to be placed any word, figure, mark, picture, design, drawing or advertisement of any nature upon any flag, standard, color, ensign, or shield of the United States or of this State, or authorized by any law of the United States or of this State; or

(2) Expose to public view any such flag, standard, color, ensign, or shield upon which shall have been printed, painted or otherwise produced, or to which shall have been attached, appended, affixed or annexed any such word, figure, mark, picture, design, drawing or advertisement; or

(3) Expose to public view for sale, manufacture, or otherwise, or to sell, give or have in possession for sale, for gift or for use for any purpose, any substance, being an article of merchandise, or receptacle, or thing for holding or carrying merchandise, upon or to which shall have been produced or attached any such flag, standard, color, ensign, or shield, in order to advertise, call attention to, decorate, mark or distinguish such article or substance. (Stats. 1925, § 348.479.)

178. **Same; Mutilation; Disrespect.**—No person shall publicly mutilate, deface, defile, defy, trample upon, or by word or act cast contempt upon any such flag, standard, color, ensign or shield. (Id. § 348.48.)

179. **Same; Exceptions.**—Sections 348.482 and 348.483 shall not apply to any act permitted by the statutes of the United States or of this State, or by the United States Army and Navy regulations, nor shall it apply to any printed or written document or production, stationery, ornament, picture or jewelry whereon shall be depicted said flag, standard, color, ensign or shield with no design or words thereon and disconnected with any advertisement. (Id. § 348.481.)

180. **Same; Definitions.**—The words flag, standard, color, ensign or shield, as used in sections 348.479 to 348.481, shall include any flag, standard, color, ensign or shield, or copy, picture or representation thereof, made of any substance or represented or produced thereon, and of any size, evidently purporting to be such flag, standard, color, ensign or shield of the United States or of this State, or a copy, picture, or representation thereof. (Id. § 348.482.)

181. **Same; Penalty.**—(1) Any person violating the provisions of section 348.479 shall be deemed guilty of a misdemeanor and upon conviction thereof shall

*See No. 92.

be punished by a fine of not less than ten dollars nor more than one hundred dollars.

(2) Any person violating the provisions of section 348.48 shall be deemed guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not less than ten dollars nor more than one hundred dollars or by imprisonment in the county jail not more than sixty days or by both such fine and imprisonment in the discretion of the court. (Id. § 348.483.)

182. Same; Interpretation.—Sections 348.479 to 348.484 shall be so construed as to effectuate its general purpose and to make uniform the laws of the States which enact them. (Id. § 348.484.)

Matches.

183. Manufacture, Storage and Distribution of Matches.—(1) No person, association or corporation shall manufacture, store, offer for sale, sell, or otherwise dispose of or distribute white phosphorus, single-dipped, strike-anywhere matches of the type popularly known as "parlor matches;" nor manufacture, store, sell, offer for sale, or otherwise dispose of or distribute white phosphorus, double-dipped, strike-anywhere matches, or other type of double-dipped matches, unless the bulb or first dip of such match is composed of a so-called safety or inert composition, non-ignitible on an abrasive surface; nor manufacture, store, sell or offer for sale, or otherwise dispose of or distribute matches which, when packed in a carton of five hundred approximate capacity and placed in an oven maintained at a constant temperature of two hundred degrees Fahrenheit, will ignite in eight hours; nor manufacture, store, offer for sale, sell or otherwise dispose of or distribute Blazer, or so-called wind matches, whether of the so-called safety or strike-anywhere type.

(2) No person, association or corporation shall offer for sale, sell or otherwise dispose of or distribute any matches, unless the package or container in which such matches are packed bears plainly marked on the outside thereof the name of the manufacturer and the brand or trade-mark under which such matches are sold, disposed of or distributed; nor shall more than one case of each brand of matches of any type or manufacture be opened at any one time in the retail store where matches are sold or otherwise disposed of; nor shall loose boxes or paper-wrapped packages of matches be kept on shelves or stored in such retail stores at a height exceeding five feet from the floor; all matches, when stored in warehouses, excepting manufacturers' warehouses at place of manufacture, when such warehouses contain automatic sprinkler equipment, must be kept only in properly secured cases, and not piled to a height exceeding ten feet from the floor; nor be stored within a horizontal distance of ten feet from any boiler, furnace, stove or other like heating apparatus, nor within a horizontal distance of twenty-five feet from any explosive material kept or stored on the same floor; all matches shall be packed in boxes or suitable packages, containing not more than seven hundred matches in any one box or package; provided, however, that when more than three hundred matches are packed in any one box or package, the said matches shall be arranged in two nearly equal portions, the heads of the matches in the two portions shall be placed in opposite directions, and all boxes containing three hundred and fifty or more matches shall have placed over the matches a center holding or protecting strip, made of chipboard, not less than one and one-quarter inches wide; said strip shall be flanged down to hold the matches in position when the box is nested into the shuck or withdrawn from it.

(3) All match boxes or packages shall be packed in strong shipping containers or cases; maximum number of match boxes or packages contained in any one shipping container or case, shall not exceed the following number:

Number of Boxes		Nominal Number of Matches per Box
One-half gross,		700
One gross,		500
Two gross,		400
Three gross,		300
Five gross,		200
Twelve gross,		100
Twenty gross,	over fifty and under	100
Twenty-five gross,	under	50

No shipping container or case constructed of fiber board, corrugated fiber board, or wood, nailed or wire-bound, shall exceed a weight, including its contents, of seventy-five pounds; and no lock-cornered wooden case containing matches shall have a weight, including its contents, exceeding eighty-five pounds; nor shall any other article or commodity be packed with matches in any such container or case; and all such containers and cases in which matches are packed shall have plainly marked on the outside of the container or case the words "Strike-Anywhere Matches" or "Strike-on-the-Box Matches."

(4) Any person, association or corporation violating any of the provisions of this act shall be fined for the first offense not less than five dollars nor more than twenty-five dollars, and for each subsequent violation not less than twenty-five dollars. (Stats. 1925, § 167.07.)

Tobacco—Tobacco Products.

184. Sale of Tobacco to Minors.—Any person who shall sell or give to any minor a cigar, cigarette or other tobacco in any form, after having been forbidden to do so by the parent or guardian of such minor, shall be punished by fine of not more than twenty-five dollars nor less than ten dollars. (Stats. 1925, § 352.49.)

185. Sale, Manufacture, or Giving Away of Cigarettes and Cigarette Papers Prohibited; Penalty.—(1) Any person who shall, by himself, his servant or agent, or as the servant or agent of any other person, directly or indirectly, or upon any pretense, or by any device, sell, give away or otherwise dispose of to any minor any cigarettes, cigarette paper or cigarette wrappers, or any substitute therefor, or any paper made or prepared for the purpose of making cigarettes or any substitute therefor, or for the purpose of being filled with tobacco for smoking shall be guilty of a misdemeanor and upon conviction thereof shall be punished in the manner hereinafter provided.

(2) It shall be unlawful for any person, firm, or corporation, in any manner, directly or indirectly, upon any pretense, or by any device, to manufacture, sell, exchange, barter, dispose of or give away, or keep for sale any cigarettes, cigarette paper or cigarette wrappers, or any paper made or prepared for the purpose of being filled with tobacco without first obtaining a license therefor, as hereinafter provided.

(3) License for the manufacture, sale, exchange, barter, disposition of or giving away or keeping for sale of cigarettes, cigarette paper, or cigarette wrappers made or prepared for the purpose of being filled with tobacco for smoking, shall be issued by the city, village or town clerk, of the city, village or town wherein such right is sought to be exercised. Every such license shall be issued on the first day of July in each year or thereafter whenever applied for and shall continue in force from date of issuance until the succeeding thirtieth day of June, unless sooner revoked for a violation of this section as herein provided.

(4) Every person, firm or corporation desiring a license under this section shall file with the city, village or town clerk of the city, village or town wherein such right is sought to be exercised, a written application therefor, stating the name of the person and the place for which such license is desired. Every license shall be signed by the city, village or town clerk and shall name the licensee and the place wherein he is authorized to conduct such business and the same shall not be delivered until the applicant shall produce and file with such clerk a receipt showing the payment of the license fee of five dollars to the treasurer of such municipality. In case of a change of ownership in any licensed location the authority granting the license may authorize a transfer of such license to the new owner.

(5) Any person violating any of the provisions of subsections (1), (2), (3), (4), or (5) of this section shall be deemed guilty of a misdemeanor and shall be punished by a fine of not more than one hundred dollars nor less than twenty-five dollars for the first offense and by a fine of not more than two hundred dollars nor less than twenty-five dollars for the second or subsequent offense, after the passage of this act. And if upon such second or subsequent violation, the person so violating subsections (1), (2), (3), (4) or (5) of this section shall have been personally guilty of a failure to exercise due care to prevent violation thereof, he shall be punished upon conviction thereof by a fine of not more than three hundred dollars nor less than twenty-five dollars or by imprisonment in the county jail not exceeding sixty days or by both such fine and imprisonment, and such conviction shall immediately terminate the license of the person so convicted and such person shall not be entitled to another license hereunder for a period of five years thereafter, nor shall he in that period act as the servant or agent of a person licensed

hereunder for the performance of the acts authorized by such license. The provisions hereof shall not apply to the sales of jobbers or manufacturers doing an interstate business with customers outside of the State.

(6) Any minor being in possession of any cigarettes, cigarette paper or cigarette wrappers and being asked by any sheriff, deputy sheriff, police officer, village marshal, truant officer, probation officer or teacher in any school to tell where or from whom such cigarettes, cigarette paper or cigarette wrappers were obtained, who shall refuse to furnish such information, shall be guilty of a misdemeanor, and upon conviction thereof, shall be punished by a fine of not more than five dollars, and any minor who shall intentionally misrepresent his age for the purpose of securing any cigarettes, cigarette paper, or cigarette wrappers, or any substitute therefor, or any paper made or prepared for the purpose of making cigarettes or any substitute therefor, or for the purpose of being filled with tobacco for smoking, shall be guilty of a misdemeanor, and upon conviction thereof, shall be punished by a fine of not more than twenty-five dollars or by imprisonment in the county jail not more than thirty days, or by both such fine and imprisonment; provided, that if such person shall be a boy under the age of seventeen years or a girl under the age of eighteen years, such person shall be a "delinquent child" under section 48.01, subsection (1),* and subject to the provisions of the statutes relating to juvenile courts. (Id. § 352.50.)

186. Youths Under Sixteen; Public Smoking Forbidden.—Every person who shall sell or give to any person under the age of sixteen years, a cigar, or tobacco in any form, without the written consent of the parent or guardian of such minor, shall be punished by a fine of not less than ten dollars nor more than twenty-five dollars for each offense, and every person under the age of sixteen years who shall smoke or use cigarettes, cigars or tobacco on any public road, street, alley or park or other lands used for public purposes or in any public place of business or amusement, except when in the company of a parent or guardian, shall be punished by a fine of not more than ten dollars or by imprisonment for not exceeding thirty days. (Id. § 352.63.)

187. Premise Owners Who Permit Smoking; Penalty.—Any person who shall permit any person under the age of sixteen years who shall not be in the company of a parent or guardian to use cigarettes, cigars or tobacco in any form in or upon premises occupied by him, shall be punished for the first offense by a fine of not more than ten dollars and for any subsequent offense by a fine of not more than twenty-five dollars or by imprisonment for not exceeding thirty days. (Id. § 352.64.)

188. No Basements.—No shop or place wherein cigars are manufactured shall be located below the ground floor. (Id. § 110.01.)

189. Floor Space.—Each employee in any shop or place wherein cigars are manufactured, shall, while actually employed, be allowed to use twenty square feet of surface space, unobstructed to the ceiling. (Id. § 110.02.)

190. Air Space.—Every room wherein cigars are manufactured shall contain at least seven hundred cubic feet of air space. It shall in every part be not less than eight feet in height, from floor to ceiling, every window shall have not less than twelve square feet in superficial area, and the entire area of window surface shall not be less than twelve per cent of the floor space of such room. (Id. § 110.03.)

191. Ventilation.—Every room in which cigars are manufactured while work is carried on shall be so ventilated that the air shall not become impure and injurious to the health of the persons employed therein, and it shall wherever necessary, by the means of air shafts or other ventilation, be so changed as to render harmless all gases, dust and other impurities generated in the process of manufacturing cigars. All windows are to be kept open for thirty minutes before working hours and for thirty minutes after working hours. (Id. § 110.04.)

192. Sanitation.—Every such shop or place in which one or more persons are employed and every such factory in which five or more persons are employed, shall be kept clean. The dust must be removed from work tables and floors once every day, the floors scrubbed at least once a week and one cuspidor provided for every two employees. (Id. § 110.05.)

193. Closets.—Where men and women are employed there shall be separate dressing rooms and water-closets for the different sexes. (Id. § 110.06.)

194. Penalty.—Any person violating any provision of sections 110.01 to 110.08, inclusive, shall be punished by fine not exceeding twenty-five dollars, and no less than ten dollars for the first offense, and by fine not exceeding fifty dollars, and no less than twenty-five dollars for the second and each following offense. (Id. § 110.07.)

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*Omitted herein.

195. Enforcement.—The Factory Inspector shall have full power and it shall be his duty to enforce all the provisions of sections 110.01 to 110.08, inclusive, but no prosecution shall be instituted for any violation of sections 110.02, 110.03 and 110.04, unless the employer or manufacturer, or the firm has been notified by a notice sent in a registered letter for at least four weeks prior to a prosecution, requiring the necessary changes in the factory or workshop, and such request has not been complied with. (Id. § 110.08.)

Trade-Marks, Etc.

196. Trade-Marks and Labels.—(1) Any person, firm, copartnership, corporation, association, or union of workingmen, which has heretofore adopted or used or shall hereafter adopt or use any label, trade-mark, trade name, term, design, pattern, model, device, shop mark, drawing, specification, designation, or form of advertisement, for the purpose of designating, making known, or distinguishing any goods, wares, merchandise, or other product of labor or manufacture as having been made, manufactured, produced, prepared, packed, or put on sale by such person, firm, copartnership, corporation, association, or union of workingmen, or by a member or members thereof, he or they, if residents of this or any other State of the United States, and such foreign corporations as may have been duly licensed to transact business in the State of Wisconsin, may file an original, a copy, or photographs, or cuts with specifications of the same for record in the office of the Secretary of State, by leaving two such originals, copies, photographs, or cuts with specifications, the same being counterparts, facsimiles, or drawings thereof, with said secretary and by filing therewith a sworn statement, specifying the name of the person, firm, copartnership, corporation, association, or union of workingmen, on whose behalf such label, trade-mark, term, trade name, pattern, model, design, device, shop mark, drawing, specification, designation, or form of advertisement is to be filed, the class of merchandise and a separate description of the goods to which the same has been or is intended to be appropriated, the residence, location, or place of business of such party, that the party, on whose behalf such label, trade-mark, trade name, term, design, pattern, model, device, shop mark, drawing, specification, designation, or form of advertisement to be filed, has the right to the use of the same, and that no other person, or persons, firm, copartnership, corporation, association or union of workingmen has such right either in the identical form or in any such near resemblance thereto as may be calculated to deceive, and that the originals, copies, photographs, or cuts, counterparts, facsimiles, or drawings filed therewith are correct.

(2) Where the several parts of a single unit article of trade or commerce are severally marked to distinguish them by the person, firm, copartnership, corporation, association, or union of workingmen having the right to manufacture such single unit under a trade name or brand used by him or them, such person, firm, copartnership, corporation, association, or union may, in filing under this section the designation of such trade name or brand, attach thereto photographs or cuts with specifications of the several parts of the unit to which it is attached or applied, and thereafter no further filing or registration of any such parts so used shall be necessary to protect the owner or lawful use of the trade name or brand of the unit against the use by others of any of the several parts thereof and any such filing shall be construed to be a single filing, and but one filing fee shall be paid therefor.

(3) The papers required to be filed hereunder shall be recorded in a book for that purpose, and there shall be paid to the Secretary of State for such recording and filing the fee of three dollars.

(4) Nothing in this section shall be construed as authorizing registration hereunder of names and brands of beverages by the persons, firms or corporations specified in section 132.11. (Stats. 1925, § 132.01.)

197. Duplication or Reproduction.—(1) It shall be unlawful for any person, firm, copartnership, corporation, association or union of workingmen, without the consent of the owner of any such label, trade-mark, trade name, term, design, pattern, model, device, shop mark, drawing, specification, designation, or form of advertisement registered in accordance with the provisions of the preceding section, to remove any such label, trade-mark, trade name, design, shop mark, or other designation, or form of advertisement so registered and attached to merchandise or products of labor, for the purpose of using such merchandise or products of labor as a pattern for the duplicating or reproduction of the same, either in the identical form or in such near resemblance thereto as may be calculated to deceive.

(2) Nothing herein contained shall be taken to prohibit the using of such merchandise or products of labor as a pattern for the reproduction of the same in individual cases of emergency repairs.

(3) And it shall be unlawful for any other person to make use of such label, trade-mark, trade name, term, design, pattern, model, device, shop mark, drawing, specification, designation, or form of advertisement so filed, or any such likeness or imitation thereof, or utter or display the same orally, or in any printed or written form in the conduct of his business or any business transaction without the express consent, license, and authority of the person, firm, copartnership, corporation, association, or union so owning the same, and such unauthorized and unlawful use may be prohibited and prevented by injunction or other proper proceeding in a court of competent jurisdiction without recourse to the penal statute providing a punishment for such unlawful use. In case such association or union of workingmen is not incorporated such actions may be commenced and prosecuted by an officer or member of such association or union on behalf of and for the use of such association or union. (Id. § 132.02.)

198. Penalty.—(1) Every person who shall knowingly and willfully violate sections 132.01 or 132.02, except only those provisions relative to emergency repairs, shall be guilty of a misdemeanor, and upon conviction thereof shall be punished by imprisonment for not more than six months or by a fine of not more than two hundred dollars.

(2) Nothing contained in sections 132.01, 132.02 and 132.03 shall require a new filing or registration in cases to which this act applies where there has heretofore been a compliance with section 132.01, or any acts amendatory thereof, by any person or persons, firm, copartnership, corporation, association, or union of workingmen. (Id. § 132.03.)

199. Filing of Description with Secretary of State; Publication of; Fees.—Any and all persons or corporation, who may be the owners of cans, tubs, firkins, boxes, bottles, casks, barrels, kegs, cartons, tanks, fountains, vessels or containers with his, her, its or their names, brands, designs, trade-marks, devices or other marks of ownership stamped, impressed, labeled, blown in or otherwise marked thereon, may file with the Secretary of State and also with the register of deeds of any county in which any such person or persons or corporations may have his, her, its or their principal place of business, a written statement or description verified by affidavit of such owner or his, her, or its agent, of the names, brands, designs, trade-marks, devices or other marks of ownership so used by him, her, it or them, and of the said article or articles upon which the same are used, or if such principal place of business shall be without the State, then such written statement or description so verified may be filed with the register of deeds of any county of this State. Said statement shall be published once a week for three successive weeks in a newspaper printed in the English language and of general circulation in said county, a copy of which publication, proved in the same manner as proof of publication is now required to be made by law, when no special mode of proving the same is provided, shall also be filed with the Secretary of State and with such register of deeds. All such written statements or descriptions and all such certificates of publication so filed with the register of deeds shall be recorded at large by him in a book to be kept by him and such book shall be subject at all reasonable hours to the inspection of all persons who may choose to inspect the same. The Secretary of State and the register of deeds shall deliver to any person who may apply therefor copies of all such written statements or descriptions of names, brands, designs, trade-marks, devices, or other marks of ownership and of all certificates of publication so filed with them, duly certified to by them in the usual manner, and such certified copies shall be admissible in evidence in all prosecutions under sections 132.04 to 132.08, inclusive, and shall be prima facie evidence that the provisions of this section have been complied with, and of the title of the owner or owners named therein, to the property upon which the name, brand, design, trade-mark, device or other marks of ownership of such owner or owners may appear as described therein. The Secretary of State shall receive a fee of three dollars and the register of deeds shall receive a fee of one dollar for each statement and certificate of publication filed and also a fee of one dollar for each certified copy of such statement and certificate of publication, to be paid for by the person filing or applying for the same. (Id. § 132.04.)

200. Sale of Receptacle by Other Than Owner Prohibited.—It is hereby declared to be unlawful for any person or persons or corporation without the written consent of the owner or owners thereof, to hereafter keep for sale any can, tub, firkin, box, bottle, cask, barrel, keg, carton, tank, fountain, vessel or container so marked or distinguished as aforesaid, of which a description shall have been filed

and published as provided in section 132.04, or to use or fill with any similar substance, commodity or product as originally contained therein for the sale of such substance, commodity or product any such can, tub, firkin, box, bottle, cask, barrel, keg, carton, tank, fountain, vessel or container or to receive, take, buy, sell, or dispose of or traffic in any such can, tub, firkin, bottle, box, cask, barrel, keg, carton, tank, fountain, vessel or container, or to deface, erase, obliterate, cover up or otherwise remove or conceal any such name, brand, design, trade-mark, device or other mark thereon, for the purpose of destroying or removing the evidence of the ownership of such article. (Id. § 132.05.)

201. **Use of Receptacle by Other Than Owner; as to Junk Dealers.**—The using by any person or persons or corporation other than the owner or owners thereof, or his, her, its or their agent, of any such can, tub, firkin, box, bottle, cask, barrel, keg, carton, tank, fountain, vessel or container, for the sale therein of any substance, commodity, or product, other than that originally therein contained, or the buying, sell, or trafficking in any such can, tub, firkin, box, bottle, cask, barrel, keg, carton, tank, fountain, vessel or container, or the fact that any junk dealer or dealers in cans, tubs, firkins, boxes, bottles, casks, barrels, kegs, cartons, tanks, fountains, vessels or containers, shall have in his or her possession any such can, tub, firkin, box, bottle, cask, barrel, keg, carton, tank, fountain, vessel or container, so marked or stamped, and a description of which shall have been filed and published as provided in section 132.04 shall be, and it hereby is, declared to be, prima facie evidence that such using, buying, selling or trafficking in or possession of is unlawful within the meaning of sections 132.04 to 132.08, inclusive. (Id. § 132.06.)

202. **Penalty for Unlawful Use.**—Any person or persons or corporation or any officer or agent of any corporation acting for or in the name of such corporation who shall knowingly and willfully with intent to unlawfully convert to his own use violate any of the provisions of sections 132.04 to 132.08, inclusive, shall be punished by imprisonment in the county jail for not more than six months, or by fine of not more than two hundred dollars, or by both such fine and imprisonment. (Id. § 132.07.)

203. **Rights of Owner to Injunction.**—Every such person or corporation having complied with the provisions of sections 132.04 to 132.08, inclusive, as aforesaid, may proceed by suit to enjoin any other person or corporation from filling with any substance, commodity or product for the sale therein of such substance, commodity or product any can, tub, firkin, box, bottle, cask, barrel, keg, carton, tank, fountain, vessel or container, so marked or distinguished as aforesaid, or from buying, selling, using or disposing of or trafficking in the same, or from defacing, erasing, obliterating, covering up or otherwise removing any such name, brand, design, trade-mark, device or other marks of ownership thereon, for the purpose of destroying or removing the evidence of the ownership of such article, and all courts having equity jurisdiction shall have power to grant injunctions according to the course and principles of courts of equity, to restrain such filing [filling] for sale or such buying, selling, giving away, using or disposing of, or trafficking in or such defacing, erasing, obliterating, covering up, or otherwise removing or the violation of any right acquired under the provisions of sections 132.04 to 132.08, inclusive, and upon a decree being rendered in any such case against the defendant, the complainant shall be entitled to recover the damages the complainant may have sustained by reason of the said acts of the defendant and the court shall assess the same or cause the same to be assessed under its direction. (Id. § 132.08.)

204. **Certificate; Evidence.**—Said secretary shall deliver to the person, association or union so filing or causing to be filed any such label, trade-mark, term, design, device or form of advertisement so many duly attested certificates of the filing and recording of the same as may be desired, and shall receive for each such certificate a fee of one dollar. Any such certificate shall, in all suits and prosecutions arising out of or depending upon any rights claimed under such label, trade-mark, term, design, device or form of advertisement be sufficient proof of the adoption thereof. The Secretary of State shall not record any label, trade-mark, term, design, device or form of advertisement that may reasonably be mistaken for anything theretofore filed in his office under the provisions of this chapter. (Id. § 132.09.)

205. **Fraudulent Filing; Damages.**—Any person who shall for himself or on behalf of any other person, association or union procure the filing of any label, trade-mark, term, design, device or form of advertisement under the provisions of the preceding section by making any false or fraudulent representations or declarations, verbally or in writing, or by any other fraudulent means shall be liable for any damages sustained in consequence thereof, to be recovered by or on behalf of

the party injured thereby, and shall also be punished as provided by law. (Id. § 132.10.)

206. **Record of Brands, Etc.**—The Secretary of State shall, on application by any person, or firm domiciled in this State or by any corporation created under the laws thereof, or by a foreign corporation licensed to do business therein and engaged in the manufacture or sale of ale, porter, lager beer, soda water, mineral water or other beverages put up in packages, record in a book kept for that purpose a description of the names, brand or trade-mark used by such person, firm or corporation for marking the casks, barrels, kegs, bottles, jugs, fountains, boxes or other packages containing such beverage. Before any such record shall be made there shall be paid said secretary a fee of five dollars for each and every such description of name, brand or trade-mark which he is requested to have recorded. Nothing elsewhere in this chapter contained is intended to be contrary to or to control or modify the provisions of this section. (Id. § 132.11.)

207. **Suit to Enjoin Use of Trade-Mark May be Brought and Injunction Issued.**—Every person, association or union adopting or using a label, trade-mark, term, design, device or form of advertisement, as provided in section 132.01, may proceed by suit to enjoin the manufacture, use, display or sale of any counterfeits or imitations thereof, and courts of competent jurisdiction shall grant injunctions to restrain such manufacture, use, display or sale, and may award the complainant damages resulting from such manufacture, use, sale or display as may be deemed just and reasonable by said court, including all profits derived from such wrongful manufacture, use, display or sale; such court shall also order that all such counterfeits or imitations in the possession or under the control of any defendant be delivered to an officer of the court to be destroyed. In case such association or union is not incorporated, such actions may be commenced and prosecuted by an officer or member of such association or union on behalf of and for the use of such association or union. (Id. § 132.12.)

208. **Removal of Brands, Etc., From Casks.**—Any person who shall willfully, maliciously or wantonly obliterate, injure or destroy the names, marks or brands affixed to any cask, barrel, keg, bottle, jug, fountain, box or other package used or intended to be used by any person or firm domiciled in this State or by any corporation created under the laws thereof and engaged in the manufacture or sale of ale, porter, lager beer, soda water, mineral water, or other beverage in any such package as is herein mentioned, shall be punished by imprisonment in the county jail not exceeding sixty days or by fine of not more than one hundred dollars, or by both such imprisonment and fine. (Id. § 343.452.)

209. **Counterfeiting Label on Goods.**—Any person who shall knowingly and willfully forge or counterfeit or cause or procure to be counterfeited upon any goods, wares or merchandise the private stamp or label of any mechanic or manufacturer, with intent to defraud the purchaser or manufacturer of any goods, wares or merchandise whatsoever, shall be punished by imprisonment in the county jail not more than six months or by fine not exceeding one hundred dollars. (Id. § 343.65.)

210. **Use of Trade-Mark Without Authority.**—Every person who shall knowingly and willfully use or display the genuine label, name or seal, trade-mark, term, design, device or form of advertisement of any person, association or union in any manner, or in or about the sale of goods or merchandise not being authorized so to do by such person, union or association, shall be deemed guilty of a misdemeanor, and shall be punished by imprisonment for not more than three months or by a fine of not more than one hundred dollars. (Id. § 343.651.)

211. **Penalty for Imitation, Etc., of Trade-Mark, Form of Advertisement, Etc.; and Obtaining by Fraud.**—(1) Any person who shall counterfeit or imitate any label, trade-mark, term, design, device or form of advertisement adopted or used by any other person or any association or union of workingmen for the purpose of designating, making known or distinguishing any goods, wares, merchandise or other product of labor as having been made, manufactured, produced, prepared, packed or put on sale by such person, association or union, or by a member or members of such association or union, or sells, offers for sale or in any way utters or circulates any counterfeit or imitation of any such label, trade-mark, term, design, device or form of advertisement, or knowingly uses any such counterfeit or imitation, or knowingly sells or disposes of, or keeps or has in his possession, with intent that the same shall be sold or disposed of, any goods, wares, merchandise or other product of labor to which any such counterfeit or imitation is attached or affixed, or on which the same is printed, painted, stamped or impressed, or knowingly sells or disposes of, or keeps or has in his possession with intent that the same shall be sold or disposed of, any goods, wares, merchandise or other product of labor contained in any box, case, can or package to which or on which any such counterfeit or imitation is

attached, affixed, printed, painted, stamped or impressed shall be punished by imprisonment in the county jail not more than six months nor less than ten days, or by fine not exceeding one hundred dollars nor less than ten dollars, or by both such fine and imprisonment.

(2) Any person who shall, for himself or on behalf of another or of any association or union, procure the filing and recording in the office of the Secretary of State of any label, trade-mark, term, design, device or form of advertisement by making any false or fraudulent representations or declarations, verbally or in writing, or by any other fraudulent means shall be punished by imprisonment in the county jail not more than one year or by fine not exceeding two hundred dollars, or by both such fine and imprisonment. (Id. § 343.66.)

NOTE: See also No. 89.

Trading Stamps, Etc.

212. Regulation of Trading Stamps.—(1) No person, firm, corporation or association within this State shall use, give, offer, issue, transfer, furnish, deliver, or cause or authorize to be furnished or delivered to any other person, firm, corporation, or association within this State, in connection with the sale of any goods, wares or merchandise any trading stamp, token, ticket, bond, or other similar device, which shall entitle the purchaser receiving the same to procure any goods, wares, merchandise privilege, or thing of value in exchange for any such trading stamp, token, ticket, bond, or other similar device, except that any manufacturer, packer or dealer may issue any slip, ticket, or check with the sale of any goods, wares or merchandise, which slip, ticket or check shall bear upon its face a stated cash value, and shall be redeemable only in cash for the amount stated thereon, upon presentation in amounts aggregating twenty-five cents or over of redemption value, and only by the person, firm or corporation issuing the same; provided, that the publication by or distribution through newspapers, or other publications, of coupons in advertisements other than their own shall not be considered a violation of this section.

(2) It shall be the duty of the Dairy and Food Commissioner to enforce the provisions of this section.

(3) Any person, firm or corporation violating any of the provisions of this section shall be guilty of a misdemeanor and on conviction thereof be punished by a fine of not less than five hundred dollars nor more than one thousand dollars, or by imprisonment in the county jail for a period not exceeding one year, or by both such fine and imprisonment, in the discretion of the court. (Stats. 1925, § 134.01.)*

213. Selling With Pretense of Prize.—Any person who shall sell or offer to sell any thing whatever, by the representation or pretense that a sum of money or something of value, which is uncertain or concealed, is inclosed within or may be found with or named upon the thing sold, or that will be given to the purchaser in addition to the thing sold, or by any representation, pretense or device, by which the purchaser is informed or induced to believe that money or something else of value may be won or drawn by chance by reason of such sale, shall be punished by imprisonment in the county jail not more than thirty days or by fine not exceeding fifty dollars. (Id. § 348.15.)

214. Guessing Contests.—Any person or persons or corporations who in their own name or under any assumed trade name, with intent to defraud, shall advertise or represent in printing or writing of any nature, any enigma, guessing or puzzle contest, offering to the participants therein any premium, prize or certificate entitling the recipient to a credit upon the purchase of merchandise in any form whatsoever; or who shall in the printing or writing, advertising or setting forth any such contests, fail to state definitely the nature of the prizes so offered; or who shall fail to state clearly upon all evidences of value issued as a result of such contest in the form of credit certificates, credit bonds, coupons, or other evidences of credit in any form whatsoever, whether the same are redeemable in money or are of value only as a credit upon the purchase of merchandise; or who shall issue to any person as a result of any such contest, any instrument in the form of a bank check or bank draft or promissory note or any colorable imitation of any of the foregoing; or who shall refuse or fail to award and grant the specific prizes offered to the persons determined to be entitled thereto under the terms of such contest, or fail to redeem any credit certificate, credit bonds, coupons or other evidences of credit issued as a result of any such contest, according to

*See No. 92.

the terms thereof, shall be guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not less than twenty-five dollars nor more than one hundred dollars, or by imprisonment in the county jail for not more than six months, or by both such fine and imprisonment; and every act done in violation of any of the provisions of this section shall be deemed a separate offense hereunder. (Id. § 348.151.)

Weights and Measures.

215. **Public Standards.**—The weights and measures and the scales and beams, received from the United States under a resolution of Congress, approved June 14, 1836, and such new weights and measures and scales and beams in addition thereto or in renewal thereof, and such as shall be made under the direction of the new State Superintendent of Weights and Measures in conformity therewith, and certified to by the National Bureau of Standards shall be the State standards. (Stats. 1925, § 125.01.)

216. **Superintendent.**—(1) Ex officio. The Dairy and Food Commissioner shall be ex officio State Superintendent of Weights and Measures.

(2) Custody of standards; comparison of city standards. He shall take charge of the standards adopted by section 125.01 as the standards of the State; cause them to be kept in a fireproof building belonging to the State, from which they shall not be removed except for repairs or for certification; and take all other necessary precautions for their safe-keeping. He shall maintain the State standards in good order and shall submit them once in ten years to the national bureau of standards for certification. He shall keep a seal which shall be so formed as to impress the letters "Wis." upon the weights and measures, scales, and beams sealed by him, and he shall correct the standards of the several cities, and as often as once in five years, compare the same with those in his possession, and shall seal the same when tried and proved to be in conformity to the State standards.

(3) General supervision; testing of standards. He shall have and keep a general supervision of the weights and measures and the weighing and measuring devices of the State, and in use in the State. He or his inspectors by his direction shall, upon the written request of any citizen, firm, or corporation, or educational institution of the State, test or calibrate weights, measures, weighing or measuring devices, and instruments or apparatus used as standards in this State.

(4) Testing for State institutions. He, or his inspectors by his direction, shall at least once annually test all scales, weights, and measures, used in checking the receipt or disbursement of supplies in every institution under the jurisdiction of the State Board of Control. And he shall report in writing his findings to such Board of Control and to the executive officer of the institution concerned; and at the request of such officer, the Superintendent of Weights and Measures shall appoint in writing one or more employees, then in the actual service of such institution, who shall act as special deputies for the purpose of checking the receipt and disbursement of supplies.

(5) Record and report. He shall keep a complete record of the standards, balances, and other apparatus belonging to the State and take receipt for same from his successor in office. He shall as soon as practicable after the thirtieth day of June in each even-numbered year make to the Governor a report of the work done by his office. The State Superintendent, or his deputy or inspectors by his direction, shall inspect all the standards used by the cities at least once in each two years and shall keep a record of the same.

(6) Supervision of local sealers; regulations. He, or his inspectors by his direction, shall at least once in each two years visit the various cities of the State in order to inspect the work of the local sealers; and in the performance of such duties, he or his inspectors by his direction may inspect the weights, measures, balances, or any weight or measuring appliance of any person, firm, or corporation and shall have the same powers as the local sealer of weights and measures. The Superintendent of Weights and Measures shall issue from time to time, regulations for the guidance of all sealers, and the said regulations shall govern the procedure to be followed by the aforesaid officers in the discharge of their duties. In said regulations he shall prescribe the amount of tolerance to be allowed, and may make reasonable regulations regarding the varieties or kinds of devices, attachments or parts entering into the construction or installation of weights and measures or weighing or measuring appliances which shall have for their object the tendency to secure correct results in the use of such appliances.

(7) Office and supplies. He shall be provided with necessary postage and shall be provided by the Superintendent of Public Property with a suitable room

or rooms, necessary office and laboratory furniture and appliances, supplies, stationery, books and periodicals.

(8) Test measures, packages and containers. In all territory within this State, except in cities subject to the provisions of section 125.04, the State Superintendent of Weights and Measures shall have the power, except as otherwise provided in sections 126.20 to 126.25, inclusive, and in sections 196.16 and 196.17* of the statutes, to inspect, test, try and ascertain if they are correct, all weights, measures or weighing or measuring devices kept, offered or exposed for sale, or sold, and it shall be his duty to inspect, test, try and ascertain if they are correct, all weights, scales, beams, measures of every kind, instruments or mechanical devices for measurement, and tools, appliances or accessories connected with any or all such instruments or measurements used or employed within said territory by any proprietor, agent, lessee or employee in determining the size, quantity, extent, area or measurement of quantities, things, produce, or articles of any kind offered for distribution, consumption, transportation, sale, barter, exchange, hire or award. He shall have the power to, and shall from time to time by himself, his agents, inspectors, or sealers, weigh or measure and inspect packages or amounts of commodities of whatsoever kind, kept for the purpose of sale, or exposed for sale, sold, or in the process of delivery, in order to determine whether the same contains the amounts represented and whether they are offered for sale or sold in the manner in accordance with law. (Id. § 125.02.)

217. City Standards.—The common council of each city appointing a sealer under section 125.04 shall procure at the expense of the city and shall keep at all times a complete set of weights and measures, scales and beams in exact conformity to the State standards, except that they may be made of such materials as the Superintendent of Weights and Measures may direct; all such weights and measures, scales, and beams having been tried and accurately proved by him shall be sealed and certified to by the State Superintendent of Weights and Measures, and shall then be deposited with and preserved by the city sealer as public standards. Whenever the common council of such city shall neglect for six months so to do, the city clerk, on notification and request by the Superintendent of Weights and Measures, shall provide such standards and cause the same to be so tried, proved, sealed, certified, and deposited at the expense of the city. (Id. § 125.03.)

218. City Sealers.—(1) There shall be a city sealer of weights and measures in all cities having a population of more than five thousand inhabitants according to the last official United States census, who shall be appointed by the mayor from a list to be furnished by the State or local civil service board and under the rules of said board. He shall be paid a salary to be fixed by the board or body authorized to fix the salaries of city officials, and shall be provided with suitable office quarters in said city, and no fees shall be charged by him or by the city for inspection or testing of weights, measures, or weighing or measuring devices.

(2) Except as otherwise provided in sections 126.20 to 126.25, and in sections 196.16 and 196.17,* the city sealer shall within his city have the power to inspect, test, try, and ascertain if they are correct, all weights, measures, or weighing or measuring devices, kept, offered, or exposed for sale or sold, and it shall be his duty to inspect, test, try, and ascertain if they are correct, all weights, scales, beams, measures of every kind, instruments, or mechanical devices for measurement, and tools, appliances, or accessories connected with any or all such instruments or measurements, used or employed within the city by any proprietor, agent, lessee or employee in determining the size, quantity, extent, area, or measurement of quantities, things, produce, or articles of any kind offered for distribution, consumption, transportation, sale, barter, exchange, hire, or award. The city sealer shall have the power to and shall from time to time weigh or measure and inspect packages or amounts of commodities of whatsoever kind kept for the purpose of sale, offered or exposed for sale, sold or in the process of delivery, in order to determine whether the same contain the amounts represented, and whether they be offered for sale or sold in a manner in accordance with law.

(3) He shall, at least once in each year or as much oftener as he may deem necessary, see that all weights, measures, and weighing and measuring apparatus used in the city are correct and that the same are in compliance with the regulations issued by the State Superintendent of Weights and Measures. He may for the purpose above mentioned, and in the general performances of his official duties, with or without formal warrant, enter or go in or upon any stand, place, building, or premises; or may stop any vendor, peddler, junk dealer, coal wagon, ice wagon, or any dealer whatsoever, for the purpose of making the proper tests.

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*Relate to measurements used by public utilities. Omitted herein.

(4) Whenever the city sealer finds a violation of the statutes relating to weights and measures, he shall cause the violator to be prosecuted. Whenever the sealer compares weights and measures and finds that they correspond or causes them to correspond with the standards in his possession, and with the regulations issued by the State Superintendent of Weights and Measures, he shall seal or mark the same with appropriate devices to be approved by the State Superintendent of Weights and Measures. The sealer shall condemn and seize and may destroy incorrect weights and measures and weighing or measuring instruments which cannot be repaired; and such as are incorrect and yet may be repaired, he shall mark or tag as "condemned for repairs" in a manner prescribed by the State Superintendent of Weights and Measures.

(5) The city sealer shall keep a complete record of the word done by him and shall make a quarterly report to the mayor, which report shall be filed with the city clerk, and a quarterly report duly sworn to, to the State Superintendent of Weights and Measures, these quarterly reports to cover the three-month periods beginning July first, October first, January first, and April first, respectively, and to be submitted not later than twenty days following the expiration of the period covered by the report.

(6) The city sealer of weights and measures shall forthwith on his appointment execute and file an official bond, with sureties approved by the appointing power.

(7) Nothing contained in sections 125.01 to 125.16, inclusive, shall be construed as prohibiting cities subject to the provision of this section from enforcing ordinances regulating weights and measures, heretofore or hereafter enacted not in conflict with said sections or the regulations of the Superintendent of Weights and Measures issued in pursuance thereof; nor as prohibiting cities from employing city sealers of weights and measures to perform other public services not inconsistent with their duties as sealers of weights and measures, with or without extra compensation, as determined and fixed by the city; provided, that where such services are rendered to another city department, the cost of such services be charged to the city department receiving same. (Id. § 125.04.)

219. Sealers in State at Large.—In all territory within this State, except cities subject to the provisions of section 125.04, the inspectors of weights and measures appointed under subsection (1) of section 125.02 and such assistant dairy and food commissioners and such cheese factory, dairy and food inspectors and such creamery and dairy food inspectors as may from time to time be designated by the Superintendent of Weights and Measures shall act, ex officio, as sealers of weights and measures, with like authority, powers, and duties as prescribed for city sealers in subsections (2) to (5), inclusive, of section 125.04. (Id. § 125.05.)

220. Sealer's Liability; His Removal from Office.—If any sealer of weights and measures shall neglect to perform any duty imposed by law or shall prove and seal any weight, measure, scale or beam by any public standard which shall not have been tried, proved and sealed as prescribed by this chapter he shall forfeit for each such offense ten dollars. The State Superintendent of Weights and Measures may remove from office any sealer of weights and measures for willful malfeasance or nonfeasance or for manifest incompetence, upon first giving him written notice of the charges against him and a reasonable opportunity to be heard in his defense. (Id. § 125.06.)

221. Police Powers of Sealers.—(1) There is hereby conferred upon the State Superintendent of Weights and Measures, his inspectors, and all sealers of weights and measures, police power; they shall be provided by the Superintendent of Weights and Measures with suitable badges or insignia of authority and in the exercise of their functions shall exhibit the same, upon demand, to any person questioning their powers, and they are hereby empowered and authorized to make arrests, with or without formal warrant, of any person or persons violating the provisions of any statute relating to weights and measures.

(2) Whoever in any manner whatsoever impersonates or hinders the State Superintendent of Weights and Measures or any inspector or any sealer of weights and measures, in the performance of their official duties shall be punished by a fine of not less than ten nor more than one hundred dollars. (Id. § 125.07.)

222. Dry Commodity Standards.—(1) Whenever any of the articles or commodities mentioned in this section shall be sold by the bushel, or fractional part thereof, and no special agreement as to the weight thereof shall be made in writing, the measure thereof shall be ascertained by avoirdupois weight, and shall be computed as follows:

(2) Sixty pounds for a bushel of wheat, peas, potatoes, clover seed, beans, alfalfa, or alsike;

(4) Fifty-six pounds for a bushel of Indian corn, rye, lima beans, wrinkled peas, flaxseed, rutabagas, or tomatoes;
(5) Fifty-four pounds for a bushel of sweet potatoes;
(6) Fifty pounds for a bushel of corn meal, rape seed, millet seed, beets, green cucumbers, rye meal, carrots, buckwheat, hickory nuts, onions or fine salt;
(7) Forty-eight pounds for a bushel of barley, peaches, pears, or Hungarian grass seed;
(8) Fourteen pounds for a bushel of blue grass seed or redtop seed;
(9) Forty-six pounds for a bushel of castor beans;
(10) Forty-five pounds for a bushel of timothy seed or rough rice;
(11) Forty-four pounds for a bushel of hemp seed, parsnips, apples, or sea island cotton seed;
(12) Forty-two pounds for a bushel of turnips;
(13) Thirty pounds for a bushel of string or green beans and for green peas in the pod;
(14) Fourteen pounds for a bushel of spinach;
(15) Forty-six pounds for a bushel of oranges;
(16) Thirty-five pounds for a bushel of cranberries;
(17) Thirty-four pounds for a bushel of barley malt;
(18) Thirty-three pounds for a bushel of dried peaches;
(19) Thirty-two pounds for a bushel of oats or onion sets;
(20) Thirty pounds for a bushel of upland cotton seed;
(21) Twenty-five pounds for a bushel of dried apples;
(22) Twenty pounds for a bushel of bran or shorts;
(23) Seventy pounds for a bushel of coarse salt or lime;
(24) Eighty pounds for a bushel of unslaked lime;
(25) Eight pounds for a bushel of plastering hair;
(26) And two thousand two hundred pounds for a cord of hemlock bark;
(27) For a fractional part of a bushel a like fractional part of the above weights shall be required.
(28) All dry commodities not otherwise specified in this section shall be bought or sold only by standard dry measures, standard weight, or numerical count except where parties otherwise agree in writing. (Id. § 125.08, as amended L. 1927, c. 143.)

223. **Standard Bushel.**—The bushel in struck measure shall contain two thousand and one hundred fifty and forty-two hundredths cubic inches. The half bushel and the parts thereof shall correspond in capacity to that of the bushel and shall be the standard measure for fruits, vegetables, and other dry commodities customarily sold by heaped measure; and in measuring such commodities, the half bushel or other smaller measure shall be heaped as high as may be without special effort or design. (Stats. 1925, § 125.09.)

224. **Standard Bottles.**—(1) Bottles used for the sale of milk and cream shall be of the capacity of half gallon, three pints, one quart, one pint, half pint, one gill filled full to the bottom of the cap seat, stopple or other designating mark. The following variations on individual bottles or jars may be allowed, but the average contents of not less than twenty-five bottles selected at random from at least four times the number tested must not be in error by more than one-quarter of the tolerances: Six drams above and six drams below on the half gallon; five drams above and five drams below on the three-pint; four drams above and four drams below on the quart; three drams above and three drams below on the pint; two drams above and two drams below on the half pint; two drams above and two drams below on the gill. When milk or cream is pasteurized in the bottle in which it is to be sold or delivered, such bottle may have a capacity sufficient to permit of the expansion of the contents in the process of heating, but such bottle shall have clearly marked thereon by a line or other designating mark the point to which such bottle is filled when containing the respective capacities provided for in this section, at sixty-eight degrees Fahrenheit (twenty degrees centigrade). The State Superintendent of Weights and Measures shall prescribe and adopt such rules and regulations as he may deem necessary to carry out the provisions of this section. Bottles or jars used for the sale of milk or cream shall have clearly blown or otherwise permanently marked in the side of the bottle, the capacity of the bottle and the word "Sealed" and in the side or bottom of the bottle, the name, initials or the trade-mark of the manufacturer and designating number, which designating number shall be different for each manufacturer and may be used in identifying the bottles. The designating number shall be furnished by the State Superintendent of Weights and Measures upon application by the manufacturer, and upon filing by the manufacturer of a bond in the sum of one thousand dollars with sureties to be approved by the Attorney-General conditioned upon their conformance with

the requirements of this section. A record of the bonds furnished, the designating numbers and to whom furnished shall be kept in the office of the Superintendent of Weights and Measures.

(2) Any manufacturer who sells milk or cream bottles to be used in this State that do not comply as to size and markings with the provisions of this section shall suffer the penalty of five hundred dollars, to be recovered by the Attorney-General in an action against the offender's bondsmen, to be brought in the name of the people of the State. Any dealer who uses, for the purpose of selling milk or cream, jars or bottles purchased after this law takes effect that do not comply with the requirements of this section as to markings and capacity, shall be deemed guilty of using false or insufficient measure.

(3) Sealers of weights and measures are not required to seal bottles or jars for milk or cream marked as in this section provided, but they shall from time to time make tests on individual bottles used by the various firms in the territory over which they have jurisdiction, in order to ascertain whether the above provisions are being complied with, and they shall report violations found immediately to the Superintendent of Weights and Measures. (Id. § 125.10.)

225. Hundredweight and Ton.—When any commodity shall be sold by weight it shall be understood to mean the net weight, and all contracts concerning goods or commodities sold by weight shall be construed accordingly unless such construction would be manifestly inconsistent with the special agreement of the parties contracting. When any commodity is sold by the ton it shall be understood to mean the net weight of twenty hundred avoirdupois pounds unless such construction would be manifestly inconsistent with the special agreement of the parties contracting. (Id. § 125.12.)

226. Standard Barrels, Crates and Boxes.—(1) A barrel for liquids shall contain thirty-one and one-half gallons, and a hogshead two barrels.

(2) A barrel for beer, ale, porter or other similar fermented liquors shall contain thirty-one gallons, each gallon to contain two hundred thirty-one cubic inches; a half-barrel, fifteen and one-half gallons; a quarter barrel, seven and three-fourths gallons; an eighth-barrel, three and seven-eighths gallons. The capacities of the barrel and its subdivisions enumerated above shall apply to all containers in which beer, ale, porter or other similar fermented liquors are commonly sold, known as barrels, kegs, casks, or any other container made of staves, hoops and flatheads. Reasonable tolerances shall be prescribed by the State Superintendent of Weights and Measures for the containers above designated.

(3) A barrel of flour measured by weight shall contain one hundred ninety-six pounds.

(4) A barrel for potatoes or other vegetables shall be the same as the standard barrel for apples or pears or other fruit as provided in subsection (6) of this section.

(5) A barrel of unslaked lime shall contain two hundred pounds.

(6) The standard barrel for apples or pears or other fruit, unless otherwise specifically defined, shall have an interior capacity of seven thousand and fifty-six cubic inches, and shall not be less than twenty-six inches between the heads inside; the diameter of the heads shall be seventeen and one-eighth inches, including the beveled edge; the outside bilge or circumference shall be not less than sixty-four inches, the thickness of the staves being four-tenths of an inch; provided, however, that any barrel of a different form, but of an interior capacity of seven thousand and fifty-six cubic inches, shall be a legal barrel.

(7) The standard barrel for cranberries shall measure not less than twenty-five and one-quarter inches between the heads inside; the diameter of the heads shall be sixteen and one-quarter inches, including the beveled edge; the outside bilge, or circumference, shall measure not less than fifty-eight and one-half inches, the thickness of the staves being four-tenths of an inch. But any barrel of different form, but of the same interior capacity shall be considered a legal barrel.

(8) A standard crate, box or basket for apples, pears, plums, peaches and other fruits not secondarily contained in quart or other boxes within such crate, box or basket, shall have an interior capacity of two thousand one hundred fifty cubic inches exclusive of cover.

(9) A bushel crate of cranberries or blueberries shall have an interior capacity of one bushel struck measure.

(10) All sales of blackberries, blueberries, currants, gooseberries, raspberries, cherries, strawberries, and similar berries in quantities of less than one bushel shall be by the quart, pint, or half-pint, dry measure, and all berry boxes or baskets sold, used, or offered for sale within the State shall be of the interior capacity of not less than one quart, pint, or half-pint, dry measure. Any person who, by himself

or by his servant or agent or as the servant or agent of another, shall violate any of the provisions of this subsection shall be punished by a fine of not less than twenty-five dollars nor more than one hundred dollars, or by imprisonment in the county jail not less than ten days nor more than three months. In addition thereto, the illegal boxes or baskets and the fruit therein contained may be confiscated.

(11) All sales of fresh fruits or vegetables in containers of less than one bushel dry capacity measure shall be in containers of the standard capacity of one quart, two quarts, three quarts, four quarts, five quarts, six quarts, eight quarts, sixteen quarts or twenty-four quarts standard dry measure, and such receptacles shall in fact contain the full capacity of such fresh fruits or vegetables, or if in other than standard containers such receptacles for fresh fruits or vegetables shall be plainly and conspicuously marked to indicate the true net weight, measure or numerical count of such fruits or vegetables.

(13) All contracts for the sale of apples, pears, cranberries, or other fruits, potatoes or other vegetables, by the barrel or crate, unless it is otherwise expressly stipulated in writing, shall be construed to mean barrels or crates of the capacity prescribed in subsections (4), (6), (7), (8) and (9) of this section.

(14) (a) Nothing in this section shall be construed as preventing the sale and shipment into other States of barrels, crates, berry boxes, or baskets of other capacities than those herein specified nor as prohibiting the use of barrels, crates, berry boxes, or baskets of other capacities than those herein specified for the sale and shipment therein into other States of the fruits or vegetables named or designated in this section; and until the first day of March, 1913, nothing in this section shall prevent the sale by net avoirdupois weight of any of the fruits or vegetables named or designated in this section, if in containers of other capacities than the standards fixed by this section; and until the first day of March, 1913, nothing in this section shall prevent the sale of any of the fruits or vegetables named or designated in this section, if the containing barrel, crate, berry box, or basket in which the same are sold is plainly and indelibly stamped or branded on the outside thereof in characters in color different from the container, at least one inch high in the case of barrel or crate, and at least one-half inch high in the case of berry box or basket, so as to show the correct interior capacity thereof by fractional part of the standard barrel or crate or of the standard quart or pint dry measure, as the case may be, if sold for such capacity.

(b) The requirement of subsection (4) of section 125.04 of the statutes as to sealing by the sealer of weights and measures shall not be construed as applying to the barrels, crates, boxes, or baskets designated in this section. (Id. § 125.13.)

227. **Hop Boxes.**—The standard size of boxes used for picking hops shall be not exceeding three feet long, one and one-half feet wide and two feet deep, inside measure. (Id. § 125.14.)

228. **Standard for Grain.**—No person shall sell, buy or receive in store any grain at any weight or measure per bushel other than the standard weight or measure per bushel fixed by law and for any violation hereof the offender shall forfeit not less than five nor more than fifty dollars. (Id. § 125.15.)

229. **Grain Tester, How Used.**—No person shall determine the grade of any grain which is bought or received in store at any mill, elevator, warehouse or storehouse by the use of any grain tester that is not sealed in accordance with the United States standard of measure and which sealer is not in accordance therewith at the time it is used. When grain is tested at the instance of the seller the tester shall be filled by pouring the grain into it from a scoop or a similar vessel, and when the tester is filled it shall be struck or leveled with three zigzag movements of a straight edge. Any person who shall violate the provisions of this section and thereby cheat or defraud the seller or buyer of any grain shall be punished as is provided in section 4432 [343.33].* (Id. § 125.16.)

230. **Appropriation.**—The salaries and expenses of city sealers shall be paid from the city treasuries, respectively. (Id. § 125.17.)

231. **Cheese Purchased at Wholesale to be Weighed Before Delivery.**—(1) Every person, firm or corporation that purchases or engages in the business of purchasing cheese in quantities of fifty pounds or more, in this State shall, in all cases except where otherwise agreed by express contract, correctly weigh or cause to be correctly weighed, each and every box or package thereof, at or before the time that such cheese shall be delivered to the purchaser, or to any common carrier for the purchaser for shipment, and every such person, firm or corporation shall make payment for all such cheese purchased, according to the weight so ascertained, and at the price or amount therefor agreed upon with the owner or vendor of such cheese

*See No. 234.

at the time of such delivery, except for such cheese as shall be found to be of inferior quality by a test thereof made at or before the time of such delivery.

(2) Any person, firm or corporation violating the provisions of this section shall be guilty of a misdemeanor, and upon conviction thereof, shall be punished by a fine of not less than ten nor more than two hundred dollars. (Id. § 125.18.)

232. **Sale of Growing Crops; Weighing; Quality.**—Any person, firm or corporation transacting business in this State, that shall enter into any contract for the purchase of any crop that is not ready for immediate delivery, shall in all cases weigh, or cause to be weighed, the crop so purchased, at or before the time such crop is delivered to the purchaser, or to a common carrier at the direction of the purchaser for shipment, and every such person, firm or corporation shall ultimately make payment in full for all of the crop so purchased according to the weight so ascertained and at the price or amount specified in the contract, without regard to the quality or condition of such crop or portions thereof at the time of delivery, unless any inferior quality or unsound condition of such crop shall be due to the negligence or willful act of the vendor, subsequent to such purchase, and in case any purchaser shall fail or refuse to comply with his contract as provided in this section, the vendor, in any action prosecuted by him to recover for any crop sold to such purchaser, shall recover as damages for such failure or refusal, double the contract price of such crop at the weight thereof when ready for delivery and offered to or accepted by the purchaser. (Id. § 125.19.)

233. **Bread, Standard Loaves.**—(1) All bread manufactured, procured, made or kept for sale, offered or exposed for sale, or sold, in the form of loaves for use or consumption within this State, shall be one of the following weights and no other, namely: one pound, one and one-half pounds, or multiples of one pound avoirdupois weight, provided, however, that a variation or tolerance of one and one-fourth ounces in excess or one and one-fourth ounces in deficiency per pound from the weights provided for in this section be allowed in the weight of individual loaves of bread; and the weight of individual loaves of bread shall be held to be the average of at least ten loaves of the same approximate weight and same manufacturer, if that number is available at the time of weighing in any place where bread is manufactured, procured, made or kept for sale, offered or exposed for sale, or sold. If ten loaves are not available, then the weight of individual loaves shall be held to be the average of all available loaves of the same approximate weight and same manufacturer, at the time of weighing in any place where bread in loaves is manufactured, procured, made or kept for sale, offered or exposed for sale, or sold, but in no case shall said number be less than five.

(2) The provisions of this section shall not apply to rolls, buns, biscuits, crackers and similar articles weighing less than four ounces avoirdupois each, nor to stale bread, provided that such bread be conspicuously marked "stale bread," or placed in a container conspicuously marked "stale bread," and sold as and for stale bread.

(3) Any person, firm or corporation who by himself, his servant or agent, or as the servant or agent of another person, firm or corporation, shall manufacture, procure, make or keep for sale, offer or expose for sale, or sell, bread in the form of loaves of weights other than provided for in subsection (1) of this section and in excess of the tolerances provided for therein, shall be guilty of a misdemeanor, and upon conviction thereof, shall be punished by a fine of not less than twenty-five dollars nor more than one hundred dollars, or by imprisonment not more than ninety days nor less than ten days, or by both such fine and imprisonment.

(4) The Dairy and Food Commissioner as ex-officio State Superintendent of Weights and Measures, by himself, his inspectors, sealers of weights and measures, chemists, or agents, and city sealers of weights and measures, shall enforce the provisions of this section. (Id. § 125.21.)

234. **False Weights and Measures.**—(1) Any person who, by himself or by his agent or servant, or as the agent or servant of another, shall use in the buying or selling of any commodity or thing, or for hire or award, or retain in his possession, any false weight or measure or weighing or measuring device; or who shall sell or offer for sale, or have in his possesion for the purpose of selling, any false weight or measure or weighing or measuring device, or any device or instrument to be used or calculated to falsify any weight or measure; or who shall use or retain in his possession, except as expressly provided by statute any weight or measure or weighing or measuring device which has not been sealed by a sealer of weights and measures within one year; or who shall sell, or offer or expose for sale, or keep for the purpose of sale a lesser quantity of any commodity than he represents such quantity to be, or shall take or attempt to take more than the quantity he represents, when, as buyer, he furnishes the weight, measure, or weighing or measuring device, by means of which the amount of commodity is determined; or who shall sell or offer or expose for sale, or keep for the purpose of sale any

commodity in a manner contrary to law; or who shall violate any provisions of sections 125.01 to 125.16, for which a specific penalty has not been prescribed; shall be punished by a fine of not more than twenty-five dollars, or by imprisonment in the county jail not more than ten days, or by both such fine and imprisonment. . . .

(3) But nothing contained in sections 125.01 to 125.16 shall prohibit the use by any person, or by his servant or agent, in good faith, of any unsealed weight or measure or weighing or measuring device purchased or acquired by such person after the last visit of a sealer to such person for the purpose of inspection and sealing of weights and measures, or any sealed weight or measure or weighing or measuring device in his possession after the expiration of one year next after the last inspection and sealing thereof, provided the said person shall have notified the city sealer in cities subject to the provisions of section 125.04, or the Superintendent of Weights and Measures, respectively, in writing, signed by said person, of the fact that he has such weight or measure or weighing or measuring device, giving the number thereof and a general description of the same, and the place where the same may be found for the purpose of inspection, and shall have received a written acknowledgment of said notice, signed by such city sealer or Superintendent of Weights and Measures. (Id. § 343.33.)*

NOTE: See also No. 1 et seq.; No. 5; No. 10; the dairy law, No. 45 et seq.; the farm products law, No. 85 et seq.; the match law, No. 183. For the grain inspection law, see Stats. 1925, § 126.01 et seq.

PART V.

Cases.

1. General Food and Drug Law.

Benzoate of Soda—Prohibition of Sale of Food Containing It—As Applied to Retail Sale of Secondary Package Out of Original Package of Importation, Not Inconsistent With Commerce Clause or Purpose of Federal Food and Drugs Act: *Weigle v. Curtice Brothers Co., 248 U. S. 285, 39 S. Ct. 124, 63 L. Ed. 242 (1919).

Boric Acid—Prohibition of Sale of Food Containing It is Valid—Preservative Containing It Is Within Prohibition: *McCarthy v. State, 170 Wis. 516, 175 N. W. 785 (1920).

Canned Peas—Excessive Brine Constitutes Adulteration Within Federal Food and Drugs Act: See Barron County Canning & Pickle Co. v. Niana Pure Food Co., 191 Wis. 635, 211 N. W. 764 (1927).

Food Law—Constitutional: *McCarthy v. State, 170 Wis. 516, 175 N. W. 785 (1920); *Day-Bergwall Co. v. State, 190 Wis. 8, 207 N. W. 959 (1926).

Meat—Action for Slander With Respect Thereto: Singer v. Bender, 64 Wis. 169, 24 N. W. 903 (1885).

Medicine—Action for Libel With Respect Thereto: Dr. Shoop Family Medicine Co. v. Wernich, 95 Wis. 164, 70 N. W. 160 (1897).

Milk—Action for Slander With Respect Thereto: Geary v. Bennett, 53 Wis. 444, 83 N. W. 639 (1881).

Penalty—May be Collected by Civil Action: State v. Grove et al., 77 Wis. 448, 46 N. W. 532 (1890).

Vanilla Extract—Flavoring Preparation Colored to Imitate it, Violates Law: *Day-Bergwall Co. v. State, 190 Wis. 8, 207 N. W. 959 (1926).

2. Special Food Laws.

Bakery—Confectionery—License—Sanitation: State ex rel. Ohlenforst v. Beck et al., 139 Wis. 37, 119 N. W. 300 (1909); *Benz et al. v. Kremer et al., 142 Wis. 1, 125 N. W. 99, 26 L. R. A. (N. S.) 842 (1910); *Wisconsin Association of Master Bakers et al. v. Weigle, 167 Wis. 569, 168 N. W. 383 (1918); *Wisconsin Association of Master Bakers et al. v. City of Milwaukee et al., 191 Wis. 302, 210 N. W. 707 (1926).

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*See No. 92.

Berries—Short Measure: Peeters v. State, 154 Wis. 111, 142 N. W. 181 (1913).

Beverages—Non-intoxicants—License—Inspection: *Silber v. Bloodgood et al., 177 Wis. 608, 188 N. W. 84 (1922); Walsh et al. v. State, 180 Wis. 356, 192 N. W. 1004 (1923); Same, 183 Wis. 93, 197 N. W. 192 (1924); *Pelkowski v. State, 183 Wis. 322, 197 N. W. 935 (1924); City of Milwaukee v. Stachelski, 185 Wis. 142, 200 N. W. 769 (1924); City of Milwaukee v. Rozman, 185 Wis. 144, 200 N. W. 770 (1924). See also: State ex rel. Attorney-General v. Thekan et al., 184 Wis. 42, 198 N. W. 729 (1924).

Beverages—Non-intoxicants—Regulation of Sale: *Alby v. Smith, 178 Wis. 138, 189 N. W. 493 (1922); *Kroeplin v. County of Milwaukee et al., 180 Wis. 424, 190 N. W. 454 (1923).

Beverages—Non-intoxicating Liquor Law—Pop and Ginger Ale Subject to It: Davis v. State, 187 Wis. 115, 203 N. W. 760 (1925).

Butter—Adulterated Butter: See Dabold v. Chronicle Publishing Co., 107 Wis. 357, 83 N. W. 639 (1900).

Cheese—Excessive Moisture Content: Scott v. State, 171 Wis. 487, 177 N. W. 615 (1920).

Cheese—Manufacture From Milk From Which Fat Has Been Removed, Prohibited—Applicable to Emmenthaler Cheese: *State v. Langlade County Creamery Co., 213 N. W. 664 (1927).

Cold Storage—Fish: Green Bay Fish Co. v. State, 186 Wis. 330, 202 N. W. 667 (1925).

Fish: See *Cold Storage.*

Grain—Inspection and Grading: *Globe Elevator Co. v. Andrew et al., 144 Fed. 871 (1906); Andrew et al v. Globe Elevator Co. et al., 156 Fed. 664, 84 C. C. A. 376 (1907).

Meat—Slaughterhouse: *City of Milwaukee v. Gross, 21 Wis. 241, 91 Am. Dec. 472 (1866); *Taylor v. State, 35 Wis. 298 (1874). See also: *Maercker v. City of Milwaukee, 151 Wis. 324, 139 N. W. 199, L. R. A. 1915 F, 1196, Ann. Cas. 1914 B, 199 (1912).

Milk—Adulteration—Civil Action for Damages: Karlen et al. v. Hadinger, 147 Wis. 78, 132 N. W. 591 (1911).

Milk—Adulteration—Minimum Milk Fat Standard: Splinter v. State, 140 Wis. 567, 123 N. W. 97 (1909).

Milk—Filled Milk: *State ex rel. Carnation Milk Products Co. et al. v. Emery, 178 Wis. 147, 189 N. W. 564 (1922).

Milk—License to Peddle—Summary Revocation: *State ex rel. Nowotny v. City of Milwaukee et al., 140 Wis. 38, 121 N. W. 658, 133 Am. St. Rep. 1060 (1909).

Milk—Pasteurization Required: *Pfeffer et al. v. City of Milwaukee et al., 171 Wis. 514, 177 N. W. 850, 10 A. L. R. 128 (1920).

Milk—Tuberculin Test Required—Summary Destruction of Unwholesome Milk: *Adams v. City of Milwaukee et al., 144 Wis. 371, 129 N. W. 518, 43 L. R. A. (N. S.) 1066 (1911), affirmed in *Same, 228 U. S. 572, 33 S. Ct. 610, 57 L. Ed. 971 (1913).

Oleomargarine: *Meyer et al. v. State, 134 Wis. 156, 114 N. W. 501, 14 L. R. A. (N. S.) 1061 (1908); Welch v. State, 145 Wis. 86, 129 N. W. 656, 32 L. R. A. (N. S.) 748 (1911); Essex v. State, 170 Wis. 512, 175 N. W. 795 (1920); *John F. Jelke Co. v. Emery, 214 N. W. 369 (1927). See also: Dabold v. Chronicle Publishing Co., 107 Wis. 357, 83 N. W. 369 (1900); *State ex rel. Downey-Farrell Co. v. Weigle, 168 Wis. 19, 168 N. W. 385 (1918).

Peddler—License: *State v. Whitcom, 122 Wis. 110, 99 N. W. 468 (1904).

Refreshment Stands—License: *Barling v. West et al., 29 Wis. 307, 9 Am. Rep. 576 (1871).

Syrup—Labeling of Corn Syrup—Interference With Federal Food and Drugs Act: *McDermott v. State, *Grady v. State, 143 Wis. 18, 126 N. W. 888, 21 Ann. Cas. 1315 (1910), reversed in *McDermott v. Wisconsin, *Grady v. Wisconsin, 228 U. S. 115, 33 S. Ct. 431, 57 L. Ed. 754, 47 L. R. A. (N. S.) 984 (1913), also reversed in *McDermott v. State, *Grady v. State, 154 Wis. 333, 145 N. W. 1103 (1913). *Corn Products Refining Co. v. Weigle, 221 Fed. 988 (1915).

Wholesale Produce Business—License: *State ex rel. Hickey v. Levitan et al., 210 N. W. 111 (1926).

3. Special Drug Laws.

Pharmacy—Population Distinction: *State v. Heinemann, 80 Wis. 253, 49 N. W. 818, 27 Am. St. Rep. 34 (1891); *State v. Evans, 130 Wis. 381, 110 N. W. 241 (1907).

Poisons: See Mossrud v. Lee, 163 Wis. 229, 157 N. W. 758 (1916); Stasek v. Banner Coffee Co., 164 Wis. 538, 159 N. W. 945 (1917).

"Prescribe"—Defined: See In re Will of Bruendl, 102 Wis. 45, 78 N. W. 169 (1899).

4. Civil Action to Recover Damages for Injury Alleged to Have Been Caused by Consumption or Use of Product.

Bottle—Explosion: Ruck v. Milwaukee Brewery Co., 144 Wis. 404, 129 N. W. 414 (1911); Same, 148 Wis. 222, 134 N. W. 914 (1912).

Bottle—Broken Milk Bottle: Koehler v. Waukesha Milk Co., 190 Wis. 52, 208 N. W. 901 (1926).

Drugs: See *Horse Medicine.* See also: Wm. S. Merrell Chemical Co. v. A. Spiegel Co., 131 Wis. 272, 112 N. W. 136 (1907).

Food: Haberman v. Gasser, 104 Wis. 98, 80 N. W. 105 (1899); Haley v. Swift & Co., 152 Wis. 570, 140 N. W. 292 (1913); Same, 152 Wis. 573, 140 N. W. 293 (1913). See also: Leopold et al. v. Van Kirk et al., 27 Wis. 152 (1870); Same, 29 Wis. 548 (1872); Northern Supply Co. v. Wangard, 123 Wis. 1, 100 N. W. 1066, 107 Am. St. Rep. 984 (1904); Karlen v. Hadinger, 147 Wis. 78, 132 N. W. 591 (1911); Barron County Canning & Pickle Co. v. Niana Pure Food Co., 191 Wis. 635, 211 N. W. 764 (1927).

Grass Destroyer: Mossrud v. Lee, 163 Wis. 229, 157 N. W. 758 (1916).

Horse Medicine: Kennedy v. Plank et al., 120 Wis. 197, 97 N. W. 895 (1904).

Matches: Stasek v. Banner Coffee Co., 164 Wis. 538, 159 N. W. 945 (1917).

Soap: Hasbrouck v. Armour & Co. et al., 139 Wis. 357, 121 N. W. 157, 23 L. R. A. (N. S.) 876 (1909).

5. Miscellaneous.

Cigarettes: Goodrich v. State, 133 Wis. 242, 113 N. W. 388 (1907); State v. Sbragia, 138 Wis. 579, 119 N. W. 290, 23 L. R. A. (N. S.) 697 (1909).

Gift Enterprise: Stevens v. Freund et al., 169 Wis. 68, 171 N. W. 300 (1919).

Trade-Marks: Dunbar v. Glenn et al., 42 Wis. 118, 24 Am. Rep. 395 (1877); Leidersdorf et al. v. Flint, 50 Wis. 401, 7 N. W. 252 (1880); Marshall et al. v. Pinkham, 52 Wis. 572, 9 N. W. 615, 38 Am. Rep. 756 (1881); Hill v. Lockwood et al., 62 Wis. 507, 22 N. W. 581 (1885); Gessler v. Grieb, 80 Wis. 21, 48 N. W. 1098, 27 Am. St. Rep. 20 (1891); Listman Mill Co. v. William Listman Milling Co., 88 Wis. 334, 60 N. W. 261, 43 Am. St. Rep. 907n (1894); Oppermann v. Waterman et al., 94 Wis. 583, 69 N. W. 569 (1896); Manitowoc Malting Co. v. Milwaukee Malting Co., 119 Wis. 543, 97 N. W. 389 (1903); Avenarius v. Kornely, 139 Wis. 247, 121 N. W. 336 (1909); Wisconsin White Lily Butter Co. v. Safer, 182 Wis. 71, 195 N. W. 700 (1923). See also: Fish Bros. Wagon Co. v. La Belle Wagon Works et al., 82 Wis. 546, 52 N. W. 595, 16 L. R. A. 453, 33 Am. St. Rep. 72 (1892); Bank of Tomah v. Warren et al., 94 Wis. 151, 68 N. W. 549 (1896); High Court of Wisconsin Independent Order of Foresters et al. v. Commissioner of Insurance of State of Wisconsin et al., 98 Wis. 94, 73 N. W. 326 (1897); Lemke v. Dietz, 121 Wis. 102, 98 N. W. 936 (1904); Phœnix Manufactory Co. v. White, 149 Wis. 287, 135 N. W. 891 (1912); J. I. Case Plow Works v. J. I. Case Threshing Machine Co. et al., 162 Wis. 185, 155 N. W. 128 (1916); Gessler v. Erwin Co. et al., 182 Wis. 315, 193 N. W. 363 (1924); Milwaukee Corrugating Co. v. Krueger et al., 184 Wis. 139, 198 N. W. 394 (1924).

Trading Stamps: *Trading Stamp Cases, 166 Wis. 613, 166 N. W. 54, Ann. Cas. 1918 D, 707 (1917); *State ex rel. Downey-Farrell Co. v. Weigle, 168 Wis. 19, 168 N. W. 385 (1918); Sperry & Hutchinson Co. v. Weigle, 169 Wis. 562, 173 N. W. 315 (1919). See also: State v. Sbragia, 138 Wis. 579, 119 N. W. 290, 23 L. R. A. (N. S.) 697 (1909).

Weights and Measures: *Yates v. City of Milwaukee, 12 Wis. 673 (1860); Peeters v. State, 154 Wis. 111, 142 N. W. 181 (1913); *Brittingham & Hixon Lumber Co. v. City of Sparta et al., 157 Wis. 345, 147 N. W. 635 (1914); City of Milwaukee v. Locher & Schefrin Co., 164 Wis. 167, 159 N. W. 815 (1916).

WYOMING.*

PART I.

General Food and Drug Law.

1. **State Chemist; Salary; Duties.**—The office of State Chemist is hereby created for the State of Wyoming, and shall receive a salary of two thousand dollars per year for his services, to be paid by the State of Wyoming out of any money not otherwise appropriated, the same to be paid by the State Auditor in the manner provided for the payment of other accounts against the State, and he shall receive no other salary or compensation from State or university funds. Such chemist shall be a professor of chemistry in the University of Wyoming. It shall be his duty to make or cause to be made a chemical analysis of such foods, drugs, drinks, gasoline, illuminating oils or other material relative to the enforcement of this chapter, as shall be submitted to him or shall be deemed advisable for such analysis, and make a full and complete written report of the same, and, when so requested, it shall be his duty to testify in court. He shall receive his necessary traveling expenses to be paid by the State of Wyoming when employed in performing the provisions of this chapter. (C. S. 1920, § 3723.)

2. **Assistants to the State Chemist.**—The State Chemist, by and with the approval of the Governor is hereby authorized to employ an assistant to the State Chemist, who will receive a salary of fifteen hundred dollars ($1,500.00), per year for his service, and that in the same manner two assistants to the State Chemist may be employed who shall each receive a salary of one thousand dollars ($1,000.00) per year for their services; the salaries to be paid by the State of Wyoming out of any moneys not otherwise appropriated, the same to be paid by the State Auditor in the manner provided for the payment of such accounts against the State. The assistant chemists shall keep their offices at the University of Wyoming and the board of trustees of the said university shall furnish the necessary room for the carrying out of the provisions of this chapter. The assistant chemists shall perform such duties as they may be required to perform by the State Chemist. (Id. § 3724.)

3. **Expenses.**—The necessary traveling expenses and expenses for the purchase of apparatus, chemicals, etc., shall be paid from any appropriation made by the Legislature as a contingent fund for the State Chemist; provided, that the expense shall be limited to the appropriation made. (Id. § 3725.)

4. **Seal—Annual Report.**—The State Chemist shall keep a seal with which to attest official acts and documents. He shall make an annual report to the Governor on or before the first day of October of each year, which shall contain itemized statements of all receipts and disbursements, and all persons employed by him together with such statistics and other matter as he may regard of value to the administration or public at large, and said report may be published annually as public documents of the State of Wyoming, as may be provided by law. (Id. § 3726.)

5. **Bond.**—Before entering upon the discharge of his official duties, the State Chemist shall give bond in the sum of one thousand dollars ($1,000.00) to the State of Wyoming, which shall be furnished by some responsible surety company, which shall be accepted by the Governor, conditioned that he will truly account for and turn over to the person or persons authorized by law to receive the same all moneys or other property which may come into his hands in his official capacity, and for the faithful performance of the duties of his office as the same are prescribed by law; which bond, with his oath of office endorsed thereon, shall be filed with the Secretary of State. (Id. § 3727.)

6. **Adulteration Unlawful.**—It shall be unlawful for any person to manufacture, sell, transport or offer for sale or transportation, any article of food,

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CITATIONS: "C. S. 1920" refers to the Wyoming Compiled Statutes Annotated, 1920, published by authority of the legislature. "L." refers to the session laws of the year cited.

drug, gasoline* or illuminating oil* which is adulterated or misbranded within the meaning of this chapter. (Id. § 3728.)

7. Drug and Food Defined.—The term "drug" as used in this chapter shall include all medicines and preparations recognized in the United States Pharmacopœia or National Formulary for internal or external use, and any substance or mixture of substances intended to be used for the cure, mitigation, or prevention of disease of either man or other animals. The term "food" as used herein, shall include all articles used for food, drink, confectionery or condiment, by man or other animals, whether simple, mixed or compound. (Id. § 3729.)

8. Adulterated Articles.—For the purpose of this chapter an article shall be deemed to be adulterated:

In Case of Drugs:

First—If, when a drug is sold under, or by a name recognized in the United States Pharmacopœia, or National Formulary, it differs from the standard of strength, quality, or purity, as determined by the test laid down in the United States Pharmacopœia or National Formulary official at the time of investigation, provided, that no drug defined in the United States Pharmacopœia or National Formulary shall be deemed to be adulterated under this provision, if the standard of strength, quality or purity be plainly stated upon the bottle, box or other container thereof, although the standard may differ from that determined by the test laid down in the United States Pharmacopœia or National Formulary.

Second—If its strength or purity shall fall below the professed standard or quality under which it is sold.

In the Case of Confectionery:

If it contains terra alba, barytes, talc, chrome yellow, or other mineral substances or poisonous color or flavor, or other ingredient deleterious or detrimental to health, or any vinous, malt or spirituous liquor, or compound, or narcotic drug.

In the Case of Food:

First—if any substance has been mixed and packed with it so as to reduce or lower or injuriously affect its quality or strength.

Second—If any substance has been substituted wholly or in part, for the article.

Third—If any valuable constituent of the article has been wholly or in part abstracted.

Fourth—If it be mixed, colored, powdered, coated or stained in a manner whereby damage or inferiority is concealed.

Fifth—If it contains any added poisonous or other added deleterious ingredient, which may render such article injurious to health; provided, that when in the preparation of food products for shipment they are preserved by an external application, applied in such a manner that the preservative is necessarily removed, mechanically, or by maceration in water, or otherwise, and directions for the removal of said preservative shall be printed on the covering of the package, the provisions of this act shall be construed as applying only when said products are ready for consumption.

Sixth—If it be coated with talc, clay, paraffin, varnish, shellac or any other injurious substances.

Seventh—If it consists in whole or in part of filthy, decomposed or putrid animal or vegetable substances, or any portion of an animal unfit for food, whether manufactured or not, or if it is the product of a diseased animal, or one that has died otherwise than by slaughter.

Eighth—If, in case of poultry, domestic or wild fowls, or any slaughtered rabbits, squirrels, or other small animals wild or tame, the crops, entrails and other offensive parts are not properly drawn or removed. (Id. § 3730.)

9. Misbranded Foods and Drugs.—The term "misbranded," as used herein, shall apply to all drugs or articles of food, or articles which enter into the composition of food, the package or label of which shall bear any statement, design or device, regarding such article or the ingredients or substances contained therein which shall be false or misleading in any particular, and to any food or drug product which is falsely branded as to the State, territory or country in which it is manufactured or produced.

For the purpose of this act an article shall also be deemed to be misbranded:

In Case of Drugs:

First—If it be an imitation of or offered for sale under the name of another article.

Second—If the contents of the package as originally put up shall have been removed, in whole or in part, and other contents shall have been placed in such package, of if the package fail to bear a statement on the label of the quantity or

*Omitted herein.

proportion of any alcohol, morphine, opium, cocaine, heroin, alpha or beta eucaine chloroform, cannabis indica, chlorae hydrate, or acetanilide, or any derivative or preparation of any such substance contained therein.

Third—If its package or label shall bear or contain any statement, design, or device regarding the curative or therapeutic effect of such article or any ingredients or substances contained therein, which is false and fraudulent.

In Case of Food:

First—If it be an imitation of, or offered for sale under the distinctive name of another article.

Second—If it be labeled or branded so as to deceive or mislead the purchaser, or purport to be a foreign product when not so, or if the contents of the package as originally put up shall have been removed in whole or in part and other contents shall have been placed in such package, or if it fail to bear a statement on the label of the quantity or proportion of any morphine, opium, cocaine, heroin, alpha or beta eucaine, chloroform, cannabis indica, chloral hydrate, or acetanilide, or any derivative or preparation of any of such substances contained therein.

Third—If in package form, the quantity of the contents be not plainly and conspicuously marked on the outside of the package in terms of weight, measure or numerical count; provided, however, that reasonable variations shall be permitted and also exemptions as to small packages may be established by rules and regulations made in accordance with section 3741.

Fourth—If the package containing it or its label shall bear any statement, design or device regarding the ingredients or the substances contained therein, which statement, design or device, shall be false or misleading in any particular; provided, that any article of food, which does not contain any added poisonous or deleterious ingredients shall not be deemed to be adulterated or misbranded in the following cases:

First—In the case of mixtures or compounds which may be now or from time to time hereafter known as articles of food, under their own distinctive names, and not an imitation of, or offered for sale under the distinctive name of another article, if the name be accompanied on the same label or brand with the statement of the place where said article had been manufactured or produced.

Second—In the case of articles labeled, branded or tagged so as to plainly indicate that they are compounds, imitations or blends, and the word "compound," "imitation," or "blend," as the case may be, is plainly stated on the package in which it is offered for sale; provided, that the term "blend," as used herein, shall be construed to mean a mixture of like substances, not excluding harmless coloring or flavoring ingredients, used for the purpose of coloring and flavoring only; and provided, further, that nothing in this act shall be construed as requiring or compelling proprietors or manufacturers of proprietary foods, which contain no unwholesome added ingredients, to disclose their trade formulas, except insofar as the provisions of this act may require to secure freedom from adulteration or misbranding. (Id. § 3731.)

10. **Samples—Disposition—Net Weight.**—Representative samples of foods, drinks, drugs, gasoline and illuminating oils shall be collected by the State Dairy, Food and Oil Commissioner,* or his deputies. Samples may be purchased in the open market, and if in bulk, the marks, brands, or tags upon the package, carton, wrapper or other container, and the accompanying written or printed matter shall be noted. The collector shall also note the name of the vendor and the agent through whom the sale was actually made, together with the date of purchase. Any sample so collected shall be sealed by the collector with a seal provided for the purpose. For the purpose of this chapter all samples which do not show the net weight properly marked on top of the box, package, or on the face of the principal label, may be disapproved by the State Dairy, Food and Oil Commissioner without further test and the absence of the net weight properly labeled shall be prima facie evidence that they are misbranded and need not be sent to the State Chemist for examination, but may be certified to the county attorney directly by the State Dairy, Food and Oil Commissioner, or his deputies, without the certificate of the State Chemist. (Id. § 3732, as amended L. 1921, c. 33, § 2.)

11. **State Chemist Shall Make Analysis.**—It shall be the duty of the State Chemist to make, or cause to have made, under his direction, analysis and examinations of such articles as shall be furnished to him by the Dairy, Food and Oil Commissioner,* or his deputies, for the purpose of determining upon such examinations whether such articles are adulterated or misbranded within the meaning of this chapter, and to certify the results of such analysis and examinations to the Dairy, Food and Oil Commissioner. (C. S. 1920, § 3733.)

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*See No. 30. This law is to be corrected accordingly.

12. When Analysis Shows Violation.—When the examinations or analysis shows that the provisions of this chapter have been violated, the Dairy, Food and Oil Commissioner shall cause notice of such fact, together with copy of the findings, to be given to the party or parties from whom the sample was obtained, and to the party, if any, whose name appears upon the label as manufacturer, packer, wholesaler, retailer or other dealer. The parties so notified, shall be given an opportunity to be heard under such rules and regulations as may be prescribed as aforesaid. Notices shall specify the date, hour and place of the hearing. The hearing shall be private, and the parties interested therein may appear in person or by attorney. If the party, whose name appears on the label, resides without the State, he shall be entitled to a reasonable notice by mail as may, with due diligence, be obtained. (Id. § 3734.)

13. Dairy, Food and Oil Commissioner Shall Certify to Prosecuting Attorney.—If, after such hearing, the Dairy, Food and Oil Commissioner is convinced that the provisions of this chapter have been violated, he shall certify at once to the county prosecuting attorney of the county in which the collection was made, a copy of the results of the examination of such article, duly authenticated by the State Chemist making such examination under oath of such officer. (Id. § 3735.)

14. Prosecuting Attorney Shall Prosecute.—It shall be the duty of every prosecuting officer to whom the Dairy, Food and Oil Commissioner shall report any violation of this chapter, as herein provided, to cause appropriate proceedings to be commenced and prosecuted in the proper courts without delay, for the enforcement of the penalty as in such case herein provided. (Id. § 3736.)

15. Publication of Judgment.—After judgment of the court, notice shall be given by publication, in such manner as may be prescribed by the rules and regulations aforesaid. If an appeal be taken from the judgment of the court, notice of that fact must accompany the publication. (Id. § 3737.)

16. Penalty for Violations.—Any person violating any of the provisions of this chapter shall be guilty of a misdemeanor, and for each offense shall, upon conviction thereof, be fined not less than twenty-five dollars ($25.00), nor more than one hundred dollars ($100.00); and for each subsequent offense and conviction thereof, shall be fined not less than fifty dollars ($50.00), nor more than two hundred dollars ($200.00), or shall be sentenced to imprisonment for not more than sixty days, or both, at the discretion of the court. (Id. § 3738.)

17. Dealers' Protection.—Under the provisions of this chapter, no dealer shall be prosecuted for selling or offering for sale any article of food, drug, gasoline, or illuminating oil in the original, unbroken package in which it was received by said dealer, provided, he can establish a guaranty signed by the wholesaler, jobber, manufacturer, or other person, residing in the United States from whom he purchased such article, to the effect that same is not adulterated or misbranded within the meaning of this act, designating it. Said guaranty to afford protection shall contain the name and address of the person making the sale of such article to such dealer, and in such case said person shall be amenable to the prosecutions, fines, and other penalties which would attach in due course to the dealer under the provisions of this chapter. When the examination or analysis herein provided shows that the provisions of this chapter have been violated, and the dealer is relieved from prosecution under this section by the production of a guaranty signed by the person residing outside of this State, then the Dairy, Food and Oil Commissioner in the case of foods and drugs, shall report such fact to the Secretary of Agriculture of the United States, or the proper officer appointed for the enforcement of Act of Congress, approved June 30, 1906, known as the "Food and Drug Act." (Id. § 3739.)

18. Word "Person" Construed.—The word "person" as used in this chapter shall be construed to import both the plural and singular, as the case demands, and shall include corporations, companies, societies and associations. When construing and enforcing the provisions of this chapter, the act, omission or failure of any officer, agent or other person acting for, or employed by any company, corporation, society or association within the scope of his employment, or office, shall in every case be also deemed to be the act, omission, or failure of such corporation, company, society or association, as well as that of the person. (Id. § 3740.)

19. Rules and Regulations.—The State Dairy, Food and Oil Commissioner, in executing the provisions of all laws which come under his jurisdiction shall accept such of the Rules and Regulations of the United States Department of Agriculture as he may deem necessary and adopt the standards of purity for foods as laid down by the United States Department of Agriculture, also make, promulgate and enforce such other rules and regulations as may seem necessary and proper to a prompt and effective enforcement of the laws. (Id. § 3741.)

20. Agent for Service.—For the purpose of this chapter and for the purpose of getting service on foreign companies. corporations. or firms, any agent or person who shall sell, keep for sale, offer for sale or handle goods made, sold or handled by said firms, company or corporation, shall be deemed an agent thereof, upon whom the process of any court of this State of competent jurisdiction may be served for the purpose of carrying into effect the provisions of this chapter and service upon such agent shall be binding upon his principals. (Id. § 3742.)

Miscellaneous General Provisions.

21. Appointment.—The office of Dairy, Food and Oil Commissioner* for the State of Wyoming is hereby created. Such commissioner shall be appointed by the Governor, by and with the consent of the Senate and his term of office shall be for four years, from the first day of April of the year of his appointment and vacancies occurring in the office for any cause, shall be filled by appointment for the balance of the unexpired term. The salary of the commissioner shall be two thousand four hundred ($2,400.00) dollars per annum, together with his actual and necessary expenses incurred in the discharge of his official duty, which shall be paid in the same manner as other State officers. (C. S. 1920, § 247.)

22. Duties.—It shall be the duty of the said commissioner* to enforce all laws against frauds and adulteration or impurities in foods, drinks, drugs, gasoline, or illuminating oils, and unlawful labeling of same; and in the performance of such duties said commissioner and his assistants shall have power to enter into any creamery, factory, store, salesroom, drug store, laboratory or place of business, or other place where they have reason to believe foods, drinks, or drugs are made, prepared, sold or offered for sale, and to examine the invoices and freight bills and to examine any cask, or package containing or supposed to contain any article of food, drinks, drugs, gasoline, or oil, and examine or cause to be examined and analyzed the contents thereof by the State Chemist, or some other competent person under his direction, and he shall at the same time, and in the presence of the person from whom such property is taken securely seal up two samples of the articles seized or taken, one of which shall be examined or analyzed under the direction of the commissioner, this sample to be paid for by the commissioner, but not the one left in possession of the owner. (Id. § 248, as amended L. 1921, c. 33, § 1.)

23. County Attorneys—Assist.—It shall be the duty of the county attorney in any county of the State, when called upon by the commissioner, to render any legal assistance in his power to execute the laws and to prosecute cases arising under the provisions of this chapter; and all fines and assessments collected in any prosecution begun or caused to be begun under the provisions of this chapter shall be paid into the State treasury. (C. S. 1920, § 249.)

24. Office in State Capitol.—The necessary room or rooms shall be provided for said Dairy, Food and Oil Commissioner in the State capitol building, which said rooms shall be set apart for his use. (Id. § 250.)

25. Seal.—The State Dairy, Food and Oil Commissioner shall keep a seal with which to attest official acts and documents. (Id. § 251.)

26. Annual Report.—The State Dairy, Food and Oil Commissioner shall make an annual report to the Governor on or before the 1st day of October of each year, which shall contain itemized statements of all receipts and disbusements [disbursements], and all persons employed by him, together with such statistics and other matters as he may regard of value to the administration or to the public at large, and said report may be published annually as public documents of the State of Wyoming, as provided by law. (Id. § 252.)

27. Bond.—Before entering upon the discharge of his official duties, the State Dairy, Food and Oil Commissioner shall give bond in the sum of two thousand dollars to the State of Wyoming, which shall be approved by the Governor, conditioned that he will truly account for and apply all moneys or other property which may come into his hands in his official capacity, and for the faithful performance of the duties of his office as the same are prescribed by law; which bond, with his oath of office endorsed thereon, shall be filed with the Secretary of State. (Id. § 253.)

28. Condemnation of Foods.—Any article of food, drink, medicine, drug or liquor that is adulterated or misbranded within the meaning of the chapter† prohibiting the manufacture and sale of adulterated, misbranded, poisonous or deleterious foods, drugs, medicines and liquors, approved March 2, 1911 (chapter 230), or

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*See No. 30. This and the following sections are to be corrected accordingly.

†See No. 1 et seq.

any amendment thereof or that is made, labeled or branded contrary to the provisions of the said chapter, or that does not conform to the definition or analytical requirements provided in the said act, and is being sold or offered for sale or exposed for sale within the State of Wyoming, shall be liable to be proceeded against before any justice of the peace, within whose jurisdiction the same may be found, and seized for condemnation and confiscation; and authority and jurisdiction are hereby vested in the several justices of the peace, to issue the warrant and to hear and determine the proceedings herein provided for. Such proceedings shall be by complaint, verified by affidavit, and in the name of the State of Wyoming against the article or articles proceeded against, particularly describing the same, the place where they are located, the name of the person, firm or corporation in whose possession they are found, and wherein they violate the provisions of this section. Thereupon said justice of the peace shall issue a warrant returnable not less than three nor more than ten days after its date directed to the sheriff or any constable of the county commanding such officer to seize and take into his possession the article or articles described in the complaint, and bring the same before the justice of the peace who issued the warrant, and to summon the person, firm or corporation named in the warrant and any other person who may be found in possession of the said articles to appear at the time and place therein specified, which warrant shall be executed and served in the same manner as a writ of replevin in civil cases before such justice of the peace. The hearing upon such complaint shall be at the time and place specified in the warrant, which time shall not be less than five days nor more than fifteen days from the return day. Upon the hearing the complaint may be amended, and any person, firm or corporation that appears and claims the said article or articles shall be required to file its claim in writing, and either party may demand a trial by jury and appeal may be taken as in other civil cases. If upon such hearing such article is condemned as being adulterated or misbranded or of a poisonous or deleterious character within the meaning of the said chapter, or as made, labeled or branded contrary to the provisions of the said act, or as not conforming to the definition or analytical requirements provided in the said act, the same shall, unless an appeal be taken, be confiscated and disposed of by destruction or sale, as the justice of the peace may direct, and the proceeds thereof, if sold, less the legal costs and charges, shall be paid into the treasury of the State of Wyoming, but such article shall in no instance be sold contrary to the provisions of the said chapter; provided, however, that upon the payment of the costs of such proceedings and the execution and delivery of a good and sufficient bond to the State Dairy, Food and Oil Commissioner for the use of the State of Wyoming, to the effect that such articles shall not be sold or otherwise disposed of contrary to the provisions of the said chapter, the justice of the peace may, by order, direct that such articles be delivered to the owner thereof. Whenever the State Dairy, Food and Oil Commissioner, or his deputy, shall have ground for suspicion that any article of food, found in possession of any person, firm or corporation, is adulterated or misbranded within the meaning of the said chapter, he may without a warrant seize such article of food and make an inventory thereof, and shall leave a copy of such inventory with the party holding such suspected goods, and tag the same "suspected," and he shall notify in writing the person, firm or corporation in whose possession it may be found, not to offer the same for sale or sell or otherwise dispose of the same until further notice in writing from the commissioner. Whereupon the State Dairy, Food and Oil Commissioner shall forthwith cause a sample of said article of food to be examined or analyzed by the State Chemist, and if the same shall be found to be adulterated or misbranded within the meaning of the said act, the commissioner shall proceed with a hearing and subsequent proceedings, as provided in this section. If, however, such examination or analysis shall show that such article of food complies with the provisions of the said chapter, the person, firm or corporation in whose possession such article of food is found shall forthwith be notified in writing that said seizure is released and authority given to dispose of such article of food. Any justice of the peace of the county, upon the filing of an affidavit by the State Dairy, Food and Oil Commissioner or his deputy that he has probable cause for believing any food or dairy product or substitute therefor, or imitation thereof, kept for sale or for a purpose, or had in possession or under control, contrary to the provisions of the said act, or other laws which now exist or may be hereafter enacted, are concealed by any person or at any place shall issue a search warrant and cause a search to be made in any place therefor, and to that end may cause any building, enclosure, guilty of a misdemeanor, and upon conviction thereof, shall be fined not less than wagon or car to be entered, and any apartment, chest, box, locker, tub, jar, crate, basket or package to be broken open and the contents thereof examined. (Id. § 254.)

29. Interference—Penalty.—Any person or persons interfering with the Dairy, Food and Oil Commissioner in the discharge of his duties shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be fined not less than fifty dollars, nor more than three hundred dollars, nor imprisonment for more than ninety days in jail, or both fine and imprisonment at the discretion of the court. (Id. § 255.)

29a. Establishment of Department—Commissioner.—A State Department of Agriculture is hereby created and established under the management and control of a Board of Agriculture acting through a public officer to be known as the State Commissioner of Agriculture, to be appointed by the board. (L. 1923, c. 100, § 1.)

29b. Duties of Commissioner.—The commissioner shall have his office in the capitol building of the State of Wyoming and shall act as Secretary of the State Board of Agriculture. He shall be the executive officer of the State Board of Agriculture, and shall under the direction of the State Board of Agriculture enforce and execute all provisions and laws of the State required to be enforced by the said board and also all rules and regulations of said board. . . . He shall enforce and supervise the administration of all laws relating to agriculture, horticulture, epiculture, poultry, dairying, agricultural products and agricultural interests (except when these laws are especially delegated to some other department). (Id. § 12.)

29c. Additional Duties of Commissioner.—He shall collect State Agricultural statistics annually and aid in every way possible in the problem connected with the grading, standardizing, marketing and distributing of agricultural products; and may, after investigation, establish and promulgate, with the approval of the Board of Agriculture, standard grades and other standard classifications of and for agricultural products; and may appoint the necessary inspectors of agricultural products; and also may enter into agreements with the United States Department of Agriculture whenever he may deem it necessary or advisable for the establishment of joint State-Federal inspection service in Wyoming for agricultural products. A certificate of inspection, when not reversed or modified, certifying grade or other classification of any farm product, when issued by a regularly authorized State or State-Federal inspector, shall be accepted in any court of this State as prima facie evidence of the true grade or classification of such product at the time of its grading or classification. The Commissioner of Agriculture, acting under the direction of the State Board of Agriculture in the collecting of information necessary to the performance of his duties, as such Commissioner of Agriculture, is hereby authorized to call upon the several State, county, city, town, precinct and school district officers and the officers of the several State institutions of learning, penal and other State instiutions for such information as may be required for properly setting forth the resources of the State and the development thereof. And it shall be the duty of all such officers to furnish such information upon blanks furnished by the State Board of Agriculture when a written request of the Commissioner of Agriculture is presented. Each owner, operator or manager of any manufacturing, mining or other business establishment operating in this State, or other person having information necessary for carrying out the purposes of this act, shall, upon request of the Commissioner, furnish the same upon blanks supplied by the State Board of Agriculture. He shall also prepare exhibits of the State's resources, whenever practicable, for national, international and State expositions. (Id. § 14, as amended L. 1927, c. 57, § 1.)

30. Dairy, Food and Oil Department Discontinued—Transfer of Duties.—From and after April 1st, 1923, or as soon thereafter as the State Department of Agriculture may be organized for business, the office of Dairy, Food and Oil Commissioner shall be abolished and the tenure of all employees of said office is hereby terminated. All powers now vested in the Dairy, Food and Oil Commissioner and all duties and privileges now imposed and conferred upon him by and under the existing laws, are hereby transferred to and imposed and conferred upon the Commissioner of Agriculture, to be exercised by him through such chief of division, deputy assistant or other agency as he may determine with the approval of the Board of Agriculture. The records of said office shall be transferred by him to the Commissioner of Agriculture and the rules and regulations promulgated by him and in force on the date when this act shall take effect and shall continue in force until altered or repealed by the Commissioner of Agriculture in accordance with law. All proceedings then pending before the Dairy, Food and Oil Commissioner shall be transferred to the jurisdiction of the Commissioner of Agriculture, who is hereby vested with full authority to carry the same to completion as the Dairy, Food and Oil Commissioner might have done had it not been for the enactment of this statute. In carrying out the provisions of this act, no new provisions or official positions not otherwise provided for in this act shall be created within the Department of Agriculture, except in the employment of such additional clerical assistance

as may prove necessary in the discharge of the additional duties imposed upon the department. (L. 1923, c. 100, § 16.)

30a. **Provisions Relative to Enforcement Not Changed.**—The requirements and provisions as to inspections, quarantines, and general police regulations of laws already upon the statute books or that may subsequently be added are in no wise rescinded or abated by this act. The method of their administration only is hereby modified to conform to exigencies and conditions obtaining by reason of the creation of this new and largely inclusive Department of Agriculture. (Id. § 18.)

31. **Adulterating Foods or Medicines.**—Every person who adulterates or dilutes any article of food, drink, drug, medicine, spirituous or malt liquor, or wine, or any article used in compounding them, with a fraudulent intent to offer the same for sale, or to cause or permit the same to be offered for sale, as unadulterated and undiluted; and every person who fraudulently sells or keeps or offers for sale the same as unadulterated or undiluted shall be punished by a fine of not more than five hundred dollars or imprisonment in the county jail not more than sixty days, or by both. (C. S. 1920, § 7249.)

32. **Selling Spoiled Food or Medicine.**—Every person who knowingly sells or keeps, or offers for sale, or otherwise disposes of, or tries to dispose of, any article of food, drink, drug or medicine, knowing that the same has become tainted, decayed, spoiled or otherwise unwholesome or unfit to be eaten or drunk shall be fined not more than fifty dollars, or imprisoned in the county jail not more than thirty days, or both. (Id. § 7250.)

33. **Branding Domestic Merchandise as "Imported."**—Any person, firm, or corporation, their agents or employees, who shall with knowledge that same is not imported brand, label, stamp, mark, sell, or offer for sale as "imported" any living thing or any article of merchandise, grown, made, produced or manufactured in the United States, shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not less than fifty dollars ($50.00) nor more than three hundred dollars ($300.00.) (Id. § 7300.)

NOTE: See also Nos. 108 and 128.

PART II.

Special Food Laws.

Beverages.

See Nos. 31, 32, 79, 89 et seq., 133, and 144 et seq.

Bread—Bakeries.

See Nos. 37, 89 et seq. and 107.

Canned Goods—Canneries.

See Nos. 80 et seq. and 89 et seq.

Cider.

See Nos. 147 and 162.

Cold Storage.

See Nos. 67 and 89 et seq.

Confectionery.

See Nos. 8 and 89 et seq.

Dairy Products—Substitutes for Dairy Products.

34. **Imitation Butter and Cheese Defined.**—For the purpose of this chapter every article, substitute or compound, other than that produced from pure milk or cream from same, made in the semblance of butter and designated to be used as a substitute for butter made from pure milk, or cream from the same, is hereby

declared to be imitation butter and that for the purpose of this chapter, every article, substance or compound, other than that produced from pure milk, or cream from the same, made in the semblance of cheese and designed to be used as a substitute for cheese made from pure milk, or cream from the same, is hereby declared to be imitation cheese.

Provided, that the use of salt, rennet and other harmless coloring matter for coloring the product of pure milk, or cream, shall not be construed to render such product an imitation. (C. S. 1920, § 3743.)

35. Coloring—Compound—Sale.—No person, firm, or corporation, by himself, his agents, servants, or employees, shall coat, powder, or color with annatto or any coloring matter whatever any substance designed as a substitute for butter or cheese, whereby such substitute or product so colored or compounded shall be made to resemble butter or cheese, the product of the dairy. No person, firm or corporation, by himself, his agents, or his servants, or employees, shall combine any animal fat, or vegetable oil, or other substance with butter or cheese; or combine therewith, or with animal fat, or vegetable oil or a combination of the two, or with either one, any other substance whatever; or combine with annatto, or compound with the same, or any substance or substances containing annatto or compounds of the same, or any coloring matter whatever, with imitation butter, or imitation cheese, as defined in the first section of this act [3743], for the purpose, or with the effect, of imparting thereto a yellow color, or any shade of yellow, so that such imitation butter, or imitation cheese, shall resemble yellow or any shade of genuine yellow butter or cheese; nor introduce any such coloring matter, or any substance, or substances, containing any such coloring matter into any one of the articles of which same is composed. Provided, nothing in this chapter shall be construed to prohibit the use of salt, rennet and harmless coloring matter for coloring the products of pure milk, or cream from the same. No person, firm or corporation, by himself, his agents, servants or employees, shall produce or manufacture any substance in imitation or semblance of natural butter, or cheese, nor sell, nor have in his possession, nor keep for sale nor offer for sale, any imitation butter or imitation cheese, made or manufactured, compounded or produced in violation of this section, whether such imitation butter or imitation cheese shall be made or produced in this State or elsewhere. (Id. § 3744.)

36. Purchaser of Substitute Notified.—No person, firm, or corporation, by himself, his agents, servants, or employees, shall sell or offer for sale any substance designed to be used for a substitute for butter or cheese, under the name of, or under the pretense that the same is butter or cheese; and no persons, firm or corporation, by himself, his agents, servants or employees shall sell any substance designed to be used as a substitute for butter or cheese, unless he shall inform the purchaser distinctly at the time of sale, that the same is a substitute for butter or cheese as the case may be, and shall deliver to the purchaser, at the time of sale, a statement clearly printed in the English language, which shall refer to the article sold, and which shall contain in prominent and plain Roman type, a statement the substance so sold is a substitute for butter or cheese, as the case may be, and such statement shall also give the name and place of business of the maker. (Id. § 3745.)

37. Cards to be Posted in Places Where Used.—No keeper or proprietor of any bakery, hotel, public institution, dining cars, restaurants, saloon, lunch counter, or place of public entertainment, or any person having charge thereof, or employed thereat, or any person, firm or corporation, furnishing board for others than members of his own family, or for any employees where such board is furnished for a compensation, or as any part of the compensation of any such employee, shall keep, use or serve therein, either as food for his guests, boarders, inmates, patrons, customers, or employees, or for cooking purposes, an imitation butter, or imitation cheese as defined in section 3743, and in using or serving any substance designed as a substitute for butter or cheese, as herein defined, he or they shall display and keep posted a card opposite each table in a conspicuous place where the same may be easily seen and read, in the dining room, eating room, lunch room, restaurant, hotel, public institution, dining car, boarding house, saloon, or place of public entertainment and place where such substance, designed as a substitute is sold, used or disposed of, which card shall be white, and in size not less than ten by fourteen inches (10x14 inches); upon which shall be printed in plain black, Roman letters, not less than one inch in length and one-half inch in width, the words "Imitation Butter Used Here," or "Imitation Cheese Used Here," as the case may be, and said cards shall not contain any other words than the ones above prescribed. (Id. § 3746.)

38. Penalty.—Any person violating the provisions of this chapter shall be guilty of a misdemeanor, and for each offense shall, upon conviction thereof, be fined not less than twenty-five dollars ($25.00), nor more than one hundred dollars

($100.00); and for each subsequent offense and conviction thereof, shall be fined not less than fifty dollars ($50.00), nor more than two hundred dollars ($200.00), or shall be sentenced to imprisonment for not more than sixty days or both at the discretion of the court. (Id. § 3747.)

39. **Rules and Regulations.**—In executing the provisions relating to the sale of imitation butter and cheese, the Dairy, Food and Oil Commissioner* shall, from time to time, make, promulgate and enforce such rules and regulations as may be necessary and proper to a prompt and effective enforcement of this chapter. (Id. § 3748.)

40. **Enforcement.**—The State Dairy, Food and Oil Commissionner* and his assistants shall enforce the provisions of this chapter. (Id. § 3749.)

41. **Tuberculin Test of Dairy Cattle.**—All cows in the State of Wyoming supplying milk or cream in cities or towns, or to creameries in this State, shall be tuberculin tested for tuberculosis; and all bulls which are or are known to have been exposed to such cows, shall also be tested as above. If necessary, the State Veterinarian may order the quarantine of such animals as suspected of being diseased with tuberculosis; and any person, persons, firm, association, or corporation violating such quarantine shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined not less than ten dollars nor more than one hundred dollars for each offense. (Id. § 3793.)

42. **Appointment Special Deputy State Veterinarian—Duties—Salary—Other Assistants.**—The State Veterinarian, by and with the advice and consent of the Governor is hereby authorized to appoint a qualified person, to be known as Special Deputy State Veterinarian, who shall act under the direction of the State Veterinarian in carrying out the provisions of this chapter, who shall take an oath for the faithful and efficient performance of all duties required of him and who shall give satisfactory bond to the State of Wyoming in the sum of three thousand dollars ($3,000.00). The Special Deputy State Veterinarian shall receive a salary of one thousand five hundred dollars ($1,500.00) per annum, together with all actual and necessary traveling expenses incurred while engaged in the performance of his duties. The State Veterinarian is further authorized to employ such other assistants as may be deemed necessary to carry out the provisions of this chapter. (Id. § 3794.)

43. **Certificate or Permit.**—No dairy, association, person, or persons engaged in the business of selling milk or cream in cities or towns or to creameries in this State, may sell such milk or cream unless they possess a certificate or special permit from the State Veterinarian, as hereinafter provided. Any dairy, association, person or persons violating this section shall be deemed guilty of a misdemeanor and shall upon conviction thereof be fined not less than ten dollars, nor more than one hundred dollars, for each offense. (Id. § 3795.)

44. **Certificate—Permit.**—On completion of the tuberculin test upon all dairy cattle as above, owned by any dairy, association, firm, corporation, person, or persons, the State Veterinarian shall cause a certificate to be issued to such owner or owners, showing that all such cattle are free from tuberculosis; or, if all animals were not found free from tuberculosis, a certificate showing that proper disposition (as required by law) has been made of diseased animals, and that the remaining animals in the herd or herds are free from tuberculosis, so far as may be determined by the tuberculin test. Such certificate shall be the owner's authority for selling milk or cream as above. As the tuberculin testing of all dairy cattle in this State cannot begin immediately upon the date that this chapter becomes effective, the State Veterinarian is hereby authorized to issue special permits to owners of such cattle as remain untested while the provisions of this chapter are being carried out, for the selling of milk or cream in cities or towns or to creameries in this State, without certificate as above provided. These special permits shall be effective only for the period from the date that this chapter becomes effective, until proper test and issuance of certificate as above provided. (Id. § 3796.)

45. **Notice to Owners.**—The State Veterinarian, or his duly authorized agent shall ascertain the names and addresses of all owners of dairy cattle in this State and shall notify them, in writing, of the provisions of this chapter, obtaining acknowledgment from owner, of receipt of such notice. No person, persons, firm, association, or corporation owning dairy cattle shall be considered as violating the provisions of this act, who has not been officially notified of its provisions. The owner notified shall make application to the State Veterinarian for a special permit as above provided—to be used as his authority for selling milk or cream in cities or towns, or to creameries in this State, until such animals shall have been tuberculin tested and certificate issued as above provided. (Id. § 3797.)

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*See No. 30. This law is to be corrected accordingly.

46. Ear Tags—Record.—Each animal tested with tuberculin under the provisions of this chapter, which passes the test satisfactorily to the State Veterinarian shall have an ear tag inserted in its ear. The State Veterinarian shall see that a correct record is kept of all cattle tested, the date and place of testing, the names and addresses of owners, and the number of the ear tag inserted in the ear of each animal, and shall report this information in his regular biennial report. (Id. § 3798.)

47. Definition of Dairy Cow.—A dairy cow within the meaning of this act, shall be any cow the milk or milk products from which is sold or used for human consumption. (Id. § 3799, as amended L. 1925, c. 58.)

48. First Test to be Made Without Charge.—The first tuberculin test of all cattle of owners selling or using milk or cream shall be made by the State Veterinarian's Department without charge to the owners. All subsequent tests shall be made under the supervision of the State Veterinarian's Department at the expense of the owners. (Id. § 3800.)

49. Tuberculosis Eradication Fund.—The fees collected in compliance with the preceding section, shall be immediately transmitted to the State Veterinarian who shall deposit same in the State treasury to the credit of the "Tuberculosis Eradication Fund" hereby created; such fund shall be under the control of the State Veterinarian and any salaries or expenses connected with bovine tuberculosis eradication work in this State may be paid by the State treasury from such fund, upon presentation of State Auditor's voucher properly approved. (C. S. 1920, § 3801.)

50. Retests of Cattle.—Whenever the State Veterinarian shall have reason to suspect that the disease tuberculosis exists, or has been introduced by imported dairy cattle, among any herd or number of dairy cattle in this State, he shall order the retesting of same—regardless of former tests made, if any. (Id. § 3802.)

51. Accredited Herds.—Herds may become accredited by complying with the regulations of the United States Bureau of Animal Industry, National Live Stock Sanitary Association. (L. 1925, c. 58, § 5.)

52. Unsanitary Premises—Penalty.—The State Veterinarian or other person acting under his authority may order any unsanitary dairy barns or premises, cleaned and disinfected. Such cleaning and disinfecting shall be at the expense of the owner or owners. If, after a reasonable length of time, unsanitary barns or premises ordered cleaned and disinfected by the State Veterinarian or other persons acting under his authority, are not cleaned and disinfected as ordered, then such owner or owners shall be fined not less than ten dollars nor more than one hundred dollars, for each offense. (C. S. 1920, § 3804.)

53. Cities May Require Test.—The mayor or board of commissioners of any city or town of this State shall have the power by ordinance duly enacted to require the owner or owners of dairies or dairy herds, or persons selling or offering for sale any milk or its products within such city or town to compel such owners of dairies or dairy herds, to have all animals in such herds tested for tuberculosis, once each year; and to prohibit the sale of milk or its products in such city or town unless all cows from which such milk is obtained have passed the test for tuberculosis within the past year. (Id. § 3805.)

54. Penalty for Interference.—Any person who intentionally interferes with, refuses to assist in gathering and testing his cattle or hinders the work of the State Veterinarian or his employees under this act, or who attempts to defeat the object of the tuberculin test by a previous injection of tuberculin commonly known as "plugging," or in any way attempts to prevent an accurate and truthful determination of the condition of the cattle tested, shall be fined not less than ten dollars nor more than one hundred dollars for each offense, or by imprisonment in the county jail for not more than thirty days, or both, in the discretion of the court. (Id. § 3806, as amended L. 1925, c. 58.)

55. Definition of Milk, Skimmed Milk and Cream—Construction.—For the purpose and within the meaning of this act, milk is the lacteal secretion obtained from the complete milking of cows. Skimmed milk is milk from which substantially all of the butter fat has been removed. Cream is that portion of the milk rich in butter fat which rises to the surface of the milk on standing, or is separated from the milk by centrifugal force. When construing or enforcing the provisions of this act, the act, omission, or failure of any officer, agent, or other person acting for or employed by any individual, corporation, partnership, society, or association, within the scope or employment of his office, shall in every case be also deemed to be the act, omission or failure of such individual, corporation, partnership, society, or association, as well as that of such officer, agent, or other person. (L. 1921, c. 85, § 1.)

56. Sale or Possession of Milk and Cream Under Standard.—No person shall sell or deliver for consumption as milk or cream, or have in his possession with

intent to sell or deliver for consumption as milk or cream: (a) Milk to which water or other foreign substance has been added; (b) Milk containing less than 3 per cent of butter fat as determined by the Babcock test for butter fat or less than 8.5 per cent solids not fat; (c) Skimmed milk which is not labeled "Skimmed Milk"; (d) Skimmed milk to which water or other foreign substance has been added or which does not contain at least 9.25 per cent of milk solids; (e) Milk or cream containing or which has been exposed to any disease producing bacteria; (f) Milk or cream which has been produced, stored, handled, or transported in any unclean or insanitary manner; (g) Milk or cream, the container of which is labeled or branded so as to deceive or mislead the purchaser; (h) Cream which contains less than 18 per cent butter fat; (i) Whipping [cream] which contains less than thirty per cent butter fat, provided that nothing in this act shall be construed to prohibit the sale, when labeled so as to show its true character, of either sour milk or sour cream, or buttermilk, or compounds such as "Hebe" or modified or powdered milks. (Id. § 2.)

57. Milk from Diseased Animals—Dirty Milk.—No person shall sell, offer or expose for sale, exchange or deliver any milk or cream which has been taken from any animal having any disease or sickness or from any animal during the period of fifteen days before and five days after parturition; or from any animal which has been fed unwholesome food or has had access to contaminated water; or from any animal kept in a crowded or unhealthful condition. No person shall sell, offer or expose for sale, exchange or deliver any milk or cream which contains sediment of dirt, scales, scabs, manure, hair or filth of any kind. (Id. § 3.)

58. Cleaning of Receptacles After Emptying.—It is hereby declared to be a violation of this act for any person having in possession bottles, cans, or other receptacles containing milk or cream or any dairy product including ice cream not to cleanse or cause to be cleansed such receptacles immediately upon emptying. No person shall have in possession or consign for transportation any receptacle which is used for the transportation or handling of cream or milk, or any dairy product including ice cream, unless said receptacle is thoroughly clean and in a sanitary condition. No person shall use, cause or allow to be used, any receptacle which is used in the transportation or handling of milk or cream, or any other dairy product, including ice cream, for any other purpose whatsoever. No person shall keep in his possession for more than three days after emptying any cans or receptacles which do not belong to him, which have contained milk, or cream, or any dairy product, including ice cream, but shall ship or deliver, or cause to be shipped or delivered, any such cans or receptacles to their rightful owners within that time. (Id. § 4.)

59. Power of Dairy, Food and Oil Commissioner.—The Dairy, Food and Oil Commissioner* or his authorized agents, shall have access, at all reasonable times, to all dairies, places of business, factories, buildings, warehouses, and cars used in the production, manufacture, sale or transportation of dairy products and the Dairy, Food and Oil Commissioner, or his authorized agents, upon paying or offering to pay the full value thereof, may take from any producer, handler, or sell of milk, cream, or any other dairy product, whether principal, agent or employee, one or more samples for the purpose of inspection and chemical analysis. Any person who hinders or prevents such access or who refuses to sell or deliver to the Dairy, Food and Oil Commissioner, or his authorized agents, shall be deemed guilty of a violation of this act. (Id. § 5.)

60. Tester—Examination—License.—Every creamery, shipping station, or other factory or person receiving, buying and paying for milk or cream on the basis of the amount of butter fat, contained therein, shall have in its employ a licensed tester, who shall supervise and be responsible for the operation of the Babcock test of milk and cream. The license shall be issued to such person by the Dairy, Food and Oil Commissioner when the applicant has passed a satisfactory examination given by the Dairy, Food and Oil Commissioner. Each license shall be valid for one year after its issue and shall not be transferable. The fee for such license shall be $2.00 and shall be paid to the Dairy, Food and Oil Commissioner, before such license shall be issued. Such fees accruing to the Dairy, Food and Oil Department shall be turned over to the State Treasurer and placed by him in the general fund. The Dairy, Food and Oil Commissioner shall have authority to revoke any license issued under this act. The testing of each lot of milk or cream by any such unlicensed person shall constitute a separate offense provided that any licensed person, may for valid reasons, appoint a substitute for a period not

*See No. 30. This law is to be corrected accordingly.

to exceed fourteen days, subject to the approval of the Dairy, Food and Oil Commissioner. (Id. § 6.)

61. Standard Test for Milk.—No person receiving milk or cream by weight or test or by weight and test, shall fraudulently manipulate the weights of milk or cream to take unfair samples thereof, or fraudulently manipulate such samples in any way. No person buying or paying for milk or cream on the basis of the amount of fat contained therein shall under-read, over-read or otherwise fraudulently manipulate the Babcock test used for determining the percentage of fat in milk or cream, or falsify the record thereof or read the test at any temperature, except between 135 degrees and 140 degrees Fahrenheit. In the use of the Babcock test, the standard milk measure or pipettes shall have a capacity of 17.6 cubic centimeters, and the standard test tubes or bottles for milk shall have a graduated capacity of two cubic centimeters for each 10 per cent marked on the necks thereof; cream shall be tested by weight and the standard unit for testing shall be 9 grams or 18 grams, and it shall be unlawful to use any other standards of milk or cream measure in creameries or cheese factories or any other place where milk or cream is purchased by or furnished to a receiver and the value of said milk or cream is determined by the per cent of butter fat contained in the same. (Id. § 7.)

62. Butter—Ice Cream—Evaporated Milk—Cheese.—Butter is the product made by gathering in any manner, the fat of fresh or ripened milk or cream into a mass, and it shall be unlawful for any person, firm or corporation to manufacture for sale within this State, ship into the State, or offer or expose for sale or have in his possession with intent to sell or exchange any butter which contains less than 80 per cent of butter fat or more than 16 per cent of water. Butter may contain a harmless vegetable coloring matter.

Renovated or process butter is the product made by melting butter and working without the addition or use of chemicals or any substances except milk, cream or salt, and it shall be unlawful for any person, firm, or corporation, to manufacture for sale within this State, ship into the State, or offer or expose for sale or have in his possession with intent to sell or exchange any such renovated or process butter which contains less than 80 per cent butter fat or more than 16 per cent water. If the analysis of butter or process butter shall show less than 80 per cent of butter fat, or more than 16 per cent of water, the butter or process butter thus analyzed is defined to be adulterated and shall be condemned by the commissioner. Renovated or process butter may contain a harmless coloring matter. All such butter shall be plainly stamped "Renovated Butter" or "Process Butter" in such a manner as will advise the purchaser of its true character, and the Dairy, Food and Oil Commissioner shall prescribe rules for the labeling of such products and such other rules and regulations as he may from time to time deem necessary for the proper enforcement of this act, and such rules and regulations shall have the force and effect of law.

Ice cream is the frozen product made from cream and sugar with or without flavoring and it shall be unlawful for any person, firm or corporation to manufacture, handle, or offer for sale or to sell ice cream containing less than 10 per cent butter fat. The use of eggs, gelatine, and vegetable gums is not forbidden, but must not be used to conceal an inferior product.

Evaporated or condensed milk is the product resulting from the evaporation of a considerable portion of water from whole milk, and no person, firm or corporation shall manufacture for sale within the State, or offer or expose for sale or have in his possession with intent to sell, or exchange, any evaporated milk, unless the same shall contain not less than 25.5 per cent of total milk solids and not less than 7.8 per cent of butter fat, or any sweetened evaporated milk unless the same shall contain not less than 28 per cent of total milk solids and not less than 8 per cent of butter fat. Sweetened evaporated milk is evaporated milk to which sugar (sucrose) has been added.

Cheese is the sound, solid, and ripened product made from milk or cream by coagulating the casein thereof with rennet or lactic acid, with or without the addition of ripening ferments and seasoning and it is hereby declared to be unlawful for any person, firm or corporation to manufacture for sale within the State, or offer or expose for sale or have in his possession with intent to sell or exchange any cheese which does not contain in the water free substance at least 50 per cent of butter fat.

Skim milk cheese is cheese made from skim milk in the same manner as cheese, with or without the addition of ferments or seasoning. No person shall by himself, his agent, or servant manufacture, buy, sell, offer, ship, consign, expose, or have in his possession for sale, any filled cheese or counterfeit whole milk

cheese or cheese manufactured from or by the use of skim milk to which there has been added any fat which is foreign to such milk nor by himself, his agent or servant, manufacture skim milk cheese at any cheese factory in the State and fail at the factory, where it was made, to distinctly and properly stamp on the bandage of the cheese and on the box containing the same in full faced capital letters, at least one inch in height the words "Skim Milk Cheese." It shall be unlawful for any person, firm or corporation to sell, offer for sale, or have in his possession with intent to sell or exchange any skim milk cheese which is not properly labeled. (Id. § 8.)

63. Duty of County and Prosecuting Attorney.—Whenever the Dairy, Food and Oil Commissioner, or his authorized agents, shall furnish evidence that any part of this act has been violated to the county and prosecuting attorney, for the county in which the violation occurred, it shall be the duty of the county and prosecuting attorney to represent and prosecute in behalf of the people all such cases of offense arising under the provisions of this act. (Id. § 9.)

64. Dairy Inspector—Appointment—Duties—Salary.—There shall be appointed by the Dairy, Food and Oil Commissioner* by and with the approval of the Governor, a dairy inspector who shall be employed by the Dairy, Food and Oil Commissioner to carry out the provisions of this act; also to perform such other duties as may be required by the Dairy, Food and Oil Commissioner. He shall also work in the field as much as possible for the development of the dairy industry. He shall receive a salary of twenty-one hundred dollars ($2,100.00), per year, payable in equal monthly installments for his services to be paid by the State of Wyoming out of the contingent fund of the Dairy, Food and Oil Commissioner. He shall also receive his necessary traveling expenses to be paid by the State of Wyoming when employed in performing the provisions of this act. His term of office shall extend during the pleasure of the Dairy, Food and Oil Commissioner or until his successor is appointed and qualified. (Id. § 10.)

65. Penalty.—Any person violating any of the provisions of this act shall be guilty of a misdemeanor, and upon conviction thereof, shall be fined in a sum not less than ten dollars ($10.00), nor more than one hundred dollars ($100.00) or be imprisoned in the county jail not exceeding three (3) months. (Id. § 11.)

66. Cream Stations to be Licensed—Enforcement of Act.—Any person, firm or corporation who shall operate a buying or collecting station where milk or cream is bought or collected, for the purpose of shipment, or to be sold or transported to any creamery or any other manufacturing plant outside of the State of Wyoming, shall first secure a license from the Dairy, Food and Oil Division to operate such a station; such license shall be valid for one year after its issuance and shall not be transferable. The fee for such license shall be ten ($10.00) dollars and shall be paid to the chief of the Dairy, Food and Oil Division before such license shall be issued. Such fees accruing to the Dairy, Food and Oil Division shall be covered into a fund to be used by the Agricultural Department in carrying out the duties prescribed for the dairy inspector.

The chief of the Dairy, Food and Oil Division shall make, promulgate and enforce such rules and regulations as he may deem necessary for the conducting of cream stations in a satisfactory manner. Failure of any person, firm or corporation to comply with this act or the rules and regulations thereunder will constitute grounds for revoking license. (L. 1925, c. 138, § 1.)

67. Unfair Discrimination—Penalty.—Any person, firm, company, association, or corporation, foreign or domestic, doing business in the State of Wyoming and engaged in the business of buying coal, oil, gasoline, natural gas or iron ore or anything produced from the soil of the State of Wyoming, or of buying milk, cream or butter fat for the purpose of manufacture or sale, or of buying poultry or eggs for the purpose of sale or storage, that shall for the purpose of creating a monopoly or destroying the business of a competitor, discriminate between different sections, communities, localities, cities or towns, or persons, associations, firms or corporations of this State by purchasing such commodity or commodities at a higher price or rate in one section, community, locality, city or town, or from persons, associations, firms or corporations than is paid for the same commodity by said person, firm, company or corporation in another section, community, locality, city or town or to any other person, firm, corporation or association after making due allowance for the difference, if any, in the grade or quality, and in the actual cost of transportation from the point of purchase to the point of manufacture, sale or storage shall be deemed guilty of unfair discrimination, which is hereby prohibited and declared to be unlawful, and any person, firm, company, association

*See No. 30.

or corporation, or any officer, agent, receiver or member of such firm, company, association, or corporation found guilty of unfair discrimination as hereby defined shall be punished by a fine in any sum not more than five thousand dollars or by imprisonment in the county jail not to exceed one year or by both such fine and imprisonment. (C. S. 1920, § 4371, as amended L. 1923, c. 82.)

NOTE: See also Nos. 22, 29b, 30, 78, 80, 81, 89 et seq., 99-103, and 109.

Eggs.

See Nos. 67, 80 and 81.

Feeding Stuffs.

68. Defined.—The term "Commercial Feeding Stuffs" shall be held to include all feeding stuffs used for feeding live stock and poultry, except whole seeds or grains; the unmixed meals made directly from the entire grains of corn, wheat, rye, barley, oats, buckwheat, flaxseed, kaffir and milo; whole hays, straws, cotton-seed hulls and corn stover when unmixed with other materials. Together with all other materials containing sixty per cent (60%) or more of water. (C. S. 1920, § 3758.)

69. Label to Contain Statement.—Every lot or parcel of commercial feeding stuffs sold, offered or exposed for sale or distributed within this State shall have affixed thereto a tag or label, in a conspicuous place on the outside thereof, containing a legible and plainly printed statement in the English language, clearly and truly certifying:

(a) The net weight of the contents of the package, lot or parcel;

(b) The name, brand or trade-mark;

(c) The name and principal address of the manufacturer or person responsible for placing the commodity on the market;

(d) The minimum per centum of crude protein;

(e) The minimum per centum of crude fat;

(f) The maximum per centum of crude fiber;

(g) The specific name of each ingredient used in its manufacture.

The crude protein, crude fat and crude fiber shall be determined by the methods in force at the time by the Association of Official Agricultural Chemists of North America. (Id. § 3759.)

70. Certified Copy of Statement Filed.—Before any manufacturer, importer, jobber, firm, association, corporation or person shall sell, offer or expose for sale or distribute in this State any commercial feeding stuffs, he or they shall file with the State Dairy, Food and Oil Commissioner* a certified copy of the statement specified in section 3759, with the exception of sub-division (a), for each brand of commercial feeding stuffs; said certified copy to be accompanied, when the State Dairy, Food and Oil Commissioner shall so request, by a sealed package containing at least one pound of the commercial feeding stuffs to be sold, offered or exposed for sale or distributed in this State, and the company or person furnishing said sample shall thereupon make affidavit that the said sample is representative of the commercial feeding stuffs offered for registration. (Id. § 3760.)

71. Misleading Names—Registration Cancelled.—The State Dairy, Food and Oil Commissioner shall have power to refuse to register any commercial feeding stuffs under a name, brand or trade-mark which would be misleading or deceptive, or which would tend to mislead or deceive as to the materials of which it is composed, or when the specific name of each and all ingredients used in its manufacture are not stated. He shall also have the power to refuse to register more than one commercial feeding stuffs under the same name or brand when offered by the same manufacturer, importer, jobber, firm, association, corporation or person. Should any commercial feeding stuffs be registered in this State, and it is afterward discovered that such registration is in violation of any of the provisions of this act, the State Dairy, Food and Oil Commissioner shall have the power to cancel such registration. The State Dairy, Food and Oil Commissioner shall have the power to refuse to allow any manufacturer, importer, jobber, firm, association, corporation or person to lower the guaranteed analysis or change the ingredients of any brand of his or their commercial feeding stuffs during the term for which registered, unless satisfactory reasons are presented for making such change or changes. (Id. § 3761.)

72. Brand Registered But Once.—Whenever a manufacturer, importer, jobber, firm, association, corporation or person manufacturing or selling a brand of

*See No. 30. **This law is to be corrected accordingly.**

commercial feeding stuffs shall have filed the statement required by section 3760, no other agent, importer, jobber, firm, association, corporation or person shall be required to register or file such statement upon such brand. (Id. § 3762.)

73. **Commissioner to Have Free Access—Annual Analysis.**—The State Dairy, Food and Oil Commissioner is authorized in person or by deputy to have free access to all places of business, mills, buildings, carriages, cars, vessels, and parcels of whatsoever kind used in the manufacture, transportation, importation, sale or storage of any commercial feeding stuffs, and shall have the power and authority to open any parcel containing or supposed to contain any commercial feeding stuffs, and upon tender and full payment of the selling price of said sample, to take therefrom in the manner prescribed in section 3764, samples for analysis, and said State Dairy, Food and Oil Commissioner shall annually cause to be analyzed at least one sample so taken of every commercial feeding stuffs that is found sold, offered or exposed for sale or distributed in this State. (Id. § 3763.)

74. **Samples—How Taken—Disposition.**—A representative sample of each brand of commercial feeding stuffs found sold, offered or exposed for sale shall be taken by the said State Dairy, Food and Oil Commissioner or his duly authorized representative in the presence of at least one witness. No action shall be maintained for a violation of the provisions of this chapter, based upon an analysis of a sample from not less than five separate original packages unless there is [are] less than five separate original packages of the lot, in which case portions for the official sample shall be taken from each original package; if the commercial feeding stuffs is in bulk, portions shall be taken from not less than five different places in the lot; provided, that this does not exclude sampling in bulk when not exposed sufficiently to take portions from five different places, in which case portions are to be taken from as many places as practicable. If the sample thus secured is larger than is required, it shall be mixed and quartered until a sample of suitable size remains. Said sample shall be divided into two parts, and shall be placed in packages and sealed in the presence of said witness, one of said packages so sealed shall be tendered, and if accepted, delivered to the person apparently in charge of such feeding stuffs; the other package the said State Dairy, Food and Oil Commissioner shall analyze or cause to be analyzed, and the result of such analysis, together with such additional information as the said State Dairy, Food and Oil Commissioner may deem advisable, shall be promptly transmitted to the manufacturer or person responsible for the placing of the commodity on the market, and shall be published in reports or bulletins from time to time. If the manufacturer or person responsible for the placing of any commodity so sampled upon the market be unable to secure the sample delivered to the person apparently in charge of the feeding stuffs sampled, he shall upon request to the State Dairy, Food and Oil Commissioner, be furnished with a portion of the official sample referred to in this section. The methods of analysis shall be those in force at the time by the Association of Official Agricultural Chemists of North America. (Id. § 3764.)

75. **Prosecutions.**—If it appears that any of the provisions of this chapter has [have] been violated, the State Dairy, Food and Oil Commissioner shall certify the facts to the proper prosecuting attorney and furnish that officer with a copy of the result of the analysis or other examination of such feeding stuffs duly authenticated by the analyst or other officer making the determination, under the oath of such officer; provided that if it shall appear from any such examination that any of the provisions of this chapter have been violated the State Dairy, Food and Oil Commissioner shall cause notice to be given to the manufacturer or dealer from whom said sample was taken; any party so notified shall be given an opportunity to be heard in his defense under such rules and regulations as may be prescribed by the State Dairy, Food and Oil Commissioner before the facts shall be certified to the proper prosecuting attorney. In all prosecutions arising under the provisions of this chapter, certificates of the State Chemist making the analysis or examination, when duly sworn to by such officer, shall be prima facie evidence of the fact or facts therein certified. (Id. § 3765.)

76. **Violations—Penalty.**—Any manufacturer, importer, jobber, firm, association, corporation or person who shall sell, offer or expose for sale, or distribute in this State, any commercial feeding stuffs without having attached thereto or furnished therewith such stamps, labels or tags as required by the provisions of this chapter, or who shall impede, obstruct, hinder or otherwise prevent or attempt to prevent said State Dairy, Food and Oil Commissioner or his authorized agent in the performance of his duty in connection with the provisions of this chapter, or who shall sell, offer or expose for sale or distribute in this State any commercial feeding stuffs as defined in section 3758, without complying with

the requirements of the provisions of this chapter, or who shall sell, offer or expose for sale or distribute in this State any commercial feeding stuffs which contains a smaller per centum of crude protein or crude fat or a larger per centum of crude fiber than is certified to be contained therein, or who shall fail to properly state the specific name of each and every ingredient used in its manufacture shall be deemed guilty of a violation of the provisions of this chapter and upon conviction thereof shall be fined not more than one hundred dollars ($100.00) for the first violation and not less than one hundred dollars ($100.00) for each subsequent violation. Any manufacturer, importer, jobber, firm, association, corporation or person who shall mix or adulterate any feeding stuffs with any substance or substances injurious to the health of live stock or poultry shall be deemed guilty of a violation of the provisions of this chapter, and in addition to the penalty, provided in this section, the lot of feeding stuffs with any substance or substances injurious to the health of live stock or poultry shall be deemed guilty of a violation of the provisions of this chapter and in addition to the penalty, provided in this section the lot of feeding stuffs shall be subject to seizure, condemnation and sale as the court may direct; the proceeds from such sale to be covered into the State treasury. The court may in its discretion release the feeding stuffs so seized when the requirements of the provisions of this chapter have been complied with, and upon payment of all costs and expenses incurred by the State in any proceedings connected with such seizure. (Id. § 3766.)

77. **Rules and Regulations.**—The State Dairy, Food and Oil Commissioner is hereby empowered to enforce the provisions of this chapter and to prescribe the form of tags, stamps or labels to be used to show that the registration has been properly filed, and to prescribe and enforce such rules and regulations relating to the sale of commercial feeding stuffs as he may deem necessary, and adopt such standards and definitions, to carry into effect the full intent and meaning of this chapter. (Id. § 3767.)

Flavoring Extracts and Syrups.

See Nos. 147 and 158.

Fruit Juices.

See No. 162.

Fruits and Vegetables.

See Nos. 29b, 29c, 82 et seq., and 190.

Grain.

See Nos. 177 and 190.

Meat—Meat Products.

78. **Examination of Animals—Seizure of Diseased Animals.**—The following regulations shall be observed in all cases of disease covered by this chapter:*

First—It shall be unlawful to sell, give away or in any manner part with any animal affected with or suspected of contagious or infectious disease; and in case of any animal that may be known to have been affected with, or exposed to any such disease within one year prior to such disposal, due notice of the fact shall be given in writing to the party receiving the animal.

Second—It shall be unlawful to kill for butcher purposes, any such animal, to sell, give away or use any part of it, or its milk, or to remove any part of the skin. A failure to observe these provisions shall be deemed a misdemeanor and on conviction shall be punished by a fine not less than one hundred dollars nor exceeding five hundred dollars. It shall be the duty of the owner or person having in charge any animal affected with or suspected of any contagious or infectious disease to immediately confine the same in a safe place, isolated from other animals, and with all necessary restrictions to prevent dissemination of the disease until the arrival of the State Veterinarian.

The above regulations shall apply as well to animals in transit through the State, as to those resident therein, and the State Veterinarian or his duly authorized agent shall have full authority to examine, whether in car, or yards, or stables, all animals passing through the State or any part of it, and on detection or suspicion of disease, to take possession of and treat and dispose of said animals in the same manner as is prescribed for animals resident in the State. (C. S. 1920, § 210.)

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*Chapter 21, entitled "State Veterinarian."

79. Selling Diseased Meat or Adulterated Liquor.—If any person or persons shall knowingly sell any flesh of any diseased animal, or other unwholesome provisions, or any pernicious or adulterated drink or liquors, every person so offending shall be fined not more than two hundred dollars. (Id. § 7248.)

80. Imported Meats, Etc., to be Labeled; Sign to be Displayed; Penalty.—Any person, persons, or corporation who sells or offers for sale in the State of Wyoming through meat market, store, or otherwise, any meats, either canned, frozen or cured, or any poultry, eggs or butter, which are products of any country foreign to the United States, without first indicating this fact by display of a conspicuous sign in their place of business and by labels or brands on each quarter, half, or whole carcass of such meat, and on each can, case or package containing any of above mentioned products, naming the country of its origin, and the date of exportation, shall be deemed guilty of a misdemeanor, and upon conviction shall be fined not less than $25.00 nor more than $100.00, or be imprisoned in the county jail not more than thirty days for the first offense. (L. 1921, c. 80, § 1.)

81. Penalty for Subsequent Violations.—For each second or successive conviction of such offense against this act the fine shall be not less than $100.00 nor more than $500.00, nor more than ninety days imprisonment, or both fine and imprisonment. **(Id. § 2.)**

81a. License for Peddling.—No person shall engage in the business of peddling or hawking fresh meat until he shall have procured a license therefor from the State Dairy, Food and Oil Commissioner. (C. S. 1920, § 3440.)

81b. Definition of "Commissioner."—Unless otherwise specified the word "commissioner" where used in this act shall mean the State Dairy, Food and Oil Commissioner.* (Id. § 3441.)

81c. Application for License.—Whenever any person shall apply for a license under the provisions of this chapter, he shall make application to the commissioner upon blanks furnished by the said commissioner. Applicants shall state in their application:

First—Name and post office address.
Second—Location and description of the premises.
Third—Condition of vehicle in which meat is to be transported.
Fourth—Condition of utensils.
Fifth—City or town in which meat is to be sold. (Id. § 3442.)

81d. Inspection of Premises.—When the applicant has satisfied the commissioner that he will not slaughter any animal or animals except those in perfect health, and that he will prepare his meat in a sanitary and wholesome manner, and will protect same at all times up to the delivery to the purchaser, a license will be granted said applicant to peddle or hawk fresh meat during the season for which the license is procured. The premises, utensils, wagons, and all appliances used in connection with the business of peddling and hawking fresh meat will be subject to inspection at any time, by the commissioner or his deputy; and whenever the commissioner or his deputy shall find upon a hearing to be held after not less than three days' notice to any such licensee, that the provisions of the act regulating slaughterhouses and the regulations adopted thereunder or the regulations governing the care of such meat adopted under the provisions of this act have been violated he shall have the authority to cancel said license. (Id. § 3443.)

81e. Regulations Promulgated by Commissioner.—The commissioner shall have authority to adopt and promulgate regulations governing the filing of applications and the issuance of licenses and specifying the matters to be set forth in such applications and to pay the necessary expenses of administering the provisions of this act from the appropriation for the contingent expenses of his office. (Id. § 3444.)

81f. Duty of Officers of Law.—It shall be the duty of every sheriff, deputy sheriff, constable, marshal or policeman of the State of Wyoming to require every one engaged in the business of peddling or hawking fresh meat to produce the license granted to him by the commissioner. Upon the failure of said peddler to produce such license said sheriff, deputy sheriff, constable, marshal or policeman shall make complaint to the county and prosecuting attorney who will cause appropriate proceedings to be commenced and prosecuted in the proper court without delay for the enforcement of the penalty as in such cases herein provided. (Id. § 3445.)

81g. Violations of Provisions.—Whoever shall violate the provisions of this chapter or the regulations adopted and promulgated hereunder shall be guilty of a misdemeanor and upon conviction shall be punished for the first offense by a fine of not less than $10.00 or more than $50.00 and upon conviction for every subsequent offense by a fine of not less than $50.00 or more than $100.00 or by imprisonment in the county jail, not exceeding thirty days, or both. Provided, that the provisions of

*See No. 30. This law is to be corrected accordingly.

this chapter shall not apply to the selling of fresh meat by any farmer or ranchman who is the producer thereof, providing that such farmer or ranchman has complied with the regulations of the Pure Food Commissioner which may be issued governing such sales. (Id. § 3446.)

NOTE: See also Nos. 8, 67, 89 et seq., and 104-106.

Potatoes.

82. Sorting and Grading.—Carlot shipments of potatoes originating in Wyoming shall be sorted and graded at point of origin according to United States grades as herein specified, upon request of a majority of the potato growers from a territory making shipments from any shipping points within said districts as designated by the Commissioner of Agriculture. (L. 1925, c. 95, § 1.)

83. Definition of Grades.—Grade, United States Fancy shall consist of potatoes of one variety which are mature, bright, well shaped, free from freezing injury, soft rot, dirt or other foreign matter, sunburn, second growth, growth cracks, hollow heart, cuts, scab, blight, dry rot, disease, insect or mechanical injury and other defects. The range in size shall be stated in terms of minimum and maximum diameters or weight following the grade name, but in no case shall the diameter be less than 2 inches.

In order to allow the variations incident to proper grading and handling, not more than 5 per cent, by weight of any lot may vary from the range and size stated and, in addition, not more than 6 per cent, by weight, of any lot may be below the remaining requirements of this grade but not to exceed one-third of this 6 per cent tolerance shall be allowed for potatoes affected by soft rot.

Grade United States No. 1 shall consist of potatoes of similar varietal characteristics which are not badly mis-shapen, which are free from freezing injury and soft rot, and from damage caused by dirt or other foreign matter, sunburn, second growth, growth cracks, hollow heart, cuts, scab, blight, dry rot, disease, insects or mechanical or other means.

The diameter of potatoes of round varieties shall not be less than 1⅞ inches and of potatoes of long varieties 1¾ inches.

In order to allow for variations incident to proper grading and handling not more than 5 per cent, by weight, of any lot may be below the prescribed size, and, in addition, not more than 6 per cent, by weight, may be below the remaining requirements of this grade but not to exceed one-third of this 6 per cent tolerance shall be allowed for potatoes affected by soft rot.

Grade United States No. 1 Small, shall consist of potatoes ranging in size from 1½ inches to 1⅞ inches in diameter but meeting all the other requirements of United States No. 1.

In order to allow for variations incident to proper grading and handling not more than 25 per cent by weight, of any lot may vary from the prescribed size, but not to exceed one-fifth of this tolerance shall be allowed for potatoes under 1½ inches in diameter. In addition not more than 6 per cent, by weight, may be below the remaining requirements of this grade, but not to exceed one-third of this 6 per cent tolerance shall be allowed for potatoes affected by soft rot.

Grade United States No. 2 small shall consist of potatoes of similar varietal characteristics which are free from freezing injury and soft rot and from serious damage caused by sunburn, cuts, scab, blight, dry rot, disease, insects or mechanical or other means.

The diameter of potatoes of this grade shall be not less than 1½ inches.

In order to allow for variations incident to proper grading and handling not more than 5 per cent, by weight, of any lot may be below the prescribed size, and in addition, not more than 6 per cent, by weight, may be below the remaining requirements of this grade but not to exceed one-third of this 6 per cent tolerance shall be allowed for potatoes affected by soft rot. (Id. § 2.)

84. Definitions of Terms.—"Mature" means that the outer epidermis does not loosen or "feather" readily during the ordinary methods of handling. "Bright" means free from dirt or other foreign matter, damage or discoloration from any cause, so that the outer epidermis has the attractive color normal for the variety.

"Well Shaped" means the normal, typical shape for the variety in the district where grown, and free from pointed, dumb-bell shaped, excessively elongated, knotty and other ill-formed potatoes.

"Diameter" means the greatest dimension at right angles to the longitudal axis.

"Free from damage" means that the appearance shall not be injured to an extent readily apparent upon casual examination of the lot, and that any damage from the causes mentioned can be removed in the ordinary process of preparation

for use without appreciable waste in addition to that which would occur if the potato were perfect. Loss of outer epidermis shall not be considered as an injury to the appearance.

"Badly mis-shapen" means of such shape as to cause appreciable waste in the ordinary process of preparation for use, in addition to that which would occur if the potato were perfect.

"Free from serious damage" means that any damage from the causes mentioned can be removed by the ordinary process of preparation for use without a waste of more than 10 per cent, by weight, in addition to that which would occur if the potato were perfect. (Id. § 3.)

85. Inspectors—Appointment—Duties.—The provisions of this law shall be enforced by district inspectors appointed by the Commissioner of Agriculture and they must be qualified for their duties by experience and responsible parties. They shall serve for a term of four years unless sooner removed by the Commissioner of Agriculture.

The Commissioner of Agriculture shall provide such county inspectors with printed instructions in grading, packing and market management in order that the provisions of this act may be more efficiently put into operation.

The Commissioner of Agriculture is hereby authorized to co-operate with any municipal, State or national agency in carrying out the provisions of this act.

Any standard for any farm product now or hereafter made mandatory under authority of the Congress of the United States, shall forthwith, as far as applicable, be established or prescribed and promulgated, by the Commissioner of Agriculture, as the official standard or requirement of this State.

Whenever any standard for the grade or classification of potatoes becomes effective in this act, no person thereafter shall pack, offer, consign or sell in carload lots any such potatoes loaded within the State, to which such standard is applicable unless it conform with such standard, subject to such variations therefrom as may be allowed in the regulations made in this act, except that any such potatoes may be packed, offered or consigned for sale, or sold without conforming to the standard or grade or other classification applicable thereto, if it be specifically described, or plainly marked, in accordance with the regulations under this act, in such manner as to indicate that it is ungraded or unclassified.

Whenever grades, standards or classification have been established for potatoes, according to the provisions of this act, it shall be unlawful for any shipper to ship car lot shipments as such potatoes without being inspected by a duly authorized inspector who shall issue a certificate of inspection showing grade, standard or other classification. Such certificates shall be issued in triplicate, one copy of which shall be tacked in the car in a conspicuous place, one copy shall be attached to bill of lading and one copy shall be issued to the shipper.

It shall be unlawful to destroy any certificate tacked to any car as defined in this paragraph, except that a transportation company shall transfer such certificate when cars are reloaded.

A certificate, when not reversed or modified, of the grade or other classification of any farm product issued under this act shall be accepted in any court of this State as prima facie evidence of the true grade or other classification of such farm product at the time of its grade or classification.

The district inspector shall make reports to the Commissioner of Agriculture on January 1, of each year.

Subject to approval of the Board of Agriculture, the Commissioner of Agriculture is authorized to make and promulgate such regulations as may be necessary to carry out the provisions of this act. Such regulations shall be made to conform as nearly as practicable to any act of Congress relating to the marketing of farm products.

The Commissioner of Agriculture is prohibited during his respective term of employment or office, from engaging in this State, or elsewhere, in the business of buying or selling or in commission dealing in potatoes.

The Commissioner of Agriculture is hereby authorized, upon request of any interested party, to furnish a district inspector, to inspect any lot of potatoes within the State which is not covered by any Federal certificate, whether such potatoes originated in Wyoming or elsewhere and to issue a certificate, showing grade, quality, and condition of such potatoes which will be receivable as prima facie evidence in any court in Wyoming. This provision includes storage, inspection and less than car-load lots. For this inspection the county inspector shall be paid by the party asking for such inspection, not to exceed two ($2.00) dollars per car and all traveling expenses to and from place of inspection.

Any shipper shall advise the nearest county inspector as early as possible of his intention to load car lots of potatoes within the State, so that the district inspector may have ample time to sample and inspect such lots.

Any interested party may demand a reinspection at point of origin if the grade established by the district inspector is not satisfactory to such party. This reinspection may be made by an inspector authorized by the Commissioner of Agriculture or by an official inspector of the United States Department of Agriculture, Bureau of Markets, wherever such an inspector is available. Such reinspection shall be made at the expense of the party requesting the service. (Id. § 4.)

86. Fee for Inspection.—A fee of two dollars per car shall be paid on all shipments of potatoes inspected within the district except those designated for manufacturing purposes on which no fee shall be charged. With the consent of the Commissioner of Agriculture, potatoes for seed stock may be moved to storage within the State without inspection. Other shipments of seed stock must conform to the requirements of Grade No. 1 except with regard to size, and in addition the certificate must contain a statement designating variety, trueness to type, per cent defects with regard to disease and other blemishes. When potatoes are shipped without inspection as herein provided, the shipper shall be provided with a proper certificate to post in the car. The district inspector shall receive two dollars per car as herein provided, as compensation for their [his] services. (Id. § 5.)

87. Violation of Law—Penalty.—Whoever shall remove any inspection certificate before a car is entirely unloaded, whoever except an authorized inspector shall alter any inspection certificate, whoever without using reasonable diligence to secure inspection fails or neglects to have potatoes inspected before shipping, whoever shall hinder, molest or attempt to influence any inspector in the performance of his duties, or whoever violates any of the provisions of this act shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined for each violation in any sum not exceeding five hundred dollars and the costs of the prosecution, or shall be imprisoned in the county jail not exceeding six months, or both. Any inspector who shall fail or neglect to perform the duties enforced upon him by this act shall suffer the penalty herein provided. (Id. § 6.)

NOTE: See also No. 190.

Salt.

88. Sale of Domestic Salt Regulated.—The State Board of Health of the State of Wyoming shall have authority to pass such rules and regulations as shall be necessary to regulate the sale of domestic salt or prescribe such manner of treatment as has been found practical to prevent goitre from becoming more prevalent among the citizens of the State of Wyoming. (L. 1925, c. 123, § 1.)

Vinegar.

See No. 147.

Sanitation.

89. Sanitary Condition of Buildings—Food Defined.—Every building, room, basement, cellar, occupied or used as a bakery, cannery, confectionery, creamery, cheese factory, packing house, slaughterhouse, restaurant, hotel, grocery, meat market or other place or apartment used for the preparation for sale, manufacture, packing, storage, sale or distribution of any food shall be properly lighted, plumbed and ventilated, and conducted with strict regard to the influence of such condition upon the health of the operatives, employees, clerks, or other persons therein employed, and the purity and wholesomeness of the food therein produced; and for the purpose of this chapter the term "Food" as used herein shall include all articles used for food, drink, confectionery or condiment, whether simple, mixed or compound, and all substances or ingredients used in the preparation thereof. (C. S. 1920, § 3768.)

90. Unsanitary Conditions Defined.—The floors, side walls, ceilings, furniture, receptables, implements and machinery and every establishment or place where food is manufactured, packed, stored, sold or distributed, and all cars, trucks and vehicles used in the transportation of food products, shall at no time be kept in an unclean, unhealthful or unsanitary condition, and for the purpose of this chapter, unclean, unhealthful and unsanitary conditions shall be deemed to exist if food in the process of manufacture, preparation, packing, storage, sale, distribution or transportation is not securely protected from flies, dust, dirt, and as far as may be necessary, by all reasonable means from all foreign or injurious contamination; and if the refuse, dirt, and waste products subject to decomposition and

fermentation, incident to the manufacture, preparation, packing, storing, selling, distributing and transporting of food, are not removed daily; and if the clothing of operatives, employees, clerks, or other persons therein employed is unclean. (Id. § 3769.)

91. **Walls, Ceilings and Woodwork.**—The side walls and ceilings of every bakery, confectionery, hotel and restaurant kitchen and meat markets shall be well plastered, wainscoated or ceiled with metal or lumber and shall be oil painted or kept lime washed, and all interior woodwork of every bakery, confectionery, hotel and restaurant kitchen, shall be well oiled and painted with oil paints and be washed clean with soap and water. (Id. § 3770.)

92. **Screens During Fly Season.**—The doors, windows and other openings of every food producing or distributing establishment during the fly season shall be fitted with self-closing screen doors and wire window screens of not more than 14 mesh wire gauze. (Id. § 3771.)

93. **Toilet Rooms.**—Every building, room, basement or cellar occupied or used for the preparation, manufacture, packing, canning, sale or distribution of food, shall have convenient toilet or toilet rooms, separate and apart from the room or rooms where the process of production, manufacture, packing, canning, selling or distributing is conducted. The floors of such toilet rooms shall be of cement tile, wood, brick, or other non-absorbent material and shall be furnished with separate ventilating flues or pipes, discharging into soil pipes, or on outside of the building in which they are situated. Lavatories and washrooms shall be adjacent to toilet rooms, and shall be supplied with soap, running water and towels, and shall be maintained in a sanitary condition. Operatives, employees, clerks and all other persons who handle material from which food is prepared, or the finished product before beginning work or after visiting toilet or toilets shall wash their hands and arms thoroughly with soap and clean water. (Id. § 3772.)

94. **Receptacles, Tools, Tables, Cleaned.**—All trucks, trays and other receptacles, all chutes, platforms, racks, tables, etc., and all knives, saws, cleavers, and other tools, and all utensils, machinery, and vehicles used in moving, handling, cutting, chopping, mixing, canning or other processes shall be thoroughly cleaned before using. (Id. § 3773.)

95. **Personal Cleanliness of Employees.**—The aprons, smocks, or other outer clothing worn by employees who handle meat or meat food products shall be of a material that is readily cleansed and made sanitary, and only clean garments shall be worn. Persons who handle meat or meat food products shall have to keep their hands clean and that they shall be required also to pay particular attention to the cleanliness of their boots and shoes. (Id. § 3774.)

96. **Cuspidors Required.**—Cuspidors for the use of operatives, employees, clerks or other persons, shall be provided whenever necessary and each cuspidor shall be thoroughly emptied and washed out daily with disinfectant solution and five ounces of such solution shall be left in each cuspidor while it is in use. No operatives, employee, or other person shall expectorate on the floor or side walls of any building, room, basement or cellar, where the production, manufacture, packing or storing, preparation or sale of any food is conducted. (Id. § 3775.)

97. **Living or Sleeping in Room.**—No person or persons shall be allowed to live or sleep in any room of a bakeshop, kitchen, and meat market, dining-room, confectionery or place where food is prepared, served or sold. (Id. § 3776.)

98. **Persons Affected with Certain Diseases.**—No employer shall require, permit or suffer any person to work, nor shall any person work, in a building, room, basement, cellar or vehicle occupied or used for the production, preparation, manufacture, packing, storage, sale, distribution and transportation of food who is affected with any venereal disease, small-pox, diphtheria, scarlet fever, yellow fever, tuberculosis, or consumption, bubonic plague, Asiatic cholera, leprosy, trachoma, typhoid fever (epidemic), epidemic dysentery, measles, mumps, German measles (Rothein), whooping cough, chicken pox or any other infectious or contagious disease. Any person convicted of the violation of the provisions of this section shall be deemed guilty of a misdemeanor, and shall be punished by fine of not less than fifty dollars, nor more than five hundred dollars, or by imprisonment in county jail of not less than ninety days nor more than one year or both. (Id. § 3777.)

99. **Score Cards.**—It shall be the duty of the State Dairy, Food and Oil Commissioner* or his deputies, to visit as frequently as they deem necessary, all creameries, cheese factories, condensed milk factories, dairies where milk and cream are bottled or prepared for sale, and farm dairies in the State of Wyoming,

*See No. 30. This law is to be corrected accordingly.

and inspect and score the same according to the score cards authorized by the animal industry of the United States Department of Agriculture. A copy of the score cards shall be left with the owner and such information given as will assist the producer to improve the sanitary conditions or remedy such defects as the score card indicates. A copy of the score card shall be kept on file in the commissioner's office. All creameries, cheese factories, condensed milk factories and dairies where milk and cream are bottled or prepared for sale and farm dairies falling below fifty (50) points in the rating as indicated by the score card are hereby declared to be in an unsanitary condition, and the State Dairy, Food and Oil Commissioner shall immediately proceed against them according to law. (Id. § 3778.)

100. Diseased Cattle in Dairies.—No person selling or exchanging, furnishing or delivering milk or dairy products, shall have in his possession at any place where milk cows are kept, any cattle having tuberculosis or other infectious or contagious disease. It shall be the duty of the State Dairy, Food and Oil Commissioner of this State, in case he shall find that cattle are kept in violation of the provisions of this chapter, to cause all such cattle having any contagious or infectious disease to be disposed of, according to the laws of the State. (Id. § 3779.)

101. Sanitary Conditions of Premises, Receptacles and Products.—All premises, cans, bottles and utensils employed or used in the production, transportation, sale or delivery of milk or cream for consumption, or employed or used in the manufacture or sale of any food products, shall be kept in a clean and sanitary condition, and no person shall sell, offer for sale, or have in his possession with intent to sell, any milk, cream or other food product, not manufactured, transported and offered for sale under such clean and sanitary conditions. The commissioner, or other person duly appointed by him, shall have power, when inspecting such cans, bottles and utensils used in the production, transportation, manufacture or sale of milk, cream or other food products, to order the use of any such can, bottle or other utensils, which is in an unclean or unsanitary condition, discontinued until such utensils have been put in a clean and sanitary condition, and any person, firm or corporation who receives any milk or cream in cans, bottles, or vessels which have been transported over any railroad where such cans, bottles or vessels are to be returned, shall cause the said bottles or vessels to be immediately washed and thoroughly cleansed and aired. (Id. § 3780.)

102. Unclean and Adulterated Milk.—No person, firm or corporation shall keep cows for the production of milk in a crowded condition, or in stables which are not properly ventilated, or which are filthy from accumulation of animal refuse or from any other cause. Nor shall milk for food purposes be drawn from cows which are themselves in a condition of filth or uncleanliness, or from cows which are affected with tuberculosis, running sores, or any other form of disease, or from cows which are fed either wholly or in part upon distillery waste, or brewery grains, or the waste of vinegar, or that of sugar factories, not properly dried. or upon any other form of food which will produce milk which is unhealthful or unwholesome, or from cows within fifteen days (15) before and five days (5) after parturition: And all milk thus produced is hereby declared to be unclean, impure, unhealthful and unwholesome milk, and any milk to which water or any other foreign substance has been added or from which any part of the milk commonly known as "strippings" has been withheld, or which has been deprived, either wholly or in part, of any constituent naturally or normally contained in milk, is hereby declared to be adulterated milk. (Id. § 3781.)

103. Contagious Disease Upon Premises.—The sale of milk from cows kept upon premises occupied by a family in which there is a contagious disease is prohibited, and no milk from such cows shall be sold or otherwise disposed of to any person until a permit shall be granted by the Dairy, Food and Oil Commissioner, or his deputy, which permit shall be issued only after the Dairy, Food and Oil Commissioner shall receive a certificate from the State Board of Health or county or city health officer, stating that the premises have been disinfected, and in case of typhoid fever, that the privy or cesspool has also been disinfected. (Id. § 3782.)

104. Slaughterhouses.—All yards, fences, pens, chutes, alleys, etc., belonging to the premises of all slaughtering establishments, whether they are used or not, shall be maintained in a sanitary condition, and no nuisance shall be allowed in the establishment or on its premises. Hogs must be kept at least one hundred feet from slaughtering houses and fed in clean troughs and pens. (Id. § 3783.)

105. Feed Offal Prohibited.—It shall be unlawful for any person to feed swine or animals of any kind used for human food, the flesh or offal of any animal that has died from infectious or contagious disease. (Id. § 3784, as amended L. 1921, c. 20.)

106. Soiled Meat.—Due care must be taken to prevent meat and meat food products from falling on the floor, and in the event of their having so fallen, they must be condemned or the soiled portions removed and condemned. When meat or meat products are being emptied into tanks, some device, such as a metal funnel, must be used. (C. S. 1920, § 3785.)

107. Bread Must be Wrapped.—It shall be unlawful for any person, firm, or corporation engaged in the manufacture or baking of bread to be sold for food in the State of Wyoming, to remove such bread from the building in which it is baked or manufactured before inclosing it in a suitable sanitary wrapper or package that will protect it from dust, insects or other contamination. It shall be unlawful for any dealer or other person to sell, deliver or cause to be delivered in the State of Wyoming, any bread intended to be used as food unless the same is inclosed in a suitable sanitary wrapper or package that will protect it from dust, insects or other contamination. (Id. § 3786.)

108. Food Previously Served.—It shall be unlawful for hotels, restaurants, eating houses, or other places, where food is prepared, to serve food that has been previously served to another person or persons. All food so sold or served shall be considered unclean, unsanitary and unfit for human consumption. (Id. § 3787.)

109. Milk and Cream at Hotels—Watered Milk.—It shall be unlawful for hotels, restaurants, eating houses or any other place or places, where food is prepared to serve any but pure whole milk and undiluted cream free from any added preservative, and any such place or places serving skimmed milk or diluted cream that does not comply with the standards adopted by this State for such articles, shall have large signs conspicuously placed, stating that skimmed milk and diluted cream are served instead of the pure article. The sale of watered milk is prohibited. (Id. § 3788.)

110. Inspection—Prosecution.—The State Dairy, Food and Oil Commissioner and his assistant or agents by him appointed, shall have full power at all reasonable times to enter and inspect every building, room, basement, or cellar occupied or used for the production for sale, manufacture for sale, storage, sale, distribution or transportation of food and all utensils, fixtures, furniture and machinery used as aforesaid, and, if upon inspection any food producing or distributing establishment, conveyance, employer, operative employee, clerk, driver, or other person is found to be violating any of the provisions of this act, or if the production, preparation, manufacture, packing, storing, sale, distribution, or transportation of food is being conducted in a manner detrimental to the health of the employees and operatives and the character or quality of the food therein being produced, manufactured, packed, stored, sold, distributed, or conveyed, the officer or inspector making the examination or inspection shall furnish evidence of said violation to the county attorney of the county in which the violation occurs, and it shall be the duty of all prosecuting attorneys to represent and prosecute in behalf of the people when called upon by the Dairy, Food and Oil Commissioner to do so, all such cases of offense arising under the provisions of this act.

Power is hereby given the Dairy, Food and Oil Commissioner, or his assistants or agents by him appointed, to close without formal warrant any building, room, basement or cellar used or occupied for the production for sale, manufacture for sale, storage, sale, distribution or transportation of food, provided such building, room, basement, or cellar is in an unsanitary condition and such action seems suitable in the best judgment of the Dairy, Food and Oil Commissioner, or his assistants or agents. Any such building, room, basement, or cellar so closed shall not be reopened except by written permission of the Dairy, Food and Oil Commissioner, or his assistants or agents, and only after they are satisfied that the building, room, basement, or cellar is and will be conducted in a sanitary manner thereafter. (Id. § 3789, as amended L. 1921, c. 17.)

111. Misdemeanor—Penalty.—Any person who violates any of the provisions of this chapter shall be guilty of a misdemeanor, and on conviction shall be punished for the first offense by a fine of not less than ten ($10) dollars, nor more than fifty ($50) dollars; and upon conviction for each subsequent offense by a fine of not less than fifty dollars ($50) nor more than one hundred dollars ($100), or be imprisoned in the county jail not exceeding thirty days (30), or both, in the discretion of the court. (C. S. 1920, § 3790.)

112. Salary—Deputy Dairy, Food and Oil Commissioner.—There shall be appointed by the Dairy, Food and Oil Commissioner, by and with the approval of the Governor, a deputy to the Dairy, Food and Oil Commissioner who shall act as sanitary inspector for the purpose of carrying out the provisions of this chapter, also to perform such other duties as may be required by the Dairy, Food and Oil Commissioner. He shall receive a salary of eighteen hundred ($1,800.00) dol-

lars per year for his services to be paid by the State of Wyoming out of any money not otherwise appropriated, the same to be paid by the State Auditor in the manner provided for the payment of other accounts against the State. He shall receive his necessary traveling expenses to be paid by the State of Wyoming when employed in performing the provisions of this chapter. (Id. § 3791.)

113. **Rules and Regulations.**—In executing the provisions relating to this chapter, the Dairy, Food and Oil Commissioner shall from time to time make, promulgate and enforce such rules and regulations as may be necessary and proper to a prompt and effective enforcement of this chapter, in accordance with its true intent. (Id. § 3792.)

NOTE: See also Nos. 34 et seq. and 78 et seq.

PART III.

Special Drug Laws.

Abortifacients—Contraceptives, Etc.

114. **Selling Obscene Literature.**—Whoever sells or lends, or offers to sell or lend, or gives away, or offers to give away, or in any manner exhibits, or has in his possession, with or without intent to sell, lend or give away, any obscene, lewd, indecent, or lascivious book, pamphlet, paper, drawing, lithograph, engraving, picture, daguerreotype, photograph, stereoscopic picture, model, cast, instrument or article of indecent or immoral use, or instrument or article for procuring abortion or for self-pollution, or medicine for procuring abortion or preventing conception; or advertises the same or any of them for sale; or writes or prints any letter, circular, handbill, card, book, pamphlet, advertisement, or notice of any kind; or gives information orally, stating when, how, where, or by what means, or of whom, any of the obscene, lewd, indecent, or lascivious articles or things hereinbefore mentioned, can be purchased, borrowed, presented or otherwise obtained, or are manufactured; or manufactures or draws and exposes or draws with intent to sell, or have sold, or prints any such articles or things shall be fined not more than one hundred dollars, to which may be added imprisonment in the county jail, not more than six months; but nothing in this section, or in the next two sections shall be construed to affect teaching in regularly chartered medical colleges, or the publication of standard medical books, or the practice of regular practitioners of medicine or druggists in their legitimate business. (C. S. 1920, § 7200.)

115. **Mailing Obscene Literature.**—Whoever deposits in any post office in this State, or places in charge of any person to be carried or conveyed, any lewd, obscene, indecent or lascivious book, paper, pamphlet, drawing, lithograph, engraving, picture, daguerreotype, photograph, stereoscopic picture, model, cast, instrument or article of indecent or immoral use, or instrument or article for procuring abortion, or for self-pollution, or medicine for procuring abortion or preventing conception, or any circular or handbill, card, advertisement, book, pamphlet, or notice of any kind; or gives oral information, stating when, where, how, or of whom such articles or things or any of them can be purchased or otherwise obtained; or knowingly carries or conveys the same, except in the United States mail, shall be fined not more than one hundred dollars, to which may be added imprisonment in the county jail not more than six months. (Id. § 7201.)

116. **Advertising Private Medicine.**—Whoever prints or publishes any advertisement of any secret drug or nostrum purporting to be for the exclusive use of females or which cautions females against their use when in a condition of pregnancy; or in any way publishes any account or description of any drug, medicine, instrument, or apparatus for preventing conception, or for procuring abortion or miscarriage; or sells or gives away, or keeps for sale or gratuitous distribution, any newspaper, circular, pamphlet, or book containing such advertisement, account or description, or any secret drug or nostrum purporting to be exclusively for the use of females, or for preventing conception, or procuring abortion or miscarriage, shall be fined not more than one hundred dollars, to which may be added imprisoment in the county jail not more than six months. (Id. § 7202.)

Insecticides.

See No. 139e.

Pharmacy, Poisons and Narcotics.

117. **Registered Pharmacists Only Can Retail Drugs.**—It shall not be lawful for any person, other than a registered pharmacist, to retail, compound or dispense drugs, medicines, or poisons, or to open or conduct any pharmacy or store for retailing, compounding, or dispensing drugs, medicines or poisons unless such person shall be, or shall employ and place in charge of such pharmacy or store, a registered pharmacist within the meaning of this chapter, except as hereinafter provided. (C. S. 1920, § 3557.)

118. **Registered Pharmacist Defined.**—Any person, in order to be registered within the meaning of this chapter, must be a graduate in pharmacy, or a licentiate in pharmacy. (Id. § 3558.)

119. **Licentiates in Pharmacy.**—Licentiates in pharmacy must possess the fundamentals of an English education course, be twenty-one years of age and be such persons as have had three consecutive years of practical experience in drug stores wherein the prescriptions of medical practitioners are compounded, and who have passed a satisfactory examination before the Commissioners of Pharmacy, hereinafter mentioned. The Commissioners of Pharmacy may grant certificates of registration without further examination to graduates in pharmacy who have obtained a diploma from such colleges and schools of pharmacy as shall be approved by said commission; and may also grant certificates of registration, without further examination, to the licentiates of such other State or Territorial Boards of Pharmacy as they may deem proper. (Id. § 3559.)

120. **Commissioners of Pharmacy.**—The Governor shall nominate, and by and with the advice and consent of the Senate, shall appoint three persons from among such registered pharmacists in the State as have had five years' practical experience in the dispensing of physicians' prescriptions, and be and remain engaged in the practice of pharmacy while a member of said commission, who shall constitute the Commission of Pharmacy herein named. The persons so appointed shall hold their offices for the term of six years, or until their successors are appointed and qualified; provided, that the term of office of the three commissioners first appointed shall be so arranged that the term of one shall expire on the thirty-first day of March in each second year thereafter, and the vacancies so occurring shall be filled by appointment by the Governor made with the advice and consent of the Senate. All vacancies occurring during the recess of the Legislature shall be filled in the manner provided by law. The said commissioners shall be appointed from different counties so as to represent the several portions of the State, as nearly as possible. (Id. § 3560.)

121. **Organization, Meetings and Duties of Commission.**—The said commission shall within thirty days after its appointment meet and organize by the election of a president and secretary from its own numbers, who shall be elected for the term of one year and shall perform the duties prescribed by the commission. It shall be the duty of the commission to examine all applications for registration submitted in proper form; to grant certificates of registration to such persons as may be entitled to the same under the provisions of this chapter; to cause the prosecution of all persons violating its provisions; to report annually to the Governor upon the condition of pharmacy in the State, which said report shall also furnish a record of the proceedings of the said commission for the year, and also the names of all pharmacists duly registered under this chapter. The commission shall hold meetings for the examination of applicants for registration and the transaction of such other business as shall pertain to its duties, at least once in four months. Said commission shall have power to make by-laws for the proper fulfillment of its duties under this chapter, and shall keep a book of registration, in which shall be kept the names and places of business of all persons registered under this chapter, together with the date of registration, which book shall also specify such facts as said persons shall claim to justify their registration. Two members of said commission shall constitute a quorum. (Id. 3561.)

122. **Fees.**—Every person applying for registration as a registered pharmacist shall, before a certificate is granted, pay to the secretary of the commission the sum of ten dollars, and a like sum shall be paid to said secretary by graduates in pharmacy and by licentiates of other commissions who shall apply for registration and every applicant for registration by examination shall pay the sum of ten dollars to said secretary before examination. If the applicant fails to pass a satisfactory examination his money shall be refunded, and he shall not be eligible for re-examination within four months from the date of such previous examination. After the said four months

shall have elapsed the applicant shall be entitled to re-examination upon the payment of a fee of ten dollars, as aforesaid, but such fee shall not be refunded if the applicant fails to pass a satisfactory examination. Upon failing to satisfactorily pass the second examination the applicant may be re-examined at any regular meeting of the commission upon the payment of a fee of three dollars. (Id. § 3562.)

123. Annual Fees—Certificates Kept in Public Place.—Every registered pharmacist or registered assistant pharmacist who desires to keep his certificate in force shall annually thereafter on such date as the Commission of Pharmacy may determine pay to the secretary of said Commission of Pharmacy a registry fee, to be fixed by the commission, but which shall in no case exceed two dollars, for which he shall receive a renewal of said certificate. All certificates issued during the year expire December 31st of that year. Every certificate of registration granted under this chapter shall be conspicuously exposed in the pharmacy to which it applies. Any registered pharmacist or registered assistant pharmacist who shall fail to procure the renewal of his certificate at the time stated by the commission shall not receive a renewal thereof except upon the payment of the renewal fee for each year or fraction thereof that may have elapsed between the expiration of said certificate and the application for a renewal thereof, and in addition thereto a penalty of one dollar for each year or fraction thereof so elapsing between the date of expiration of such certificate and application for a renewal, before a new certificate shall be issued. (Id. § 3563.)

124. Salary of Secretary.—The secretary of the commission shall receive a salary which shall be fixed by the commission. He shall also receive his traveling and other expenses incurred in the performance of his official duties. The other members of the commission shall receive the sum of five dollars for each day actually engaged in this service, and all legitimate and necessary expenses incurred in attending the meetings of said board; said expenses shall be paid from appropriations made for that purpose. All moneys received by the commission for fees and penalties shall, upon receipt thereof by the secretary, be paid into the State Treasury for credit to the general fund. The commission shall in its annual report to the Governor render an account of all moneys received and disbursed by them pursuant to the provisions of this chapter. (Id. § 3564.)

125. Registered Pharmacist Required.—Any person, firm or corporation who shall keep a pharmacy or drug store or engage in the retailing or compounding of medicine not being, or having in his or their employ, a registered pharmacist within the meaning of this chapter, or who shall take, use or exhibit the title of a registered pharmacist, shall be guilty of a misdemeanor and for each and every offense shall be liable to a penalty of fifty dollars. Any registered pharmacist who shall permit the compounding and dispensing of prescriptions or the vending of drugs, medicines or poisons in his store or place of business except under the supervision of a registered pharmacist, or except by a "registered assistant pharmacist," under the supervision of the registered pharmacist in charge, or any pharmacist or "registered assistant" who, while continuing in practice, shall fail or neglect to procure his annual registration, or any person who shall willfully make any false representation to procure registration for himself or any other person, shall be guilty of a misdemeanor and for every offense shall be liable to a penalty of fifty dollars; provided, that nothing in this chapter shall apply to, or in any way interfere with the business of any physician, or prevent him from supplying to his patients such articles as may seem to him proper, nor with the making and vending of patent or proprietary medicines, nor with the exclusive wholesale business of any dealers as hereinafter provided; and provided, further, that no part of this section shall be so construed as to give the right to any physician to furnish any intoxicating liquors as a beverage. (Id. § 3565.)

126. Assistant's Certificate.—Certificates as assistant pharmacist shall be issued to such person as shall be eighteen years of age or over, having the educational qualification prescribed in § 3559 hereof, and who have had two years' practical experience in drug stores in which the prescriptions of medical practitioners have been compounded during such time, and as shall pass a satisfactory examination before said board, and comply with the provisions of this chapter. The fact of such qualifications and experience shall be shown to the satisfaction of the board. Applicants for license as assistant pharmacists shall pay to the secretary of the board a fee of $5.00 before they shall be entitled to take such examination. Such certificate shall not entitle him to engage in the practice of pharmacy on his own account, nor to conduct or operate any pharmacy or drug store except under the supervision of a registered pharmacist. Annually thereafter during such time as he shall continue in such duties, he shall pay to the secretary

a sum not exceeding $1.50, for which he shall receive a renewal of his certificate. (Id. § 3566.)

127. **When Certificate Refused.**—The State Board of Pharmacy shall not grant a certificate or license to any applicant if satisfied that the safety of the public health may be endangered by reason of the habits or character of said applicant. If any person shall have obtained a license by misrepresentation or fraud or shall become unfit or incompetent by reason of negligence or intemperate habits, or other causes, to practice as a pharmacist, the State Board of Pharmacy shall have the power to revoke such license after giving such person reasonable notice and an opportunity to be heard. And if any licensee shall willfully violate any of the provisions of this chapter, or the rules and regulations established by the State Board of Pharmacy, such board may revoke his license upon proof of such violation, which revocation shall be in addition to any other penalty provided by law for such violation. Whenever the board shall revoke the license or registration of any pharmacist or registered assistant pharmacist, the secretary thereof shall notify the registered person of such action and such person shall immediately return to the board his certificate of registration. (Id. § 3567.)

128. **Adulteration—Penalty.**—No person shall add to or remove from any drug, medicine, chemical or pharmaceutical preparation any ingredient or material for the purpose of adulteration or substitution, or which shall deteriorate the quality, commercial or medical effect, or which shall alter the nature or composition of such drug, medicine, chemical or pharmaceutical preparation so that it will not correspond to the recognized test of identity or purity. Any person who shall thus willfully adulterate or alter, or cause to be adulterated or altered, or shall sell or offer for sale any such adulterated or altered drug, medicine, chemical or pharmaceutical preparation, or any person who shall substitute or cause to be substituted one material for another with the intention to defraud or deceive the purchaser, shall be guilty of a misdemeanor, and be liable to prosecution under this chapter. If convicted he shall be liable to all the costs of the action, and all expenses incurred by the Commissioners of Pharmacy in connection therewith, and for the first offense be liable to a fine of not less than fifty dollars nor more than one hundred dollars, and for each subsequent offense a fine of not less than seventy-five nor more than one hundred and fifty dollars. On complaint being entered the Commissioners of Pharmacy are hereby empowered to employ an analyst or chemical expert whose duty it shall be to examine into the so claimed adulteration, substitution or alteration, and report upon the result of his investigation; and if said report justify such action the commission shall duly cause the prosecution of the offender as provided in this chapter. (Id. § 3568.)

129. **Sale of Poisons.**—No persons except registered pharmacists shall sell at retail any poisons commonly recognized as such, and especially aconite, arsenic, belladonna, biniodide of mercury, carbolic acid, chloroform, conium, corrosive sublimate, or creosote, croton oil, cyanide of potassium, digitalis, hydrocyanic acid, nux vomica, oil of bitter almonds, oxalic acid, strychnine, sugar of lead, sulphate of zinc, white precipitate, red precipitate, or any drugs or chemicals of a like poisonous nature which would be destructive to human life when taken in doses of sixty grains or less, and no person shall sell any of the above named poisons or drugs, without affixing to the box, bottle, vessel or package containing the same, and to the wrapper or cover thereof, a label bearing the name of the article and the word "Poison" distinctly shown with the name and place of business of the seller. No person shall deliver any of said poisons to any person under the age of twenty-one years, except on order of parent or guardian of said minor, nor shall he deliver any of said poisons to any persons without satisfying himself that such poison is to be used for a legitimate purpose; provided, that nothing herein contained shall apply to the dispensing of physicians' prescriptions of any of the poisons or articles aforesaid. It shall be the duty of the person vending any of the poisons aforesaid before delivering the same to the purchaser, to cause an entry to be made in a book kept for that purpose, stating the date of sale, the name and address of the purchaser, the name [and] quantity of the poison and the purpose for which it is to be used and the name of the dispenser; and such books shall always be open for inspection by the proper authorities and shall be preserved for reference for at least two years. Any person failing to comply with the requirements of this section shall be liable to a penalty of not less than ten dollars nor more than one hundred dollars for each and every offense. It shall be the duty of the Commission of Pharmacy to enforce all laws pertaining to drug stores or pharmacies. (Id. § 3569.)

130. **Sale of Narcotics.**—Except as hereinafter provided, it shall be unlawful for any person, whether acting for himself or as agent, to possess or sell or

otherwise dispose of cocaine, eucaine, beta eucaine, alpha eucaine, morphine, heroin, chloral, chloral hydrate, Indian hemp, opium, or any salt, compound or derivative thereof, except upon the prescription of a licensed practicing physician registered in this State. No person filling the prescription shall refill the same nor give any copy thereof to the party presenting said prescription. The said prescription shall be kept on file and open to inspection by the State Board of Pharmacy Commission, city or county authorities or of the State Board of Medical Examiners, at any time, provided that the above provisions shall not apply to sales at wholesale by jobbers, wholesalers and manufacturers to retail druggists, nor to sales at retail by druggists to regular licensed practicing physicians registered in this State, or to dentists or veterinary surgeons registered in this State, nor to sales to State, county or private hospitals. And provided, further, that the above provisions shall not apply to such preparations as are recognized by the United States Pharmacopœia or National Formulary, or pharmaceutical preparations to be used in the filling of prescriptions written by a regular practicing physician in this State. Any person found guilty of any violation of the provisions of this section, shall be deemed guilty of a felony and shall be fined not less than $500.00 nor more than $1,000.00, or imprisoned in the State Penitentiary for a term of not less than one year nor more than three years, or be punished by both such fine and imprisonment in the discretion of the court. (Id. § 3570.)

131. **Felony—Penalty.**—Any person found guilty of any violation of the provisions of sections 3570 or 3572 shall be deemed guilty of a felony and shall be fined not less than $500.00 nor more than $1,000.00 or imprisoned in the State Penitentiary for a term of not less than one year nor more than three years, or punished by both such fine and imprisonment in the discretion of the court. (Id. § 3571.)

132. **Physicians—Dosage—Penalty.**—No practitioner of medicine, druggist, or veterinary medicine shall furnish to or prescribe for the use of any habitual user of the same, any cocaine, eucaine, beta eucaine, alpha eucaine, morphine, chloral, chloral hydrates, Indian hemp, opium, or any salt or compound of any of the foregoing substances or preparation containing any of the foregoing substances, to any person not under his treatment in the regular practice of his profession, and no practitioner of veterinary medicine shall administer any of the foregoing substances to any human being. Provided, however, that the provisions of this section shall not be so construed as to prevent any lawfully authorized practitioner of medicine from prescribing or administering in good faith, cocaine not exceeding two grains to any one person within the period of 24 consecutive hours; morphine not to exceed 4 grains to any one person within the period of 24 consecutive hours; codeine, Indian hemp, eucaine, alpha eucaine, beta eucaine, opium, or any of its derivatives, not to exceed 4 grains within any consecutive period of 24 hours,; chloral not to exceed 240 grains within any consecutive period of 24 hours, provided, that the provisions of this act shall not be so construed as to prevent the use of the foregoing substances in hospitals in any quantity deemed necessary by the attending physician when such administration is not for the purpose of evading the provisions of this act. When any physician shall administer or prescribe in excess of the dosage of drugs mentioned in this section, within any 24 hours, he shall within 5 days make a report of such action to the secretary of the State Board of Health, stating fully name of patient and conditions under which drugs were administered or prescribed. It shall be the duty of the State Pharmacy Commission to enforce these sections. Any person found guilty of any violation of the provisions of this section shall be deemed guilty of a felony and shall be fined not less than $500.00 nor more than $1,000.00 or imprisoned in the State penitentiary for a term of not less than one year nor more than three years, or be punished by both such fine and imprisonment in the discretion of the court. (Id. § 3572.)

133. **Liquor Sales.**—It shall be unlawful for any person or persons to conduct a saloon or bar in a drug store or pharmacy in connection therewith, or in any room adjoining and connecting therewith by any doorway, passage or opening whatever, or in any manner engage in the selling or giving away of intoxicating liquors as a beverage in any drug store or pharmacy or in connection with any such store in the State of Wyoming, and it shall be unlawful for the authorities of any county or municipality to grant a license for the sale of intoxicating liquors as a beverage within or in connection with a drug store or pharmaceutical establishment in the State of Wyoming. Any pharmacist or assistant pharmacist or owner of a pharmacy, while engaged in the practice of pharmacy, found guilty of a violation of the provisions of this chapter, shall be fined in a sum not less than $500.00 nor more than $1,000.00, and shall suffer the revocation of his or

her certificate; provided, however, that after compliance with the provisions of this chapter he or she may be re-instated, at the discretion of the State Board of Pharmacy Commission. (Id. § 3573.)

134. **Interference With Board.**—Any person or persons interfering with any member of the Commission of Pharmacy in the discharge of his duties shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined in the sum of not less than $50.00 nor more than $500.00, to which may be added imprisonment in the county jail for a period not exceeding sixty days, in the discretion of the court. (Id. § 3574.)

135. **Application.**—Nothing in this chapter shall apply to patent or proprietary medicines that have complied with the requirements of the National Pure Food and Drug Act, or to the selling of carbolic acid and strychnine in original packages. (Id. § 3575.)

136. **Suits—How Instituted.**—All suits for the recovery of the several penalties prescribed in this chapter shall be prosecuted in the name of the State of Wyoming, in any court having jurisdiction, and it shall be the duty of the prosecuting attorney of the county where such offense is committed to prosecute all persons violating the provisions of this chapter upon proper complaint being made. All penalties collected under the provisions of this chapter shall inure to the Commissioners of Pharmacy. (Id. § 3576.)

137. **Keeping Opium Dens.**—It shall be unlawful for any person or persons whomsoever to keep any house, saloon, hotel, or any place whatsoever, either public or private where opium smoking or the use of opium in any form is practiced; but nothing in this section shall be construed to prevent the sale of opium in any drug store upon the written prescription of any duly authorized medical practitioner. (Id. § 7259.)

138. **Frequenting Opium Dens.**—It shall be unlawful for any person or persons whomsoever to reside in or to visit or frequent any house, saloon, hotel or any place whatsoever, either public or private, where the use of opium in any form is practiced or indulged in. (Id. § 7260.)

139. **Penalty for Violating Last Two Sections.**—Any person violating the provisions of either of the last two preceding sections, shall upon conviction in any court of this State, be fined for each offense in any sum not less than fifty dollars nor more than one hundred dollars, or be imprisoned in the county jail not less than two months, nor more than five months, one-half of which sum shall be paid to the person giving information of the offense, the other one-half to be paid into the treasury of the county where the offense was committed, for the benefit of the school fund of such county. (Id. § 7261.)

139a. **Giving Intoxicants to Convicts Prohibited.**—Every person who shall sell or give to any person confined in the State Penitentiary or other penal institution, convict camp or any other place of confinement outside the penal institution walls within this State, or shall send by mail, express or otherwise to any such person so confined, any morphine, cocaine, whiskey or other drug or form of liquor of any character whatever, except when the prescription or order of a regularly licensed and employed physician, upon conviction shall be punished by confinement in the penitentiary for a term of not less than one year, nor more than five years, or may be imprisoned in the county jail for not more than six months. (Id. § 7278.)

139b. **Bringing Drugs Into Prisons or Reformatories.**—Any person, not authorized by law, who brings into or passes into the State Penitentiary of the State of Wyoming, or any of the reformatories therein, or within the grounds of such institutions, or brings into or passes into any jail or any insane hospital, within the State of Wyoming, any cocaine, or its derivatives; opium, or its derivatives; chloral hydrate, or its derivatives; or any other opiate, narcotic or drugs, the effect of which is to induce delirium, or intoxicating liquors of any kind whatsoever, is guilty of a felony, and upon conviction thereof, shall be punished by imprisonment in the State penitentiary for a term of not less than one nor more than three years. (Id. § 7279.)

139c. **Itinerants Prohibited From Practicing—Penalty.**—Any itinerant who has not qualified as hereinbefore provided, who shall sell or offer for sale any drug, nostrum or appliance of any kind intended for the treatment of any disease or injury or deformity, or for correction of impairment of vision or hearing, or shall by writing, printing or other method, except by ordinary professional card or sign, publicly profess to cure or treat disease, injury or deformity, by any drugs, nostrum, or in any manner whatever, shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined in any sum not less than fifty dollars nor more than one hundred dollars, and costs of prosecution, for each offense, and shall be committed until such fine and costs are paid; provided, that any one who shall maintain an office or residence in the State for a period of not more than three months in any one year shall be deemed an itinerant. (Id. § 3528.)

139d. Duty of County Commissioners.—The board of county commissioners of any county engaged in the destruction of injurious rodents and magpies under the provisions of this act is authorized to secure poisons in quantity, grain and other supplies and to furnish the same at cost to owners, occupants, and lessees of land infested with injurious rodents and magpies and where no county agricultural agent is employed, to authorize or employ a suitable person or persons, approved by the Bureau of Biological Survey of the United States Department of Agriculture and the Extension Service of the University of Wyoming Agricultural College, to prepare baits, supervise their distribution and otherwise control injurious rodents and magpies and to pay such person or persons a reasonable compensation for such services, provided, however, that in counties where a county agricultural agent is employed, said county agricultural agent shall be designated rodent control specialist, and shall serve without extra compensation and salary, except the actual traveling expenses incurred in the performance of his duties as defined by this act. (L. 1923, c. 20, § 5.)

139e. Purchase of Poisons.—After a pest inspection district has been formed the board of county commissioners so affected may, from time to time, purchase such quantities and amounts of poisons, traps and other equipment necessary to carry out the provisions of this act to poison, catch or control such insect pests, plant diseases or weeds, and warrants in payment thereof shall be drawn on the general fund. (L. 1925, c. 148, § 11.)

Venereal Disease Drugs.

140. Advertisement of Cure for Venereal Diseases.—It shall be unlawful for any person to publish or cause to be published, to deliver or distribute or cause to be delivered or distributed in any manner whatsoever, or to post, or display, or to [let] remain on any buildings, windows, or outhouses, or premises, or other surface owned or controlled by him in the State of Wyoming, or to manufacture or sell, or to have diplayed in or on any window or place where the same could be read by passers-by or the public, any advertisement, label, statement, print, or writing which refers to any person or persons from whom, or to any means by which, or to any office or place at which may be obtained any treatment or cure for syphilis, gonorrhea, chanchroid, lost manhood, sexual weakness, lost vitality, impotency, seminal emissions, gleet, varicocele, or self-abuse, whether described by such names, words, terms, or phrases, or by any other names, words, terms, or phrases, calculated or intended to convey to the reader the idea that any of said diseases, infirmities, disabilities, conditions, or habits are meant or referred to, or which refers to any medicine, article, device, or preparation that may be used for the treatment, cure, or prevention of any of the diseases, infirmaties, disabilities, conditions, or habits mentioned in this section. (L. 1921, c. 160, § 18.)

141. Definition of "Person."—The word "person" as used herein, shall mean and include natural persons, copartnerships, corporations and associations, and shall include persons of both sexes. (Id. § 19.)

142. Exceptions.—This act shall not apply to publications, advertisements, or notices of the United States Government, the State of Wyoming or of any city in the State of Wyoming. (Id. § 20.)

143. Penalty.—Any person violating any of the provisions of sections 18 and 19 shall be punished by a fine of not more than one hundred dollars, or by imprisonment for not more than thirty days, or by both such fine and imprisonment. (Id. § 21.)

Intoxicating Liquors.

144. Object and Construction of Act.—This entire act shall be deemed to be an exercise of the police power of the State for the protection of the public health, peace, safety and morals, and all of its provisions shall be liberally construed for the accomplishment of these purposes. (L. 1921, c. 117, § 1.)

145. Definition of Terms.—When used in this Act (1) The word "liquor" or the phrase "intoxicating liquor" shall be construed to include alcohol, brandy, whiskey, rum, gin, beer, ale, porter, and wine, and in addition thereto any spirituous, vinous, malt or fermented liquor, liquids and compounds, whether medicated, proprietary, patented or not, and by whatever name called, containing one-half of 1 per centum or more of alcohol by volume which are fit for use for beverage purposes: Provided, that the foregoing definition shall not extend to dealcoholized wine nor to any beverage or liquod produced by the process by which beer, ale, porter or wine is produced, if it contains less than one-half of 1 per centum of alcohol by volume, and is made as prescribed in section 37 of Title 11 of the Act of Congress known as the "National Prohibition Act" passed October 28, 1919,

and is otherwise denominated than as beer, ale, or porter, and is contained and sold in, or from, such sealed and labeled bottles, casks, or containers as are in conformity with such regulations as may be prescribed under the authority contained in said "National Prohibition Act."

(2) The word "person" shall mean and include natural persons, associations, copartnerships, and corporations.

(3) Words in the singular number shall be held to include their plurals, and vice versa.

(4) Words in the maculine gender shall be held to include the feminine and neuter.

(5) The term "conviction" shall be held to include a "plea of guilty" entered in open court. (Id. § 2.)

146. Possession, Manufacture and Sale of Intoxicating Liquors Prohibited—Proviso.—No person shall on or after the date that this act goes into effect, manufacture, sell, barter, transport, import, export, deliver, furnish, or possess any intoxicating liquors except as authorized in this act.

Liquor for non-beverage purposes and wine for sacramental purposes may be manufactured, purchased, sold, bartered, transported, imported, exported, delivered, furnished and possessed, but only as herein provided, and when permits have been issued therefor in accordance with the provisions of this act. (Id. § 3.)

147. Articles Exempt from Provisions of Act.—The articles enumerated in this section shall not, after having been manufactured and prepared for the market, be subject to the provisions of this act if they correspond with the following descriptions and limitations, namely:

(a) Denatured alcohol or denatured rum produced and used as provided by laws and regulations now or hereafter in force.

(b) Medicinal preparations manufactured in accordance with formulas prescribed by the United States Pharmacopœia, National Formulary or the American Institute of Homeopathy that are unfit for use for beverage purposes.

(c) Patented, patent and proprietary medicines that are unfit for use for beverage purposse [purposes].

(d) Toilet, medicinal and antiseptic preparations and solutions that are unfit for use for beverage purposes.

(e) Flavoring extracts and syrups that are unfit for use as a beverage, or for intoxicating beverage purposes.

(f) Vinegar and preserved sweet cider.

A person who manufactures any of the articles mentioned in this section may purchase and possess liquor for that purpose, but he shall secure the permits to manufacture such articles and to purchase such liquor, give the bonds, keep the records, and make the reports specified by the laws of the United States and the regulations made thereunder and as directed by the Commissioner of Internal Revenue. No such manufacturer shall sell, use, or dispose of any liquor otherwise than as an ingredient of the articles authorized to be manufactured therefrom. No more alcohol shall be used in the manufacture of any extract, syrup, or the articles named in paragraphs b, c, and d, of this section which may be used for beverage purposes than the quantity necessary for extraction or solution of the elements contained therein and for the preservation of the article.

Any person who shall knowingly sell any of the articles mentioned in paragraphs a, b, c and d, of this section for beverage purposes, or any extract or syrup for intoxicating beverage purposes, or who shall sell any of the same under circumstances from which the seller might reasonably deduce the intention of the purchaser to use them for such purposes, or shall sell any beverage containing one-half of 1 per centum or more of alcohol by volume in which any extract, syrup, or other article is used as an ingredient, shall be subject to the penalties provided in section 27 of this act. (Id. § 4.)

148. Permits for Use of Liquor.—No one shall manufacture, sell, purchase, transport or prescribe any liquor without first obtaining a permit therefor, as hereinafter provided, except that a person may, without permit, purchase and use liquor for medicinal purposes when prescribed by a physician as herein provided, and except that any person who is conducting a bona fide hospital or sanatorium engaged in the treatment of persons suffering from alcoholism, may under such rules, regulations and conditions as may be prescribed by the Commissioner of Internal Revenue, purchase, and use liquor, to be administered to the patients of such institution under the direction of a duly qualified physician employed by such institution. (Id. § 5.)

149. Issue of Permits—Application for—Specifications.—All permits as herein provided for shall be issued by the commissioner of law enforcement. Such per-

mits to manufacture, prescribe, sell or transport liquor, may be issued for one year and shall expire on the 31st day of December next succeeding the issuance thereof. A permit to purchase liquor shall not be in force to exceed thirty days from its date.

Any person desiring to obtain such permit shall file with the commissioner of law enforcement, his application stating his name, age, residence and occupation, and the purpose for which said liquor is to be used, and shall submit with such application a permit from the U. S. Commissioner of Prohibition and the affidavits of two reputable citizens of the State, showing the applicant to be a man of good moral character, and thereupon, if the said officer shall be satisfied that the applicant is a person of good moral character, and that he will not use said permit for unlawful purposes, he may issue to said applicant a permit for the manufacture, sale, purchase, prescription or transportation of liquor.

Permits to purchase liquor shall specify the quantity and kind to be purchased and the purpose for which it is to be used. No permit shall be issued to any person who within one year prior to the application therefor or the issuance thereof shall have violated the terms of any permit issued under the provisions of this act, or any law of any State or of the United States regulating traffic in liquor. No permit shall be issued to anyone to sell liquor at retail, unless the sale is to be made through a pharmacist by a duly licensed physician. No one shall be given a permit to prescribe liquor unless he is a physician duly licensed to practice medicine and actively engaged in the practice of his profession. Every permit shall be in writing, dated when issued and signed by the commissioner of law enforcement. It shall give the name and address of the person to whom it is issued and shall designate and limit the acts that may be performed under said permit.

Nothing in this act, shall be held to apply to the manufacture, sale, transportation, importation, possession or distribution of wine for sacramental purposes, or like religious rites, except that it shall be unlawful to manufacture, sell, transport, import, possess or distribute said wine otherwise than as provided by the laws of the United States and the regulations made thereunder. (Id. § 6.)

150. **Prescriptions for Liquor—Record of.**—No one but a physician holding a permit to prescribe liquor as provided in section 6 of this act shall issue any prescription for liquor. And no physician shall prescribe liquor unless after careful physical examination of the person for whose use such prescription is sought, or if such examination is found impracticable, then upon the best information obtainable, he in good faith believes that the use of such liquor as a medicine by such person is necessary and will afford relief to him from some known ailment. Not more than a pint of spirituous liquor to be taken internally shall be prescribed for use by the same person within any period of ten days and no prescription shall be filled more than once. Any pharmacist filling a prescription shall at the time indorse upon it over his own signature the word "canceled," together with the date when the liquor was delivered, and then make the same a part of the record that he is required to keep as herein provided.

Every physician who issues a prescription for liquor shall keep a record, alphabetically arranged in a book which shall show the date of issue, amount prescribed, to whom issued, the purpose or ailment for which it is to be used and directions for use, stating the amount and frequency of the dose. (Id. § 7.)

151. **Record of Liquor Handled.**—No person shall manufacture, purchase for sale, sell, or transport any liquor without making at the time a permanent record thereof showing in detail the amount and kind of liquor manufactured, purchased, sold or transported, together with the names and addresses of the persons to whom sold, in case of sale, and the consignor and consignee in case of transportation, and the time and place of such manufacture, sale or transportation. The record shall be in such form as the Commissioner of Internal Revenue shall prescribe and shall a tall times be open to inspection as in this act provided. (Id. § 9.)

152. **Records of Manufacturers and Druggists.**—All manufacturers and wholesale or retail druggists shall keep as a part of the records required of them a copy of all permits to purchase on which a sale of any liquor is made, and no manufacturer or wholesale druggist shall sell or otherwise dispose of any liquor except at wholesale and only to persons having permits to purchase in such quantities. (Id. § 10.)

153. **Labels for Manufactured Liquor.**—All persons manufacturing liquor for sale under the provisions of this act shall securely and permanently attach to every container thereof, as the same is manufactured a label stating name of manufacturer, kind and quantity of liquor contained therein, and the date of its manufacture, together with the number of the permit authorizing the manufacture thereof; and all persons possessing such liquor in wholesale quantities shall securely keep

and maintain such label thereon; and all persons selling at wholesale shall attach to every package of liquor, when sold, a label setting forth the kind and quantity of liquor contained therein, by whom manufactured, the date of sale, and the person to whom sold; which label shall likewise be kept and maintained thereon until the liquor is used for the purpose for which such sale was authorized. (Id. § 11.)

154. Records of Carriers.—It shall be the duty of every carrier to make a record at the place of shipment of the receipt of any liquor transported, and he shall deliver liquor only to persons who present to the carrier a verified copy of a permit to purchase, which shall be made a part of the carrier's permanent record at the office from which delivery is made.

The agent of the common carrier is hereby authorized to administer the oath to the consignee in verification of the copy of the permit presented, who, if not personally known to the agent, shall be identified before the delivery of the liquor to him. The name and address of the person identifying the consignee shall be included in the record. (Id. § 12.)

155. Marking of Package Containing Liquor.—It shall be unlawful for a person to use or induce any carrier, or any agent or employee thereof, to carry or ship any package or receptacle containing liquor without notifying the carrier of the true nature and character of the shipment. No carrier shall transport nor shall any person receive liquor from a carrier unless there appears on the outside of the package containing such liquor the following information:

Name and address of the consignor or seller, name and address of the consignee, kind and quantity of liquor contained therein, and number of permit to purchase or ship the same, together with the name and address of the person using the permit. (Id. § 13.)

156. Package Containing Liquor Cannot be Accepted Unless Properly Marked.—It shall be unlawful for any consignee to accept or receive any package containing any liquor upon which appears a statement known to him to be false, or for any carrier or other person to consign, ship, transport, or deliver any such package, knowing such statement to be false. (Id. § 14.)

157. Orders for Delivery of Liquor.—It shall be unlawful to give to any carrier or any officer, agent, or person acting or assuming to act for such carrier an order requiring the delivery to any person of any liquor or package containing liquor consigned to, or purporting or claimed to be consigned to a person, when the purpose of the order is to enable any person not an actual bona fide consignee to obtain such liquor. (Id. § 15.)

158. Advertisement of Liquor.—It shall be unlawful to advertise anywhere, or by any means or method, liquor, or the manufacture, sale, keeping for sale or furnishing of the same, or where, how, from whom, or at what price the same may be obtained. No one shall permit any sign or billboard containing such advertisement to remain upon one's premises.

The officers charged with the enforcement of this act are authorized to remove, paint over, or otherwise obliterate any such advertisement from any sign, billboard, or other place, and shall do so upon the demand of any citizen who has first requested the person in charge of such advertisement, or the owner of the property on which it is located, to remove the same.

But nothing herein shall prohibit manufacturers and wholesale druggists holding permits to sell liquor, from furnishing price lists, with description of liquor for sale, to persons permitted to purchase liquor, or from advertising alcohol in business publications or trade journals circulating generally among manufacturers of lawful alcoholic perfumes, toilet preparations, flavoring extracts, medicinal preparations, and like articles. (Id. § 16.)

159. Advertisement of Utensils or Recipes for Use in Manufacturing Liquor.—It shall be unlawful to advertise, manufacture, sell or possess for sale any utensil, contrivance, machine, preparation, compound, tablet, substance, formula, direction, or receipt advertised, designed or intended for use in the unlawful manufacture of intoxicating liquor. (Id. § 17.)

160. Soliciting Orders for Liquor.—No person shall solicit or receive, or knowingly permit his employee to solicit or receive, from any person any order for liquor, or give any information of how liquor may be obtained in violation of the provisions of this act. (Id. § 18.)

161. Possession of Liquor for Purpose of Sale.—Any person who shall, with intent to effect a sale of liquor, by himself, his employee, servant, or agent, for himself or any person, company or corporation, keep or carry around on his person, or in a vehicle, or other conveyance whatever, or leave in a place for another to secure, any liquor, or who shall travel to solicit, or solicit, or take, or accept

orders for the sale, shipment, or delivery of liquor in violation of this act is guilty of a nuisance and may be restrained by injunction, temporary and permanent, from doing or continuing to do any of said acts or things.

In such proceedings it shall not be necessary to show any intention on the part of the accused to continue such violations if the action is brought within sixty days following any such violation of the law. (Id. § 22.)

162. Penalty for Disposing of Liquor—Violation of Permit.—Any person who manufactures liquors in violation of this act upon conviction shall for the first offense be fined not less than two hundred and fifty dollars nor more than one thousand dollars and imprisoned for a period of three months, and for a second or subsequent offense shall upon conviction be fined not less than four hundred dollars nor more than two thousand dollars or imprisoned in the State Penitentiary not less than one year nor more than five years. Any person who sells liquors in violation of this act, upon conviction shall for the first offense be fined not less than two hundred dollars nor more than one thousand dollars and imprisoned for a period of ninety days, and for a second or subsequent offense shall be fined not less than four hundred dollars nor more than two thousand dollars or imprisoned not less than six months nor more than five years.

Any person violating the provisions of any permit, or who makes any false record, report or affidavit [required] by this act, or violates any of the provisions of this act, for which offense a special penalty is not prescribed, shall upon conviction be fined for a first offense not less than two hundred dollars, nor more than one thousand dollars or imprisoned not exceeding ninety days or both; for a second offense not less than three hundred dollars nor more than twenty-five hundred dollars, or be imprisoned not more than six months; for any subsequent offense he shall be fined not less than five hundred dollars and be imprisoned not less than three months nor more than two years. It shall be the duty of the prosecuting officers to ascertain whether the defendant has been previously convicted and to plead the prior conviction in the complaint, information, or indictment. The penalties provided in this act against the manufacturer of liquor without a permit shall not apply to a person for manufacturing non-intoxicating cider and fruit juices exclusively for use in his home, but such cider and fruit juices shall not be sold or delivered except to persons having permits. (Id. § 27, as amended L. 1925, c. 128.)

163. Indictment, Complaint or Information.—In any complaint, or information, or indictment for the violation of this act, separate offenses may be united in separate counts and the defendant may be tried on all at one trial and the penalty for all offenses may be imposed. It shall not be necessary in any complaint, information or indictment to give the name of the purchaser or to include any defensive negative averments, but it shall be sufficient to state that the act complained of was then and there prohibited and unlawful, but this provision shall not be construed to preclude the trial court from directing the furnishing the defendant a bill of particulars when it deems it proper to do so. (L. 1921, c. 117, § 30.)

164. Possession of Liquor—When Lawful.—Aften ten days after the date when this act has become operative the possession of liquors by any person not legally permitted under this act to possess liquor shall be prima facie evidence that such liquor is kept for the purpose of being sold, bartered, exchanged, given away, furnished or otherwise disposed of in violation of the provisions of this act. But it shall not be unlawful to possess liquors in one's private dwelling while the same is occupied and used by him as his dwelling only and such liquor need not be reported, provided such liquors are for use only for the personal consumption of the owner thereof and his family residing in such dwelling and of his bona fide guests when entertained by him therein; and the burden of proof shall be upon the possessor in any action concerning the same to prove that such liquor was lawfully acquired, possessed, and used. (Id. § 31.)

165. Duty of Prosecuting Attorney.—It shall be the duty of every prosecuting attorney in this State to prosecute by complaint, information or indictment in courts of competent jurisdiction all violations of this act in the manner now provided by law for the prosecution of criminal offenses under the general statutes of this State and in the manner as herein defined. The Governor shall have power after notice and hearing to remove from office any officer in the State who shall willfully fail, neglect or refuse to perform any of the duties imposed upon him by this act or who shall be guilty of intoxication or drunkenness. Proceedings for the removal of any such officer may be commenced either by the Governor on his own motion or on written complaint of any citizen of the State, filed with the Governor. Written notice of the time and place for the hearing of such charges together with a statement or copy of the charges filed against him shall be personally served upon such officer at least ten days before the day set for such hearing. (Id. § 36.)

166. **Act Shall Not Affect Pending Suits.**—The suits or actions pending under any law in force on the date this act takes effect, whether on behalf of the people of this State or any person or persons, may be prosecuted to final judgment and such judgment enforced in like manner and with the same effect as though this act were not passed. And the rights of action accorded to said State, or any person or persons, under any existing law are hereby preserved and saved, and excepted from the operation and effect of this act, and the same may be prosecuted and sued for recovery in like manner and to the same extent as might have been done if this act were not in effect. (Id. § 37.)

NOTE: See also No. 133.

PART IV.

Miscellaneous Laws.

False Advertising.

167. **False, Misleading and Fraudulent Advertising.**—Any person, firm, corporation or association who, with intent to sell, or in any way dispose of any merchandise, securities or anything offered by such person, firm, corporation or association, directly or indirectly, to the public for sale or distribution, or with intent to increase the sale or consumption thereof, or to induce the public or any person in any manner to enter into any obligation relating thereto, or to acquire title to or an interest therein makes, publishes, disseminates, circulates or places before the public, or any person, or causes the same to be done, either directly or indirectly, whether by newspaper publication or otherwise, any label, notice, handbill, poster, bill, circular, pamphlet or letter, any advertisement of any kind or character regarding merchandise, securities, amusements, entertainments, exhibitions, services or any other thing or commodity offered to the public, or to any person; which advertisement contains any assertion or statement which is, in fact, untrue, deceptive or misleading, shall be deemed guilty of a misdemeanor and upon conviction, shall be punished by a fine in any sum not exceeding one hundred ($100) dollars, in the discretion of the court, for every such offense and each day such publication or communication shall be published or disseminated, shall constitute a violation of the provisions of this section and shall be deemed a separate and distinct offense; provided, also, that the provisions of this section shall not apply to the publisher of any newspaper or other publication who publishes or causes to be published, disseminated or circulated any written or printed statement prohibited by the provisions of this section, without knowledge that it is false within the meaning of this section, an advertisement shall be defined as any notice, announcement, statement, representation, exhibition, demonstration or proclamation, whether by printing or writing. It shall be the duty of the county attorney of each county, on complaint being made, to vigorously prosecute any and all offenders against the provisions of this section. (C. S. 1920, § 7302.)

Flag Desecration.

168. **Desecration of the Flag.**—Any person who, in any manner, for exhibition or display, puts or causes to be placed any inscription, design, device, symbol, portrait, name, advertisement, words, characters, marks or notices whatever upon any flag or ensign of the United States, or State flag of this State or ensign evidently purporting to be either of said flags, or ensign, or who, in any manner appends, annexes or affixes to any such flag, or ensign, any inscription, design, device, symbol, portrait, name, advertisement, words, marks, notices or token whatever, or who displays or exhibits or causes to be displayed or exhibited, any flag or ensign, evidently purporting to be either of said flags, upon which shall, in any manner be put, attached, annexed or affixed any inscription, design, device, symbol, portrait, name, advertisement, words, marks, notice or token whatever, or who publicly or willfully mutilates, tramples upon, or who tears down or willfully and maliciously removes while owned by others, or otherwise defaces or defiles any of said flags, or ensign, which are public or private property, shall be deemed guilty of a misdemeanor, and shall, on conviction thereof, be punished by a fine

not exceeding two hundred and fifty dollars or imprisoned not exceeding one year, or both: Provided, however, that this section shall not apply to flags, or ensigns the property of or used in the service of the United States or of this State, upon which inscription, names of actions, words, marks or symbols are placed pursuant to law or authorized regulations. (C. S. 1920, § 7282.)

Tobacco—Tobacco Products.

169. Sale or Gift of Tobacco to Minors.—No person or persons in this State shall buy for, give to, or furnish, either directly or indirectly, any cigar, cigarette or cigarette paper, or any tobacco in any of its forms, to any person under the age of eighteen years. Any person or persons who shall violate any of the provisions of this section shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined in any sum not exceeding ten dollars and the costs of the prosecution. (C. S. 1920, § 7209.)

Trade-Marks, Etc.

170. Trade-Mark—How Adopted.—Any person, association or union may adopt a label, trade-mark, stamp or form of advertisement not previously owned or adopted by any other person, association or union, and may file the same for record in the office of the Secretary of State, by leaving two copies, counterparts or facsimiles thereof, with said secretary; and shall file therewith a certificate specifying the name or names of the person, association, or union so filing such label, trade-mark, stamp or form of advertisement, his or its residence, location or place of business, the class of merchandise and the particular description of goods comprised in such class to which it has been or is intended to be appropriated, and the length of time, if any, during which it has been in use. Such certificate shall be accompanied by a written declaration, verified under oath by the person or some officer of the association or union by whom it is filed, to the effect that the party so filing such label, trade-mark, stamp or form of advertisement, has a right to the use of the same, and that no other person, firm, association, union or corporation has the right to such use, either in the identical form or in any such near resemblance thereto as may be calculated to deceive and that the facsimiles, copies or counterparts filed therewith are true and correct. There shall be paid for such filing the fee of five dollars. Said secretary shall deliver to such person, association or union so filing the same, a duly attested certificate of the record of the same, for which he shall receive the fee of five dollars. Such certificate of record shall, in all suits and prosecutions under this chapter, be sufficient proof of the adoption of such label, stamp, trade-mark or form of advertisement. No label, trade-mark, stamp or form of advertisement shall be recorded that would reasonably be mistaken for a label trade-mark, stamp or form of advertisement already on record. (C. S. 1920, § 4356.)

171. Secretary of State Shall Prescribe Rules.—The Secretary of State is authorized to make rules and regulations and prescribe forms for the filing of labels, trade-marks and forms of advertisement under the provisions of this chapter. (Id. § 4357.)

172. Owner May Enjoin Counterfeits.—The owner of any such label, trade-mark, stamp or form of advertisement recorded as provided in § 4356 may proceed, by suit, to enjoin the manufacture, use or sale of any such counterfeits or imitations, and all courts having jurisdiction thereof shall grant injunctions to restrain such manufacture, use or sale, and shall award the complainant in such suit damages resulting from such wrongful manufacture, use or sale as may by said court be deemed just and reasonable, and shall require the defendant to pay such person, association or union the profits derived from such wrongful manufacture, use or sale; and such court may also order that all such counterfeits or imitations in the possession or under the control of any defendant in such case, be delivered to an officer of the court, or to the complainant, to be destroyed. In all cases where such association or union is not incorporated, suits under this chapter may be commenced and prosecuted by an officer of such association or union, on behalf of and for the use of such association or union, and every member of such association or union shall be liable for costs in any such proceedings. (Id. § 4358.)

173. Penalty for Making Imitation or Counterfeit.—Every person who, without authority from the owner of a label, trade-mark, stamp or form of adver-

tisement recorded as aforesaid, shall make or use any counterfeit or imitation of such label, trade-mark, stamp or form of advertisement, knowing the same to be counterfeit or imitation, and every person who, without authority from such owner, shall affix, impress or use such label, trade-mark, stamp or form of advertisement upon any goods shall be punished by a fine not exceeding two hundred dollars, or by imprisonment not exceeding one year, or by both. (Id. § 4359.)

174. **Penalty for Using Imitation or Counterfeit.**—Every person who shall sell goods upon which such label, trade-mark, stamp or form of advertisement recorded as aforesaid, or any counterfeits or imitations thereof, shall be unlawfully impressed, affixed or used, shall be punished by a fine not exceeding two hundred dollars, or imprisonment not exceeding one year, or by both such fine and imprisonment, unless such person shall show that at the time such goods came into his possession he did not know that the impression, affixing or use of such label, trade-mark, stamp or form of advertisement was unlawful. (Id. § 4360.)

175. **Evidence.**—In any suit or prosecution under the provisions of this chapter the defendant may show that he or it was the owner of such label, trade-mark or form of advertisement, prior to its being filed under the provisions of this chapter, and that it has been filed wrongfully or without right by some person, association or union. (Id. § 4361.)

176. **Live Stock Brands Excepted.**—This chapter shall not be construed as to apply to brands, marks or tags on live stock. (Id. § 4362.)

Weights and Measures.

177. **Giving False Weights in Merchandise.**—Every person who, in putting up in any bag, bale, box, barrel or other package, any hops, cotton, wool, grain, hay or other goods usually sold in bags, bales, boxes, barrels or other packages by weight, puts in or conceals therein anything whatever for the purpose of increasing the weight of such bag, bale, box, barrel or package, and thereby defrauding the purchaser, shall be fined not more than one hundred dollars. (C. S. 1920, § 7298.)

178. **Using False Weights.**—If any person shall knowingly have, keep, or use any false or fraudulent scales or weights for weighing gold or gold dust, or any other article or commodity, every person so offending shall be fined not more than five hundred dollars, or imprisoned in the county jail not more than six months. (Id. § 7311.)

179. **Selling by False Weights.**—If any person shall knowingly sell by false weights or measures, or shall knowingly use false weights or measures at any threshing machine, or at any mill, in taking toll for grinding or threshing corn, wheat, rye or other grain and seeds, he shall be deemed a common cheat and shall be fined not more than one hundred dollars, and shall be imprisoned in the county jail not more than six months. (Id. § 7314.)

180. **Standards.**—The standards of weights and measures in this State shall be those recognized or furnished by the United States. (L. 1921, c. 73, § 1.)

181. **Verification of Standards.**—In addition to the State standards of weights and measures, there shall be supplied by the State such other weights, measures and apparatus as may be found necessary to carry out the provisions of this act, to be known as working standards. Such weights, measures and apparatus shall be verified by the State Superintendent of Weights and Measures, or his authorized assistants, at his discretion upon their initial receipt and at least once in each year thereafter, by comparison with the State standards. When found accurate upon these tests the working standards shall be sealed by stamping on them the letter "W" and the date with seals which the State Superintendent of Weights and Measures shall have and keep for that purpose. The State standards shall be used in making all comparisons of weights, measures, and weighing or measuring devices submitted for test in the office of the State Superintendent of Weights and Measures. (Id. § 2.)

182. **Superintendent of Weights and Measures.**—The Dairy, Food and Oil Commissioner* shall be ex-officio State Superintendent of Weights and Measures. He shall take charge of the standards adopted by this act as the standards of the State, and cause them to be kept in a safe and suitable place, from which they shall not be removed except for repairs or for certification and he shall take all other necessary precautions for their safe keeping. He shall maintain the State standards in good order and shall submit them at least once in ten years to the

*See No. 30. This law is to be corrected accordingly.

National Bureau of Standards for certification. He shall keep a complete record of the standards, balances, and other apparatus belonging to the State and take a receipt for same from his successor in office. He shall annually, on the last day of September, make to the Governor a report of all work done by his office. (Id. § 3.)

183. Duties of Superintendent.—The State Superintendent of Weights and Measures shall have and keep a general supervision of the weights, measures, and weighing and measuring devices, offered for sale, sold, or in use in the State. When not otherwise provided by law the State Superintendent of Weights and Measures shall have the power, and it shall be his duty to inspect, test, try, and ascertain if they are correct, all weights, measures, and weighing and measuring devices kept, offered or exposed for sale, sold, or used or employed by any proprietor, agent, lessee, or employee in proving the size, quantity, extent, area, or measurement of quantities, things, produce, or articles for distribution or consumption, purchased, offered, or submitted by such person or persons for sale, hire, or award, and he shall have the power to and shall from time to time weigh or measure and inspect packages or amounts of commodities of whatsoever kind kept for the purpose of sale, offered or exposed for sale, or sold, or in the process of delivery in order to determine whether the same contain the amounts represented, and whether they be offered for sale or sold in a manner in accordance with law. He shall as often as he may deem necessary see that all weights, measures, weighing or measuring devices used are correct. He may for the purpose above mentioned, and in the general performance of his official duties, enter or go into or upon, and without formal warrant, any stand, place, building, or premises, or stop any vendor, peddler, junk dealer, coal wagon, ice wagon, delivery wagon, or any dealer whatsoever, and require him, if necessary, to proceed to some place which the State Superintendent of Weights and Measures may specify, for the purpose of making the proper tests. Whenever the State Superintendent of Weights and Measures finds a violation of the statutes relating to weights and measures, he shall cause the violator to be prosecuted. (Id. § 4.)

184. Sealing of Weights and Measures.—Whenever the State Superintendent of Weights and Measures compares weights, measures, or weighing or measuring devices and finds that they correspond or causes them to correspond with the standards in his possession, he shall seal or mark such weights, measures, or weighing or measuring devices with appropriate devices. (Id. § 5.)

185. Condemnation and Destruction of Incorrect Weights and Measures.—The State Superintendent of Weights and Measures shall condemn and seize and may destroy incorrect weights, measures, or weighing or measuring devices which in his best judgment, are not susceptible of satisfactory repair; but such as are incorrect and yet may be repaired, he shall mark or tag as "Condemned for repairs." The owners or users of any weights, measures, or weighing or measuring devices of which such disposition is made, shall have the same repaired or corrected within ten days, and they may neither use nor dispose of the same in any way, but shall hold the same at the disposal of the State Superintendent of Weights and Measures. Any weights, measures, or weighing or measuring devices which have been "condemned for repairs" and have not been repaired as required above, shall be confiscatd by the State Superintendent of Weights and Measures. (Id. § 6.)

186. Police Powers.—The State Superintendent of Weights and Measures, and his authorized assistants, are hereby made special policemen, and are authorized and empowered to arrest, without formal warrant, any violator of the statutes in relation to weights and measures, and to seize for use as evidence, without formal warrant, any false or unsealed weight, measure, or weighing or measuring device or package, or amounts of commodities found to be used, retained, or offered or exposed for sale or sold in violation of law. (Id. § 7.)

187. Interference With Superintendent—Penalty.—Any person who shall hinder or obstruct in any way the State Superintendent of Weights and Measures, or his authorized assistants, in the performance of their official duties shall be guilty of a misdemeanor and upon conviction thereof in any court of competent jurisdiction shall be punished by a fine of not less than twenty dollars ($20.00) or more than one hundred dollars ($100.00) or by imprisonment in the county jail for not more than three months or by both such fine and imprisonment. (Id. § 8.)

188. Impersonation of Superintendent—Penalty.—Any person who shall impersonate in any way the State Superintendent of Weights and Measures, or his authorized assistants, by the use of his seal or the counterfeit of his seal, or otherwise, shall be guilty of a misdemeanor, and upon conviction thereof in any court of competent jurisdiciton, shall be punished by a fine of not less than one hundred

dollars ($100.00) nor more than five hundred dollars ($500.00) or by imprisonment for not more than one (1) year or by both such fine and imprisonment. (Id. § 9.)

189. **Sale by Net Weight.**—Whenever any commodity is sold on a basis of weight, it shall be unlawful to employ any other weight in such sale than the net weight of the commodity; and all contracts concerning goods sold on a basis or [of] weight shall be understood and construed accordingly. Whenever the weight of a commodity is mentioned in this act it shall be understood and construed to mean the net weight of the commodity. (Id. § 10.)

190. **Standard Weights Per Bushel—Measurement of Hay.**—All commodities hereinafter named in this section shall be sold either by the bushel or by weight, and when sold by the bushel, the bushel shall consist of the number of pounds hereinafter stated; and whenever such commodities hereinafter named are sold in the sub-divisions of the bushel, the number of pounds in such sub-division of the bushel shall consist of the fractional part of the number of pounds as hereinafter set forth for the bushel, namely:

	Pounds Per Bushel.		*Pounds Per Bushel.*
Barley	48	Onions	57
Beans	60	Parsnips	50
Beets	56	Peaches	48
Carrots	50	Potatoes	60
Castor Beans	46	Rice Corn	56
Corn, shelled	56	Rye	56
Flaxseed	56	Speltz or Emmer	45
Green Apples	48	Sweet Potatoes	50
Indian Corn, in the ear	70	Tomatoes	56
Kaffir Corn	56	Turnips	55
Oats	32	Wheat	60

Unless otherwise agreed to between the contracting parties, the following shall constitute the legal measurement for hay in stack in the State of Wyoming: Four hundred and twenty-two (422) cubic feet shall constitute a ton of clean, native, blue joint hay, after thirty (30) days up to three (3) months' settlement in stack. As to all other kinds of hay, after the same shall have been settled in stack from sixty (60) days and up, five hundred and twelve (512) cubic feet shall constitute a ton of alfalfa or rough slough grass, after the same shall have been in the stack thirty (30) days and up to one (1) year. Four hundred and fifty (450) cubic feet shall constitute a ton of clean timothy and clover, after the same shall have been in the stack thirty (30) days, and up to one (1) year. Making measurements of hay in stack, the following is hereby made the legal method of measurement, to-wit: The width and length of the stack shall be measured, and the distance from the ground against one side of the stack to the ground against the other side of the stack, directly over and opposite, shall be taken in linear feet and inches, and then the width shall be subtracted from the measurement over the stack, as above indicated, the result divided by two, and the result so obtained multiplied by the width, and the result thus obtained multiplied by the length, which will give the number of cubic feet contained in the stack, and the tonnage shall thereupon be determined by dividing the total number of cubic feet by the number of cubic feet allowed under the provisions of this section for a ton. (Id. § 11.)

191. **Appointment of Weighmasters.**—It shall be the duty of the county commissioners to see that every city and town in their county containing two thousand or more inhabitants, is provided with public scales for the weighing of coal, hay and other merchandise sold by weight, and that every city and town council in the respective counties shall appoint a city or town weighmaster, whose services shall be paid by the city or town appointing such weighmaster. It shall be the duty of every vendor of coal, hay and other merchandise sold in bulk, and of the agents and employees of such vendor, to cause such coal, hay and other merchandise to be weighed and a statement of such weight to be delivered to the purchaser with the article so weighed. Where such coal, hay or other merchandise is weighed on a public or city scale, the weighmaster shall charge for every such certificate of weight a fee of ten cents, which shall be paid by the vendor or producer, and shall by said weighmaster be turned into the treasury of the city or town by which he was appointed. Any person failing to comply with this requirement for weighing coal, hay or other merchandise, or failing to deliver the certificate of weight as aforesaid, shall on conviction be punished by a fine of not less than ten dollars nor more than one hundred dollars for each offense. (Id. § 12.)

192. Rules and Regulations by Superintendent.—The State Superintendent of Weights and Measure shall establish uniform tolerances or reasonable variations to take care of unavoidable shrinkage, and of scale variations in handling and weighing of any of the articles mentioned in this act, and shall adopt such rules and regulations as he may deem necessary to carry out the provisions of this chapter, and he may change, modify, or amend any or all rules and regulations whenever deemed necessary, and the rules and regulations so made shall have the force and effect of law. (Id. § 13.)

193. Violation—Penalty.—Any person, who by himself or his servant or agent, or as the servant or agent of another person shall offer or expose for sale, sell, use, in the buying or selling of any commodity or thing or for hire or award, or retain in his possession a false weight or measure, or weighing or measuring device, or any weight or measure or weighing or measuring device which has not been sealed by the State Superintendent of Weights and Measures, or his authorized assistants, at his direction; or shall sell or offer or expose for sale less than the quantity he represents, when as the buyer, he furnishes the weight, measure, or weighing or measuring device by means of which the amount of commodity is determined, or who shall keep for the purpose of sale, offer or expose for sale, or sell any commodity in a manner contrary to law; or who shall violate any provision of this act for which a specific penalty has not been provided, or who shall sell or offer for sale, or use or have in his possession for purpose of selling or using any device or instrument to be used to or calculated to falsify any weight or measure or any weighing or measuring device; shall be guilty of a misdemeanor, and shall be punished by a fine of not less than twenty dollars ($20.00) or more than two hundred dollars ($200.00), or by imprisonment for not more than three (3) months, or by such fine and imprisonment, upon a first conviction in any court of competent jurisdiction; and upon a second or subsequent conviction in any court of competent jurisdiction, he shall be punished by a fine of not less than fifty dollars ($50.00) or more than five hundred dollars ($500.00), or by imprisonment in the county jail for not more than one year, or by both such fine and imprisonment. (Id. § 14.)

194. Definitions of Terms.—The word "person" as used in this act, shall be construed to import both the singular and plural, as the case demands, and shall include corporations ,companies, societies and associations.

The words "weights, measures or (and) weighing or (and) measuring devices" as used in this act shall be construed to include all weights, scales, beams, measures of every kind, instruments and mechanical devices for weighing or measuring, and any appliances and accessories connected with any or all such instruments.

The word "sell" or "sale" as used in this act shall be construed to include barter and exchange. (Id. § 15.)

NOTE: See also Nos. 9, 10, 34 et seq., and 82 et seq.

PART V.

Cases.

1. General Food Law.

Adulteration—Definition Construed: State v. Weeden, 17 Wyo. 418, 100 Pac. 114 (1909).

Maple and Cane Syrup Mixture—Information Does Not Charge Adulteration: State v. Weeden, 17 Wyo. 418, 100 Pac. 114 (1909).

2. Special Food Laws.

Maple Syrup: State v. Weeden, 17 Wyo. 418, 100 Pac. 114 (1909).

Restaurants—Hours of Labor for Females: *State v. Le Barron, 24 Wyo. 519, 162 Pac. 265 (1917).

APPENDIX A

CONTAINING ADDITIONAL STATE LAWS ENACTED IN 1927, SUBSEQUENT TO THE PREPARATION OF VOLUMES II AND III, WHICH ARE TO BE CORRECTED ACCORDINGLY

The laws contained in this Appendix are stated in the form used in Volumes II and III, i. e., by subject and numbered sections. The numbered sections in this Appendix are to be substituted for or added to the sections having the corresponding numbers in Volumes II and III, unless otherwise indicated.

ARIZONA.

PART II.

Special Food Laws.

Dairy Products—Substitutes for Dairy Products.

38. Unlawful to Sell Milk, or its Products, From Diseased Cows; Milk Must be Sold in Original Bottle.——It shall be unlawful for any person, firm or corporation producing milk to sell or offer for sale any milk or products derived therefrom that is produced by unhealthy cows or in unsanitary surroundings, or that is drawn from cows within fifteen days before or five days after calving, or that is handled, stored, or shipped in dirty, rusty or unsanitary cans. The use of preservatives in milk or cream, except small samples, for testing, shall be unlawful. Milk which is to be separated must be separated immediately after each milking, and the cream of each separation cooled before mixing with cream of another separation, and the cream must be kept in wholesome condition, in sanitary surroundings until transported to the creamery or manufacturing plant.

It shall be unlawful for the owner or any person having the management or control of any lunch counter, restaurant or other place where milk is sold by the glass for drinking purposes, to sell any milk to any customer other than in the original bottle in which the same was put up by the producer, creamery or milk depot, bearing on the cap or sealer the name of the producer, creamery or milk depot, and which said cap or sealer shall not have been removed prior to actual delivery to the consumer.

No producer or distributor of milk or milk products shall label said milk or milk products with a grade label, except as authorized by municipal ordinance, or by special permit issued by the State Dairy Commissioner.

All milk or milk products sold as pasteurized shall have been pasteurized as required herein. The temperature and time record charts shall be dated and preserved for a period of three months for the information of the State Dairy Commissioner.

Whenever the term "pasteurization," "pasteurized," "pasteurize," and similar terms are used they shall be taken to refer to the process of increasing the safety of milk and milk products and which shall be by heating every particle thereof, to a temperature of not less than one hundred forty-five degrees Fahrenheit, and holding at such temperature for not less than thirty minutes in pasteurizing apparatus approved by the State Dairy Commissioner. The temperature and time being automatically recorded by a temperature and time recording device approved by the State Dairy Commissioner, or by the United States Public Health Service. (Special Session L. 1918, c. 8, § 4, as amended L. 1927, c. 31.)

Fruits and Vegetables.

64. R. S. 1913, Civil Code, § 3311, is amended by L. 1927, c. 90. The amendment is omitted herein.

69a. Repealed. (L. 1927, c. 90, § 8.)*

Meat—Meat Products.

76. License Fees.—The Live Stock Sanitary Board may grant to applicants therefor, on the payment of the fees herein provided and the presentation of proof showing good moral character upon the part of the applicant, a license to slaughter cattle, sheep and goats, as may be set forth in such license so granted. If such slaughter business is to be carried on within, or within four miles of, any town of more than five thousand inhabitants, the applicant shall pay to such board a sum

*The penalty for violation of the sections included in Nos. 64-69 is contained in R. S. 1913, Civil Code, § 3311, as amended by L. 1927, c. 90, which provides for a fine of not less than fifty dollars and not more than five hundred dollars.

equal to one hundred fifty dollars per annum for a license to operate such business of slaughtering, the same to be at a fixed and definite slaughtering place; in the event that such slaughtering business is to be carried on within, or within four miles of, any town of three thousand or more inhabitants and less than five thousand inhabitants, then the applicant for such license shall pay the said board at the rate of one hundred twenty dollars per annum for such license; in case the business is to be carried on within, or within four miles of, any town of one thousand or more inhabitants and less than three thousand inhabitants, the applicant shall pay to said board at the rate of ninety dollars per annum for such license; all licenses to designate a fixed and definite place where such slaughtering is to be done; in all other cases an applicant shall pay at the rate of thirty dollars per annum for such slaughtering licenses.

No license issued under the foregoing provisions of this paragraph shall be issued for a shorter term or less proportionate rate of fee than will apply thereto, computed from the date of the issuance of such license up to December the thirty-first of the year in which such license is issued; provided, that any person, whether a producer or not, who slaughters animals for sale for food, shall be required to obtain a special license, which shall designate the place where such person intends to slaughter and from what live stock, by showing the names of owners, brands and other identifying marks of animals to be slaughtered under that special license, and shall state the number of animals intended to be slaughtered under such special license, which in no event shall be of a number greater than five head of cattle nor more than twenty sheep or twenty goats. No more than one special license shall be issued to any applicant for slaughter in any one year. Persons slaughtering more than the limit number provided in a special license, before slaughtering same, shall procure the regular license at the regular rates in this paragraph required.

It shall be a misdemeanor for any person to slaughter any animal of the kind mentioned in this act for sale for food, or to peddle or offer for sale any portion thereof, without first procuring one of the two classes of licenses in this paragraph specified; and the possession of the carcass, or of any portion of the meat of any such animal mentioned herein, shall be prima facie evidence of a violation of this paragraph, unless the person in whose possession such carcass or meat is found shall be able to show that the animal of which it is the whole, or part, was actually slaughtered under the authority of a license issued under the provisions of this paragraph. And provided, further, that for good cause shown, the said Live Stock Sanitary Board may, by an order entered upon its minutes after notice to the holder of such license of its intention so to do, revoke any license issued hereunder. (R. S. 1913, Civil Code, § 3741, as amended L. 1927, c. 77.)

PART IV.

Miscellaneous Laws.

Weights and Measures.

167a. Public Weighmasters.—All persons, firms, corporations, copartnerships or individuals engaged in the business of weighing cotton, for hire, or any person, firm or corporation who shall weigh any cotton and issue therefor a weight certificate which is intended to be accepted as an accurate weight upon which the purchase or sale of said cotton is to be based, shall be known as a public weighmaster, and shall file a bond with the State Inspector of Weights and Measures in the sum of one thousand ($1,000.00) dollars, for the faithful performance of his duties and shall obtain from the State Inspector of Weights and Measures a seal for the stamping of weight certificates hereinafter provided for, which shall be only in such form as said State Inspector of Weights and Measures may prescribe. Said seal shall be the property of the State and shall be forfeited and returned to the State Inspector of Weights and Measures upon termination of the performance of the duties herein prescribed as being the duties of a public weighmaster. Such seal shall be in the form and design prescribed by the State Inspector of Weights and Measures, and furnished by him at the expense of the weighmaster. Said seal shall be a recognized authority of accuracy when applied to weight certificates. (L. 1927, c. 16, § 1.)

167b. Weight Certificates.—The State Inspector of Weights and Measures shall prescribe a form of weight certificates to be used by all public weighmasters, which certificates shall be known as "The State Certificate of Weights and Measures," and shall state therein the kind of product, the number of units of the same, the date of receipt of the product, the owner, agent or consignee, the total weight of the product, the railroad, motor, team or other means of transportation by

which the product was received, and such other information as may be necessary to distinguish or identify the product from a like kind.

No certificate other than the one herein prescribed shall be used by public weighmasters, but whenever there may be issued by a public weighmaster a warehouse receipt for the product weighed, the form of such warehouse receipt shall be such as is prescribed by Chapter 47 of the Laws of Arizona of the Fifth Legislature, and said certificate of weight may be incorporated within and made a part of such warehouse receipt. (Id. § 2.)

167c. Records.—All public weighmasters shall keep and preserve correct and accurate records of all public weighing for at least five years, as provided by this act, which records shall at all times be open for inspection by the State Inspector of Weights and Measures, or his deputy. All State certificates of weights and measures as provided by this act shall contain the accurate and correct weight of all cotton weighed when issued by the public weighmaster. (Id. § 3.)

167d. False Certificate; Misdemeanor.—Any public weighmaster who shall issue a State certificate of weights and measures giving a false weight or measure of any cotton weighed by him or his representative, to any person, firm or corporation, shall be guilty of a misdemeanor, and the State Inspector of Weights and Measures may direct and compel the return to him of the State seal, or declare his bond as public weighmaster forfeited. (Id. § 4.)

167e. Same.—Any person, firm or corporation who shall request the public weighmaster or any person employed by him, to weigh any cotton falsely, or incorrectly, or who shall request a false or incorrect State certificate of weight, or any person issuing a State certificate of weight who is not a public weighmaster as provided for in this act, shall be guilty of a misdemeanor. (Id. § 5.)

167f. Appeal; Reweighing.—Any doubt or difference arising as to the correctness of the weight of any cotton for which a State certificate of weights has been issued by a public weighmaster, the owner, agent or purchaser, may upon complaint to the State Inspector of Weights and Measures, or his deputy, have said amount or part of the amount of any cotton reweighed by the State Inspector of Weights and Measures, or by a public weighmaster designated by him, upon depositing a sufficient sum of money to defray actual cost of the reweight with the State Inspector of Weights and Measures. If, on reweighing, a difference in the original weight is discovered as a result of fraud, carelessness or faulty apparatus, the cost of reweighing, and the loss occasioned by such difference in weight, shall be borne by the public weighmaster responsible for the issuance of such faulty State certificate of weight.

All public weighmasters employing or designating any person to act for them as deputy public weighmaster, shall be responsible for all acts performed by such person, and the public weighmaster shall forward to the State Inspector of Weights and Measures the name and address of any person so appointed. (Id. § 6.)

167g. Marking.—All amounts, lots, shipments or consignments of cotton, after being weighed, shall be piled or stored separately as nearly as can be, or in some manner marked in order that said amounts, lots, shipments or consignments may be distinguished from others of like kind. (Id. § 7.)

167h. Penalty.—Any person violating any of the provisions of this act shall be guilty of a misdemeanor. (Id. § 8.)

ARKANSAS.

PART IV.

Miscellaneous Laws.

Tobacco—Tobacco Products.

94-98. Probably repealed. See L. 1925, Act 256 and L. 1927, Act 149.

99-100. Repealed. (L. 1927, Act 149, § 22.)

100a. Sale of Cigars and Cigarettes Declared a Privilege, and the Tax Thereon a Privilege Tax.—The business of handling, receiving, selling, offering for sale and dealing in, through sale, barter or exchange, cigars and cigarettes as defined in section 2 of this act, is hereby declared to be a privilege under the Constitution and laws of the State of Arkansas, and the purpose of this act is to impose certain licenses, fees and taxes on this business. (L. 1927, Act 149, § 1.)

100b. Terms in This Act Defined.—The following words, whenever they appear in this act, shall be construed to mean the things set out below, respectively, to-wit:

The word "Commissioner" means the Commissioner of Revenue of the State of Arkansas.

The word "person" means one or more people, a company, a corporation, a partnership, or an association.

The word "consumer" means a person who comes into possession of tobacco or tobacco products for the purpose of consuming them, giving them away, or disposing of them in a way other than by sale, barter or exchange.

The words "licensed consumers" means a "consumer" who has a permit to purchase or receive unstamped cigars and cigarettes in the original boxes or cartons, and to stamp them himself.

The word "retailer" means a person who comes into possession of tobacco or tobacco products for the purpose of selling them to "consumers."

The word "wholesaler" means a person who comes into possession of tobacco or tobacco products for the purpose of selling them to "retailers," "licensed consumers" or other "wholesalers," or to persons outside the State.

The word "cigar" means all rolled tobacco or any substitute therefor wrapped in tobacco.

The word "cigarette" means all rolled tobacco or substitute therefor wrapped in paper or any substitute other than tobacco. (Id. § 2.)

100c. Permit Must be Secured by All Retailers and Wholesalers—Fees Fixed—Penalty for Violation.—Every wholesaler of cigars and cigarettes in this State, before commencing such business, or, if already in such business, before continuing, shall secure a permit from the Commissioner of Revenues and shall pay an annual fee of $25.00 therefor. Any person operating more than one such place of business shall secure a permit for each place.

Every retailer of cigars and cigarettes in this State, before commencing such business, or, if already in such business before continuing, shall secure a permit from the Commissioner of Revenues and shall pay an annual fee of $20.00 therefor; Provided, that any retailer whose annual gross sales of cigars and cigarettes is not more than five hundred dollars shall be given a permit for $5.00, and, that any retailer whose annual gross sales of cigars and cigarettes is more than five hundred dollars but not more than one thousand dollars shall be given a permit for $10.00. Whenever it appears to the Commissioner of Revenues that a retailer has secured a permit for $5.00 or $10.00, when a larger amount should have been paid therefor, he shall require the payment of the difference or cancel the permit. Any person operating more than one such place of business shall secure a permit for each place. (Id. § 3.)

100d. Tax Rates Specified.—There is hereby levied the following excise or privileges taxes, to-wit:

On all cigars 10% (ten per cent) of the ordinary retail price. On all cigarettes a tax of $2.00 per thousand cigarettes. These taxes shall be paid through the tax system hereinafter prescribed. (Id. § 4.)

100e. Use of Stamps Required.—Every retailer of cigars and cigarettes shall immediately after receiving same procure and securely affix to each box of cigars and to each package of cigarettes suitable stamps denoting the tax thereon, and said stamps shall be affixed at the time such goods are first received by said retailer for the purpose of sale and distribution. (Id. § 5.)

100f. Commissioner to Make Rules as to Use of Stamps.—The commissioner shall have power to make such rules and regulations as he deems requisite and advisable for the administration of this act, relating to the manner of stamping boxes and packages and the cancellation of stamps. (Id. § 6.)

100g. Penalty for Failure to Use Stamps.—Every person who has in his possession cigars or cigarettes, to which stamps as prescribed by this act, have not been affixed, shall be guilty of a misdemeanor and shall be punished as provided in section 18. (Id. § 6a.)

100h. Goods Forfeited if Not Stamped.—Whenever any cigars or cigarettes are offered or exposed for sale by retailers or in the boxes of a licensed consumer and are not properly stamped, such cigars or cigarettes shall be forfeited to the State. (Id. § 7.)

100i. Provisions for Accounting for and Disposing of Stamps——Duty of State Auditor—Local Distributors.—The commissioner shall prescribe the kind of stamps to be used in the administration of this act. The Auditor of State shall cause to be prepared and shall keep on hand at all times an adequate supply of such stamps. He shall furnish these stamps to the commissioner from time to time as they are needed, and shall charge the commissioner with all stamps so furnished The commissioner shall sell the stamps to all retailers and licensed consumers who have qualified by securing the permits as provided by section 3 of this act: Provided, that the commissioner shall arrange for one or more agents in each city or town, when he deems it advisable to handle the stamps for sale to retailers, and shall require from each such agent a bond in double the amount of the value of all stamps and money from the sale thereof that will be in possession of said agent at any one time, conditioned on the proper accounting for all money received from stamp sales and for all unsold stamps: Provided, further, that if any State depository bank consents to act as local agent, its depository bond is hereby made and declared sufficient to cover this purpose also, and no additional bond shall be required unless the amount of the depository bond be insufficient for both purposes: Provided, further, that the bank handling the stamps shall be allowed for its attention and trouble one per cent (1%) of all amounts collected through such sales and shall make settlement semi-annually with the commissioner on January 1st and July 1st, for all stamps sold under the foregoing authority. (Id. § 8.)

100j. Funds in Hands of Local Agents, How Protected.—All deposits held by any depository bank as the local agent of the commissioner representing the sales of stamps as herein provided shall be regarded as trust funds and be held as a special deposit, and in case of the failure or insolvency of said bank shall be classed and regarded as preferred claims due the State of Arkansas. (Id. § 9.)

100k. How Cost of Stamps Shall be Paid.—The cost of printing the stamps shall be paid from the appropriation made for the administration of this act. (Id. § 10.)

100l. Monthly Reports From All Retailers.—Every retailer of cigars and cigarettes shall report to the commissioner by the 10th of each month the quantities of cigarettes and cigars purchased during the preceding month. The reports provided for by this section shall be on forms prescribed by the commissioner. (Id. § 11.)

100m. Common Carriers May Transport Unstamped Goods.—Under such regulations as the commissioner may prescribe a common carrier may receive, retain possession of and transport unstamped cigars and cigarettes, and may deliver same to a wholesaler, retailer or licensed consumer. (Id. § 12.)

100n. Exceptions and Exemptions to the Tax.—The commissioner shall make such rules as he deems necessary for the regulation of the distribution of samples by manufacturers. He shall also have authority to waive the tax on cigars and cigarettes donated or given to inmates of hospitals by any patriotic or charitable organization or by the United States government and to make the necessary rules to carry out this provision. (Id. § 13.)

100o. Unlawful to Possess Unstamped Goods.—Except as herein provided, it shall be unlawful for any person to receive or have in his possession for sale, consumption or any other purpose, any cigarettes upon which the tax prescribed by this act has not been paid, and to the package or boxes containing which proper stamps prescribed by this act have not been affixed. The absence of the proper stamps from any box or package of cigars or cigarettes shall be notice to all persons that the tax has not been paid, and shall be prima facie evidence of the non-payment of such tax; provided, that the provisions of this section shall not be construed to apply to wholesalers and common carriers as hereinbefore defined. (Id. § 14.)

100p. Fraud, Penalty For.—Any person who shall falsely and fraudulently make, forge or counterfeit any stamps prescribed for use in the administration of this act, or who shall knowingly and wilfully utter, publish, pass or tender as true, any

false, altered, forged, previously used, or counterfeited stamp or stamps prescribed for such use, shall be guilty of a felony, and, upon conviction thereof, shall be punished as is provided by section 2459* of Crawford & Moses Digest of the Statutes of Arkansas. (Id. § 15.)

100q. Power of Commissioner and Duty of All Peace Officers.—The commissioner shall have general and complete supervision of the administration of this act and he shall require the several peace officers of the State to make such inspection and examination in this connection as he deems necessary, and it is hereby made the duty of such peace officer to make any inspection and examination required by the commissioner, and they are hereby empowered to do so. (Id. § 16.)

100r. Unlawful to Give or Sell to Minor Under 18 Years of Age.—It shall be unlawful for any person, other than the parent or guardian, to give, barter or sell to a minor under eighteen years (18) of age, tobacco in any form, or cigarette papers. (Id. § 17.)

100s. Penalty for Disobeying or Obstructing This Act—Revocation of License.—Any person, firm, corporation or association of persons required to pay taxes under the provisions of this act, who shall fail to affix stamps properly or cancel such stamps after being affixed, as required to be cancelled, or who shall fail or refuse to permit the commissioner or his authorized agent or representative to examine or inspect taxable stocks of merchandise, invoice books, papers and memoranda deemed necessary to secure information directly relating to the enforcement of this act, shall be guilty of a misdemeanor, and upon investigation shall be punished by a fine of $25.00 for the first offense, $50.00 for the second and $100.00 for each offense thereafter, the said penalties to be collected by civil process as hereinafter provided.

It shall also be the duty of the commissioner to revoke the license or permit to sell tobacco or tobacco products of any certain person, firm, corporation or association of persons who has, to the knowledge of the commissioner, been guilty of the violation of the provisions of this act for three (3) or more times within any two (2) years. (Id. § 18.)

100t. Compromises, How Made, Filing and Accounting Therefor.—The commissioner may compromise in a civil case arising under this act instead of commencing suit therefor, and any penalties agreed to in such compromise shall be added to the tax due and collected the same as such tax. In any case for compromise the commissioner shall keep all files in his office, the reasons for the settlement of such case by compromise, together with the statement of tax assessed, the amount of penalty imposed, and the amount actually paid in accordance with the terms of the compromise. (Id. § 19.)

100u. Up to $750,000.00 Revenue to go to Common School Fund, Remainder to Equalizing School Fund.—The State Treasurer shall place all money coming into his possession, on account of the sale of the tax stamps provided for herein, up to $750,000.00 (seven hundred and fifty thousand dollars) in the common school fund and all of the remainder of such revenues so derived to the credit of the equalizing fund as provided for by law, and shall place all money coming into his possession on account of the permits issued hereunder in the special fund for administration and enforcement of this act. (Id. § 20.)

100v. Repeals Laws in Conflict, Emergency Stated, in Force at Once.—All laws and parts of laws in conflict herewith, and especially Act No. 256 of 1925, are hereby repealed, and in view of the fact that stamps are not being put on all cigars and cigarettes by those handling same, and having no adequate law to enforce same, it is necessary for the public peace, health and safety of the State, and an emergency is therefore hereby declared and this act shall take effect and be in force from and after its passage and approval. (Id. § 22.)

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*Provides for confinement in the penitentiary not less than two nor more than five years.

CALIFORNIA.

PART I.

General Food Law.

3. Standard of Purity.—The standard of purity of food and liquor shall be that proclaimed by the Secretary of the United States Department of Agriculture, the food inspection decisions, and the service and regulatory announcements of the Bureau of Chemistry, United States Department of Agriculture or such other bureau, department, division or administration of said United States Department of Agriculture as may from time to time hereafter have and exercise the powers, functions and duties heretofore and now vested in and exercised by said Bureau of Chemistry, United States Department of Agriculture." Nothing in this section contained shall authorize or permit any adulteration of any food or liquor because the standard of purity of such food or liquor has not been proclaimed by the Secretary of Agriculture, United States Department of Agriculture. (G. L. 1923, Act 57, § 3, as amended L. 1927, c. 342.)

16a. Local Food Inspection Divisions.—The State Board of Health is hereby authorized to organize and establish local food inspection and enforcement divisions thereof, with headquarters at such points and with jurisdiction over such territory as the said board shall by order specify. For the purposes of this act, the term "local food inspection and enforcement division" shall be construed to mean the local health department headed by the duly appointed qualified and acting health officer of any county, city or city and county designated by order of said board to act as such division within the territory specified in such order, which territory may include one or more counties, cities or cities and counties. (G. L. 1923, Act 57, § 16a, as added L. 1927, c. 359.)

16b. Same; Powers and Duties.—Such local food protection and enforcement divisions shall each have power and it shall be their duty to make, or cause to be made, examinations and analyses of food on sale within the territory over which such local division has jurisdiction and suspected of being adulterated, mislabeled or misbranded, at such times and places and to such extent as the health officer of such local division shall determine. The health officer of any local food protection and enforcement division, together with his deputies, shall have, within the territory over which such local division has jurisdiction, the same powers as are possessed by peace officers of this State. (Id. § 16b.)

16c. Same; Violations; Hearings.—When an examination or analysis made pursuant to the provisions of section 16b hereof shows that any provision of this act has been violated, notice of the fact, together with a copy of the findings thereof, shall be furnished to the party or parties from whom the sample was obtained, or who issued the guarantee, as provided in this act, and a day and place shall be fixed by the health officer of the local food protection and enforcement division, at which said parties may be heard before him. At least fifteen days' notice of such hearing shall be served upon the parties interested, which hearing shall be private and confined to questions of fact. Appearances may be made in person or by attorney and testimony may be taken and evidence introduced as to the correctness of the findings made by the person making the examination or performing the analysis above referred to. If such examination or analysis be found correct, or if the party or parties fail to appear, after notice duly given as above provided, the health officer conducting the hearing shall certify the facts found to the district attorney of the county in which said adulterated, mislabeled or misbranded food was found, sold, or offered or exposed for sale. No publication as in this act provided shall be made until after said act is concluded. (Id. § 16c.)

16d. Same; Samples.—It shall be the duty of the sheriff of any county, in exercising the powers conferred upon him by section 10 hereof, to furnish samples of any and all adulterated, misbranded or mislabeled foods seized or purchased by him as in said section 10 provided, to the health officer of the local food protection and enforcement division, if any, having jurisdiction over the territory within which such seizure or purchase is made; and in carrying out the duties prescribed for him by section seventeen hereof, it shall also be his duty to purchase an additional sample and forward the same to such health officer. (Id. § 16d.)

16e. Same; Saving Clause; Rules and Regulations.—The provisions of sections 16a, 16b, 16c and 16d hereof shall not be construed as repealing, either directly or by implication any of the existing sections of this act, but shall be construed

as constituting an alternative method of enforcing the same and of carrying out the intent and purpose thereof.

The State Board of Health is hereby empowered to prescribe such rules and regulations relating to the operating of the "local inspection and enforcement division" as defined in section 16a as it may deem necessary to carry into effect the full intent and meaning of sections 16a, b, c, and d. (Id. § 16e.)

PART II.

Special Food Laws.

Apples.

50. Standard Grades.—The following standard grades and standard boxes, are hereby established for apples, packed, shipped, delivered for shipment, offered for sale or sold, in the State of California.

(a) The "extra fancy" grade shall consist of well-grown, properly matured apples of one variety; hand picked, well colored and normally shaped for the locality where produced, free from visible rot, visible dry rot, visible Baldwin spot, Jonathan spot and other diseases, and from insect pests, insect bites, bruises, skin punctures, skin broken at stem and other defects (except such bruises as are necessarily caused in the operation of packing), and virtually free from dirt, and shall be uniform in size and well packed in clean standard boxes; provided, however, that russeting confined within the basin of the stem shall be permitted, and that a variation from the said standard as to insect pests, diseases, dry rot, Baldwin spot, insect bites, bruises and other defects shall be allowed not to exceed ten per cent total thereof, nor to exceed five per cent of any one thereof, in any one package; provided, further, that a variation in the size of the apples contained in one box shall be allowed as follows: In boxes containing one hundred twenty-five apples, or less, a variation of one-half inch when measured through the widest portion of the cross-section thereof; in boxes containing one hundred thirty-eight apples, or more, a variation of three-eighths of one inch when so measured.

(b) The "fancy" grade shall consist of well-grown, properly matured apples of one variety, hand picked, normally shaped for the locality where produced, free from visible rot, visible dry rot, visible Baldwin spot, Jonathan spot, soft scald, internal breakdown, serious internal browning, visible watercore and other diseases and from insect pests, insect bites, skin punctures, skin broken at stem, bruises and other defects (except such bruises as are necessarily caused in the operation of packing), and virtually free from dirt, and shall be uniform in size and well packed in containers which shall be virtually clean; provided, that internal browning which can not be detected by external examination or pressure shall be permitted in this grade; provided, further, that smooth caterpillar bites, which on any one apple and in the aggregate shall not exceed one-half of one inch in diameter, slight limb rubs, and not to exceed two healed over case-bearer, codlin moth or aphid stings on each apple, slight sun spots and slight flyspeck fungus, and scab spots which on any one apple and in the aggregate shall not exceed one-fourth of one inch in diameter, russeting which is not excessively rough, and which does not appear on more than twenty-five per cent of the surface of any one apple in the aggregate, except in the case of Newtown Pippins, on which it does not appear on more than thirty-three per cent of the surface of any one apple in the aggregate, shall be permitted in this grade; provided, further, that when the apples contained in any box are packed in tiers, and the size thereof is indicated upon the box by the use of tier markings, the size of the apples in such package shall conform to the tier size marked as hereinafter defined, but when such tier markings are not used, but in lieu thereof the number of apples contained in the box is given, a variation in the size of the apples in such package shall be allowed as follows: In boxes containing one hundred twenty-five apples, or less, a variation of one-half inch when measured through the widest portion of the cross-section thereof; in boxes containing one hundred thirty-eight apples, or more, a variation of three-eighths of one inch when so measured; and provided, further, that a variation from said standard as to the pests, diseases and defects above mentioned as forbidden shall be permitted, not to exceed ten per cent total thereof, nor to exceed five per cent of any one thereof, in any one package; and provided, further, that apples slightly soiled and/or slightly dirty shall be permitted in this grade.

(c) The "fancy loose" grade shall conform in all respects to the "fancy" grade, as hereinabove established, with the following exceptions; the apples in this grade shall not be packed, and the only requirement as to size shall be that none of the

apples of this grade shall be of a size that will pass through a ring two and three-eighths inches in diameter.

(d) The "C" grade shall consist of properly matured apples of one variety, hand picked, free from visible rot, visible dry rot, visible Baldwin spot, Jonathan spot, soft scald, internal breakdown, serious internal browning, visible watercore, and other diseases, and from insect pests, broken skin, sun scald and frost bite more than skin deep, and shall be uniform in size and well packed; provided, that internal browning which can not be detected by external examination or pressure shall be permitted in this grade; provided, further, that scab spots on any apple not larger than one-half of one inch in diameter in the aggregate, and apples showing blssom end cracks, shall be permitted in this grade; provided, further, that a variation from said standard as to such insect pests, dry rot, Baldwin spot, diseases and defects, shall be allowed not to exceed ten per cent total thereof nor to exceed five per cent of any one insect pest, decay or Baldwin spot in any one package; provided, further, that when the apples contained in any box are packed in tiers and the size thereof is indicated upon the box by the use of tier markings, the size of the apples in such package shall conform to the tier size marked as hereinafter defined, but when such tier markings are not used, but in lieu thereof the number of apples contained in the box is given, a variation in the size of the apples in such package shall be allowed as follows: In boxes containing one hundred twenty-five apples, or less, a variation of one-half inch when measured through the widest portion of the cross-section thereof; in boxes containing one hundred thirty-eight apples, or more, a variation of three-eighths of one inch when so measured.

(e) The "C loose" grade shall conform in all respects to the "C" grade, as hereinabove established, with the following exceptions: The apples in this grade shall not be packed, and the only requirement as to size shall be that none of the apples of this grade shall be of a size that will pass through a ring two and three-eighths inches in diameter.

(f) The "Unclassified" grade shall consist of apples, packed or unpacked, of one variety, free from insect pests, visible rot, visible dry rot, visible Baldwin spot, Jonathan spot, soft scald, internal breakdown, serious internal browning and other diseases; provided, that internal browning which can not be detected by external examination or pressure shall be permitted in this grade; provided, further, that visible watercore and that scab spots on any one apple not larger than one-half of one-inch in diameter, in the aggregate, shall be permitted in this grade; provided, further, that a variation from the said standard as to such insect pests, dry rot, Baldwin spot, diseases and defects, shall be allowed not to exceed ten per cent total thereof, nor to exceed five per cent of any one insect pest, decay or Baldwin spot in any one package.

(g) For the purpose of this section, although the tolerances specified for the various standards necessarily are placed on a package basis, not more than one-fourth of the packages in any lot may be permitted to exceed the tolerance established by not more than one-half of the amount allowed; provided, that the entire lot shall average within the tolerance established; provided, further, that no container shall have more insect pests or decay than the amount specified in the tolerance established.

(h) Standard containers for apples shall be boxes of the following dimensions: Inside measurements, when measured without distention of parts; depth of end ten and one-half inches; width of and eleven and one-half inches; length of box eighteen inches, having a cubical content of as nearly as possible two thousand one hundred seventy-three and one-half cubic inches, and a box with the same length and width, but with a depth of end five and one-fourth inches; having a cubical content of as nearly as possible one thousand eighty-six and three-fourths cubic inches.

(i) All packed apples, when shipped, offered for sale or sold, shall be placed in one of the standard boxes herein described; provided, however, that other sized containers may be used (except where the words "extra fancy" are used as the grade designation) if conspicuously marked, in letters not less than one-half inch in height "irregular container." (Supp. 1925, G. L., Act 2800, § 2, as amended L. 1927, c. 250.)

51. Statement on Container.—Every container of apples, excepting loose unclassified apples, when stored, loaded, shipped, delivered for shipment, offered for sale or sold, in the State of California, shall bear upon the outside thereof, and on the end in plain words or figures and in the English language, the following: The grade of the apples therein contained, as herein defined; the designation of grade, when the stamps hereinafter provided for are not used, being stated in letters not smaller than thirty-six point type, that is, not less than one-half inch in height; the number of apples contained in the package, or the minimum net weight of the apples contained therein, or the cubical contents of the package; the variety of the apples contained in the package, unless the variety be unknown to the packer, in

which case the variety shall be stated as unknown; the name and business address of the person, firm, company, organization or corporation, who first packed or caused the same to be packed, and if repacked, the name and business address of the person, firm, company, organization or corporation who repacked the same or caused same to be repacked; the date when such apples were first packed, or if repacked, the date of repacking, and on each container of apples which have been held in cold storage for more than thirty days after being packed a statement showing the fact that the contents have been held in cold storage; provided, however, that a variation of five apples, more or less, than the number stated, shall be allowed; provided, further, that any container of loose apples which meet the requirements for unclassified apples, as herein defined, in lieu of such markings may be marked, in plain words and in the English language, and in letters not less than one-half inch in height, with the words "Unclassified apples."

(a) The term "packed," whenever used in this act, shall be construed to mean the regular, compact arrangement of all or a part of the fruit in any container; the term "well packed," whenever used in this act, shall be construed to mean the regular, compact arrangement of all of the fruit in any container, the fruit being compacted with sufficient solidity so that it will not move in the container when lidded, the top and the bottom of the box, when lidded, having a bulge of not less than one-half inch, and, where wrappers are used, all of the apples in the box being wrapped, with the exception of the bottom layer, which may be "flagged." The term "flagged" shall be construed to mean the incomplete covering of the apples by the use of wrappers which are not closed.

(b) The term "three and one-half tier," "four tier," "four and one-half tier" and "five tier," whenever used as the designation of the size of apples sold or offered for sale, shall have the following meanings, respectively, to wit:

The term "three and one-half tier" shall mean an apple in size three inches or larger when measured as in this section prescribed; the term "four tier" shall mean an apple larger in size than two and five-eighths inches and not larger than three and one-eighth inches when so measured; the term "four and one-half tier" shall mean an apple not smaller in size than two and one-fourth inches nor larger than two and three-fourths inches, when so measured; the term "five tier" shall mean an apple not smaller in size than one and seven-eighths inches, nor larger than two and one-fourth inches, when so measured.

(c) All measurements of apples that may be required or contemplated by the terms of this section shall be made by the use of rings having the specified diameter. If the apple being measured will pass through such ring it shall be deemed to be smaller than the diameter of the ring; if not, it shall be deemed to be larger than such diameter.

(d) The term "cross-section," whenever used in this act, shall mean the section of an apple taken at a right angle to a straight line drawn from the stem end to the blossom end thereof.

(e) When the size of the apples in any container shall be designated by the terms "three and one-half tier," "four tier," "four and one-half tier," or "five tier," at least ninety-five per cent of the apples in each such container shall conform to the definition of the tier marking used, as herein defined, and no apples in the container shall be smaller than the size next smaller, as herein defined.

(f) The term "properly matured," as used in this act, shall be deemed to mean that the apples to which it refers, at the time they were taken or fell from the tree, had reached that stage of development necessary to insure the proper completion of the ripening process; provided, however, that unclassified apples of any variety shall not be required to be properly matured; provided, further, that apples of the varieties Alexander, Red Astrachan, White Astrachan and Beitigheimer shall not be required to be properly matured, as herein defined, in order to meet the requirements of the "Fancy" and "C" grades.

(g) The term "insect pests," whenever used in this act, shall include San Jose scale, codlin moth and other insects, or the larvæ, nymphs, or pupæ thereof, and also shall include any apple which has been infested with codlin moth, and bears evidence of such infestation, with the exception of superficial, well healed codlin moth stings. (Id. § 3.)

52. **Apples to Conform to Standard.**—No person, firm, company, organization or corporation shall sell or offer for sale, within the State of California, any apples labeled, designated, invoiced or represented to be "Extra fancy," "Fancy," "Fancy loose," "C grade," "C loose," or "Unclassified," whether contained in closed packages or otherwise, unless the same shall conform to the standard for such grade herein established. (G. L. 1923, Act 2800, § 4, as amended L. 1927, c. 250.)

53. Same; Proviso.—No person, firm, company, organization or corporation shall import into this State, or deliver for shipment, store, load, ship, sell, barter, keep on display, offer for sale or have in his possession for sale, apples which do not meet the specifications of "Extra fancy," "Fancy," "Fancy loose," "C" grade, "C loose" or "Unclassified" apples as herein defined; provided, however, that no provision of this act shall prevent a grower of fruits in the State of California from selling the same in bulk, or unpacked and unmarked, to a packer, or prevent a grower or packer from manufacturing the same into any apple by-product, or from selling the same unmarked and unpacked to any person, firm, company, organization or corporation actually engaged in the operation of an apple by-product factory, and for the sole and express purpose of being used in the manufacture of an apple by-product; provided, further, that all apples placed or exposed in bulk for sale by any person, firm, company, organization or corporation shall at least meet the requirements of unclassified apples as herein defined; provided, further, that such apples shall not require a sign, placard or grade designation stating classification to which the apples belong; provided, further, that no statement, figure, design or device appearing in connection with and having reference to any lot of apples so exposed shall be false or misleading in any particular. (Supp. 1925, G. L., Act 2800, § 5, as amended L. 1927, c. 250.)

54. Misleading Statements.—No statement, figure, design or device appearing upon any container in which apples are loaded, sold, bartered, or offered for sale, or in which apples are packed for sale or shipment, or upon the brand or lining of any such container, or upon the wrapper of any apple therein contained, or upon any sign or placard used in connection therewith and having reference to the apples contained, shall be false or misleading in any particular. The words "Extra fancy" shall not be used with reference to any apples the grade of which does not conform to the standard for "Extra fancy" grade as in this act defined; and the word "Fancy" or words "Fancy loose" shall not be used with reference to any apples the grade of which does not conform to the standard for "Fancy" grade or the "Fancy loose" grade, as the case may be, as in this act defined; nor shall the letter "C," or words "C loose," as an indication of grade, or quality, be used with reference to any apples the grade of which does not conform to the standard for "C" grade or "C loose" grade, as the case may be, as in this act defined, nor shall the words "Unclassified apples" be used with reference to any apples, the grade of which does not conform to the requirements of unclassified apples as in this act defined. (G. L. 1923, Act 2800, § 6, as amended L. 1927, c. 250.)

61. Penalties.—Any person, firm, company, organization or corporation, who shall violate any of the provisions of this act shall be punishable by a fine of not less than fifty dollars nor more than five hundred dollars, or by imprisonment in the county jail for a period of not more than six months, or by both such fine and imprisonment; provided, however, that when any lot of apples has been inspected as herein permitted, has been passed by the inspector as conforming to the requirements of this act, and has thereupon been sold, and placed in cold storage or shipped to a purchaser, the person who was the owner, packer, or shipper of the lot, at the time of such inspection, shall not be prosecuted hereunder by reason of any failure of any of said fruit so to conform discovered upon any subsequent inspection or examination of such lot. (Id. § 13.)

Canned Goods.

96. Pressure Cooker Licenses Required.—It shall be unlawful for any person firm, company, organization, association or corporation in the State of California to engage in the commercial canning of any agricultural food products, fish or fish products, meat or meat products, which meat or meat products are not under the inspection of the Bureau of Animal Industry, United States Department of Agriculture or the division of animal industry, California State Department of Agriculture, the sterilization of which in the opinion of the California State Board of Health requires the use of a pressure cooker, or a retort, without first obtaining a license from the said State Board of Health. (Supp. 1925, G. L., Act 1248, § 1, as amended L. 1927, c. 730.)

97. Fees; Disposition of Funds.—The said State Board of Health shall issue to any person, firm, company, organization, association or corporation in the State of California, an annual license on the receipt of ten dollars per annum, per plant, and such evidence as the board may require to show that the said person, firm, company, organization, association or corporation is properly equipped with a retort or retorts or pressure cooker which are properly equipped with recording thermometers, indicating thermometers and pressure gauges to carry out such rules and regulations as the State Board of Health may adopt for the sterilization of such agricultural

food products, fish or fish products, meat or meat products, which meat or meat products are not under the inspection of the Bureau of Animal Industry, United States Department of Agriculture or the division of animal industry, California State Department of Agriculture. All moneys received by the State Board of Health for fees shall be deposited at least once each month in the State treasury to the credit of the cannery inspection fund, which fund is hereby created to be used exclusively for the payment of the expenses of enforcing the provisions of this act, and to be paid out only upon claims approved by the State Board of Health and the State Board of Control in the manner provided for by law. One thousand dollars of the cannery inspection fund may be used as a revolving fund for the purposes of carrying out the provisions of this act.

No person, firm, company, organization, association or corporation in the State of California shall permit any person, employee, or individual to operate a steam controlled retort or retorts used in the commercial canning industry for the sterilization of agricultural food products, fish or fish products, meat or meat products, which meat or meat products are not under the inspection of the Bureau of Animal Industry, United States Department of Agriculture, or the division of animal industry, California State Department of Agriculture, unless said person, employee or individual shall first obtain a permit from the State Board of Health which shall have power to pass upon and determine the qualifications of the applicant for the permit with a view to the preservation of the public health, and which permit when granted shall be revocable by the board whenever in its judgment the public health requires such action. (Id. § 2.)

98. Enforcement; Inspectors.—For the purpose of enforcing the rules and regulations of the State Board of Health and the provisions of the pure foods act relating to the canning of such agricultural food products, fish or fish products, meat or meat products, which meat or meat products are not under the inspection of the Bureau of Animal Industry, United States Department of Agriculture, or the division of animal industry, California State Department of Agriculture, the State Board of Health shall appoint a chief cannery inspector, and such additional inspectors and clerical assistance as it may deem necessary for the enforcement of its rules and regulations. (Id. § 3.)

100. Statements on Containers.—It shall be unlawful for any person, firm, company, organization or association or corporation to place upon the label of any bottle, can, jar, carton, case, box or barrel, or any receptacle, vessel or container of whatever material or nature which may be used by a packer, manufacturer, producer, jobber or dealer for enclosing any such canned agricultural food products, fish or fish products, meat or meat products, which meat or meat products are not under the inspection of the Bureau of Animal Industry, United States Department of Agriculture, or the division of animal industry, California State Department of Agriculture, any statement relative to the product having been inspected, unless such statement has been approved, officially in writing, by the State Board of Health. Said approval shall be revocable at any time at the discretion of the State Board of Health upon official written notice. (Id. § 5.)

NOTE: See also Nos. 313 and 393b, post.

Cold Storage.

See No. 393n et seq., post.

Dairy Products—Substitutes for Dairy Products.

186-209. Repealed. (L. 1927, c. 888, § 7.)

209a. Pure Milk Law.—This act shall be known as the "Pure milk law of California." (L. 1927, c. 888, § 1.)

209b. Definitions.—

(a) Unless specifically stated otherwise, the term "milk" as used in this act shall be construed to mean the milk of cows as defined in the general dairy law of California, and as distinguished from the milk of goats, sheep or ther animals.

(b) Market milk is milk which is supplied to the consumer in the natural fluid state, or prepared for human consumption without being converted into any other form or product, as distinguished from manufacturing milk. Except as provided in section 3 (c) of this act, market milk shall contain not less than three and three-tenths per cent of milk fat as a minimum. For the purposes of this act the term "market milk" shall be construed to include "market cream," except where specifically stated otherwise.

(c) It shall be unlawful for any person, firm, corporation or association to sell or exchange or offer for sale or exchange for human consumption, except in bulk to the wholesale trade, any raw market milk from cows that have not passed a tuberculin test, applied annually by a qualified veterinarian in the full time employ of the Department of Agriculture of the State of California, or a veterinarian acceptable to and designated by said department. If reacting animals are found they must be removed from the herd immediately, by the owner, must thereafter be kept separate and apart from any and all cows whose milk is produced for human consumption in the raw state, and the nonreacting animals remaining in the herd must be again tested in six months by the department. If pasteurized, all portions of such market milk shall be uniformly heated to a temperature of at least one hundred forty degrees, but not higher than one hundred forty-five degrees Fahrenheit, and held at such temperature for at least thirty minutes, and immediately thereafter cooled to a temperature of fifty degrees Fahrenheit or below and so maintained until delivered to the consumer; provided, that exceptions to this required process for pasteurization may be made upon receipt of a special written permit from the Department of Agriculture of the State of California.

Every pasteurization plant shall be equipped with a sufficient number of self-registering devices to accurately record the temperature to which and the length of time for which the pasteurized product has been heated. Such records shall be kept for two months and shall be available for inspection by any authorized inspector, agent or other employee of any health department, any approved milk inspection service, or the Department of Agriculture of the State of California. Repasteurized milk shall not be sold for market milk.

(d) Pasteurized market milk shall be bottled only in the plant where it is pasteurized. Raw market milk and pasteurized market milk shall not be bottled in the same plant; except in those plants where milk is received exclusively from cows that have passed an official tuberculin test as required for raw market milk by the provisions of section 2 (c) of this act; or except in those plants where an official representative of any approved milk inspection service is maintained during the period of handling, processing or bottling any such market milk; provided, however, that the provisions of this paragraph shall not apply to market cream.

(e) When served by any hotel, boarding house, restaurant, saloon, lunch counter or other place of public entertainment market milk shall be served in the original bottle, the cap of which shall not be removed, except in the presence of the consumer or patron; provided, however, that this provision shall not apply to market cream.

(f) All the provisions of section 2 (e) shall also apply to goat's milk.

It shall be unlawful for any person, firm, corporation or association, to sell or exchange or offer or expose for sale or exchange for human consumption, as and for cow's milk, any cow's milk to which goat's milk has been added or, as and for goat's milk, any goat's milk to which cow's milk has been added.

(g) The class or grade of all market milk sold, except in bulk to distributors, and the name and address of the producer or distributor (who shall be responsible for the quality of the contents and correct labeling as required by this act) shall at all times appear plainly and in a conspicuous place on, or be securely attached to, every cap, bottle, can or other container.

Market milk which is not subject to grading and grade designations, shall be labeled with the words "Market Milk," which label shall also state whether such milk is raw or pasteurized, in capital letters not less than one-eighth inch in height and one-sixteenth inch in width. Graded market milk shall be labeled with the name of the grade, which label shall also state whether such milk is raw or pasteurized, in capital letters not less than one-eighth inch in height and one-sixteenth inch in width.

No distinguishing names, pictures, symbols, marks, words or other representations, intended to signify or describe the quality of market milk or cream, except those specified in this act, shall appear on any milk bottle, milk bottle cap, milk can, or other milk container; provided, that the use of registered trade-marks or other trade symbols, which do not pertain to the quality of the product in any manner, shall not be deemed to be a violation of the provisions of this act; and provided, further, that nothing herein contained shall be construed to prohibit the use of the names of breeds of dairy cattle, breed trade-marks or other designations adopted by a national or State breed association approved by the Department of Agriculture of the State of California, when such breed names, trade-marks or designations are placed only on an inner cap, or embossed or engraved in the glass of the bottle; or to prohibit the use of the expression, "from nonreacting tuberculin tested cows"; and provided, further, that nothing herein contained shall be construed to prohibit the dating of milk bottle caps as otherwise provided in section 3 (c) of this act or under the rules of an approved milk inspection service, or under local ordinances.

It shall be unlawful for any person, firm, corporation, or association selling or handling market milk, except the original bottler thereof, to have in his or its possession, or under his or its control, any milk bottle cap or label, except the caps and/or labels that are affixed to the filled containers at the time of delivery to said seller or handler. It shall be unlawful for any person, firm, corporation or association, selling or handling market milk to remove any cap or label from any milk container and attach said cap or label to another milk container. It shall be unlawful to sell or offer for sale or have on hand for sale any milk bottle caps which are not packed by the manufacturer in a single column in unopened, dust proof tubular packages. (Id. § 2.)

209c. Certified Milk; Guaranteed Milk, Etc.—(a) Where an approved milk inspection service is maintained as provided in section 4 of this act, market milk shall be graded and designated as follows: "certified milk," "guaranteed milk," "grade A milk," "grade B milk." Market cream if graded shall conform to all of the standards set for market milk of the same grade except that maximum bacterial count for market cream shall be not more than three times as great as that for the corresponding grade of milk.

(b) Certified milk, is market milk which conforms to the rules, regulations, methods and standards for the production and distribution of certified milk adopted by the American Association of Medical Milk Commissions and must bear the certification of a milk commission appointed by a county medical association, organized under and approved by the medical society of the State of California, and must otherwise conform to the requirement of the so-called certified milk act, approved April 25, 1913. (Stats. 1913, p. 83.)

(c) Guaranteed milk, is market milk, which shall conform to the following requirements as a minimum: If raw, the health of the cows shall be determined by physical examination at least once each month by an official representative of an approved milk inspection service and by a tuberculin test as required by section 2 (c) of this act. It shall be produced on dairies which score not less than ninety per cent on the dairy farm score card adopted by the Department of Agriculture of the State of California. It shall be bottled on the premises where produced and must be delivered in containers having the pouring lip completely protected from contamination and shall be cooled immediately after being drawn from the cow to fifty degrees Fahrenheit or less, and so maintained until delivered to the consumer, when it shall contain not more than fifteen thousand bacteria per milliliter, and not less than three and one-half per cent of milk fat. It must be sold to the consumer within thirty hours after production and shall be labeled to indicate the date of sale to the consumer. All persons who come in contact with the raw guaranteed milk must exercise scrupulous cleanliness and must not be afflicted with any communicable disease or in a condition to disseminate the germs of typhoid fever, tuberculosis, diphtheria or other communicable disease liable to be conveyed by the milk. The absence of such germs in all such persons shall be determined by bacteriological and physical examination by a health department maintaining an approved milk inspection service, or other person or laboratory approved in writing by the Department of Agriculture of the State of California, conducted at the time of employment and every six months thereafter in a manner approved by the said Department of Agriculture.

If pasteurized, guaranteed milk shall conform with all the provisions for raw guaranteed milk, except with respect to bottling at the ranch where produced, and except it shall contain not more than three thousand bacteria per milliliter at the time of delivery to the consumer.

(d) Grade A milk is market milk which shall conform to the following requirements as a minimum;

If raw, the health of the cows shall be determined by physical examination at least once in two months by an official representative of an approved milk inspection service and by a tuberculin test as required by section 2 (c) of this act. It shall be produced on dairies that score not less than eighty per cent on the dairy farm score card adopted by the Department of Agriculture of the State of California; provided, however, that dairies where no two cows freshen within four consecutive months and which are found by any milk inspection service to comply fully with the remaining provisions of this act are hereby exempted from such scoring requirements and from the use of labels prescribed in section 2 (g) hereof. It shall contain not more than fifty thousand bacteria per milliliter at the time of delivery to the consumer. All persons who come in contact with raw grade A milk must exercise scrupulous cleanliness and must not be afflicted with any communicable disease or in a condition to disseminate the germs of typhoid fever, tuberculosis, diphtheria or other communicable diseases liable to be conveyed by milk. Absence of such germs

may be determined by bacteriological and physical examination, to the satisfaction of an approved milk inspection service.

If pasteurized, the health of the cows shall be determined by physical examination at least once in six months, by an official representative of an approved milk inspection service. It shall be produced on dairies that score not less than seventy per cent on the dairy farm score card adopted by the Department of Agriculture of the State of California. It shall contain not more than one hundred fifty thousand bacteria per milliliter before pasteurization and not more than fifteen thousand bacteria per milliliter at the time of delivery to the consumer.

(f) Grade B milk is market milk which shall conform to the following requirements as a minimum:

The health of the cows shall be determined by physical examination at least once in six months by an official representative of an approved milk inspection service. It shall be produced on dairies that score not less than sixty per cent on the dairy farm score card adopted by the Department of Agriculture of the State of California. It shall always be pasteurized and shall contain not more than one million bacteria per milliliter before pasteurization and not more than fifty thousand bacteria per milliliter at the time of delivery to the consumer. Grade B milk shall be sold only in cans to the wholesale trade to be used for cooking and baking purposes; provided, however, that this latter provision shall not apply to Grade B cream. (Id. § 3.)

209d. Milk Inspection Service and Laboratory.—(a) Counties or groups of counties, cities or groups of cities, or groups of cities and counties, are hereby authorized to maintain in connection with their respective health departments a milk inspection service and laboratory, conformable to the provisions of this act and the rules and regulations promulgated by the Director of Agriculture of the State of California for the enforcement of this act as provided in section 4 (d). Such counties, cities, or cities and counties may contract one with the other for the maintenance by one of them of such milk inspection service and laboratory within the limits of the other and pay a pro rata of the cost thereof from license fees collected for that purpose or from other moneys available for such purposes. It shall be lawful for any county, city, or city and county to levy and collect a license tax from those who come under the provisions of this act and to pay the same or provide that the same be paid directly to any other county, city, or city and county performing the inspection service under the act as authorized herein. Upon approval in writing of such milk inspection service by the Department of Agriculture of the State of California, any such milk inspection service is authorized to grade market milk as produced or sold under its jurisdiction and to require the use of the respective grade designations as prescribed in section 3 of this act.

(b) Any person, firm, corporation or association, or any group of persons, firms, corporations or associations engaged in the sale or distribution of market milk where an approved milk inspection service, in connection with a local health department, is not maintained may make application in writing to the Department of Agriculture of the State of California requesting the establishment of an approved milk inspection service, authorized to grade the market milk sold or distributed by them in conformity with all of the provisions of this act, and the rules and regulations for its enforcement and to require the use of respective grade designations prescribed in section 3 of this act. Upon receipt of such application by the Department of Agriculture of the State of California the Directors of Agriculture of the State of California through his duly authorized agents shall cause an investigation pertaining to the merits of such application, to be made. If, from the results of such investigation, it shall appear necessary and desirable that such approved milk inspection service be established, the applicant or applicants shall be provided with a form of contract, whereby said applicant or applicants shall agree to accept and to comply with the provisions of this act and the rules and regulations for its enforcements, and to pay a fee sufficient to defray the salaries and other expenses in connection with the maintenance of an approved milk inspection service which amount is to be designated by the Director of Agriculture, and which shall be payable three months in advance during the first week of January, April, July and October of each year. When such agreement shall be signed by the applicant or applicants it shall be validated by the signature of the Director of Agriculture who shall at the same time issue a proclamation establishing a milk inspection service and granting the privileges requested in the application as hereinabove set forth.

(c) It shall be the duty of the Department of Agriculture of the State of California either directly or indirectly through its authorized agents or those of an approved local milk service, to inspect dairies and milk plants, to examine and test cows, to exclude reacting animals from the herds, to mark by branding on the jaw with the capital letter "T" three inches in height and two inches in width any cattle

which under the provisions of this act have been tested with tuberculin and found to react to the test, to conduct and/or supervise milk scoring or other contests when deemed advisable, and to enforce all the other provisions of this act.

(d) The Director of Agriculture of the State of California is hereby authorized to approve local milk inspection services and to make such rules and regulations as may be necessary from time to time to enforce any provision of this act.

(e) Any milk delivered by the producer thereof, to be sold as any grade of market milk, defined in section 3 of this act, shall not be degraded or excluded from the market when a score of the dairy on which said milk is produced is below the specified minimum legal requirement unless a copy of said score shall be promptly given to the proprietor or operator of the dairy and the purchaser of the milk produced by said dairy, and until after a period of sixty hours subsequent to a rescore, made after a period of ten days following the previous scoring, shows the score of said dairy to be again below the specified minimum legal requirement, and a copy of such rescore promptly given to the proprietor or operator of said dairy and the purchaser of the milk produced by said dairy. If, during the said sixty hour period following this said rescoring, a protest is filed with the head of the milk inspection service under whose jurisdiction the milk of such dairy is sold, the milk produced on said dairy shall not be degraded or excluded from the market until after a third score has been made by the said duly authorized representative of said milk inspection service jointly with a duly authorized representative of the Department of Agriculture of the State of California who shall concur in said rescore.

(f) It shall be the duty of the district attorney of each and every county of this State, upon application of the said Department of Agriculture of the State of California or the authorized representatives of any milk inspection service in his county to attend to the prosecution in the name of the people of any action brought for the violation of any of the provisions of this act within his county. (Id. § 4.)

209e. Market Milk; Penalties.—(a) It shall be unlawful for any person, firm, corporation or association, to sell or exchange any milk as and for or under the designation, label or other representation of guaranteed, grade A or grade B milk, except under the supervision of a milk inspection service approved by the Department of Agriculture of the State of California; provided, that a person, firm, corporation or association, which is authorized to sell market milk within the jurisdiction of a milk inspection service may sell market milk from the same supply, of the same quality, in similar containers, and under the same label in territory outside the jurisdiction of any milk inspection service, if local ordinances are not thereby violated, and also in territory within the jurisdiction of any other milk inspection service, if the consent of said other milk inspection service has been previously obtained. It shall be unlawful for any person, firm, corporation or association, to sell, or exchange, or offer or expose for sale or exchange, in any city, county or city and county or any combination of cities and counties in which a milk inspection service, approved by the Department of Agriculture of the State of California has been established any market milk other than graded milk as provided in this act. For the purpose of this act the term "approved milk inspection service" shall be construed to mean a milk inspection service maintained in connection with a county or city, or group or combination of counties and cities which inspection service shall be approved in writing by the Department of Agriculture of the State of California as provided in section 4 (a) and section 4 (b) of this act; or a milk inspection service established by proclamation of the Director of Agriculture as provided in section 4 (b) of this act.

(b) Any person, firm, corporation or association, who shall violate any of the provisions of this act shall be guilty of a misdemeanor and upon conviction shall be punishable by a fine of not less than twenty-five dollars nor more than five hundred dollars, or by imprisonment in the county jail for not more than ninety days, or by both such fine and such imprisonment. (Id. § 5.)

209f. Constitutionality.—If any section, subsection, sentence, clause or phrase of this act is for any reason held to be unconstitutional, such decision shall not affect the validity of the remaining portions of this act. The Legislature hereby declares that it would have passed this act, and each section, subsection, sentence, clause, and phrase thereof irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared unconstitutional. (Id. § 6.)

209g. Repeal.—An act known as the "Pure milk law of California," approved June 15, 1923, as amended, and all acts and parts of acts inconsistent with the provisions of this act are hereby repealed. (Id. § 7.)

212. Unlawful to Sell, Etc., Certain Milk Products.—It shall be unlawful for any person, firm, corporation or association, by himself, his servant or agent, or as the servant or agent of another, to manufacture, sell, exchange or have in possession with intent to sell or exchange, any milk, cream, skim milk, buttermilk, condensed or

evaporated milk, powdered milk, condensed skim milk, or any of the fluid derivatives of any of them to which has been added any fat or oil other than milk fat, either under the name of said products, articles or the derivatives thereof, or under any fictitious or trade name whatsoever; provided, however, that the fat naturally contained in chocolate and not separated therefrom is hereby declared not to be a fat or oil within the meaning of this act; and provided, further, that the addition to the products commonly known as condensed skim milk, condensed buttermilk, or semi-solid buttermilk of not more than five per cent of pure cod liver oil shall not be deemed to be a violation of the provisions of this act, so long as the resultant product shall be sold for poultry or stock feed; and provided, further, that said product shall not be sold, offered for sale, or kept on hand for sale for human consumption. (G. L. 1923, Act 1943, § 3, as amended L. 1927, c. 525.)

233. Cheese; Labels; Standards.—(a) Cheese is the sound, solid or semi-solid product made from milk, skim milk or cream by coagulating the casein thereof with rennet, pepsin, lactic acid or such other coagulating agents as may be approved in writing by the Department of Agriculture of the State of California, with or without the addition of ripening ferments and seasoning and with or without salt (sodium chloride) and with or without harmless coloring matter. Milk to be made into cheese shall conform to the following requirements as a minimum; it shall be unadulterated, fresh, clean, free from foreign substances detrimental to its quality or to the quality of the products prepared therefrom, and shall have been obtained from the udder by the complete milking of one or more healthy cows properly fed and kept, excluding that obtained within five days after or fifteen days prior to parturition.

(b) All cheese sold, offered for sale, exposed for sale, or on hand for sale must be labeled to indicate the variety and the grade, whether whole milk, part skim or skim, and, if made in California, it must be labeled at the factory with the manufacturer's factory number, assigned annually by the Department of Agriculture of the State of California under the rules and regulations provided in section 21 of this act. If made outside of the State of California, it must be labeled with the name of the manufacturer or distributor. Whole milk cheese must contain not less than fifty per cent of pure milk fat in its water-free substance. Part skim cheese must contain not less than thirty per cent of pure milk fat in its water-free substance. Skim cheese is cheese that contains less than thirty per cent of pure milk fat in its water-free substance. It shall be unlawful for any person, firm, corporation or association by themselves, or their agents or employees, to sell, exchange or deliver, or to offer for sale, exchange or delivery, or to cause or permit to be sold, exchanged or delivered or advertised for sale any part skim cheese or skim cheese, except cottage cheese, unless the same be offered for sale and sold as part skim cheese or skim cheese; and it shall be unlawful for any person, firm, corporation or association to expose any such cheese for sale, unless there shall be attached to the outside of every vessel, can, package or piece from or in which such cheese is exposed, sold or held for exchange or delivery, a tag, upon which shall be legibly and distinctively printed in black letters at least one inch in height the words "part skim cheese" or "skim cheese," as the case may be.

(c) Established varieties of cheese are those for which definitions and standards appear in law. All other varieties shall be known as special varieties and may be made under written permit from the Department of Agriculture of the State of California. The standards of composition and labeling requirements shall be those promulgated by the Director of Agriculture of the State of California, and designated in the special permit issued for their manufacture; provided, however, that no special variety of cheese shall be made in shape, form or size similar to any cheese defined by law in paragraph (d) of this section.

(d) Definitions of established varieties: (1) Cheddar cheese is cheese made by the so-called cheddar process, which consists in part of subjecting the curd to a matting and milling process and molding into characteristic forms with a plain white bandage in hoops under pressure, and containing not more than thirty-eight per cent of moisture. (2) Granular cheese is cheese made by the so-called stirred curd or granular process and moulded into characteristic forms with a red bandage in hoops under pressure, similar to those of the cheddar variety, and containing not more than thirty-eight per cent of moisture. (3) Monterey cheese is cheese made by the so-called stirred curd or granular process, without added color, characteristic in size and molded into characteristic shape or form in bags under pressure and containing not more than forty-two per cent of moisture. (4) Cream cheese is an unripened cheese made by the Neufchatel process or variations thereof, from cream, milk, or skim milk enriched with cream or butter fat sufficient so that the resultant cheese shall contain in its water-free substance not less than sixty-five per cent of pure milk fat. All manufacturers of cheese who manufacture cream cheese from butter

shall first secure from the Department of Agriculture of the State of California a permit to do so. Said permit shall be issued subject to the rules and regulations made and promulgated by the Director of Agriculture and may be revoked for violation thereof after due hearing by the Department of Agriculture of the State of California. (5) Cottage cheese shall be made from pure milk or skim milk which has been pasteurized by the system described for market milk or by the system described for manufacturing milk or cream as provided for in section 15 of this act, with or without harmless coloring matter, and sold fresh without molding into forms. (6) Creamed cottage cheese is cottage cheese to which a sufficient quantity of pure, fresh, pasteurized sweet cream is added so that the finished product contains not less than four per cent of pure milk fat. (G. L. 1923, Act 1945, § 7, as amended L. 1927, c. 817.)

234. Ice Cream.—(a) Ice cream is a frozen product made with pure, sweet milk, cream, skim milk, evaporated or condensed milk, evaporated or condensed skim milk, dry milk, dry skim milk, pure milk fat, or wholesome sweet butter made from sweet cream, or any combination of any such products, with or without sweetening, clean wholesome eggs or egg products, and with or without the use of harmless flavoring and coloring, and containing not less than ten per cent of milk fat nor more than six-tenths of one per cent of pure and harmless edible stabilizer, approved by the Department of Agriculture of the State of California. Ice cream, when sold by the manufacturer, shall not contain in excess of one hundred fifty thousand bacteria per gram. Ice cream shall otherwise conform to the composition and weight requirements which shall be specified in regulations promulgated by the Director of Agriculture, in accordance with the provisions of section 21a of this act. All manufacturers of ice cream who use butter, eggs or egg products in the manufacture of ice cream shall first secure from the Department of Agriculture of the State of California a permit to do so. Said permit shall be issued subject to the rules and regulations made and promulgated by the Director of Agriculture, and may be revoked for violation thereof, after due hearing.

(b) Fruit ice cream is ice cream which contains not less than eight per cent of milk fat and not less than three per cent by weight of clean, mature, sound fruit or the juice thereof, with or without the use of harmless flavoring and coloring and containing not more than six-tenths of one per cent of pure, harmless edible stabilizer, approved by the Department of Agriculture.

(c) Nut ice cream is ice cream which contains not less than eight per cent of milk fat and not less than one per cent by weight of sound, nonrancid nut meats, with or without the use of harmless flavoring and coloring, and containing not more than six-tenths of one per cent of pure, harmless, edible stabilizer, approved by the Department of Agriculture of the State of California.

(d) French ice cream, French custard ice cream, cooked ice cream, ice custard, parfaits and all similar frozen products are varieties of ice cream, which shall contain not less than ten per cent of milk fat, and not less than five dozen of clean, wholesome egg yolks, or one and five-tenths pounds of wholesome dry egg yolk containing not to exceed seven per cent of moisture, or three pounds of wholesome, frozen egg yolk containing not to exceed fifty-five per cent of moisture, or the equivalent of egg yolk in other form, for each ninety pounds of ice cream mix, and which shall otherwise conform to the regulations which may be promulgated by the Director of Agriculture in accordance with the provisions of section 21 of this act.

(e) Ice milk is a frozen product containing less milk fat than ice cream, or any of the varieties of ice cream defined in this section and made from pure, sweet milk, with or without sweetening, clean wholesome eggs, or egg products, and harmless flavoring, and containing not less than two and four-tenths per cent of milk fat, and not more than six-tenths of one per cent of pure and harmless edible stabilizer, approved by the Department of Agriculture of the State of California, and all other substances which shall be in semblance of ice cream except imitation ice milk or imitation ice cream. All containers of ice milk shall be conspicuously so labeled, and vehicles conveying ice milk, and places where ice milk is sold, shall display a conspicuous, legible sign containing the words "Ice Milk Sold Here," in letters not less than six inches high. No person shall use the name "ice cream," "cream," "creamy," nor any other word or phrase other than those especially designated by this act, in either labeling or advertising, nor in any other manner, either orally or written, in connection with the advertising, sale or distribution of ice milk. (Id. § 8.)

235. Standards; Definitions.—(a) Milk fat or butter fat is the fat of milk and has a Reichert-Meissl number not less than twenty-four and a specific gravity not less than nine hundred five thousandths (0.905) (milk fat at forty degrees centigrade compared with water at forty degrees centigrade). By Reichert-Meissl number is meant the number of milliliters of decinormal alkali required to neutralize the

acidity of the distillate from five grams of fat treated in the manner described in the book entitled, "Official and Tentative Methods of Analysis of the Association of Official Agricultural Chemists," published by that association in the month of July, in the year nineteen hundred twenty-four (July, 1924, A. D.).

(b) Skim milk is milk from which a part or all of the milk fat has been removed, which contains less than three per cent of milk fat and not less than eight and eight-tenths per cent of milk solids.

(c) Dried milk is the product resulting from the removal of water from milk, and shall otherwise conform to the definition, standards and requirements established by the Secretary of Agriculture of the United States for this product.

(d) Dried skimmed milk is the product resulting from the removal of water from skimmed milk and shall otherwise conform to the standards and requirements established by the Secretary of Agriculture of the United States for this product.

(e) Buttermilk is that portion of sweet or ripened milk or cream which remains after the separation and complete or partial removal therefrom of milk fat in the process of churning, and, when sold for human consumption, shall be deemed to be adulterated if any water is added to said buttermilk.

(f) Cultured buttermilk is pasteurized milk or pasteurized skim milk, or a combination thereof, with or without an admixture of buttermilk, which has been treated with special cultures of lactic acid bacteria, so that the product somewhat resembles buttermilk in appearance, composition and flavor.

(g) Acidophilus milk is milk, skim milk, or a combination thereof, which has been sterilized and afterward fermented by a pure culture of Lactobacillus acidophilus (Moro).

Before engaging in the business of manufacturing, preparing, selling, distributing, or otherwise dealing in acidophilus milk, every person, firm, corporation or association, in addition to the usual factory license, shall obtain and hold an acidophilus milk license from the Department of Agriculture of the State of California. Upon receipt of the application for such a license, said Department of Agriculture shall investigate the equipment and sanitary condition of the place where such acidophilus milk is to be manufactured or prepared, and provide the applicant with a copy of the laws of the State of California pertaining thereto. If the condition of the place is found to be satisfactory, a special fee of one hundred dollars ($100) shall be paid by the applicant, whereupon the license shall be issued. Said license shall normally expire on the thirty-first day of December of year, and shall be revocable for violation of any of the requirements pertaining to acidophilus milk.

(h) Modified milk is milk which has been altered in composition to conform to special nutritional requirements. Modified milk may be sold only upon prescription of a regularly licensed physician.

Before engaging in the business of manufacturing, preparing, selling, distributing, or otherwise dealing in modified milk, every person, firm, corporation or association, in addition to the usual factory license, shall obtain and hold a modified milk license from the Department of Agriculture of the State of California. Upon receipt of application for such license, said Department of Agriculture shall investigate the equipment and sanitary conditions of the place where such modified milk is to be manufactured or prepared and provide the applicant with a copy of the laws of the State of California pertaining thereto. If the condition of the place is found to be satisfactory, a special fee of one hundred dollars ($100) shall be paid by the applicant, whereupon the license shall be issued. Said license shall normally expire on the thirty-first day of December of each year, and shall be revocable for violation of the requirements pertaining to modified milk.

(i) Milk or skim milk, properly pasteurized, and combined with fruit or fruit juices, chocolate, chocolate syrups, or other harmless syrups, with or without the addition of harmless coloring material, may be used in the manufacture and sale of soft drinks under a trade term; provided, that such product shall be so colored or contain ingredients that cause it to distinctly differ from milk in appearance or other characteristics. (Id. § 9.)

236. Unlawful to Use Formaldehyde, Etc., to Delay Souring; Coloring Matter; Gelatin.—No person, firm, corporation or association shall produce, manufacture or prepare for sale, or sell, offer for sale or have on hand for sale, any milk, cream, or other product of milk to which has been added, or that may contain, any compound of boron, salicylic acid, formaldehyde, or other chemical or substance for the purpose of preventing or delaying fermentation or souring. It shall be unlawful for any person to produce, manufacture or prepare for sale, or to sell, or to offer for sale, or to have on hand for sale any milk or product of milk, to which any coloring matter, except as otherwise provided in this act, has been added by any person or to which any gelatine or other substance, except as otherwise provided in this act, has been added by any person to increase the consistency of such milk, or product of

milk, so as to make it appear richer or of better quality. This section shall not be construed to prohibit the use of harmless coloring matter and common salt (chloride of sodium) in butter and cheese, the use of gelatine or other substances named in section 8 of this act in the manufacture of ice cream, or the use of alkalies approved by the Department of Agriculture of the State of California in the manufacture of butter, or the adjustment of the acidity of ice cream mixed within limits designated by said Department of Agriculture. (Id. § 10.)

237. Labeling of Products.—All products defined in this act, when sold, or offered or exposed for sale to the retail trade shall be labeled or billed with the correct name of the product and shall conform to all other requirements for special labeling of the products as provided in this act, or in the rules and regulations for its enforcement. No person, firm, corporation or association, shall use the name of any product defined in this act, either orally, printed, or written, in connection with the sale of any product or substance unless said product or substance shall conform to the definitions and standards prescribed by this act. No person, firm, corporation, or association, shall make or cause to be made any statement either oral, written, or printed, nor make or print, or cause to be made or printed, any design, symbol, picture, or illustration in connection with the advertising or sale of any product, article, or compound defined in this act, which statement, design, symbol, picture, or illustration shall be false, deceptive or misleading in any manner. (Id. § 11.)

240. Unsanitary Creameries.—(a) Any creamery, factory, or building in which dairy products of any kind are manufactured, or any store, salesroom, or depot, or other place where milk or any product of milk is handled or kept for sale, shall, among other causes so classified by the Department of Agriculture of the State of California, be deemed unsanitary within the meaning of this act in the following cases:

(1) If milk or cream is received that has reached an advanced stage of fermentation, or that shows a state of putrefactive fermentation, or contains foreign substances detrimental to the quality of the manufactured product.

(2) If the utensils and apparatus that come in contact with milk or its products are not thoroughly washed and sterilized by means of boiling water or superheated steam or other means equally effective and acceptable to the Department of Agriculture of the State of California, after each using, and if the cans or containers in which the milk or cream is received, transported or delivered are not thoroughly washed, sterilized and dried after emptying and before being sent out to be used again.

(3) If the floor is so constructed as to permit the flowing of water, milk or other liquids underneath or among the interstices of such floor, where fermentation and decay can take place, or if such floor can not be readily kept free from dirt.

(4) If drains are not provided that will convey refuse milk, water and sewage away to a point at least fifty yards distant from such creamery or factory of dairy products or if any cesspool, privy vault, hog yard, slaughterhouse, manure or any decaying vegetable or animal matter shall be so located as to permit foul odors to reach any such creamery or other factory of dairy products or storeroom or depot where milk or its products are sold or handled; of if the water supply of the plant is subject to pollution with sewage or contamination with pathogenic bacteria unless said water be subjected to efficient chlorination or otherwise treated to make it safe for use in connection with the manufacture of food products.

(5) If such creamery or factory of dairy products does not permit access of light and air sufficient to secure good ventilation.

(6) If in any building or buildings used in connection with any creamery, or factory of dairy products, any insects or other species of animal life are permitted, or if upon the floor or walls any milk or its products or any filth is allowed to accumulate or ferment, or decay, or if the bodies or wearing apparel of persons employed, or coming in contact with any milk or its products in any creamery, or factory of any dairy products, are unclean and not washed from time to time with reasonable frequency, or if suitable toilet and lavatory facilities and clean towels are not provided for employees.

(b) The score cards used for the official scoring of factories of dairy products shall be those established by the regulations adopted by the Department of Agriculture of the State of California as provided for in section 21 of this act. (Supp. 1925, G. L., Act 1945, § 14, as amended L. 1927, c. 817.)

241. Pasteurization; Apparatus; Unlawful Sales.—(a) The process of pasteurization, as applied to milk, skim milk, cream and other milk products, is hereby defined to be a process for the elimination therefrom of organisms harmful to human beings, which process shall consist of uniformly heating such milk, skim milk or cream, as the case may be, to a temperature of not less than one hundred forty degrees Fahrenheit and of holding the same at a temperature between one hundred forty and one hundred forty-five degrees Fahrenheit for a period of not less than

thirty minutes, nor more than one and one-half hours, and immediately thereafter cooling the same to a temperature of not above fifty degrees Fahrenheit; provided, that when cream is pasteurized to be used and is used in the manufacture of butter, or when milk is pasteurized to be used and is used in the manufacture of cheese, and where the process of ripening or starting in each case is to be commenced immediately, then it shall not be required that such cream or milk be cooled to a lower degree than necessary for such ripening or starting; and provided, further, that modification of this method may be practiced when approved in writing by the Department of Agriculture of the State of California after due investigation of the efficiency of such method. Milk or skim milk or cream that is to be used in the manufacture of butter or cheese may be pasteurized by heating above one hundred forty-five degrees Fahrenheit and when the same is uniformly heated to and held at a temperature above one hundred fifty-one degrees Fahrenheit, the time for holding may be decreased from thirty minutes by one minute for each degree of temperature above one hundred forty-five degrees Fahrenheit. If milk is repasteurized it must not be sold as market milk.

(b) All apparatus used for the pasteurization of milk, skim milk or cream shall be kept in strictly clean and sanitary condition and every pasteurizing plant shall be equipped with sufficient recording thermometer devices to accurately record the temperature to which and the length of time for which the pasteurized product has been heated.

All recording thermometer devices used in the pasteurization of any milk, skim milk or cream must be of a type approved by, and the use thereof must at all times be subject to the approval of, the Department of Agriculture of the State of California. All persons, firms, corporations or associations using pasteurizing apparatus within the State of California shall date, preserve and keep on file for a period of not less than two months after the same are made, all records made by such thermometer, or in lieu of such preservation may deliver such records to any public officer authorized by law or ordinance to receive the same, and said records shall, at all times, be open to the inspection of the said Department of Agriculture, State Board of Health, and of all other State, county and municipal officers charged with the enforcement of laws and ordinances respecting dairy products or the public health.

(c) No person, firm, corporation or association shall sell, exchange or offer or expose for sale or exchange, or have in its possession for sale or exchange any milk, cream, skim milk, ice cream, butter, buttermilk, cheese or other products of milk as and for pasteurized milk, cream, skim milk, ice cream, butter, buttermilk, cheese or other products of milk, as the case may be, nor use the word "pasteurized," or any of its derivatives in connection with the sale, designation, advertising, labeling or billing of any milk, cream, skim milk, ice cream, butter, buttermilk, cheese or other milk products, unless the same and all products of milk contained therein or used in the manufacture thereof consist exclusively of milk, skim milk or cream which has been treated by the process of pasteurization as defined and regulated in this section. (G. L. 1923, Act 1945, § 15, as amended L. 1927, c. 817.)

242. Factory Licenses.—(a) Every person, firm, corporation or association, before regularly engaging in the business of dealing in, receiving, manufacturing, freezing or processing milk or any product of milk shall obtain a license to do so for each separate plant or place of business from the Department of Agriculture of the State of California; provided, that nothing in this section shall apply to retailers dealing in finished products received from a distributor or producer in final form. Upon receipt of an application for such license, the said Department of Agriculture shall investigate the equipment and the sanitary condition of the plant where milk or the products of milk are to be received, processed, frozen or manufactured, and provide the applicant with a copy of the dairy laws of the State of California. If the condition of the plant is found to be satisfactory, a "factory license" shall be issued by said Department of Agriculture to such applicant upon receipt of a license fee of ten dollars, except that every person, firm, corporation or association engaged in the business of dealing in, receiving, manufacturing, freezing or processing ice cream, ice milk and all similar frozen products shall be required to pay annually a minimum factory license fee of twenty-five dollars for the manufacture of fifty thousand gallons or fraction thereof per year, and for each additional ten thousand gallons or fraction thereof manufactured per year, said applicant shall pay an additional license fee of one dollar. All factory licenses herein required shall expire at the end of each calendar year; provided, that such license shall remain in full force and effect during the month of January of the next succeeding year or such part thereof as may be necessary for the renewal of said license by said Department of Agriculture. All licenses may be renewed each successive year provided that the plant for which previous license was issued or the business thereof shall have been conducted in

accordance with the requirements of this act during the year next preceding that for which renewal is requested. The fee for the renewal of such license (except for ice cream, ice milk and all similar frozen products, which shall be as hereinbefore provided) shall be one dollar for each one hundred thousand pounds of milk fat or part thereof, or each four hundred thousand gallons of milk or part thereof, purchased or received during the preceding year, ending the thirty-first day of December; provided, in no case shall the renewal fee exceed ten dollars except for ice cream, ice milk and all similar frozen products which shall be as hereinbefore provided. The correct amount of the fee for the renewal of said license shall be forwarded with said application for its renewal. Any factory license may be suspended or revoked by the said Department of Agriculture for violation of any of the provisions of this act, or for violation of any of the rules and regulations promulgated for its enforcement as provided in section 21 of this act.

(b) All persons who shall test milk or cream, purchased, received or sold on the basis of the milk fat contained therein must first obtain and hold a license to do so from the Department of Agriculture of the State of California, said license to be known as a "tester's license." Any method or process which gives accurate results may be used; provided, that all glassware and other apparatus must be examined for accuracy and the procedure be approved by the Department of Agriculture of the State of California; and provided, further, that a tester's license must be obtained for each method or process used. The said Department of Agriculture upon receipt of an application for such license, shall examine into the qualifications of the applicant and every applicant shall satisfy said Department of Agriculture of his qualifications, and shall have a thorough knowledge of the provisions of the law with which he must comply and pay a fee of five dollars before any such license shall be issued. Said applicant shall state the method of testing to be used by the applicant, which method must be approved by said Department of Agriculture of the State of California before a license may be issued. All such licenses shall expire with the thirty-first day of December of each year and may be renewed within thirty days prior to expiration upon filing application for such renewal and payment of a renewal fee of one dollar; provided, all requirements of the law and regulations pertaining to the work of the licensee have been observed. Any "tester's license" may be suspended or revoked by the said Department of Agriculture for violation, by the holder thereof, of any of the provisions of this act, or any of the rules and regulations for its enforcement, promulgated as provided in section 21 of this act.

(c) All persons, other than licensed testers, who shall take samples of milk or cream purchased, received or sold on the basis of the milk fat contained therein, on which sample tests are to be made as a basis of payment, and all persons who shall make weighings of milk or cream, the weights thus obtained to be used as a basis of payment, must first obtain and hold a license to do so from the Department of Agriculture of the State of California, said license to be known as a "sampler's and weigher's license;" provided, that when the same person does both the sampling and weighing only one license shall be required; and provided, further, that in case of emergency a person may weigh or sample for a period not exceeding one week before making application for a license. The said Department of Agriculture upon receipt of an application for such license shall examine into the qualifications of the applicant, and every applicant shall satisfy said Department of Agriculture of his qualifications and shall have a thorough knowledge of the provisions of the law with which he must comply and pay a fee of one dollar before any such license shall be issued. All such licenses shall expire with the thirty-first day of December of each year and may be renewed within thirty days prior to expiration upon filing application for such renewal and payment of a renewal fee of one dollar; provided, all requirements of the law and regulations pertaining to the work of the licensee have been observed. Any "sampler's and weigher's license" may be suspended or revoked by the said Department of Agriculture for violation, by the holder thereof, of any of the provisions of this act, or of any of the rules and regulations for its enforcement, promulgated as provided in section 21 of this act.

Any person who shall take samples of milk or cream for testing shall be required to hold the same in an unchanged condition until delivered to a licensed tester.

(d) All persons who shall make bacteriological determinations upon milk or cream which determinations are used as a basis of payment or determining value must first obtain and hold a license to do so from the Department of Agriculture of the State of California, said license to be known as a "technician's license." The Department of Agriculture upon receipt of an application for such license shall examine into the qualifications of the applicant. Upon successfully passing the required examination and the payment of a fee of five dollars a license shall be issued to said applicant. All such licenses shall expire with the thirty-first day of December of each year and may be renewed within thirty days prior to expiration

upon filing application for such renewal and payment of a renewal fee of one dollar; provided, all requirements of the law and regulations pertaining to the work of the licensee have been observed. Any "technician's license" may be suspended or revoked by the Department of Agriculture of the State of California for violation, by the holder thereof, of any of the provisions of this act, or of any of the rules and regulations promulgated as provided in section 21 of this act. (Supp. 1925, G. L., Act 1945, § 16, as amended L. 1927, c. 817.)

242a. Dairy Produce Exchange.—(a) For the purposes of this act, a dairy produce exchange shall be deemed to be any association of persons, firms, corporations and/or associations organized for the purpose of furnishing a medium for trading in butter, cheese or eggs, to facilitate the marketing of said products, or to establish their wholesale market value.

(b) It shall be unlawful for any person, firm, association or corporation to establish or operate a dairy produce exchange without first obtaining from the Director of Agriculture a license to do so.

(c) Every dairy produce exchange within the expiration of ninety days from and after the effective date of this act, and any person, firm, association or corporation thereafter desiring to operate a dairy produce exchange, and before engaging in such activity, shall file with the Director of Agriculture a written application for a license, which application shall be accompanied by the license fee of one hundred dollars, and shall state or include the following information:

(1) The name under which said exchange proposes to operate.

(2) The location of its place of business.

(3) The names of its officers, directors, and the persons, firms, corporations and/or associations constituting its membership.

(4) A certified copy of its articles of incorporation, its constitution and by-laws, and the rules and regulations and bases of trade under which it proposes to operate.

(d) It shall be the duty of the Director of Agriculture to examine the application, and if he finds that the applicant has fully complied with the provisions of this act, he shall issue to said applicant a license authorizing it to operate such a dairy produce exchange. Said license shall recite in bold type that the issuance thereof is permissive only and does not constitute a recommendation or endorsement of the rules and regulations or bases of trade under which said applicant proposes to operate.

(e) The Director of Agriculture may upon his own motion and shall, upon the verified complaint in writing of any person, investigate the actions of any dairy produce exchange as defined by this act, and shall have the power to temporarily suspend or permanently revoke licenses issued under the provisions of this act whenever the holder thereof is guilty of:

1. Failing to supply all the information required by the provisions of subdivisions 1, 2, 3, and 4 of subsection (c) of this section.

2. Making any false statements or misrepresentations of facts to the Director of Agriculture.

3. Fraud or deception in his or its application for or procurement of a license.

4. Any other conduct, whether of the same or a different character than hereinabove specified, which is unlawful.

5. Violation of any law or ordinance of the State or any city or county or the rules of the Federal Trade Commission governing unfair trade practices in the handling of butter, cheese and/or eggs.

(f) Before suspending or revoking any license the said Director of Agriculture shall notify in writing the applicant or holder of such license of the charges against him or it, and afford an opportunity to be heard in person or by counsel in reference thereto.

(g) Every order, decision or other official act of the Director of Agriculture, including every decision suspending or revoking any license under this act, shall be subject to review, in accordance with the provisions of chapter I of title I of part III of the Code of Civil Procedure, and any party aggrieved by any such order, or decision of the Director of Agriculture may, within thirty days from date of written notice of said decision or order, appeal therefrom to the Superior Court of the State of California, in and for the county in which the said dairy produce exchange affected by such decision has its place of business, under the terms of this act by serving upon the Director of Agriculture a notice of such appeal and a demand in writing for a certified transcript of all the papers on file in his office affecting or relating to such decision and all the evidence taken on the hearing. Thereupon the said Director of Agriculture shall, within thirty days upon payment of the costs therefor by the appealing party, make and certify such transcript. The applicant shall, within fifteen days after receiving the same, file the same and the notice of appeal with the clerk of said court. Upon the hearing of said appeal the burden of proof shall lie upon the party appealing and the court shall receive and consider any pertinent

evidence, whether oral or documentary, concerning the action of the Director of Agriculture from which the appeal is taken.

(h) In the event of the suspension or revocation of any license the decision of the Director of Agriculture shall not take effect until thirty days after its date. In the event of an appeal from the decision of the Director of Agriculture to any court of competent jurisdiction in the State of California, the decision of the Director of Agriculture shall remain in effect pending the determination of such appeal, unless the party appealing and aggrieved by such decision of the Director of Agriculture shall file with said court a bond in a sum to be fixed by said court, which bond shall be in favor of the people of the State of California, and be conditioned upon the faithful performance of all those things which are ordered to be done, or the faithful observance of such restraint as may be directed by the Director of Agriculture. Said bond shall be for the benefit of any person having dealings with such appellant, and any such person so dealing with the same shall have the right to commence a suit thereon in his own name against appellant and his sureties.

(i) (1) The Director of Agriculture shall have power to administer oaths, certify to all official acts and to issue subpœnas for the attendance of witnesses and the production of books and papers. In any hearing in any part of the State, the process issued by the Director of Agriculture shall extend to all parts of the State, and may be served by any person authorized to serve process of courts of record, or by any person designated for that purpose by the Director of Agriculture. The person serving any process shall receive such compensation as may be allowed by the Director of Agriculture, not to exceed fees prescribed by law for similar service, and such fees shall be paid in the same manner as provided herein for the payment of fees of witnesses.

(2) Each witness who shall appear by order of the Director of Agriculture shall receive for his attendance the same fees and mileage allowed by law to a witness in civil cases, which amount shall be paid by the party at whose request such witness is subpœnaed. When any witness who has not been required to attend at the request of any party shall be subpœnaed by the Director of Agriculture, his fees and mileage shall be paid from the funds that the Director of Agriculture may accumulate out of fees to be obtained from applicants for licenses.

(j) (1) The Superior Court, in and for the county in which any hearing may be held by the Director of Agriculture, shall have the power to compel the attendance of witnesses, the giving of testimony and the production of books and papers as required by any subpœna issued by the Director of Agriculture. In case of the refusal of any witness to attend or testify or produce any papers required by such subpœnas, the Director of Agriculture may report to the Superior Court, in and for the county in which the hearing is pending, by petition, setting forth that due notice has been given of the time and place of attendance of said witness, or the production of said papers, and that the witness has been examined in the manner prescribed in this act, or that the witness has failed or refused to attend or produce the papers required by subpœna before the Director of Agriculture, in the cause of proceeding named in the subpœna, or has refused to answer questions propounded to him in the course of such hearing, and ask an order of said court compelling the witness to attend and testify or produce said papers before the Director of Agriculture.

(2) The court, upon petition of the Director of Agriculture, shall enter an order directing the witness to appear before the court at a time and place to be fixed by the court in such order, but the time to be not more than ten days from the date of the order, and then and there show cause why he has not attended or testified or produced said papers before the said Director of Agriculture. A copy of said order shall be served upon said witness. If it shall appear to the court that said subpœna was regularly issued by the Director of Agriculture and duly served, and if it shall appear that said testimony and/or said books or papers are relevant, material and pertinent to the hearing being held by the said Director of Agriculture, then the court shall thereupon enter an order that said witness appear before the Director of Agriculture at the time and place fixed in said order, and testify or produce the required papers, and upon failure to obey said order said witness shall be dealt with as for contempt of court.

(k) The Director of Agriculture may, upon his own motion or upon application of the complainant or the licensee in any hearing before him cause the deposition of witnesses residing within or without the State to be taken, in the manner prescribed by law for like depositions in civil cases in the Superior Courts of this State, and to that end may compel the attendance of witnesses and the production of books and papers.

(l) For each license the Director of Agriculture shall charge the sum of one hundred dollars, which said sum must accompany the application for the said license.

Except as otherwise provided herein each license issued by the Director of Agriculture shall continue in effect so long as the licensee shall continue in business, and shall pay a fee of one hundred dollars annually to the Director of Agriculture, such fee being payable on the first Monday of each calendar year.

(m) The Director of Agriculture may require such monthly or other periodical reports, records of market quotations and other statistical information as may be necessary to him in administering this act, and all such reports, statistics or information pertinent to each licensee shall be kept on file in the office of the Director of Agriculture and subject to public inspection.

(n) The Director of Agriculture shall have access to all records of every licensed dairy produce exchange, and may appoint a representative to sit with the Board of Directors or other governing body of such exchange.

(o) The Director of Agriculture or his duly authorized representative shall act as arbitrator in all cases of dispute or contention concerning the maintenance or operation of any licensed dairy produce exchange, or the by-laws, rules or regulations pertaining thereto. Upon receipt of any verified complaint concerning a licensed dairy produce exchange the Director of Agriculture or his duly authorized representative shall proceed to make a thorough investigation. In this connection he may conduct hearings, of which all interested parties shall receive due notice, and may require written submittals setting forth the views of any or all contending parties. In this connection he shall invite the co-operation and solicit the opinion of the Federal Trade Commission and the Bureau of Agricultural Economics of the United States Department of Agriculture. On the basis of the information so obtained the director shall prescribe a tentative rule which shall be effective in the operation of any licensed dairy produce exchange for a period not to exceed ninety days. If after such trial period it shall appear that said tentative rule operates in a fair and equitable manner, it shall then upon order of the Director of Agriculture, be made a permanent rule of said licensed dairy produce exchange. If in the conduct of any such investigation it shall appear that any unlawful act or acts shall have been committed by any licensed dairy produce exchange the Director of Agriculture may initiate appropriate legal proceedings against such licensee. Any person, firm or corporation who or which shall operate a dairy produce exchange without a license shall be guilty of a misdemeanor and shall also be liable to pay to the State of California the sum of one hundred dollars for each and every day of such operation; said moneys to be recovered by an action at law brought by the Attorney-General in the name of the people of the State of California. Any person who shall make any false statement in applying for a license or shall violate any rule or decision of the Director of Agriculture authorized by this section shall be guilty of a misdemeanor. (G. L. 1923, Act 1945, § 16½ as added L. 1927, c. 850.)

243. Weighing and Sampling; Records.—(a) No person, firm, corporation or association shall fraudulently manipulate the measure or weight or underread or overread or otherwise manipulate any test used for determining the grade or quality of milk or cream, or the per cent of milk fat in milk or cream, nor take an unfair sample of milk or cream on which a test is to be made, nor fraudulently manipulate such samples, or the records of any measurement, weight, or test, or combination thereof. A permanent record in duplicate of all tests of milk or cream purchased, received, or sold, on the basis of the amount of milk fat contained therein, must be made by a tester, licensed by the Department of Agriculture of the State of California, on standard forms supplied by, or in accordance with the specifications for such records, adopted by the said Department of Agriculture. Each test shall be legibly recorded with indelible pencil or ink and shall be accompanied by the patron's name or number in such a manner as to correctly identify the test obtained upon the milk or cream of each patron. Each sheet or page shall be authenticated by the signature of the tester licensed by the said Department of Agriculture, and a duplicate record shall be deposited by said licensed tester immediately after completing the test on the day's samples, in a box provided by the purchaser or receiver or seller of milk or cream, as the case may be, said box to be constructed, sealed and maintained in accordance with the rules and regulations promulgated as provided in section 21 of this act. The original record shall be immediately delivered to the purchaser or receiver or seller of said milk or cream, who shall retain said original record for a period of at least three months. The said licensed tester shall retain an unmodified sample of all milk or cream tested by him for a period of not less than forty-eight hours after tests of said milk or cream have been made and said purchaser or receiver or seller of milk or cream shall provide a suitable place where such samples so retained may be kept and such place shall be acceptable to the said Department of Agriculture. When payment for milk or cream is made on the basis of the milk fat contained therein, samples shall be taken from each lot of said milk or cream upon delivery, and payment shall be made in accordance with the

percentage of milk fat actually found in said samples; provided, that nothing in this section shall be construed to prohibit weighing and sampling on a route; and provided, further, that nothing in this section shall be construed to prohibit the use of composite samples of milk.

(b) In conducting the Babcock test, the milk fat column in tests on milk, in milk test bottles, shall be read from the extreme bottom of the fat column to the top of the top meniscus. In tests on cream in cream test bottles the meniscus at the top of the milk fat column shall be destroyed by the use of an overlying foreign oil approved by the Department of Agriculture of the State of California, and the milk fat column shall be read from the extreme bottom of the fat column to the plane of separation between the fat column and the overlying foreign oil. The reading of the test shall be made when the temperature of the milk is between one hundred thirty and one hundred forty degrees Fahrenheit.

(c) No person shall knowingly render any statement or bill showing the weight, grade, percentage of fat, amount of fat, price, or total amount paid, which shall be false, deceptive or misleading in any particular.

(d) All measuring glassware, weights or scales used by licensed testers or licensed technicians shall be accurate. All glassware shall be examined by the Department of Agriculture of the State of California and if found to be accurate, each piece shall have a legible or indelible distinguishing mark placed upon it by the said Department of Agriculture. All Babcock glassware and scales shall comply with the following specifications:

(1) Milk test bottle. The total per cent graduation shall be eight. The graduated portion of the neck shall have a length of not less than sixty-three and five-tenths millimeters and the graduation shall represent whole per cent, five-tenths per cent and tenths per cent. The error in the total graduation or in any part thereof shall not exceed one-tenth of one per cent. The neck shall be cylindrical for at least five millimeters below the lowest and above the highest graduation mark.

(2) Fifty per cent nine gram long-neck cream test bottle. The total per cent graduation shall be fifty. The graduated portion of the neck shall have a length of not less than one hundred twenty millimeters. The graduation shall represent five per cent, one per cent and five-tenths per cent. The cylindrical part of the neck shall extend at least five millimeters below the lowest and above the highest graduation mark. Each bottle shall bear at the top of the neck above the graduations, in plain legible characters, a mark defining the weight of the charge to be used—nine grams. The error in the total graduation or in any part thereof, shall not exceed twenty-five hundredths of one per cent.

(3) Fifty per cent eighteen gram long-neck cream-test bottle. The total per cent graduation shall be fifty. The graduated portion of the neck shall have a length of not less than one hundred twenty millimeters. The graduation shall represent five per cent, one per cent and five-tenths per cent. The cylindrical part of the neck shall extend at least five millimeters below the lowest and above the highest graduation mark. Each bottle shall bear at the top of the neck above the graduations, in plain legible characters a mark defining the weight of the charge to be used—eighteen grams. The error in the total graduation or in any part thereof shall not exceed twenty-five hundredths of one per cent.

(4) Seventeen and six-tenths milliliter pipette. The delivery tube shall have a length of one hundred to one hundred twenty millimeters and an outside diameter between four and five-tenths and five and five-tenths millimeters, and a straight nozzle. The pipette shall contain seventeen and six-tenths milliliters of water at twenty degrees centigrade, when the bottom of the meniscus coincides with the mark on the suction tube. The error in the graduation shall not exceed five one-hundredths of a milliliter.

(5) Scales or balance. The scales or balance used in weighing cream samples into the test bottles shall have a sensibility of not more than thirty milligrams.

(e) A fee of one dollar shall be paid by the owner of said glassware to the Department of Agriculture of the State of California for every dozen pieces of Babcock glassware examined in accordance with the provisions of paragraph (d) of this section. The said department shall charge fees for examining glassware and apparatus used in methods of testing other than the Babcock test, which fees shall be sufficient to cover the actual cost of such examination. (Supp. 1925, G. L., Act 1945, § 17, as amended L. 1927, c. 817.)

244. Containers to be Kept Sanitary and in Good Condition.—(a) Every person, firm, corporation or association, not a common carrier, who receives from a private or common carrier in cans, bottles, vessels or other containers, any milk, cream, ice cream, or other product of milk intended for human consumption, which has been transported over any railroad, or boat, or freight line, or by other common or private carrier, which said cans, bottles, vessels or other containers, are to be

returned to the manufacturer, distributor, consignor or shipper, shall cause the said empty cans, bottles, vessels or other containers to be thoroughly cleansed and sterilized by boiling water or superheated steam before return shipment of the same, and every private or common carrier before accepting such cans or containers to be returned to the manufacturer or distributor shall require that each container be plainly marked with the name and address of the person returning same. All milk bottles, cans or containers of any kind in which milk or any product of milk is kept, stored, transported or delivered shall be sound, smooth, free from rust or open seams, and at all times kept in a condition which will permit thorough cleansing of all surfaces with which the milk or its products come in contact. Bottles, cans, tubs, cabinets, containers or other receptacles, commonly used for the reception, storage or delivery of milk, cream, ice cream or other products of milk shall not be used as a receptacle for, or storage place of, any vegetables, fish, fowls, meats, other foodstuffs, or refuse matter, bottles, or filthy or offensive substance, or for any other purpose than that for which they were originally intended. All empty cans, bottles, vessels or other containers delivered to the producer by the manufacturer, retailer, or distributor for the reception of milk or any product of milk shall be kept by said producer in a clean, sanitary, sterile condition and shall be used for no other purpose whatsoever. All empty cans, bottles, vessels or other containers delivered to the consumer by retailer or distributor shall be thoroughly cleansed before returning the same to the retailer or distributor.

(b) Any person, firm, corporation or association engaged in receiving, producing, manufacturing, packing, canning, bottling, handling or selling milk or any product of milk in containers marked or otherwise identified with the name or names of such person, firm, corporation or association, or with any fictitious or other name or word or words or with any mark or device whatsoever, may file with the Department of Agriculture of the State of California a description of the name or names, or word or words, or mark or device so used, and an application for registration of the same as a brand, which application shall be accompanied by a fee of five dollars. The applicant shall also cause such description to be printed once a week for three successive weeks in one or more newspapers of general circulation published in the locality or localities in which said applicant shall be engaged in business. The Department of Agriculture of the State of California may refuse to register a brand when it appears that the same or a similar brand has been previously registered by another; and whenever it appears that two or more applicants have applied for the registration of the same or similar brands, the Director of Agriculture may after hearing determine the right of prior ownership in such brand; and when such right of prior ownership is determined the Director of Agriculture shall refuse to register, or shall cancel the registration of, any duplicate or similar brand. Any person, firm, corporation or association acquiring any container marked with a brand registered under the provisions of this section, by purchase or by other lawful means, shall so notify the Department of Agriculture of the State of California, and shall not thereafter be required again to file and publish said description, but may acquire as a part of said purchase all such benefit as the vendor had under this act. It shall be the duty of every person who finds or receives in the regular course of business or in any other manner any container marked with a brand registered under the provisions of this section to make diligent effort to find the owner thereof and to restore or return the same. (G. L. 1923, Act 1945, § 18, as amended L. 1927, c. 817.)

245. Wagons to be Labeled; Sanitation; Transportation.—(a) All wagons, vehicles or carts from which market milk, cream, butter, ice cream, buttermilk or ice milk are regularly sold, marketed, delivered or peddled, shall have the name and address of the owner plainly lettered thereon in letters at least three inches high, and one and a half inches wide, on both sides of such vehicle. All carriers of milk, cream or other products of milk, whether producer, gratuitous private carrier other than the producer, private carrier for hire, or common carrier, in transporting milk and cream shall maintain all cars, motor trucks, other vehicles or boats in a clean and sanitary condition.

(b) All vehicles, boats or other conveyances, while transporting milk or cream or clean empty containers intended for milk or cream, and all shipping platforms or premises where such containers are held awaiting shipment, shall either be enclosed or provided with canvas covering or otherwise afforded protection from the direct rays of the sun, from warm air, from dust, mud, rain and other sources of contamination when in the judgment of an authorized representative of the Department of Agriculture of the State of California it is necessary. No milk or cream or other product of milk shall be transported in connection with or close to any other commodity from which it may absorb foreign flavors or which may contaminate it, and no milk or cream or empty containers used for milk or cream shall be hauled in any

vehicle used for hauling manure, or garbage, or in any other unclean vehicle, car or boat. All milk or cream cans or other shipping containers for products of milk shall be handled carefully, and while containing milk, cream or other products of milk, shall be kept right end up; provided, nothing herein shall be construed to derogate from any powers or authority of the Railroad Commission of the State of California.

(c) No carrier of milk, cream or other product of milk, whether gratuitous private carrier, private carrier for hire, or common carrier, shall receive or transport any milk or cream or product of milk after notification by an authorized representative of the Department of Agriculture of the State of California, that such product is unclean, polluted, tainted, unwholesome, stale, impure or adulterated, or has been produced in violation of the provisions of this act. (Id. § 19.)

247. **Department of Agriculture to Enforce Act; Duties.**—(a) It shall be the duty of the Department of Agriculture of the State of California to enforce the provisions of this act and the Director of Agriculture shall promulgate such rules and regulations as are incidental to the enforcement of the provisions and accomplishment of the purposes of this act.

(b) The Director of Agriculture, through his agents or employees, is hereby authorized to enter upon and inspect any car, truck, dairy premises, creamery, cheese factory, ice cream factory, or other place where milk, cream or products of milk of any kind are being produced, sold, handled, kept, transported, delivered or used, or where the Director of Agriculture, his agents or employees, have reason to believe that oleomargarine or substances designed to be used as a substitute for butter, or imitation butter, or imitation cheese, or imitation milk is being manufactured, sold, kept, delivered, transported or stored in violation of any of the provisions of this act, or where they have reason to believe that containers used in the handling of milk or any product of milk are being used, kept, delivered, transported, or stored, and to take samples of milk or any product of milk, imitation milk, or oleomargarine from such premises, and to impound and hold for evidence or pending an analysis, any milk, or product of milk, or imitation milk, or oleomargarine, or any container used in the handling of milk or any product of milk, which he has reason to believe may be manufactured, sold, kept, delivered, transported, stored, or handled in violation of any of the provisions of this act. The Director of Agriculture shall cause posters to be placed in a conspicuous manner on dairies throughout the State, indicating in a brief and simple manner the most important requirements for the production of dairy products.

(c) No tolerance in weights, measures, percentages of milk fat or moisture, or any other measure or standard shall be permitted under or according to the provisions of this act, except where specific provisions therefor are made in this act.

(d) The Director of Agriculture, through his agents or employees, is authorized to condemn any milk, cream, butter, cheese, or other product of milk which is found to be impure, unclean, unwholesome, or stale, or that is produced, manufactured, handled or kept in an insanitary place, or that is adulterated; and he shall have power to destroy, or to mark for identification with a nontoxic substance, any condemned milk or product of milk; provided, that no manufactured product of milk or cream may be destroyed without due notice to the owner thereof and a hearing before the Director of Agriculture of the State of California, or other officer especially designated by him.

(e) Upon the representation of any interested party, the Director of Agriculture may institute proceedings in any court of competent jurisdiction to recover to the owner thereof any container marked with a brand registered under the provisions of section 18 of this act. The expense of such proceedings shall be paid by the owner of such container, or by other interested party on whose representations such proceedings were instituted, and shall be a lien on such container.

(f) Containers found to be used in violation of the requirements of paragraph (a) of section 18 of this act shall be condemned and marked with the word "condemned" in an appropriate manner, and shall not be used again in connection with the handling of milk or any product of milk for human consumption, until they have been cleaned or repaired in a manner acceptable to an authorized representative of the Department of Agriculture of the State of California.

(g) It shall be unlawful for any person, firm, corporation or association to prevent or to interfere with or to attempt to nullify in any way the work of duly authorized representatives of the Department of Agriculture of the State of California, or of an approved milk inspection service maintained under the provisions of the pure milk law of California, or to interfere with or prevent any of said representatives from examining any records or books in the conduct of his official duty, or to prevent or to interfere with any of said authorized representatives in the event he deems it advisable to secure samples of milk or any product of milk, imitation

milk, imitation butter, or oleomargarine, or any substance designed to be used as a substitute for milk or any product of milk.

(h) The licenses issued in accordance with the provisions of section 16 of this act, upon a hearing before the Director of Agriculture, of which the licensee shall have a written notice of the time and place of said hearing and the charges made against him, may be suspended or revoked by said Director of Agriculture if, after written notice, the licensee fails, after thirty days, to comply with the laws, rules and regulations under which the license was granted; provided, that no such thirty days' notice shall be required in cases of manipulation of the measures, weights, samples, or tests for milk fat content of milk or cream, upon which payment is based, or the records thereof.

(i) No prosecution based on a sample or samples of milk, or any product of milk, shall be had, unless a duplicate of said sample or samples is left with the accused; provided, it shall not be required that samples taken in connection with the establishment of proof of fraudulent manipulation of the test for milk fat in milk, or cream, be given to the accused.

(j) It shall be the duty of the district attorney of each and every county in this State, upon application of the Department of Agriculture of the State of California or its authorized representatives, to attend to the prosecution, in the name of the people, of any action brought for the violation of any of the provisions of this act within his county. (Supp. 1925, G. L., Act 1945, § 21, as amended L. 1927, c. 817.)

249a. Appropriations.—There is hereby appropriated out of any money in the State treasury not otherwise appropriated, the sum of twenty-seven thousand dollars to be expended by the Department of Agriculture of the State of California to carry out the provisions of this act. (L. 1927, c. 817, § 13.)

253. Rules 2, 3, and 4 of this section are amended to read as follows:

Rule 2. In addition to the list of quarantinable diseases given in rule 1 of this section the following is a partial list of contagious, infectious and communicable diseases, all of which, though not required to be quarantined, must be properly reported in writing to the State Board of Health, or its secretary, by the said local health boards or chief executive health officers, viz.: chicken-pox, erysipelas, pneumonia, uncinariasis or hookworm, epidemic cerebrospinal meningitis, trachoma, whooping-cough, mumps, dengue, dysentery, tuberculosis, typhoid fever, tetanus, malaria, leprosy, measles, German measles, glanders and anthrax affecting human beings, rabies, pellagra, beri-beri, syphilis, gonococcus infection, and poliomyelitis, and any disease which appears to have become epidemic. The diseases last above enumerated, and such others as from time to time may be added thereto by the State Board of Health or its secretary, shall be quarantined whenever in the opinion of the State Board of Health or its secretary such action is necessary to protect the public health, and shall be isolated whenever in the opinion of the State Board of Health, its secretary, or the local board of health or health officer, isolation is necessary to protect the public health. This list can be changed at any time by the State Board of Health or its secretary.

Rule 3. When any building, house, structure, or part thereof, or tent or other place, is quarantined because of a contagious, infectious or communicable disease, said local health boards or chief executive health officer shall cause to be firmly fastened, in the most conspicuous place upon such house, building, tent or other place, a yellow placard, upon which shall be printed the following words:

"Keep out, these premises have been quarantined by order of the .....
Note—Under the provisions of the public health act of the State of California anyone entering or leaving these premises without the permission of the health officer is guilty of a misdemeanor."

The word "quarantined" as it appears upon such placard shall be printed in plain and legible letters of at least two and one-half inches in length.

Such placard shall not be removed by any person except the health officer or his deputies, nor shall the same be obstructed or obscured in any manner by any person whatever.

Rule 4. When persons quarantined in a house, building, structure, tent, or other place have recovered from the disease for which the quarantine is established, or when the quarantine is for exposure to a contagious, infectious or communicable disease, and the period of incubation designated has elapsed, the quarantine shall not be raised by order of the local board of health or local health officer until every exposed room, together with all bedding, clothing, and all other personal property contained therein, has been thoroughly disinfected, or if necessary, such personal property may be destroyed, by or under the direction of the health officer or his deputy; and until all persons quarantined shall have taken a thorough antiseptic bath and put on clothing free from contagion.

254a. Bovine Tuberculosis Law.—This act shall be known as the "bovine tuberculosis law" of California. (L. 1927, c. 47, § 1.)

254b. Definitions.—

(a) The word "person" as used in this act shall be construed to import both the singular and plural, as the case demands, and shall include individuals, partnerships, firms, corporations, associations, commonwealths, their agents, and/or employees;

(b) The word "tuberculin" shall be construed to mean the product of the growth of the tubercle bacillus from any source, used in the diagnosis of tuberculosis in live stock and poultry.

(c) The term "accredited herd" shall be construed to mean a herd of cattle for which the owner holds a valid certificate of accreditation issued to him by the Bureau of Animal Industry of the United States Department of Agriculture and the Department of Agriculture of the State of California;

(d) The term "tuberculosis eradication area" shall be construed to mean an area established and delimited by proclamation of the Director of Agriculture of the State of California for the purpose of promoting the eradication of bovine tuberculosis in said area in co-operation with the United States Department of Agriculture.

(e) The term "tuberculosis modified area" shall be construed to mean an area so declared by proclamations of the United States Department of Agriculture and Department of Agriculture of the State of California;

(f) The word "test" shall be construed to mean the use of tuberculin for the purpose of diagnosing tuberculosis in cattle;

(g) The term "grade animal" or "grade herd" shall be construed to mean an animal or a herd of animals not individually identified in the herd book of any breed record association recognized by the United States Department of Agriculture;

(h) The term "pure-bred animal" or "pure-bred herd" shall be construed to mean an animal or a herd of animals individually identified in the herd book of a breed record association recognized by the United States Department of Agriculture. (Id. § 2.)

254c. Sale of Tuberculin.—(a) It shall be unlawful for any person to sell or otherwise dispose of any tuberculin in the State of California that has not been produced under license of the Bureau of Animal Industry of the United States Department of Agriculture;

(b) All sales and all other disposition of tuberculin to be used within the State of California shall be reported within five (5) days thereafter to the Department of Agriculture of the State of California. (Id. § 3.)

254d. Tuberculin; Who May Buy or Possess It.—(a) It shall be unlawful for any person other than a veterinarian approved by the Department of Agriculture of the State of California to buy, possess, or use tuberculin as defined in section 2 (b) of this act for any purpose whatsoever;

(b) The use of tuberculin for any purpose whatsoever by said approved veterinarian shall be reported within five (5) days thereafter to the Department of Agriculture of the State of California;

(c) The result of every test shall be reported within five (5) days thereafter to the Department of Agriculture of the State of California by the veterinarian conducting said test. (Id. § 4.)

254e. Milk; Tuberculin Test.—It shall be unlawful for any person to sell, or otherwise convey to another, for the feeding of live stock or poultry, any milk or product of milk from animals which have not passed a tuberculin test applied by a veterinarian approved by the Department of Agriculture of the State of California, until such milk or product of milk has been pasteurized, or heated to a temperature as efficient as pasteurization in the destruction of pathogenic bacteria, in a manner acceptable to the Department of Agriculture of the State of California. (Id. § 5.)

254f. Slaughter of Animals.—(a) Animals known to be affected with tuberculosis shall under permit in writing from the Director of Agriculture, and after being branded in accordance with the provisions of this act, be removed from a tuberculosis eradication or modified area, or slaughtered, within sixty days, under the supervision of the Department of Agriculture of the State of California, or of the United States Bureau of Animal Industry;

(b) The slaughtering of all animals, under the provisions of this act, shall be under the supervision of an inspector of the Department of Agriculture of the State of California, or of the United States Bureau of Animal Industry, except that in any chartered or incorporated city or city and county that maintains a regular meat inspection service by persons who have passed the civil service meat and/or market inspectors' examination the slaughtering of said animals under the provisions of this act shall be under the supervision of such an inspector or inspectors of such chartered or incorporated city or city and county. The carcasses shall be disposed of in

accordance with the rules and regulations of the Department of Agriculture of the State of California, or of the United States Bureau of Animal Industry governing meat inspection. (Id. § 12.)

254g. Rules and Regulations.—In order to carry into effect the provisions of this act, the Director of Agriculture is hereby authorized to make such rules and regulations as may, in his judgment, be necessary, proper or advisable. (Id. § 13.)

254h. Penalty.—Any person, whether principal, agent or otherwise, who violates any of the provisions of this act, shall be deemed guilty of a misdemeanor, punishable by a fine of not more than five hundred dollars ($500), or not more than thirty (30) days in jail, or by both such fine and imprisonment. (Id. § 14.)

254i. Saving Clause.—All acts or parts of acts in conflict with any of the provisions of this act, are hereby repealed, provided that nothing herein contained shall be construed or held to repeal an act known as the "pure milk law"* of the State of California, approved June 15, 1923. (Id. § 16.)

NOTE: See also No. 393n et seq., post.

Eggs.

See No. 242a, ante.

Feeding Stuffs.

282. Commercial Feeding Stuffs Defined; Exceptions.—The term "commercial feeding stuffs" shall be held to include all feeding stuffs used for feeding live stock and poultry, except the following:

(a) Whole seeds or grains.

(b) Fresh green roughage, milk, skimmed milk, whey and buttermilk, the unmixed meals made directly from and consisting of the entire grains of corn, wheat, rye, barley, oats, buckwheat, flaxseed, kaffir, milo and light rice; provided, that light rice shall be labeled "light rice" when ground; and not excepting ground barley exceeding nine per cent in fiber and/or five per cent ash, ground oats exceeding fourteen per cent fiber and/or five per cent ash, ground corn exceeding four per cent fiber and/or three per cent ash, milo exceeding five per cent fiber and/or four per cent ash and kaffir exceeding five per cent fiber and/or four per cent ash.

(c) Whole hays, straws, cottonseed hulls and corn stover when unmixed with other materials. (G. L. 1923, Act 2665, § 1, as amended L. 1927, c. 381.)

284. Labels; What to Contain.—Every lot or parcel of commercial feeding stuffs sold, offered or exposed for sale or distributed within this State shall have affixed thereto a tag or label, in a conspicuous place on the outside thereof, containing a legible and plainly printed statement in the English language, clearly and truly certifying:

(a) The net weight of the contents of the package, lot or parcel;

(b) The name, brand or trade-mark;

(c) The name and principal address of the manufacturer or person responsible for placing the commodity on the market;

(d) The minimum per centum of crude protein;

(e) The minimum per centum of crude fat;

(f) The maximum per centum of crude fiber;

(g) The maximum per centum of ash;

(h) The specific name of each ingredient used in its manufacture;

(i) The per centum of such ingredients as corn cobs, corn bran, oat hulls, barley hulls, rice hulls, ground light rice, or similar materials, when such constitute a portion of the package, lot or parcel.

(j) The per centum of grit or mineral matter they contain.

The crude protein, crude fat, crude fiber and ash shall be determined by the methods in force at the time by the Association of Official Agricultural Chemists of North America. (Id. § 3.)

284a. Tags and Invoices.—Any importer, jobber, firm, association, corporation or person who shall manufacture or mix any commercial feeding stuffs, for another, shall, when such commercial feeding stuffs are not to be resold, furnish those for whom said commercial feeding stuffs are manufactured or mixed a numbered invoice which shall have written or printed thereon the date of sale and the name and the number of pounds of each ingredient entering into such commercial feeding stuffs so mixed for another. Each package of such commercial feeding stuffs mixture shall have attached thereto a written or printed tag showing the number and date of said invoice and the name of the mixer or manufacturer. All such invoices

*Repealed. See No. 186, ante.

shall remain on file for six months, subject to inspection under the provisions of this act. No two invoices issued in one calendar year shall bear the same number. (G. L. 1923, Act 2665, § 3a, as added L. 1927, c. 381.)

289. **Guaranty; Violations; Penalties.**—Any manufacturer, importer, jobber, firm, association, corporation or person who shall sell, offer or expose for sale, or distribute in this State, any commercial feeding stuffs without having attached thereto or furnished therewith such labels or tags as required by the provisions of this act, or who shall impede, obstruct, hinder or otherwise prevent or attempt to prevent said State Board of Health or its authorized agent in the performance of its duty in connection with the provisions of this act, or who shall sell, offer or expose for sale or distribute in this State any commercial feeding stuffs as defined in section 1, without complying with the requirements of the provisions of this act, or who shall sell, offer or expose for sale or distribute in this State any commercial feeding stuffs which contain a smaller per centum of crude protein or crude fat or a larger per centum of crude fiber or ash than is certified to be contained therein, or who shall fail to properly state the specific name of each and every ingredient used in its manufacture or who shall fail to properly state the per centum of such ingredients as corn cobs, corn bran, oat hulls, barley hulls, rice hulls, ground light rice or similar materials, when such constitute a portion of the package, lot or parcel or the per centum of grit or mineral matter shall be deemed guilty of a violation of the provisions of this act and upon conviction thereof shall be fined not more than one hundred dollars for the first violation and not less than one hundred dollars for each subsequent violation. Any manufacturer, jobber, importer, firm, association, corporation or person who shall mix or adulterate any feeding stuffs with any substance or substances injurious to the health of live stock or poultry shall be deemed guilty of a violation of the provisions of this act, and in addition to the penalty provided in this section, the lot of feeding stuffs shall be subject to seizure, condemnation and sale as the court may direct. The court may in its discretion release the feeding stuffs so seized when the requirements of the provisions of this act have been complied with, and upon payment of all costs and expenses incurred by the State in any proceedings connected with such seizure. One-half of all fines, and the proceeds from condemned foodstuffs collected by any court or judge for the violations of the provisions of this act shall be paid to the State Treasurer, and the State Treasurer shall deposit such money to the credit of the fund for the maintenance of the State laboratory, to be drawn against by warrants of the State Controller upon claims which shall be approved by the State Board of Health and the State Board of Control. No dealer shall be prosecuted under the provisions of this act when he can establish a guaranty signed by the wholesaler, jobber, manufacturer or other party, residing in the United States, from whom he purchased such commercial feeding stuffs to the effect that the same are not adulterated, mislabeled or misbranded within the meaning of this act, and can also establish by satisfactory evidence that the commercial feeding stuffs sold, offered or exposed for sale or distributed in this State were mislabeled or did not conform to the analysis declared on the label or tag affixed thereto, and that at the time of selling, offering or exposing for sale or distributing in this State such commercial feeding stuffs the dealer was not aware of that fact; such guaranty may be either general or special. A general guaranty shall guarantee, without conditions or restriction, all of the commercial feeding stuffs purchased, prepared, compounded, packed, distributed or sold by the guarantor as not mislabeled or adulterated within the meaning of this act. A special guaranty shall guarantee in the same manner the particular commercial feeding stuffs listed in an invoice of the same and shall be attached to or shall fully identify such invoice. Both said guaranties to afford protection must contain the name and address of the party or parties making the sales of such commercial feeding stuffs to said dealer. If the guaranty be to the effect that such commercial feeding stuffs are not adulterated, mislabeled or misbranded within the meaning of the national pure food act, approved June 30, 1906, it shall be sufficient for the purposes of this act and have the same force and effect as though it referred to this act, except that a guaranty referring to the said national pure food act alone shall not be sufficient for the purposes of this act in any case where at any time the standard for the commercial feeding stuffs concerned under this act is higher than the standard for like commercial feeding stuffs under said national pure food act. In case the wholesaler, jobber, manufacturer or other party making such guaranty to said dealer resides without this State and it appears from the certificate of the Director of the State Laboratory that such commercial feeding stuffs were adulterated, mislabeled or misbranded, within the meaning of this act or the national pure food act, approved June 30, 1906, the district attorney must forthwith notify the Attorney General of the United States of such violation. (G. L. 1923. Act 2665, § 8, as amended L. 1927, c. 381.)

NOTE: See also No. 212, ante.

Fish—Fish Products.

308. Purpose.—It is hereby declared that it is the purpose of this act to bring about an increased consumption of fresh fish by the people of California, to enable them to obtain the same at reasonable prices, and to empower the Director of Agriculture to regulate and control the business of buying and selling fresh fish, to regulate the destruction of food fish, to create a State fish exchange fund, to license those engaged in marketing fresh fish, to create a State fish exchange fund, to provide penalties for violations of this act, to investigate and report on the fish industry, and to promote the sale of fish. (G. L. 1923, Act 8034, § 2, as amended L. 1927, c. 791.)

309. Terms Construed.—The following terms used in this act shall, unless a different meaning is plainly required by the context, be construed as follows:

The "Director of Agriculture" shall be understood to be himself personally or his duly appointed and authorized representative. A "person" shall be deemed to include individuals, partnerships, associations and corporations or their agents or employees. A "retail dealer," "peddler," or "huckster," is one engaged in the business of selling fresh food fish direct to the consumer. A "wholesale dealer" is one who sells fresh food fish to hotels, restaurants, railroads, steamships, hospitals, institutions and all others than the consumer, and especially to retail dealers for resale. A "fish buyer" or "fish broker" is one engaged in the business of buying or selling fresh food fish for the owner or consignee, or who, without an established place of business, buys from the fishermen for the purpose of reselling to others than the consumer. "Market fishermen" are individuals engaged in the business of catching fish which is sold or intended to be sold. When the singular is used the plural is also included; whenever the masculine is used the feminine and neuter are included. (Id. § 3.)

311. Fish Business Regulated by Director of Agriculture.—(a) The director of Agriculture is hereby vested with jurisdiction to regulate and control the business of buying and selling and otherwise disposing of fresh food fish caught in the waters under the jurisdiction of the State, and the business of buying, selling and disposing of such fresh food fish may not be carried on except in accordance with the provisions of this act.

(b) The Director of Agriculture is hereby vested with jurisdiction to open and conduct where, when and for so long as he deems it advisable, State markets for the buying and selling of fresh food fish, and to rent, lease or purchase plants and equipment necessary for the same, and to use so much of the funds placed at the disposal of the State Market Director by the act creating the State commission market, approved June 10, 1915,* or in the event of the repeal of said act, by the State Market Commission Act, as may be required in establishing and conducting said markets.

(c) The Director of Agriculture is hereby vested with full power, authority and jurisdiction to do and perform any and all things, whether herein specifically designated, or in addition thereto, which are necessary or convenient in the exercise of any power, authority or jurisdiction conferred under this act. (Id. § 5.)

312. Price Regulations.—(a) The Director of Agriculture shall, when and where and for so long as he deems it advisable, establish maximum prices to be paid or charged in any particular locality, for food fish of any or all varieties intended for human consumption in its fresh condition, caught in the waters under the jurisdiction of the State:

First—To be paid to those engaged in catching such fish for sale.

Second—To be paid to those engaged in the wholesale fish business.

Third—To be charged to the consumer by retail fish dealers, peddlers or hucksters; and said prices shall be such as will allow, in the judgment of the Director of Agriculture, a reasonable compensation or profit to those engaged in the catching or selling of such fish.

(b) The Director of Agriculture may, at his discretion, from time to time make such changes or withdrawals in the prices authorized in section 6 (a) hereof, as he may deem necessary.

(c) It shall be unlawful for any person engaged in the business of selling fresh food fish in a particular locality to charge more than the maximum prices authorized for such locality, as provided in section 6 (a) hereof. Any violation of the provisions of this paragraph, after receipt of notice of maximum prices established in accordance with the provisions of section 6 (a) of this act, shall be good and sufficient ground

*See No. 393n et seq., post.

for the suspension or revocation by the Director of Agriculture in his discretion of any license issued under the authority of this act.

(d) In the exercise of powers under this act, the Director of Agriculture may confer with parties interested with a view of securing their advice and counsel as to maximum prices to be paid and charged. (Id. § 6.)

313. Destruction or Diversion of Food Fish; Consent Thereto; Exceptions.—It shall be unlawful for any one to destroy, or cause or permit to be destroyed any food fish in excess of fifty pounds within one day of twenty-four hours or to divert, or cause or permit to be diverted any food fish to any use other than human consumption, without having first obtained the written consent of the Director of Agriculture to such destruction or diversion. Consent to such destruction or diversion shall be given only where the applicant establishes to the satisfaction of the Director of Agriculture that such destruction or diversion is not for the purpose of influencing prices and that reasonable efforts have been made to induce its consumption by the public. Nothing in this section shall be construed to apply:

To the use of food fish by fishermen as bait in the customary manner, or to food fish in the possession of canners, curers or packers and which are not suitable for their use and which in consequence are destroyed or diverted to use other than human consumption. (Id. § 7.)

314. When Excessive Supply of Fish Reaches Market.—In the event of a supply of fresh food fish reaching any market, which supply in the judgment of the Director of Agriculture is excessive or abnormal:

(a) It shall be the duty of the Director of Agriculture, in his discretion, to use every means at his command to induce its consumption by the public, including reduction in prices thereon and increased publicity, as hereinafter provided for.

(b) It shall be obligatory on the part of market fishermen and wholesale fish dealers, who find themselves possessed of an excessive supply, to notify the Director of Agriculture of the fact, and failure to give such notice shall be sufficient grounds for the suspension for a period not exceeding one month, in the discretion of the Director of Agriculture, of any license issued under the authority of this act.

(c) The Director of Agriculture may, at his option, use the moneys of the State Fish Exchange fund hereinafter provided for, in purchasing any part or all of an excess of food fish over the amount that can be sold through ordinary channels, and to place same in cold storage, and to resell same to any or all buyers, and any loss or profit in such transactions shall be charged or credited to the State Fish Exchange fund. (Id. § 8.)

315. Licenses; Fees.—Every person, individual, partnership, association or corporation, other than market fishermen, engaged in the business of buying and selling fish for consumption in its fresh condition, shall pay to the State an annual license fee, as follows:

First—All retail dealers, dealing exclusively in fish, crustaceans and mollusks, ten dollars.

Second—All retail dealers, handling fish in connection with a retail business, owned by them, in other products than crustaceans and mollusks, and all peddlers and hucksters, five dollars.

Third—All fish brokers and all fish buyers, fifty dollars.

Fourth—All fishermen's organizations selling the catch of their members or agents selling the catch of such fishermen's organizations, fifty dollars.

Fifth—All salesmen or agents representing wholesale fish dealers located outside the State, fifty dollars.

Sixth—All wholesale fish dealers, on the basis of their gross receipts from the sale of fresh food fish, including their sales at branch houses, as follows:

When gross receipts for one year are:

Not in excess of fifty thousand dollars, fifty dollars.

Between fifty thousand dollars and one hundred thousand dollars, seventy-five dollars.

Between one hundred thousand dollars and two hundred thousand dollars, one hundred dollars.

Between two hundred thousand dollars and four hundred thousand dollars, one hundred and fifty dollars.

Between four hundred thousand dollars and six hundred thousand dollars, two hundred dollars.

More than six hundred thousand dollars, two hundred fifty dollars.

Seventh—All branch houses of wholesale dealers—that is, wholesale dealers operating more than one wholesale establishment—for each branch house, five dollars.

Fees payable by wholesale dealers under paragraph sixth of this section as above, shall be due and payable in advance, and shall be based on the applicant's sworn statement as to his gross receipts from the sale of food fish sold for human consump-

tion in its fresh condition, using the preceding year as a basis. If the applicant did no wholesale business during said preceding year, a license shall be issued upon payment of a fee of fifty dollars and the execution of a good and satisfactory bond by the applicant to the Director of Agriculture, guaranteeing the payment of such additional amount as will make the total payable on his actual business during such period equal to the license fee fixed in said paragraph sixth of this section. If the amount of actual sales of any such dealer for any annual period, for which he has paid license fees in advance, shall be greater or less than the amount on which such license fee was based, he shall at the end of such period, be charged with and shall pay to the State such additional amount as would be due on the basis of actual sales as set forth in paragraph sixth hereof, if the amount of actual sales be greater than the amount on which license fee was paid; or if the actual sales be less than such amount for any such annual period, he shall, at the end thereof, be credited with the difference between the license fee paid in advance and the fee that would have been due on the basis of actual sales as set forth in paragraph sixth hereof; but such credit shall be made only on further license fees that may be payable by any such dealer. (Id. § 9.)

316. Period of Licenses; Proportionate Charge for Portion of Annual Period.—All licenses provided for in this act shall be paid in advance and shall terminate with June thirtieth, following the date of issue. A proportionate charge shall be made, according to the number of months covered, for licenses issued for a portion of the annual period, but in no case shall the fee be less than one-half of the annual fee, excepting those issued to wholesale dealers as hereinabove provided in section 9 of this act. A separate license shall be required for each place of business from persons owning or operating more than one establishment, except that the sale of fish from a vehicle by the holder of an exclusive retail fish dealer's license shall not require a peddler's license. Persons doing both a wholesale and retail business shall be required to take out both wholesale and retail licenses unless the total receipts of any such person amount to less than ten thousand dollars per annum, and any such person having total receipts of less than ten thousand dollars per annum shall be considered a retail dealer for licenses hereunder. (Id. § 10.)

318. Repealed. (L. 1927, c. 791, § 10.)

322. State Fish Exchange Created.—To carry out the provisions of this act, there is hereby created a "State Fish Exchange" as a division of the State Department of Agriculture. The State Fish Exchange shall have an executive officer who shall execute a bond to the people of the State of California in the sum of ten thousand dollars for the faithful performance of his duties. The Director of Agriculture shall have authority, subject to the State Civil Service Act, to appoint all employees, including attorneys, of the State Fish Exchange necessary to carry out the provisions of this act and shall fix their compensation and such employees so appointed shall have all the powers and authority of sheriffs and other peace officers for the purpose of enforcing this act. (G. L. 1923, Act 8034, § 16, as amended L. 1927, c. 791.)

323. Rules and Regulations.—The Director of Agriculture shall establish and enforce rules and regulations necessary for the proper carrying out of the provisions of this act, and shall print and distribute the same to all persons applying therefor without charge. (Id. § 17.)

324. State Fish Exchange Fund.—There is hereby created a fund to be known as the "State Fish Exchange Fund." On or before the tenth day of each month the State Fish Exchange shall remit to the State treasury all moneys collected by said exchange under this act, during the preceding month. All such remittances shall be placed to the credit of the State Fish Exchange Fund and said fund shall be kept separate and apart from other State moneys. All expenses of whatsoever nature incurred by said exchange pursuant to the provisions of this act, including the actual and necessary traveling and other expenses of its employees incurred while on business of the exchange and including the premium and charge for bonds given by surety companies for employees of the exchange when required by the Director of Agriculture or by the provisions hereof, shall be paid from the said fund, after approval of the Director of Agriculture, upon claims to be audited by the State Board of Control, except as provided in section 19 of this act. (Id. § 18.)

325. Revolving Fund.—A revolving fund of five hundred dollars shall be established by the State Board of Control out of the State Fish Exchange Fund for expenses of the State Fish Exchange, other than salaries, rent and other regular expenses, and the Director of Agriculture may expend such revolving fund, without first procuring the authority of the Board of Control, but shall file vouchers therefor monthly with the Board of Control. (Id. § 19.)

326. Payments to Fund.—A sum equaling five per cent of the gross receipts of the State Fish Exchange shall be paid out of the State Fish Exchange Fund,

monthly, to the Director of Agriculture and credited to the general fund, for services rendered the State Fish Exchange by the Director of Agriculture. (Id. § 20.)

327. Educational and Publicity Campaigns.—Any surplus over and above the expenditures of the State Fish Exchange in the State Fish Exchange Fund shall be expended by said exchange, under the direction of the Director of Agriculture, in educational and publicity campaigns for the purposes of increasing the consumption of fresh food fish, and of enabling the public to obtain fish at reasonable prices. (Id. § 21.)

329. License Suspended or Revoked.—Any license issued under the authority of this act may be suspended or revoked by the Director of Agriculture in his discretion, as herein provided, or upon evidence that the holder thereof has been or is a violator of the provisions of section 6 of this act, authorizing the fixing of maximum prices on fish, or of the fish and game laws of the State, as evidenced by conviction in any court of competent jurisdiction; or any such license may be suspended in the discretion of the State Director of Agriculture for a period not to exceed thirty days for any violation of the rules and regulations provided for in section 17. Such suspension or revocation shall be made only after due notice of such intention has been given the offender and an opportunity given him to rebut the charge at a formal hearing by the Director of Agriculture, at which hearing the accused shall be entitled to be represented by attorney. (Id. § 23.)

330. Statement of Fish Caught.—The Director of Agriculture may require from any person engaged in marketing fish a written statement as to the amount and varieties of fish caught, or on hand, or sold by said person. Failure to furnish such statement on demand shall be good and sufficient grounds for the suspension of license issued under the provisions of this act, at the discretion of the Director of Agriculture, for a period not exceeding thirty days. (Id. § 24.)

332. Investigations; Subpœnas.—(a) The Director of Agriculture may make investigations concerning all matters relating to the provisions of this act. In connection therewith he shall have the right to inspect the books and records of any person engaged in marketing fish, and the Director of Agriculture is hereby empowered to hear complaints, administer oaths, certify to all official acts, and to issue subpœnas for the attendance of witnesses and the production of papers, books, accounts, documents and testimony in any inquiry, investigation, hearing or proceeding in any part of the State.

(b) The Superior Court in and for the county, or city and county, in which any inquiry, investigation or proceeding may be held by the Director of Agriculture, shall have power to compel the attendance of witnesses, the giving of testimony and the production of papers, including books, accounts and documents, as required by any subpœna issued by the Director of Agriculture. The court, upon petition of the Director of Agriculture, shall enter an order directing the witness to appear before the court at a time and place to be fixed by the court in such order, the time to be not more than ten days from the date of the order, and then and there show cause why he had not attended and testified or produced said papers before the Director of Agriculture. A copy of said order shall be served upon said witness. If it shall appear to the court that said subpœna was regularly issued by the Director of Agriculture, the court shall thereupon enter an order that said witness appear before the Director of Agriculture at a time and place to be fixed in such order, and testify or produce the required papers, and upon failure to obey said order said witness shall be dealt with as for contempt of court. (Id. § 26.)

333a. Suits Commence When.—All prosecutions or suits brought under this act shall be commenced within six months from the time such offense was committed. (G. L. 1923, Act 8034, § 28.)

NOTE: See also No. 96 et seq., ante, and No. 393n et seq., post.

Fruits, Vegetables, Etc.

372-387. Repealed. (L. 1927, c. 865, § 40.)

387a. California Fruit, Nut and Vegetable Standardization Act.—This act shall be known, and for any and all purposes may be designated and referred to, as "The California fruit, nut and vegetable standardization act of 1927." (L. 1927, c. 865, § 1.)

387b. Standards Established.—To promote the development of the California fruit, nut and vegetable industry, and to prevent deception in the packing, marking, shipping or sale of fruits, nuts and vegetables for State, interstate or foreign commerce, there are hereby created and established certain standards and standard containers for apricots, avocados, berries, cherries, citrus fruits, dates, grapes, peaches, pears, oriental persimmons, plums and fresh prunes, "Wonderful" pome-

granates, quinces, walnuts, artichokes, cantaloupes, carrots, head lettuce, melons, onions, potatoes, sweet potatoes and tomatoes. (Id. § 2.)

387c. Enforcement.—The Director of Agriculture is hereby empowered, through his duly authorized agents, and through the county horticultural commissioners of each county of the State, their deputies and inspectors, to enforce all provisions of this act. The Director of Agriculture shall have supervision and control over all enforcing officers of this act in the State of California. The refusal of any officer duly authorized under this act to carry out the orders and directions of the Director of Agriculture in the enforcement of this act shall be deemed neglect of duty.

The horticultural commissioner of each county, and his deputies and inspectors, shall be, by virtue of their office, inspectors of fruits, nuts and vegetables under this act in their respective counties. (Id. § 3.)

387d. Enforcing Officers; Duties and Powers.—All enforcing officers under the provisions of this act shall have power to enter and to inspect every place or vehicle, within the county or district for which they have been appointed, where any fruits, nuts or vegetables are produced, stored, packed, delivered for shipment, loaded, shipped, being transported, offered for sale or sold, and to inspect such places and all such fruits, nuts and vegetables, and the containers thereof and equipment found in any such places, or in vehicles when being transported.

It shall be the duty of all enforcing officers mentioned in this act to carry out the provisions of this act in their respective counties or districts, and to cause the prosecution of any person, firm, company, corporation or organization whom they know or have reason to believe to be guilty of violating any of its provisions. Any enforcing officer in the performance of his duties shall have the same powers possessed by other peace officers of the city, county, or State, and shall have the right, while exercising such police powers, to seize and hold as evidence such part of any pack, load, lot, consignment or shipment of fruits, nuts or vegetables packed, delivered for shipment, loaded, shipped, or being transported, offered for sale or sold in violation of this act, as may in his judgment be necessary to secure the conviction of the party he knows or believes has violated or is violating any of the provisions of this act. (Id. § 4.)

387e. Prosecution of Offenders.—It shall be the duty of the district attorney of such county, or city and county, in which any violation of this act may occur, to prosecute the person, firm, company, organization or corporation accused of such violation, and also, at the request of the Director of Agriculture or his duly authorized agents, to institute and prosecute such action as may be authorized under the provisions of this act. (Id. § 5.)

387f. Additional Grades and Rules.—The Director of Agriculture is hereby empowered to define, promulgate and enforce such rules and regulations as may be deemed necessary to carry out the provisions of this act, which shall not conflict with any provided for in this act.

The Director of Agriculture is hereby empowered to establish and enforce such additional grades, grading rules and regulations as may be deemed necessary on fruits, nuts or vegetables, including those which are not named in this act, which shall not conflict with any provided for in this act, after a thorough investigation has been made of the needs of the particular fruit, nut or vegetable for which grades grading rules and regulations are contemplated. Such grades, grading rules and regulations must, before they become effective, be approved in one or more public meetings attended by representative growers and shippers of the localities interested in the industry affected. Such meetings shall be advertised at least once in a newspaper published in such localities one week or more prior to the meetings; said meetings shall be presided over by the Director of Agriculture, or any of his duly authorized agents and shall, in so far as possible and practicable, be conducted at such place or places as can be conveniently reached by representatives of the affected industry. Grades, grading rules and regulations, established in accordance with the provisions of this section, shall not be modified during the current shipping season of the fruit, nut or vegetable for which they are established, excepting as hereinafter provided. In like manner the Director of Agriculture may provide for standard packages other than those established in this act, but no standard packages shall be eliminated or changed without two years' notice to the industry involved.

On receipt of a written appeal signed by at least twenty-five representative growers and shippers of the commodity for which grades, grading rules, regulations or standard packages have been established under the provisions of this section, protesting against the grades, grading rules, regulations or standard packages so established, the Director of Agriculture shall call a hearing within ten days after the receipt of such an appeal. Due notice shall be given by the Director of Agriculture to all interested parties of the date and place of such hearing and the grades, grading

rules, regulations or standard packages shall be sustained, modified or revoked, in the discretion of the Director of Agriculture on the basis of the evidence presented. If such grades, grading rules, regulations or standard packages are not changed or modified by the Director of Agriculture, in accordance with the provisions of this section, they shall continue to be in full force and effect. Grades, grading rules, regulations and standard packages, established under the provisions of this section, shall be promulgated by the Director of Agriculture and published in one or more newspapers or farm journals of general circulation in the State of California.

The legislature hereby declares that the establishment by the Director of Agriculture of such additional standards, grading rules, regulations and standard packages as provided by this section, constitutes merely the necessary expert and technical definition of details, and is not considered by the legislature as a legislative act on the part of the Director of Agriculture. (Id. § 6.)

387g. Definitions.—When used in this act the words herein mentioned shall be defined as follows: "containers" or "packages" shall mean any box, crate, lug, chest, basket, carton, barrel, keg, drum, sack, or other container used for packing, shipping or selling fruits, nuts or vegetables. "Subcontainers" shall mean any basket or other receptacle used within a container. "Pack, packing or packed" shall mean the regular compact arrangement of all or part of the fruit or vegetables in any container or subcontainer used for the purpose of sale or transportation, "deceptive pack" shall mean any container of fruits, nuts or vegetables which has in the outer layer or any exposed surface fruits, nuts or vegetables which are so superior in quality, size or condition to those in the interior of the container, or the unexposed portion, as to materially misrepresent the entire contents, "deceptive arrangement" or "deceptive display" of fruits, nuts or vegetables shall mean any bulk load, arrangement or display of such products which has in the outer layer, or exposed portion, fruits, nuts or vegetables which are so superior in quality, size or condition to any of those which are concealed, or the unexposed portion, as to materially misrepresent any part of the lot. "Fruits, nuts or vegetables" shall mean the food product of any tree, vine or plant which produces edible fruits, nuts or vegetables suitable for human consumption. "Mature," excepting when otherwise specifically defined, shall mean having reached the stage of maturity which will indicate the proper completion of the ripening process. "Overripe" shall mean having reached an advanced stage of maturity which causes the product to be undesirable or unfit for human consumption in a fresh state. "By-products" shall mean any product commercially processed or manufactured for resale from fruits, nuts or vegetables, or their juices. "County" shall include in its meaning a consolidated city and county. (Id. § 7.)

387h. Fruits, Etc., to Conform With Provisions of Act.—All fruits, nuts and vegetables when being packed or placed in any container, or after packing, or when delivered for shipment, loaded, shipped, or being transported, offered for sale or sold in bulk, or in any container or subcontainer, shall conform with all provisions of this act. (Id. § 8.)

387i. Marking of Packages.—Excepting as hereafter specifically exempted, all containers of fruits, nuts or vegetables of a kind specified in this act, except subcontainers, shall bear upon them in plain sight and in plain letters on the outside thereof the following: Name of the orchard or farm where the same was produced, with the post office address thereof; or the name of the person, firm, company, corporation or organization who shall have first packed or authorized the packing of same; or the name under which such packer shall be engaged in business, together with a sufficiently explicit address to permit ready location of such packer.

Any containers, when used as subcontainers, excepting as hereinafter provided in section 21, shall be exempt from the provisions regarding marking when the container in which they are placed is marked in compliance with the requirements of this act.

All markings required by this act, except net weight, shall be plainly and conspicuously stamped, stenciled, printed, labeled or branded on one end of each crate, box, lug, carton or chest, and on one side of each keg, drum or sack, and on either one side or the top cover of each basket, barrel or other container. (Id. § 9.)

387j. False Designation Prohibited.—No containers or subcontainers of fresh or dried fruits, nuts or vegetables shall bear grade or other designations that are in any way false or misleading. This provision shall be construed to prohibit the repeated use of any container or subcontainer of fruits, nuts or vegetables, bearing any markings required by this act, or any designations of brand, quality or grade, unless all such markings which do not properly and accurately apply to the products repacked or replaced therein shall first be completely removed, erased or obliterated. Nothing in this act shall be construed to conflict with any California or federal laws or regulations regarding net weight markings on containers or subcontainers. (Id. § 10.)

387k. Standard Packages.—Standard packages are hereby established as follows:

(1) Standard basket, approximately eight inches square on top, six and one-half inches square on bottom and four inches deep, inside measurements.

(2) Standard berry baskets: (a) Dry pint containing an interior capacity of approximately thirty-three and six-tenths cubic inches. (b) Dry one-half pint containing an interior capacity of approximately sixteen and eight-tenths cubic inches; provided, that the only standard basket for strawberries shall be the dry pint.

		Depth Inside in Inches.	Width Inside in Inches.	Length Outside in Inches.
(3)	Standard twelve basket crate	2⅞	13½	19½
(4)	Standard crate	4	16	17½
(5)	Standard crate	4¼	16	17½
(6)	Standard crate	4½	16	17½
(7)	Standard crate	4¾	16	17½
(8)	Standard crate	5	16	17½
(9)	Standard cherry box	2¼	9	19¾
(10)	Special cherry box	3	9¾	19¾
(11)	Standard cherry lug	4½	9	19¾
(12)	Standard fruit box	3	11½	19¾
(13)	Standard fruit box	3½	11½	19¾
(14)	Standard fruit box	4	11½	19¾
(15)	Standard fruit box	4¼	11½	19¾
(16)	Standard fruit box	4½	11½	19¾
(17)	Standard fruit box	4¾	11½	19¾
(18)	Standard pear box	8½	11½	19¾
(18A)	Standard artichoke box	9¾	11	22
(18B)	Half artichoke box	4⅞	11	22
(19)	Standard lug box	4	13½	17½
(20)	Standard lug box	4¼	13½	17½
(21)	Standard lug box	4¾	13½	17½
(22)	Standard lug box	5¼	13½	17½
(23)	Standard lug box	5¾	13½	17½
(24)	Special sawdust pack lug	7½	13½	17½
(25)	Special sawdust pack lug	7¾	13½	17½
(25A)	Standard artichoke lug	8½	14	24
(26)	Standard orange box	11½	11½	26
(26A)	Persimmon box	3¾	11½	26
(27)	Half orange box	5¾	11½	26
(28)	Pomegranate box	6½	11½	26
(29)	Standard lemon box	10	13	27
(29A)	Half lemon box	5	13	27
(30)	Jumbo lemon box	11⅛	13½	27
(30A)	Half jumbo lemon box	5⁹/₁₆	13½	27
(31)	Standard cantaloupe crate	12	12	23½
(32)	Pony cantaloupe crate	11	11	23½
(33)	Jumbo cantaloupe crate	13	13	23½
(34)	Standard cantaloupe flat	4	12	23½
(35)	Special cantaloupe flat	4½	13½	23½
(36)	Special cantaloupe flat	5	14½	23½
(37)	Standard lettuce crate	13	18	24½

maximum, with minimum inside length of 21¾ inches.

Inside length of lettuce crates shall be measured between the end slats, excepting that if flat end posts wider than one and one-half inches are used, the inside length shall be measured between the posts.

(38) Standard grape drum, containing two thousand six hundred forty-two cubic inches, fourteen inches deep, fifteen and one-half inches wide, inside.

(39) Standard grape keg containing two thousand six hundred forty-two cubic inches minimum.

In standard containers numbers 26, 26A, 27 and 28 the average inside length of the two compartments, between center and end pieces, shall be not less than eleven and fifteen-sixteenths inches. In standard containers numbers 29, 29A, 30 and 30A the average inside length of the two compartments, between center and end pieces, shall be not less than twelve and seven-sixteenths inches.

Prior to July 1, 1929, the inside width of standard containers numbers 19, 20, 21, 22, 23, 24 and 25 may be thirteen and three-fourths inches in lieu of thirteen and one-half inches. (Id. § 11.)

387l. Containers; Unlawful to Sell When Mislabeled or Deceptively Packed.—It shall be unlawful for any person, firm, company, organization or corporation to pack or cause to be packed, import, sell, offer for sale, deliver for shipment, load, ship or transport any fruits, nuts or vegetables which do not conform with all requirements of this act.

It also shall be unlawful to prepare, deliver for shipment, load, ship, transport, offer for sale or sell a deceptive pack, load, arrangement or display of fresh or dried fruits, nuts or vegetables, or to mislabel any container or display of such fruits, nuts or vegetables. (Id. § 12.)

387m. When Ungraded Products May be Sold.—No provision of this act, excepting as hereinafter provided in section 21, shall be construed to prevent a grower of fruits, nuts or vegetables in the State of California from selling or delivering the same unpacked and unmarked, as a part of his crop in bulk to a packer for grading, packing or storage; or to prevent a grower or packer from manufacturing the same into any by-product, or from selling the same unpacked and unmarked to any person, firm, company, organization or corporation actually engaged in the operation of a commercial by-products factory for the sole and express purpose of being used in the State of California in the manufacture of a by-product for resale. (Id. § 13.)

387n. Exemptions.—All fruits, nuts or vegetables of a kind specified in this act which are not wrapped or packed, and which are intended for use in the State of California in commercial processing, preserving or manufacture of by-products for resale, shall be exempt from the provisions of this act; excepting as hereinafter provided in section 21; provided, however, that the packages in which they are contained shall bear no false or misleading statements or designations; provided, further, that such fruits, nuts or vegetables shall not be deceptively packed or deceptively placed in any container.

Any inspector of fruits, nuts or vegetables may require from the owner and/or shipper of such fruits, nuts or vegetables such proof as he may deem necessary that they will be used only in the State of California in commercial processing, preserving or manufacture of by-products for resale and shall hold same until satisfactory proof is given. (Id. § 14.)

387o. Common Carriers May Refuse Fruits, Etc., Shipped in Violation of Act.—It shall be lawful for any forwarding company, person, firm, corporation or organization, and for any common carrier to decline to ship or transport any fruits, nuts or vegetables when notified by an inspector of fruits, nuts and vegetables that such products are found to be delivered for shipment in violation of any of the provisions of this act, and any such forwarding company, person, firm, corporation, organization or common carrier may reserve the right in any receipt, bill of lading or other writing given to the consignor thereof, to reject for shipment and to return to such consignor or hold at the expense and risk of the latter all fruits, nuts or vegetables which upon inspection are found to be delivered for shipment in violation of any of the provisions of this act. (Id. § 15.)

387p. Apricots.—Fresh apricots, when being packed, or after packing, or when delivered for shipment, loaded, shipped, or being transported, offered for sale or sold in any container or subcontainer, shall conform to the following standard.

Standard for Fresh Apricots. Fresh apricots shall be mature but not overripe, shall be free from cuts, bruises, unhealed cracks, insect injury, mold, brown rot, decay, and from serious damage caused by scab, shot hole fungus, hail or other means, and in the case of packed apricots shall be virtually uniform in size; provided, that not more than ten per cent, by count, of the apricots in any one container may be below these requirements, but not to exceed one-half of this tolerance, or five per cent, shall be allowed for any one cause.

Damage caused by scab or shot hole fungus, on any apricot, shall not be considered serious unless the spots total more than five in number, or cover an aggregate area of more than one-fourth inch in diameter. Damage caused by hail in any apricot shall not be considered serious unless it causes a waste of ten per cent by weight of the fruit.

"Virtually uniform in size" shall mean in the case of packed apricots a variation of not more than one-fourth of an inch in diameter, when measured through the widest portion of cross-section, between the fruits in any one container. When packed in layers there shall be approximately the same numerical count in each layer throughout a container or subcontainer having straight sides. In the case of apricots packed in sloping side containers, the bottom layer shall contain a smaller numerical count than the top layer.

Markings. In addition to the markings required by section 9 of this act, all containers of fresh apricots, when packed, shall bear upon them in plain sight and in plain letters on the outside thereof the following: Name of variety if known, and when not known the words "unknown variety," the net weight, and the approximate number of fruits in the container or subcontainer, which number shall be within four of the true count; provided, that in lieu of the approximate number of fruits the numerical description of pack may be used. Numerical description of pack shall describe the count of the top layer on two adjacent sides of the container or subcontainer. When two or more varieties are packed or placed in a container they shall be labeled "mixed varieties." Containers in which the fruit in the top layer only is placed in compact arrangement shall be labeled "face and fill" in lieu of the approximate number of fruits.

Containers of fresh apricots which are not packed shall not be required to show any markings.

Standard Containers for Packed Apricots. Packed fresh apricots shall be in standard containers numbers 4, 5, 6, 7, 20 or 23 established in section 11 of this act; provided, that other sized containers may be used if conspicuously marked in letters not less than one-half inch in height "irregular container." No standard containers are established for loose fresh apricots which are not packed. (Id. § 16.)

387q. Avocados.—Avocados, when being packed, or after packing, or when delivered for shipment, loaded, shipped, or being transported, offered for sale or sold, in any container or subcontainer or in bulk, shall conform to the following standard:

Standard for Avocados. Avocados shall be mature, free from worm injury, mold, decay, and from serious damage caused by cuts, bruises, growth cracks, insects or disease; and in the case of packed avocados shall be virtually uniform in size; provided, that not more than ten per cent, by count, of the avocados in any one container or loose lot may be below these requirements, but not to exceed one-half of this tolerance, or five per cent, shall be allowed for any one cause; provided, further, that no part of this tolerance shall be allowed for immature avocados.

Damage to any avocado shall not be considered as serious unless it causes a waste of twenty per cent by weight of the fruit.

The percentage of serious defects in any bulk lot of avocados may be established by inspection of a representative sample, which shall consist of not less than one hundred fruits selected at random.

When packed in layers there shall be approximately the same numerical count in each layer throughout a container or subcontainer having straight sides.

Avocados shall not be considered mature when the edible portion shows an oil content of less than eight per cent, by weight, by chemical analysis.

Markings. In addition to the markings required by section 9 of this act, all containers of avocados, when packed, shall bear upon them in plain sight and in plain letters on the outside thereof the following: Name of variety, if known, and when not known the words "unknown variety" or "unnamed variety," the net weight or average weight of fruits, and the number of fruits in the containers or subcontainer. When two or more varieties are packed or placed in a container they shall be labeled "mixed varieties."

Containers of avocados which are not packed shall not be required to show any markings.

No Standard Containers. No standard containers are established by this act for avocados. (Id. § 17.)

387r. Berries.—A. Strawberries, when being packed, or after packing, or when delivered for shipment, loaded, shipped, or being transported, offered for sale or sold in any container or subcontainer, shall conform to the following standard.

Standard for Strawberries. Strawberries shall be mature but not overripe, shall not be noticeably undeveloped or deformed; and shall have the cap (calyx) attached, and be free from cuts, mold, decay, and from serious damage caused by rain, irrigation, sun, frost, bruising, disease, insects or other means, and in the case of face packed strawberries shall be virtually uniform in size; provided, that not more than ten per cent, by weight, of the strawberries in any one container or subcontainer, may be below these requirements, but not to exceed one-half of this tolerance, or five per cent, shall be allowed for any one cause.

Any strawberry which has not less than two-thirds of the surface showing pink or red color shall be considered mature.

"Virtually uniform in size" shall mean, in the case of face packed strawberries, a variation of not more than one-fourth of an inch in diameter, when measured through the widest portion of cross-section, between the berries in any one subcontainer.

"Face packed" shall mean the regular arrangement of the top layer of strawberries in any container or subcontainer.

Markings. The markings required by section 9 of this act, in lieu of being plainly and conspicuously stamped, stenciled, printed, labeled or branded on one end of each crate or chest containing berries, may be shown on tags or labels placed on top of the fruit in each crate, slide or drawer.

Standard Containers for Strawberries. All strawberries shall be in standard subcontainer number 2a established in section 11 of this act.

B. Red and Blackcap Raspberries, Blackberries, Dewberries and Loganberries. Red and blackcap raspberries, blackberries, dewberries and loganberries, when being packed, or after packing, or when delivered for shipment, loaded, shipped, or being transported, offered for sale or sold in any container or subcontainer, shall conform to the following standard:

Standard for Red and Blackcap Raspberries, Blackberries, Dewberries and Loganberries. Red and blackcap raspberries, blackberries, dewberries and loganberries shall be mature but not overripe, shall not be noticeably undeveloped or deformed; and shall be free from cuts, mold, decay and from serious damage caused by rain, sun, frost, bruising, disease, insects or other means; provided, that not more than ten per cent, by weight, of the berries in any one container or subcontainer may be below these requirements, but not to exceed one-half of this tolerance, or five per cent, shall be allowed for any one cause.

Markings. The markings required by section 9 of this act, in lieu of being plainly and conspicuously stamped, stenciled, printed, labeled or branded on one end of each crate or chest containing berries, may be shown on tags or labels placed on top of the fruit in each crate, slide or drawer.

Standard Containers for Red and Blackcap Raspberries, Blackberries, Dewberries and Loganberries. All red and blackcap raspberries, blackberries, dewberries and loganberries shall be in standard subcontainers number 2a or 2b, established in section 11 of this act. (Id. § 18.)

387s. Cherries.—Cherries when being packed or after packing, or when delivered for shipment, loaded, shipped, or being transported, offered for sale or sold in any container, or subcontainer, shall conform to the following standard:

Standard for Cherries. Cherries shall be mature but not overripe, not abnormally soft, wrinkled, shriveled or spongy, not stemless or wet, and shall be free from soft bruises, unhealed growth cracks or splits, cuts, bird pecks or other skin breaks, insect injury, aphis honey dew, mold, brown rot, decay and from serious damage caused by sunburn or doubles, and in the case of packed cherries shall be virtually uniform in size; provided, that not more than ten per cent, by count, of the cherries in any one container may be below these requirements, but not to exceed one-half of this tolerance, or five per cent, shall be allowed for any one cause.

Damage caused by sunburn shall not be considered serious unless the flesh is affected. Damage caused by doubles shall not be considered serious unless one of the halves is undeveloped, small or dry.

"Virtually uniform in size" shall mean, in the case of packed cherries, that the average size of cherries used in the fill shall not be smaller than would pack one row more in each direction than the cherries in the packed face; provided, further, that bunch faced or drop faced cherries shall not be considered packed. Cherries in cartons shall have the same size in each layer.

Markings. In addition to the markings required by section 9 of this act, all containers of cherries, when packed, bunch faced or drop faced, shall bear upon them in plain sight and in plain letters on the outside thereof the following: Name of variety, if known, and when not known the words "unknown variety," and the net weight. When two or more varieties are packed or placed in a container they shall be labeled "mixed varieties."

Containers of cherries which are not packed, bunch faced or drop faced shall not be required to show any markings.

Containers of cherries which are loose, bunch faced or drop faced, may be marked with row sizes as herein defined, and when any container is so marked the average size of the cherries in the face, or exposed surface of the fruit, shall conform to the row size so marked; provided, further, that the average size of cherries used in the fill shall not be smaller than one row size below that marked on the container.

The number of "row size" shall be deemed to be that number of cherries of uniform size whose aggregate width will equal nine inches. The diameter of cherries for the various "row sizes" shall be as follows: For an "8 row size," one and one-eighth inches; for a "9 row size," one inch; for a "10 row size," nine-tenths of one inch; for an "11 row size," nine-elevenths of one inch; for a "12 row size," nine-twelfths of one inch, and for a "13 row size," nine-thirteenths of one inch.

Standard Containers for Packed Cherries. Packed, bunch faced or drop faced cherries shall be in standard containers numbers 3, 9, 10, 11, 12, 14, 19 or 23, established in section 11 of this act; provided, that standard containers, numbers 11 and 12, shall not be standard after January 1, 1929; provided, further, that other sized containers may be used if conspicuously marked in letters not less than one-half inch in height "irregular container." No standard containers are established for loose cherries which are not packed, bunch faced or drop faced. (Id. § 19.)

387t. Citrus Fruits.—Citrus fruits, when being packed or after packing, or when delivered for shipment, loaded, shipped, or being transported, offered for sale or sold in any container or subcontainer, or in bulk, shall conform to the following standard:

Standard for Citrus Fruits. Citrus fruits shall be mature, virtually free from marked evidence of freezing injury, free from rots, excepting brown rot, blue and green mold, and from serious damage caused by splits, cuts, bruises, stem or thorn punctures, or by drying at the stem or blossom end; and in the case of packed citrus fruits shall be virtually uniform in size; provided, that, with the exception of freezing injury, not more than ten per cent, by count, of the citrus fruits in any one container, or in any lot in bulk, may be below these requirements, but not to exceed one-half of this tolerance, or five per cent, shall be allowed for any one cause; provided, further, that brown rot, blue and green mold shall not be considered serious defects.

Oranges shall not be deemed mature under the provisions of this act unless the juice contains soluble solids equal to or in excess of eight parts to every part of acid contained in the juice, the acidity of the juice to be calculated as citric acid without water of crystallization; provided, that the oranges have attained at least twenty-five per cent of yellow or orange color before picking; provided, however, that oranges which are substantially or at least seventy per cent colored at the time of picking shall be deemed mature irrespective of analysis of the juice; provided, further, that no oranges may be accelerated in color unless the juice contains soluble solids equal to or in excess of eight parts to every part of acid contained in the juice, the acidity of the juice to be calculated as citric acid without water of crystallization.

Grapefruit shall not be deemed mature under the provisions of this act unless the juice contains soluble solids equal to or in excess of five parts to every part of acid contained in the juice, the acidity of the juice to be calculated as citric acid without water of crystallization.

"Virtually free from marked evidence of freezing injury" means that not more than fifteen per cent, by count, of the citrus fruits in any one container, or in any lot in bulk, may show marked evidence of freezing injury, which is hereby defined as a water soaked appearance or evidence of previous water soaking, or the presence of crystals or crystalline deposit, on the two surface membranes of each of two or more segments, as shown on the separation of the segments one from another, of a section, not less than one inch or more than one and one-half inches in thickness, of the central portion of the fruit, obtained by cutting off a portion of each end—the evidence of freezing injury to show for the entire length but not necessarily the entire area of the surface membranes; or a drying or desiccation in twenty per cent or more of the exposed pulp as shown on a transverse cut through the center.

The percentage of marked evidence of freezing injury or other defects may be established by inspection of a representative sample, which shall consist of not less than one hundred fruits of the various sizes selected at random.

Damage caused by splits, cuts, bruises, or stem or thorn punctures, in any citrus fruit, shall not be considered serious if the injury is well healed and free from mold or decay.

Damage caused by drying at the stem or blossom end of any citrus fruit shall not be considered serious unless twenty per cent or more of the pulp shows a marked drying or desiccation.

Markings. In addition to the markings required by section 9 of this act, all containers of citrus fruits, when packed, shall bear upon them in plain sight and in plain letters on the outside thereof the following: The number and average diameter of citrus fruits in the container, and, in the case of oranges, the name of variety, if known, and when not known the words "unknown variety" or "seedlings."

Containers of citrus fruits which are not packed shall not be required to show any markings.

Standard Containers. All packed oranges, grapefruit and tangerines shall be in standard containers numbers 26 or 27, and all packed lemons shall be in standard containers numbers 29, 29A, 30 or 30A, established in section 11 of this act; provided, that other sized containers may be used if conspicuously marked in letters not less than one-half inch in height "irregular size container." No standard con-

tainers are established for other species of citrus fruits or for loose citrus fruits which are not packed. (Id. § 20.)

387u. Fresh or Dried Dates.—Markings. In addition to the markings required in section 9 of this act, all containers and subcontainers of fresh or dried dates or date by-products shall bear upon them, in plain sight on the outside thereof, in the English language, the net weight, and, in letters not less than one-half of an inch in height, the name of the State or of the foreign country where the dates were produced, directly preceded by the words in like-sized type "grown in"; provided, that, in the case of any containers or subcontainers with contents of not more than three pounds net weight, this marking may be in letters not less than one-eighth of an inch in height.

Standard Containers. No standard containers are established by this act for dates. (Id. § 21.)

387v. Grapes—Districts.—For the purpose of this act the State shall be divided into districts as follows:

District 1. That part of the State south of the San Gorgonio pass in Riverside county and east of the Sierra Nevada range, comprising parts of the counties of Riverside and San Diego and all of Imperial county.

District 2. All of the State excepting the part included in district 1.

Classification of Varieties. For the purpose of this act grape varieties shall be classified as follows:

GROUP A.

(White)

Almeria
Aspiran Blanc
Bicane
Chasselas de Fontainebleau
Chasselas Napoleon
Cornichon Blanc
Dattier de Beyrouth
Dizmar
Golden Chasselas
Golden Queen
Khalili
Khandahar
Ladyfinger
Malaga
Ohanez
Olivette Blanche
Olivette de Vendemian
Palomino
Persian 23
Pizzutello di Roma
Rish Baba
Rosaki
Sultana
Thompson Seedless
Verdal

(Red)

Angelino
Catawba
Chasselas Rose
Emperor
Flame Tokay
Hunisa
Maraville de Malaga
Molinera Gorda
Pink Thompson Seedless
Piment
Red Malaga
Rose de Falloux
Sultanina Rose
Tokay
Zabalkanski
Zabalkanskoi

(Black)

Black Corinth
Black Ferrara
Black Hamburg
Black Monukka
Black Morocco
Black Prince
Black Zante
Bleu Grau
California Concord
Concord
Corinthe Noir
Cornichon
Danugue
Drodelabi
Frankenthal
Fresno Beauty
Gros Colman
Gros Guillaume
Isabella
Isabella Regia
Muscat Albardiens
Muscat Hamburg
Olivette Noir
Panariti
Pierce
Pierce Isabella
Pizzutello Nero
Prune de Cazouls
Purple Damascus
Rose of Peru
Ribier
Servian Blue
Snow's Muscat Hamburg
Zante Currant

and other similar varieties.

GROUP B.

(White)

Burger
Colombar
Elbling
Feher Szagos
Folle Blanche
Huasco (Muscat)
Muscat Bonod
Muscat Bowood
Muscat of Alexandria
Muscatel Gordo Blanco
Pedro Ximenes
Riesling
Sauvignon
Sauvignon Vert
Semillon
Traminer
White Hanepoot (Muscat)

(Black)

Alicante-Bouschet
Alicante-Ganzin
Aramon
Beclan
Black Pinot
Burgundy
Cabernet Sauvignon
Calmette
Carignane
Charbono
Early Black July
Grand Noir
Grenache
Jacquez
Lenoir
Madelaine
Madeleine
Madelaine Angevine
Malvoisie
Mataro
Mission
Mondeuse
Mourastel
Mourvedre
Petit-Bouschet
Petite Sirah
Serine
Syrah
Zinfandel

and other similar varieties which are not included in Group A.

Standards for Grapes. Grapes, when being packed or placed in any container, or after packing, or when delivered for shipment, loaded, shipped, or being transported, offered for sale or sold in any container or subcontainer, shall conform to one of the following standards:

Standards for Group A. Fancy Grapes. Fancy grapes shall consist of bunches of well developed grapes of one variety which are uniformly well colored, mature, firmly attached to capstems, not shattered, split, crushed, wet, soft, wilted or scarred; which are free from shot berries, raisining or raisined berries, sunburned or dried berries, waterberry, mildew, Almeria spot, mold, decay, and from damage caused by other disease, insects, discoloration, freezing, or other means.

Bunches shall not be straggly, or excessively small excepting that a sufficient number of small bunches shall be allowed to insure a properly packed container. Stems shall be free from mold and from damage caused by mildew.

In order to allow for variations incident to proper grading and handling, not more than five per cent, by weight, of the grapes in any container, may be below the requirements of this grade; but not more than a total of two per cent, by weight, may be seriously damaged, and not more than one-fourth of this amount, or one-half of one per cent, may be affected by mold or decay.

Fancy Sawdust Packed Grapes. Fancy grapes when packed in sawdust, cork, or similar packing material, in addition to the specifications prescribed above for fancy grapes, shall comply with the following requirements:

The bunches of grapes shall be well matured, and may be loose but not excessively straggly, and shall be not less than six inches in length, measured from shoulder to tip, excepting the Almeria (Ohanez) variety, which shall have bunches not less than four inches in length and weighing not less than one-half pound each. The berries shall have a diameter of not less than five-eighths of an inch, measured through the widest portion of cross section, excepting the Almeria variety, which shall have berries with a diameter of not less than nine-sixteenths of an inch. The stems shall be mature and shall not be weak, dry or brittle.

The five per cent tolerance permitted above for fancy grapes also shall apply to fancy sawdust packed grapes, but total serious defects, including mold and decay, shall be limited to one-half of one per cent by weight. In addition, grapes of this grade when packed in sawdust, cork, or similar packing material, may have not to exceed ten per cent, by weight, of the bunches in any container, and not more than

five per cent, by weight, of the berries, which are below the prescribed sizes or weights.

Number 1-A Grapes. Number 1-A grapes shall consist of bunches of grapes of one variety which are well colored, mature, firmly attached to capstems, not shattered, split, crushed, wet, soft, wilted, or badly scarred; which are free from immature shot berries, raisining or raisined berries, sunburned or dried berries, waterberry, mildew, mold, decay and from damage caused by other disease, insects, freezing or other means.

Bunches shall not be excessively straggly and stems shall be free from mold and from damage caused by mildew.

In order to allow for variations incident to proper grading and handling, not more than ten per cent, by weight, of the grapes in any container may be below the requirements of this grade; but not more than a total of five per cent, by weight, may be seriously damaged, and not more than one-fifth of this amount, or one per cent, may be affected by mold or decay.

Grapes of varieties included in group A which have been placed in cold storage for a period of not less than thirty days, on a basis of storage in transit from the point of packing to interstate markets, and which, upon removal from storage, fail to meet the requirements of No. 1-A grapes only by reason of deterioration which has occurred after packing, shall not be required to show grade markings, provided that such grapes shall at least meet the requirements of unclassified grapes.

Unclassified Grapes, Packed in Sawdust, Cork or Similar Packing Material. All grapes packed in sawdust, cork or similar packing material, which fail to comply with the requirements for fancy sawdust packed grades as established above, shall be required to meet the specifications of No. 1-A grapes, and to be marked "unclassified" as hereafter required; provided, however, that the packer or owner of any grapes in sawdust, cork or similar packing material, which fail to meet the requirements of fancy sawdust packed grapes, or unclassified grapes in sawdust, only by reason of deterioration which has occurred after packing, shall not be held liable for violation of this provision on account of such deterioration.

Standards for Group B. No. 1-B Grapes. Number 1-B grapes shall consist of grapes which are fairly well colored, mature, firmly attached to capstems, not split, crushed, or wet; which are free from immature shot berries, raisining or raisined berries, sunburned or dried berries, waterberry, redberry, mold or decay, and from damage caused by mildew or other disease, insects or other means.

In order to allow for variations incident to proper handling, not more than fifteen per cent, by weight, of the berries in any container may be raisining or raisined; provided, that not more than one-third of this amount, or five per cent, may be raisined. In addition, not more than ten per cent, by weight, of the berries in the container, may be below the remaining requirements of this grade, but not more than a total of five per cent, by weight, may be seriously damaged, and not more than two-fifths of this amount, or two per cent, may be affected by mold or decay; but in no case shall more than fifteen per cent, by weight, of the bunches in any container have spots of mold or decay affecting three or more contiguous berries.

Number 2 Grapes. Number 2 grapes shall consist of grapes which are mature, which are not detached from the capstems, split, crushed, or wet; which are free from raisined berries, sunburned or dried berries, waterberry, redberry, mold or decay, and from other serious damage.

In order to allow for variations incident to proper handling, not more than fifteen per cent, by weight, of the berries in any container may be raisined, and in addition not more than ten per cent, by weight, of the berries in the container may be below the remaining requirements of this grade, but not more than a total of five per cent, by weight, may be affected by mold or decay.

Unclassified Grapes. Unclassified grapes shall be mature and shall not include in excess of ten per cent, by weight, of berries affected by mold or decay in any one container; provided, that, in the case of varieties included in group A, not more than ten per cent, by weight, of the bunches in any container may be immature.

Any grapes which fail to meet the requirements for unclassified grapes, because of immaturity, mold or decay, may be disposed of only as provided in sections 13 and 14 of this act, excepting that nothing in this act shall prevent a grower of grapes from selling part or all of his crop, which may fail to meet the requirements of unclassified grapes, to a purchaser for the sole and express purpose of being used by such purchaser for the manufacture of a by-product in the State of California; provided, that each container of such grapes shall be plainly and conspicuously marked with the name and address of the grower, and, in letters not less than one-half inch in height, with the words "by-product grapes"; provided, further, that each such sale shall be made only under written permit of an enforcing officer of

this act, who may require from the grower and/or purchaser of such grapes such proof as he may deem necessary that they will be used only as herein provided.

General Requirements. For the purpose of the standards for grapes, and their respective tolerances, established above, the provisions shall apply to the bunch as the unit in the case of:

1. Maturity of group A varieties.
2. Color in fancy, fancy sawdust pack, No. 1-A and unclassified sawdust pack standards.
3. Bunches which fail to meet requirements for size or compactness (straggly or excessively straggly) in fancy, fancy sawdust pack, No. 1-A and unclassified sawdust pack standards.
4. Mixed varieties (except in No. 1-B, No. 2 or unclassified grapes when marked "mixed varieties" or with color of grapes).
5. Stems which are immature, weak, dry or brittle in fancy sawdust pack.
6. Stems which are not free from mold and damage caused by mildew in fancy, fancy sawdust pack, No. 1-A and unclassified sawdust pack.
7. Bunches damaged by discoloration in fancy and fancy sawdust pack standards.
8. Bunches having spots of mold affecting three or more contiguous berries in No. 1-B standard.

The maturity of group B varieties shall apply to the entire contents of any container, as hereinafter stated, and color requirements in No. 1-B standard apply to the entire contents of each container.

In regard to all other requirements and tolerances the individual grape berry shall be the unit considered.

For the purpose of this section, although the tolerances specified for the various standards necessarily are placed on a package basis, not more than one-fourth of the packages in any lot may be permitted to exceed the tolerance established by not more than one-half of the amount allowed; provided, that the entire lot shall average within the tolerance established; provided, further, that no container shall have more mold or decay than the amount specified in the tolerance established.

No provision of this section shall be construed to prevent placing any varieties included in group A under the standards established for group B; provided, all containers are properly marked with the grade designations as hereafter required, nor to prevent placing any varieties included in group B under the standards established for group A.

Definitions. When used in this section the words herein mentioned shall be defined as follows:

"Well matured," in the standard for fancy grapes packed in sawdust, cork or similar packing material, means that each bunch of grapes shall test not less than seventeen per cent soluble solids in juice, as determined by the Balling or Brix scale hydrometer; provided, that the variety Malaga shall test not less than twenty per cent.

"Mature" stems means that they shall be firm and pliable but not limp or flabby, generally of a yellowish green or straw color, or having brownish, woody seals at the cut ends.

"Mature," in the standards for grapes shall mean that each bunch of the varieties classified above in group A shall test not less than seventeen per cent soluble solids in juice, as determined by the Balling or Brix scale hydrometer; provided, that the varieties Malaga and Thompson seedless shall test not less than eighteen per cent when produced in any section excepting district one; provided, further, that the varieties Emperor, Gros Colman (Bleu Grau, Drodelabi, Fresno Beauty, Servian Blue), Pierce Isabella (Pierce, Isabella Regia, California Concord), Olivette Blanche, Ladyfinger, Rish Baba, Khalili, Persian 23 (Dizmar) and Cornichon shall test not less than sixteen per cent; provided, further, that in the case of varieties included in group B "mature" shall mean that the average or composite test of all the grapes in any container shall be not less than seventeen per cent soluble solids in juice, as determined by the Balling or Brix scale hydrometer; provided, that white varieties of the Muscat type shall test not less than eighteen per cent; provided, further, that the variety Burger shall test not less than sixteen per cent.

"Uniformly well colored" in standards for grapes, means in the case of:

"Black varieties" that each bunch shall have not less than ninety-five per cent, by count, of berries showing good characteristic color; excepting that in order to allow for variations incident to proper grading and handling, not more than ten per cent, by weight, of the bunches in any container may have not less than eighty per cent, by count, of berries showing good characteristic color.

"Red varieties" that each bunch shall have not less than seventy-five per cent, by count, of well colored berries; excepting that in order to allow for variations

incident to proper grading and handling not more than ten per cent, by weight, of the bunches in any container may have not less than sixty per cent of well colored berries. Red grape berries shall be considered well colored when at last sixty per cent of the surface shows good characteristic color. Light or cherry red, dark red and purple are considered good characteristic color for the Emperor variety.

"White varieties" that each bunch shall have not less than twenty-five per cent, by count, of berries showing straw or amber color; excepting that in order to allow for variations incident to proper grading and handling, not more than ten per cent, by weight, of the bunches in any container may be below this requirement. No straw or amber color shall be required for Almeria (Ohanez) and Verdal.

"Well colored" in standards for grapes, means in the case of:

"Black varieties" that each bunch shall have not less than seventy-five per cent, by count, of berries showing characteristic color; excepting that in order to allow for variations incident to proper grading and handling not more than ten per cent, by weight, of the bunches in any container may have not less than fifty per cent, by count, of berries showing characteristic color. Reddish purple to black color shall be considered characteristic for Cornichon.

"Red varieties" that each bunch shall have not less than sixty per cent, by count, of well colored berries; excepting that in order to allow for variations incident to proper grading and handling, not more than ten per cent, by weight, of the bunches in any container may be below this requirement.

"White varieties" no requirements for "well colored."

"Fairly well colored" in standards for grapes, means in the case of:

"Black varieties" that seventy-five per cent of the grapes in any container shall show color characteristic of the variety when mature. Reddish purple to black color shall be considered as characteristic for Mission, Aramon, Rose of Peru, Black Prince, Black Hamburg, Grenache, and Malvoise.

"Red varieties" that sixty per cent of the grapes in any container shall have at least half of the surface of the berries showing characteristic color.

"White varieties" no requirements for "fairly well colored."

"One variety" means grapes having the same varietal characteristics.

"Wet" means moisture from crushing, rain, dew or other causes.

"Raisining berries" means grape berries in some stage of the normal curing process, which have developed to some extent the characteristic shriveled or wrinkled appearance of a raisin, but which contain sufficient juice to drop from the berry under ordinary pressure between thumb and finger. Change of color and flavor are, in some cases, additional characteristic of raisining berries.

While wilting is prerequisite to the raisining process, berries which merely are wilted without shriveling, wrinkling, or change of color, are not considered as raisining.

"Raisined berries" means grape berries which are fully cured, resembling raisins, which do not contain sufficient juice to drop from the berry under ordinary pressure between thumb and finger.

"Sunburned or dried grapes" mean grapes which show complete drying out, from any cause, of part or all of any individual berries.

"Waterberry" means a disease characterized by a watery, soft or flabby condition of the berries. Such affected berries are low in sugar content, have tender skins and are very easily crushed.

"Redberry" means a condition closely resembling waterberry, generally found in black varieties. Such grapes show a red or brownish red color, in addition to the general characteristics of waterberry.

"Damage caused by mildew" means damage causing discoloration of the berries which seriously affects the appearance of a lot.

"Damage caused by discoloration" means that more than fifteen per cent, by count, of the berries on any bunch, show a dark brown discoloration. Sunkissed berries of an amber or light brown color shall not be considered as damaged.

"Seriously damaged" includes grapes which are split, crushed, wet, completely dried, or affected with redberry, waterberry, mold or decay.

Markings. Each container of grapes, packed in sawdust, cork or similar packing material, which meet the requirements of fancy sawdust packed grapes, as established above, may be marked "fancy" or "fancy sawdust packed," but shall bear no other term designating quality or grade, excepting as hereafter provided.

Any container of grapes, packed in sawdust, cork or similar packing material, which meet the requirements of unclassified grapes packed in such material, shall be plainly and conspicuously marked, in letters not less than one-half inch in height, with the word "unclassified," and shall bear no other term designating quality or grade.

Any container of grapes, excepting those packed in sawdust, cork or similar packing material, may be marked with any proper designation of quality or grade; pro-

vided, that each container of grapes of a variety included in group A, established above, which fail to meet the requirements of the standard for No. 1-A grapes, established above, shall be plainly and conspicuously marked in letters not less than one-half inch in height, with the proper standard designation as "No. 1-B" or "No. 2," as the case may be, but shall bear no other term designating quality or grade, excepting as hereafter provided.

Each container of grapes which meet the requirements for unclassified grapes, but which fail to meet the requirements for No. 2 grapes, established above, shall be plainly and conspicuously marked, in letters not less than one-half inch in height, with the word "unclassified," and shall bear no other term designating quality or grade.

In lieu of the standard grade markings required above, any container of grapes may be marked with the name for the same grade established in United States standards for grapes promulgated by the United States Department of Agriculture and approved by the Director of Agriculture of the State of California.

In addition to the markings required above, and those required by section 9 of this act, all containers of grapes shall bear upon them in plain sight and in plain letters on the outside thereof the following: Net weight and name of the variety, provided that the words "variety unknown," "mixed varieties" or the color of the grapes may be marked in lieu of the name of the variety.

Standard Containers. Grapes packed in sawdust, cork or similar packing material shall be in standard containers numbers 24, 25, 38 or 39, and all other grapes shall be in standard containers numbers 1, 4, 5, 6, 7, 20, 21, 22 or 23 established in section 11 of this act; provided, that containers numbers 20, 21, 22 and 23 shall be standard for grapes only when used without cleats, or when used with a cleat or cleats on each end not to exceed a total height of eleven-sixteenths of an inch; provided, that other sized containers may be used if conspicuously marked in letters not less than one-half inch in height "irregular containers"; provided, further, that containers numbers 20, 22 and 24 shall be standard only until July 1, 1929. (Id. § 22.)

387w. Peaches.—Fresh peaches, when being packed, or after packing, or when delivered for shipment, loaded, shipped, or being transported, offered for sale or sold in any container or subcontainer, shall conform to the following standard:

Standard for Fresh Peaches. Fresh peaches shall be mature but not overripe, shall be free from unhealed cuts or skin breaks, unhealed growth cracks, serious bruises, insect injury, split pits which are open at the stem end, mold, brown rot, decay and from serious damage caused by scab, rust, blight, or other diseases, hail or other means, and in the case of packed peaches shall be virtually uniform in size; provided, that not more than ten per cent, by count, of the peaches in any one container may be below these requirements, but not to exceed on-half of this tolerance, or five per cent, shall be allowed for any one cause.

Damage caused by scab or rust on any peach shall not be considered serious unless the spots cover an aggregate area in more than one-half inch in diameter, or show cracks. Damage caused by blight on any peach shall not be considered serious unless the spots total more than ten in number, or cover an aggregate area of more than one-half inch in diameter, or cause gum to exude. Damage caused by hail in any peach shall not be considered serious unless it causes a waste of ten per cent by weight of the fruit. Superficial thrip marks which do not cover more than five per cent of the surface of any peach shall not be considered as insect injury.

"Virtually uniform in size" shall mean, in the case of packed peaches, a variation of not more than one-half of an inch in diameter, when measured through the widest portion of cross-section, between the fruits in any one container. When packed in layers there shall be approximately the same numerical count in each layer throughout a container or subcontainer having straight sides.

Markings. In addition to the markings required by section 9 of this act, all containers of fresh peaches, when packed, shall bear upon them in plain sight and plain letters on the outside thereof the following: Name of variety, if known, and when not known the words "unknown variety"; the net weight, and the approximate number of fruits in the container or subcontainer, which number shall be within four of the true count; provided, that, in lieu of the approximate number of fruits, the numerical description of pack may be used. When two or more varieties are packed or placed in a container they shall be labeled "mixed varieties."

Containers in which the fruit in the top layer only is placed in regular compact arrangement shall be labeled "face and fill" in lieu of the approximate number of fruits and net weight.

Containers of fresh peaches which are not packed shall not be required to show any markings.

Standard Containers for Packed Peaches. Packed fresh peaches shall be in standard containers numbers 1, 5, 6, 7, 14, 15, 16, 17 or 23, established in section

11 of this act; provided, that other sized containers may be used if conspicuously marked, in letters not less than one-half inch in height, "irregular container." No standard containers are established for loose fresh peaches which are not packed. (Id. § 23.)

387x. Pears.—Fresh pears, when being packed, or after packing, or when delivered for shipment, loaded, shipped, or being transported, offered for sale or sold in any container or subcontainer, shall conform to the following standard:

Standard for Fresh Pears. Fresh pears shall be mature but not overripe, shall be free from cuts or skin breaks, serious bruises, San Jose scale, codlin moth larvæ, mold, decay, and from serious damage caused by scab, black end or other diseases, limb rubs, frost, hail, codlin moth larvæ or other insects, and in the case of packed pears shall be virtually uniform in size; provided, that not more than ten per cent, by count, of the pears in any one container may be below these requirements, but not to exceed one-half of this tolerance, or five per cent, shall be allowed for any one cause.

Damage caused by scab or black end in any pear shall not be considered serious unless the spots cover an aggregate area of more than one-half inch in diameter. Damage caused in any pear by other diseases, limb rubs, frost or hail shall not be considered serious unless it causes a waste of ten per cent by weight of the fruit. Damage to any pear caused by thrip mark, blister mite or other superficial blemishes due to insects shall not be considered serious unless it affects ten per cent of the surface of the fruit. Damage caused to any pear by superficial well healed codlin moth "stings" shall not be considered serious, but any unhealed "stings" or holes caused by codlin moth larvæ shall be considered serious.

"Virtually uniform in size" shall mean, in the case of packed pears, a variation of not more than one-half of an inch in diameter, when measured through the widest portion of cross section, between the fruits in any one container. When packed in layers there shall be approximately the same numerical count in each layer throughout a container or subcontainer having straight sides.

Markings. In addition to the markings required by section 9 of this act, all containers of fresh pears, when packed, shall bear upon them in plain sight and in plain letters on the outside thereof the following: Name of variety, if known, and when not known the words "unknown variety"; the net weight and the approximate number of fruits in the container or subcontainer, which number shall be within four of the true count; provided, that in lieu of the approximate number of fruits, the numerical description of pack may be used. When two or more varieties are packed or placed in a container they shall be labeled "mixed varieties."

Containers in which the fruit in the top or outer layer only is placed in regular compact arrangement shall be labeled "face and fill" in lieu of the approximate number of fruits.

Containers of fresh pears which are not packed shall not be required to show any markings.

Standard Containers. Packed fresh pears shall be in standard containers numbers 5, 6, 7, 16, 18, 22 or 23, established in section 11 of this act; provided, that other sized containers may be used if conspicuously marked in letters not less than one-half inch in height "irregular container." No standard containers are established for loose fresh pears which are not packed. (Id. § 24.)

387y. Persimmons (Oriental).—Oriental persimmons, when being packed, or after packing, or when delivered for shipment, loaded, shipped, or being transported, offered for sale or sold in any container or subcontainer shall conform to the following standard:

Standard for Oriental Persimmons. Oriental persimmons shall be mature but not overripe, shall be free from cuts, bruises, broken skins, growth cracks, loosened calyx, mold, decay, and from serious damage caused by hail; and in the case of packed Oriental persimmons shall be virtually uniform in size; provided, that not more than ten per cent, by count, of the persimmons in any one container may be below these requirements, but not to exceed one-half of this tolerance, or five per cent, shall be allowed for any one cause.

Damage caused by hail in any persimmon shall not be considered serious unless it causes a waste of ten per cent by weight of the fruit.

"Virtually uniform in size" shall mean, in the case of packed Oriental persimmons, a variation of not more than one-half of an inch in diameter, when measured through the widest portion of cross-section, between the fruits in any one container.

No Oriental persimmon shall be considered mature unless the entire surface has attained an orange or reddish color.

Markings. In addition to the markings required by section 9 of this act, all containers of Oriental persimmons, when packed, shall bear upon them in plain sight and in plain letters on the outside thereof the following: Name of variety, if known, and when not known the words "unknown variety"; the net weight and the approximate number of fruits in the container or subcontainer, which number shall be within four of the true count; provided, that in lieu of the approximate number of fruits the numerical description of pack may be used. When two or more varieties are packed or placed in a container they shall be labeled "mixed varieties," or, when each subcontainer holds only one variety, "assorted varieties."

Containers in which the fruit in the top layer only is placed in regular compact arrangement shall be labeled "face and fill" in lieu of the approximate number of fruits.

Containers of Oriental persimmons which are not packed shall not be required to show any markings.

Standard Containers for Packed Oriental Persimmons. Packed Oriental persimmons shall be in standard containers numbers 5, 6, 7, 12, 13, 14, 15, 16, 17, 23, or 26A, established in section 11 of this act; provided, that other sized containers may be used if conspicuously marked in letters not less than one-half inch in height "irregular container." No standard containers are established for loose Oriental persimmons which are not packed. (Id. § 25.)

387z. Plums and Fresh Prunes.—Plums and fresh prunes, when being packed, or after packing, or when delivered for shipment, loaded, shipped, or being transported, offered for sale or sold in any container or subcontainer, shall conform to the following standard:

Standard for Plums and Fresh Prunes. Plums and fresh prunes shall be mature but not overripe, shall be free from cuts, serious bruises, unhealed growth cracks, mold, brown rot, decay, and from serious damage caused by sunburn, hail, split pits and insects; and in the case of packed plums and fresh prunes shall be virtually uniform in size; provided, that not more than ten per cent, by count, of the plums or fresh prunes in any one container may be below these requirements, but not to exceed one-half of this tolerance, or five per cent, shall be allowed for any one cause.

Damage caused in any plum or fresh prune by sunburn or insects shall not be considered as serious unless the flesh is affected. Damage caused in any plum or fresh prune by split pits shall not be considered as serious unless it causes an opening at the stem end. Damage caused by hail in any plum or fresh prune shall not be considered serious unless it causes a waste of ten per cent by weight of the fruit.

"Virtually uniform in size" shall mean, in the case of packed plums and fresh prunes, a variation of not more than one-fourth of an inch in diameter, when measured through the widest portion of cross section, between the fruits in any one container. When packed in layers there shall be approximately the same numerical count in each layer throughout a container or subcontainer having straight sides. In the case of plums or fresh prunes packed in sloping side containers, the bottom layer shall contain a smaller numerical count than the top layer.

Markings. In addition to the markings required by section 9 of this act, all containers of plums and fresh prunes, when packed, shall bear upon them in plain sight and in plain letters on the outside thereof the following: Name of variety, if known, and when not known the words "unknown variety"; the net weight and the approximate number of fruits in the container or subcontainer, which number shall be within four of the true count; provided, that in lieu of the approximate number of fruits the numerical description of pack may be used. Numerical description of pack shall describe the count of the top layer on two adjacent sides of the container or subcontainer. When two or more varieties are packed or placed in a container they shall be labeled "mixed varieties," or, when each subcontainer holds only one variety, "assorted varieties."

Containers in which the fruit in the top layer only is placed in regular compact arrangement shall be labeled "face and fill" in lieu of the approximate number of fruits.

Containers of plums or fresh prunes which are not packed shall not be required to show any markings.

Standard Containers for Packed Plums and Fresh Prunes. Packed plums and fresh prunes shall be in standard containers numbers 4, 5, 6, 7, 8, 13, 14, 15, 16, 20, 21, 22 or 23, established in section 11 of this act; provided, that other sized containers may be used if conspicuously marked in letters not less than one-half inch in height "irregular container." No standard containers are established for loose plums or fresh prunes which are not packed. (Id. § 26.)

387aa. Pomegranates ("Wonderful").—Pomegranates of the "Wonderful" variety, when being packed, or after packing, or when delivered for shipment, loaded,

shipped, or being transported, offered for sale or sold in any container or subcontainer, shall conform to the following standard:

Standard for "Wonderful" Pomegranates. "Wonderful" pomegranates shall be mature, free from internal rot and other decay, and from serious damage caused by sunburn, growth cracks, cuts or bruises, and in the case of packed "Wonderful" pomegranates shall be virtually uniform in size; provided, that not more than ten per cent, by count, of the pomegranates in any one container may be below these requirements, but not to exceed one-half of this tolerance, or five per cent, shall be allowed for any one cause; provided, further, that no part of this tolerance shall be allowed for "Wonderful" pomegranates which are not mature.

Damage caused in any "Wonderful" pomegranate by sunburn shall not be considered serious unless the seed arils fail to show the characteristic reddish color of normal matured fruit. Damage caused by cracks in the rind or other portion of a "Wonderful" pomegranate shall not be considered serious unless the crack is over one inch in length or exposes any seed arils. Damage caused in any "Wonderful" pomegranate by cuts or bruises shall not be considered serious unless the seed arils are injured.

Any "Wonderful" pomegranate shall not be considered mature unless the juice is at least as dark in color as the shade of red shown by the Lovibond tintometer scale red 20 plus yellow 1, in addition to which the juice shall contain not to exceed one and eighty-five one hundredths (1-85/100) per cent of acid.

"Virtually uniform in size" shall mean, in the case of packed "Wonderful" pomegranates, a variation of not more than one-half of an inch in diameter, when measured through the widest portion of cross-section, between the fruits in any one container.

Markings. In addition to the markings required by section 9 of this act all containers of "Wonderful" pomegranates, when packed, shall bear upon them in plain sight and in plain letters on the outside thereof the following: The name of the variety and the number of fruits in the container.

Containers of "Wonderful" pomegranates which are not packed shall not be required to show any markings.

Standard Containers for Packed "Wonderful" Pomegranates. All packed "Wonderful" pomegranates shall be in standard containers numbers 27 or 28, established in section 11 of this act; provided, that other sized containers may be used if conspicuously marked in letters not less than one-half inch in height "irregular container."

No standard containers are established for loose "Wonderful" pomegranates which are not packed. (Id. § 27.)

387bb. Quinces.—Quinces, when being packed, or after packing, or when delivered for shipment, loaded, shipped, or being transported, offered for sale or sold in any container or subcontainer, shall conform to the following standard:

Standard for Quinces. Quinces shall be mature but not overripe, shall be free from cuts or skin breaks, unhealed growth cracks, serious bruises, San Jose scale, codlin moth larvæ, mold, decay and from serious damage caused by scab or other diseases, hail, codlin moth larvæ or other means and in the case of packed quinces shall be virtually uniform in size; provided, that not more than ten per cent, by count, of the quinces in any one container may be below these requirements, but not to exceed one-half of this tolerance, or five per cent, shall be allowed for any one cause.

Damage caused by scab, other diseases or hail to any quince shall not be considered serious unless it causes a waste of ten per cent by weight of the fruit. Damage caused to any quince by superficial well healed codlin moth "stings" shall not be considered serious, but any unhealed "stings" or holes caused by codlin moth larvæ shall be considered serious.

"Virtually uniform in size" shall mean, in the case of packed quinces, a variation of not more than one-half of an inch in diameter, when measured through the widest portion of cross-section, between the fruits in any one container. When packed in layers there shall be approximately the same numerical count in each layer throughout a container or subcontainer having straight sides.

Markings. In addition to the markings required by section 9 of this act, all containers of quinces, when packed, shall bear upon them in plain sight and in plain letters on the outside thereof the following: Name of variety, if known, and when not known the words "unknown variety"; the net weight, and the approximate number of fruits in the container or subcontainer, which number shall be within four of the true count; provided, that in lieu of the approximate number of fruits the numerical description of pack may be used. When two or more varieties are packed or placed in a container, they shall be labeled "mixed varieties."

Containers in which the fruit in the top layer only is placed in regular compact arrangement shall be labeled "face and fill" in lieu of the approximate number of fruits.

Containers of quinces which are not packed shall not be required to show any markings.

No Standard Containers. No standard containers are established by this act for quinces. (Id. § 28.)

387cc. Walnuts.—Walnuts, when being packed or placed in any container, or after packing, or when delivered for shipment, loaded, shipped, or being transported, offered for sale or sold in any container or in bulk, shall conform to the following standard.

Standard for Walnuts. Walnuts shall be mature, free from blanks, insect larvæ, insect injury and from meats which are rancid, affected by green mold or by serious damage caused by white mold, gray mold, or shriveling; provided, that not more than twenty per cent, by count, of the walnuts in any one container or bulk lot may be below these requirements.

Damage caused to the meat of any walnut by white or gray mold shall not be considered serious unless the mold adheres to more than one-fourth of the entire surface of the kernel, or materially affects the edibility. Damage caused to the meat of any walnut by shriveling shall not be considered serious unless at least one-fourth of the kernel of the nut is shriveled so that the meat is leathery, tough, unpalatable, or decidedly shrunken.

Markings. In addition to the markings required by section 9 of this act all containers of walnuts shall bear upon them in plain sight and in plain letters on the outside thereof the following: Name of grade, variety or type (as "budded," "soft shell," or "seedlings"); the net weight, and, in letters not less than one and one-half inches in height, and in the English language, the name of the State or of the foreign country where the nuts were produced.

No Standard Containers. No standard containers are established by this act for walnuts. (Id. § 29.)

387dd. Artichokes.—Globe artichokes, when being packed or placed in any container, or after packing, or when delivered for shipment, loaded, shipped, or being transported, offered for sale or sold in any container, shall conform to one of the following standards:

Standards for Globe Artichokes. Fancy Globe Artichokes. Fancy Globe artichokes shall be properly trimmed, free from colored blossoms, insect larvæ, insect injury, mold, decay, and from damage caused by freezing, bruising, snails, and other means, and in the case of packed artichokes shall be virtually uniform in size; provided, that not more than ten per cent, by count, of the artichokes in any one container may be below these requirements, but not to exceed one-half of this tolerance, or five per cent, shall be allowed for any one cause.

Unclassified Globe Artichokes. Unclassified Globe artichokes shall be free from insect larvæ and insect injury, mold, decay, and from serious damage caused by freezing, and in the case of packed artichokes shall be virtually uniform in size; provided, that not more than ten per cent by count, of the artichokes in any one container may be below these requirements, but not to exceed one-half of this tolerance, or five per cent, shall be allowed for any one cause.

Properly trimmed means that the stems shall show a clean cut and be not over one and one-half inches in length.

Damage caused by freezing or bruising shall mean that part or all of the bud is distinctly darkened or discolored.

Serious damage caused by freezing means that the stem or heart of the artichoke shows discoloration due to freezing.

Virtually uniform in size shall mean, in the case of packed Globe artichokes, a variation of not more than three-fourths of an inch in diameter, when measured through the widest portion of cross-section between the artichokes in any one container.

Standard Pack for Globe Artichokes. Globe artichokes, when packed, or after packing, or when shipped, delivered for shipment, offered for sale or sold as a standard pack, shall be tightly packed with a bulge and shall have a minimum net weight of thirty-five pounds in a standard box. There shall be approximately the same numerical count of uniformly sized Globe artichokes in each layer throughout the container. The following sizes may be put up as standard packs in the standard box:

Size 1. Packed with not more than sixty artichokes.

Size 2. More than sixty but not more than seventy-five artichokes.

Size 3. More than seventy-five but not more than ninety-six artichokes.

Size 4. More than ninety-six but not more than one hundred twenty-five artichokes.

Size 5 shall constitute a standard pack in the standard half box only and shall pack not more than one hundred twenty-five artichokes in this container.

Marking Requirements. In addition to the markings required by section 9 of this act, all containers of Globe artichokes, when packed, shall be plainly and conspicuously stamped or stenciled on the outside thereof, in figures not less than one-half inch in height, with the number of artichokes contained therein; provided, that the contents may vary not more than five artichokes from the count as marked.

Each container of Globe artichokes which meet the requirements for Fancy Globe artichokes, as established above, may be marked "Fancy" or with any other proper designation of quality or grade; provided, that each container of Globe artichokes which fail to meet the requirements of Fancy Globe artichokes, but which meet the requirements for unclassified Globe artichokes, shall be plainly and conspicuously marked, in letters not less than one-half inch in height, with the word "unclassified," and shall bear no other term designating quality or grade.

Containers in which Globe artichokes are not packed to conform with the requirements for the standard pack established above shall be plainly and conspicuously marked, in letters not less than one-half inch in height, "irregular pack."

Standard Containers. Packed Globe artichokes shall be in standard containers numbers 18A, 18B or 25A, established in section 11 of this act; provided, that other sized containers may be used if conspicuously marked in letters not less than one-half inch in height "irregular container." No standard containers are established for Globe artichokes which are not packed. (Id. § 29a.)

387ee. Cantaloupes.—Cantaloupes, when being packed, or after packing, or when delivered for shipment, loaded, shipped, or being transported, offered for sale or sold in any container shall conform to the following standard:

Standard for Cantaloupes. Cantaloupes shall be mature but not overripe, not soft, wilted, spongy, flabby, or poorly netted, and shall be free from mold, decay, unhealed growth cracks, cuts, and from serious damage caused by bruises, sunburn, insect injury, aphis honey dew or other means; and in the case of packed cantaloupes shall be virtually uniform in size; provided, that not more than ten per cent, by count, of the cantaloupes in any one container may be below these requirements, but not to exceed one-half of this tolerance, or five per cent, shall be allowed for any one cause.

Damage caused by bruises, sunburn, aphis honey dew or insects to any cantaloupe shall not be considered serious unless affecting the edible portion or providing ready entrance for fungus or decay.

"Mature" in the case of cantaloupes shall mean that the appearance of the outside indicates maturity and the arils which surround the seed during development of maturity have been absorbed and, in addition, that the juice of the edible portion shall contain not less than eight per cent soluble solids as determined by the Balling or Brix scale hydrometer.

"Virtually uniform in size" shall mean, in the case of packed cantaloupes, that there shall be the same numerical count of uniformly sized cantaloupes in each layer throughout the container.

Standard Pack for Cantaloupes. The following counts of cantaloupes hereby are established as standard packs for the respective standard containers as shown:

Standard Pack—Counts	Standard Container Number
27, 36 or 45 31	(Standard Cantaloupe Crate)
45 or 54 32	(Pony Cantaloupe Crate)
27, 36 or 45 33	(Jumbo Cantaloupe Crate)
9, 12 or 15 34	(Standard Cantaloupe Flat)
9, 12 or 15 35	(Special Cantaloupe Flat)
8, 9, 11 or 12 36	(Special Cantaloupe Flat)

Marking Requirements. In addition to the markings required by section 9 of this act, which shall be placed on all containers of cantaloupes, all cantaloupe packs, other than those provided in this section, shall be conspicuously marked in letters not less than one-half inch in height "irregular pack."

Containers of cantaloupes which are not closed shall not be required to show the markings prescribed in this act.

Standard Containers. Packed cantaloupes shall be in standard containers numbers 31, 32, 33, 34, 35 or 36, established in section 11 of this act; provided, that other sized containers may be used if conspicuously marked in letters not less than one-half inch in height "irregular size container." No standard containers are established for unpacked or loose cantaloupes in open or unlidded containers. (Id. § 30.)

387ff. Carrots.—Carrots, when being packed or placed in any container, or after packing, or when delivered for shipment, loaded, shipped, or being transported, offered for sale or sold in any container, shall conform to the following standard:

Standard for Carrots. Carrots shall be fairly well formed, free from decay, insect injury, unhealed growth cracks, and from serious damage caused by green discoloration, diseases, mechanical or other means, and when bunched shall be virtually uniform in size; provided, that not more than ten per cent, by weight, of the carrots in any container may be below these requirements, but not more than a total of five per cent, by weight, shall be allowed for decay.

Carrots shall not be considered fairly well formed if doubles or other misshapen condition cause a waste of ten per cent, by weight, of the edible portion.

"Serious damage caused by green discoloration" shall mean a green color on more than fifteen per cent of the length of any carrot.

"Virtually uniform in size" shall mean, in the case of bunched carrots, a variation of not more than one-half of an inch in diameter, when measured through the widest portion of cross section, between the carrots in any one bunch.

Marking Requirements. In addition to the markings required by section 9 of this act, which shall be placed on all containers of carrots, all containers of bunched carrots shall be plainly and conspicuously stamped or stenciled on the outside thereof, in figures not less than one-half inch in height, with the number of bunches contained therein.

No Standard Containers. No standard containers are established by this act for carrots. (Id. § 30a.)

387gg. Head Lettuce.—Head lettuce, when being packed, or after packing, or when delivered for shipment, loaded, shipped, or being transported, offered for sale or sold in any container shall conform to the following standard:

Standard for Head Lettuce. Head lettuce shall not be leafy without head formation and shall be free from slime or decay affecting leaves within the head, free from seed stems or stem rot which are apparent on external examination, internal insect injury, and from serious damage caused by bursting or freezing; provided that not more than ten per cent, by count, of the heads in any one container may be below these requirements, but not to exceed one-half of this tolerance, or five per cent, shall be allowed for any one cause.

Damage caused by bursting shall not be considered serious unless the head is burst open. Damage caused by freezing shall not be considered serious when it affects only the wrapper leaves and/or not exceeding three outer head leaves.

Standard Pack for Head Lettuce. Head lettuce, when packed, or after packing, or when shipped, delivered for shipment, offered for sale or sold as a standard pack, shall contain either three dozen, three and a half dozen, four dozen, four and a half dozen, five dozen, seventy-five or ninety heads of lettuce per crate, and shall be tightly packed with a slight bulge of crates when lidded, and crates shall contain not more than thirty pounds of ice. Each crate of four and one-half dozen count shall have each layer arranged with four rows of four, five, five and four heads.

In the case of head lettuce in standard packs there shall be the same numerical count of regularly arranged heads in each layer, and no heads shall be placed outside of the regular arrangement of three uniform flat layers, excepting that in the case of sizes smaller than five dozen a bridge of from three to six heads shall be permitted, but the heads in such bridge shall be included in the count as marked.

In the case of head lettuce in other than standard packs, there shall not be a variation in numerical count of more than two heads between any two layers in one container.

Both iced and dry packed lettuce shall be considered as packed, in both open and closed containers.

Marking Requirements. In addition to the markings required by section 9 of this act, all crates of head lettuce, when packed, shall be plainly and conspicuously stamped or stenciled on the outside thereof, in figures not less than one-half inch in height, with the exact number of heads contained therein; provided, that in the case of crates marked "irregular pack" the contents may vary not more than three heads from the count as marked.

Crates in which lettuce is not packed to conform with the requirements for a standard pack established above shall be conspicuously marked "irregular pack" in letters not less than one-half inch in height.

Standard Containers. Ice packed lettuce shall be in standard container number 37, established in section 11 of this act; provided, that other sized containers may be used if conspicuously marked in letters not less than one-half inch in height "irregular container." No standard containers are established for lettuce which is loose or dry packed. (Id. § 31.)

387hh. Persian Melons, Casabas, Honey Dew Melons and Watermelons.—Persian melons, casabas, honey dew melons and watermelons when being packed, or after packing, or when delivered for shipment, loaded, shipped or being transported,

offered for sale or sold in any container or in bulk, shall conform to the following standard:

Standard for Persian Melons, Casabas, Honey Dew Melons and Watermelons. Persian melons, casabas, honey dew melons and watermelons shall be mature but not overripe or soft, shall be free from mold, decay, unhealed growth cracks, cuts, and from serious damage caused by bruises, sunburn, insect injury, aphis honey dew or other means; provided, that not more than ten per cent, by count, of the melons in any lot may be below these requirements, but not to exceed one-half of this tolerance, or five per cent, shall be allowed for any one cause.

Damage caused by bruises, sunburn, aphis honey dew or insects, to any Persian melon, casaba, honey dew melon or watermelon, shall not be considered serious unless it affects the edible portion or provides ready entrance for fungus or decay.

"Mature" in the case of watermelons shall mean that the appearance of the outside indicates maturity, that the arils which surround the seed have been absorbed, and that the flesh of the melon has not less than seventy-five per cent red color.

Markings. All containers of packed melons shall bear the markings required in section 9 of this act.

No Standard Containers. No standard containers are established by this act for Persian melons, casabas, honey dew melons or watermelons.

Deceptive Load. It shall be unlawful to load, offer for shipment, ship, transport, offer for sale or sell a deceptive load of Persian melons, casabas, honey dew melons or watermelons. A deceptive load is hereby defined as one which has in the upper layer, or exposed portion, melons which are so superior to any of the others in the load in size, quality or maturity as to misrepresent the contents. (Id. § 32.)

387ii. Onions.—Onions when being packed or placed in any container, or after packing, or when delivered for shipment, loaded, shipped, or being transported, offered for sale or sold in any container shall conform to the following standard:

Standard for Onions. Onions shall be free from decay, freezing injury and from serious damage caused by insects, sun scald, heat, or sprouting; provided, that not more than ten per cent, by weight, of the onions in any container may be below these requirements, but not to exceed one-half of this tolerance, or five per cent, shall be allowed for any one cause.

Damage caused by sun scald or heat shall not be considered serious unless it has caused a softening or collapse of the tissues which has not been followed by drying. Damage caused by sprouting shall not be considered serious unless the onions are soft and spongy.

Markings. No markings shall be required by this act on containers of onions.

No Standard Containers. No standard containers are established by this act for onions. (Id. § 33.)

387jj. Potatoes.—Potatoes, when being packed or placed in any container or after packing, or when delivered for shipment, loaded, shipped, or being transported, offered for sale or sold in any container or in bulk shall conform to the following standard:

Standard for Potatoes. Potatoes shall be free from freezing injury, sun scald, salt injury, black heart, live tuber moth larvæ, fusarium tuber rot, leak, slimy soft rot, late blight rot, black leg and from serious damage caused by powdery dry rot, Rhizoctonia, scab, growth cracks, second growth, hollow heart, sunburn, cuts, bruises, mechanical injury, grass roots, wire worm, tuber moth and nematode; provided, that not more than ten per cent, by weight, of the potatoes in any one container or bulk lot may be below these requirements, but not to exceed one-half of this tolerance, or five per cent, shall be allowed for any one cause.

Damage caused in any potato by powdery dry rot, Rhizoctonia, scab, growth cracks, second growth, hollow heart, sunburn, cuts, bruises, mechanical injury, grass roots, wire worm, tuber moth and nematode shall not be considered serious when it can be removed by the ordinary process of preparation for use without a waste of ten per cent or more, by weight, in addition to that which would occur if the potato were perfect.

Markings. No markings shall be required by this act on containers of potatoes.

No Standard Containers. No standard containers are established by this act for potatoes. (Id. § 34.)

387kk. Sweet Potatoes.—Sweet potatoes, when being packed or placed in any container, or after packing, or when delivered for shipment, loaded, shipped, or being transported, offered for sale or sold in any container, shall conform to the following standard:

Standard for Sweet Potatoes. Sweet potatoes shall be free from freezing injury, sun scald, fusarium tuber rots, wet rot, black rot, soft rot, and from serious damage caused by powdery dry rot or other disease, growth cracks, sunburn, cuts, bruises, mechanical injury, grass roots, nematode, wire worm or other insects; provided, that

not more than ten per cent, by weight, of the sweet potatoes in any one container may be below these requirements, but not to exceed one-half of this tolerance, or five per cent, shall be allowed for any one cause.

Damage caused by powdery dry rot or other disease, growth cracks, sunburn, cuts, bruises, mechanical injury, grass roots, nematode, wire worm or other insects shall not be considered serious when it can be removed by the ordinary process of preparation for use without a waste of ten per cent or more, by weight, in addition to that which would occur if the sweet potato were perfect.

Markings. No markings shall be required by this act on containers of sweet potatoes.

No Standard Containers. No standard containers are established by this act for sweet potatoes. (Id. § 35.)

387ll. Tomatoes.—Tomatoes when being packed or after packing, or when delivered for shipment, loaded, shipped, or being transported, offered for sale or sold in any container or subcontainer, shall conform to the following standard:

Standard for Tomatoes. Tomatoes shall be mature but not overripe, shall be free from insect injury which has penetrated or materially damaged the flesh, wet or soft rots, blight, freezing injury, and from serious damage caused by blossom end rot, mosaic, alkali spot, sun scald, bruises, cat faces, blossom end scars and growth cracks; and, in the case of tomatoes which are wrapped and packed, shall be virtually uniform in size; provided, that not more than ten per cent, by weight, of the tomatoes in any one container may be below these requirements, but not to exceed one-half of this tolerance, or five per cent, shall be allowed for any one cause.

Damage caused to any tomato by blossom end rot, mosaic, alkali spot, sun scald, bruises, cat faces, blossom end scars or growth cracks, shall not be considered as serious unless it causes a waste of twenty per cent by weight.

"Virtually uniform in size" shall mean, in the case of packed wrapped tomatoes, a variation of not more than one-half of an inch in diameter, when measured through the widest portion of cross-section, between the tomatoes in any one container.

When tomatoes are wrapped and packed in layers, there shall be approximately the same numerical count in each layer throughout a container or subcontainer having straight sides. When wrapped and packed in standard California lug boxes, the center and bottom layers shall have the same count, which, in case wide cleats are used, may be not to exceed one row more in length than the top layer, and, if packed on edge, one row more in width than the top layer, but which shall not be less than the count in the top layer.

Marking Requirements. In addition to the markings required by section 9 of this act, all containers of packed tomatoes shall bear upon them in plain sight and in plain letters on the outside thereof the net weight; provided, that, in the case of packed tomatoes which are not wrapped, all markings required by this act may be shown on a tag placed on top of the tomatoes within the container, instead of being placed upon one end as prescribed in section 9 of this act.

Containers of tomatoes which are not packed shall not be required to show any markings.

No Standard Package. There is no standard package established by this act for tomatoes. (Id. § 36.)

387mm. Penalty.—Any person, firm, company, corporation or organization who shall violate any of the provisions of this act shall be deemed to be guilty of a misdemeanor, and, upon conviction thereof, shall be punishable by a fine of not less than fifty dollars nor more than five hundred dollars, or by imprisonment in the county jail for not more than six months, or by both such fine and imprisonment. (Id. § 37.)

387nn. Seizure; Condemnation; Destruction.—Any fruits, nuts or vegetables packed, stored, delivered for shipment, loaded, shipped, or being transported, offered for sale or sold in violation of any of the provisions of this act, and their containers, shall be deemed to be a public nuisance, and shall not be moved from the place where they may be, excepting under the specific direction of a proper enforcing officer. After due and proper written notice, if the packer or owner of such fruits, nuts or vegetables shall refuse or shall fail within twenty-four hours, to recondition or remark the same so as to comply with all requirements of this act, such fruits, nuts or vegetables and their containers may be seized by the Director of Agriculture, his deputies or any enforcing officer as herein provided, and by order of the justice, municipal or superior court of the county, or city and county, within which the same may be, shall be condemned and destroyed, or released upon such conditions as the court, in its discretion, may impose to insure that they will not be packed, delivered for shipment, shipped, transported, offered for sale or sold in violation of any of the provisions of this act. (Id. § 38.)

387oo. Constitutionality.—If any section, subsection, sentence, clause or phrase of this act is for any reason held to be unconstitutional, such decision shall not affect the validity of the remaining portions of this act. The legislature hereby declares that it would have passed this act, and each section, subsection, sentence, clause, or phrase, thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared unconstitutional. (Id. § 39.)

387pp. Repeal.—The "California fruit and vegetable standardization act," approved May 23, 1925, is hereby repealed. (Id. § 40.)

393a. Title of Act.—This act shall be known, and for any and all purposes may be designated and referred to as "The California fruit and vegetable certification act." (L. 1927, c. 562, § 1.)

393b. Certificates of Grade and Quality.—To promote the development of the California fruit, vegetable and agricultural industry the Director of Agriculture and his duly authorized employees or agents may investigate and certify to shippers or other financially interested parties the grade, quality and condition of fruit, vegetable or other farm products under such rules and regulations as he may prescribe, including the payment of such fees as will be reasonable; provided, that certificates issued by authorized employees or agents of the Director of Agriculture and certificates issued under authority of an act of the United States Congress, and in accordance with the rules and regulations of the Secretary of Agriculture of the United States, shall be received in all courts of the State of California as prima facie evidence of the truth of the statements therein contained. Such investigation shall not be made or such certificates issued by any person not specially authorized by the Director of Agriculture. Any certificate issued by the State under the provisions of this act, or by any person, firm, company, corporation or organization shall truly state the grade, quality and condition of the product or products certified, and a true copy of any such certificate shall be furnished to the Director of Agriculture, or to the county horticultural commissioner of the county where the shipment originated, on demand made in writing.

Nothing in this act contained shall apply to any investigation made or any certificate issued by any person, firm or corporation in respect to canned or dried fruit shipped, packed or stored by it or to any investigation made or any certificate issued by any bona fide chamber of commerce, board of trade or other bona fide nonprofit association of producers or merchants in respect to canned or dried fruit sold, shipped, packed or stored by any of its members or other persons for whom it may make any such inspection or issue any such certificate.

The Director of Agriculture is authorized to co-operate with the United States Department of Agriculture in carrying out the provisions of this act. (Id. § 2.)

393c. Disposition of Funds.—All moneys collected under the provisions of this act shall be paid into "Fruit and vegetable certification fund," which fund is hereby created, and of which ten thousand dollars ($10,000), may be used as a revolving fund, subject to the approval of the State Board of Control. All moneys in the State treasury deposited to the credit of the "standardization fund" under the provisions of "The California fruit and vegetable standardization act of 1925," approved May 23, 1925, as heretofore existing, shall be merged with and become a part of the "Fruit and vegetable certification fund" created under this act. The "Fruit and vegetable certification fund" shall be held subject to the uses of the Director of Agriculture for the sole and express purpose of carrying out the provisions of this act. (Id. § 3.)

393d. Annual Report.—Within ninety days after the end of each fiscal year the Director of Agriculture shall prepare a statement showing the receipt and expenditure during the fiscal year of funds provided for in this act, and shall, upon written request, forward a copy of this report to any party financially interested in the inspection work conducted under the authority of this act. (Id. § 4.)

393e. Fruits and Vegetables Not to Carry Spray Residue.—It shall be unlawful to pack, ship, store, deliver for shipment, offer or expose for sale any fresh or dried fruits or vegetables carrying spray residue or other added deleterious ingredient in excess of the quantity prescribed under the laws of the United States. (L. 1927, c. 807, § 1.)

393f. Enforcement; Director of Agriculture; Duties.—The Director of Agriculture of the State of California shall be charged with the enforcement of this act and for that purpose shall have the power:

(a) Personally or through his deputies or inspectors to enter every place within the State of California where fresh or dried fruits or vegetables are produced, packed, stored, shipped, transported, delivered for shipment, offered for sale or sold and to inspect all fresh or dried fruits or vegetables found therein or in transit.

(b) Personally or through his deputies or inspectors to seize and quarantine any or all lots of fresh or dried fruits or vegetables which, in his judgment, carry

spray residue or other added deleterious ingredient in violation of the provisions of this act pending examination and chemical analysis and final disposition as in this act provided.

(c) When any lot of fresh or dried fruits or vegetables has been found to carry spray residue in excess of the quantity prescribed by the laws of the United States the Director of Agriculture may permit the lot to be cleaned or reconditioned and to release such lot after such treatment if the same is found to comply with the provisions of section 1 of this act.

(d) The Director of Agriculture shall make rules and regulations for carrying out the provisions of this act. (Id. § 2.)

393g. Seizure; Condemnation.—Any fresh or dried fruits or vegetables when packed, shipped, stored, delivered for shipment, offered for sale or sold in violation of any of the provisions of this act may be seized by the Director of Agriculture, his deputies or inspectors, and by order of the Superior Court of the county, or city and county, within which the same may be found, shall be condemned or destroyed or released upon such conditions as the court in its discretion may impose. (Id. § 3.)

393h. Penalty.—Any person, firm, company or corporation violating any of the provisions of this act shall be guilty of a misdemeanor. (Id. § 4.)

393i. Black Currants.—The cultivated black currant (Ribes nigrum), is hereby declared to be a public nuisance; and the Director of the State Department of Agriculture and the county commissioners of horticulture of every county are hereby invested with the power to abate the nuisance in a summary manner.

Every person, firm or corporation who or which grows, propagates or distributes cultivated black currants (Ribes nigrum), in the State of California is guilty of a misdemeanor. (Pol. Code 1923, § 2320, as added L. 1927, c. 50.)

393j. Definitions.—The following terms when used in this act shall be construed as follows:

Profichi crops shall mean the crop of Capri figs maturing in June and July and used to caprify or pollinate the main crop of the Smyrna type of figs.

Mamme crop shall mean the winter crop of Capri figs.

Matured pollen shall mean pollen in a powdery condition which can be dusted or shaken out from the anthers in appreciable quantities.

Spent figs shall mean Capri figs from which all the female Blastophaga insects have issued.

Blanks shall mean Capri figs which are devoid of Blastophaga insects or galls containing Blastophaga insects. (L. 1927, c. 143, § 1.)

393k. Unlawful Packing, Etc.; Misdemeanor.—Every person who shall pack, ship, deliver for shipment, offer for sale or sell in any container or subcontainer any lot of Capri figs of the profichi crop, which shall not contain matured pollen, or which shall not contain living Blastophaga insects in the adult stage, or which shall contain more than twenty-five per cent of spent figs, or which shall contain more than ten per cent of blanks, is guilty of a misdemeanor. (Id. § 2.)

393l. Same.—Every person who shall pack, ship, deliver for shipment, offer for sale or sell in any container or subcontainer any lot of Capri figs of the mamme crop, which shall contain more than twenty-five per cent of spent figs, or which shall contain more than ten per cent of blanks, is guilty of a misdemeanor. (Id. § 3.)

393m. Enforcement.—The State Director of Agriculture is hereby empowered through his duly authorized agents and the county horticultural commissioners of each county of the State, their deputies and inspectors, acting under the supervision and control of the State Director of Agriculture, to enforce all of the provisions of this act, and to promulgate and enforce such rules and regulations as he may deem necessary thereto. All enforcing officers under this act shall have the power to enter any place where Capri figs are produced, packed, stored, shipped, delivered for shipment, offered for sale or sold, and to inspect the same, and to seize and hold for evidence any Capri figs packed, shipped, delivered for shipment, offered for sale or sold in violation of any of the provisions of this act, and to prosecute actions for violation of the provisions hereof. (Id. § 4.)

393n. "State Market Commission" Created—Purposes.—There is hereby created the "State Market Commission," a State organization for the following purposes, to wit:

First—To act as adviser for producers and distributors when requested, assisting them in economical and efficient distribution of any such products at fair prices.

Second—To gather and disseminate impartial information concerning supply, demand, prevailing prices and commercial movements, including common and cold storage of any such products.

Third—To promote, assist and encourage the organization and operation of co-operative and other associations and organizations for improving the relations and

services among producers, distributors and consumers of any such products, and to protect and conserve the interests of the producers and consignors of such products.

Fourth—To foster and encourage co-operation between producers and distributors of any such products, in the interest of the general public.

Fifth—To foster and encourage the standardizing, grading, inspection, labeling, handling, storage and sale of any such products.

Sixth—To act as a mediator or arbitrator, when invited by both parties, in any controversy or issue, that may arise between producers and distributors of any such products.

Seventh—To certify, for the protection of owners, buyers, or creditors, when so requested, warehouse receipts for any such products, verifying quantities and qualities thereof, and to charge for such service fees sufficient to make the service at least self-supporting.

Eighth—To issue labels bearing the seal of the State Market Commission on request of the producer, packer, canner, or distributor, for any such products, for which State labels have not otherwise been authorized by law, under such rules and regulations as the director may deem necessary and to charge for such labels such fees as in the judgment of the State Market Director may be proper.

Ninth—To act on behalf of the consumers of any such products in conserving and protecting their interests in every practicable way.

Tenth—To improve, broaden and extend in every practicable way the distribution and sale of any such California products throughout the markets of the world.

Eleventh—To promote in the interest of the producer, the distributor, and consumer, economical and efficient distribution and marketing of all or any agricultural, fishery, dairy and farm products produced, grown, raised, caught, manufactured or processed within the State of California.

It shall be within the province of the State Market Director, hereinafter provided for, to determine and decide when, where and to what extent, existing conditions render it necessary or advisable to carry out any or all the purposes of this act and he is herewith granted power and authority to carry out any or all of said purposes. (G. L. 1923, Act 8033, § 1.)

393o. Title of Act—Terms Defined.—This act shall be known as the "State Market Commission Act."

The following terms used in this act shall, unless a different meaning is plainly required by the context, be construed as follows:

The "commission" shall be the State Market Commission.

The "director" shall be the State Market Director himself personally or his duly appointed and authorized representative.

The word "products" shall refer to the agricultural, fishery, dairy and farm products produced, grown, raised, caught, manufactured or processed within the State of California.

The term "organizations of producers and distributors" shall include all corporations, societies, associations and organizations of producers or of producers and distributors, or of distributors, co-operative or otherwise, formed for the purpose of facilitating the marketing of any such products.

A "person" shall be understood to include individuals, partnerships, associations and corporations or their agents or employees.

When the singular is used the plural is also included. Whenever the masculine is used, the feminine and neuter are included. (Id. § 2.)

393p. State Market Director—Secretary.—The State Market Commission shall consist of a governing body of one person, to be known as the State Market Director, hereinafter referred to as the director, who shall be appointed by the Governor of the State of California, and of a secretary to be appointed by the State Market Director, as hereinafter provided, and these two shall perform the duties and exercise the powers of the State Market Commission and shall administer the provisions hereof, administer oaths, certify to all official acts, and do all proper acts to carry out any and all of the purposes hereof. (Id. § 3.)

393q. Power of Director.—The director is hereby vested with full power, authority and jurisdiction to do and perform any and all things which are necessary or convenient in the exercise of any power, authority or jurisdiction designated and conferred upon him under this act. (Id. § 4.)

393r. Bureau of Correspondence.—The commission shall have a bureau of correspondence for gathering and disseminating information on all subjects relating to the marketing of California products, and may issue bulletins thereon, and by every practicable means keep the producers informed of the supply and demand and at what market their products can best be handled. (Id. § 5.)

393s. Term of Director—Removal.—The director shall hold office at the pleasure of the Governor and his annual salary shall be five thousand dollars. The

Legislature by a two-thirds vote may remove the director for misconduct, neglect of duty or incompetency. (Id. § 6.)

393t. Term of Secretary—Salary.—The State Market Commissioner shall have a secretary who shall be appointed by the director and hold office at his pleasure, and shall perform such duties as he may prescribe. The annual salary of the secretary shall be three thousand six hundred dollars. (Id. § 7.)

393u. Seal.—The State Market Commission shall have a seal bearing the inscription "State Market Commission of California," which seal shall be affixed to all such instruments as the director shall require. (Id. § 8.)

393v. Salaries.—The salaries of the director and secretary shall be paid in the same manner as are the salary of other State officers. (Supp. 1925, G. L., Act 8033, § 9.)

393w. Whole Time Devoted to Duties.—The director shall not engage in any other line of business during his term of office, but shall devote his whole time, attention and ability to the duties of his office. The director shall not hold or own any stock or other interest whatsoever in any produce commission business. (G. L. 1923, Act 8033, § 10.)

393x. Disposition of Fees, Etc.—All fees and charges and costs collected by said commission under this act shall be paid into the State treasury of the State to the credit of the general fund. (Supp. 1925, G. L., Act 8033, § 11.)

393y. Annual Report.—The director shall make and submit to the Governor, on or before the first day of December of each year, a report containing a full and complete account of the transactions and proceedings of the State Market Commission for the preceding fiscal year, together with such other facts, suggestions, and recommendations as may be deemed of value to the people of the State. (G. L. 1923, Act 8033, § 13.)

393z. Bond.—The director, before entering upon the duties of his office, shall make and execute to the people of the State of California an official bond in the sum of five thousand dollars, for the faithful performance of the duties of his office. The director may require of the officers and employees such bonds for the faithful performance of their duties as in his judgment may be necessary. (Id. § 14.)

393aa. Investigation of Products Held in Storage.—The director may make pertinent investigations concerning the aggregate amount of products held in common and cold storage. In connection with any such investigation, the director shall have the right to inspect only the pertinent books and records of common or cold storage warehouses for the purpose of determining and publishing aggregate amounts of products held in storage, and the director is hereby empowered to issue subpœnas for the attendance of witnesses and the production of pertinent books, papers, accounts, documents, and testimony in any such investigation. (Id. § 15.)

393bb. Constitutionality.—If any section, subsection, sentence, clause or phrase of this act is for any reason declared to be unconstitutional, such decision shall not affect the validity of the remaining portions of this act. The Legislature hereby declares that it would have passed this act and each section, subsection, sentence, clause or phrase thereof, irrespective of the fact that any one or more other sections, subsections, sentences, clauses or phrases be declared unconstitutional. (Id. § 17.)

393cc. Stats. 1915, p. 1390, Repealed.—That certain act entitled "An act to provide for the creation of the State Commission Market, and the organization thereof, to carry on the business of receiving from the producers thereof the agricultural, fishery, dairy and farm products of the State of California and selling and disposing of such products on commission, creating the 'State Commission Market Fund' and appropriating money therefor," approved June 10, 1915, and known as the "State Commission Market Act," chapter seven hundred thirteen of the Statutes of 1915, and all other acts and parts of acts in conflict with this act are hereby repealed. (Id. § 18.)

NOTE: See also No. 407a et seq. and No. 665a et seq., post.

Grain—Grain Products.

394-407. Repealed. (L. 1927, c. 75, § 14.)

407a. Title of Act.—This act shall be known as "The California Field Crops Inspection Act." (L. 1927, c. 75, § 1.)

407b. Definition.—The term "field crop products" as used in this act shall be deemed to include grain crops, dry bean crops, seeds, forage crops, fiber crops and other field crops and the manufactured products and by-products thereof. (Id. § 2.)

407c. Director of Agriculture to Enforce Act.—The Director of Agriculture of the State of California is hereby charged with the duty of carrying out all of the

provisions of this act, and he shall on or before sixty days from the time this act becomes effective put into effect the provisions of this act relative to the standards and inspection of field crop products for which standards have been established under authority of any compulsory United States standardization act. (Id. § 3.)

407d. Powers.—He shall have the power:

(a) To fix the compensation and determine the duties of such employees as shall be necessary to carry out the provisions of this act.

(b) To establish uniform standards for field crop products. Any standards for field crop products which have been or which may hereafter be made mandatory under authority of the Congress of the United States shall forthwith be established and promulgated by the Director of Agriculture as the official standards of this State. Any optional standards which have been established under authority of the Congress of the United States may be established and promulgated by the Director of Agriculture as official standards of this State if after hearings he deems the said standards applicable to California products.

(c) To establish inspection districts within the State. When such a district is established inspection service may be rendered therein in accordance with rules and regulations promulgated by the director.

(d) To establish, upon request, inspection stations at warehouses, docks, or industrial plants which are within or without an established inspection district. The director may make special rules and regulations applicable to each specific inspection station and the conditions under which same shall be established and maintained.

(e) To provide through the regularly established inspection districts and stations, sampling, grading, inspection and certification service for field crop and other agricultural products within the State or shipped into or through the State.

(f) To issue certificates as to quality and condition of field crop products and agricultural products in accordance with standards established under authority of this act, or any other standards which may be fixed by trade or contract and which do not conflict with official State standards.

(g) To promulgate, amend or repeal rules and regulations for sampling, grading, inspection and certification for the purpose of carrying out the provisions of this act.

(h) To fix and determine all fees for sampling, grading, inspection and certification of field crop products and other agricultural products. The director is hereby authorized to collect such fees in advance of performing the services, but shall not be required to do so if in his opinion the benefits of such services would be lessened by such advance payments. (Id. § 4.)

407e. Certificates of Quality.—The Director of Agriculture shall inspect and grade upon request and certify to any interested party the quality and condition of any agricultural product covered by the provisions of this act, under such rules and regulations as he may prescribe; provided, that certificates issued by authorized agents of the Director of Agriculture shall be received in courts of the State of California as prima facie evidence of the truth of the statements therein contained. Such inspection shall not be made or such certificates issued by any person not specifically authorized by the Director of Agriculture in reference to any field crop product for which State standards have been officially established. Any person so authorized shall comply with the rules and regulations issued by the director relative to the certification of field crop products. (Id. § 5.)

407f. Certificate of Authority.—The Director of Agriculture shall issue to each employee authorized to grade and inspect the products included under this act a certificate showing such authority, which shall be posted in a permanent and conspicuous place at the official station of such employee. (Id. § 6.)

407g. Employees to be Bonded.—The Director of Agriculture shall require from each employee who is responsible for the sampling, grading, inspection and certification of any product covered by this act a bond in amount to be determined by the Director of Agriculture and the costs of said bond shall be borne by the State Department of Agriculture. (Id. § 7.)

407h. Promulgation of Standards.—The Director of Agriculture may hold hearings for the presentation of facts and information relative to the promulgation of standards under the provisions of this act. Any standard established hereunder shall become effective thirty days after official promulgation of the same; provided, that any standard promulgated under the authority of the California grain standardization act, and effective at the time of passing of this act, shall be made effective immediately with the promulgation of said standard. (Id. § 8.)

407i. Powers of Employees.—The Director of Agriculture and his duly authorized employees may enter any place where field crop products covered by this act are stored, shipped, sold or offered for sale, for the purpose of carrying out the provisions of this act. The Director of Agriculture and his duly authorized employees may, for the purpose of inspection and examination, break the seals of cars

and after such inspection has been made the State officials shall securely close and reseal such doors as were broken open by them, using a special seal as provided by the Department of Agriculture for the purpose. A record of all original seals broken by said officials, the date when broken, record of all seals substituted thereafter and the date and number of said seals shall be made by said officials. (Id. § 9.)

407j. Railroads to Provide Sidetracks.—Any railroad delivering field crop products in cars at any of the places provided with inspection service under this act shall provide convenient and suitable sidetracks at such places as the director may designate, on which all cars of field crop products delivered by them shall, upon arrival, be set and arranged convenient for inspection, whenever such cars or field crop products are to be inspected in accordance with the provisions of this act. (Id. § 10.)

407k. Appeal.—Any person aggrieved by the grading by any authorized inspector of any of the products for which standards have been established under the provisions of this act may appeal to the Director of Agriculture in accordance with such rules as he may establish. If the appeal pertains to a commodity moving in intrastate commerce, but for which standards have been established under the provisions of a compulsory United States act, the appellant may, with the approval of the Secretary of the United States Department of Agriculture, appeal to the federal grain supervisor of the supervision district in which the product was located when inspected and certified. (Id. § 11.)

407l. Penalty.—Any person violating any of the provisions of this act shall be guilty of a misdemeanor. (Id. § 12.)

407m. Disposition of Funds.—All moneys received under the provisions of this act shall be paid monthly into the State treasury and placed to the credit of the general fund. (Id. § 13.)

407n. Repeal.—An act known as the "California grain standardization act," approved June 3, 1921, is hereby repealed. (Id. § 14.)

NOTE: See also No. 665a et seq., post.

Meat—Meat Products.

429i. License to Slaughter or Sell Cattle.—1. No person shall slaughter a bovine animal or offer for sale, barter or exchange the meat thereof, unless he shall have a license therefor issued in accordance with the provisions of this act, except as herein otherwise provided.

2. Every person slaughtering cattle as a business shall do so in a designated slaughterhouse. Before beginning business he must procure from the director a license to carry on such business and execute a bond to the State of California, in the penal sum of one thousand dollars to be approved by the director, conditioned that such person shall not slaughter, sell or expose for sale any cattle or the meat thereof, without first being the owner thereof, or being authorized so to do by such owner, and that in case he shall slaughter any cattle without being the owner, or so authorized by the owner, he shall, in addition to all other statutory penalties, pay therefor double the value of such animal. All amounts recovered on said bonds shall be paid as follows: One-half to the owner of such animal and the remaining one-half to the cattle protection fund.

3. Said director shall grant to every applicant who complies with the provisions of this act a license to slaughter cattle, and sell the meat thereof for the unexpired portion of the current calendar year. Every applicant for such license shall pay to said director the following annual fee which shall be paid in advance: Applicants who slaughter less than ten head per month, five dollars per annum. Applicants who slaughter more than ten head and less than fifty head per month, ten dollars per annum. Applicants who slaughter more than fifty head, twenty-five dollars per annum. One-fourth of said fees shall be paid for a fractional quarter of a year. But in no case shall the fee be less than two dollars for a fractional part of the year.

4. The applicant shall state in his application where his slaughterhouse is located, and he shall not slaughter cattle at any other place. If a licensee desires to change the location of his slaughterhouse he shall apply to said director to have his license transferred, and the director may reissue the license without additional charge.

5. Upon failure of a licensee for a period of fifteen days to pay said fee, his license shall thereupon be forfeited and thereafter it shall be unlawful for him to slaughter cattle until a penalty of twenty-five dollars and fifty cents per day for every day the licensee slaughters cattle after the expiration of his license, is paid to the director and a new license issued.

6. The director may, after notice to the interested party and a hearing, revoke a license for a wilful violation of any of the provisions hereof, or for maintaining an insanitary slaughterhouse, unless such slaughterhouse shall be under the supervision of a city or county meat inspection department where regular inspection is conducted by employees who have passed a civil service meat inspector's examination, or the United States Department of Agriculture, and a license so revoked shall not be reissued except upon the payment of a renewal fee of twenty-five dollars.

7. Every slaughterer of cattle shall keep on file in his office for ninety days after slaughter, the original bill of sale and the certificate of inspection of all cattle slaughtered by him.

8. Every peddler, or retailer of meats, purchasing the meat of any bovine animal, must enter in a book to be kept for that purpose and exhibit the same on demand, the name of the person from whom said meat was purchased or otherwise obtained, the date of said purchase, the quantity so purchased, and the time and place of the delivery thereof to him.

No peddler, or retailer of meat, shall purchase the meat of a slaughtered bovine animal from any person not known to him to be licensed under the provisions of this act, or a regular wholesale dealer in meats with an established place of business.

9. No person not licensed as a slaughterer under this act shall give, sell or deliver to any peddler of meats any part of the carcass of a bovine animal. This provision shall not apply to purchases from a regular wholesaler of meat having an established place of business.

10. Nothing in this act shall be so construed as to prohibit an owner of property, or a ranchman located on a definite property as a tenant, lessee or purchaser under contract, from slaughtering cattle bred and raised by him in small numbers on said premises and nothing herein shall be so construed as to prohibit such ranchmen from selling or giving away a portion of the meat thereof.

11. Any person actually engaged in the dairy business or engaged in the raising of cattle may slaughter upon his own premises any calves under eight months of age, actually produced by him, upon annual notification to the Director of Agriculture of his intention to slaughter such calves, and filing with the office of the Director of Agriculture a monthly report giving the number of calves slaughtered per month.

12. Every licensed slaughterer shall at the end of each calendar month mail to the director a written report stating the total number of cattle inspected for marks and brands and slaughtered during the preceding month and showing in separate columns the number thereof that were: (a) calves under one year of age; (b) cows one year of age and over; (c) steers; (d) stags; (e) bulls; (f) number slaughtered on each date; (g) branded, and (h) unbranded cattle. (G. L. 1923, Act 4638, § 5, as amended L. 1927, c. 869.)

NOTE: See also No. 96 et seq. and No. 254a et seq., ante.

Nuts.

See No. 387a et seq., ante.

PART III.

Special Drug Laws.

Insecticides and Fungicides.

477. Report of Moneys.—The Director of Agriculture shall, at least once each month, report to the State Controller the amount of fees and moneys collected, and, at the same time, he shall pay into the State treasury the entire amount of such receipts. All such receipts shall be credited to the general fund. Any balance remaining in the fund now known as the "division of chemistry fund" shall revert to and become a part of the general fund. (G. L. 1923, Act 5995, § 17, as amended L. 1927, c. 55.)

Pharmacy, Poisons and Narcotics.

478. Registration of Pharmacists.—From and after the passage of this act it shall be unlawful for any person to manufacture, compound, sell, or dispense any drug, poison, medicine or chemical, or to dispense or compound any prescription of a medical practitioner, unless such person be a registered pharmacist, or a registered assistant pharmacist within the meaning of this act, except as hereinafter provided.

Every store, dispensary, pharmacy, laboratory or office for the sale, dispensing or compounding of drugs, medicines or chemicals, or for the dispensing of prescriptions of medical practitioners, shall be in charge of a registered pharmacist. A registered assistant pharmacist may be left in charge of a store, dispensary, pharmacy, laboratory or office for the sale, dispensing, or compounding of drugs, medicines or chemicals or for the dispensing of prescriptions of medical practitioners only during the temporary absence of the registered pharmacist. Temporary absence within the meaning of this act shall be held to be only those unavoidable absences which may occur during a day's work, and when the registered pharmacist in charge shall be within immediate call, ready and able to assume the direct supervision of said pharmacy. No registered assistant shall conduct a pharmacy. Every store or shop where drugs, medicines or chemicals are dispensed or sold at retail, or displayed for sale at retail, or where prescriptions are compounded, which has upon it or in it as a sign, the words "pharmacist," "pharmaceutical chemist," "apothecary," "druggist," "pharmacy," "drug store," "drugs," or any of these words shall be deemed a "pharmacy" within the meaning of this act, and no store or shop shall use the word drug or drugs in any advertisement, or display unless a licentiate is in charge. (G. L. 1923, Act 5886, § 1, as amended L. 1927, c. 599.)

479. Qualifications of Pharmacists.—Any person in order to become a registered pharmacist must be a licentiate in pharmacy or a practicing pharmacist. Practicing pharmacists are persons who at the passage of this act are registered as such, and who shall on or before the first day of July, 1928, have paid to the California State Board of Pharmacy all moneys due for renewal of registration as required by section 9 of this act.

An applicant for registration as a registered pharmacist must be at least twenty-one years of age, and of good moral character and temperate habits, and must be a citizen of the United States, or if not a citizen of the United States must have filed and proven his or her intention of becoming such; and provided further, if citizenship is later denied to any person registered under this act, then such denial of citizenship shall automatically cancel all such registrations and privileges. (G. L. 1923, Act 5886, § 2, as amended L. 1927, c. 90.)

480. Licentiates in Pharmacy; Practicing Pharmacists.—Licentiates in pharmacy are persons who are registered as such on or before the first day of January, 1928, and who shall on or before the first day of July, 1928, have paid to the California State Board of Pharmacy all moneys due for renewals of registration as provided for in section 9 hereof, or are such other persons as shall be registered in accordance with the classes provided by this section.

Proof of the qualifications for registration in these several classes must be made to the satisfaction of the California State Board of Pharmacy, substantiated by such affidavits or other evidence as may be required by said board.

Pharmaceutical experience as used in this act shall mean service and experience obtained after the applicant's fifteenth birthday, in a pharmacy under the personal supervision of a registered pharmacist or licentiate in pharmacy, and which shall be service and experience predominantly related to the selling of drugs, compounding physician's prescriptions, preparing pharmaceutical preparations, and keeping records and making reports required under State and federal statutes; provided, however, that time spent attending a school or college of pharmacy or a department of pharmacy of a university shall be counted the equivalent of pharmaceutical experience as defined in this act; and provided, further, that no applicant shall count as experience both college attendance and drug store experience for the same calendar month as more than the actual calendar month; and provided, further, that not more than thirty months of pharmacy college attendance shall be counted toward required experience.

Graduation from a school or college of pharmacy or a department of pharmacy of a university after January 1, 1928, shall not be recognized by the California State Board of Pharmacy unless said school or college of pharmacy or pharmacy department of a university requires in its course a minimum of two thousand two hundred fifty hours in pharmaceutical work which includes nine hundred hours of laboratory work predominantly related to pharmaceutical chemistry for graduation.

Registration as a licentiate in pharmacy shall be granted by the California State Board of Pharmacy to the following classes of persons: Class one, class two, class three, class four, class five and class six.

Class one. Registration as a licentiate in pharmacy shall be granted to any person otherwise qualified as provided in section 2 hereof, who shall have passed a written examination to the satisfaction of and before the California State Board of Pharmacy, who shall have had four years pharmaceutical experience as defined in section 3 of this act, who shall have been registered as an assistant pharmacist in this State for a period of not less than one year and who shall have graduated from

a school or college of pharmacy or department of pharmacy of a university recognized by the California State Board of Pharmacy.

Class two. Registration as a licentiate in pharmacy shall be granted to any person otherwise qualified as provided in section 2 hereof appearing in person before the California State Board of Pharmacy who shall have been registered by examination as a licentiate in pharmacy or a registered pharmacist in any other State or territory or the District of Columbia; provided, however, such State or territory of the United States or the District of Columbia must be one which reciprocally grants registration without examination to persons who have been registered in the State of California as licentiates in pharmacy under the terms and conditions similar to those required in this class, who shall have graduated from a school or college of pharmacy or a department of pharmacy of a university recognized by the California State Board of Pharmacy who shall have had four years of pharmaceutical experience as defined by section 3 of this act.

Class three. Registration as a licentiate in pharmacy shall be granted to any person otherwise qualified as provided in section 2 hereof; who shall have passed a written examination to the satisfaction of and before the California State Board of Pharmacy, who shall have had five years pharmaceutical experience as defined by section 3 of this act, who shall have been registered as a licentiate in pharmacy or a registered pharmacist and actually engaged in the practice of pharmacy and in lieu of not having been a graduate of a school or college of pharmacy or department of pharmacy of a university and in good standing in another State or territory of the United States, or the District of Columbia, before January 1, 1928, for a period of not less than five years previous to his or her application for registration, provided, further, that after January first, 1933, he or she must be a graduate of a school or college of pharmacy, or a department of pharmacy of a university recognized by the California State Board of Pharmacy.

Class four. Registration as a licentiate in pharmacy shall be granted to any person otherwise qualified as provided by section 2 hereof; who shall pass an oral examination to the satisfaction of the California State Board of Pharmacy, who shall have had twenty years pharmaceutical experience as defined in section 3 of this act, who shall have been registered as a licentiate in pharmacy or a registered pharmacist in good standing in another State or territory of the United States or the District of Columbia for a period of not less than ten years prior to his or her application for registration in this State.

Class five. Registration as a licentiate in pharmacy shall be granted to any person otherwise qualified as provided in section 2 hereof, who shall be registered as an assistant pharmacist in the State of California, prior to January 1, 1928, who shall have passed a written examination to the satisfaction of the California State Board of Pharmacy, who shall have had five years of pharmaceutical experience as defined by section 3 of this act, who shall have been registered as an assistant pharmacist for a period of two years prior to his or her application for examination as a licentiate in pharmacy.

Class six. Registration as a licentiate in pharmacy shall be granted to any person otherwise qualified as provided in section 2 hereof, who shall be registered as an apprentice in pharmacy before the passage of this act, who shall have passed a written examination to the satisfaction of the California State Board of Pharmacy, who shall have had five years of pharmaceutical experience as defined by section 3 of this act, who shall have been registered as an assistant pharmacist in the State of California for a period of two years prior to his or her application for examination as a licentiate in pharmacy. (Id. § 3.)

481. Registered Assistant Pharmacists.—Registered assistant pharmacists are persons who are registered as such on or before the first day of January, 1928, and who on or before the first day of July, 1928, shall have paid to the California State Board of Pharmacy all moneys due for renewal of registration as required by section 9 of this act, or are such other persons as shall be registered in accordance with the provisions of this section.

An applicant for registration as assistant pharmacist must be at least twenty years of age and of good moral character and temperate habits and must be a citizen of the United States, or if not a citizen of the United States must have filed and proven his or her intention of becoming such; and provided, further, if citizenship is denied to any person registered under this act, then such denial of citizenship shall automatically cancel all such registration and privileges.

Registration as an assistant pharmacist shall be granted by the California State Board of Pharmacy to the following classes of persons: Class A, Class B.

Class A. Registration as an assistant pharmacist shall be granted to any person otherwise qualified as provided in section 4 hereof who shall have passed a written

examination to the satisfaction of the California State Board of Pharmacy, who shall have had three years pharmaceutical experience as defined by section 3 of this act, who shall have satisfactorily completed at least one-half of the course required for graduation in a school or college of pharmacy or a department of pharmacy of a university recognized by the California State Board of Pharmacy.

Class B. Registration as an assistant pharmacist shall be granted to any person otherwise qualified as provided by section 4 hereof, who shall be a registered apprentice before the passage of this act and who shall have passed a written examination to the satisfaction of the California State Board of Pharmacy, who shall have had three years pharmaceutical experience as defined by section 3 of this act.

Proof of qualification for registration under this section shall be made in the same manner as proof for registration as a licentiate in pharmacy under section 3 hereof, and pharmaceutical experience as used in this section shall be defined the same as a pharmaceutical experience required for a licentiate in pharmacy as defined in section 3 hereof. (Id. § 4.)

483. Secretary and Treasurer; Duties.—It shall be the duty of the secretary to keep a book of registration open at the city of San Francisco, in which shall be entered under the supervision of the board the names, titles, qualifications and places of business of all persons coming under the provisions of this act. The secretary shall give receipts for all moneys received by him and pay the same to the treasurer of the board, taking his receipt for the same.

The treasurer shall disburse the same by order of the board for necessary expenses, taking proper vouchers therefor. The balance of said money, after paying the expenses of the board, he shall pay to the State Treasurer, who shall keep it in a special fund to be used in carrying out the provisions of this act. It shall be the duty of the secretary of the board to erase from the register the name of any registered pharmacist or assistant pharmacist who has died, or who in the opinion of the board has forfeited his right under the law to do business in this State. Besides the duties required by this act, it shall be the duty of the secretary to perform such other reasonable duties appertaining to his office as may be required of him by the Board of Pharmacy. The secretary shall receive such compensation as may be fixed by the Board of Pharmacy; no member of the board shall act as secretary except during the temporary absence of the regular authorized officer. (G. L. 1923, Act 5886, § 6, as amended L. 1927, c. 599.)

484. Powers and Duties of Board.—Four members of the board shall constitute a quorum. They shall hold a meeting at least once in every four months.

Subdivision 1. The State Board of Pharmacy shall have power:

(a) To make such by-laws and regulations, not inconsistent with the laws of this State, as may be necessary for the protection of the public, appertaining to the practice of pharmacy and the lawful performance of its duties.

(b) To regulate the practice of pharmacy.

(c) To regulate the sale of poisons.

(d) To regulate the quality of all pharmaceutical preparations and medicines dispensed in this State, using the United States Pharmacopœia or National Formulary, as the standard.

(e) To investigate all complaints as to the quality and strength of all pharmaceutical preparations and medicines, and to take such action as may be necessary to prevent the sale of such as do not conform to the standard and tests prescribed in the latest edition of the United States Pharmacopœia or National Formulary.

(f) To employ inspectors of pharmacy and to inspect during business hours all pharmacies, dispensaries, stores, or places in which drugs, medicines and poisons are compounded, dispensed or retailed, and to cause the prosecution of all persons whenever there appears to the board to be reasonable ground for such action.

(g) To examine and register as pharmacists and assistant pharmacists all applicants whom it shall deem qualified to be such. All persons applying for registration, under this act, shall pay the following fees therefor to the secretary of the Board of Pharmacy. Every applicant for registration other than that of an apprentice, shall pay a fee of ten dollars on filing his or her application, which shall be compensation to the Board of Pharmacy for investigation or examination of the applicant; and if the board finds that any applicant for registration on experience and credentials is entitled to be registered, then he or she shall pay an additional fee of fifteen dollars upon the issuance of certificate of such registration; and any licentiate found by the board on examination to be entitled to a certificate shall pay the additional sum of five dollars upon the issuance of certificate; all applicants for examination as assistant, if found satisfactory by the board, shall be entitled to their certificate without further fee; and provided further, that an applicant for registration on experience and credentials may at his or her option be examined as a licentiate without further fee for application.

(h) In the event any person having registered shall have lost his or her certificate, or the same has been destroyed, or if he or she desires the renewal of the same, a new certificate may be issued by said board upon the applicant paying therefor the sum of three dollars; provided further, that where the original certificate is not lost or destroyed, then the certificate shall be surrendered before a renewal of same shall be issued; and provided further, that the board shall have the power to require satisfactory evidence from the applicant of the loss or destruction of the certificate; and provided further, that where the applicant is delinquent for the annual dues required by this act then he or she shall be required to pay to said board sufficient fees to cover his delinquency in that behalf before he or she shall be entitled to a reissue of the certificate in this subdivision provided for.

(i) To provide by proper rules and regulations for the temporary or permanent revocation by said board of licenses issued under the provisions of this act; whenever the holder of such license shall have made false affidavits in reference to his experience or the experience of any other person applying for registration or shall be guilty of habitual intemperance or addicted to the use of narcotic drugs or shall have been convicted of a felony or embezzlement or larceny subsequent to the procuring of his or her license in any court having legal jurisdiction. (Id. § 7.)*

485. Members of Board Not to Teach Pharmacy Except in Certain Capacities; Compensation of Members.—No member of the board shall teach pharmacy in any of its branches, unless it be as a teacher in a public capacity and in a college of pharmacy. The members of the Board of Pharmacy shall each be paid the sum of ten dollars per diem for every meeting of the board which they attend, and for each day engaged in rating examination papers based upon one per diem for each forty papers or fraction thereof, together with their necessary expenses, and mileage at the rate of five cents per mile for each mile necessarily traveled. All compensation of members and all other expenses of the board shall be paid out of the examination and registration fees and fines. (Id. § 8.)

486. Renewal of Registration; Fees; Revocation.—Every person holding a certificate from said board shall renew annually their registration with said board; and every registered pharmacist, and every assistant registered pharmacist who desires to retain his registration on the books of the Board of Pharmacy in this State shall annually, after the expiration of the first year's registration and on or before the first day of July of each succeeding year, pay to the secretary of the Board of Pharmacy a renewal fee, to be fixed by the board, which shall not exceed two dollars for registered pharmacist and one dollar for assistant registered pharmacist, in return for which fee a renewal certificate of registration shall be issued. In case any person defaults in payment of said fee his or her registration may be

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*G. L. 1923, Act 5886, § 7, was previously amended April 9, 1927, by L. 1927, c. 90, to read as follows:

"Four members of the board shall constitute a quorum. They shall hold a meeting at least once in every four months.

Subdivision 1. The State Board of Pharmacy shall have power:

(a) To make such by-laws and regulations, not inconsistent with the laws of this State, as may be necessary for the protection of the public, appertaining to the practice of pharmacy and the lawful performance of its duties.

(b) To regulate the practice of pharmacy.

(c) To regulate the sale of poisons.

(d) To regulate the quality of all pharmaceutical prescriptions and medicines dispensed or sold in this State, using the United States Pharmacopœia or National Formulary as the standard.

(e) To investigate all complaints as to the quality and strength of all pharmaceutical preparations and medicines, and to take such action as may be necessary to prevent the sale of such as do not conform to the standard and tests prescribed in the latest edition of the United States Pharmacopœia or National Formulary.

(f) To employ inspectors of pharmacy and to inspect during business hours all pharmacies, dispensaries, stores, or places, in which drugs, medicines and poisons are compounded, dispensed or retailed, and to cause the prosecution of all persons whenever there appears to the board to be reasonable ground for such action.

(g) To examine and register all pharmacists and assistant pharmacists and all applicants whom it shall deem qualified to be such. All persons applying for registration under this act shall pay the following fees therefor to the secretary of the Board of Pharmacy; every applicant for registration, other than that of apprentice, shall pay a fee of ten dollars on filing his or her application, which shall be compensation to the Board of Pharmacy for investigation or examination of the applicant; and if the board finds that any applicant for registration on experience and credentials is entitled to be registered, then he or she shall pay an additional fee of

revoked by the Board of Pharmacy on sixty days' notice, in writing from the secretary, unless within said time the fee is paid, together with such penalty, not exceeding ten dollars, as the board may impose. Upon payment of said fee and penalty the board must reinstate the delinquent's registration. (Id. § 9.)

488. Responsibility for Quality of Drugs, Etc., Adulteration.—Ever proprietor or manager of a pharmacy or drug store shall be held responsible for the quality of all drugs, chemicals and medicines sold or dispensed by him, except those sold in the original package of the manufacturer and except those articles or preparations known as patent or proprietary medicines. Any person who shall knowingly, wilfully or fraudulently falsify or adulterate, or cause to be falsified or adulterated, any drug or medicinal substance, or any preparation authorized or recognized by the pharmacopœia of the United States or used, or intended to be used in medical practice, or shall mix or cause to be mixed, with any such drug or medicinal substance any foreign or inert substance whatever, for the purpose of destroying or weakening its medicinal power or effect, or of lessening its cost, and shall wilfully, knowingly, or fraudulent sell the same, or cause it to be sold, for medicinal purposes, shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not less than fifty dollars and not more than two hundred dollars, or by imprisonment for not less than fifty days and not more than two hundred days, or by both such fine and imprisonment.

All prescriptions filed by a duly registered pharmacist must be kept on file and open for inspection by duly constituted authorities for a period of at least two years, and any person who shall willfully fail to do so shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be liable to a fine of not exceeding fifty dollars; and for each subsequent offense shall be liable to a fine of not less than fifty dollars, and not more than one hundred dollars. The State Board of Pharmacy may at any time, when in their judgment it appears advisable, deputize one of their members, or any other competent person, to investigate any suspected violation of any of the provisions of this act, and, if the result of such investigation seems to the board to justify such action, the board shall cause the prosecution of any person violating any of the provisions of this act. (G. L. 1923, Act 5886, § 11, as amended L. 1927, c. 90.)

492. Apprentices in Pharmacy.—After the passage of this act no person shall be registered as an apprentice in pharmacy.

No apprentice shall be allowed to sell drugs, medicines nor poisons, excepting those allowed to be sold by all dealers in stores, nor shall any apprentice be permitted to compound prescriptions except under the direct, immediate and personal supervision of a registered pharmacist, nor shall any apprentice ever be left in charge

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fifteen dollars upon the issuance of certificate of such registration; and any licentiate found by the board on examination to be entitled to a certificate shall pay the additional sum of five dollars upon the issuance of certificate; all applicants for examination as assistant, if found satisfactory by the board, shall be entitled to their certificate without further fee; and provided, further, that an applicant for registration on experience and credentials may at his or her option be examined as a licentiate without further fee for application.

(h) In the event any person having registered shall have lost his or her certificate, or the same has been destroyed, if he or she desires the renewal of the same, a new certificate may be issued by said board upon the applicant paying therefor the sum of three dollars; provided, further, that when the original certificate is not lost or destroyed, then the certificate shall be surrendered before a renewal of the same shall be issued; and provided, further, that the board shall have power to require satisfactory evidence from the applicant of the loss or destruction of the certificate; and provided, further, that where the applicant is delinquent for the annual dues required by this act then he or she shall be required to pay to said board sufficient fees to cover his delinquency in that behalf before he or she shall be entitled to a reissue of the certificate in this subdivision provided for.

(i) To provide by proper rules and regulations for the revocation by said board of licenses issued under the provisions of this act, whenever the holder of such license shall be guilty of habitual intemperance or addicted to the use of narcotic drugs, or shall have been convicted of a felony.

(k) Shall issue to each applicant granted registration as a licentiate in pharmacy in accordance with the provisions of this act, a signed certificate under the seal of the California State Board of Pharmacy.

(l) Shall issue to each applicant granted registration as an assistant pharmacist in accordance with the provisions of this act, a signed certificate under the seal of the California State Board of Pharmacy. (G. L. 1923, Act 5886, § 7, as amended L. 1927, c. 90.)

of a pharmacy; provided, that any apprentice in pharmacy employed before January 1, 1928, as such but who has not registered as an apprentice as provided in section 15, may make application to the Board of Pharmacy to have his experience allowed for the purpose of applying for registration as assistant pharmacist, which may be allowed by the board upon furnishing satisfactory affidavits covering his or her experience.

Nothing contained in this act shall affect the registration already granted to aliens, as either registered pharmacists, licentiates in pharmacy or registered assistant pharmacists, neither shall anything contained in this act affect any pending legislation or prosecution, either civil or criminal, instituted before the passage of this act, but the same may be asserted, enforced or prosecuted as fully and to the same extent as if this amendatory act had not been passed. (Id. § 15.)

492a. When Act to Take Effect.—This act shall take effect on and after the first day of January, 1928. (L. 1927, c. 90, § 7.)

493. Household Remedies and Drugs; Permits to General Dealers in Rural Districts.—The Board of Pharmacy shall issue a permit to general dealers in rural districts in which the conditions, in their judgment, do not justify the employment of a registered pharmacist, and where the store of such general dealer is not less than three miles distant from the store of a registered pharmacist; which said permit shall authorize the persons or firm named therein to sell in such locality, but not elsewhere, and under such restrictions and regulations as said board may from time to time adopt, the following simple household remedies and drugs, in such manner and form as may be hereafter authorized by said board, as follows, to-wit:

Tincture of arnica, spirits of camphor, almond oil, distilled extract of witch hazel, syrup of ipecac, syrup of rhubarb, hive syrup, sweet spirits of nitre, tincture of iron, Epsom salts, Rochelle salts, senna leaves, carbonate of magnesia, seidlitz powders, quinine, cathartic pills, camomile flowers, caraway seed, chlorate of potash, moth balls, plasters, salves, ointments, peroxide of hydrogen, gum camphor, blue ointment, asafœtida, saffron, anise seed and saltpeter, and such other remedies or drugs as the board may from time to time designate.

The board shall charge an annual fee of five dollars in advance for such permit, and it shall be unlawful for any dealer to sell any drugs or ordinary household remedies without complying with the requirements of this section. Whenever a registered pharmacist shall establish a pharmacy within three miles by the shortest road from the place of business of such dealer, no further license shall be granted, and the license already issued shall be void; provided, that the following drugs, medicines and chemicals may be sold by grocers and dealers generally without restriction, viz.:

Glauber salts, vaseline, turpentine, condition powders, cream of tartar, carbonate of soda, bay rum, essence of Jamaica ginger, essence of peppermint, ammonia, alum, castor oil, bicarbonate of soda, chloride of lime, glycerine, witch hazel, sheep dip, borax, sulphur, bluestone, copperas, flax seed, insect powder, flypaper, ant poison, squirrel poison, gopher poison, and poultry vermifuge; and arsenical poisons used for orchard spraying, when prepared and sold only in original and unbroken packages and labeled with the official poison labels; provided, that this act shall not prevent the sale of Epsom salts in original packages of not less than ten pounds when plainly and properly labeled "For live stock only and not for medical purposes" in letters not less than one-half inch in height. (G. L. 1923, Act 5886, § 16, as amended L. 1927, c. 673.)

508. Penalties for Unlawful Sale of Narcotics, Etc.—Any person convicted under section 8 of this act for selling, peddling, furnishing, or giving away, or offering to sell, furnish, or give away, any of the narcotic drugs or their derivatives mentioned in section 8, shall upon conviction for the first offense be punished by imprisonment in the county jail or in the State Prison for not less than six months nor more than six years and for the second and each subsequent offense, shall be imprisoned in the State Prison for not less than one year nor more than ten years.

Any person convicted under section 8 of this act for having in possession any of the narcotic drugs or their derivatives mentioned therein, shall upon conviction for the first offense be punished by imprisonment in the county jail or in the State Prison for not more than six years; for the second and each subsequent offense of which said person so convicted shall be found guilty, said person shall be punished by imprisonment in the county jail or in the State Prison for not more than ten years.

Any person who shall hire, employ, or use, any minor under the age of sixteen years in unlawfully transporting, carrying, selling, preparing for sale, peddling, or using any morphine, cocaine, heroin, opium, shall upon conviction thereof be deemed guilty of a felony and shall be punished by imprisonment in the State Prison for not less than one year nor more than five years, and for each subsequent offense upon conviction, be imprisoned in the State Prison for not less than six years.

Any person who shall forge or alter any prescription for any narcotic drugs specified in section 8 of this act or who obtains any such drugs by any forged or altered prescription or who has in possession any such drugs secured by such forged or altered prescription shall upon conviction for the first offense be punished by imprisonment in the county jail or in the State Prison for not less than six months nor more than six years, and for a second or subsequent offense in the State Prison for not less than one year nor more than ten years.

Any person violating any of the other provisions of this act, except those contained in section 8 and 8½ shall be deemed guilty of a misdemeanor and upon conviction shall be fined in a sum not less than thirty dollars, nor more than two hundred dollars, or by imprisonment for not less than thirty days, and not more than fifty days, or by both such fine and imprisonment. All moneys, forfeited bail or fines received under the operation of this act shall be sent without delay by the magistrate receiving same, seventy-five per cent to the State Treasurer to be deposited in the State treasury and twenty-five per cent to the city treasurer of the city, if incorporated, or to the county treasurer of the county in which the prosecution is conducted. (Supp. 1925, G. L., Act 5994, § 7, as amended L. 1927, c. 775.)

509. Unlawful to Sell Certain Narcotic Drugs; Regulations Concerning Sale. —It shall be unlawful for any person, firm or corporation to sell, furnish or give away or offer to sell, furnish or give away or to have in their or his possession any cocaine, opium, morphine, codeine, heroin, alpha eucaine, beta eucaine, flowering tops and leaves, extracts, tinctures and other narcotic preparations or hemp or loco weed (cannabis sativa), Indian hemp, peyote (anhalonium), or chloral hydrate or any of the salts, derivatives or compounds of the foregoing substances or any preparation or compound containing any of the foregoing substances or their salts, derivatives or compounds, excepting upon the written order or prescription of a physician, dentist or veterinary surgeon, licensed to practice in this State, which order or prescription shall be dated and shall contain the name of the person for whom prescribed, written in by the person writing said prescription, or if ordered by a veterinary surgeon it shall state the kind of animal for which ordered and shall be signed by the person giving the prescription or order. Such order or prescription shall be permanently retained on file by the person, firm or corporation who shall compound or dispense the articles ordered or prescribed, and it shall not be again compounded or dispensed if each fluid or avoirdupois ounce contains more than ten grains of chloral hydrate, or four grains of Indian hemp or loco weed excepting upon the written order of the prescriber for each and every subsequent compound and dispensing. No copy or duplicate of such written order or prescription shall be made or delivered to any person but the original shall be at all times open to inspection by the prescriber and properly authorized officers of the law and shall be preserved for at least three years from the date of the filing thereof; provided, that the above provisions shall not apply to sales at wholesale by jobbers, wholesalers and manufacturers to pharmacies, as defined in section 1* of an act entitled "An act to regulate the practice of pharmacy in the State of California and to provide a penalty for the violation thereof; and for the appointment of a board to be known as the California State Board of Pharmacy," approved March 20, 1905, and acts amendatory thereof; or physicians, nor to each other, nor to the sale at retail in pharmacies by pharmacists to physicians, dentists or veterinary surgeons duly licensed to practice in this State; provided, further, that all such wholesale jobbers, wholesalers and manufacturers, in this section mentioned shall keep in a manner readily accessible, the written orders or blank forms required to be preserved under the provisions of section 2 of the act of Congress, approved December 17, 1914, relating to the production, importation, manufacture, compounding, sale, dispensing or giving away of opium or coca leaves and salts, derivatives or preparations. And said records shall always be open for inspection by any peace officer or any member of the Board of Pharmacy or any inspector authorized by said board and such records shall be preserved for at least two years after the date of the last entry therein. The taking of any order, or making of any contract or agreement, by any traveling representative, or any employee, of any person, firm or corporation, for future delivery in this State of any of the articles or drugs mentioned in this section shall be deemed a sale of said articles or drugs by said traveling representative, or employee, within the meaning of the provision of this act; provided, further, that a true and correct copy of all orders, contracts or agreements, taken for narcotic drugs specified in this section shall be forwarded by registered mail to the secretary of the California State Board of Pharmacy within twenty-four hours after the taking of such order, contract or agreement, unless such order, contract or agreement is recorded as required under the provisions of section 2 of an act of Congress, approved December 17, 1914,

*See No. 478, ante.

relating to the production, importation, manufacture, compounding, sale, dispensing or giving away of opium or coca leaves, their salts, derivatives or preparations of some wholesale jobber, wholesaler or manufacturer permanently located in this State, as provided for in this section. It shall be unlawful for any practitioner of medicine, dentistry or veterinary medicine to administer to himself as a habitual user or furnish to or subscribe for the use of any other habitual user of the same, or of anyone representing himself as such, any cocaine, opium, morphine, codeine, heroin or chloral hydrate, or any salt, derivative or compound of the foregoing substances or their salts, derivatives or compounds; and it shall also be unlawful for any practitioner of medicine or dentistry to prescribe or give any of the foregoing substances for himself or any person not under his treatment in the regular practice of his profession, or for any veterinary surgeon to prescribe or furnish any of the foregoing substances for the use of himself or any other human being; provided, however, that the provisions of this section shall not be construed to prevent any duly licensed physician from furnishing or prescribing in good faith as their physician by them employed as such, for any habitual user of any narcotic drugs who is under his professional care, such substances as he may deem necessary for their treatment, when such prescriptions are not given or substances furnished for the purpose of evading the purposes of this act; provided, that such licensed physician shall report in writing, over his signature, by registered mail, to the office of the California State Board of Pharmacy, within twenty-four hours after the first treatment, each and every habitual user of such narcotic drugs as are enumerated in this section, whom he or she has taken, in good faith, under his or her professional care, for the cure of such habit, such report to contain the date, name and address of such patient, and the name and quantity of the narcotic or narcotics prescribed in such treatment; and provided, further, that the above provisions shall not apply to preparations of the United States pharmacopœia and national formulary or other recognized or established formula or remedies sold or dispensed without a physician's prescription containing not more than two grains of opium, or one-fourth grain of morphine, or one grain of codeine, or one-eighth grain of heroin, or ten grains of chloral hydrate or four grains of Indian hemp or loco weed in one fluid ounce, or, if a solid preparation, in one ounce, avoirdupois, except tincture opii camphorata (commonly known as paregoric) which may be sold only upon the prescription of a physician licensed to practice in this State and said prescription shall not be again refilled or dispensed. (G. L. 1923, Act 5994, § 8, as amended L. 1927, c. 60.)

517. Limit of Prescriptions to Habitual Users; Reports of Physicians.—Any of the drugs mentioned in section 8 of this act employed in treating a habitue or addict must be applied or administered by a licensed physician and surgeon of this State, or a registered nurse acting under his instructions, and except during emergency treatment or where the patient's addiction is complicated by the presence of incurable disease, serious accident or injury, or the infirmities attendant upon age shall be permitted only in institutions approved by the State Board of Medical Examiners, where the patient is kept under restraint and control, or in city or county jails or State prisons; provided, further, that any licensed physician treating any habitue under section 8 of this act shall not prescribe for or furnish such habitue more than eight grains of opium, or four grains of morphine, or two grains of cocaine, or two grains of heroin for each daily treatment and at the end of fifteen days of such treatment the said physician shall not prescribe for or furnish to such habitue, for each daily treatment, more than four grains of opium, or two grains of morphine, or one grain of cocaine, or one grain of heroin, and at the end of thirty days from the first treatment, the prescribing or furnishing of any of the narcotic drugs above enumerated shall be entirely discontinued; and the physician shall report by registered mail as required in section 8 of this act, and shall in the same manner further report in fifteen days, and in thirty days, the progress of the patient under the treatment so administered by him; otherwise, said treatment shall not be considered in good faith as provided in section 8 of this act; provided, however, that any licensed physician may prescribe for or furnish his patient as their physician employed by them as such, and who is suffering with some incurable disease, ailment, or injury, any of the narcotic drugs mentioned in section 8, in such quantity as may be necessary for a reasonable length of time and the physician prescribing or furnishing any of the narcotic drugs must personally furnish a signed, detailed report in writing, to the office of the California State Board of Pharmacy, by registered mail, within twenty-four hours after writing the first prescription or furnishing the narcotic drug to such patient; and provided, further, that the California State Board of Pharmacy may employ a licensed physician to interview, examine and report the result of such interview or examination of any patient coming under the provisions of this section; provided, further, that the California State Board of Health shall furnish, upon request in writing from the California State Board of Pharmacy, a list of incurable

diseases or ailments which, in its judgment, might require excessive amounts of narcotic drugs to be prescribed for or furnished by a physician for relief or benefit. (Id. § 8½.)

518a. Division of Narcotic Enforcement.—The State Board of Pharmacy shall maintain under its supervision and control a division of narcotic enforcement which shall have charge of narcotic enforcement and shall have such powers as may from time to time be referred and delegated to it by the State Board of Pharmacy. The said board with the approval of the Governor, shall appoint a chief of the division of narcotic enforcement who shall receive such compensations as the said board may deem necessary and proper.

The State Board of Pharmacy is also hereby empowered subject to the approval of the Department of Finance to employ and fix the compensation of such inspectors and other employees and of such attorneys as it may deem necessary to employ to perform all legal services connected with the said division. The said inspectors of the division of narcotic enforcement shall have all the powers and duties of peace officers in the performance of their duties, and shall be exempt from the provisions of the civil service laws of this State.

All expenses incurred hereunder in the maintenance of said division of narcotic enforcement shall be paid out of any funds under the control and supervision of the State Board of Pharmacy. Claims against any such funds shall be audited by the State Board of Pharmacy subject to the approval of the Department of Finance and shall be paid by the State Treasurer upon warrants drawn by the State Controller. (L. 1927, c. 597.)

532b. Superseded by L. 1927, c. 89. See No. 532u, post.

532d. Narcotic Rehabilitation Act.—This act shall be known as the "Narcotic Rehabilitation Act." The Director of Institutions, with the approval of the State Board of Control, is hereby authorized and directed to provide on the grounds of an existing State institution or other property owned or acquired by the State, an institutional unit to be used for the isolation and rehabilitation of narcotic users, which said unit shall be known as the State Narcotic Hospital, and shall be administered as provided by law. (L. 1927, c. 89, § 1.)

532e. Definition.—Any person shall be held to be a "drug addict" within the meaning of this act, who habitually takes or otherwise uses any opium, morphine, cocaine or other narcotic drugs, except when such taking or use is prescribed by a physician licensed to practice medicine and surgery in this State, in the course of his professional practice only. (Id. § 2.)

532f. Warrant of Arrest.—Whenever it appears by affidavit to the satisfaction of a magistrate of a county or city and county, that any person is a drug addict within the meaning of this act, he must issue and deliver to some peace officer for service, a warrant directing that such person be arrested and taken before a judge of the Superior Court for a hearing and examination on such charge. Such officer must thereupon arrest and detain such person until a hearing and examination can be had. At the time of the arrest a copy of said affidavit and warrant of arrest must be personally delivered to said person. Such affdavit and warrant of arrest must be substantially in the form provided by section 2168 of the Political Code for the arrest of a person charged with insanity. The person charged must be taken before a judge of the Superior Court, to whom said affidavit and warrant of arrest must be delivered to be filed with the clerk. The judge must then inform him of his rights to make a defense to such charge and produce any witnesses in relation thereto. The judge must by order fix such time and place for the hearing and examination in open court as will give a reasonable opportunity for the production and examination of witnesses. Such order must be entered in the minutes of the court by the clerk and a certified copy of the same served on such person. The judge may also order that such notice of the arrest of such person and the hearing of the charge be served on such relatives of said person known to be residing in the county, or city and county, as the court may deem necessary or proper. The judge may cause witnesses to be summoned and examined before him, and after a hearing and examination, if he believes the person charged is a drug addict, the court must make an order that such person be confined in the State Narcotic Hospital for an indeterminate period of not less than eight months nor more than two years. (Id. § 3.)

532g. Expenses of Commitment.—The court at the hearing must inquire into the financial condition of the person committed or the parent, guardian or other person charged with the support of such person, if a minor, and if the court finds such person or persons able to do so in whole or in part a further order must be made requiring him or them to pay, to the extent the judge may consider just, the expenses of the proceedings in connection with the commitment of such person, the expenses of the delivery thereof to the State Narcotic Hospital, and to pay to the

said hospital at stated periods such sums as in the opinion of the court are proper during such time as the person committed may remain in the said hospital. (Id. § 4.)

532h. Juvenile Drug Addict.—Whenever a girl or boy is brought before a juvenile court under the juvenile court law, or if on the arrest of any person charged with crime in any court, it appear to such court, either before or after jurisdiction, that such person is a drug addict within the meaning of this act, the court may adjourn the proceedings or suspend the sentence, as the case may be, and direct some suitable person to take proceedings under this act against the person before the court, and the court may order that, pending the preparation, filing and hearing, of the petition the person before the court be detained in a place of safety, or if a minor, be placed under the guardianship of some suitable person on his entering into a recognizance for the appearance of the person upon trial or under conviction when required. If upon the hearing of the petition, or upon a subsequent hearing under this act, the person before the court, upon trial, or under conviction be found not to be a drug addict as herein defined, the court may proceed with the trial or impose sentence, as the case may be; or, if such person be committed to the said hospital as a drug addict and shall have been detained therein for a period of not less than eight months, whenever thereafter the superintendent of the branch wherein said addict is confined and the Director of Institutions shall certify to the committing court that such person has been sufficiently treated, or shall give any other reason which is deemed by the court to be adequate and sufficient, the court may order the discharge of the person so committed, or may order his or her return to await the further action of the court. (Id. § 5.)

532i. Parole or Discharge.—Any person committed under the provisions of this act, except such persons as may have been committed under the provisions of section 5, may be paroled or discharged after the expiration of eight months by the superintendent of the branch wherein such addict is confined, by and with the consent of the Director of Institutions, under such terms and conditions as they may establish, and must be discharged on the expiration of the maximum term of confinement. (Id. § 6.)

532j. Voluntary Applicants for Admission to State Hospital.—The superintendent of either branch of the State Narcotic Hospital may accept as patients any persons voluntarily applying for treatment for drug addiction, and, if the voluntary applicant sign a statement that he or she is suffering from drug addiction and desires treatment in the same manner and subject to the same rules and restrictions as if committed by a court, may receive such person without formal commitment, with like effect as if formally committed, subject to discharge when sufficiently treated or for any other reason deemed adequate; provided, however, that such voluntary patient shall agree to and must remain in said institution for a period of not less than eight months and must pay for his care and treatment therein such amount as may be fixed by the Director of Institutions. (Id. § 7.)

532k. Same; Residence in State.—No person shall be admitted to the State Narcotic Hospital as a voluntary patient who has not been a resident of the State of California for a period of two years next preceding application for admission. (Id. § 8.)

532l. Witnesses; Fees.—Witnesses at hearings for the commitment of drug addicts shall be entitled to receive the usual fees and expenses allowed by law in other cases in such courts; and any fees or traveling expenses payable to any witness in any proceeding for the commitment of a drug addict, and all expenses connected with the execution of any process under this act, which may not be paid by the drug addict or his parent, guardian or other person charged with his support if he be a minor, shall be paid by the county treasurer of the county in which such person resides. (Id. § 9.)

532m. Writ of Commitment.—It shall be the duty of the sheriff of any county wherein an order is made by any court committing any person under this act, or of any other person designated by the said court, to execute the writ of commitment, and to receive as compensation therefor such fees as are now or may hereafter be provided by law for the transportation of prisoners to the State Prison, and payable in the same manner; provided, that in all cases the parent, guardian or other person charged with the support of such person, being a minor, may, at his option, with the approval of the court, and in all cases where he is able or the estate of such person is sufficient, shall, if the said court approve, without expense to the county or State, execute said writ, after being duly sworn therefor, with like effect and with like powers as the sheriff would have; but no female person committed shall be taken to the said hospital by any male person not her husband, father, brother or son, without the attendance of some woman of good character and mature age, chosen for the purpose by the court, which woman shall, if the

court see fit, be paid therefor such reasonable remuneration as the court may allow. (Id. § 10.)

532n. Support of Addicts.—For each person committed under this act there shall be paid by the county or city and county of which he is a bona fide resident, to the State Treasurer, to the credit of the general fund of the State the sum of twenty-five dollars ($25) monthly for and during each month or part of month such person so committed remains an inmate of the institution, in case the payments herein provided to be made by the person committed, or by his parent, guardian, or other person charged with his support, he being a minor, should not be made, and to the extent they are not made, not exceeding twenty-five dollars ($25) per month. (Id. § 11.)

532o. Reports.—Each county auditor must include in his State settlement report rendered to the Controller in the months of May and December, the amount due by reason of commitment under this act, and the county treasurer, at the time of the settlement with the State in such months, must pay to the State Treasurer, upon the order of the Controller, the amounts found to be due by reason of the commitments herein referred to. (Id. § 12.)

532p. Transfers.—Within thirty days after the buildings herein provided for are prepared to accommodate them, the Department of Institutions shall transfer to said hospital all persons then inmates of any State Hospital for the Insane who have been theretofore committed to such State Hospital for the Insane because or on account of drug addiction; provided, however, they are not mentally deranged. The expense of such transfer is chargeable to the State, and the bills for same, when approved by the Department of Institutions, must be paid by the Treasurer of State on the warrant of the Controller, out of any moneys provided for the care and maintenance of drug addicts. (Id. § 13.)

532q. Liability for Support.—In the event of the transfer of any inmate or patient as provided in section 13 of this act the liability of any estate, person or county for the care, support and maintenance of such person, shall be the same as it was to the institution from which the transfer is made. (Id. § 14.)

532r. Unlawful to Bring Narcotics Into Hospital.—Any person not authorized by law, who brings into the said hospital or within the grounds thereof, any opium, morphine, cocaine, or other narcotic, or any intoxicating liquor of any kind whatever, except for medicinal or mechanical purposes, or any firearms, weapons or explosives of any kind, is guilty of a felony. (Id. § 15.)

532s. Escape.—If any person procure the escape of any inmate of the said hospital, or advise, connive at, aid or assist in such escape, or conceal any such inmate after such escape, he or she is guilty of misdemeanor. (Id. § 16.)

532t. Unlawful Commitment.—Anyone who shall knowingly contrive to have any person adjudged a drug addict under this act, unlawfully or improperly, shall be deemed guilty of a misdemeanor. (Id. § 17.)

532u. Repeal.—Section 2185c of the Political Code,* in so far as it applies to the commitment of drug addicts is superseded by the provisions of this act. (Id. § 18.)

532v. Constitutionality.—The invalidity of any part of this act shall not be construed to affect the validity of any other part capable of having practical operation and effect without the invalid part. (Id. § 19.)

532w. Cosmetology Act—Phenol or Mercury—Stronger Solution.—Nothing in this act shall permit the use of any X-ray machine in the treating of the scalp or in the removal of superfluous hair or permit the local application of carbolic acid (phenol) in a solution or mixture of more than ten per cent or corrosive sublimate (mercury) or its preparation or derivatives or compounds in a stronger solution or preparation than one to five hundred. Violations of the provisions of this section shall constitute a misdemeanor, punishable as provided in section 3 hereof. (L. 1927, c. 845, § 12a.)

Tuberculin.

See No. 254a et seq., ante.

*Quoted in No. 532b.

PART IV.

Miscellaneous Laws.

Trade-Marks.

See Nos. 244 and 247, ante.

Weights and Measures.

612. **Office of County Sealer of Weights and Measures Created; Term of Office; Salary, Etc.**—The office of county sealer of weights and measures is hereby created. Whenever in this act the term "sealer" is used, the same shall be taken to mean and refer to sealer of weights and measures. The term of office of such sealer of weights and measures shall be four years, but he shall be subject to removal at the will of such board. A sealer appointed under this act may, with the consent of the board of supervisors of the county appointing him, appoint a deputy or deputies when necessary or expedient to carry out the provisions of this act. Such deputies shall always be subject to removal by the sealer of weights and measures. The salary and compensation provided for the sealer and deputy sealers shall be paid out of the county treasury in equal monthly installments, where the employment is by the year, and monthly as earned in other cases, in the same manner and at the same time as other county officers are paid. In addition to the salaries and compensations provided, said sealer and deputies shall be entitled each to receive their personal and traveling expenses necessarily incurred in the performance of their duties as herein provided, and said expenses so incurred and all compensation earned by such officers or employees as shall not be employed by the year shall be a county charge, and the board of supervisors shall allow and pay the same out of the general fund of the county in the same manner as other claims against said fund are allowed and paid. In case the legislative body of any county or city and county shall not appoint a sealer for such county or city and county within thirty days after a vacancy occurs, the State Director of Agriculture shall assign as soon as practicable a deputy who shall perform all the duties of sealer in such county or city and county as provided in this act to be performed by county or city sealers and shall provide copies of the original standards of weights and measures for use by said deputy in such county. The actual cost of such services shall be paid by the county in the same manner in which other claims against the county are paid. The amount to be paid shall be at the rate of one hundred fifty dollars per month for the time such deputy is employed in such county in addition to the actual traveling expenses of such deputy made necessary by such appointment.

The county shall also stand its proportionate share of the actual cost of the set of copies to be used in such county by such deputy, at the rate of one-twelfth of the cost thereof for every month such copies are employed therein during the first year of their use, and in that event such county may at any time pay the balance of the cost of such copies and become the owner thereof, or the county may pay rental to the State for the use of such copies at the rate of ten per cent per annum of the cost price thereof. (G. L. 1923, Act 9204, § 16, as amended L. 1927, c. 863.)

612a. L. 1927, c. 863, adds to the act included in Nos. 598-640, fifty-five new sections to be numbered consecutively 16x4 to 16x58. These sections relate to salaries to be paid to sealers of weights and measures in all counties from the fourth class to the fifty-eighth class. The said sections are omitted herein.

613. **Town Sealer of Weights and Measures; Deputies.**—The legislative body of any city or town may appoint a sealer of weights and measures, fix his compensation and provide for the appointment by the sealer of such number of deputies as the said legislative body may deem necessary and expedient and fix the compensation of such sealer and deputies. They shall be allowed their traveling expenses actually and necessarily incurred in the performance of their duties. The term of office of sealer of weights and measures appointed under the provisions of this section shall be four years. He shall be subject to removal by the power appointing him. Deputies appointed under the provisions of this section by a sealer of a city or town shall be subject to removal by the sealer. (Id. § 17.)

665a. **Title of Act.**—This act shall be known as the "California terminal weighing act." (L. 1927, c. 802, § 1.)

665b. **Definitions.**—The word "director" whenever used in this act shall be held and construed to mean the Director of Agriculture of the State of California.

The term "agricultural products" when used in this act shall, unless such construction be inconsistent with the context, be construed as including corn, wheat, oats, rye, barley, grain, sorgums and rice. (Id. § 2.)

665c. Director of Agriculture; Duties.—The director is hereby charged with the duty of carrying out all of the provisions of this act.

He shall have the power:

(a) To fix the compensation and determine the duties of such employees as shall be necessary to carry out the provisions of this act.

(b) To establish weighing stations and weighing districts and change same from time to time as circumstances require.

(c) To promulgate, amend, or repeal rules and regulations for the weighing of agricultural products for the purpose of carrying out the provisions of this act.

(d) To fix and determine reasonable charges for the weighing of agricultural products when such service is rendered by an employee of the Department of Agriculture.

(e) To provide, upon request of interested party, and with the consent of the management of the industry where the service is to be performed, regular weighing service at industrial points located within or without a regularly established weighing district; provided, that the industry requesting same shall guarantee payment of all costs.

(f) To provide, upon request of an interested party and with the consent of the management of the industry where the service is to be performed, employees for the weighing of any agricultural product, manufactured product or by-product thereof; provided, that such weighing is to be done at a regularly established weighing station, or, if not at a regular weighing station, the party requesting service shall pay such costs, in addition to the regular weighing fees, as the director shall assess. (Id. § 3.)

665d. Certificate of Authority.—The director shall issue to each employee authorized to weigh agricultural products a certificate or identification of such authority, and each employee shall, upon demand of anyone in authority, produce said certificate when entering any premises for the purpose of carrying out the provisions of this act. (Id. § 4.)

665e. Employees to Post Bonds.—Each employee who weighs agricultural products under this act and/or issues weight certificates thereof shall give a surety bond (the cost of said bond to be paid by the State) to the State of California in such sum as the Director of Agriculture shall determine, said bond to be approved by the director and conditioned upon the faithful discharge of the employee's duties. The director may employ temporary help for period not to exceed ten consecutive working days without requiring filing of approved bond. (Id. § 5.)

665f. Action on Bond.—The bonds shall be filed with the director, and any person aggrieved by any official act or the neglect of duty of any such employee or by reason of neglect or failure of such employee to comply with the provisions of this act or of the rules and regulations of the director, shall have a right of action upon such bond for the recovery of all damages suffered thereby. (Id. § 6.)

665g. Employees Not to be Interested in Products Which They Weigh.—No employee shall, during his term of office, be interested, directly or indirectly, in the purchasing or selling of agricultural products which he is employed to officially weigh. (Id. § 7.)

665h. Fees.—The fees for the weighing of agricultural products shall be paid by the party requesting the service or the industrial plant where the weighing is done and shall be a lien upon such products. The director shall so adjust the fees to be collected under this act as in his judgment will meet the expenses necessary to carry out the provisions hereof and may prescribe a different scale of fees for different localities. The director is hereby authorized to collect such fees in advance of performing the services, but shall not be required to do so if in his opinion the benefits of this service would be lessened by such advance payments. (Id. § 8.)

665i. Reweighing.—Any interested party shall have the right to call for reweighing of any specific lot; the regular weighing fees shall be paid by the party requesting such services, unless the variation from the original weight shall be greater than a reasonable tolerance which shall be established by the Director of Agriculture. (Id. § 9.)

665j. Who to Provide Scales.—It shall be the duty of all warehouse, dock, mill and elevator operators to provide suitable and satisfactory scales for the purpose of weighing agricultural products under the provisions of this act. (Id. § 10.)

665k. Employees; Duties.—The employees of the department, before opening the doors of any car containing agricultural products upon arrival at any of the places designated by the director as weighing station, shall first ascertain the condition of such cars and determine whether any leakages have occurred while said cars were in transit, and whether or not the doors are properly secured and sealed,

and shall make a record of such facts in all cases, giving seal numbers. The employees shall break the seal of all cars of agricultural products subject to State weighing. (Id. § 11.)

665l. Employees; Hours; Compensation.—When it is deemed advisable to load or unload cars or cargoes of agricultural products on days or during hours other than usual working days or usual working hours, the Director of Agriculture shall provide the necessary employees for the weighing of said agricultural products during such days and hours other than usual working days or usual working hours. The time of service or work of such employees, whether in the regular employ of the Department of Agriculture or hired specially for the occasion, who are provided by the Director of Agriculture for the weighing of agricultural products on days or during hours other than usual working days or usual working hours as aforesaid, when it is deemed advisable to load or unload cars or cargoes of agricultural products on days or during hours other than usual working days or usual working hours, and who do, pursuant to the terms of this act, at the instance and request of the Director of Agriculture, weigh agricultural products on days or during hours other than usual working days or usual working hours, when it is deemed advisable to load or unload cars or cargoes containing agricultural products on days or during hours other than usual working days or usual working hours, shall not be limited or restricted to eight hours of service or work during any one calendar day while doing such weighing on days or during hours other than the usual working days or usual working hours and in case such employee, whether in the regular employ of the Department of Agriculture or hired specially for the occasion, shall, pursuant to the terms of this act, at the instance and request of the Director of Agriculture, weigh agricultural products on days or during hours other than usual working days or usual working hours on occasions when it is deemed advisable to load or unload cars or cargoes of agricultural products on days or during hours other than usual working days or usual working hours as aforesaid, be entitled to reasonable compensation for his services in weighing agricultural products on days or during hours other than usual working days or usual working hours, in addition to his compensation, salary or wages for his work and services performed during usual working days and usual working hours, said reasonable compensation for weighing agricultural products as aforesaid on days or during hours other than usual working days or usual working hours to be fixed by the Director of Agriculture and the same to be paid by the party requesting such unusual service on days or during hours other than usual working days or usual working hours, to the Department of Agriculture, which amount of money so paid shall be in addition to the regular fees provided for weighing. (Id. § 12.)

665m. Penalty.—Any person violating or failing to comply with any provisions of this act shall be guilty of a misdemeanor. (Id. § 13.)

665n. Disposition of Funds.—All money collected under the provisions of this act shall be paid into the State treasury and placed to the credit of the "terminal weighing fund," which fund is hereby created. All of the moneys that may be in said fund from time to time are hereby appropriated to carry out the provisions of this act. There is hereby appropriated out of any moneys in the State treasury, not otherwise appropriated, the sum of twenty-seven thousand five hundred dollars, or so much thereof as may be necessary for the purpose of carrying out the provisions of this act until such time as the revenues obtained from fees for the weighing of agricultural products shall be sufficient to meet the expenses incident to the administration of this act. Said sum shall be placed to the credit of the terminal weighing fund. The sum hereby appropriated shall be repaid into the general fund of the State treasury as soon as possible from the surplus funds accruing from the operation of this act. (Id. § 14.)

665o. Not to Conflict With Public Weighmasters Act.—None of the provisions of this act shall be construed to conflict with or in any way supplant any of the provisions of an act* entitled "An act defining public weighmaster; describing his duties; providing for rules and regulations governing the performance of his duties; prescribing a bond and fixing the amount thereof; and providing penalties for any violation of the provisions of this act," approved June 8, 1915, as amended. (Id. § 15.)

NOTE: See also No. 387a et seq. and No. 407a et seq., ante.

COLORADO.

PART II.

Special Food Laws.

Cantaloupes and Melons.

36. Melon Inspection.—The State Inspector of Cantaloupes and Melons, or his deputy or assistants shall inspect, examine and certify all cantaloupes and melons grown within this State, for human consumption, so far as possible or practicable, and shall have marked each crate or package thereof in a plain and legible way, showing the name and address or the number of the grower or growers or the shipper or shippers, number or approximate number and variety of cantaloupes or melons contained therein, and it is and shall be the duty of the inspector, his deputy or assistant inspectors, to attach a certificate of inspection to each manifest or bill of lading of carload or part of carload of cantaloupes or melons loaded within this State for shipment; Provided, that only in case of loading and shipment of cantaloupes or melons in full carload lots shall it be necessary to so mark every crate and package thereof.

It shall be the duty of the State Inspector, his deputy or assistants, to collect from the shippers of said cantaloupes and melons the following amounts for making said inspection and for issuing certificates as herein provided: Cantaloupes, honey dews, honey balls, casabas and all other melons shipped in crates, standard, pony, flat and all intermediate size crates in less than carload lots one cent (1c) per crate and for carload lots the sum of not to exceed four dollars ($4.00) per car. For each carload of watermelons inspected the inspector shall collect the sum of not to exceed four dollars ($4.00). It is further provided that the shippers of said cantaloupes and melons are hereby empowered to collect from the growers or owners of said cantaloupes and melons one-half of the above mentioned inspection fees. The State Inspector shall keep a correct account of all moneys received from said melon shippers or owners on account of said inspection by himself, his deputy and his assistants, and shall pay the same over to the State Treasurer, and the State Inspector shall furnish to the State Auditing Board proper vouchers for all salaries and expenses. All moneys paid over to the State Treasurer hereunder shall be credited by him to a fund to be known as "The Melon Inspection Fund." Such fund shall be a continuing one and the same is hereby appropriated for the purpose of carrying out the provisions of this act. (L. 1925, c. 95, § 3, as amended L. 1927, c. 101.)

NOTE: See also Nos. 72-72b, post.

Dairy Products—Substitutes for Dairy Products.

57. Oleomargarine; Sale; Regulations.—No such substance shall hereafter be sold, offered or exposed for sale, except in cartons, wrappers or packages put up by the manufacturer thereof containing not more than five pounds; such cartons, wrappers or packages to be plainly and conspicuously labeled with the word "Oleomargarine" in Gothic or equally conspicuous letters at least three-eighths of an inch high. The name and address of the manufacturer shall also be plainly printed on the carton, wrapper or package in which such oleomargarine is sold at retail. The color of the ink with which all such words are printed must be in the strongest contrast to the color of the package.

No person, firm, association or corporation shall use in any way in connection or association with the sale or exposure for sale or advertisement of any substance designed to be used as a substitute for butter, the words "butter," "creamery," or "dairy," or the name or representation of any breed of dairy cattle or any combination of such word or words and representation, or any other words or symbols or combinations thereof commonly used in the sale of butter.

Every person, company or corporation, or any agent of any company or corporation, who violates any provision of this act, or who sells or offers for sale, or delivers, or offers to deliver any oleomargarine in any other form of carton, wrapper or package than as above described, or who packs in any carton, wrapper or package any oleomargarine in any manner contrary to law, or who falsely brands, stamps or labels any carton, wrapper or package, denoting that it contains other than oleomargarine, shall be fined for the first offense not more than five hundred (500)

dollars, or imprisoned for not more than thirty (30) days in the county jail, or both, such fine and imprisonment, and for a second or other offense, shall be fined not more than one thousand (1,000) dollars, or imprisoned in the county jail not more than twelve (12) months, or both, such fine and imprisonment in the discretion of the court. (C. L. 1921, § 3082, as amended L. 1927, c. 141.)

Fruits and Vegetables.

72. **Inspection and Classification; Not Compulsory.**—Cantaloupes and melons are not within the purview of this act and the words "fruits and vegetables" or "fruits or vegetables" as used herein do not include cantaloupes or melons. The inspection in the State of Colorado of all fruits and vegetables (except cantaloupes and melons), and the classification of grades thereof, shall be under the direction and control of the Colorado Director of Markets, hereinafter designated as the "director." Such inspection, and classification of grades and grades established and promulgated shall not be compulsory in any case, but shall be optional in all cases. A certificate when issued as to grade or other classification of any fruits or vegetables under this act shall be accepted in any court of this State as prima facie evidence of the true grade or other classification of any fruits or vegetables at the time of its grade or classification. In carrying out the provisions of this act, the director, his inspectors, employees and agents are authorized to enter on any business day, during the usual hours of business, any storehouse, warehouse, cold storage plant, packing house, railroad car, or any other building or place where fruits or vegetables are kept or stored by any person engaged in shipping of fruits or vegetables. The Director of Markets is hereby authorized to promulgate such rules and regulations relative to the proper marking of containers, the issuing of certificates of inspection, the tagging of cars and such other rules and regulations as he deems necessary for the improvement of the quality and marketing of all fruits and vegetables in car lot shipments. The Director and his inspectors, employees, or agents are each prohibited, during their respective terms of employment or office, from engaging in this State, or elsewhere, in the business of buying or selling or in commission dealing in fruits and vegetables. (L. 1925, c. 96, § 2, as amended L. 1927, c. 102, § 1.)

72a. Penalty.—Any person who violates any provision of this act or willfully interferes with the Director of Markets, his inspectors, employees or agents in the performance or on account of the execution of his or their duties under this act shall be deemed guilty of a misdemeanor and punished by a fine of not more than one hundred dollars. (L. 1927, c. 102, § 2.)

72b. Salaries.—The salary or compensation of all persons holding office or employment under the Director of Markets in accordance with the terms and provisions of this act shall be fixed by the Director of Markets by and with the consent and approval of the Governor; provided, no employee shall receive more than five dollars per day for actual service together with the necessary traveling expenses, except that the inspectors in charge of any one of the six inspection districts of the State may receive not more than seven dollars per day for actual service and necessary traveling expenses. This exception shall also apply to the Director of Markets deputized representatives for special work. (Id. § 3.)

Meat—Meat Products.

108a. Bills of Sale; Evidence of Ownership.—Any person who shall sell and deliver any live chickens, turkeys, ducks, geese or other fowl of one kind, class or breed, of the number of fifteen (15) or more at one time, shall give the purchaser thereof a written memorandum or bill of sale describing the kind, class or breed and the number so sold and delivered, together with any mark or brand, leg-band, paint-mark, wing-crop or any other mark of identification. Such memorandum or bill of sale shall be retained by such purchaser and he shall exhibit it on demand of any peace officer of this State at any time so long as such fowl are in such purchaser's possession; and if and when the purchaser sells and delivers such fowl he shall deliver said memorandum or bill of sale to his purchaser. Such memorandum or bill of sale shall be prima facie evidence of ownership in any civil suit or criminal proceeding in any court in this State. (L. 1927, c. 85, § 1.)

108b. Record of Purchase.—Every person engaged in the business of buying or buying and selling chickens, turkeys, ducks, geese or other fowl, when buying fifteen (15) or more of one class or breed at one time, shall note in writing in a book which he shall keep for that purpose at his place of business, the same date required by section one hereof, to be contained in the memorandum or bill of sale,

together with the name of the person from whom purchased, his place of residence or business and his post office address; and he shall permit inspection of such records at all reasonable times during business hours of any peace officer of this State. (Id. § 2.)

108c. Penalty.—Any person who shall violate any of the provisions of this act shall be subject to a fine not exceeding one hundred dollars ($100) for each offense; but a prosecution under this act shall not be a bar to a prosecution for larceny as now or hereafter provided by law. (Id. § 3.)

PART III.

Special Drug Laws.

Insecticides and Fungicides.

150. Repealed. (L. 1927, c. 113, § 27.)

150a. Adulterated Insecticides; Packages Marked.—It shall be deemed a violation of this act for any one to sell in Colorado insecticides or fungicides such as Paris green, London purple, white arsenic, arsenate of lime, arsenate of lead, arsenite of zinc, cyanide of potassium, hellebore, pyrethrum powder, or any other materials or preparations sold or offered for sale, for the control of insect pests or animal pests, plant diseases, or weeds, that are diluted or mixed with other substances, unless the kind and amount of the adulterations or mixtures are conspicuously printed in the English language upon each and every package sold. (L. 1927, c. 113, § 22.)

150b. Inspection of Insecticides.—The State Entomologist may inspect, and make analyses of insecticides or fungicides held or offered for sale within the State to determine their purity, their strength and their value for the destruction of insect pests or animal pests or plant diseases or weeds in any stage of their development. He or his deputies or county pest inspectors shall have free access during all reasonable business hours upon or into any premises or structures to make examinations of insecticide or fungicide materials, and upon tendering payment therefor at the current price, may take any sample or samples for examination or analysis, the results of which may be published for the information of the public. (Id. § 23.)

150c. Misdemeanor; Penalty.—Each and every violation of any of the provisions of this act, and each and every noncompliance with any notice or direction given by the county pest inspector in charge under the provisions of this act, shall be punishable by a fine in the sum of not less than five dollars nor more than five hundred dollars, and each and every day that any person, firm or corporation shall fail to comply with any notice in writing received from the State Entomologist, or county pest inspector as charged under the provisions of this act, shall be deemed a separate offense. (Id. § 17.)

Pharmacy, Poisons and Narcotics.

152. Board to Meet in Denver 30 Days After Appointment.—The board shall within thirty days after its appointment, meet in the city of Denver, Colorado, and organize and shall elect a president, secretary and treasurer, who shall perform the duties prescribed by the board. Meetings for the examination of applicants for registration, granting of certificates and the transaction of other necessary business, shall be held at least once every four months and at such times and places as may be fixed by the board; provided, that ten days' public notice of the time and place of each meeting at which there is to be an examination of candidates for registration shall be given. It shall be the duty of the board to receive all applications for examination and registration submitted in proper form, to grant certificates to such persons as may be entitled to same under this act, to report annually to the Governor and the Colorado Pharmacal Association upon the condition of pharmacy in the State of Colorado, which report shall include a recital of the proceedings of the board and the names of all persons registered under this act; to keep a book for registration in which shall be entered the names and places of business of all persons registered under this act and showing under which particular section of this act each one was registered; and all other necessary facts pertaining to the granting of registration. The Board of Pharmacy shall have power:

(a) To make such by-laws and regulations not inconsistent with the laws of the State of Colorado, as may be necessary for the regulation of the business appertaining to the practice of pharmacy and the lawful performance of its duties;

(b) To regulate the practice of pharmacy;

(c) To regulate the sale of poisons and to adopt schedules of those poisons of which a written record shall be kept by the retailer;

(d) To prescribe the forms and methods of application and examination and registration;

(e) To demand and receive from applicants the fees herein provided, which shall be held by the board and applied to the payment of salaries and other necessary expenses incident to the full discharge of its duties. (C. L. 1921, § 4581, as amended L. 1927, c. 145.)

154. Salaries of Secretary; Duties of.—The salaries of the respective members of said board shall be five dollars ($5.00) for each day of actual service and all legitimate expenses incurred in the discharge of their official duties. The secretary of said board, who may or may not be a member thereof, shall receive an additional salary, to be fixed by the Board of Pharmacy, but which shall not exceed the sum of one thousand five hundred dollars ($1,500) per annum. He shall pay to the treasurer at each meeting or whenever the board may direct, such funds of the board as may be in his possession and take the treasurer's receipt therefor; provided, that no part of the salaries and expenses of the board shall be paid out of the State treasury. The board may employ such assistance as it may deem proper to investigate violations of this act and enforce the provisions thereof and cause prosecutions for violations thereof; and shall have power and authority to employ an attorney to assist in prosecutions under this act and for any other purpose which said board may deem necessary; to fix the compensation therefor and pay the same out of funds in the hands of the board. In all annual reports to the Governor and the Colorado Pharmacal Association the board shall render an account of all moneys received or disbursed pursuant to this act. The secretary and treasurer shall each give such bond as said board shall from time to time direct. (Id. § 4583.)

155. Pay $1.00 to Colorado Pharmacal Association—Balance Paid Into State Treasury.—On the first day of July of each year, the Board of Pharmacy shall pay into the treasury of the Colorado Pharmacal Association one dollar ($1.00) of the fee annually paid by each pharmacist and assistant pharmacist for renewal of his registration under this act, which sum of one dollar ($1.00) shall entitle such registrant to membership in the Colorado Pharmacal Association. The board shall pay the balance of all other moneys held by them into the State treasury to the credit of a fund for the use of the State Board of Pharmacy; provided, that the sum of three hundred dollars ($300.00) may be retained by the Board of Pharmacy for use as a revolving fund. The compensation and expenses of the members, officers and employees of the Board of Pharmacy shall be paid out of the fund in the State treasury for the use of the State Board of Pharmacy. (Id. § 4584.)

156. Any Member or Inspector May Examine Applicants and Issue a Permit—Fee for a Temporary Permit—Board May Administer Oath.—Any member of the Board of Pharmacy or any inspector, duly authorized by said board, may examine any applicant orally or in writing and issue a temporary permit to practice pharmacy which shall authorize such practice for a period not to exceed four months, from its date. The issuance of such temporary permit shall not entitle the holder thereof to a permanent certificate, and no permanent certificate shall be issued to such holder until he or she shall have passed a satisfactory examination before the board, or presented credentials showing that he or she is entitled to registration by reciprocity. No unregistered person shall be permitted to perform the duties of a registered pharmacist until he or she has obtained such temporary permit. No temporary permit shall be granted to any person whose application for registration has been denied by the board. The members of the Board of Pharmacy or authorized inspector conducting the examination as herein set forth shall be entitled to charge and receive the sum of ten dollars ($10.00) for such temporary permit, said sum to be paid to the Board of Pharmacy; provided, that said ten dollars ($10.00) shall be applied on the reciprocity fee of any person entitled to a certificate by reciprocity, or on the examination fee of any candidate for registration where examination is taken within four months from the date of the temporary permit. The Board of Pharmacy or any member or authorized inspector thereof shall have authority to administer oaths, to summon witnesses, and to take testimony in any matters relating to their duties. It shall be the duty of the secretary, under the direction of the board, personally or by deputy, to aid in the enforcement of this act and in the prosecution of all persons charged with violating any of its provisions. (Id. § 4585.)

158. Person Must Re-register—Renew License for Three Dollars—Default of Payment of Fee Cause for Revokal.—Every person holding a certificate from the Board of Pharmacy shall annually re-register with said board and each registered pharmacist or assistant pharmacist, who desires to retain his registration shall, on or before the 2d day of July, of each year, pay to the Secretary of the State Board

of Pharmacy, a renewal fee of three dollars ($3.00), one dollar ($1.00) of which shall be paid by the Board of Pharmacy into the treasury of the Colorado Pharmacal Association, and which shall entitle the registrant to membership in the Colorado Pharmacal Association. The sum so paid to the Colorado Pharmacal Association shall be used for educational purposes and for the advancement of the art and science of Pharmacy. Every registered apprentice in pharmacy shall, on or before the 2d day of July of each year, pay to the secretary of the board, a fee of fifty cents (50c) in return for which a renewal of registration shall be issued. In case any person defaults in payment of said fee his or her registration may be revoked by the Board of Pharmacy upon thirty days' notice in writing from the secretary mailed to his or her post office address as obtained from the books of the secretary, unless within said time the fee is paid, together with such penalty not exceeding ten dollars ($10.00) as the board may impose. The person whose registration is so revoked, shall, in order to regain registration, apply for and pass an examination as provided in this act, or in the case of those who are eligible to registration by reciprocity, again pay the required fee and follow the procedure set out in the rules of the board, pertaining to reciprocal registration, or in the case of registered apprentices in pharmacy, again make application for registration as such and pay the required fee as provided in this act. (Id. § 4587.)

162. Pharmacist Report Apprentice in His Employ—Qualifications for Apprentice.—It shall be the duty of every registered pharmacist who takes into his or her employ an apprentice, whose purpose it is to become a pharmacist or an assistant pharmacist, to report within thirty days to the Board of Pharmacy such facts regarding the schooling and preliminary qualifications of such apprentice, as the Board of Pharmacy may require for the purpose of registration as an apprentice. The applicant for registration as apprentice in pharmacy shall be at least fifteen years of age. The board, if satisfied with the qualifications of the applicant shall upon the payment by him of a fee of one dollar ($1.00) which shall accompany his application, issue a certificate. The beginning of the term of experience required of applicants for registration as pharmacist, or assistant pharmacist, shall be computed from the date of registration as apprentice; provided, however, that a person, who, before or after this act takes effect, may have served part of his apprenticeship in some State not requiring apprentice registration, may, when applying for apprentice registration, give proof of such experience satisfactory to the board and receive credit therefor. An apprentice pharmacist shall have the right to do, under the direct, immediate and personal supervision of a registered pharmacist, or assistant pharmacist, any or all things that may be done by a pharmacist or assistant pharmacist. (Id. § 4591.)

164. Compounding of Drugs Must be Under Pharmacist or Assistant Pharmacist.—Any person who shall permit the compounding of physicians' prescriptions or the selling of drugs, medicines or poisons, except by or under the direct, immediate and personal supervision of a registered pharmacist, or under the direct, immediate and personal supervision of an assistant pharmacist during the temporary absence of the registered pharmacist, or any unregistered person, who shall retail medicines, poisons or chemicals, except in a licensed pharmacy under the direct, immediate and personal supervision of a registered pharmacist or under the direct, immediate and personal supervision of an assistant pharmacist during the temporary absence of the registered pharmacist, except as otherwise provided in this act, shall be deemed guilty of a misdemeanor. Temporary absence within the meaning of this act shall be defined by the Board of Pharmacy. Provided, that nothing in this act shall apply to or interfere with any practitioner of medicine who is duly registered as such by the State Board of Medical Examiners of this State, and who does not keep a pharmacy, or open shop, advertised or otherwise for the retailing of medicines or poisons, to prevent him from supplying to his own patients, as their physician, and by them employed as such, such remedies as he may desire. Nor shall this act apply to the exclusive wholesale business of any dealer, except as to drugs put up by them in sealed packages for sale to the public without inspection by the retailer. Such sealed packages shall be put up under the direct, immediate and personal supervision of a registered pharmacist, and shall be sold only to those pharmacies or drug dealers which are licensed by the Board of Pharmacy under the provisions of this act. Wholesale dealers without the State shall be permitted to sell drugs in original packages only where the label shows the name of the registered pharmacist under whose supervision the packages were prepared, provided, that nothing in this act shall in any manner interfere with the marketing or vending on any proprietary or patent medicines in unbroken, original packages. (Id. § 4593.)

166. Repealed. (L. 1927, c. 145, § 10.)

168. Penalties Recovered in Civil Court.—The penalties hereinafter prescribed for the violation of any of the provisions of this act may be recovered in any

court having jurisdiction, by a civil action instituted by the Board of Pharmacy in the name of the State of Colorado, or by criminal prosecution upon complaint being made; and it shall be the duty of the district attorney of the county or district wherein violation of the provisions of this act occur, to conduct all such actions and prosecutions at the request of the board. All fines and penalties so recovered shall be paid to the State Board of Pharmacy; Provided, however, that the Board of Pharmacy may employ special counsel to assist the district attorney in such actions and prosecutions. (C. L. 1921, § 4597, as amended L. 1927, c. 145.)

169. Unlawful for Any Person to Send Poisons Without Labeling; Form of Label; Unlawful to Vend Poisons Without Inquiry; Schedules.—It shall be unlawful for any person not licensed under the provisions of this act to vend, sell, give away or furnish, either directly or indirectly, any poisons enumerated in schedules A and B of this act as hereinafter set forth, and it shall be unlawful for any person licensed by the Board of Pharmacy under the provisions of this act to vend, sell, give away or furnish, directly or indirectly, any poisons enumerated in schedules A and B of this act, without labeling the package, box, bottle, carton or paper in which said poison is contained, with the name of the article, the word "poison" and the name and place of business of the person furnishing the same. The label required by this act to be placed on all packages of poison shall be printed upon red paper in distinct white letters, or in distinct red letters upon white paper, and shall bear the word "poison," the "vignette" representing the skull and cross bones, and the name and address of the person or firm selling the same. The name of an antidote and antidotal treatment for the poison sold shall also appear upon the label. It shall be unlawful to sell or deliver any of the poisons named in schedule A or any other dangerously poisonous drug, chemical or medicinal substance which may in the future be designated by the State Board of Pharmacy, unless on inquiry it is found that the person desiring the same is aware of its poisonous character, and it satisfactorily appears that it is to be used for a legitimate purpose; and unless an entry is made in a book kept for that purpose, stating the date and hour of sale, and the name, address and signature of the purchaser, the name and quantity of the poison sold, a statement by the purchaser of the purpose for which it is required, and the name of the dispenser, who must be a registered pharmacist, or assistant pharmacist in charge of the place of business during the temporary absence of the registered pharmacist as heretofore defined in this act; provided, further, that said entry shall be made out in full in ink, before said signature of the purchaser is made thereto, and that said entry shall be made by said dispenser himself, and not by any person who is not a registered pharmacist or assistant pharmacist. No such poison shall be sold or delivered to any person who is less than eighteen years of age, except upon written order of some older person known to the vendor. When in the opinion of the State Board of Pharmacy it is in the interest of public health, it is hereby empowered to further restrict or regulate the retail sale of any poison by rules, not inconsistent with the provisions of this act, by them to be adopted, and which rules must be applicable to all persons alike. It shall be the duty of the board upon request to furnish any dealer with a copy of the laws relating to articles, preparations and compounds, the sale of which is prohibited or regulated by this act. Provided, however, that nothing in this act shall interfere with the business of those merchants who keep or sell such poisons, acids or chemicals as are regularly used in agriculture, mining and the arts, when kept and sold for such purposes only in sealed and plainly labeled packages.

Schedule A shall consist of the following poisons and such poisons as shall be hereafter added by the State Board of Pharmacy under the provisions of this article: Arsenic, hydrocyanic acid and its salts, cocaine, morphine, strychnine and all other poisonous vegetable alkaloids and their salts. Oil of bitter almonds, opium and its preparations, except paregoric and such others as contain less than two (2) grains to the ounce.

Schedule B shall consist of the following poisons and such poisons as shall be hereafter added by the State Board of Pharmacy under the provisions of this article: Aconite, belladonna, cantharides, colchicum, conium, cotton root, digitalis, ergot, hellebore, henbane, phytolacca, strophanthus, oil of tansy, oil of pennyroyal, oil of savine, veratrum viride and their pharmaceutical preparations; arsenical solutions, carbolic acid, chloral hydrate, chloroform, corrosive sublimate, creosote, croton oil, mineral acids, oxalic acid, Paris green, salts of lead, salts of zinc, white hellebore, tincture of iodine. A "poison" within the meaning of this act is defined to be any drug, chemical, medicine or preparation liable to be destructive to adult human life in quantities of sixty grains or less. (Id. § 4598.)

206a. Cannabis Indica.—That cannabis indica, or cannabis sativa, commonly known as Indian hemp, hasheesh or marijuana, is hereby found and declared to be a

habit-forming drug, the unrestricted use of which is injurious to the well-being of the users. (L. 1927, c. 95, § 1.)

206b. Sale, Etc., Prohibited; Proviso.—That from and after the passage of this act the growing, possession, sale or gift of cannabis indica or any derivative thereof, in any form or compound, shall be prohibited; provided, that the production, possession and sale of cannabis indica may be permitted under the following conditions:

First—Cannabis indica may be grown and the product sold by the grower alone, under rules and regulations consistent with this act, to be formulated by the Board of Health of the State of Colorado, the sale by the grower to be restricted to regularly established manufacturing or wholesale druggists.

Second—Wholesale and manufacturing druggists may sell cannabis indica and the derivatives and compounds thereof to retail druggists who either are or who regularly employ licensed or registered pharmacists under the laws of the State of Colorado.

Third—Retail druggists may sell cannabis indica and derivatives and compounds thereof only upon the original prescription of a physician regularly licensed to practice medicine in the State of Colorado, and such prescription may not be refilled or used a second time.

Provided, further, that nothing herein contained shall prohibit the sale of cannabis indica or derivatives thereof when compounded with other drugs or medicines in which the amount of cannabis indica or any derivative thereof shall not exceed one-half grain solid extract or its equivalent to one fluid ounce of solution in which it is contained or when it shall not exceed one-half grain solid extract or its equivalent to one ounce, avoirdupois weight, of the total with which it is included, in solid or semi-solid form, and only when such fluids, solids or semi-solid substances containing cannabis indica or a derivative thereof, are prepared for and by reason of their composition suitable for external use only. (Id. § 2.)

206c. Penalty.—Any person who violates the terms of this act shall be guilty of a misdemeanor and on conviction thereof shall be punished by a fine of not less than fifty dollars or more than three hundred dollars, or by imprisonment in the county jail for not less than one month nor more than six months or by both fine and imprisonment, in the discretion of the court. (Id. § 3.)

207a. Rodent Pest Act; Keep Record of Poison Purchased and Sold.—Said board [State Board of Agriculture], when acting in co-operation with said survey in pest control operations hereunder, may, through its officers, members or authorized agents, purchase and sell to land owners, lessees, contract holders and boards of county commissioners strychnine and other poisons for rodent control; provided, the said board shall make and keep a permanent record of all such sales made by it showing the name of purchaser, date of purchase, kind and amount of poison purchased. (L. 1927, c. 153, § 16.)

CONNECTICUT.

PART II.

Special Food Laws.

Apples.

20. Standard Barrels to be Used for Apples.—The standard barrel of apples shall be of the following dimensions when measured without distention of its parts: Length of stave, twenty-eight and one-half inches; diameter of head, seventeen and one-eighth inches; distance between heads, twenty-six inches; circumference of bulge, sixty-four inches, outside measurement; and the thickness of staves not greater than four-tenths of an inch; provided any barrel of a different form having a capacity of seven thousand and fifty-six cubic inches shall be a standard barrel. The standard bushel for apples shall be a container having a capacity of not less than one United States standard bushel or twenty-one hundred fifty and forty-two hundredths cubic inches. Containers for apples other than the standard barrel or bushel shall be marked in terms of capacity or count. (P. A. 1919, c. 295, § 1, as amended P. A. 1927, c. 295.)

21. Classified Standards of Apples.—The standard grades of apples when packed or repacked within the State shall be as follows: "Standard Fancy" shall include only apples of one variety which are well matured specimens, hand-picked, above medium color for the variety, normal shape, of good and reasonably uniform size, sound, free from dirt, disease, insect or fungous injury, bruises or any other defects, except such as are necessarily caused in the operation of packing, and shall be packed in clean, strong packages. A variation not exceeding ten per centum from any requirement of this section shall be allowed. "Standard A" shall include only apples of one variety which are well matured specimens, hand-picked, well packed, of medium color for the variety, practically normal shape, sound, practically free from dirt, disease, insect or fungous injury, bruises or other defects, except such as are necessarily caused in the operation of packing. A variation not exceeding ten per centum from any requirement of this section shall be allowed. "Standard B" shall include only apples of one variety, which are well matured, well packed, not materially deformed, practically free from dirt, disease, insect or fungous injury or any other defect which materially injures the usefulness or keeping quality of the apple. A variation not exceeding ten per centum from any requirement of this section shall be allowed. Apples not conforming to the foregoing specifications of grade or, if conforming, not branded in accordance therewith, shall be considered "Unclassified" and so branded. (Id. § 2.)

27. Misbranded Packages, Defined.—For the purposes of this act, apples packed in closed or open packages shall be deemed to be misbranded if their measure, quality or grade shall not conform in every particular to the brand or mark upon or affixed to the package or if the faced or shown surface shall give a false representation of the contents of the package. (Id. § 8.)

32b. Rules and Regulations Regarding Lettering in Branding and Marking Packages of Apples—Violations, Procedure.—The Commissioner of Agriculture shall prescribe rules and regulations as to the lettering to be used in branding or marking packages of apples. He shall make and may modify uniform rules and regulations for carrying out the provisions of said chapter 295 and of this act. When the commissioner shall become cognizant of the violation of any provision of said chapter 295 or of this act he shall cause notice of such violation, together with a copy of his findings relating thereto, to be given to the person or persons concerned. Any person so notified shall be given a hearing under rules and regulations prescribed by the commissioner. Notices of such hearing shall specify the date, hour and place of the hearing. (P. A. 1927, c. 295, § 4.)

Beverages.

45. License Fee.—A fee of twenty dollars shall accompany each application for the license provided for in said chapter 102. Each such license shall expire on the thirtieth day of June next following the issuance thereof. Such license shall be in such form as the commissioner shall determine and shall be kept exposed to view in a conspicuous place upon the premises where such business shall be conducted or

carried on. All fees received for such licenses shall be paid by the commissioner to the State Treasurer and shall be added to the regular appropriation for the expense of the Dairy and Food Commissioner. No person, firm or corporation shall sell or offer for sale within the State any beverages manufactured or bottled beyond the boundaries of the State unless such person, firm or corporation shall have made application for and secured a license from the Dairy and Food Commissioner upon the payment of twenty dollars, and no such license shall be issued by the Dairy and Food Commissioner until such establishment shall have been inspected by him or his agent, or until such establishment shall have furnished said commissioner a certificate from the commission having the enforcement of the beverage law in the State where such establishment is located that such establishment complies in every respect with the requirements of the Connecticut beverage law. (P. A. 1925, c. 102, § 2, as amended P. A. 1927, c. 263.)

46. Equipment of Manufacturing Establishments.—The establishment used for the preparation, manufacture and bottling of any beverage shall be adequately lighted and ventilated and all floors shall be constructed of cement, concrete or tile laid in cement, or other material impervious to water, and shall have sufficient pitch to insure drainage; walls and ceilings shall be vanished or painted in light color and kept clean; doors, windows and other openings of any room in which beverages or the ingredients of such beverages shall be prepared shall be screened and all entrances and exits shall be equipped with automatic closing devices, and each room in such establishment shall have at least one device for the catching of flies. Wash basins, sinks and toilets shall be provided for employees and no toilet shall open directly into any room used for the preparation or bottling of any beverage. Each such establishment shall be equipped with adequate and efficient machinery for the soaking, automatic cleaning and sterilizing of all bottles in which any such beverage or water shall be placed for the purpose of sale. The term "beverage" as used herein shall include all waters, soft drinks and like products, whether simple, mixed or compounded. (Id. § 3.)

53aa. Bottles or Containers to Have Name of Manufacturer or Trade-Mark Thereon—Penalty.—No person, firm or corporation shall sell, offer for sale or give away within the State any beverage in bottles or other containers unless each of such bottles or containers shall have blown into it, etched or engraved, or otherwise indicated thereon, the name of the person, firm or corporation manufacturing or bottling such beverage or the name of the registered trade-mark of such beverage. The filling or refilling of any glass jar, bottle or other container, with beverages, water, mineral water or any other drink or fluid, with intent to sell or vend such water, beverage or fluid, which bears the label of any other person, firm or corporation or which has blown into it the name or trade-mark of any person, firm or corporation without the consent of such person, firm or corporation, shall constitute misbranding in violation of the provisions of section 2439* of the general statutes. Any person who shall violate any provision of this section shall be subject to the penalties provided in section ten of said chapter 102. (P. A. 1927, c. 263, § 3.)

Dairy Products—Substitutes for Dairy Products.

64-66. Repealed. (P. A. 1927, c. 173, § 15.)

66a. Examination of Persons Weighing, Sampling and Testing Milk or Cream—Application and Examining Fee—License—Revocation.—The Dairy and Food Commissioner shall make rules and regulations for the examination of persons who may engage in the weighing, sampling or testing of milk or cream which is to be bought or sold on the basis of the butter fat content or the bacterial count, or for the purpose of determining the butter fat content or bacterial count for publication or for advertising purposes, provided such examination shall conform to the specifications and directions for testing milk and cream for the butter fat content and bacterial count adopted, from time to time, by the Association of Official Agricultural Chemists. Applications for such examinations shall be made in writing to the Dairy and Food Commissioner, accompanied by the following fees: Examination for tester's license, three dollars, which may also include sampler's and weigher's licenses; bacteriological examination, three dollars; examination for sampler's license, two dollars, which may also include weigher's license; examination for weigher's license, one dollar. Said commissioner shall designate the time and place of holding such examinations, and may issue, to any person who shall have complied with the rules and regulations for such examination and shall have passed the same to the satisfaction of the commissioner, a license to weigh, sample or test any milk or cream, which

*See No. 4.

license shall be valid until the thirty-first day of December next following the issuance thereof and may be renewed annually upon written application to the commissioner accompanied by a fee of one dollar. Such license may be revoked by the commissioner, after hearing upon due notice to the licensee, for dishonesty, incompetency, inaccuracy or violation of the provisions of this act. No person shall take any sample or test any milk or cream for the purpose of determining its butter fat content or its bacterial count except as herein provided, and nothing herein shall be construed to prevent private testing and sampling for plant purposes. Any person not holding such license may take any unbroken package of milk or cream as a sample. (P. A. 1927, c. 173, § 1.)

66b. Permits to be Displayed in All Establishments.—Every creamery, shipping station, milk factory, cheese factory, ice cream factory or milk condensory, or person receiving, buying and paying for milk or cream on the basis of the butter fat content therein shall be required to hold a permit for each place where milk or cream is received by weight or measure. Such permits shall be issued by the Dairy and Food Commissioner, and may be revoked by him for violation of the provisions of this act. Each permit issued hereunder shall be posted in plain view in the station for which it shall have been issued. (Id. § 2.)

66c. "Babcock Test."—No person, firm or corporation, or agent or servant thereof, engaged in the business of buying milk or cream on the basis of the percentage of butter fat contained therein, to [shall] underread, overread or otherwise fraudulently manipulate the samples or the test commonly known as the "Babcock test" used for determining the percentage of such fat in such milk or cream, or to falsify the record thereof, or to make the "Babcock" reading except when the fat has a temperature between one hundred and thirty-five degrees and one hundred and forty-five degrees, Fahrenheit, inclusive, or to use for such test any other pipette than the standard 17.6 C. C. pipette in the case of milk. In all tests of cream the cream shall be weighed and not measured into the test bottle using nine grams or eighteen grams. (Id. § 3.)

66d. Tests to be Made by Licensed Tester—License to be Displayed—Suspension or Revocation.—Each person, firm or corporation, or agent or servant thereof, engaged in the business of receiving or buying milk or cream on the basis of the percentage of butter fat contained therein as determined by the "Babcock test," shall have the test or tests made only by a licensed tester, who shall be responsible for the same. Each licensed tester shall post his license in plain view in the testing room in which he may be employed. The Dairy and Food Commissioner may suspend or revoke such license for failure to post it as above required. Each such license which shall have been revoked shall be returned to the commissioner. (Id. § 4.)

66e. Samples to be Taken by Licensed Sampler—License to be Displayed—Revocation and Suspension.—Each person, firm or corporation engaged in the business of buying milk or cream on the basis of the percentage of butter fat contained therein shall have the samples taken by a person holding a license to sample milk or cream. Each licensed weigher and sampler shall post his license in plain view in the plant in which he may be employed. The Dairy and Food Commissioner may revoke such license for failure to post it as above mentioned or for any other just cause. Each such license which shall have been revoked shall be returned to the commissioner. (Id. § 5.)

66f. To be Weighed by Licensed Weigher.—Any person, firm or corporation engaged in the business of buying milk or cream by weight shall have such milk or cream weighed by a licensed weigher. Each licensed weigher shall post his license in plain view in the room where the weighing is done. The Dairy and Food Commissioner may revoke such license for failure to post it as above mentioned or for any other just cause. Each such license which shall have been revoked shall be returned to the commissioner. (Id. § 6.)

66g. Tests How and When Made.—Any person, firm or corporation, or agent or servant thereof, engaged in the business of buying milk or cream on the basis of the percentage of butter fat contained therein as determined by the "Babcock test," shall make such test at least once every eleven days. The milk or cream purchased from each person shall be represented by a composite sample taken from the entire delivery of all the several lots of milk or cream bought from such person except when milk is frozen or partly churned, and shall cover a period of not more than eleven days. A sample consisting of not less than seventeen cubic centimeters of milk shall be taken each day, except when milk is frozen or partly churned, from the milk or cream furnished by each such person, and an approved preservative shall be added to the milk or cream, and each composite sample shall be held in an approved air-tight bottle, such bottle being plainly labeled to show the name or number of the person whose milk or cream the composite sample represents. All such composite

samples shall cover the same period of time, except where the number of samples taken shall exceed two hundred, in which case they may be taken and tested in two series. The milk to be sampled shall be placed in an approved mixing tank and shall be run through a fine-mesh strainer before any sample shall be taken. The composite samples shall be kept in a cool place, away from strong light. The test or tests shall be made within seventy-two hours, Sundays and holidays excepted, after the last sample shall have been added to the composite sample, and a report shall be mailed to the Dairy and Food Commissioner on blanks furnished at cost by said commissioner. After such samples shall have been tested their residues shall be held intact and in condition suitable to test on the premises where they are tested for a further period of not less than seven days, in order to make possible a check test. The Dairy and Food Commissioner, or his agent, is authorized to make such check tests whenever in his judgment such tests are advisable. (Id. § 7.)

66h. Composite Samples to be Divided Into Two Parts for Purposes of Testing.—Any person, firm or corporation engaged in the business of buying milk or cream from producers to be paid for on the basis of the percentage of butter fat contained therein, and for that purpose taking samples therefrom to form a composite sample to be tested every eleven days to determine its value on such basis, shall, at the request of the producer, divide each such composite sample into two parts and tender the same to the producer or his authorized agent before any test shall be made of such composite sample. The producer or his authorized agent shall have his choice of either sample so divided. The sample so selected shall be sealed by the person dividing the sample in the presence of both parties concerned. Such producer shall be permitted to send such sealed sample to the Dairy and Food Commissioner. Said commissioner shall cause such sample to be tested for the per centum of butter fat and shall send a report of such test to the producer from whom it was received within ten days or as soon thereafter as possible. The producer or producers selling milk or cream to any person, firm or corporation may at any time employ a licensed tester to take composite samples, such samples to cover the same period of time as those taken by the dealer or his agents. (Id. § 8.)

66i. Duties of Dairy and Food Commissioner.—The Dairy and Food Commissioner and his agents are authorized to enter the premises and to examine the test and weight records and testing apparatus of any person, firm or corporation for the purpose of carrying out the provisions of this act. (Id. § 9.)

66j. Fee to be Turned Over to the State Treasurer.—All fees collected under the provisions of this act shall be paid by the commissioner to the State Treasurer, to be added to the regular appropriation for the expenses of the Dairy and Food Commissioner. (Id. § 10.)

66k. Enforcement.—The Dairy and Food Commissioner or his agents shall be charged with the enforcement of the provisions of this act. (Id. § 11.)

66l. Appeals From Orders or Decisions of Commissioner.—Any person, firm or corporation aggrieved by any decision of the Dairy and Food Commissioner regarding the enforcement of the provisions of this act may appeal to any judge of the Superior Court or the Court of Common Pleas within the county, who may order such hearing thereon and make such emergency orders pending such hearing as shall appear to him necessary. Such petition shall state the decision whereby the petitioner claims to be aggrieved. Such judge or court, by itself or a committee appointed by it, may hear such appeal de novo and may affirm, modify or rescind such decision. (Id. § 12.)

66m. Procedure.—For the violation of any provision of this act proceedings may be instituted against either the owner or manager who is responsible for the business transacted, or the licensed tester of such milk or cream or the person weighing and sampling the same, or against all of such persons. (Id. § 13.)

66n. Penalties.—Any person, firm or corporation, or agent or servant thereof, violating any provision of section three of this act shall be fined not less than twenty-five dollars nor more than five hundred dollars or imprisoned not more than twelve months, or be both fined and imprisoned. Any person violating any other provision of this act shall be fined not less than fifteen dollars nor more than fifty dollars or imprisoned not less than ten days nor more than thirty days, or be both fined and imprisoned. (Id. § 14.)

66o. Repeal.—Chapter 222 of the public acts of 1925 is repealed. (Id. § 15.)

81. Powers and Duties of Dairy and Food Commissioner.—The Dairy and Food Commissioner shall have power to enforce the provisions of sections 2436 to 2478, inclusive, of the general statutes, and, when the necessary evidence is submitted by the Connecticut Agricultural Experiment Station or the State Department of Health that any of said provisions has been violated, he shall make complaint to the prosecuting officer having jurisdiction thereof. The Dairy and Food Commissioner, or his authorized agent, shall have the right to take samples of milk or cream from

any producer or vendor upon the tender of the market price thereof, and shall seal and mark such samples, and, upon request of such producer or vendor or his agent, shall seal and mark duplicate samples of such milk or cream and leave the same with such producer or vendor. Any two bottles of milk or cream procured as a sample as herein provided shall be deemed duplicates for the purpose of this act. (G. S. 1918, § 2479, as amended P. A. 1927, c. 106.)

84. Sale of Impure Milk Prohibited—Penalty.—No person, firm or corporation shall offer or sell or expose for sale for human consumption, any milk containing an average of more than one million bacteria per cubic centimeter, as determined by analyses made by a laboratory approved by the State Department of Health of at least three separate samples taken, within a period of not exceeding thirty days, from milk offered or sold or exposed for sale by the same person, firm or corporation; and no person, firm or corporation shall, for any purpose, use or publish any result of any count or test of bacteria, which count or test shall not have been made by the State Department of Health or by a laboratory approved by the State Department of Health. Any person, firm or corporation violating any provision hereof shall be fined not more than one hundred dollars. (G. S. 1918, § 2482, as amended P. A. 1927, c. 157.)

131. Equipment of Milk House or Room.—A milk house or room shall be provided in any dairy where milk is being produced, handled or sold, and such house or room shall be used exclusively for the care, cooling, handling and storing of milk or products thereof, and shall have a smooth, concrete floor, graded, drained and trapped, so that water will not stand on the floor. The space occupied by windows shall equal at least ten per centum of the floor area. All windows, doors or other openings shall be effectually screened during the fly season. If a steam boiler shall be used, a suitable ventilator shall be provided in the ceiling to carry off the steam. Milk plants in which milk is being prepared for retail trade shall be equipped with suitable facilities for washing and sterilizing bottles, cans and other equipment and shall have an adequate supply of hot and cold water and if a steam boiler and sterilizer shall not be used, a chemical solution approved by the Dairy and Food Commissioner, shall be used for sterilizing purposes. (P. A. 1925, c. 225, § 11, as amended P. A. 1927, c. 232.)

135. Sale of Milk Regulated.—No person shall bottle, pour, dip or measure any milk, cream, skim milk or buttermilk for sale at retail in any vehicle upon any street, or in any other place than a milk room or place approved by the Dairy and Food Commissioner. Milk, when served by any hotel, restaurant, lunchroom, fountain or other place of public entertainment, shall be served in the original bottle, the cap of which shall not be removed except in the presence of the consumer or patron, but this provision shall not apply to cream so served or to mixed beverages of which milk forms a part. (Id. § 15.)

136. Not to Engage in Process Known as "Pasteurization of Milk or Cream" Without Permit.—No person, firm or corporation shall engage in the process known as "pasteurization of milk or cream" for public sale until a permit shall have been issued by the Dairy and Food Commissioner. Such permit shall be issued for a period ending December thirty-first of each year, and may be suspended or revoked at any time for cause by the Dairy and Food Commissioner. During pasteurization a competent person shall be in charge who shall have passed an examination satisfactory to the Dairy and Food Commissioner and shall hold a certificate to pasteurize milk, which certificate shall be valid until revoked. No milk or cream shall be sold in this State as "pasteurized" milk or cream unless produced in accordance with the provisions hereinafter specified. (Id. § 16.)

140. Equipment of Plants.—Each pasteurizing plant, except such plants as shall use the single "batch" system, shall be equipped with an automatic controller and an automatic recording thermometer, which shall regulate and register on a chart the temperature of the milk or cream as it shall be pasteurized. The recording thermometer shall be tested at least twice each week by a certified operator, and an accurate record of the findings shall be kept in such a manner as the Dairy and Food Commissioner may require, showing the date when the thermometers were tested. Each plant shall be equipped with a certified thermometer for checking the accuracy of recording thermometers, and such thermometer shall be certified as to its accuracy before using by the Connecticut Agricultural Experiment Station, at New Haven. An automatic controller and a duplicate automatic recording thermometer shall be kept in reserve in good repair at all times. Plants pasteurizing with the "batch" system, with one tank, shall be equipped with an automatic recording thermometer which shall register on a chart the temperature of the milk or cream as it shall be pasteurized, and a duplicate automatic recording thermometer shall be kept in reserve in good repair at all times. Each chart for recording shall be certified to by the Dairy and Food Commissioner before being used, while in use shall be kept in a

locked chamber and after use shall be preserved for at least six months, subject to inspection by the Dairy and Food Commissioner. (Id. § 20.)

Feeding Stuffs.

164. Statement Concerning Weight and Quality to be Filed With the Connecticut Agricultural Experiment Station—Fee.—Before any concentrated commercial feeding stuff shall be sold or offered or exposed for sale in this State the person who shall cause it to be sold or offered or exposed for sale shall file with the Connecticut Agricultural Experiment Station on January 1, 1928, and annually thereafter, two certified copies of the statement prescribed in section two of said act, on forms supplied by the Connecticut Agricultural Experiment Station, and shall pay a registration fee of fifteen dollars for each brand to be sold or offered or exposed for sale in this State. When any feeding stuff shall have been registered and the fee paid thereon, the director of said station shall issue a certificate of registration for such feed, and a list of the brands so registered shall be published annually in the station report. Fees so paid to said station shall be used toward defraying the expense of inspection. Whenever registration and payment as prescribed herein shall have been made on any brand of feeding stuff by any person, no other person shall be required to register such brand or to pay a registration fee thereon. The director may refuse registration of any feeding stuff, or may cancel any registration which shall have been made, if it shall appear or shall be found that all the provisions of said act or of this act have not been fulfilled, or if the feeding stuff shall bear any statement, design or device which shall be false or misleading in regard to the materials of which it is composed. No feeding stuff on which registration shall have been refused or cancelled shall be permitted to be sold or offered or exposed for sale in this State. (P. A. 1925, c. 196, § 3, as amended P. A. 1927, c. 29.)

Fruits, Vegetables, Etc.

176d. Labels for Standard Grade of Farm Products to be Determined and Designed by Commissioner of Agriculture.—The Commissioner of Agriculture, having established grades or standards for farm products under the provisions of chapter 380 of the public acts of 1921,* may determine or design brands to be used on labels for identifying farm products packed in accordance with official grades and standards established as aforesaid and shall cause such labels to be printed and shall distribute the same at a reasonable price. A written application to the commissioner for permission to use any such label and a written permission therefor, signed by the commissioner or a duly authorized assistant, shall be a condition precedent to the use of any such label. The commissioner may revoke the right to use any such label whenever it shall appear on investigation that such label shall have been misused. (P. A. 1927, c. 199, § 1.)

176e. Notice to be Published.—Upon the establishment of such grades or standards and upon the determination of such brands, notice thereof shall be published for three successive weeks in three newspapers, stating the grade or grades so established and the brands so determined, and the date on which such establishment or determination is to take place. The commissioner shall distribute information relative to the grades or standards so established and the brands so determined. (Id. § 2.)

176f. Revocation of Right to Use Labels—Penalties.—After notice of the establishment of grades or standards and the determination of brands, no labels shall be used to identify farm products as being of a grade established as aforesaid after the revocation of the right to use such label by the commissioner. Any person who shall violate any provision of this section shall be fined not more than fifty dollars for the first offense and not more than two hundred dollars for each subsequent offense, and any person who shall obstruct or hinder the commissioner or any of his assistants in the performance of his duties under the provisions of this act shall be fined not less than ten dollars nor more than one hundred dollars. (Id. § 3.)

176g. Inspectors.—The commissioner may employ inspectors to inspect farm products labelled in accordance with official grades or standards established and promulgated by the commissioner for the purpose of determining and certifying the quality and condition thereof and other material facts relative thereto. Certificates issued in pursuance of such inspection and executed by the inspector shall state the date and place of inspection, the grade, condition and approximate quality of the farm products inspected and any other pertinent facts that the commissioner may

*See Nos. 176a-176c.

require. Such a certificate and all federal certificates relative to the condition or quality of such farm products shall be prima facie evidence in all courts of the State of the facts required to be stated therein. (Id. § 4.)

176h. Rules and Regulations.—The commissioner may prescribe rules and regulations for carrying out the provisions of this act, including the fixing of fees for inspections under the provisions of section four of this act. Such fees shall be paid monthly into the State treasury. (Id. § 5.)

176i. Inspection by Commissioner or His Agents.—The commissioner, in person or by some person authorized by him, shall have free access at all reasonable hours to any building or other place wherein it is reasonably believed that farm products labelled in accordance with official grades established and promulgated by the commissioner are being marketed or held for commercial purposes. The commissioner, in person or by some person authorized by him, shall have power to open any bag, crate or other container of such farm products and examine the contents thereof, and may, upon tendering the market price, take samples therefrom. (Id. § 6.)

Meat—Meat Products.

182a. Care of Live Poultry While Being Transported or Offered for Sale.—Any crate or other container used for the purpose of transporting, shipping or holding for sale any live poultry shall be in a sanitary condition and shall be constructed so as to provide sufficient ventilation and warmth and such poultry, while in such container, shall receive such reasonable care as may be required to prevent unnecessary suffering. Any person who shall violate any provision of this act shall be fined not more than one hundred dollars or imprisoned not more than thirty days or both. (P. A. 1927, c. 257, § 1.)

182b. Repeal.—Chapter 133 of the Public Acts of 1925 is repealed. (Id. § 2.)

183. Repealed.—(P. A. 1927, c. 257, § 2.)

PART IV.

Miscellaneous Laws.

Trade-Marks.

See No. 53aa, ante.

Weights and Measures.

289. Weight of Bushel of Various Articles—Penalty.—The bushel of apples shall contain forty-eight pounds; of dried apples, twenty-five pounds; of barley, forty-eight pounds; of dried beans, sixty pounds; of lima beans in pod, twenty-eight pounds; of string beans, twenty-four pounds; of beets, table size, fifty pounds; of beet greens, twelve pounds; of bran or shorts, twenty pounds; of buckwheat, forty-eight pounds; of carrots, fifty pounds; of clover seed, sixty pounds; of hard coal, eighty pounds; of Indian corn, fifty-six pounds; of corn meal, fifty pounds; of sea island cotton seed, forty-four pounds; of upland cotton seed, thirty pounds; of cranberries, thirty-two pounds; of dandelions, twelve pounds; of flaxseed, fifty-five pounds; of grass seed, timothy or herdsgrass, forty-five pounds; of redtop seed, fourteen pounds; of hickory nuts, fifty pounds; of horseradish, fifty pounds; of kale, commercially dry, twelve pounds; of lime, seventy pounds; of mangelwurzel, sixty pounds; of oats, thirty-two pounds; of onions, fifty-two pounds; of parsley, eight pounds; of parsnips, forty-five pounds; of peaches, fifty-two pounds; of dried peaches, thirty-three pounds; of pears, fifty-two pounds; of dried peas, sixty pounds; of dried peas in pod, twenty-six pounds; of peppers, twenty-four pounds; of plums, forty-eight pounds; of potatoes, sixty pounds; of sweet potatoes, fifty-four pounds; of quinces, forty-eight pounds; of rough rice, forty-five pounds; of rye, fifty-six pounds; of rye meal, fifty pounds; of fine salt, seventy pounds; of coarse salt, seventy pounds; of spinach, commercially dry, twelve pounds; of tomatoes, fifty-six pounds; of summer turnips, fifty pounds; of rutabaga turnips, fifty-five pounds; of wheat, sixty pounds. Any person who, himself or by his servant or agent, or as the servant or agent of another, shall sell or offer for sale any of the above-mentioned commodities at a less weight per bushel than herein specified shall be fined or imprisoned or both, as provided in section 2310* of the general statutes. (G. S. 1918, § 4784, as amended P. A. 1927, c. 226.)

NOTE: See also No. 66a et seq., ante.

*See No. 282.

DELAWARE.

PART II.

Special Food Laws.

Apples.

7-20. Repealed by implication. (L. 1927, c. 48, § 14.)

20a. Grades and Classes.—Apples packed in this State in closed packages, and intended for sale within or without this State, shall be graded as follows:

"Delaware Fancy" grade: This grade of apples shall consist of apples of one variety, which are mature, but not overripe, well formed, and free from decay, spray burn, limb rub, sunscald, visible watercore, or injury caused by dirt or other foreign matter, by skin punctures or bruises, except those incident to a proper packing, or by hail, russetting, disease, insects, or mechanical or other means, and each apple of this grade shall have the amount of color specified hereinafter for the variety; provided that in order to allow for the variations incident to proper grading and handling not in excess of ten per cent, by weight, of the apples in any one lot may be below the requirements of this grade, but not more than one-tenth of this amount, or 1%, shall be allowed for decay.

"Delaware Number One" grade: This grade of apples shall consist of apples of one variety which are mature, but not overripe, free from decay and from damage caused by dirt or other foreign matter, by skin punctures or bruises, except those incident to proper packing, or by spray burn, russeting, limb rubs, sunscald, visible watercore, hail, disease, insects, or mechanical or other means; and each apple of this grade shall have the amount of color specified hereinafter for the variety; provided that in order to allow for variations incident to proper grading and handling, not in excess of ten per cent, by weight, of the apples in any lot may be below the requirements of this grade, but not more than one-tenth of this amount, or 1%, shall be allowed for decay.

"Delaware Commercial" grade: This grade of apples shall consist of apples of one variety which meet the requirements of Delaware Number One except as to color, and provided further that early varieties such as Duchess of Oldenburg, Gravenstein, Liveland Raspberry, Red June, Summer Hagloe, Twenty Ounce, Wealthy, Williams, and other varieties which ripen at the same period need not be mature. In order to allow for variations incident to proper grading and handling, not more than ten per cent, by weight, of the apples in any lot may be below the requirements of this grade, but not more than one-tenth of this amount, or 1%, shall be allowed for decay.

"Delaware Number Two" grade: This grade of apples shall consist of apples of one variety which are mature but not overripe, free from decay and from serious damage caused by dirt or other foreign matter, by bruises except those incident to proper packing, or by spray burn, sunscald, hail, disease, insects or mechanical or other means. In order to allow for variations incident to proper grading and handling, not more than 10 per cent, by weight, of the apples in any lot may be below the requirements of this grade, but not more than one-tenth of this amount, or 1%, shall be allowed for decay.

"Delaware Unclassified" grade: This grade of apples shall consist of apples which are not graded in conformity with any of the foregoing grades:

"Well formed" means having the shape characteristic of the variety.

"Free from damage" means that the apples shall not be injured by any defect to an extent either apparent in the process of the proper grading or which would cause a loss in the ordinary preparation for use. The following blemishes shall not be considered as damage: (1) Two small healed insect punctures not larger than one-eighth inch in diameter in which the injured tissue is dry and corky; (2) russeting and limb rubs which do not materially disfigure the fruit; (3) scab spots affecting an aggregate area of not more than one-fourth inch in diameter; (4) hail marks where the injury is superficial and the skin has not been broken or discolored; (5) spray burn or sunscald where the injury is superficial and the normal color of the fruit is not materially changed and where there is no blistering or cracking of the skin.

"Free from serious damage" means that no defects shall be permitted which taken singly or collective, materially deform or disfigure the fruit. The following defects shall not be considered as serious damage: (1) Healed insect punctures which do not materially deform the fruit; (2) small scab and blotch infections

not exceeding an aggregate area of one-half inch in diameter, or cedar rust infection not exceeding an aggregate area of three-quarters inch in diameter provided the skin is not cracked; (3) superficial blemishes such as fly speck and sooty blotch affecting not to exceed one-third of the surface; (4) or fruit spots such as Bitter Pit (Strippen) and Jonathan Spot affecting not to exceed 10 per cent of the surface.

Each apple graded as "Delaware Fancy" or "Delaware Number One" must have the percentage of color specified in the following table, according to its variety. "Color," as referred to in the following table, shall be deemed and taken to mean a good shade of red, characteristic of the variety, and faded brown stripes shall not be considered as color:

	Variety.	
	Delaware Fancy.	Delaware No. 1.
Solid Red:		
Arkansas Black	50 per cent	25 per cent
Black Ben Davis	do.	do.
Gano	do.	do.
King David	do.	do.
Winesap	do.	do.
Other similar varieties	do.	do.
Red June	33 per cent	15 per cent
Other similar varieties	do.	do.
Striped or Partially Red:		
Delicious	50 per cent	25 per cent
Jonathan	do.	do.
McIntosh	do.	do.
Missouri Pippin	do.	do.
Strawberry	do.	do.
Other similar varieties	do.	do.
Arkansas (Mammoth Black Twig)	33 per cent	15 per cent
Baldwin	do.	do.
Ben Davis	do.	do.
Nero	do.	do.
Paragon	do.	do.
Rome Beauty	do.	do.
Stayman Winesap	do.	do.
Wealthy	do.	do.
Williams	do.	do.
York Imperial	do.	do.
Willowtwig	do.	do.
Crimson Beauty	do.	do.
Other similar varieties	do.	do.
Duchess of Oldenburg	25 per cent	10 per cent
Gravenstein	do.	do.
Hubbardston	do.	do.
Red Astrachan	do.	do.
Smokehouse	do.	do.
Summer Rambo	do.	do.
Other similar varieties	do.	do.
Red Cheeked or Blushed:		
Maiden Blush	Blushed Cheek	None
Monmouth (Red Cheeked Pippin)	do.	do.
Winter Banana	do.	do.
Other red cheeked or blushed varieties	do.	do.

No requirement as to color shall be deemed to apply to Fourth of July, Transparent, Early Ripe, Star, Grimes Golden, Henry Clay, Stark, and other yellow and green varieties. (L. 1927, c. 48, § 1.)

20b. Marks and Brands.—Each closed package of apples packed in this State, and intended for sale within or without this State shall be marked or branded in a conspicuous place on the outside of the package with the name and address of the person who own[s] the apples at the time they were packed, the true name of the

variety, the grade, and the minimum size of the apples therein contained; provided that the number of apples contained in the package may be substituted for the minimum size. The minimum size of the apples in every grade shall be determined by taking the transverse diameter of the smallest apples in the package. Minimum sizes may be designated by figures or words and the word "minimum" may be abbreviated to "min."

If the true name of the variety is not known to the packer, or to the person by whose authority the apples are packed, or branded, then such variety shall be designated as "unknown."

The letters and figures used in marking or branding closed packages of apples under this act shall be of a size not less than one-half inch in height.

The marks and brands prescribed in this act may be accompanied by additional marks or brands which are not inconsistent with or more conspicuous than and which do not in any way obscure the marks and brands prescribed. (Id. § 2.)

20c. Conditions of Sale.—No person shall sell or offer for sale in this State, or transport or ship or consign in this State for purposes of sale within or without this State, any apples in closed packages packed in this State unless the apples contained in every such closed package are graded in accordance with the provisions of this act, and unless every such package is marked or branded in accordance with the provisions of this act. (Id. § 3.)

20d. Closed Package.—The term closed package, as used in this act, shall be deemed and held to mean any package which is constructed in such manner as to require the removal of the cover or head for an inspection of its contents. (Id. § 4.)

20e. Size and Quality.—No person shall sell or offer for sale in this State, apples in closed packages packed without this State, unless every such package is marked or branded in accordance with the provisions of this act, and unless the apples on the face or surface exposed when the package is opened fairly represent the size and quality of the apples in the package, color excepted. (Id. § 5.)

20f. Board of Agriculture to Enforce.—It shall be the duty of the State Board of Agriculture to ascertain if closed packages containing apples packed in this State are marked or branded in a conspicuous place on the outside thereof, and with letters and figures at least one-half inch in height, stating the name and address of the owner, the name of the variety, the grade, and the minimum size or the number of apples contained therein, and for this purpose the said State Board of Agriculture and its agents are hereby authorized to enter any place where there are closed packages of apples coming within the provisions of this act, and to examine the outside of such closed packages, and the said State Board of Agriculture and its agents are further authorized, for the purpose aforesaid, to examine the outside of closed packages of apples in trains, cars, trucks or other vehicles, or when carried in water transports. But it shall not be the duty of the State Board of Agriculture or its agents to inspect the contents of closed packages to ascertain whether the marks or brands are a true statement of the facts, nor to inspect the packing of apples, unless on the request of the owner or packer of the apples.

It shall be the duty of the said State Board of Agriculture to report to the Attorney-General every case where any closed package of apples is not marked or branded as aforesaid. (Id. § 6.)

20g. Appropriations.—The State Board of Agriculture is authorized to expend annually such amount of money as shall be necessary and proper for the performance of its duties under this act, provided that such sum shall not exceed in any year the sum of three thousand dollars ($3,000.00).

The sum of $3,000.00 is hereby appropriated for each year hereafter, beginning with the year 1927, out of any moneys in the treasury of the State for the purpose of accomplishing the objects of this act.

The State Treasurer is hereby authorized, in each year hereafter, beginning with the year 1927, to pay to the State Board of Agriculture, on orders of said board signed by its president and attested by its secretary, such sums of money, for the purposes of this act, as the said board shall designate, provided that the aggregate of the sums paid by the State Treasurer, as aforesaid, shall not exceed in any one year the sum of $3,000.00.

The State Board of Agriculture shall keep a true and detailed account of its expenditures under the provisions of this act, and which account shall be at all times open to inspection by the citizens of this State. (Id. § 7.)

20h. Packing of Boxes.—No person shall pack for sale, ship for sale, offer or consign for sale, or sell, any apples in closed packages, unless the apples on the face or surface exposed when the package is opened fairly represent the size and quality of the apples in the package, color excepted. (Id. § 8.)

20i. Presumption.—The foregoing provisions as to the grading of apples, and as to the marking or branding of closed packages containing apples, shall not apply in any case where the apples in such packages are not intended to be sold, or offered for sale, or shipped or consigned for the purpose of sale, but apples in any closed package shall be presumed to be intended to be sold or offered for sale, or shipped or consigned for the purpose of sale, unless and until the contrary shall be satisfactorily established. (Id. § 9.)

20j. United States Grades.—The provisions of this act, so far as they relate to the grading of apples, shall not apply where the apples contained in the closed package are graded according to the official standards for the grading of apples as promulgated from time to time by the Secretary of Agriculture of the United States, which official standards are commonly known as the United States grades; but each closed package of apples must, in every case, be marked or branded in accordance with the provisions of this act relative to the marking and branding of packages. (Id. § 10.)

20k. Common Law to Remain in Force.—All marks or brands on closed packages containing apples shall be a true statement of the facts indicated by such marks or brands. This act, or anything herein contained, shall not be deemed or held to be a substitute for, or to bar or preclude the prosecution under any other statute of this State, or under the common law, or under any statute of the United States applicable to mismarking or misbranding. (Id. § 11.)

20l. Penalty.—Every violation of any of the provisions of this act shall be deemed a misdemeanor and every person guilty thereof shall, upon conviction, be fined not less than $25.00 nor more than $100.00, in the discretion of the court, for every such violation.

Any person who shall obstruct or in any way interfere with the State Board of Agriculture or any of its agents in the execution of any of the duties of the said State Board of Agriculture under this act shall be deemed to have violated the provisions of this act. (Id. § 12.)

20m. Repeals.—All acts and parts of acts relating to the grading or packing of apples, or the marking or branding of apple containers, and all other acts and parts of acts inconsistent with this act, are hereby repealed. (Id. § 14.)

Beverages.

21. Licenses; Fees.—No person, firm or corporation shall manufacture for sale in bottles or jugs any soft drink or other nonalcholic beverage (except apple cider) within this State without having first applied for and having received a license from the State Board of Health. Said application shall contain the name of the applicant, his address and the location of his manufacturing plant or plants, the name of the beverage or beverages manufactured, and such other pertinent information as shall be prescribed by the State Board of Health in pursuance of the provisions of this act. The application shall be accompanied by a fee of twenty-five dollars ($25.00), upon receipt of which application and fee the State Board of Health shall issue to said applicant a license for the manufacture of the beverages mentioned in this section. Said license shall be for the fiscal year ending June 30, 1928, unless sooner revoked, as herein provided, and shall be renewed annually thereafter. A license may be denied at the time of application if the establishment of the applicant is known to be in an insanitary condition or if the water supply is known to be dangerously polluted. No soft drink or other nonalcoholic beverage (except apple cider) not manufactured in this State shall be sold or offered for sale in the State of Delaware, unless same is first inspected and registered with the State Board of Health, and a license fee of $50.00 shall be paid by said manufacturer, his agent or dealer, to the State Board of Health, same to be renewed annually. (R. C. 1915, § 780A, as added L. 1923, c. 55, and amended L. 1927, c. 52.)

22. (The following is to be substituted for paragraph (e) of R. C. 1915, § 780C.): (e) All bottling establishments shall be equipped with adequate and sufficient machinery for the automatic soaking, cleaning and rinsing of bottles. All bottles prior to refilling shall be cleansed and sterilized by soaking in a solution of not less than three and one-half per cent caustic alkali, for a period of not less than three minutes, and at a temperature not lower than one hundred and twenty degrees Fahrenheit, to be followed by spraying and rinsing with water from the same source as used in filling, where practicable, or in any case by water of an accepted degree of purity and safety. Bottles too large for the machine shall be washed in the hot alkali solution and rinsed until free from any trace of alkali before refilling. All capping machines shall be provided with automatic crown feed. The reuse of caps, crowns or corks is prohibited. Such caps, crowns, and corks shall be at all

times so kept or stored as to be shielded from infection and contamination. All containers for the preparation or storage of syrups, fruit juices, extracts and flavors used in the manufacture of beverages shall be of glass, glazed-lined metal, or stoneware; provided that this shall not apply to those preparations not removed from the manufacturer's shipping package. In no case shall receptacles of galvanized iron be used for liquids to be bottled. Containers shall be covered at all times. The construction of pumps and piping used for conveying syrups, fruit juices and similar liquids shall be such as to permit of ready disconnection and cleaning. Linings of lead or zinc are prohibited. Proper receptacles shall be provided for solid wastes. Floors, walls, ceilings, doors, windows, window ledges, etc., shall be kept clean and free from dust. All fixtures, machinery, utensils and piping shall be maintained in cleanly condition, using for this purpose hot water, live steam and such chemical agents as may be approved by the State Board of Health. (Id. § 780C (e).)

(Strike out the word "wood" in paragraph "g" of R. C. 1915, § 780C, following the word "brick." Add at the end of said paragraph "g" the following:)

It shall be considered a violation of this act for any person, firm or corporation to fill or refill any glass, jar, bottle or any other container with soda water, mineral water or any other drink or fluid, with attempt to seal or vend such water, drink or fluid, which bears the label of any other person, firm or corporation, or which has blown in such glass, bottle or other container the name of any person, firm or corporation without consent of such person, firm or corporation. (Id. § 780C (g).)

30a. **Label; What to Contain.**—Any drink product as defined above which contains artificial color or flavor, such facts shall be put on the cap or label. Such cap or label shall also bear the name and address of the bottler or manufacturer of such product, except that where the name of the bottler or manufacturer of such product has been blown in the bottle or other container shall be exempt from putting the name and address of the bottler or manufacturer of such product on the cap itself. (R. C. 1915, § 780L, as added L. 1927, c. 52.)

Cold Storage.

39. **Storage Longer Than Twelve Months Forbidden, Except Upon Consent of Board of Health.**—No person or persons, corporation or corporations, engaged in the business of cold storage warehousemen or refrigerating within the State of Delaware, shall keep in storage for preservation or otherwise any kind of food or any article used for food for a longer period than twelve calendar months without the consent granted as hereinafter provided by the Board of Health having jurisdiction, or its duly authorized agents or officers, or except as hereinafter otherwise provided. (R. C. 1915, § 774, as amended L. 1927, c. 51.)

42. **Food Kept Longer Than Twelve Months; Report of; Delivery Without Health Board Certificate, Forbidden; Time Extended; Time Limit.**—In the event of any food or any article used for food being kept or maintained in refrigerating or cold storage places for a longer period than twelve months, report of such fact shall be filed by the person or persons, corporation or corporations operating such cold storage or refrigerating place with the board of health having jurisdiction as aforesaid, upon blanks so provided by said board of health upon application, and no such food or article used for food shall, after the expiration of said period of twelve months, be delivered to any person or persons, corporation or corporations, without a certificate from the board of health having jurisdiction as aforesaid first had and obtained authorizing such delivery. Power is given to said board of health, or its proper agents, to extend the time when any particular foodstuff or articles used for food may be kept, maintained or preserved in such place or places. (Id. § 777.)

Dairy Products—Substitutes for Dairy Products.

47. L. 1927, c. 210, amends R. C. 1915, § 3594, by adding thereto the following paragraph:

The Municipal Court of the city of Wilmington shall have concurrent jurisdiction of all violations of this section committed within the corporate limits of the city of Wilmington.

PART III.

Special Drug Laws.

Pharmacy, Poisons and Narcotics.

101. Qualifications of Applicants for Licenses.—An applicant to be licensed as a pharmacist shall be not less than twenty-one years of age; and if said applicant shall have been a resident of the State of Delaware for a period of at least five years previous to the date of taking examination, such applicant shall present to the State Board of Pharmacy satisfactory evidence that he has had a sufficient general education, shall have had at least four years experience in pharmacy under the instruction of a licensed pharmacist and shall pass a satisfactory examination by or under the direction of the Board of Pharmacy; if such applicant shall not have been a resident of this State for the period of at least five years previous to the taking of such examination, he shall present to the Board of Pharmacy satisfactory evidence that he is a graduate of a recognized school or college of pharmacy, and shall also pass a satisfactory examination by or under the direction of the Board of Pharmacy.

An applicant to be licensed as an assistant pharmacist shall be not less than eighteen years of age, shall have a general education sufficient in the judgment of the Board of Pharmacy, shall have not less than two years' experience in pharmacy under the instruction of a licensed pharmacist, and shall pass a satisfactory examination by or under the direction of the Board of Pharmacy.

Provided, however, that in the case of persons who have attended a reputable school or college of pharmacy the actual time of attendance at such school or college may, in the discretion of the Board of Pharmacy, be deducted from the time of experience required of pharmacists and assistant pharmacists, but in no case shall less than two years' experience be required for registration as a licensed pharmacist. (R. C. 1915, § 864, as amended L. 1927, c. 56, § 1.)

113a. Drug Store; Operation; Penalties.—Every pharmacy or drug store shall be owned by a licensed pharmacist, and no co-partnership shall own a pharmacy or drug store unless all the partners are licensed pharmacists; provided, that any corporation organized and existing under the laws of the State of Delaware, or of any other State of the United States, and authorized to do business in the State of Delaware and empowered by its charter to own and conduct pharmacies or drug stores, and, at the time of the passage of this act, still owns and conducts a pharmacy or pharmacies or a drug store or stores in the State of Delaware, may continue to own and conduct the same and may establish and own additional pharmacies or drug stores in accordance with the provisions of this act; but any such corporation which shall not continue to own at least one of the pharmacies or drug stores theretofore owned by it or ceases to be actively engaged in the practice of pharmacy, shall not be permitted thereafter to own a pharmacy or drug store; and provided, further, that the provisions of this act shall not apply to any person who is not a registered pharmacist, who, at the time of the passage of this act, owns a pharmacy or drug store.

Any licensed pharmacist shall have personal supervision of not more than one pharmacy or drug store at the same time.

Every person, partnership, association or corporation doing business as the proprietor or proprietors of a pharmacy, drug store or other place of business wherein the retailing, compounding or dispensing of any drugs, chemicals or poisons or the compounding of physicians' prescriptions is carried on, shall cause the name of the proprietor or proprietors to be displayed upon a sign conspicuously placed upon the exterior of the premises and this sign shall be presumptive evidence of the ownership of such pharmacy, drug store or other place of business.

Any person, partnership, association or corporation violating the provisions of section 875A, section 21, to 875A, section 23, inclusive, of this act, shall be deemed guilty of a misdemeanor, and if a corporation, any officer thereof who knowingly participates in such violation shall also be deemed guilty, and on conviction thereof shall be fined not less than twenty-five dollars and not more than one hundred dollars, and each day any violation of said sections of this act shall continue shall constitute a separate and distinct offense. That jurisdiction of any offense for the violation of sections 21 to 23, inclusive of this act, and the right of appeal

shall be as provided for in paragraph 874a, section 19a of this chapter. (R. C. 1915, § 875A, as added L. 1927, c. 56, § 2.)*

Serum, Antitoxin, Etc.

133-135. Expired.

135a. **Antihog-Cholera Serum; Appropriation.**—The sum of five thousand dollars ($5,000) be and the same is hereby appropriated as an emergency fund to be used by the State Board of Agriculture during the period ending June 30, 1927, for the purpose of securing antihog-cholera serum and virus. (L. 1927, c. 46, § 1.)

135b. **Same; Distribution.**—The antihog-cholera serum and virus purchased under the provisions of this act shall be distributed by the State Board of Agriculture, whenever from investigation and the information they can obtain there is danger of an epizootice of hog cholera in any part of the State. The serum and virus shall be issued to those persons deemed competent by the said board to administer it, on their application in writing stating the approximate number of animals to be treated and the amount of serum and virus to be used, for which amount the persons so receiving the same shall receipt to the said board. (Id. § 2.)

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*Section 875A, as added by chapter 56 of the Laws of 1927, is divided into four subsections, indicated as sections 21 to 24. We have consolidated these sections as No. 113a.

FLORIDA.

PART I.

General Food and Drug Law.

Miscellaneous General Provisions.

17d. Bureau of Inspection.—There is hereby created in the Department of the Commissioner of Agriculture of the State of Florida the Bureau of Inspection. The Bureau of Inspection created by this act shall be under the control and supervision of the Commissioner of Agriculture of the State of Florida.. The Commissioner of Agriculture is hereby authorized to employ a supervisor of inspectors, whose salary shall be thirty-six hundred ($3,600.00) dollars per year, and whose duty it shall be to receive all reports from the inspectors; to direct the inspectors in the performance of their duties under instructions of the Commissioner of Agriculture; to receive all remittances of any nature and kind from the inspectors and to keep an accurate account thereof; to properly dispose of the funds coming into his hands, and to perform any and all duties in connection with the Bureau of Inspection, which he may be required by the Commissioner of Agriculture to perform. Said supervisor of inspectors is hereby vested with all power and authority and with each and every obligation and restriction which are vested in other police officers. (L. 1925, c. 10149, § 1, as amended by act of May 27, 1927.)

17e. Inspectors; Duties; Powers.—The Governor is hereby authorized to appoint inspectors for the Bureau of Inspection as provided by law as the same may be recommended in writing by the Commissioner of Agriculture. The inspectors appointed by the Governor under the provisions of this act shall each hold such office until such time as the Governor may deem proper to discontinue the services of such inspector, or until such time as the Commissioner of Agriculture may advise the Governor either that the services of such inspector are not satisfactory or that the services of such inspector are no longer required by the Bureau of Inspection. Commissions issued to such inspectors shall run from the date thereof during the pleasure of the Governor not exceeding the term of four years, and the Governor is hereby expressly authorized to terminate the appointment of any inspector at any time when in his judgment the best interests of the State will be subserved by discontinuing the services of such inspector. Each inspector appointed under the provisions of this act shall receive a salary of twenty-four hundred ($2,400.00) dollars per annum, payable monthly in the same manner as other State officials, and shall be reimbursed for his expenses incurred while on official business, including railroad fare, hotel bills, telegrams, food and lodging and other expenses necessary and incident to the performance of his duties, not exceeding the sum of twenty-four hundred ($2,400.00) dollars per annum and shall be allowed the sum of ten cents per mile for use of automobile while traveling upon official business, such bills for expense to be audited by the supervising inspector and approved by the Commissioner of Agriculture. Should any inspector fail to expend the monthly proportionate allowance for expenses, the balance may be used when necessary in any subsequent month. Each inspector appointed under the provisions of this act is hereby vested with all power and authority and with each and every obligation and restriction which are vested in other police officers. It shall be the duty of each of the inspectors appointed under the provisions of this act, when directed by the Commissioner of Agriculture so to do, to perform any or all of those duties which have heretofore been performed by oil inspectors, by food, drug and fertilizer inspectors for the Chemical Division of the Department of Agriculture, and by citrus fruit inspectors, and each of said inspectors appointed under the provisions of this act is hereby vested with all power and authority and with each and every obligation and restriction which was heretofore applied to or vested in oil inspectors, food, drug and fertilizer inspectors for the Chemical Division of the Department of Agriculture and citrus fruit inspectors. (Id. § 2.)

PART II.

Special Food Laws.

Citrus Fruit.

19. Closed Season.—It shall be unlawful for any person to sell or offer for sale, transport, prepare, receive or deliver for transportation or market any citrus fruit between the 31st day of August and the 1st day of December in any year, unless such fruit is accompanied by a certificate of inspection and maturity thereof as defined by this act, issued by a duly authorized citrus fruit inspector of the Department of Agriculture of the State of Florida.

The certificates of inspection and maturity mentioned in this act shall be of such number, form, size and character, and shall be used in such manner to identify the fruit to which they relate, as the Commissioner of Agriculture of this State may by rule or regulation prescribe. Provided, that the Commissioner of Agriculture may, by regulation under the maturity standard now provided by law, prescribe a tolerance of two-tenths of one per cent on either the total soluble solids or ratio, or divided between the two. All inspections shall be made at the packing house. Provided, that it shall be unlawful during the remaining period from December 1st to August 31st following in each year, for any person to sell, offer for sale, transport, deliver or prepare for sale or transportation any citrus fruit which is immature or otherwise unfit for consumption, or for any person to receive any such fruits under a contract of sale, or for the purpose of sale, offering for sale, transportation or delivery for transportation thereof. Provided, further, that the provisions of this act shall not apply to sales of citrus fruit "on the trees," not [nor] to common carriers or their agent when the fruit accepted for transportation or transported by such common carrier is accompanied by a proper certificate of maturity of such fruits, as hereinafter provided, or when accepted by them for transportation between the 1st day of December in any year and the 1st day of September next thereafter, nor to transportation of fruit from grove to packing house located within this State. (L. 1925, c. 10103, § 2, as amended act of May 27, 1927.)

21. Registration of Packing House.—The owner, manager or operator of each packing house at which it is intended to pack or prepare citrus fruit for market or transportation during the then present or then next ensuing citrus fruit shipping season, shall register such packing house and its location, shipping point and postoffice, with the Commissioner of Agriculture, not less than ten (10) days before packing or otherwise preparing any citrus fruit for sale or transportation in or at such packing house; and he shall in addition to such registration give the said commissioner not less than seven (7) days written notice of the date on which the packing, or other preparation for sale or transportation between August 31st, and December 1st of citrus fruit of the then current or the next ensuing season's crop would be begun. And it shall be unlawful for any person to operate a citrus fruit packing house or to pack or otherwise prepare for sale or transportation any citrus fruit at such packing house, without having previously registered said packing house and given the notice herein required; provided that, no certificate of inspection and maturity of any fruit shall be issued by any authorized inspector to any person who has not registered with the commissioner during the then current year or has not given to said commissioner the notice as required by this act, nor until after payment of the inspection fee imposed by or under the provisions of this act and such payment evidenced as herein required or authorized. (Id. § 4.)

22. Fees; Stamps.—Every vendor or shipper of citrus fruit between the dates of August 31st and December 1st of each year shall pay to the Commissioner of Agriculture a fee of two and one-half cents for every box of citrus fruit by him, it or them sold, transported or delivered for transportation, or when such fruit is sold, or transported in bulk or in containers other than standard size boxes shall pay two and one-half cents for each two (2) cubic feet or eighty (80) pounds of such fruit; provided, however, that if the Governor and Commissioner of Agriculture shall determine, not less than thirty (30) days before the first day of September in any year, that a smaller fee than that herein named will produce sufficient funds to defray the expenses of and incident to the enforcement of this act during the then next ensuing citrus fruit shipping or marketing season, the Governor may by order and proclamation reduce the fee to be paid during the next ensuing season to such sum as may be deemed sufficient for said purpose.

Such fee shall be due when the fruit is prepared for market or transportation, and payment thereof shall be evidenced by stamps; as hereinafter provided. And

it shall be unlawful to sell, deliver, transport, or deliver or receive for transportation, any citrus fruit payment of the fee which is not evidenced by proper stamps as may be provided by regulation prescribed by the Commissioner of Agriculture.

Provided, however, that the provisions of this section shall not apply to the transportation or carriage of fruit from grove to packing houses within this State. (Id. § 5.)

25a. Enforcement.—The Commissioner of Agriculture may in each year employ as many citrus fruit inspectors, for such period or periods, not exceeding one year, as said commissioner shall deem to be necessary for the effective enforcement of this act.

All persons authorized under the provisions of this act to inspect and certify to the maturity of citrus fruit shall be governed in the discharge of their duties as such inspectors by the provisions of this act and by the rules and regulations prescribed by the Commissioner of Agriculture, as herein authorized, and shall perform their duties under his direction and supervision. (Id. § 9.)

25b. Salary of Inspector.—The salary of each citrus fruit inspector shall be at the rate of one hundred and fifty dollars ($150.00) per month, and in addition thereto shall receive his or her necessary traveling and other expenses incurred by him or her in the discharge of his or her duties as such inspector, which shall be paid upon approval of accounts therefor by the Commissioner of Agriculture. The commissioner is hereby authorized and empowered to employ such additional field and other agents and clerical assistance, at such times and for such periods and to incur and pay any other expenses, including traveling expenses of the Commissioner of Agriculture, during the citrus fruit season as may be necessary for the effective enforcement of this act, and to secure the payment of the inspection fees hereby imposed or that may be imposed under the authority of this act.

In cases of emergency or necessity when no citrus fruit inspector is available for inspection of a particular lot of citrus fruit, the commissioner may designate some fit and competent individual to inspect, test and certify as to such lot of fruit. Certificates made or issued by such designated individual shall be signed by him or her as "Special Citrus Fruit Inspector;" he or she shall not be required to give any bond, but shall be subject to the penalties imposed by this act for any violation of any of the provisions hereof. (L. 1925, c. 10103, § 10.)

28a. Fund.—All money received by the Commissioner of Agriculture for inspection fees and certificates of inspection and maturity shall be paid by him to the State Treasurer who shall deposit said money to account of "Citrus Fruit Inspection Fund."

All salaries and other expenses incurred in the execution and enforcement of the provisions of this act shall be paid out of such "Citrus Fruit Inspection Fund" (except as provided in the next succeeding section) by vouchers approved by Commissioner of Agriculture and warrant issued thereon by the Comptroller. (Id. § 14.)

28aa. Appropriation.—In order to provide for the expenses incident to the enforcement of this act during the citrus fruit shipping season of 1925 and 1926, the State Comptroller and Commissioner of Agriculture are hereby authorized to transfer to the Citrus Fruit Inspection Fund the sum of fifty thousand dollars ($50,000.00) from other inspection tax funds of this State. Provided, however, that said sum shall be returned to such other inspection tax funds from the proceeds of the inspection fees hereby authorized as soon as practicable. (Id. § 15.)

28aaa. Citrus Fruit Damaged by Frost; Emergency Inspectors.—In the event that any considerable portion of the citrus fruit produced in the State of Florida, and on the trees at the time shall have suffered such serious damage by reason of the occurrence of a severe frost and/or a freeze as to have become unfit for consumption the Commissioner of Agriculture in his discretion and by and with the consent and advice of the Governor shall have the power to declare the existence of a State emergency in the citrus industry. It shall forthwith become the duty of the Commissioner of Agriculture to employ as many emergency inspectors for such period or periods, not longer than until the next ensuing June 1st, as he may deem necessary for the effective enforcement of this act. (Act of May 27, 1927, § 1.)

28b. Emergency Inspectors; Powers.—Such emergency inspectors shall have the right and authority and it shall be their duty under the supervision of the Commissioner of Agriculture, and subject to such rules and regulations as said Commissioner of Agriculture may promulgate in accordance with this act, to inspect citrus fruit found at any packing house, or at any other place where the same is being prepared for shipment or for sale; provided, that except as to shipments of citrus fruit in bulk, all samples drawn for inspection under the terms of this act shall be taken only from the packing bins or from the place where said fruit is last found

in bulk before being packed in the boxes or containers in which said fruit is to be sold or transported. In the event that any of such fruit is found to be so damaged as to be unfit for consumption, it shall be the duty of said emergency inspectors detecting such condition to inform the manager, or other person in active charge of the packing house where such damaged fruit is found that the same is unfit for consumption and should not be sold or transported. It shall likewise be the duty of said emergency inspectors to notify the Commissioner of Agriculture as to the disposition of said damaged fruit and as to all facts concerning the condition of the same. In the event that such damaged fruit so found to be unfit for consumption shall not be destroyed by shipper, it shall become the duty of the Commissioner of Agriculture to forthwith furnish all information concerning the same to the United States Department of Agriculture and/or the officials, agents or inspectors of said United States Department of Agriculture, or of any bureau thereof, engaged in the work of inspecting and condemning such damaged fruit. It shall likewise be the duty of said Commissioner of Agriculture to co-operate fully with the United States Department of Agriculture and its agents in effecting the condemnation and destruction under the United States laws of all such damaged fruit which shall be shipped, sold or transported in spite of the warning of said emergency inspectors, and in assisting in the prosecution of all persons who may be prosecuted in the United States courts by reason of the sale or transportation of said damaged fruit. (Id. § 2.)

28c. Purpose of Act.—It is the purpose of this act that such emergency inspectors as are provided for herein shall be used by the Commissioner of Agriculture so as to enlarge and assist the inspection service of the United States Department of Agriculture and that such emergency inspectors shall use such tests and standards in determining the fitnes or unfitness for consumption of damaged fruit as may be from time to time prescribed by the Bureau of Chemistry of the United States Department of Agriculture for use by its own licensed inspectors and agents. (Id. § 3.)

28d. Rules and Regulations.—The Commissioner of Agriculture shall from time to time as he may deem it to be expedient and necessary make and promulgate rules and regulations for carrying out and enforcing the provisions and regulations of this act; provided, that such regulations shall incorporate the standards and tests prescribed from time to time by the Bureau of Chemistry of the United States Department of Agriculture. (Id. § 4.)

28e. Obstructing Emergency Inspector.—It shall be unlawful for any person to obstruct or resist any emergency inspector in the performance or discharge of any duty imposed upon or required of him or her by the provisions of this act or by any rule or regulation prescribed by the Commissioner of Agriculture as herein authorized. (Id. § 5.)

28f. Duties of Emergency Inspectors.—It shall be unlawful for any emergency inspector to make or issue any false report or statement as to inspection of any fruit or as to the condition of any citrus fruit inspected by him. (Id. § 6.)

28g. Emergency Inspectors; Salaries; Length of Service.—The emergency inspectors employed under the provisions of this act shall each hold office until such time as the Commissioner of Agriculture may deem proper to discontinue his services, or until such time as the supervising inspector may advise the Commissioner of Agriculture either that the services of such emergency inspector are not satisfactory or that the services of such emergency inspector are no longer required. Each emergency inspector employed under the provisions of this act shall receive a salary of one hundred fifty dollars ($150.00) per month, and in addition thereto shall receive his necessary traveling and other expenses incurred by him in the discharge of his duties as such inspector, which shall be paid upon approval of accounts by the supervising inspector and the Commissioner of Agriculture. Such salaries and expenses shall be paid out of the "General Inspection Fund,"* created by chapter 10149, acts of 1925.

The Commissioner of Agriculture is hereby authorized to employ such additional field and other agents and clerical assistance, at such times and for such periods and to incur and pay out of the "General Inspection Fund" on vouchers approved by the supervising inspector and Commissioner of Agriculture, any other expenses, including traveling expenses of the Commissioner of Agriculture, during such period of emergency season as may be necessary for the effective enforcement of this act. (Id. § 7.)

28h. State Chemist to Retain Power.—The State Chemist and Assistant State Chemist of the State of Florida shall retain all power and authority heretofore vested in them in regard to inspection in any ways affected by the provisions of this act. (Id. § 8.)

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*See No. 17f.

28i. Penalty.—Any person who shall violate any of the provisions of this act shall be punished by a fine of not less than fifty dollars ($50.00) and not more than one thousand dollars ($1,000.00) or by imprisonment for not less than one month and not more than twelve months, or both such fine and imprisonment in the discretion of the court. (Id. § 9.)

28ii. Repealed.—All laws in conflict with the provisions of this act are hereby repealed. (Id. § 10.)

28j. Use of Arsenic on Citrus Trees Prohibited.—It shall be unlawful for any person, partnership, association or corporation owning, managing or tending and cultivating citrus groves or trees to use arsenic or any of its derivatives or any combination, compound or preparation containing arsenic, as a fertilizer or spray on bearing citrus trees. (Act of May 25, 1927, § 1.)

28k. Sale of Citrus Fruit Containing Arsenic Prohibited.—It shall be unlawful for any person, partnership, association or corporation to sell or offer for sale, transport, prepare, receive or deliver for transportation or market, any citrus fruit of any variety which shall contain any arsenic, or any compound or derivative of arsenic. (Id. § 2.)

28l. Inspectors.—The citrus fruit inspectors who shall be appointed by the Governor upon recommendation of the Commissioner of Agriculture, and the special citrus fruit inspectors who may from time to time be designated by the Commissioner of Agriculture, in accordance with Chapter 10103, Laws of Florida, Acts of 1925, shall be authorized to inspect citrus fruit hereunder, at any packing house or other place where citrus fruit is being received or prepared for sale and transportation and to carry out the provisions of this act in general under the direction and supervision of the Commissioner of Agriculture and subject to the provisions of law and the rules and regulations prescribed by the Commissioner of Agriculture. (Id. § 3.)

28m. Seizure; Analysis.—Whenever any citrus fruit inspector or special citrus fruit inspector shall find citrus fruit at any packing house or other place where the same is being received or prepared for sale or transportation which citrus fruit shall, when tested under the provisions of Chapter 10103, Laws of 1925, show an abnormal and excessively high ratio of total soluble solids of the juice thereof to the anhydrous citric acid thereof, indicating the presence of arsenic therein, it shall become the duty of said inspector to at once seize and take possession said citrus fruit pending the procuring of the chemical analysis hereinafter provided for, notifying the manager or other person in charge of said packing house of such seizure. It shall be unlawful for the manager of said packing house, or the owner of said citrus fruit, or any person whomsoever to sell, transport or in any way move or dispose of any of said fruit from the time of seizure thereof until after the making of said chemical analysis and the receipt of the chemist's report thereon; provided that no citrus fruit so seized may be held by any inspector more than 96 hours after the time of seizure thereof unless the same shall be shown by the chemist's analysis to contain arsenic. (Id. § 4.)

28n. Samples.—Upon the making of seizure of any citrus fruit as provided for in section 4 hereinabove, it shall be the duty of the inspector making said seizure to immediately draw samples therefrom as shall be provided for by regulations to be issued by the Commissioner of Agriculture, drawing said samples either from the packing house bins, or elsewhere in the packing house, or from field boxes or vehicles delivering said citrus fruit to said packing house. Such samples, so drawn by said inspector, shall be transported with all possible haste to such chemist or chemists as may be designated by the Commissioner of Agriculture for the making by such chemist or chemists of a chemical analysis thereof to determine whether or not the said citrus fruit contains arsenic. It shall be the duty of said chemist or chemists to make said analysis with all proper haste and to report by the quickest means available the result of said analysis, as soon as the same is completed, to the inspector making the seizure. If the said analysis shall show that the said citrus fruit contains no arsenic it shall be the duty of the inspector to release the fruit from seizure as soon as he receives the report of the chemist or chemists thereon. (Id. § 5.)

28o. Seizure; Destruction.—All citrus fruit prepared for sale or transportation or which is being prepared for such purposes, or which has been or is being delivered for sale or transportation, that may be shown by the chemical analysis hereinabove provided for to contain arsenic or any compound or derivative of arsenic shall be destroyed by the inspector making seizure of the same or by any citrus fruit inspector or by the sheriff of the county where found, as may be provided by regulations prescribed by the Commissioner of Agriculture. (Id. § 6.)

28p. Rules and Regulations.—The Commissioner of Agriculture shall from time to time, as he may deem to be expedient and necessary, make and promulgate rules and regulations for carrying out and enforcing the provisions and regulations of this act. (Id. § 7.)

28q. Unlawful to Obstruct Inspector.—It shall be unlawful for any person to obstruct or resist any citrus fruit inspector or any special citrus fruit inspector in the performance or discharge of any duty imposed upon or required of him or her by the provisions of this act or by any rule or regulation prescribed by the Commissioner of Agriculture as herein authorized. (Id. § 8.)

28r. Penalty.—Any person who shall violate any of the provisions of this act, or do or commit any act herein declared to be unlawful, or shall violate any reasonable rule or regulation made and promulgated by the Commissioner of Agriculture in pursuance of the authority therefor herein given, shall be punished by a fine of not less than five hundred dollars ($500.00) and not more than ten thousand dollars ($10,000.00) or by imprisonment for not less than one month and not more than twelve months, or by both such fine and imprisonment in the discretion of the court. (Id. § 9.)

28s. Repeal.—All laws in conflict with the provisions of this act are hereby repealed. (Id. § 10.)

NOTE: See also No. 17e, ante.

Cold Storage.

See No. 43a et seq., post.

Eggs.

43a. Classification.—Within the intent and purpose of this act eggs are classified as: (a) COLD STORAGE EGGS, construed to mean eggs which have been in cold storage; (b) SHIPPED EGGS, construed to mean eggs shipped into the State of Florida which have not been in cold storage; (c) FRESH FLORIDA EGGS, construed to mean eggs produced in Florida which are neither partly nor wholly decomposed and which have not been in cold storage or processed. (L. 1927, c. , § 1.)

43b. Labeling; Marking; Proviso.—From and after the passage of this act it shall be unlawful for any person, firm, association or corporation within this State: (a) To offer for sale or sell at wholesale or retail any case of eggs without clearly imprinting thereon, or securely pasting thereto a label not smaller than seven inches by seven inches on which shall be plainly and legibly printed, the name and address of the packer of said eggs and the classification to which same belongs as hereinbefore designed. Provided, this act shall not apply to any case of eggs not divested of its interstate character. (b) Or to offer for sale or sell any pasteboard or other carton of eggs without first imprinting or stamping thereon in letters not smaller than three-eighths of an inch in height the classification as above set forth in which the eggs contained therein belong, and also the packer's name and address in smaller type. (c) Or to offer to sell or sell eggs in bulk (not in cartons) from any open case, box or other receptacle holding said eggs in bulk without displaying conspicuously on every such open case, box or other receptacle, a placard of heavy cardboard not smaller than eight inches by eleven inches in size on which shall be legibly and plainly printed in letters not smaller than one inch in height wording showing whether the said eggs offered for sale or sold are "cold storage eggs," "shipped eggs" or "fresh Florida eggs." (d) Or to offer eggs for sale in any newspaper advertisement or circular without plainly designating in such newspaper or circular in which of the above named classifications the eggs being offered for sale properly belong. (Id. § 2.)

43c. Penalty.—Any person, firm, association or corporation violating section 2 of this act is guilty of a misdemeanor, and upon conviction thereof shall be sentenced to pay a fine of not less than fifty ($50.00) dollars nor more than two hundred ($200.00) dollars, or to imprisonment for not more than ninety (90) days in the county jail. (Id. § 3.)

Fruits, Vegetables, Etc.

60c. Grades.—The standard grades of all fruits and vegetables shall be the same as those of the United States grades as now promulgated or which may be promulgated by the United States Department of Agriculture. (Act of May 23, 1927, § 1.)

60d. Inspection.—The Florida State Marketing Bureau, co-operating with the United States Department of Agriculture, shall, when requested by the shipper, furnish carlot inspection of fruits and vegetables at shipping point, furnishing certificates in conformity with those used by the United States Department of Agriculture in shipping point inspection, provided the expense or charge of such inspection shall be paid by the shipper. (Id. § 2.)

60e. Inspection Fees.—All fees for inspection shall be paid to the State Marketing Commissioner, who shall deposit same in a fund to be knowin as the co-operative inspection fund, and all expenses for inspection service shall be paid from said fund upon the approval and at the direction of the State Marketing Commissioner. (Id. § 3.)

60f. Certificates of Inspection; Evidence.—All such co-operative government certificates shall be accepted as prima facie evidence in the courts of Florida. (Id. § 4.)

60g. Enforcement.—The State Marketing Commissioner shall employ such assistants as are necessary to carry out the provisions of this act. (Id. § 5.)

60h. Repeals.—All laws or parts of laws in conflict with this act be and the same are hereby repealed. (Id. § 6.)

Sanitation.

70. Screens.—All hotels, rooming houses, apartment houses, tenement houses and restaurants, lunch or sandwich stands or counters shall screen all outside doors, windows and other openings with wire netting not less than sixteen meshes to the inch, except where such doors or other openings are protected by electric fans so installed that they will prevent the ingress of insects. (R. G. S. 1919, § 2152, as amended by Act of June 6, 1927.)

70a. Violation of Regulations as to Operation of Hotels.—Violation of any and all laws, rules and regulations relating to inspection, construction and operation of all hotels, rooming houses, apartment houses, tenement houses, restaurants, lunch and sandwich stands or counters, or other eating places, any owner, manager, agent or person in charge of a hotel, rooming house, apartment house, tenement house, restaurant, lunch or sandwich stand or counter who shall obstruct or hinder any hotel inspector in the proper discharge of his duties imposed by law or who shall fail or neglect or refuse to pay the license fee for inspection required by law, or who shall fail or refuse to perform or carry out any duty imposed upon him by law, or the rules and regulations authorized thereunder, shall be guilty of a misdemeanor, and upon conviction thereof, shall be fined not less than $5.00 nor more than $50.00, or shall be imprisoned in the county jail for not less than ten days nor more than thirty days, or both. And every day that such a hotel, rooming house, apartment house, tenement house, restaurant, lunch or sandwich stand or counter shall be operated in violation of law or rules and regulations authorized thereunder shall constitute a separate offense. (Id. § 5641.)

PART III.

Special Drug Laws.

Pharmacy, Poisons and Narcotics.

82a. Board of Health to Enforce Pharmacy Laws; Exception.—From and after the passage of this act and upon its becoming a law, the enforcement of each and every the several provisions of the laws of this State governing and regulating the practice of pharmacy and/or the operation, and/or management, of drug stores in this State as now in force or as may be hereafter enacted, shall be vested in and shall be under the direct and immediate supervision of the State Board of Health. Provided, however, that nothing herein shall be constructed or deemed to apply to the examination and registration of applicants before the Board of Pharmacy of the State of Florida, or to such rules and regulations as the said Board of Pharmacy may now or hereafter promulgate relating to the practice of pharmacy and/or the operation and/or management of drug stores in this State. (Act of June 4, 1927, § 1.)

82b. Drug Stores; Registration; Fees.—On the first Monday of July of each and every year, commencing with the first Monday in July, 1928, all owners and/or proprietors of drug stores in the State of Florida shall annually register their said drug stores with the State Board of Health, on a printed or typewritten form, or forms, showing the name of the drug store or pharmacy to be registered; the name and address of the owner, or owners, and/or the manager thereof, if there be one;

and the names of all registered pharmacists employed in such pharmacy or drug store, together with the certificate date and number of such registered pharmacist; a fee of ten ($10.00) dollars shall be charged by and paid to the State Board of Health by the owner, or owners, and/or proprietor of each such pharmacy and/or drug store, upon each annual registration of such pharmacy and/or drug store, said fee so charged to be used by the State Board of Health to defray expenses necessarily incurred by said Board of Health in the enforcement of the provisions of this act. The provisions of this act shall not apply to stores or places of business where patent and proprietary medicines or common household remedies are sold in the original package. (Id. § 2.)

82c. Drug Inspectors; Duties.—The State Board of Health, in order to enforce the provisions of this act and the provisions of all other laws of the State of Florida, and/or such rules and regulations of the Board of Pharmacy of the State of Florida as said board may heretofore or hereafter promulgate relating to the regulation of the practice of pharmacy and/or the operation and/or management of pharmacies and/or drug stores in the State of Florida, shall be and it is hereby authorized and empowered to appoint one, or more, registered pharmacists in the State of Florida, who shall be known as drug inspectors of the State Board of Health, who shall be under the jurisdiction and immediate supervision and control of the State Board of Health, at and for a yearly salary, or salaries to be fixed by the State Board of Health, whose duty it shall be to see to the strict and proper compliance with the provisions of this act and the provisions of all other laws of the State of Florida, regulating the practice of pharmacy and/or each and every the operation and/or management of pharmacies and/or drug stores in the State of Florida, by making regular and periodical and unannounced inspections of all pharmacies and/or drug stores in the State of Florida, and it shall be the further duty of the drug inspectors of the State of Florida to promptly and diligently report to the State Board of Health all violations of the provisions of this act or of any other law now or hereafter enacted regulating and/or governing the practice of pharmacy and/or the operation and/or management of pharmacies and/or drug stores in the State of Florida. (Id. § 3.)

82d. Penalty.—Anyone charged with a violation of the provisions of this act, or the provisions of any other law, whether now or hereafter enacted regulating and/or governing the practice of pharmacy and/or the operation and/or management of pharmacies and/or drug stores in this State shall, upon conviction, for each such violation, be fined a sum not exceeding the sum of one thousand ($1,000.00) dollars, or be imprisoned for a period not to exceed six months, or both. (Id. § 4.)

82e. Repeal.—All laws or parts of laws in conflict with the provisions of this act are hereby repealed. (Id. § 5.)

89. Titles; Signs; Display.—It shall be unlawful for any one, except a registered pharmacist, under this chapter who shall conform to the rules and regulations of the said Board of Pharmacy to take, use or exhibit the title "pharmacist," "druggist," "pharmacy," "drug store," or any other title, sign, display or declaration that would tend to lead the public to believe that such person engaged in the business of selling, compounding or dispensing any medicinal drugs, medicinal chemicals, pharmaceutical preparations and biologicals, or to have charge of, engage in or carry on, for himself or for another, the dispensing, compounding or sale of any medicinal drugs, medicinal chemicals, pharmaceutical preparations and biologicals anywhere within the State, and no registered pharmacist shall have personal supervision of more than one pharmacy or drug store at the same time; and, except as prescribed by the provisions of this chapter, it shall not be lawful for any person to practice as a registered pharmacist, or advertise or represent himself by any title, sign, display and declaration or otherwise to be such, or to engage in, conduct, carry on, or be employed in the dispensing, compounding or retailing of any medicinal drugs, medicinal chemicals, pharmaceutical preparations and biologicals within this State: Provided, that this section shall not be construed as precluding any person from owning a drug store or pharmacy if all the dispensing, compounding and retailing of medicinal drugs, medicinal chemicals, pharmaceutical preparations and biologicals in the same shall be constantly under the immediate supervision and direction of a registered pharmacist. The provisions of this act shall not apply to stores or places of business where physicians' prescriptions are not compounded and where patent and proprietary or common household remedies are sold in the original package. (R. G. S. 1919, § 2218, as amended by the act of June 4, 1927.)

NOTE: See also No. 28j et seq., ante.

Serums.

107-111. Probably repealed. See 111a et seq.

111a. Hog-Cholera Serum and Virus.—It shall be the duty of the State Live Stock Sanitary Board to purchase and keep on hand for distribution through authorized and approved administrators, antihog-cholera serum and hog-cholera virus to be furnished upon application through said administrators and upon their approval, the applicant to pay twenty-five (25) per cent of the actual cost of the first 3,000 c.c.'s of said serum and virus and to be furnished additional amounts of serum and virus at actual cost. All applications shall be made under oath by the owner or custodian of hogs to be inoculated. It shall state that the hogs are the property of the signer of such oath or that the signer is the custodian of such hogs and that the signer has not previously received serum and virus up to his allotment as herein provided during the year comprised in the date of oath. Such oath shall be made upon blanks furnished by the State Live Stock Sanitary Board and shall have the endorsement of some authorized and approved administrator as hereinafter provided. (Act of May 11, 1927, § 1.)

111b. Who May Inoculate.—Only those veterinarians, county agents or laymen who have been granted permits allowing the use of antihog-cholera serum and hog virus by the State Live Stock Sanitary Board shall be permitted to inoculate with antihog-cholera serum and hog-cholera virus. (Id. § 2.)

111c. Purchase on Bids.—The State Live Stock Sanitary Board shall purchase serum and virus from the lowest and best bidder, quality of serum and distance of shipment being considered, after receiving bids from at least three serum and virus manufacturers or dealers. The said State Live Stock Sanitary Board shall not purchase any serum and virus that has not been inspected according to government or State regulations and so labeled to provide both a serial and establishment number. Provided, however, that when price and quality shall be equal, the State Live Stock Sanitary Board shall purchase serum and virus manufactured within the State in such amounts as they may be able to furnish. (Id. § 3.)

111d. Penalty.—Any person who shall make a false statement in order to secure a shipment of serum and virus, seventy-five per cent of which is furnished free by the Live Stock Sanitary Board, shall, upon conviction, be fined not more than one hundred ($100.00) dollars or less than ten ($10.00) dollars or by imprisonment of not more than six (6) months or by both fine and imprisonment, and any officer, agent or servant of the State Live Stock Sanitary Board or any person charged with the duty of the administration of the provisions of this act or who shall assume to administer the provisions of this act who shall speculate in the sale or distribution of such hog-cholera serum and virus or who shall fail to account for the proper sale and distribution of the same shall be deemed guilty of a misdemeanor and punished in like manner. (Id. § 4.)

111e. Appropriation.—The sum of sixty thousand ($60,000.00) dollars is hereby appropriated annually for two years out of any funds in the State treasury not otherwise appropriated for the purchase and distribution of serum and virus, or as much thereof as may be necessary to carry out the provisions of this act, and provided that all moneys accruing for the sale of serum and virus, as provided in this act, shall be deposited in the State treasury to the credit of the State Live Stock Sanitary Board in a fund to be known as the serum fund, which shall be used as a revolving fund for the further purchase and distribution of serum and virus as provided in this act. (Id. § 5.)*

111f. Disposition of Money.—Any portion of the appropriation provided under the provisions of this act not expended for the purchase and distribution of serum and virus as herein provided, shall revert to the General Revenue Fund of the State. (Id. § 6.)

NOTE: See also No. 89, ante.

PART IV.

Miscellaneous Laws.

False Advertising.

126a. **Untrue and Misleading Advertisements Prohibited.**—After the passage of this act it shall be unlawful for any person, firm, corporation or association with

*A supplemental appropriation of $10,000 is made by an act of April 14, 1927.

intent to sell or in any wise dispose of merchandise, securities, service or anything offered by such person, firm, corporation or association, directly or indirectly, to the public, for sale or distribution or with intent to increase the consumption thereof, or with intent to induce the public in any manner to enter into any obligation relating thereto, or to acquire title thereto, or any interest therein, to knowingly or intentionally make, publish, disseminate, circulate or place before the public, or to cause, directly or indirectly, to be made, published, disseminated or circulated or placed before the public in this State in a newspaper or other publication or in the form of a book, notice, handbill, poster, bill, circular, pamphlet or letter or in any other way, an advertisement of any sort regarding such merchandise, securities, service or anything so offered to the public which advertisement contains any assertion, representation or statement which is untrue, deceptive or misleading. (Act of June 6, 1927, § 1.)

126b. Penalty.—Any person, firm, corporation or association found guilty of the violation of section 1 hereof shall be deemed guilty of a misdemeanor and shall be punished by fine not exceeding two hundred and no/100 ($200.00) dollars or imprisonment not exceeding ninety (90) days, or both at the discretion of the court. (Id. § 2.)

GEORGIA.

PART IV.

Miscellaneous Laws.

Chain Stores.

149a. Tax.—. . . Paragraph 109. Upon all persons, firm, or corporation owning or controlling a chain of stores consisting of more than five stores the sum of two hundred and fifty dollars ($250.00) for each store in excess of five. "Chain Stores" as used herein shall mean and include five or more stores owned, operated, maintained or controlled by the same firm, person or corporation in which goods, wares or merchandise of any kind are sold at retail in the State of Georgia. Provided, that the provision of this paragraph shall apply to wholesale chain stores as well as retail chain stores, and shall in no event be construed to apply to persons, firm or corporation engaged in the sale of gasoline, motor oils and kindred lines when not sold in grocery stores.

"That the enforcement of the provisions of Paragraph 109 of section 2 is hereby delegated to the Department of Revenue. . . . (General Tax Act of 1927.)

IDAHO.

PART II.

Special Food Laws.

Dairy Products—Substitutes for Dairy Products.

103c. Quarantine; Milk.—The Director of the Idaho Bureau of Animal Industry, or any deputy of such bureau, shall have the power to place any cattle under quarantine when any owner or caretaker of such cattle shall refuse to permit the tuberculin test to be applied to such cattle in the manner provided in chapter 146* of the Idaho Session Laws of 1923. The notice of quarantine shall be in writing and any cattle described therein shall not be transported or moved in any manner from the premises described in the quarantine notice. It shall be unlawful to sell, give away, offer for sale or transport any milk or milk products produced from the cattle described in such notice of quarantine. Such director or his deputy shall furnish one copy of the quarantine notice to the owner or caretaker of the cattle; the original of which notice shall be placed in the hands of the sheriff of the county in which such cattle are situated, and it shall be the duty of the sheriff to enforce the quarantine in accordance with such notice. The quarantine shall be removed whenever a satisfactory test has been made of the cattle described in said notice. (L. 1927, c. 56, § 1.)

103d. Penalty.—Any person who shall violate any provisions of such quarantine shall be guilty of a misdemeanor. (Id. § 2.)

Meat—Meat Products.

115c. Poultry; Records.—Every person, firm or copartnership or corporation in the State of Idaho who shall engage in the business of buying and selling domestic fowl or poultry shall keep a record of the purchase of all domestic fowl or poultry. Such record shall contain the name of the seller, his residence, the number, kind and grade of such domestic fowl or poultry and shall at all times be open to the inspection of any sheriff or peace officer of the State of Idaho, and any person who shall fail to keep such record, or shall refuse to permit the inspection thereof, as herein provided shall be guilty of a misdemeanor. (L. 1927, c. 132, § 2.)

*Omitted herein.

ILLINOIS.

PART I.

General Food and Drug Law.

General Food Law.

10. Defines Adulteration.—For the purpose of this act, an article shall be deemed to be adulterated:

In case of confectionery:

First—If it contains terra alba, barytes, talc, chrome yellow, paraffin, mineral fillers or poisonous substances, or poisonous color or flavor.

Second—If it contains any ingredient deleterious or detrimental to health, or any vinous, malt or spirituous liquor or compound, or narcotic drug.

In the case of food:

First—If any substance has been mixed or packed with it so as to reduce or lower or injuriously affect its quality, strength or purity.

Second—If any substance has been substituted wholly or in part for the article.

Third—If any valuable constituent of the article has been wholly or in part abstracted or left out: Provided, that in the manufacture of skim or separated cheese the whole or part of the butter fat in the milk may be abstracted.

Fourth—If it be mixed, colored, powdered, coated, polished, or stained in any manner whereby damage or inferiority is concealed, or it is made to appear better or of greater value than it really is.

Fifth—If it contains any poisonous or deleterious ingredient which may render such article injurious to health: Provided, that when in the preparation of food products for shipment they are preserved by an external application, applied in such a manner that the preservation is necessarily removed mechanically, or by maceration in water, or otherwise, and directions for the removal of said preservatives, shall be printed on the covering of the package, the provisions of this act shall be construed as applying only when such products are ready for consumption; and formaldehyde, hydrofluoric acid, boric acid, salicylic [acid] and all compounds and derivatives thereof are hereby declared unwholesome and injurious.

Sixth—If it consists in whole or in part of a filthy, decomposed or putrid, infected, tainted or rotten animal or vegetable substance or article, or any portion of an animal unfit for food, whether manufactured or not, or if it is the product of a diseased animal, or one that has died otherwise than by slaughter.

In the case of foods, beverages or confectionery:

First—If it is colored with any coloring matter or dye other than harmless vegetable colors or coal tar colors permitted and approved by the United States Department of Agriculture. (Stats. 1924, c. 56b, ¶ 8, as amended L. 1927, p. 536.)

11. Misbranded Defined.—The term "misbranded," as used herein, shall apply to all articles of food or drink or articles which enter into composition of food or drink, the packages or labels of which bear any statement, design or device regarding such article, or the ingredients or substance contained therein which shall be false or misleading in any particular; and to any such products which are falsely branded as to manufacturer, packer, or dealer who sells the same or as to the State, Territory or country in which it is manufactured or produced: That for the purpose of this act an article shall also be deemed to be misbranded—

In case of food:

First—If it be an imitation of or offered for sale under the distinctive name of another article, or if it does not conform to the standards set forth in this act.

Second—If it be so labeled or branded as to make the identity of the manufacturer, packer or dealer who sells or offers the same for sale uncertain or doubtful; or which is so labeled or branded as to indicate on the receptacle, vessel or container the name of any firm or corporation other than the firm or corporation actually manufacturing, packing or dealing in the article or product so sold or offered for sale; or if it be labeled or branded so as to deceive or mislead the purchaser, or purports to be a foreign product when not so, or if the contents of a package as originally put up shall have been removed in whole or in part and refilled by contents of a different quality or of a different manufacturer, packer or dealer, or if it shall fail to bear a statement on the label of the quantity or proportion of any morphine, opium, cocaine, heroin, alpha or beta eucaine, chloroform, canabis indica, chloral hydrate, or acetanilid, or any derivative or preparation of any such substance contained therein.

Third—If in package form, the true quantity of the contents be not plainly and conspicuously marked on the outside of the package in terms of weight, measure, or numerical count: Provided, however, that reasonable variation shall be permitted and tolerances and also exemptions as to small packages shall be established by rules and regulations made in accordance with the provisions of section 38 of this act.

Fourth—If it be a manufactured article of food or food sold in package form, and is not distinctly labeled, marked or branded with the true name of the article and with either the name of the manufacturer and place of manufacture, or the name and address of the packer or dealer who sells the same, or if its label does not conform to the regulations set forth in this act.

Fifth—If the package containing it or its label shall bear any statement, design or device regarding the ingredients of the substance contained therein, which statement, design or device shall be false or misleading in any particular: Provided, that an article of food which does not contain any added poisonous or deleterious ingredients shall not be deemed to be adulterated or misbranded in following cases:

1st—In case of mixture or compounds which may be now or from time to time hereafter known as articles of food under their own distinctive name, and which mixture or compound is not an imitation of or offered for sale under the distinctive name of another article, if the name be accompanied on the same label or brand with the name and address of the packer or dealer, and the net measure of the contents.

2d—In case of articles labeled, branded or tagged so as to plainly indicate that they are compounds, imitations or blends and the word "compound," "imitation" or "blend," as the case may be, is plainly stated on the package in which it is offered for sale: Provided, that the term "blend" as used herein, shall be construed to mean a mixture of like substances, not excluding harmless coloring or flavoring ingredients used for the purpose of coloring or flavoring only; and as applied to alcoholic beverages, only those distilled spirits shall be regarded as "like substances" which are distilled from the fermented mash of grain and are of the same alcoholic strength; And, provided, further, that nothing in this act shall be construed as requiring or compelling proprietors or manufacturers of proprietary foods, which contain no unwholesome added ingredients to disclose their trade formulas, except in so far as the provisions of this act may require to secure freedom from adulteration or misbranding.

3d—In the case of mixtures of corn syrup (glucose) or corn sugar (dextrose) or corn sugar syrup, with cane or beet sugar(sucrose) or cane or beet sugar syrup, in food, if the maximum percentage of corn syrup (glucose) or corn sugar (dextrose) or corn syrup, in such article of food be plainly stated on label. (Stats. 1924, c. 56b, ¶ 9, as amended L. 1927, p. 539.)

23. Penalties, License Fees and Proceeds Paid to State Treasurer.—All fines, penalties, and all proceeds collected from goods confiscated and sold under the provisions of this act and other laws relating to dairy and food products, and all license fees collected hereunder, shall be paid within thirty days after such collection to the Department of Agriculture and by it paid into the State treasury. (Id. ¶ 37.)

27. Sale of Illegal Food.—The sale of food which is adulterated or misbranded or which violates any of the provisions of this act is hereby prohibited; and whoever offers for sale, exposes for sale or sells any food which is adulterated or misbranded or that violates any of the provisions of this act shall be guilty of a misdemeanor and punished as herein provided. (Id. ¶ 41.)

29. When Prosecution Brought.—No action or prosecution shall be instituted against any person for a violation of the provisions of this act, unless the same shall have been commenced within one year from the taking of said sample. (Id. ¶ 43.)

PART II.

Special Food Laws.

Beverages.

See No. 10, ante.

Cold Storage.

60. No Cold Storage Warehouse to Accept Food for Storage Unless Marked With Date—Date of Removal—Defacing Marks.—No person, firm, or corporation shall place, receive, or keep in any cold storage warehouse in this State articles of food unless the same shall be plainly marked, stamped, or tagged, either upon the container in which they are packed, or upon the article of food itself,

with the date when placed therein: And no person, firm, or corporation shall remove, or allow to be removed, such article of food from any cold storage warehouse unless the same shall be plainly marked, stamped, or tagged, either on the container in which it is enclosed or upon the article of food itself, with the date of such removal, and such marks, stamps, and tags shall be prima facie evidence of such receipt and removal and of the dates thereof. Provided, that it shall be a violation of this act to erase, deface, or remove the markings or tags, required by this section from the container or the article of food itself. (Stats. 1924, c. 56b, ¶ 125, as amended L. 1927, p. 545.)

65. Penalties.—Any person, firm, or corporation violating any provision of this act shall be guilty of a misdemeanor and shall upon conviction be punished for the first offense by a fine not exceeding one hundred ($100) dollars and for the second or any subsequent offense a fine not exceeding five hundred ($500) dollars.

All fines imposed and collected under this act shall be paid within thirty days after such collection to the Department of Agriculture and by it paid into the State treasury. (Id. ¶ 130.)

Confectionery.

See No. 10, ante.

Dairy Products—Substitutes for Dairy Products.

74. Persons Receiving Milk, Etc., to Wash Cans.—Any person, firm or corporation who receives from any other person, firm or corporation, any milk or cream, or ice cream, in cans, bottles, or vessels which are to be returned, shall cause the said cans, bottles or vessels to be emptied before the said milk or cream, or ice cream contained therein shall become sour, and shall cause said cans, bottles or vessels to be immediately washed and thoroughly cleansed and aired. (Stats. 1924, c. 56b, ¶ 17, as amended L. 1927, p. 539.)

79. License for Using Milk Tester and Sampling.—No person shall operate a milk or cream testing apparatus to determine the percentage of butter fat in milk or cream for the purpose of purchasing the same either for himself or for another or perform the operation known as sampling of milk or cream for the purpose of determining the percentage of butter fat in them without first securing a license from the Department of Agriculture of this State, authorizing such person to operate such tester or perform such sampling. Any person desiring to secure such license shall make application therefor on a blank to be prepared and provided by the Department of Agriculture, and such applicant, before being issued such license, shall pass a satisfactory examination in person and prove by actual demonstration that he is competent and qualified to properly use such tester and make an accurate test with the same, or perform a sampling operation.

Such license shall be issued for a period of two (2) years from and after the date of its issuance and a fee of one dollar ($1.00) shall be paid for such license by the licensee upon the issuance thereof. The Department of Agriculture, for just cause shall have authority to revoke any license issued under the provisions of this act.

The fees collected under the provisions of this section shall be paid into the State treasury monthly by the Department of Agriculture. (Id. ¶ 21.)

92. Penalty—Disposition of Fines.—Any person, firm, or corporation who shall violate any provision of this act shall be guilty of a misdemeanor and upon conviction shall be fined for each such offense by a fine not less than five ($5.00) dollars, nor more than one hundred ($100.00) dollars, or by imprisonment in the county jail not to exceed thirty (30) days.

All fines imposed and collected under this act shall be paid within thirty days after such collection to the Department of Agriculture and by it paid into the State treasury. (Stats. 1924, c. 56b, ¶ 66, as amended L. 1927, p. 542.)

119. Imitation Butter.—For the purpose of this act, "imitation butter" or "substitute for butter" is defined to be any product containing more than one per cent (1%) of water and any fat or oil other than that derived from milk or cream and made in the appearance or semblance of butter or designed to be used for any of the purposes for which butter is used: Provided, that the use of salt and harmless coloring matter for coloring the product of pure milk or cream shall not be construed to render such product an imitation. (Stats. 1924, c. 56b, ¶ 90, as amended L. 1927, p. 543.)

120. Coloring Imitation Butter Prohibited.—No person shall coat, powder or color with annatto or any coloring matter whatever any imitation butter or substitute for butter, whereby such substitute or product so colored or compounded shall be made to resemble butter, the product of the dairy.

No person shall combine any animal fat or vegetable oil or other substance with butter, or combine therewith, or with animal fat or vegetable oil, or combination of the two, or with either one, any other substance or substances, for the purpose or with the effect of imparting thereto a yellow color or any shade of yellow so that such substitute shall resemble yellow or any shade of genuine yellow butter, nor introduce any such coloring matter or such substance or substances into any of the articles of which the same is composed.

Provided, nothing in this act shall be construed to prohibit the use of salt, rennet and harmless coloring matter for coloring the products of pure milk or cream from the same.

No person shall by himself, his agents or employees, produce or manufacture any substance in imitation or semblance of natural butter, nor sell, nor keep for sale, nor offer for sale any imitation butter, made or manufactured, compounded or produced in violation of this section, whether such imitation butter shall be made in the State or elsewhere.

This section shall not be construed to prohibit the manufacture and sale under the regulations hereinafter provided, of substances designed to be used as a substitute for butter and not manufactured or colored as herein provided. (Id. ¶ 91.)

128. Fines and Penalties.—Whoever shall violate any of the provisions of this act shall be punished by a fine of not less than fifty, nor more than two hundred dollars, or by imprisonment in the county jail not to exceed sixty days for each offense, or by both fine and imprisonment, in the discretion of the court, or the fine alone may be sued for and recovered before any justice of the peace in the county where the offense shall be committed, at the instance of any person, in the name of the people of the State of Illinois as plaintiff.

All fines imposed and collected under this act shall be paid within thirty days after such collection to the Department of Agriculture and by it paid into the State treasury. (Id. ¶ 99.)

Eggs.

137. When Unfit for Food—To be Candled—Disposition of Eggs Not Fit for Food—Licensee to Keep Record.—For the purposes of this act an egg shall be deemed unfit for human food if it be addled or mouldy, a black rot, a white rot, or a blood ring; or if it has an adherent yolk, or a bloody or green white; or if it be incubated beyond the blood ring stage; or if it consist in whole or in part of a filthy, decomposed or putrid substance.

It shall be unlawful for a person, firm or corporation to sell, offer for sale or have in possession with intent to sell, eggs for human food purposes which are not fit for human food within the meaning of this act and the pure food laws as so known in this State.

Every person, firm or corporation who purchases eggs from the producer, for sale at retail or wholesale, shall candle all eggs offered to him, them, or it and shall refuse to buy eggs unfit for human food as in this act defined, and such producer so tendering for sale any egg or eggs so unfit shall be docked accordingly. Such candling shall be done in the presence of the producer if he so requests.

All eggs excluded by the candling or other method as unfit for human food, with the exception of those which have a putrid odor when broken, shall be broken in the shell, the broken eggs put in a tight container at once and denatured so as to render them unfit for sale as human food. The usual egg case shall not be considered a tight container. All licensees shall keep an accurate record of candling and dockage of eggs unfit for human food purposes subject to inspection of said Department of Agriculture. (Stats. 1924, c. 56b, ¶ 68, as amended L. 1927, p. 537.)

144. Violation of Act a Misdemeanor—Penalty—Disposition of Fines.—Any person, firm or corporation failing to comply with the requirements of, or violating any of the provisions of this act or the rules and regulations for the enforcement of this act made by the Department of Agriculture, shall for the first offense be fined not less than $15.00 nor more than $50.00. For the second offense he shall be fined not less than $50.00 nor more than $100.00, and for the third or any subsequent offense he shall be fined not less than $100.00 nor more than $200.00, and in addition to such fines, in the discretion of the court, for the first offense his license may be suspended for not more than thirty days; for the second offense not more than sixty days, and for the third or any subsequent offense his license may be revoked.

All fines imposed and collected under this act shall be paid within thirty days after such collection to the Department of Agriculture and by it paid into the State treasury. (Id. ¶ 75.)

Extracts.

146. Extracts to be Labeled.—Extracts made of more than one principle shall be labeled in a conspicuous manner with the name of each principal, or else with the name of the inferior or adulterant; and in all cases when an extract is labeled with two or more names, such names must be in a conspicuous place on said label, and the name of one of the articles used shall not be given greater prominence than another; provided, that all extracts which are not made from the fruit, berry, bean or other part of the plant, and are made artificially, as raspberry, strawberry, etc., shall be labeled "imitation" in letters similar in size and immediately preceding the name of the article; provided, further, that prepared cocoanut, containing nothing other than cocoanut, sugar and glycerine, shall be labeled as prepared cocoanut, and when so made need not be labeled "compound" or "mixture." Any such extract not labeled as herein provided for shall be deemed to be misbranded within the meaning of this act. (Stat. 1924, c. 56b, ¶ 12, as amended L. 1927, p. 539.)

Feeding Stuffs.

157. Fines; Costs.—When the rendition of the judgment imposes a fine as provided in any of the sections of this act, it shall be the duty of the justice of the peace or other court rendering such judgment also to render a judgment for costs, and such justice of the peace or other courts shall forthwith issue a capias or warrant or commitment against the body of the defendant commanding that unless the said fine and costs be forthwith paid, the defendant shall be committed to the jail of the county, and the constable or other officer to whose hands such capias or warrant shall come, shall in default of such payment arrest the defendant and commit him to the jail of the county, there to remain as provided by section 171 of "An act to revise the law in relation to criminal jurisprudence," in force July 1, 1895, unless such fine and costs shall sooner be paid.

All fines imposed and collected under this act shall be paid within thirty days after such collection to the Department of Agriculture and by it paid into the State treasury. (Stats. 1924, c. 56b, ¶ 144, as amended L. 1927, p. 543.)

Fruits, Vegetables, Etc.

168. Regulations—Fees and Fines.—The director is hereby authorized to promulgate regulations for carrying out the purposes and provisions of this act. All fees and moneys collected or received by employees or agents of the Department of Agriculture, under this act, and the regulations which may be promulgated hereunder and all fines collected for violations of any provisions of this act, shall be covered into the treasury.

The revolving fund heretofore created for these fees and fines is abolished, and the moneys now contained therein shall be placed in the general revenue fund. (Stats. 1924, c. 5, ¶ 100, as amended L. 1927, p. 8.)

Meat—Meat Products.

190a. License Required—Fee—How Displayed.—Any person, firm or corporation desiring to engage in dealing or trading in live market poultry shall obtain a license from the Department of Agriculture for each place of business in which they engage in such dealing or trading; and shall state in application for such license the name of applicant; if a firm, the names of the members of said firm; and, if the applicant be a corporation, the names of the officers of such corporation. Application shall include place of business, telephone exchange and telephone number. The sum of one dollar ($1.00) shall accompany application for license. Separate licenses shall be obtained for each establishment at which business is conducted and for each motor vehicle or other conveyance used in the purchase of or trading for live market poultry.

For the purpose of this act every person who buys live market poultry or who trades or exchanges goods, wares or merchandise of any character or articles of any value for live market poultry shall be deemed to be in the business of dealing or trading in live market poultry.

Upon receipt of application, together with fee of one dollar, the Department of Agriculture may issue to said applicant a license to engage in dealing in live poultry,

which license shall be in full force and effect until the first day of July following, unless it be revoked for cause by the department.

Such license shall be prominently displayed in the place of business of said person, firm or corporation, or on the motor vehicle or other conveyance used in the purchase of or trading for live market poultry. (L. 1927, p. 18, § 1.)

190b. Records to be Kept by Licensee.—Each person, firm or corporation licensed to deal or trade in live poultry, under the provisions of this act, shall keep a record which will show the date of transaction, number, weight, breed, description and other distinguishing marks, if any, of live birds procured; and the name, address and brief description of seller, type of conveyance, if auto, record of license number; which record shall be open to inspection by all peace officers upon demand. (Id. § 2.)

190c. Penalties—Fines Remitted to Department of Agriculture—Exceptions.—Any person, firm or corporation who shall engage in the business of dealing or trading in live poultry without a license, or who shall fail to keep a record, as required by this act, or any poultry dealer, seller or other person who causes to be entered upon such record any fictitious name, address or other data, or who otherwise violates any of the provisions of this act, shall be guilty of a misdemeanor, and upon conviction shall be punished by a fine of not less than ten dollars ($10.00) nor more than one hundred dollars ($100.00) for each offense; and his license may be revoked by the Department of Agriculture, after the department has given the offender an opportunity to be heard.

All fines collected under this act by any magistrate, or other officer, shall be remitted to the Department of Agriculture within thirty (30) days, and by the department remitted to the State treasury, as provided by statute; provided this act shall not apply to transactions in poultry subsequent to sale of said poultry to a dealer licensed under this act, or to transactions in poultry produced outside of the State of Illinois. (Id. § 3.)

PART IV.

Miscellaneous Laws.

False Advertising.

265. Fraudulent Advertising; Penalty.—Whoever, with intent to sell, or in any wise dispose of merchandise, securities, service, or anything offered by him, directly or indirectly, to the public for sale or distribution, or with intent to increase the consumption thereof, or to induce the public in any manner to enter into any obligation relating thereto, or to acquire title thereto, or an interest therein, causes, directly or indirectly, to be made, published, disseminated, circulated, or placed before the public, in this State, in a newspaper or other publication, or in the form of a book, notice, handbill, poster, bill, circular, pamphlet or letter, or in any other way, an advertisement of any sort regarding merchandise, securities, service, or anything, so offered to the public, which advertisement contains any assertion, representation or statement of fact which is untrue or deceptive, shall be guilty of a misdemeanor and on conviction thereof shall be punished by a fine of not less than ten dollars nor more than one hundred dollars or by imprisonment in the county jail not exceeding twenty days or by both said fine and imprisonment. (Stats. 1924, c. 38, ¶ 224, as amended L. 1927, p. 403.)

IOWA.

PART I.

General Food and Drug Law.

19. Code of Iowa 1924, § 3047, is amended by striking out the period at the end of said section and adding thereto the following:

"and on a third conviction for the same offense may be restrained by injunction from operating such place of business." (Code of Iowa, 1924, § 3047 as amended L. 1927, c. 61.)

34. Code of Iowa 1924, § 3067, is amended by striking therefrom the words, "as defined in the preceding chapter." (Code of Iowa, 1924, § 3067, as amended L. 1927, c. 63.)

PART II.

Special Food Laws.

Dairy Products—Substitutes for Dairy Products.

94. Code of Iowa 1924, § 3093, is amended by striking from line three (3) the word "butter" and by inserting in lieu thereof the word "product." (Code of Iowa, 1924, § 3093, as amended L. 1927, c. 63.)

Eggs.

114a. Grades.—The following grades of eggs are hereby established:

Grade 1. The minimum requirements of this grade shall be eggs which are clean and sound, with an air space of two-eighths (2/8) inch or less in depth, yolk only slightly visible, white firm and clear, and the germ not visible. Eggs shall weigh twenty-four (24) ounces net per dozen, with a minimum rate of twenty-two (22) ounces for individual eggs. This grade would include eggs that would go as United States specials and United States extras.

Grade 2. The minimum requirements of this grade shall be eggs which are clean and sound, air cell of three-eighths (3/8) inch or less in depth, yolk may be visible and mobile, white shall be reasonably firm, and germ may be slightly visible. Eggs shall weigh twenty-four ounces net per dozen, with a minimum rate of twenty-two (22) ounces for individual eggs. This grade shall include eggs that would go as United States standards.

Grade 3. All edible eggs which do not meet the requirements of either of the preceding grades may be classed under this grade or may be further subdivided in conformity with federal grades into United States trades, United States dirties, or United States checks.

Fresh eggs. A fresh egg shall be considered such if not to exceed fourteen days old, shall be clean and sound, with an air cell of two-eighths (2/8) of an inch or less in depth, yolk only slightly visible, white firm and clear, and the germ not visible.

Special grade 1. The minimum requirements of this grade shall be the same as of grade 1, and in addition thereto, when sold to the dealer, the eggs must have been laid within a period of seventy-two hours. (L. 1927, c. 64.)

Meat—Meat Products.

134a. License—Definition.—Every person, partnership or corporation engaged in the business of buying for the market, poultry or domestic fowls from the producer thereof, shall obtain a license from the Department of Agriculture for each establishment at which said business is conducted.

The word producer as herein used shall include anyone not a licensed dealer who has acquired such poultry or domestic fowls other than through a licensed dealer. (L. 1927, c. 67, § 1.)

134b. Fee.—The license fee shall be one dollar ($1.00) per annum, and each license shall expire on March 1st after the date of issue. (Id. § 2.)

134c. Records.—Each licensee shall keep such records as the Department of Agriculture shall require, as to date of purchase, name and residence of seller and number and description of such poultry or domestic fowls purchased from the producer. (Id. § 3.)

134d. Inspection.—Such records as are required by the Department of Agriculture to be kept by such licensee shall be open to inspection by any peace officer at any reasonable time. (Id. § 4.)

134e. Enforcement.—The Department of Agriculture shall be charged with the duty of the enforcement of this act. (Id. § 5.)

134f. Penalty.—Any person who shall violate the provisions of this chapter shall, for each offense, be deemed guilty of a misdemeanor and punishable as such. (Id. § 6.)

PART IV.

Miscellaneous Laws.

Tobacco—Tobacco Products.

424. Mulct Tax.—No permit shall be granted or issued until the applicant shall have paid, for the period ending July first (1) next following the issuance of such permit, to the treasurer of the city, town, or county granting such a permit, a mulct tax as follows when the permit is granted during the months of July, August or September:

1. In towns and other places outside any city or town, fifty dollars ($50).
2. In cities of the second class, seventy-five dollars ($75).
3. In cities of the first class, one hundred dollars ($100).

If the permit is granted during the months of October, November or December, the said tax shall be three-fourths (¾) of the above maximum schedule; if granted during January, February or March, one-half (½) of said maximum schedule; if granted during April, May or June, one-fourth (¼) of said maximum schedule.

All permits shall become null and void if the holder thereof shall fail to pay a maximum mulct tax on or before July first (1) each year thereafter for the year then beginning. (Code of Iowa, 1924, § 1563, as amended L. 1927, c. 33.)

431. Code of Iowa, 1924, § 1570 is amended:

First, by inserting immediately after the word "sale" in line three (3) the following, "or gift,".

Second, by striking out the sub-division which reads as follows: "a. More than twenty-five (25) but not more than fifty (50) papers, one-half (½) cent," and by inserting in lieu of said stricken part the following: "a. Fifty (50) papers or less, one-half (½) cent." (Id. § 1570.)

431a. Monthly Reports.—Every permit holder, except wholesale dealers who also sell at retail, who is subject to the provisions of the preceding section, shall make and file with the Treasurer of State, on or before the tenth (10) day of each calendar month, and on blanks furnished by said officer, true, correct, and sworn reports in such detail as said treasurer may demand, covering the following enumerated matters and such other matters pertaining thereto as said treasurer may require for the last preceding calendar month, to-wit: the number of cigarettes, cigarette papers, wrappers and tubes purchased during said preceding month, from whom purchased, and the specific kind and brands thereof. (Code of Iowa, 1924, § 1570-b1, as added L. 1927, c. 33.)

431b. Inspection of Books.—The books, records, papers, receipts, and invoices of any person subject to the provisions of the second preceding section which pertain to the purchase or sale of cigarettes, cigarette papers, wrappers or tubes shall be subject to inspection at any time during ordinary business hours by the treasurer or his representatives. (Id. § 1570-b2.)

432. Code of Iowa, 1924, § 1571, is amended by inserting immediately after the word "sold" in the first (1st) line, the words "or given away." (Code of Iowa, 1924, § 1571, as amended L. 1927, c. 33.)

432a. Stamping Broken Packages.—When a package or carton which contains inner individual, taxable packages of cigarettes, cigarette papers, wrappers or tubes, is opened, the stamps provided by this chapter shall be immediately affixed to all of said inner individual, taxable packages. (Code of Iowa, 1924, § 1571-b1, as added L. 1927, c. 33.)

433. Violation.—Any person violating any of the provisions of sections 1557 (fifteen hundred fifty-seven), 1570 (fifteen hundred seventy), 1570-b1 (fifteen hundred

seventy-b one), 1571 (fifteen hundred seventy-one), or 1571-b1 (fifteen hundred seventy-one b one) shall be punished by fine of not less than one hundred dollars ($100), nor more than three hundred dollars ($300), and be confined in the county jail until such fine is paid, but not exceeding six (6) months. In addition all cigarettes, cigarette papers, and papers made or prepared for the purpose of making cigarettes, in his possession or in his place shall be confiscated and forfeited to the county in which seized, and be disposed of as like property is disposed of when seized on search warrant. (Code of Iowa, 1924, § 1572, as amended L. 1927, c. 33.)

434. Forgery—Counterfeiting—Used Stamp.—Any person who, with intent to defraud the State, shall make, alter, forge, or counterfeit any license, permit, or stamp, provided for in this chapter, or who shall have in his possession any forged, counterfeited, spurious, or altered license, permit, or stamp with intent to use the same, knowing or having reasonable grounds to believe they are such, or have in his possession any cigarette stamp or stamps which he knows have been removed from the packages of cigarettes or cigarette papers to which they were affixed, or who affixes to any package of cigarettes or cigarette papers a stamp which he knows has been removed from any other package of cigarettes or cigarette papers, shall be fined not more than one thousand dollars ($1,000), or be imprisoned in the penitentiary or men's or women's reformatory not more than three (3) years. (Id. § 1573.)

435. Code of Iowa, 1924, § 1574, as amended L. 1925, c. 146, is further amended by inserting immediately after the word "permits" in line six (6) the following:

"All orders for stamps, to be delivered by mail, amounting to less than ten dollars ($10) shall be accompanied by such additional remittance as will defray the postage and registration charges." (Id. § 1574.)

439. Code of Iowa, 1924, § 1578, is amended by striking from line one (1) the word "county" and by inserting in lieu thereof the word "state." (Id. § 1578.)

Weights and Measures.

See No. 114a, ante.

KANSAS.

PART II.

Special Food Laws.

Dairy Products—Substitutes for Dairy Products.

17-34. Repealed. (L. 1927, c. 242, § 14.)

34a. State Dairy Commissioner.—The State Board of Agriculture is hereby authorized and empowered to appoint a State Dairy Commissioner and such deputies and office assistants as in its judgment may be deemed necessary to fully carry out the provisions of this act; to fix their compensation and to have full and complete control and supervision over the Dairy Commissioner's office, and said board is further authorized to formulate and prescribe such reasonable rules and regulations as may be deemed necessary to accomplish the purposes of this act. (L. 1927, c. 242, § 1.)

34b. Duties.—It shall be the duty of the State Dairy Commissioner: (1) To inspect or cause to be inspected, as often as may be deemed practicable, all the creameries, public dairies, condenseries, butter, cheese and ice cream factories, or any other places where dairy products are produced, manufactured, kept, handled, stored or sold within the State. (2) To prohibit the production and sale of unclean or unwholesome milk, cream, butter, cheese, ice cream or other dairy products. (3) To condemn for food purposes all unclean or unwholesome dairy products wherever he may find them. (4) To take samples anywhere of any dairy products or imitation thereof, and cause the same to be analyzed or satisfactorily tested according to the method of the Association of Official Agricultural Chemists in force at the time. Such analyses or tests shall be preserved and recorded as evidence, and the certificate of such test, when sworn to by the analyst, shall be admitted in evidence in all prosecutions that may result under the operation of this act. (5) To assist the State Board of Agriculture in compiling and publishing annually statistics and information concerning all phases of the dairy industry in this State and the manufacturers of dairy products, upon his request, shall furnish the Dairy Commissioner such data and statistics as he may require, and these shall be used for the purpose of compiling statistical reports of general dairy interest, and for checking fee returns as provided hereinafter. (Id. § 2.)

34c. Powers.—The State Dairy Commissioner and his deputies are hereby authorized and empowered: (1) To enter, during business hours, all creameries, public dairies, condenseries, cheese and ice cream factories, or other places where dairy products are manufactured, produced, stored, sold or kept for sale or transportation, to perform their official duties. (2) To examine, under oath or otherwise, any person whom they may believe has knowledge concerning the unlawful operation of any creamery, public dairy, condensery, cheese or ice cream factory, or other place where dairy products are produced, bought, sold or tested. (3) To require the posting in a conspicuous outside place at their places of business, in letters and figures that are approved by the State Dairy Commissioner, the local price paid for butterfat by cream buyers; and that it shall be unlawful to pay other than the posted price. (4) To issue subpœnas requiring the appearance of witnesses and the production of books, papers, reports and records, and to administer oaths with like effect as is done in courts of law in this State. It shall be the duty of any District Court or the judge thereof, upon the application of said State Dairy Commissioner, to issue an attachment for such witness or witnesses and compel his or their attendance before the State Dairy Commissioner to give testimony upon such matters as shall be lawfully required by such commissioner, and said court or judge shall have power, in cases of refusal, to punish for contempt, as in other cases of refusal to obey the orders and process of the court. (Id. § 3.)

34d. Definitions.—For the purposes of this act, (1) The term "dairy manufacturing plants" shall be construed to embrace creameries, condenseries, public dairies, butter, cheese, ice cream and other dairy factories, and the term shall be considered also to mean such concerns as manufacture for sale dairy products, either at wholesale or retail. (2) The term "public dairies" shall also be considered to mean any places where milk and cream are purchased from producers and sold or kept for sale either at wholesale or retail. (3) The term "milk or cream station" shall be considered to mean any place where milk or cream may be received or purchased and held for shipment or delivery to the dairy manufacturing plant.

(4) The term "milk or cream brokerage" shall be considered to mean any business that is conducted for the purpose of purchasing milk, cream or butter fat with the intent of resale without being converted into a finished product. (5) The term "field superintendent" shall be considered to mean any qualified person who is the duly authorized representative of any person, firm, company or corporation engaged in buying, selling or manufacturing dairy products, and who has supervision over buying station and operators. (6) The term "station operator" shall be considered to mean any person who performs the act of sampling or testing milk, cream or other dairy products, the test of which is to be used as a basis of making payment for said products. (Id. § 4.)

34e. Babcock Test.—In determining the value of milk, cream or other dairy products by the use of the babcock test, it shall be unlawful to give any false reading or in any way manipulate the test so as to give a higher or lower per cent of butter fat than the milk, cream or other dairy products actually contain, or to cause any inaccuracy in reading the per cent of butter fat by securing from any quantity of milk, cream or other dairy products to be tested an inaccurate sample for the test. All samples of milk or cream, the tests of which are to be used as a basis of payment, shall be kept in a cool, clean, sanitary place and in tightly stoppered bottles or tightly covered jars for at least twenty-four hours after the test of said samples has been completed. None other than the Babcock method, or such method of testing as may be approved by the Dairy Commissioner, may be employed when testing milk or cream, the test of which is to be used as a basis for making payment for the milk or cream thus tested. None other than single-bottle torsion balance scales, or such scales as may be approved by the Dairy Commissioner, may be used when weighing cream for testing, when such tests are to be used as a basis for making payment for such cream. In the establishing of new stations or replacing condemned scales, single-bottle scales must be installed. It shall be unlawful to use adjustable scale weights in determining the weight of cream used in the Babcock test. Only such centrifuge shall be used as shall meet the approval of the State Dairy Commissioner. Specifications for apparatus and chemicals and directions for testing milk and cream must conform to those adopted by the American Dairy Science Association, with such additions as are deemed advisable by the Dairy Commissioner to make them applicable to the provisions of this act. All test tubes, bottles, pipettes or instruments used in connection with testing or determining the value of milk, cream or other dairy products by the use of the Babcock test shall be approved by the State Dairy Commissioner. It shall be unlawful for any person or persons to use any test tube, bottle, pipette or instrument in connection with such test which is not perfectly clean; for the purposes of this act, any unclean test bottle, tube, pipette or instrument is declared inaccurate. All milk and cream tests shall be maintained at a temperature of 135 degrees F. for at least ten minutes before the reading of the per cent of butter fat is made and recorded. In reading cream tests glymol must be used, and the samples under test must be held for ten minutes in a water bath of such temperature that the tests shall be read at 135 degrees F. The water in bath must extend above the butter fat column in the neck of the bottle. (Id. § 5.)

34f. Butter Fat Standards.—It shall be the duty of the State Dairy Commissioner and his deputies and they are hereby authorized to test milk, cream and other dairy products for the purpose of ascertaining the percentage of butter fat or other ingredients contained therein; and if said Dairy Commissioner, or any of his deputies, shall find upon test that there is a variance of more than one per cent of butter fat between his test and that made by any person engaged in testing, buying or selling milk, cream or other dairy products, said commissioner or deputy commissioner shall cause his test to be verified and substantiated by the chemist at the Kansas State Agricultural College, and if such chemist shall find that the test made by such commissioner or deputy commissioner is correct, the test thus made and verified shall, in all prosecutions for violations of the provisions of this act, be prima facie evidence that the test made by the person engaged in testing, buying or selling such milk, cream or other dairy products was falsely made, and the Dairy Commissioner is hereby authorized to recall and cancel the tester's permit of such person thus making false tests, or to bring criminal action against such person, or both. (Id. § 6.)

34g. Sanitation.—It shall be unlawful: (1) To handle milk, cream, butter, ice cream or other dairy products in unclean or insanitary places, or in an insanitary manner, or to keep, store or prepare for market any milk, cream or other dairy products in the same building or enclosure with any hide or fur house, or any cow, horse or hog barns or sheds, or other places where live stock is kept, housed or handled, or in rooms or buildings used as gasoline or oil filling stations. Cream or milk receiving and buying stations must have outside doors or adjustable outside

windows, and if cream stations have connecting doors with any other part of the building in which said stations may be located, there must be installed at the connecting door a vestibule having solid doors provided with strong springs to keep them closed, and such vestibule must meet the approval of the Dairy Commissioner. Cream rooms must be used exclusively for the handling of dairy products. The State Dairy Commissioner and his deputies shall have the power and they are hereby authorized to forbid the handling of cream, milk, butter, ice cream or other dairy products in any such place or places as in their judgment are insanitary and will affect the purity of the milk, cream, butter, ice cream or other dairy products handled therein, or that will in any way injure the flavor or market value thereof. (2) To handle, test or ship milk, cream or ice cream or other dairy products in unclean or insanitary vessels, or to expose milk, cream or ice cream or other dairy products to flies or other contaminating influences likely to convey pathogenic or other injurious bacteria to such milk, cream, ice cream or other dairy products. (3) For any common carrier to neglect or fail to remove or ship from its depot, on the day of its arrival there for shipment, any milk, cream or other dairy products left at such depot for transportation. Railway and express companies and other common carriers must provide and utilize sanitary ventilated rooms or canvas covers at depots or transfer points for the protection from extreme temperatures of all milk, cream and ice cream received for shipment, and not allow merchandise of a contaminating nature to be stored on or with the cream. (4) To allow milk or cream cans or ice cream packers to remain at a railroad depot longer than one day from the date of their arrival, or to allow the empty cans to stand more than one day without removing the covers and inverting the cans in pure air. (5) To use any branded or registered cream can or milk can or ice cream packer or container for any other purpose than the handling, storing or shipping of milk, cream or ice cream. It shall be unlawful for any person other than the rightful owner thereof to use any can, bottle or other receptacle if such receptacle is marked with the brand or trademark of the owner. (6) For any person other than the rightful owner thereof to in any way alter the mark or brand or ownership identification on any can, bottle or other receptacle without the consent of the owner. Every person, firm or corporation purchasing ice cream in cans and shipping bags which are to be returned to the manufacturer shall cause such cans to be washed and cleaned as soon as emptied, and with the bags stored in a dry place, and returned at once. (7) To sell or offer for sale milk, cream, butter, cheese, ice cream or other dairy products that are not pure and fresh and handled with clean utensils. In all cases it shall be unlawful to sell or offer for sale milk or cream from diseased or unhealthy animals or handled by any person, suffering from or coming in contact with persons afflicted with any contagious disease, and it shall be unlawful to sell or offer for sale any milk or cream exposed to contamination or into which have fallen any insanitary articles or any foreign substance which would render the milk or cream or the product manufactured therefrom unfit for human consumption. In all prosecutions and proceedings for the enforcement in any of the courts of this State of all laws and regulations pertaining to the production, sale and distribution of dairy products of any kind whatsoever, the standards of purity and the definition of said products shall be such as are hereinafter stated, and whosoever shall sell or offer or expose for sale anywhere in this State milk, cream, butter, cheese, ice cream or other dairy product containing any preservatives of any kind whatsoever except common salt or sugar, or that shall not comply with the standards hereinafter provided, shall be guilty of a misdemeanor. (Id. § 7.)

34h. Definitions and Standards.—(A) (1) Whole milk is the lacteal secretion obtained by the complete milking of one or more healthy cows, properly fed and kept, excluding that obtained within fifteen days before and five days after calving, and when offered for sale must contain not less than three and one-fourth per cent of butter fat; (2) milk for manufacturing purposes may contain less than three and one-fourth per cent of butter fat, but must be delivered pure, sweet and clean; (3) for the purposes of this act, skimmed milk shall be considered to be such milk as has had all or a portion of the butter fat removed.

(B) (1) Cream is that portion of milk rich in butter fat which rises to the surface of the milk on standing or is separated from it by centrifugal force, and contains not less than eighteen per cent of butter fat. (2) All cream shall be graded according to the following rules, and each grade shall be kept in a separate can, plainly marked to indicate the grade contained therein: (a) First-grade cream shall consist of cream that is clean, smooth, free from undesirable odors, clean to the taste, and sweet or only slightly sour. (b) Second-grade cream shall consist of cream that is too sour to grade as first, that contains undesirable flavors or odors in a moderate degree, that is foamy, yeasty or slightly stale, or that is too old to

pass as first-grade cream. All sour cream containing less than twenty-five per cent butter fat shall be graded as second grade. It shall be unlawful to falsely grade cream, or to mix cream of different grades, or to offer for sale or purchase for use as human food unlawful cream as herein defined. (c) Unlawful milk or cream shall consist of milk or cream that is very old, rancid, moldy, dirty or curdy, which contains or has contained any foreign matter, or in which has been found insanitary articles or utensils, and such milk or cream shall not be purchased, sold or used for food purposes. It shall be unlawful to sell or offer for sale, or ship with the intent of selling, to any purchaser any milk, cream or other dairy product that has contained or does contain any foreign substance that renders said milk, cream or other dairy product unfit for human food. Persons engaged in milk or cream buying are hereby required, when offered unlawful milk or cream, to treat it with Venetian red sufficient to show unmistakably that such cream is unfit to be used in the manufacture of human food. (3) No part of any shipment of milk or cream to be used in the manufacture of food products shall be delivered to a carrier in an unwholesome condition.

(C) (1) Butter is the product made by gathering, in any manner, the fat of fresh or ripened milk or cream into a mass which also contains not less than eighty per cent of butter fat or made in accordance with such standards as shall be established by the Department of Agriculture of the United States. Provided, that the amount of butter fat in the product of any one manufacturer, or in any given quantity of butter, shall be determined as hereinafter provided with reference to renovated or process butter; butter may also contain a harmless vegetable coloring matter. (2) Renovated or process butter is the product made by melting butter and reworking, without the addition or use of chemicals or any substance except milk, cream or salt, and contains not less than eighty per cent of butter fat, or made in accordance with such standards as shall be established by the Department of Agriculture of the United States. Provided, that the amount of butter fat in the product of any one manufacturer, or in any given quantity of butter, renovated or process butter, shall be ascertained in the following manner, to wit: Five samples shall be taken from five different packages of any one manufacturer, or from any one tub or churning of butter, and a careful analysis made by the official method adopted by the Association of Agricultural Chemists. If this analysis shall show less than eighty per cent of butter fat, butter or process butter thus analyzed shall be deemed adulterated butter, and the manufacturer shall be deemed guilty of a misdemeanor and the butter must be reworked before again being offered for sale. Renovated or process butter may also contain a harmless vegetable coloring matter.

(D) (1) Cheese is the solid and ripened product made by coagulating the casein of milk by means of rennet or acids, with or without the addition of ripening ferments or seasoning; cheese may also contain harmless vegetable coloring matter; (2) whole milk or full cream cheese is cheese made from milk from which no portion of the fat has been removed and contains not less than fifty per cent of butter fat in proportion to total solids; (3) skim-milk cheese is cheese made from milk from which any portion of the fat has been removed.

(E) (1) Ice cream is a frozen product containing not less than ten per cent milk fat; not less than a total of twenty per cent milk solids, and not less than thirty-three per cent total solids; said product consisting of a flavored, sugar-sweetened mixture of cream or cream and milk, or the sweet, pure products of cream and milk, with or without the addition of gelatine, vegetable gums, or such other wholesome stabilizers as may be approved by the State Dairy Commissioner, to which mixture may be added pure, fresh, sweet, wholesome eggs, fruit or fruit juice, cocoa, chocolate or nuts. (2) All milk, cream and milk products shall be pasteurized before used in the manufacture of ice cream. Pasteurization for the purposes of this act is defined to mean the heating of the milk, cream or milk products used in the manufacture of ice cream to a temperature of at least 145 degrees Fahrenheit and held at said temperature for thirty minutes. All pasteurizing vats used for pasteurizing ice cream mix, or milk and cream used in the manufacture of ice cream, shall be equipped with a recording thermometer, and for each vat of milk, cream or ice cream mix pasteurized, a separate record chart shall be used; said charts being dated and kept on file until called for by the State Dairy Commissioner or deputy. It shall be unlawful to use any milk, cream or ice cream mix in the manufacture of ice cream without having on file, subject to the demand of the State Dairy Commissioner, a true record of pasteurization of said product. The facilities for holding said product at a low temperature until frozen must meet the approval of the State Dairy Commissioner. (3) Samples of ice cream taken for official test shall be taken with a butter trier from a full or nearly full can of ice cream in solid condition, or from the ice cream freezer.

(F) (1) It shall be unlawful to sell, keep for sale or offer for sale any condensed or evaporated milk, concentrated milk, sweetened condensed milk, sweetened evaporated milk, sweetened concentrated milk, sweetened condensed skimmed milk, sweetened evaporated skimmed milk, sweetened concentrated skimmed milk, which shall not conform at least to the minimum standards hereinafter provided. Condensed milk, evaporated milk or concentrated milk is the product resulting from the evaporation of a considerable portion of the water from whole, fresh, clean milk, and contains, all tolerances being allowed for, not less than twenty-five and five-tenths per cent (25.5%) of total solids and not less than seven and eight-tenths per cent (7.8%) of milk fat. Sweetened condensed milk, sweetened evaporated milk or sweetened concentrated milk is the product resulting from the evaporation of a considerable portion of the water from whole, fresh, clean milk, to which sugar (sucrose) has been added. It contains, all tolerances being allowed for, not less than twenty-eight per cent (28.0%) of total milk solids, and not less than eight per cent (8.0%) of milk fat. Condensed skimmed milk, evaporated skimmed milk, concentrated skimmed milk, is the product resulting from the evaporation of a considerable portion of the water from skimmed milk, and contains, all tolerances being allowed for, not less than twenty per cent (20.0%) of milk solids. Sweetened condensed skimmed milk, sweetened evaporated skimmed milk, sweetened concentrated skimmed milk, is the product resulting from the evaporation of a considerable portion of the water from skimmed milk to which sugar (sucrose) has been added. It contains, all tolerances being allowed for, not less than twenty-eight per cent (28.0%) of milk solids. (2) It shall be unlawful to manufacture, sell, keep for sale, or have in possession with intent to sell or exchange, any milk, cream, skim milk, buttermilk, condensed or evaporated milk, powdered milk, condensed skim milk, or any of the fluid derivatives of any of them to which has been added any fat or oil other than milk fat, either under the name of said products, or articles or the derivatives thereof, or under any fictitious or trade name whatsoever. (3) It shall be unlawful to sell, keep for sale or offer for sale any condensed or evaporated or powdered skim milk in containers holding less than ten (10) pounds avoirdupois net weight, and each said container shall bear the name and address of the manufacturer, distinctly branded, indented, labeled or printed thereon, together with the words "condensed skim milk" or "powdered skim milk," as the case may be, in Roman letters of a size at least as large as any other words or letters appearing on said brand, indentation or label. (Id. § 8.)

34i. Licenses; Taxes.—(A) (1) It shall be unlawful to manufacture butter, ice cream, cheese, condensed milk or milk powder in the State of Kansas, without first having applied for and obtained a license signed by the State Dairy Commissioner, bearing the seal of his office. Such license shall be conspicuously displayed in the applicant's place of business. Dairy manufacturer's license shall be issued on application, of the legally authorized representative of such dairy manufacturing plants, to the Dairy Commissioner, accompanied by the annual license fee of ten dollars ($10), such license to remain in force for one year, subject to the provisions of this act, the rules and regulations based hereon, and the payment of the quarterly butter fat tax in accordance with the following schedule:

Creameries: That each person, firm, partnership, company or corporation engaged in the manufacture of butter shall pay, through the office of the State Dairy Commissioner, not later than the fifteenth day of January, April, July and October, five cents (5c) for each one thousand pounds of butter fat purchased from Kansas producers during the three preceding calendar months.

Ice cream factories: That each person, firm, partnership, company or corporation engaged in the manufacture of ice cream shall pay, through the office of the State Dairy Commissioner, not later than the fifteenth day of January, April, July and October, fifty cents (50c) for each one thousand gallons of ice cream manufactured during the three preceding calendar months.

Cheese factories: That each person, firm, partnership, company or corporation engaged in the manufacture of cheese, shall pay, through the office of the State Dairy Commissioner, not later than the fifteenth day of January of each year, five cents (5c) for each one thousand pounds or fraction thereof of butter fat purchased during the preceding year.

Condenseries and milk powder plants: That each person, firm, partnership, company or corporation engaged in the manufacture of condensed milk, condensed skimmed milk, powdered milk or powdered skimmed milk, shall pay, through the office of the State Dairy Commissioner, not later than the fifteenth day of January, April, July and October, five cents (5c) for each one thousand pounds of butter fat purchased during the three preceding calendar months.

Nothing in this act pertaining to the manufacture of butter shall apply to farmers or producers of milk and cream when churning milk or cream produced on their own farm into what shall be known as dairy, country, or farm butter, or to prohibit

such producers from making cheese out of milk and cream produced on their own farm.

(B) (1) It shall be unlawful to establish a cream- or milk-buying station and install any person or persons as station operators without first having obtained a field superintendent's license from the State Dairy Commissioner. (2) Field superintendents' licenses may be obtained by making application to the State Dairy Commissioner, passing the examination given under his direction, and paying the annual fee of five dollars ($5), such licenses being renewable each year on the payment of the annual fee unless canceled because the holder thereof has been found guilty of violating the dairy law or the rules and regulations based thereon.

(C) (1) It shall be unlawful for any person to sample or test milk, cream or other dairy products, the test of which is to be used as a basis for making payment for said product, without first having obtained a tester's permit signed by the State Dairy Commissioner and bearing the seal of his office, and such permit must be conspicuously displayed in the applicant's place of business. (2) Tester's permits will be issued for one year, subject to cancellation when the holder thereof shall be found guilty of having violated any of the provisions of this act or the rules and regulations based hereon. (3) Testers' permits shall be granted to those who have passed a satisfactory examination under the direction of the State Dairy Commissioner, when application for such permit is accompanied by the annual fee of three dollars ($3). (4) Cream testers' permits shall be renewable without examination on the payment of the annual fee, subject to the following provisions: First, that the applicant made a grade of 85 per cent on the last final examination; second, that the milk or cream station operated by or in which the applicant is working grades 85 per cent according to the official score card adopted by the State Dairy Commissioner, and carries a first grade seal. Persons who did not make a grade of 85 per cent on the last final examination, or whose stations are not first grade, must take the examination and if accepted, pay the fee. (5) All testers' permits now in force will be null and void after July 1, 1927, and those now holding permits dated to expire in 1927, 1928 and 1929, must avail themselves of the opportunity of obtaining a permit as herein provided or discontinue to do any sampling or testing of milk or cream.

(D) It shall be unlawful to establish any milk- or cream-buying stations without first having obtained a station license from the State Dairy Commissioner. Such license may be obtained by a licensed field superintendent making application accompanied by the annual fee of two dollars ($2), such license to be in force for one year, subject to revocation by the State Dairy Commissioner at any time the station shall be found to be in violation of the provisions of this act or the rules and regulations based hereon.

(E) (1) It shall be unlawful to engage in the milk or cream brokerage business without first having obtained a license from the State Dairy Commissioner to operate or conduct such business. (2) Milk or cream brokerage permits may be obtained in the same manner and under the same provisions as those of a dairy manufacturing plant, being subject to the annual license fee of ten dollars ($10) and the quarterly butter fat tax of five cents (5c) per one thousand pounds purchased.

(F) All moneys paid to or received by the State Dairy Commissioner under the provisions of this act shall be handled through the funds of the State Board of Agriculture and be paid into the State treasury monthly by the secretary of said board, there to be placed in a separate fund, which is hereby appropriated to the State Board of Agriculture for the purpose of administering the provisions of this act. Any unexpended balances now in funds available for the dairy division are hereby reappropriated and made a part of above-named fund, and any unexpended balance in said fund at the close of any fiscal year is hereby reappropriated to the State Board of Agriculture for the ensuing year. The State Auditor is hereby authorized to draw warrants against this separate fund, upon presentation of properly itemized and duly verified vouchers, approved by the Secretary of the State Board of Agriculture. (Id. § 9.)

34j. Penalties.—Any person, firm or corporation, and any officer, agent, representative, servant or employee of such person, firm or corporation who violates any of the provisions of this act, or any of the rules and regulations based hereon, shall be deemed guilty of a misdemeanor, and his or their permit or license shall be subject to suspension or cancellation by the State Dairy Commissioner. Upon conviction the offender shall be punished by a fine of not less than twenty-five ($25) dollars nor more than two hundred dollars ($200) for each offense. (Id. § 10.)

34k. Enforcement.—The State Dairy Commissioner, by himself or his deputies, shall be charged with the enforcement of the provisions of this act. (Id. § 11.)

341. Interstate Commerce.—Nothing in this act shall be construed to prohibit the shipment into this State from a foreign State, and the first sale thereof in this State in the original package intact and unbroken, of any of the products or articles, the manufacture, sale or exchange of which or possession of which with intent to sell or exchange is prohibited hereby. (Id. § 12.)

Potatoes.

64a. Standards.—In order to promote, protect, and develop the interests of the commercial potato-growing industry in this State, the State Board of Agriculture is hereby authorized and empowered, after investigation and public hearing, to fix and promulgate official standards for grading and classifying all Kansas-grown Irish potatoes offered for car-lot shipment in the State of Kansas. Such official standards shall follow as nearly as possible the United States government grades for potatoes with such other additions and qualifications as may be deemed necessary. (L. 1927, c. 13, § 1.)

64b. Shipping Points; Inspection.—No railway or railroad company shall accept for shipment between the dates of June 15 and September 1 of each year, any carloads of Kansas grown Irish potatoes from any station which shall not have been designated by the State Board of Agriculture as an inspection shipping point. The Secretary of the State Board of Agriculture shall designate as potato shipping points in Kansas prior to June 15 of each year, all shipping points where, in his judgment, the number of cars shipped will pay the expense of official inspection and proper notice shall be sent to each point so designated, at which points all cars shall be officially inspected. A copy of the inspection certificate or a memorandum in writing of the contents thereof, must be promptly filed with the agent of the railway or railroad company at the billing point, and such agent shall place on the bill of lading a statement showing the grade of potatoes in accordance with the inspector's report. A placard showing the grade of potatoes shall be posted by the inspector in a conspicuous place on the inside of each car. At all points not designated and notified as above provided, no inspection shall be required. (Id. § 2.)

64c. Rules and Regulations.—The State Board of Agriculture is hereby authorized to co-operate with the United States Department of Agriculture or any bureau or division thereof, in accomplishing the purposes of this act. The State Board of Agriculture is hereby authorized to enter into an agreement with the United States Bureau of Agricultural Economics regulating this inspection service, and such agreement shall set forth the duties and responsibilities of each to the other, and the State Board of Agriculture is also hereby authorized to make necessary rules and regulations for the purpose of carrying out the provisions of this act. (Id. § 3.)

64d. Fees.—The fees covering inspections under this act shall be paid by the shipper of the potatoes to the Secretary of the State Board of Agriculture. Fees shall be uniform during the shipping season of each year, and upon the taking effect of this act, there shall be collected three dollars ($3) for each carload inspected: Provided, however, that when there has been accumulated in the potato inspection fund at the end of any calendar year from the fees provided for by this section, the sum of five thousand dollars ($5,000) then the fee for inspection shall be reduced to two dollars per car until the surplus in such fund shall be reduced to two thousand five hundred dollars ($2,500), when the fee shall increase to three dollars ($3) per car. (Id. § 4.)

64e. Appropriations.—All fees received by the Secretary of the State Board of Agriculture in connection with the enforcement of the provisions of this act, shall be turned into the State treasury monthly, and be set aside in a separate fund to be known as the potato inspection fund, and used by the Secretary of the State Board of Agriculture in defraying the cost of this work. Said potato inspection fund is hereby appropriated to the State Board of Agriculture, and any unexpended balance in said fund less ten per cent to be retained for the general revenue fund of the State, at the close of the fiscal year ending June 30, 1927, is hereby reappropriated for the fiscal year ending June 30, 1928, and any unexpended balance in said fund at the close of the fiscal year ending June 30, 1928, is hereby reappropriated for the fiscal year ending June 30, 1929. The State Auditor is hereby authorized to draw his warrants upon the State Treasurer for any money in the said potato inspection fund created under the provisions of this act, upon the presentation of properly itemized and verified vouchers approved by the Secretary of the State Board of Agriculture. (Id. § 5.)

64f. Penalties.—Any person removing inspection placard from a car before it is unloaded, or any person violating any provisions of this act, shall be deemed guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not more than one hundred dollars, or by imprisonment for not more than sixty days, or by both such fine and imprisonment. (Id. § 6.)

64g. Certificates of Inspection.—A certificate, when not superseded by a finding on appeal, or a finding on appeal of the grade, classification, quality or condition of potatoes, issued under this act, and all certificates issued under authority of the Congress of the United States relating to the grade, classification, quality or condition of potatoes, shall be accepted in any court of this State as prima facie evidence of the true grade, classification, quality or condition of such agricultural product at the time of its inspection. (Id. § 7.)

64h. Constitutionality.—If any provision of this act or the application thereof to any person or circumstance is held invalid the validity of the remainder of the act and of the application of such provision to other persons or circumstances shall not be affected thereby. (Id. § 8.)

Sanitation.

See No. 34a et seq., ante.

PART IV.

Miscellaneous Laws.

Tobacco—Tobacco Products.

149-153. Repealed. (L. 1927, c. 171, § 23.)

153a. Definitions.—The following words, whenever they appear in this chapter shall be construed to mean the things set out below, respectively, to wit: (a) The word "person" means one or more people, a corporation, a partnership, or an association. (b) The word "consumer" means a person who comes into possession of cigarettes or cigarette papers for the purpose of consuming them, giving them away, or disposing of them in any way other than by sale, barter or exchange. (c) The word "retailer" means a person who comes into possession of cigarettes or cigarette papers for the purpose of selling them to "consumers." (d) The word "cigarette" means all rolled tobacco or substitute therefor wrapped in paper or any substitute other than tobacco. (e) The words "cigarette paper" means any paper used in the rolling of cigarettes. (L. 1927, c. 171, § 1.)

153b. Sale to Minors.—It shall be unlawful for any person, company or corporation to sell or give away to any minor under 21 years of age any cigarettes, cigars, cigarette papers, tobacco or any other such materials connected with the smoking of tobacco. And it shall likewise be unlawful for the proprietor of any place of business to permit minors under 21 years of age to frequent such place of business while in the act of using tobacco in any form. The term "place of business" as herein used shall apply to any and all such places as shops, stores, factories, offices, theaters, recreation and dance halls, pool rooms, cafes, restaurants, hotels, lodging houses, street cars, interurban and railway passenger coaches and waiting rooms. (Id. § 2.)

153c. Penalties.—Any person who shall violate any of the provisions of the preceding section shall be guilty of a misdemeanor and upon conviction shall be fined in a sum of not less than $25 nor more than $100 or by confinement of not less than thirty (30) days nor more than ninety (90) days in the county jail or by both such fine and imprisonment: Provided, that upon the conviction of any retailer of cigarettes, of the violation of any provisions of this act, the judge of the District Court may, in addition to imposing other penalties provided herein, revoke the license of such retailer to sell cigarettes, and may, in addition thereto, fix a term not to exceed two years, during which time said license shall not be renewed or other license issued to such retailer. (Id. § 3, as amended L. 1927, c. 172.)

153d. Retailer's License.—It shall be unlawful for any person to retail cigarettes or cigarette papers without a retailer's license obtained as herein provided. If the application is for a permit to retail cigarettes or cigarette papers within the limits of any county within this State the clerk of said county shall, upon proper application made and the payment of the license fees provided for herein, issue said applicant a license. (L. 1927, c. 171, § 4.)

153e. Form of Permit.—Such permit shall: (1) Be granted only to a person owning or operating the place from which sales are to be made under the permit. (2) Not to be transferable. (3) Be numbered and show the name and the residence of the person to whom granted and the place of business of the holder where sales are to be conducted under such permit. (Id. § 5.)

153f. Issuance Certified to State Treasurer.—The clerk of a county which has granted a permit shall upon the issuance of any permit granted under the provisions of this chapter immediately certify such issuance to the Treasurer of the State. (Id. § 6.)

153g. License Fee.—The license fee shall be fifty dollars in cities of the first and second class, and 25 dollars in cities of the third class and places outside of incorporated cities, which said license fees shall be placed in the general fund of the county issuing the license. All licenses shall expire on the thirtieth day of June of each year. (Id. § 7, as amended L. 1927, c. 173.)

153h. Tax Upon the Sale of Cigarettes and Cigarette Papers.—There is hereby levied and assessed and shall be collected and paid to the State Treasurer prior to or at the time of the sale and delivery to the consumer, upon all cigarettes and cigarette papers, the following tax: (1) On each twenty cigarettes or fractional part thereof, two cents. (2) On each fifty cigarette papers or fractional part thereof, one cent. (L. 1927, c. 171, § 8.)

153i. Packages; Stamps affixed; Cancellation.—All cigarettes sold under the provisions of this chapter shall be put up in packages and on each of said packages shall be affixed thereto a suitable stamp denoting the tax thereon, and said stamp shall be properly canceled prior to the sale, removal or consumption under such regulation as the Treasurer of State shall prescribe, said cancellation of stamp to bear the permit number under which sale is made. All cigarette papers sold under the provisions of this chapter shall be put up in packages or booklets and there shall be securely affixed thereto a suitable stamp denoting the tax thereon and said stamp shall be properly canceled prior to sale, removal or consumption under such regulation as the Treasurer of State shall prescribe. (Id. § 9.)

153j. Sale on Trains.—Any person, firm or corporation engaged in the news and tobacco business on steam railway trains or electric cars desiring to retail cigarettes on any steam railway train or electric cars operating in Kansas may obtain a license to sell cigarettes and cigarette papers on such steam railway trains or electric cars upon making application to the State Treasurer for such license and the payment of an annual fee of three hundred dollars. Such license will permit such person, firm or corporation to retail cigarettes and cigarette papers on any steam railway train or trains, electric car or cars operating and running in the State of Kansas. Cigarettes and cigarette papers sold on any such steam railway trains or electric cars shall be subject to the taxes herein elsewhere provided. All proceeds received by the State Treasurer from license fees and tax under this section shall be placed by the State Treasurer in the general fund of the State treasury. (Id. § 10.)

153k. Violation.—Any person who retails cigarettes and cigarette papers to consumers without having and possessing a valid and existing license, as herein provided, or who possessing or not possessing a license, sells cigarettes or cigarette papers without paying the tax or without having the stamps duly attached and canceled to such cigarettes or cigarette papers, as provided herein, shall, upon conviction, be adjudged guilty of a misdemeanor and fined not less than two hundred dollars nor more than five hundred dollars or confined in the county jail not less than thirty days nor more than six months or both such fine and imprisonment. If the convicted person be a holder of a license, the judge of the District Court may revoke such license, and may in any event enter an order making the convicted person ineligible to renew or receive a license for a period not to exceed two years from date of conviction, and the judge of said court may, if the person convicted be an employee of a licensed dealer, revoke the said dealer's license in the same manner, and for the same period of time as above provided. (Id. § 11.)

153l. Forgery; Counterfeiting.—Any person who, with intent to defraud the State, shall make, alter, forge or counterfeit any license, permit or stamp provided for in this chapter, or who shall have in his possession any forged, counterfeited, spurious or altered license, permit or stamp, with intent to use the same, knowing or having reasonable grounds to believe they are such, or for the purpose of destroying identity of dealer by defacing permit number, shall be fined not more than one thousand dollars and be imprisoned in the State Penitentiary not more than three years. (Id. § 12.)

153m. Preparation of Stamps; Delivery to Treasurer; Sale.—The auditor of the State shall prepare and have suitable stamps for use on each kind of package. Such stamps shall bear the facsimile signature of the Auditor of State. Upon

requisition of the Treasurer of State the Auditor shall deliver to his order the stamps designated in such requisition and shall charge the Treasurer with the stamps so delivered, and shall keep an accurate record of all stamps coming into and leaving his hands. The Treasurer of State shall sell the stamps only to retailers holding unrevoked permits; such sale shall be in denominations as follows: Two-cent stamps in amounts of five hundred stamps; one-cent stamps in amounts of two hundred fifty stamps. All funds arising from the sale of such stamps shall be paid into the general fund of the State and become a part thereof. (Id. § 13.)

153n. Stamps Redeemed by Treasurer.—The State Treasurer shall, on written request of any licensed retailer whose license has been surrendered or revoked, redeem any unused stamps which such retailer presents for redemption, and pay for the same out of funds derived under the provisions of this chapter. It shall be unlawful for any dealer to sell such stamps to any person whomsoever. (Id. § 14.)

153o. Enforcement.—The State Treasurer is hereby authorized to administer and enforce the tax provisions of this act, and to make such rules and regulations as is necessary to carry out such tax provisions. In doing so the State Treasurer may call to his aid the Attorney-General, any county attorney, or any peace officer. The Treasurer is further authorized to pay from the revenue derived under the provisions of this chapter for the tax stamps to be obtained by the State Auditor as provided herein, and for such blank forms and postage as may be necessary for the State Treasurer in collecting the taxes provided herein. (Id. § 15.)

153p. Consumer; Stamp Tax.—It shall be unlawful for any consumer to have in his possession or to purchase cigarettes or cigarette papers upon which the tax provided by this act has not been paid. (Id. § 16.)

153q. Violation.—Any person violating the preceding section shall, upon conviction, be punished by a fine of not less than ten dollars nor more than twenty-five dollars. (Id. § 17.)

153r. Cigarette Advertisements.—It shall be unlawful for any person, company or corporation to advertise cigarettes or cigarette papers, or any disguise or subterfuge of either of these, in any circular, newspaper or other periodical published, offered for sale or for free distribution within the State of Kansas. It shall also be unlawful for any person, company or corporation to advertise cigarettes or cigarette papers on any street sign, placard or billboard; or in any package of merchandise, store window, show case, or any other public place within the State of Kansas. (Id. § 18.)

153s. Penalty.—Any person violating any of the provisions of this act where penalty is not heretofore prescribed for the violation of a specific part of this act, shall, upon conviction, be punished by a fine of not less than one hundred dollars nor more than three hundred dollars. (Id. § 19.)

153t. Wholesale Dealers.—No person or firm handling cigarettes or cigarette papers in a wholesale way shall be permitted to sell cigarettes or cigarette papers to any person or firm not holding a license to retail such cigarettes or cigarette papers under the provisions of this chapter. Any person or firm found guilty of violating this section shall be subject to penalties prescribed by [for] violators in section 11 of this act. (Id. § 20.)

153u. Failure to Prosecute.—The failure of any peace officer to prosecute violators of this chapter shall constitute grounds for ouster proceedings. (Id. § 21.)

Trade-Marks.

See No. 34g, ante.

Weights and Measures.

See No. 34a et seq. and No. 64a et seq., ante.

MARYLAND.

PART II.

Special Food Laws.

Dairy Products—Substitutes for Dairy Products.

92a. Dairy Records; Perjury.—Any person employed by the State Board of Agriculture, the University of Maryland, or any department or branch thereof, to inspect and/or test cows and/or the quantity and quality of milk, who shall willfully make any false oath or affirmation with respect to the production record of any cow, shall be deemed guilty of perjury. If any such person shall make oath or affirmation to two statements, one contradicting the other, with respect to the production record of any cow, and shall make oath or affirmation willfully and falsely, it shall be sufficient, in order to convict, to allege and prove that one of the said contradictory statements, is or must be false and willful, without specifying which one. (Annotated Code, 1924, Art. 27, § 451A, as added L. 1927, c. 491.)

Oysters.

112a. Measure of Shells.—All oysters taken from any of the waters of this State, either with scoops, dredges or any similar instruments, or tongs or rakes, shall be culled upon their natural bed or bar whence taken, and all shells shall be returned to the bed or bar from which they were taken, and all oysters whose shells measure less than three inches in length, measuring from hinge to mouth, whether attached to a marketable oyster or not, shall be included in said culling and replaced upon said bed or bar as taken; and when oysters measuring less than three inches are adhering so closely to the shell of a marketable oyster as to render removal impossible without destroying the small oysters, then such oysters, including the marketable oyster or oysters shall be returned to the bed or bar from which they were taken; and the culling of oysters taken as aforesaid required by this section shall be actually made and completed before such oysters are thrown or deposited in the hold or bottom of any such canoe or boat or vessel aforesaid. (Annotated Code, 1924, Art. 72, § 8, as amended L. 1927, c. 125.)

112b. Same; Penalties.—Any person who shall have oysters in his possession which contain more than five per cent of shells, and oysters less than three inches from hinge to mouth (whether adhering to marketable oysters or not), which for the purpose of this article are declared to be unmerchantable oysters, shall be guilty of a misdemeanor, and in ascertaining such percentage the officers of the oyster police force and the measurers and inspectors, are hereby authorized and directed to select such amount of oysters from any pile, hold, bin, house or other place as he may think proper and to require the same to be culled and disposed of, as provided in section 11 of this article; and any person violating any of the provisions of this section shall be subject to the penalties and fines as provided in section 11 of this article, in precisely the same manner as if he were a captain of a boat. (Id. § 9.)

112d. Same.—Any person, firm or corporation engaged in catching, buying, selling or packing oysters violating any provision of section 8 or 9 of this article shall be deemed guilty of a misdemeanor, and upon conviction before any justice of the peace or court of competent jurisdiction shall be fined the sum of not less than $100, or confined in jail not less than 30 days nor more than six months, either or both, and in addition to such fine or imprisonment said cargo shall be confiscated and returned to natural beds or bars under the supervision of the oyster inspector or other officer making the arrest, and at the expense of the violator, which expense shall be in addition to the fine imposed and collectible in the same manner, and the boat or vessel shall be held as security for the payment of said fine. If the violator has taken oysters only with tongs he shall be fined $25, and the boat in which said oysters are found shall be held as security for the payment of said fine. In addition to the above penalties the justice of the peace or judge may, in a case where the violator has been previously convicted of violating the provisions of this subtitle, suspend or revoke the license under which said violator may be operating for the purpose of catching, shucking, packing or canning oysters. In case there is an appeal or waiver of trial before justice of the peace, in order to provide for the disposition of any oysters that have been declared unmerchantable,

the cargo of oysters shall remain in the possession or custody of the deputy commander, inspector or other officer making the arrest until the captain of the boat or vessel or the packer shall have culled the oysters in question; and the officer under whose supervision the reculling is done, after ascertaining the quantity of unmerchantable oysters and shells so culled out, shall give the captain or other person in charge of said vessel or packing house a certificate showing the number of bushels of such unmerchantable oysters and the said captain or other person shall return said unmerchantable oysters so culled out to the natural beds or bars under the supervision of the officer. The cost of reculling and expenses incident to same shall be borne by the violator. (Annotated Code, 1924, Art. 72, § 11, as amended L. 1927, c. 467.)

112h. Same.—Any packer, commission man, boatman or other person who shall conspire or agree with any other person to evade any of the provisions of this article, or who shall connive at or participate in such violation shall be guilty of a misdemeanor. It shall be unlawful for any captain or other person in charge of a vessel to discharge his oysters, or for any packing house or any other person to receive oysters between the hours of one hour after sunset and one hour before sunrise. Any violation of this section shall be a misdemeanor punishable by a fine of not less than one hundred dollars and not more than five hundred dollars for each offense on conviction before a court of competent jurisdiction; one-half of said fine to go to the informer and the other one-half to the comptroller, to be placed to the credit of the oyster fund, unless the informer be an officer of the State fishery force. And the general inspectors and measurers or special inspectors shall be on duty continuously during the working or delivery hours, viz: from one hour before sunrise to one hour after sunset. (Id. § 15.)

112k. Repealed. (L. 1927, c. 126.)

112l. Measure of Shells.—All oysters taken from any natural rocks, beds or shoals within the Potomac River shall be culled on their natural rocks, beds or shoals as taken, and oysters whose shells measure less than three inches in length, measuring from hinge to mouth, whether attached to a marketable oyster or not, and all shells shall be included in said culling and placed on said rocks, beds or shoals; provided, that oysters once passed from the culler less than the prohibited size, and all shells shall be considered as not having been culled according to the provisions of this section for the purpose of this section shall be declared to be unmerchantable oysters; and when oysters measuring less than three inches are adhering so closely to the shell of a marketable oyster as to render removal impossible without destroying the small oysters, then such oysters, including the marketable oyster or oysters, shall be returned to the bed or bar from which they were taken. And it shall be unlawful for any person to take, buy or sell the small oysters and shells from the natural rocks, beds and shoals as aforesaid, or to take, buy or sell or have in possession oysters less than three inches in length from hinge to mouth. Whenever any inspector or other officer shall have reason to believe that this section has been violated with the reference to the culling of oysters, such inspector or other officer is hereby authorized to examine the cargo of any boat or vessel, and if upon examination of said cargo the said inspector or other officer shall find that five per centum or more of said cargo shall consist of shells and oysters whose shells measure less than three inches in length, measuring from hinge to mouth, the captain of the boat or other person in charge of said boat shall be deemed to have violated this section, and upon conviction, if of a dredge boat or vendor of oysters, shall be fined not less than one hundred dollars, or confined in jail not less than thirty days nor more than six months, either or both, and in addition to such fine or imprisonment said cargo shall be confiscated and returned to the natural beds under the supervision of the oyster inspector or other officer making the arrest, and at the expense of the violator, which expense shall be in addition to the fine imposed and collectable in the same manner, and the boat or vessel on which said oysters are found shall be held as security for the payment of said fine; if the boat in which only oyster tongs are used, the said captain or other person in charge shall be fined not less than fifty dollars or confined in jail not less than fifteen days nor more than three months, either or both, and said cargo confiscated and returned to the natural beds under the supervision of the oyster inspector or other officer making the arrest. And the boat or vessel on which said oysters are found shall be held as security for the payment of said fine; provided, however, that when any person shall be found with oysters in violation of this section, he shall be presumed to be a dredger or vendor of oysters, and if he claims to be a tonger, the burden shall be upon said person to show that he is a tonger only. In case there is an appeal or waiver of trial before justice of the peace, in order to provide for the disposition of any oysters that have been declared unmerchantable, the cargo of oysters shall

remain in the possession or custody of the deputy commander, inspector or other officer making the arrest until the captain of the boat or vessel or the packer shall have reculled the oysters in question; and the officer under whose supervision the reculling is done, after ascertaining the quantity of unmerchantable oysters and shells so culled out, shall give the captain or other person in charge of said vessel or packing house a certificate showing the number of bushels of such unmerchantable oysters and the said captain or other person shall return said unmerchantable oysters so culled out to the natural beds or bars under the supervision of the officer. The cost of reculling and expenses incident to same shall be borne by the violator. Provided, that this section shall not apply to seed oysters or plants taken under other provisions of this act from that portion of the Potomac River above a straight line drawn from the north point at the mouth of Upper Machodoc creek, in the county of King George, Virginia, to Lower Cedar Point, in Charles county, Maryland. (Annotated Code, 1924, Art. 72, § 73, as amended L. 1927, c. 476.)

112ll. **Permits; Inspection Tax.**—It shall be unlawful for any person to carry or attempt to carry or buy for the purpose of carrying out of the State any oysters taken from the natural rocks, beds or bars in the waters of this State, until he has first obtained for each cargo a permit to do so from the deputy commander or inspector from whose district said cargo is to be taken, and has paid to the deputy commander or inspector an inspection tax of four cents per bushel on the number of bushels in said cargo in order to defray the cost of such inspection; said inspection tax on oysters shall attach irrespective of actual sale of oysters and shall be effective prior to shucking or shipping same.

Any person violating the provisions of this section shall, upon conviction, be fined the sum of not less than one hundred dollars nor more than two hundred dollars, and the boat or vessel, together with her tackle used in the violation, shall be forfeited to the State to be dealt with in accordance with section 31, and all oysters found on said vessel shall be returned to the beds whence taken.

All taxes collected under the provisions of this act shall be remitted to the Conservation Department and forwarded to the Comptroller or State Treasurer to be placed to the credit of the Conservation Fund.

Nothing in this act shall be construed to permit or allow the catching or removing of oysters measuring less than three inches from hinge to mouth. (Annotated Code, 1924, Art. 72, § 82A, as added L. 1927, c. 122.)

114. **License for Selling, Etc., of Oysters; Fees; Separate License for Each Place of Business.**—It shall be unlawful for any person, firm or corporation having a fixed place of business, buying oysters and employing labor to prepare them for market to engage in the business of buying, selling, marketing, packing or canning oysters without first taking out a license to engage in such business by application to the Conservation Department of Maryland. Where any such person, firm or corporation operates more than one house for the buying, selling, marketing, packing or canning of oysters, a separate license shall be obtained for each house in which oysters are shucked or otherwise prepared for market; such license to be in the nature and form of a contract between the State of Maryland and the applicant and shall provide for the payment of a license fee of twenty-five dollars, and shall further provide that the licensee must turn over to the State of Maryland at least ten per cent of the shells from the oysters shucked in his establishment for the current season, said shells to be removed on or before the twentieth day of August of said season; or at the discretion of the Conservation Department its equivalent in money, the value thereof being determined at the market value of shells as of the first day of May following the close of the season. The Conservation Department shall notify each packer or canner on or before the said first day of May whether it is its intention to take the ten per centum of the shells from oysters shucked as aforesaid, or its equivalent in money. Said license shall have effect from the first day of September in the year in which it may have been obtained until the twenty-fifth day of April, inclusive, next succeeding. (Annotated Code, 1924, Art. 72, § 91, as amended L. 1927, c. 119, § 1.)

PART IV.

Miscellaneous Laws.

Chain Stores.

183.1. **Chains of More Than Five Stores Prohibited; Penalty.**—On and after June 1, 1927, it shall be unlawful within Allegany County, Maryland, for any

person, firm, association or corporation, its servants or agents to establish, own, operate, set-up or cause to be established, owned, or operated either directly or indirectly, under trade name for the sale of any brand of goods, wares, merchandise, more than five mercantile or other stores for the sale of goods, wares or merchandise, commonly known as chain store or chain stores for the sale or retail of any goods, wares or merchandise; any person, firm, association or corporation, its officers, agents, consignees or servants violating the provisions of this section shall be deemed guilty of a misdemeanor upon conviction before the Circuit Court of Allegany County and shall be fined not less than five hundred ($500.00) dollars for each and every offense, all fines imposed under this section shall be paid over to the county commissioners of Allegany County for the use of the public school system of Allegany County. (L. 1927, c. 554, § 1.)

183.2. Licenses; Fees.—In addition to the license fees now imposed in Allegany County under general or local laws against the person, firm or corporation set forth in section 1, before said person, firm or corporation mentioned in the preceding section and the limitations therein contained shall own, operate or maintain any of said chain stores in Allegany County they shall first obtain from the clerk of the Circuit Court for Allegany County a special license to be known as a chain store license and pay to said clerk of the court for each and every chain store operated or to be operated by said individual, firm or corporation the sum of five hundred ($500.00) dollars per year, which said license shall be payable to and collected by the clerk of the Circuit Court for Allegany County for the use of the county commissioners of Allegany County in the same manner and form as traders' licenses are now issued, collected and payable. Any person, firm, association or corporation owning and operating said chain store or stores in Allegany County, Maryland, after June 1, 1927, who fails to take out said license on June 1, 1927, shall be deemed guilty of a misdemeanor and upon conviction thereof by the Circuit Court for Allegany County shall in addition to said license fee herein stipulated to be paid be fined not less than five hundred ($500.00) dollars for each and every offense, said fine to be paid to the county commissioners of Allegany County for the use of the public school system of Allegany County. (Id. § 2.)

MICHIGAN.

PART II.

Special Food Laws.

Beverages.

48-61. Repealed. (P. A. 1927, No. 126, § 17.)

61a. License by Whom Issued; Fee; To Be Displayed.—No person, firm or corporation shall manufacture or bottle for sale at wholesale any soft drink, natural or mineral water, carbonated or otherwise, or other nonalcoholic beverage except apple cider within this State without having first filed with the Department of Agriculture an application for a license for each plant sixty days prior to contemplated operation of plant, accompanied with a fee of twenty-five dollars, upon receipt of which application the Commissioner of Agriculture shall, after satisfactory inspection, issue to the person, firm or corporation making such application a license to manufacture or bottle soft drinks, distilled, spring or mineral waters, fruit juices or other nonalcoholic beverages, as hereinafter provided. Said license shall run for one year, from the date of issue, unless sooner revoked, as herein provided, and must be prominently displayed in said plant, and shall be renewed annually thereafter. No license issued under the provisions of this act shall be transferable. (P. A. 1927, No. 126, § 1.)

61b. Inspection and Registration.—No soft drink, distilled, spring or mineral water, or other nonalcoholic beverage except apple cider not manufactured or bottled in the State shall be sold or offered for sale within the State of Michigan unless same is first inspected and registered with the Department of Agriculture as provided in section three hereof, and an inspection fee of twenty-five dollars for each such drink or other nonalcoholic beverage bearing a distinguishing flavor or name shall be paid by either the manufacturer, his agent or dealer to the Department of Agriculture of the State of Michigan, same to be renewed annually. (Id. § 2.)

61c. Sale Before Registration Unlawful; Proviso; Who Exempted.—No person, firm or corporation shall sell, offer for sale, or have in his or their possession with intent to sell, any soda water syrup or extract, soft drink syrup or extract, or nonalcoholic cordials, without first registering the same and the name and address of the manufacturer thereof with the Commissioner of Agriculture. At the time of making such registration an inspection fee of five dollars for each and every syrup or extract that is sold or offered for sale shall be paid to the Commissioner of Agriculture. Said registration shall be renewed annually: Provided, that whenever any manufacturer, agent or seller shall have paid this fee, his or their agent or dealer using the same shall not be required to do so. All moneys collected hereunder by the Commissioner of Agriculture shall be paid into the State treasury and credited to the Beverage Inspection Fund hereby created. The moneys so derived are hereby appropriated to compensate for and meet the expense of inspection of plants and general supervision of the industry. The provisions of this section shall not apply to local sellers of soft drinks or other non-intoxicating beverages or syrups and extracts made by themselves for their own use or retail exclusively. A manufacturer, jobber or dealer in every syrup, extract, soft drink, distilled, spring or mineral water or other nonalcoholic cordial or beverage required to be registered under this section shall, upon making application for such license, file with the Commissioner of Agriculture a sample of said syrup, extract, soft drink or other nonalcoholic cordial or beverage for analysis, and said registration shall not be granted by the Commissioner of Agriculture unless he shall determine that said syrup, extract, soft drink or other beverage is free from all harmful drugs and other ingredients that are injurious to health. (Id. § 3.)

61d. Saccharin, Unlawful to Use.—The use of saccharin in the manufacture of soft drinks or other nonalcoholic beverages is hereby prohibited. (Id. § 4.)

61e. Revocation of License.—The Commissioner of Agriculture shall have power to revoke any license issued under the provisions of this act whenever it is determined by himself or any of his deputies, chemists or other properly qualified official, that any of the provisions of this act have been violated. Any person, firm or corporation whose license has been so revoked shall discontinue the manufacture or sale within the State of soft drinks, syrups, cordials, fruit juices, distilled, spring or mineral water, or other nonalcoholic beverages until the provisions of this act

have been complied with and a new license issued. He may revoke such license temporarily until there is a compliance with such conditions as he may prescribe, or permanently for the unexpired period of such license. (Id. § 5.)

61f. Notice to Licensee.—Before revoking any license the Commissioner of Agriculture shall give written notice to the licensee affected, stating that he contemplates the revocation of the same and giving his reasons therefor. Said notice shall appoint a time of hearing before said commissioner and shall be mailed by registered mail to the licensee. On the day of hearing the licensee may present such evidence to the commissioner as he deems fit, and after hearing all the testimony the commissioner shall decide the question in such manner as to him appears just and right. (Id. § 6.)

61g. Appeals.—Any licensee who feels aggrieved at the decision of the commissioner may appeal from said decision within ten days by writ of certiorari to the Circuit Court of the county where licensee resides. (Id. § 7.)

61h. Beverages, of What to Consist; Proviso; Further Proviso.—For the purpose of this act all soft drinks or other nonalcoholic beverages, except pure, nonalcoholic fruit juices, shall consist of a beverage made from a pure cane or beet sugar syrup containing pure flavoring materials, with or without added fruit acid, with or without added color, and shall contain in the finished product not less than eight per cent sugar, except dry ginger ale, which must contain not less than seven per cent sugar: Provided, that nothing in this act shall prohibit the use of any other harmless ingredients in the manufacture of soft drinks or other nonalcoholic beverages: And provided, further, that whenever artificial coal tar colors are used, nothing but the certified colors as approved by the Federal government are permissible. The provisions of this section shall not apply to the nonalcoholic beverages made in imitation of beer, bitter drinks, or other similar drinks. All soft drinks or other nonalcoholic beverages not in compliance with the standards established by this act shall be deemed to be adulterated. (Id. § 8.)

61i. Labeling.—Whenever artificial colors are used in the manufacture of soft drinks or other nonalcoholic beverages bearing a distinctive or coined name, the label or crown on the container shall indicate the presence of "artificial color." All still drinks, nonalcoholic ciders, nonalcoholic fruitades, nonalcoholic fruit juices, or other similar drinks that are made in imitation of the natural fruit juices, shall be properly and distinctly labeled with the word "imitation" followed by the name of the beverage. All such drinks or other nonalcoholic beverages sold in or drawn from cooler bottles or other closed containers of a quart or more capacity that contain artificial coloring or artificial flavor of any character shall be labeled "imitation," said labels to be prominently displayed to the public on all containers in which said still drinks or other nonalcoholic beverages are sold or dispensed. Labels for this purpose shall be printed in letters not less than one inch long and three-fourths of an inch in width and the word "imitation" shall precede and be in equal size type with the name of the imitated fruit juice following. All advertising or display signs shall conform to the aforementioned requirements. (Id. § 9.)

61j. Idem.—When soda water, carbonated soft drinks, or other nonalcoholic beverages manufactured from true fruit extracts or natural fruit flavors or natural fruit juices not made in imitation of a fruit juice, contain artificial color or flavor, the labels or crowns shall indicate the presence of artificial color, flavor, or both, with the words "artificial color and flavor," preceded by the name of the drink, as follows: "Cherry soda (in equal sized type), artificial color and flavor," and all other fruit flavors labeled in like manner. (Id. § 10.)

61k. Sterilization of Bottles.—All bottles of a quart capacity or less used in the manufacture of soft drinks, distilled, spring or mineral waters, or other nonalcoholic beverages, before being filled, shall be sterilized by soaking in a hot caustic solution of not less than one hundred twenty degrees Fahrenheit, that shall contain not less than three per cent caustic or alkali expressed in terms of sodium hydrate for a period of not less than five minutes, then thoroughly rinsed in pure water until free from alkali or sodium hydrate. Each and every bottle so sterilized, when filled with a soft drink or other nonalcoholic beverage, must be distinctly labeled with the true name of the soft drink, distilled, spring or mineral water, or other nonalcoholic beverage therein contained, together with the true name of the manufacturer thereof. The use of bottles with other than the manufacturer's or filler's or authorized distributor's name blown therein, without the written consent of the original owner, is hereby prohibited. Nothing in this act shall be construed to include milk or cream bottles. (Id. § 11.)

61l. Ventilation, Etc., of Buildings.—All buildings, stores, factories or other places where soft drinks, fruit juices, cordials, distilled, spring or mineral waters, or other nonalcoholic beverages are manufactured or bottled, shall be well lighted and ventilated and shall be kept at all times in a sanitary condition. All machines, bottles,

jars, or other utensils used in the manufacture of soft drinks, fruit juices, cordials, or other nonalcoholic beverages shall be kept at all times in a clean and sanitary place and in a sanitary condition. (Id. § 12.)

61m. Bottles.—No bottle shall be used in the manufacture of soft drinks or other nonalcoholic beverages in which the metal or rubber part of the stopper comes in contact with the beverage. The provisions of this section shall not apply to carbonated water put up in siphons. (Id. § 13.)

61n. Acts Not Affected.—This act shall be construed as in no way affecting, modifying, or changing in any manner, any act passed by the legislature relating to the manufacture and sale of intoxicating liquors. (Id. § 14.)

61o. Penalty for Violation.—Any person, firm or corporation who shall do any of the acts or things prohibited, or neglect or refuse to do any of the acts or things required by this act, or in any way violate any of its provisions, shall be deemed guilty of a misdemeanor and shall be punished by a fine of not more than one hundred dollars, or by imprisonment in the county jail for a period of not more than ninety days or by both such fine and imprisonment in the discretion of the court. (Id. § 15.)

61p. Enforcement.—The Commissioner of Agriculture shall be charged with the enforcement of the provisions of this act. (Id. § 16.)

Dairy Products—Substitutes for Dairy Products.

99-100. Repealed. (P. A. 1927, No. 211.)

104-106. Repealed. (P. A. 1927, No. 211.)

133a. Containers; Proviso.—No person, firm or corporation shall offer for sale any milk or cream, except in containers which carry thereon the name of the person, firm or corporation preparing and putting up such products for sale, which name may either be printed on the cap or cover or side of said container, or if the containers be glass bottles, the name may be clearly blown or otherwise permanently marked on the side of the bottle: Provided, however, that this section shall not apply to any milk or cream dealer who sells or offers for sale only such milk and cream as he produces from his own dairy. (P. A. 1927, No. 361.)*

133b. Marking, Etc.; Where Filed; Fee.—Any person, firm or corporation engaged in the distribution and sale of milk and cream and using in the sale and delivery of the same, bottles, cans, boxes and other containers, may mark and designate such bottles, cans, boxes and other containers with his or its name or other mark or device printed, stamped, engraved, etched, blown or otherwise produced upon the same, and file in the office of the Secretary of State and also in the office of the county clerk of the county in which his or its principal place of business is situated, a description of such name, mark or other device and shall also cause such description to be printed once in each week for three weeks successively in a newspaper published in said county. When any such person, firm or corporation shall have complied with the provisions of this section, he or it shall thereupon be deemed the proprietor of such name, mark or device and of every such bottle, can, box or other container upon which the said name, mark or device may be printed, stamped, etched, engraved, blown or otherwise produced upon the same. Upon the filing with the Secretary of State and county clerk, as herein above provided, such name, mark or device, there shall be paid to the secretary and the county clerk, respectively, one dollar for each such name, mark or device so filed.

133c. May Assign Name, Etc.; Proviso.—Any person, firm or corporation, having complied with the provisions of section four-b of this act, may assign by sale or otherwise, such name, mark or device to another person, firm or corporation and the said assignee shall have all the rights and immunities and obligations conferred by this act upon the original seller in relation to said bottles, cans, boxes and other containers: Provided, that such assignee shall file in the office of the Secretary of State and also in the office of the clerk of the county in which his or its principal place of business is situated a certificate of said assignment and cause such certificate to be printed once in each week for three weeks successively in a newspaper published in such county.

133d. When Unlawful to Sell Milk, Etc.; Proviso.—It is hereby declared unlawful for any person, firm or corporation, other than the registered owner, to sell or offer for sale any milk or cream in any bottle, can or other container, or to sell or offer for sale such milk or cream in bottles, cans or other containers packed in or enclosed by boxes or cases, which bottles, cans, boxes, cases or other con-

* This and the four succeeding sections are added by P. A. 1927, No. 361, to P. A. 1913, No. 222 [C. L. 1915, §§ 6417-6422], included in Nos. 130-135.

tainers, or either of them, are so marked or designated as aforesaid with any name, mark or device of which a description shall have been filed and published as provided in sections four-b and four-c of this act; or to deface, erase, obliterate, cover up, or otherwise remove or conceal any such name, mark or device thereon, or to sell, buy, give, take or otherwise dispose of, or traffic in such bottles, cans, boxes, cases or other containers, without the written consent of, or unless the same shall have been purchased from the person, firm or corporation whose name, mark or device shall be in or upon the bottle, can, box, case or other container and registered in accordance with the provisions in said sections four-b and four-c: Provided, that the provisions of this section relating to the use of milk bottles shall not be operative in those counties having a population of less than one hundred thousand according to the federal census of nineteen hundred twenty.

133e. Unlawful to Destroy Bottles, Etc.—No person, firm or corporation shall destroy, secrete or withhold the bottles, cans or cases of another dealer and any person, firm or corporation so offending shall be liable in treble damages for such offense and such person, firm or corporation so offending shall, in addition to this and all other civil remedies, be guilty of a misdemeanor and shall be punished accordingly under the penal provisions of this act.

Fruit Juices.

See No. 61a et seq., ante.

Fruits and Vegetables.

219. U. S. No. 1; Diameter; Variations.—U. S. No. 1 shall consist of potatoes of similar varietal characteristics which are not badly misshapen, which are free from freezing injury and soft rot and from damage caused by dirt or other foreign matter, sunburn, second growth, growth cracks, hollow-heart, cuts, scab, blight, dry-rot, disease, insects or mechanical or other means.

The diameter of potatoes of round varieties shall be not less than one and seven-eighths inches, and of potatoes of long varieties, one and three-fourth inches.

In order to allow for variations incident to proper grading and handling, not more than five per cent, by weight, of any lot may be below the prescribed size, and, in addition, not more than six per cent, by weight, may be below the remaining requirements of this grade, but not to exceed one-sixth of this six per cent tolerance shall be allowed for potatoes affected by soft rot. (P. A. 1925, No. 76, § 2, as amended P. A. 1927, No. 28.)

220. U. S. No. 1 Small; Variations.—U. S. No. 1 small shall consist of potatoes ranging in size from one and one-half inches to one and seven-eighths inches in diameter, but meeting all the other requirements of U. S. No. 1.

In order to allow for variations incident to proper grading and handling, not more than twenty-five per cent, by weight, of any lot may vary from the prescribed size, but not to exceed one-fifth of this tolerance shall be allowed for potatoes under one and one-half inches in diameter. In addition, not more than six per cent, by weight, may be below the remaining requirements of this grade, but not to exceed one-sixth of this six per cent tolerance shall be allowed for potatoes affected by soft rot. (Id. § 3.)

221. U. S. No. 2; Diameter; Variations.—U. S. No. 2 shall consist of potatoes of similar varietal characteristics which are free from freezing injury and soft rot and from serious damage caused by sunburn, cuts, scab, blight, dry rot, disease, insects or mechanical or other means.

The diameter of potatoes of this grade shall be not less than one and one-half inches.

In order to allow for variations incident to proper grading and handling, not more than five per cent, by weight, of any lot may be below the prescribed size, and, in addition, not more than six per cent, by weight, may be below the remaining requirements of this grade, but not to exceed one-sixth of this six per cent tolerance shall be allowed for potatoes affected by soft rot. Decay and deterioration of Michigan grown potatoes developing in transit when otherwise up to grade shall be considered as affecting the condition and not the grade. (Id. § 4.)

223. **How Tagged or Labeled; Colors of Tags; Sales Excepted.**—When prepared for shipment in bags, baskets, barrel, box, hamper, or any other container, the same shall be tagged or labeled or branded legibly, designating the name and address of the person, dealer, shipper, corporation, society or association, or agent or representative, also the grade and net weight. When shipped as bulk, two cards

conspicuously placed shall accompany such potatoes, which cards shall not be smaller than four and one-half inches by six inches in size, designating in letters not less than one-half inch in height the name and address of the shipper, the name of the grade, the car initial and number, and the date.

Blue tags shall be used for the U. S. No. 1 grade and red tags for the U. S. No. 2 grade. Properly branded or stenciled bags do not require a tag.

It is further provided that this act shall not apply to, or be construed to include, the sale of potatoes of his own production by the grower, made by himself personally or by an employee, direct to a consumer, or to a groceryman or company or copartnership conducting a grocery store. (Id. § 6.)

224. "Person" Defined.—The word "person" as used herein shall be construed to include any dealer, shipper, corporation, society, association, or their agent or representative. The act, omission or failure of any official or employee of any person, when such official or employee is acting within the scope of his employment or office, shall, in every case, be deemed also the act, omission or failure of the person as well as the official or employee. (Id. § 7.)

225. Graded and Branded Before Sale, Etc.—It shall be unlawful for any person to pack for sale, expose or offer for sale, or sell, or consign or ship or have in his possession any container or package or bulk shipment consisting of Michigan grown potatoes which are not graded and branded in accordance with the provisions of this act and the regulations made hereunder, or have in his possession for sale any potatoes prepared for sale or sold which bear any false statement, design or device regarding the same, within the meaning of this act. In reusing any tag, package or cover upon which appear any marks required by this act, or which were intended to describe the contents of the package, the person who is responsible for the use of such tag, package or cover shall cause such marks to be removed, erased, or obliterated before reusing. No person, except an authorized inspector of the State Department of Agriculture, shall alter, efface, or remove, or cause to be altered, effaced or removed, wholly or in part, any brands or marks requied to be put upon packages under the provisions of this act, except in repacking or to make the brands or marks correspond to the contents of the package. (Id. § 8.)

226. Misdemeanor, What Deemed; Penalty.—Any person, either principal or agent, who violates any of the provisions of this act, or of the regulations promulgated hereunder, shall be deemed guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not less than ten dollars and costs, nor more than fifty dollars and costs for the first offense, and not more than one hundred dollars and costs for each subsequent offense, or by imprisonment in the county jail for not more than thirty days in default of paying the fine and costs, or both in the discretion of the court. (Id. § 9.)

231. Marking Requirements.—Before being removed from premises the grower, packer, or dealer, all closed containers packed for sale, shipment, delivery, consignment, or sold, shall bear upon the outside of each container or cover, either by stamp, label, or stencil, the following: Name and address of grower or dealer; name of the variety, when known; if not known, then "Unknown"; the grade and the minimum size. The Michigan Fancy and Michigan Uniform "A" grade shall also bear the maximum size mark. When packed in boxes the numerical count must be declared and the apples shall not vary more than one-fourth of an inch in diameter. Letters used in marking shall be at least one-quarter inch high. In reusing any container or cover that bears any brands or markings describing previous contents, such brands or markings if they are inconsistent, must be removed or obliterated. (P. A. 1925, No. 82, § 4, as amended P. A. 1927, No. 290.)

235. "Fancy Table Grapes," How Packed; Bunches.—"Fancy table grapes" shall be packed in two or four-quart climax baskets or carriers of two or more small units, or any container of less than twelve-quart (sixteen pound) capacity, and shall consist of grapes of one variety which are sound, well colored, mature, firmly attached to capstems, and free from split, crushed, wet, soft, dried, shattered berries, mildew, berry moth, russeting and damage caused by other diseases, insects, mechanical or other means. Bunches shall be well formed for the variety excepting compact portions of bunches consisting of three or more berries to fill open spaces between full bunches. Bunches shall be packed with stems concealed as nearly as may be. Not more than ten per cent, by count, of the berries may be below the grade requirements, and not more than two per cent of berries, by count, injured by mechanical means, nor more than one per cent may be affected by dry rot. In addition, not more than five per cent by count, of any lot may consist of bunches not well formed. (P. A. 1925, No. 145, § 1, as amended P. A. 1927, No. 181.)

236. "No. 1 Grapes."—"No. 1 grapes" shall be packed in twelve-quart (sixteen-pound) capacity climax baskets, or larger containers, and shall consist of grapes which meet the requirements of the fancy table grade, except that not more than

fifteen per cent, by count, of bunches shall be below the grade requirements for bunches together with a tolerance of two per cent, by count, for dry rot, and three per cent, by count, injured by mechanical means. Facing bunches shall be packed with stems concealed as nearly as may be. (Id. § 2.)

240. Terms Defined.—"Well colored" means that ninety per cent of the grapes have solid color for the variety. "Mature" means that grapes have flavor characteristic of the variety. "Dry rot" means dried up, raisin-like grapes. "Well formed" means fairly compact but not closely united, solid or tight. "Small units" means not to exceed four-quart capacity containers. (Id. § 6.)

242. Penalty for Violation.—Any person convicted of violating any of the provisions of this act shall be deemed guilty of a misdemeanor and upon conviction thereof for the first offense be subject to a fine of not more than fifty dollars and costs, or imprisonment in the county jail for not to exceed thirty days, or both such fine, costs and imprisonment in the discretion of the court. Any person convicted for the second and subsequent violations shall be subject to a fine of not more than two hundred dollars and costs, or thirty days in jail, or both such fine, costs and imprisonment in the discretion of the court or magistrate before whom such conviction may be had. (Id. § 8.)

Honey.

244a. Penalty for Selling, Etc., Diseased Bees, Honey.—If the owner, possessor, agent or lessee of an apiary, honey or appliances, shall sell, barter or give away, or remove from the premises, without the consent of the commissioner, any bees from diseased colonies except in combless packages, with food not made with honey, be they queens, drones or workers, honey or appliances, or expose other bees to the danger of such disease, said owner shall, on conviction thereof be punished by a fine of not less than ten dollars nor more than fifty dollars and costs of prosecution, or by imprisonment in the county jail for not less than ten days nor more than thirty days or by both such fine and imprisonment in the discretion of the court: Provided, that bees may be shipped without honey or feed containing honey: Also provided, that honey may be sold in tight containers for commercial purposes other than with bees or as food for bees. (P. A. 1927, No. 60, § 4.)

Meat—Meat Products.

263. Sausages, When Deemed Adulterated; Label; When May Contain Water.—For the purpose of this act sausage shall be deemed to be adulterated:

First—If it contains added water in excess of the quantity required to bring the amount up to that which the meats from which it is prepared contain immediately after slaughter;

Second—If it contains any cereal or vegetable flour;

Third—If it contains any artificial color, coal-tar dye, boric acid or borates, sulphites, sulphur dioxide, sulphurous acid, or any other substances injurious or deleterious to health;

Fourth—If it contains any diseased, contaminated, filthy or decomposed substance; or is manufactured, in whole or in part, from a diseased, contaminated, filthy or decomposed substance, or a substance produced, stored, transported or kept in a way or manner that would render the article diseased, contaminated or unwholesome; or if it is any product of a diseased animal, or the product of any animal which has died otherwise than by slaughter. Nothing in this act shall be construed as prohibiting the sale of sausage which when properly labeled shall conform to the following standard: Sausage shall not contain cereal in excess of two per cent. When cereal is added its presence shall be noted on the label or on the product. That water or ice shall not be added to it except for the purpose of facilitating grinding, chopping and mixing, in which case the added water or ice shall not exceed three per cent except as provided in the following paragraph. Sausages of the class which are cooked or smoked, such as Frankfurt style, Vienna style and Bologna style, may contain added water in excess of three per cent, but not in excess of amount sufficient to make the sausage palatable. When water in excess of three per cent is added to this class of sausage the statement "sausage, water and cereal" shall appear on the label or on the product, but when no cereal is added, the addition of water need not be stated. (C. L. 1915, § 6511, as amended P. A. 1927, No. 91.)

270a. Record of Purchasers, Etc.—Any person, firm or corporation engaged in the business of purchasing poultry for the purpose of resale shall keep a record of the date of each such purchase, the name and residence of the seller, kind of

poultry purchased and the description and number thereof, whether such poultry was raised by the seller or purchased from others, and if purchased from others, then the name of the person from whom the same was purchased by the seller and the date of such purchase, and if the seller delivers such poultry by means of automobile or other vehicle having a license thereon, then the number of such license. (P. A. 1927, No. 100, § 1.)

270b. Duty of Seller.—The seller shall at the time of making sale of any poultry as provided in the preceding section, truthfully state all of the facts as aforesaid; shall sign his name to such statement and shall certify to the correctness thereof. (Id. § 2.)

270c. Blanks, Who to Furnish.—Each and every person, firm or corporation, so purchasing poultry as aforesaid, shall procure from the Secretary of State suitable blanks for such record. It shall be the duty of said Secretary of State to furnish said blanks free of cost to the applicant upon demand; and all purchasers of poultry as hereinbefore designated shall order and keep on hand a supply of such blanks. (Id. § 3.)

270d. To Constitute Record.—All such blanks when filled shall constitute a record of the purchase or purchases made; shall be safely kept by such purchasers for a period of one year and shall at all times be open to the inspection of all sheriffs, their deputies, police officers, or other law enforcement officers of this State upon demand by such officer. (Id. § 4.)

270e. Misdemeanor; Penalty.—Any person violating any of the provisions of the foregoing sections, shall be deemed guilty of a misdemeanor and punishable by any court of competent jurisdiction, by a fine of not exceeding one hundred dollars or imprisonment in the county jail of the county where the offense is committed, for a period of not exceeding ninety days, or both such fine and imprisonment in the discretion of the court, together with the costs of prosecution. (Id. § 5.)

270f. When Unlawful to Sell.—It shall be unlawful for any person with intent to misrepresent or defraud, to sell, offer for sale, or expose for sale as "kosher" any meat or meat preparation which is not such in fact. The word "kosher" as herein used shall mean in conformity with orthodox Jewish religious requirements. (P. A. 1927, No. 112, § 1.)

270g. Idem.—No person operating any kosher meat market or kosher delicatessen store shall sell or offer for sale, or keep for sale in the regular course of his business any nonkosher meat or meat products unless he shall, together with his window, sign or other sign, display a sign in letters at least four inches in height, the words "nonkosher meat sold here." (Id. § 2.)

270h. Penalty.—Any person who shall violate any provision of this act shall be guilty of a misdemeanor and shall be punished for each offense by a fine of not to exceed five hundred dollars, or by imprisonment not to exceed four months or by both such fine and imprisonment. (Id. § 3.)

Mineral Water.

See No. 61a et seq., ante.

Syrups.

See No. 61a et seq., ante.

Sanitation.

See No. 61a et seq., ante.

PART III.

Special Drug Laws.

Pharmacy, Poisons and Narcotics.

359a. Ownership Regulated—Proviso—Further Proviso.—Every pharmacy, drug store or apothecary shop shall be owned by a registered pharmacist and no partnership or corporation shall own a drug store, pharmacy or apothecary shop unless at least twenty-five per cent of all stock is held by registered pharmacists, except that any corporation, organized and existing under the laws of the State of Michigan, or any other State of the United States, authorized to do business in the

State of Michigan and empowered by its charter to own and conduct pharmacies, drug stores or apothecary shops and which; at the time of the passage of this act, owns and conducts a drug store or stores, pharmacy or pharmacies, apothecary shop or shops in the State of Michigan may continue to own and conduct the same and may establish and own additional pharmacies, drug stores or apothecary shops in accordance with provisions of this article: Provided, that any such corporation which shall not continue to own at least one of the pharmacies, drug stores or apothecary shops theretofore owned by it, or ceases to be actively engaged in the practice of pharmacy in the State of Michigan, shall not be permitted thereafter to own a drug store, pharmacy or apothecary shop; And provided further, that any person not a registered pharmacist who at the time of the passage of this act owns a pharmacy, drug store or apothecary shop in the State of Michigan, may continue to own and conduct the same in accordance with existing laws and regulations; And provided further, that the administrator, executor or trustee of the estate of any deceased owner of a pharmacy, drug store or apothecary shop, or the widow, heirs or next of kin of such deceased owner, may continue to own and conduct such pharmacy, drug store or apothecary shop in accordance with existing laws and regulations; Provided further, that this act shall not apply to stores or shops in which patent or proprietary medicines and ordinary domestic or household remedies, such as the sale of is provided for in section eighteen* of act number one hundred thirty-four, Public Acts of eighteen hundred eighty-five, are the only drugs and medicines sold at retail. (P. A. 1927, No. 359, § 1.)

359b. Penalty for Violation.—Any individual, firm or corporation violating the provisions of this act shall be deemed guilty of a misdemeanor and upon conviction shall be subject to a fine of not less than five hundred dollars and costs of prosecution. (Id. § 2.)

379a. When Unlawful to Sell.—It shall be unlawful for any person, dealer, agent or employee of any corporation, directly or indirectly, to use, sell or offer for sale, give away or offer to give away, any clinical thermometer that does not comply with the definition stated in this act for a standard clinical thermometer. (P. A. 1927, No. 106, § 1.)

379b. Standard Clinical Thermometer Defined.—A standard clinical thermometer is a certified thermometer and is one that registers accurately at every reading and is standardized by the United States Bureau of Standards for thermometers. These thermometers must not have a variance of over two-tenths of a degree. All clinical thermometers that are used or sold must comply with the United States Bureau of Standards. If there is a correction there must be a correction slip on the certificate that goes with the thermometer, showing either minus or plus to the amount of the correction but the variance must not exceed two-tenths of a degree. (Id. § 2.)

379c. Enforcement—Proviso.—The Board of Pharmacy shall make such rules and regulations as may be necessary for the enforcement of this act. It shall be the duty of said Board of Pharmacy to investigate all complaints under this act and take all steps necessary to its enforcement; Provided, that no person, dealer, or employee of any corporation shall be prosecuted under the provisions of this act when he can establish a guarantee, signed by a wholesaler, jobber, manufacturer or other parties residing in this State, from whom such thermometer or thermometers were purchased, to the effect that the said clinical thermometer or thermometers so purchased were certified to comply with section two of this act. (Id. § 3.)

379d. Penalty.—Any person violating any of the provisions of this act shall, upon conviction thereof, be punished by a fine of not less than fifty dollars nor more than one hundred dollars in the discretion of the court. (Id. § 4.)

Serum, Anti-Toxin, Tuberculin, Etc.

382-385. Repealed. (P. A. 1927, No. 105, § 3.)

385a. Antitoxin, Etc., Distribution Of.—It shall be the duty of the State Commissioner of Health to manufacture and distribute throughout the State, antitoxin and other biological products for use in the control of communicable diseases. Said commissioner is hereby authorized to adopt rules and regulations governing such distribution. Subject to the rules and regulations so prescribed, health officers and health boards of the various counties, cities, villages and townships of the State may from time to time make requisition on the State Commissioner of Health for such antitoxin and other products, which requisitions shall, if deemed reasonable and necessary, be honored in the order in which the same are presented to said commissioner. (P. A. 1927, No. 105, § 1.)

*See No. 340.

385b. May Purchase Supplies, Etc.—The commissioner may purchase such number of animals as may be required, and may employ necessary labor and purchase supplies requisite for the manufacture and distribution of such products. (Id. § 2.)

385c. Laboratories, Etc.—Registration Of.—All laboratories and other places where live pathogenic germs are handled or cultivated, shall be registered with the Michigan Department of Health, and a registration number shall be issued to each place registered. Registration and application for this registration number shall be made by the person, firm or corporation in charge of the laboratory or other place where such germs are handled. The registration number shall be valid for one year, at the expiration of which time it may be renewed upon application. (P. A. 1927, No. 308, § 1.)

385d. Label on Containers—Record of Sale, Etc., Kept.—All live pathogenic germs or cultures of such germs when given away or sold by a laboratory or other person, shall bear a label on the container showing the registration number of the laboratory or other person, the name of the person or firm obtaining same, and the destination of the germs, and no person or laboratory shall sell or convey any live germs or culture to any other person or laboratory without the permismission of the State Commissioner of Health. Such person or laboratory shall also keep a record of every sale, gift or other distribution of live germs, giving the name and residence of the recipient or purchaser, which record shall at all times be open to examination by any person or authority, and a copy of which record shall be filed with the Department of Health. (Id. § 2.)

385e. Penalty for Violation.—Any violation of this act shall be deemed a misdemeanor punishable by a fine of two hundred dollars or six months' imprisonment, or both. (Id. § 3.)

Venereal Disease Drugs.

392. Repealed. (P. A. 1927, No. 180.)

Wood Alcohol.

392a. When Unlawful to Sell, Etc.—Labels.—No person shall sell, offer for sale, give away, deal in or supply, or have in his or her possession with intent to sell, offer for sale, give away, deal in or supply any methanol (otherwise known as wood naphtha, wood alcohol or methyl alcohol) or completely denatured alcohol, either crude or refined, unless the container in which the same is sold, offered for sale, given away, dealt in, or supplied shall have lithographed or imprinted upon said container or upon a label pasted upon said container the following device and words, in bold characters in red color on white, viz.:

(Skull and cross-bones represented)

POISON.

(P. A. 1927, No. 111, § 1.)

392b. Idem—Proviso.—No person shall sell, offer for sale, give away, deal in, or supply, or have in his or her possession with intent to sell, offer for sale, give away, deal in or supply, any completely denatured alcohol unless the container in which the same is sold, offered for sale, given away, dealt in, or supplied, shall have lithographed, imprinted or pasted upon said container the "Poison" label prescribed by the federal government under the provisions of the national prohibition act, or any supplement thereto or amendment thereof: Provided, however, that the provisions of this section shall not apply to completely denatured alcohol transferred from manufacturers' or dealers' storage tanks directly to the radiators of automotive vehicles. (Id. § 2.)

392c. Penalty.—Any person violating any of the provisions of this act shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be subject to a fine of not more than one hundred dollars and costs of prosecution, or imprisonment in the county jail for not less than ten days, nor more than ninety days, or both such fine and imprisonment in the discretion of the court. (Id. § 3.)

PART IV.

Miscellaneous Laws.

Trade-Marks.

See No. 133a et seq., ante.

Weights and Measures.

485. Repealed. (P. A. 1927, No. 211.)
NOTE: See No. 379a et seq., ante.

MONTANA.

PART II.

Special Food Laws.

Dairy Products—Substitutes for Dairy Products.

60a. License Fee for Receiving Stations.—Hereafter all milk or cream buying or collecting stations shall pay an annual license fee of five dollars ($5.00) for all stations handling less than fifteen hundred (1,500) pounds of butter fat per month; ten dollars ($10.00) for all stations handling fifteen hundred (1,500) pounds and less than three thousand (3,000) pounds; fifteen dollars ($15.00) per month for all stations handling three thousand (3,000) pounds and less than six thousand (6,000) pounds; twenty dollars for all stations handling six thousand (6,000) pounds and over. (L. 1927, c. 142, § 1.)*

60b. Room Regulations.—The room in which any milk or cream buying or collection station shall hereafter be operated in this State shall contain floor space large enough for all equipment in said station, including cooling tank of sufficient size to hold all cream bought or collected at such station on each day.

All such stations collecting more than fifteen hundred (1,500) pounds of butter fat per month shall be equipped with a steam boiler large enough to furnish sufficient steam to thoroughly sterilize milk and cream cans. No stove or heating apparatus other than a steam boiler shall be permitted to be used for the purpose of heating water with which to cleanse utensils used in a cream station collecting more than fifteen hundred (1,500) pounds of butter fat per month, providing the provisions of this section shall not apply to forwarding stations in which no testing for butter fat is made. (Id. § 2.)

60c. Penalty for Violation.—Any person, firm or corporation violating any of the provisions of this act shall be deemed guilty of a misdemeanor and upon conviction shall be punished by a fine of not less than twenty-five dollars ($25.00) and not more than one hundred dollars ($100.00) or imprisonment in the county jail for not to exceed six months or by both such fine and imprisonment. (Id. § 3.)

PART IV.

Miscellaneous Laws.

Weights and Measures.

277. Tester of Scales—Duties—Bonds.—The Commissioner of Agriculture shall employ an expert tester of scales, known as the State Scale Expert, whose duties it shall be under such rules and regulations as the commissioner may prescribe to test all scales within this State whereon grain is weighed at elevators and public warehouses; also to test all wagon scales, track scales, beet scales, stock scales, wool scales, coal scales and truck scales within the State of Montana once each year whereon coal, grain, sugar beets and other farm commodities are weighed for the public. The State Scale Expert and each deputy shall give a bond to the State of Montana in the sum of one thousand dollars ($1,000.00) conditioned upon the faithful performance of his duties. It shall be the duty of the State Scale Expert and his deputies to enforce the provisions of this act and they shall have full police power to enter or go into or upon, with or without formal warrant, any place, building or premises, for the purpose of making proper test, as required by this act. The Commissioner of Agriculture shall make such rules and regulations as he may deem necessary to carry out the provisions of this act. (L. 1927, c. 124, § 1.)

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*The title of this act reads as follows:

"An act amending section 3569, Revised Codes of Montana, 1921, as amended by chapter 35, Session Laws of 1923, fixing the license of milk or cream buying or collecting stations; regulating the floor space and heating arrangements of such stations; providing penalties for the violation of this act and repealing all acts and parts of acts in conflict herewith."

278. **Fees for Test.**—There shall be collected by the State Scale Expert and his deputies from each person, firm, copartnership or corporation, for each track scale tested, the sum of ten dollars ($10.00) and for each shipping scale with a capacity of forty thousand (40,000) pounds and over, ten dollars ($10.00); for each wagon scale, truck scale, coal scale, dump scale, shipping scale, beet scale, wool scale and stock scale, five dollars ($5.00); and for each dormant platform scale, three dollars ($3.00); and for each portable scale, grain tester and other small scales used for weighing or testing grain in grain elevators or warehouses, one dollar ($1.00). (Id. § 2.)

279. **Expenses—Revolving Fund.**—All bills and accounts of expense incurred by the State scale expert and his deputies shall be presented to the Board of Examiners and allowed by said board in the same manner as provided for other claims contracted for and in behalf of the State of Montana. And to expedite the handling of the work in the field there shall be set aside a contingent revolving fund of two thousand dollars ($2,000.00), out of which the expenses of the field men shall be paid each week, together with other emergency cash claims. (Id. § 3.)

280. **Certificate of Test.**—A suitable certificate shall be prepared by the State scale expert to be affixed to all weighing devices tested under the terms of this act. Said certificate shall bear the signature of the State scale expert or his deputy doing the work and shall indicate the date when the test was made and whether the device was sealed or condemned. (Id. § 4.)

281. **Inspections When Made.**—No weighing device, which has not been tested as prescribed herein, shall hereafter be used without permission from the Department of Agriculture, and an inspection of each such weighing device shall be made at least once each year; provided, however, that a period of sixty (60) days after the passage of this act shall be allowed for the first test of all such scales and weighing devices, and no person shall be prosecuted for any violation of the terms of this act until after said sixty (60) days period. The Department of Agriculture shall at the request of the owner of any weighing device subject to the terms of this act inspect and test such apparatus. Any person or persons making use of weighing devices subject to the terms of this act must report to the Commissioner of Agriculture in writing the number and location of said weighing device and must promptly report the installation of any new weighing device. No weighing device rejected or condemned after inspection as required by this act shall be used until the same has been tested and sealed as required by this act. (Id. § 5.)

282. **Permission for Use of Weighing Device.**—The Department of Agriculture may grant permission for the use of a weighing device until the inspection can be made (without causing too great expense), as provided by this act. (Id. § 6.)

283. **False Test—Penalty.**—Any State scale expert or deputy who shall make a false test of any scale or who shall seal the same without having been properly tested in accordance with the terms of this act, shall be guilty of a misdemeanor and punished as provided in section seven. The use of a weighing device covered by this act after same has been condemned shall be punishable as provided in section seven of this act. (Id. § 7.)

NEBRASKA.

PART II.

Special Food Laws.

Cold Storage.

27. Cold Storage Warehouses—Certificate—Fee.—Any person desiring to operate a cold storage or refrigerating warehouse, shall make application in writing to the Department of Agriculture for that purpose, stating the location of the plant or plants. On receipt of the application, the department shall cause an examination to be made into the sanitary condition of said plant or plants, and if found to be in a sanitary condition and otherwise properly equipped for the business of cold storage, the department shall cause a certificate to be issued authorizing the applicant to operate a cold storage or refrigerating warehouse for and during the period of not to exceed one year. All certificates shall expire on the 31st day of December of the year in which they are issued. The certificate shall be issued upon payment by the applicant of a registration fee of five ($5.00) dollars to the Department of Agriculture. (C. S. 1922, § 7499, as amended L. 1927, c. 6.)

Dairy Products—Substitutes for Dairy Products.

44. Refusal and Revocation of Licenses.—The Department of Agriculture may withhold a permit for testing cream from any applicant therefor whom it may deem unworthy and may revoke any permit issued to a person who has violated the terms thereof, or who has failed to comply with any requirement of this article, or refuses or fails to obey its lawful request or direction, and any conviction of the person for an offense punishable under this article shall also be sufficient grounds for such revocation. Any person whose permit has been revoked for violation of any of the provisions of this article shall not be granted a new permit for a period of one year from the date of such revocation. (C. S. 1922, § 7444, as amended L. 1927, c. 11.)

49. Licensed Testers Required.—Every person, firm or corporation or association, or other factory or person receiving, buying and paying for milk or cream on the basis of the amount of butter fat contained therein shall be required to procure an annual permit for the operation of such cream buying station or factory, shall pay the fee herein provided for such permit and shall have in its employ a person who holds a permit to test cream, who shall supervise and be responsible for the operation of the Babcock test of milk and cream. The tester's permit shall be issued to such person, by the Department of Agriculture or its secretary when such person shall have passed a satisfactory examination in person and shall have proved by actual demonstration before an inspector or authorized agent of the Department of Agriculture that he is competent and qualified to conduct the Babcock test for butter fat. Every person, firm, corporation or association employing a field representative, supervisor or one charged with the inspection, operation or management of cream buying agencies before its agent, servant, or employee assumes to operate a station or business wherein milk or cream is bought, paid for, or tested, shall procure a tester's permit for its agents, servant or employee and shall pay the annual fee and the renewal fee, as hereinafter provided, and such tester, the agent, employee or servant or another shall, before such permit is granted qualify in the manner hereinbefore provided for testers and in such other manner as may be reasonably required by the Department of Agriculture. No permit as herein required shall be issued except upon written application on forms furnished by the Department of Agriculture for that purpose which applications shall be signed by applicant. Annual permits issued to persons other than those actually doing milk and cream buying on their own account shall be issued only upon written application signed by both principal and agent. One of the written conditions set forth in all applications for such permits shall be that neither the independent cream buyer nor principal nor agent, as the case may be, will indulge in any unfair business practices, fraudulent or illegal act; and that true and accurate tests of milk, or cream tested in the ordinary course of business will be made at all times. Every permit shall be valid for one year after its issue and shall not be transferable. The fee for each annual permit (which includes tester's permit,

when such tester is the agent, employee or servant of another) and each annual renewal thereof shall be two ($2.00) dollars and shall be paid to the Department of Agriculture or its authorized agent before any such permit or any renewal thereof shall be issued. The testing of each lot of milk or cream by any person, firm, corporation, association or other factory, its employees, agents or servants, without the annual permit herein required exhibited in plain sight of patrons of the place where milk or cream is tested shall constitute a separate offense. The absence of such annual permit in the place of business of the person, firm, or corporation, as aforesaid, or the testing of milk or cream by such person, firm or corporation at any time so that it appears to contain more or less butter fat than such milk or cream in fact does contain, or any failure or neglect on the part of the person, firm or corporation, its agent, servant or employee to refuse to correct for under-payment or to make demand for refund, for over-payment on account of errors made in the testing of milk or cream, as the case may be, shall be prima facie evidence of the intent of the person, firm or corporation to whom annual permit shall have been granted, to violate the provisions of this act: Provided, that any person, holding a permit to test milk or cream, as aforesaid, may for valid reasons appoint a substitute for a period not to exceed thirty (30) days, subject to the approval of the Department of Agriculture. No new cream buying station or new location of a station for the operation of which permit shall have been granted shall be open for the purchase of butter fat by any person, firm, corporation or association except under a new annual permit issued by the Department of Agriculture until such new station or location shall have been inspected by the Department of Agriculture and until such station and equipment shall have been approved by an authorized representative of such department. No person, firm, corporation or association shall buy or offer to buy cream or butter fat without displaying the price being offered or to be paid for the cream or butter fat. Such price shall be posted and displayed continuously during the business hours of such buying agent and in letters and figures not less than two inches in height, in such manner or place so that the price posted shall be plainly visible from the street in front of the building or place in which such purchase is made; and it shall be deemed a violation hereof if there be a failure on the part of such person, firm, corporation or association, its agent, servant or employee, either to post such prices or to buy cream or butter fat at a price different from that which is posted. All such persons, firms, corporations or associations, their agents, servants, or employees shall keep a record in their respective cream stations of the time and date on or at which changes in prices are made and posted, together with a plain and legible record of the tests made of each lot of cream or milk purchased or sold, which record shall be open for public inspection at all times. (Id. § 7449.)

50. Fraud in Testing Milk or Cream.—No person, firm, corporation, association or other factory or person operating a cream buying station for the purpose of receiving or buying milk or cream by weight or test; or persons in the employment of such person, firm, corporation, association or other factory operating such cream buying station shall fraudulently manipulate the weights of milk or cream or take unfair samples thereof or fraudulently manipulate such samples in any way. No person, firm, corporation, association or other factory or person or employee, buying and paying for milk or cream on the basis of the amount of butter fat contained therein shall under-read, over-read or otherwise fraudulently manipulate the Babcock test used for determining the percentage of fat in milk or cream or falsify the record thereof or read the tests at any temperature except between 135 degrees and 140 degrees Fahrenheit, or pay on the basis of any measurement of weight which is other than seventeen and six-tenths (17.6) cubic centimeters for milk and nine (9) grams for cream. In all tests made under the provisions of this section the cream shall be weighed into the test bottles. (Id. § 7450.)

53. Violation—Penalty.—Any person, firm, association, corporation, tester, independent cream buyer or owner of any cream station, their agents, servants or employees, violating any of the provisions of this article shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be fined in a sum not less than ten dollars ($10.00) nor more than one hundred ($100.00) dollars or be imprisoned in the county jail not exceeding three months. (Id. § 7453.)

66a. Unfair Discrimination in Purchase of Cream—Penalty.—Any person, firm, co-partnership, association or corporation, foreign or domestic, doing business in the state of Nebraska and engaged in the business of buying milk, cream or butter fat for the purpose of manufacture or for the sale of such milk, cream or butter fat, who shall discriminate between different sections, localities, communities, cities or villages of this state by purchasing such commodities at a higher price or rate in one locality than is paid for the same commodity by said person, firm, co-partnership, association or corporation in another locality, after making due allowance for the

difference, if any, the actual cost of transportation from the locality of such purchase to the locality of manufacture or the locality of the sale of such milk, cream or butter fat, shall be deemed guilty of unfair discrimination, which is hereby prohibited and declared to be unlawful, and, upon conviction thereof, shall be punished by a fine not exceeding one hundred dollars or imprisonment in the county jail not exceeding ninety days, or both, for the first offense, and for the second and each subsequent offense not exceeding five hundred dollars, or imprisonment in the county jail not exceeding six months, or both: Provided, that it shall not be unfair discrimination for any person, firm, co-partnership, association or corporation to pay in any section, locality, community, city or village of this State, a price equal to that actually paid on the same day by any bona fide competitor in such place for milk, cream or butter fat of the same kind and grade, if such price is paid in a good faith effort to meet such competition, and the burden of proving such facts shall be upon the defendant. (L. 1927, c. 3.)

Feeding Stuffs.

72-79. Repealed. (L. 1927, c. 10, § 12.)

79a. Commercial Feeding Stuffs—Defined.—The term "commercial feeding stuff" shall be held to include all the feeding stuffs used for feeding live stock and poultry; except (a) whole seeds or grains; (b) whole unground hays, straws, cottonseed hulls and corn stover when unmixed with other materials; and (c) all other materials containing sixty (60) per cent or more of water: Provided, that the provisions of this act shall not include the unmixed meals or chops, made from the whole grain to which nothing has been added and from which nothing has been abstracted, when such unmixed meals or chops are exchanged for whole grain of a like kind or when such unmixed meals or chops are manufactured, sold and delivered on the premises of the manufacturer, direct to the ultimate consumer. (L. 1927, c. 10, § 1.)

79b. Term "Brand" Defined.—The term "brand" as used in this act, is to be taken to mean: First, the name, trade-mark or other designation under which a commercial feeding stuff is sold; and second, the feeding stuff itself. (Id. § 2.)

79c. Label Required.—Every lot or parcel of commercial feeding stuff sold, offered or exposed for sale, or distributed within this State, shall have a label affixed thereto, in a conspicuous place on the outside thereof, bearing a legible and plainly printed statement in the English language, clearly and truly certifying; (a) The name and principal address of the manufacturer or person responsible for placing the commodity on the market; (b) the minimum net weight of the contents of the package, lot, or parcel; (c) the name, brand, or trade-mark of the feeding stuff contained therein; (d) the minimum per centum of crude protein; (e) the minimum per centum of crude fat; (f) the maximum per centum of crude fiber; (g) the minimum per centum of crude nitrogen-free extract (carbohydrates minus fiber) contained in the feeding stuff; (h) the specific (common) name of each ingredient used in its manufacture, and (i) the maximum amount of each foreign mineral ingredient. The crude protein, crude fat, crude fiber, and crude nitrogen-free extract shall be determined according to the official methods of the Association of Official Agricultural Chemists of North America in force at the time. (Id. § 3.)

79d. Registration with Department.—Before any manufacturer, importer, jobber, firm, association, corporation, or person shall sell, offer or expose for sale, or distribute in this State any commercial feeding stuff he shall file for registration with the Department of Agriculture, a certified copy of the statement specified in section 3 of this act, for each brand of such commercial feeding stuff and shall furnish to the Department of Agriculture or its authorized agent a sealed package containing at least one pound of such commercial feeding stuff; and the company or person furnishing said sample shall thereupon make affidavit that the said sample is representative and a true sample of such commercial feeding stuff offered for registration. The fact that any person, firm, or corporation subject to the provisions hereof has heretofore complied with requirements similar to or identical with those of this section, whether the same are established by law or by the regulations of any branch or department of the State government, shall not exempt him, them or it from again registering and otherwise complying with the provisions of this section after it shall have become effective. (Id. § 4.)

79e. Department May Refuse Registration.—The Department of Agriculture shall have power to refuse to register any commercial feeding stuff under a name, brand, or trade-mark, which would be misleading or deceptive, or which would tend to mislead or deceive as to the materials of which it is composed, or when the specific name of each and all ingredients used in its manufacture is not stated. The

Department of Agriculture shall also have the power to refuse to register more than one commercial feeding stuff under the same name or brand when offered by the same manufacturer, importer, jobber, firm, association, corporation, or person. Should the Department of Agriculture or its authorized agent in the exercise of the powers conferred by this act stop the sale of any lot, package or parcel of commercial feeding stuff, prompt notice of such action shall be given to the manufacturer, importer, jobber, firm, association, corporation, or person responsible for having placed such commercial feeding stuff on the market. Should it be established by a hearing, as provided for in section 10 of this act, to the satisfaction of the Department of Agriculture that any brand or brands of commercial feeding stuff have been sold in violation of any of the provisions of this act or that a false sworn statement has been made relative thereto, the department shall have power to cancel or suspend the registration of such brand or brands of commercial feeding stuff. The said department shall refuse to allow any manufacturer, importer, jobber, firm, association, corporation, or person to lower the guaranteed analysis or change the ingredients of any brand of his or their commercial feeding stuff, registered for sale in this State until a statement thereof as provided in section 3 of this act has been filed with the Department of Agriculture. The Department of Agriculture is hereby empowered to enforce the provisions of this act and to prescribe the form of labels to be used and to prescribe and enforce such rules, regulations, and standards as it may deem necessary to carry into effect the full intent and meaning of this act. (Id. § 5.)

79f. Inspection Tax.—Every manufacturer of commercial feeding stuff, as defined in this act shall pay to the Department of Agriculture an inspection tax of ten ($0.10) cents for each ton (2,000 lbs.) of commercial feeding stuffs sold, offered or exposed for sale or distributed in this State, and shall affix to each lot shipped in bulk, and to each parcel of such commercial feeding stuffs a tag or stamp, to be furnished by Department of Agriculture, stating that all charges specified in this section have been paid. Whenever any commercial feeding stuffs, as defined in section one (1) above, are exposed or offered for sale in bulk or stored the person keeping the same for sale shall keep on hand cards upon which shall be printed the statement required by the provisions of this act and when such feeding stuffs are sold at retail in bulk or in packages belonging to the purchaser, the vendor shall furnish the purchaser with sufficient tax tags or stamps to cover the sale, and with a card or cards upon which appear the statement required by the provisions of this act. No inspection fee shall be required for the sale of unadulterated wheat, rye and buckwheat bran, nor for the sale of wheat, rye and buckwheat shorts sold in this state. (Id. § 6.)

79g. Analysis by Department—Samples.—The said Department of Agriculture or its authorized agent shall, upon presentation of his credentials to the person in charge, have free access to all places of business, mills, buildings, vehicles, cars, vessels, and parcels of whatever kind used in the manufacture, transportation, importation, sale or storage of any commercial feeding stuff, and shall have the power and authority to open any parcel containing, or supposed to contain, any commercial feeding stuff, and to take therefrom in the manner prescribed herein, samples for analysis. He shall tender therefore the retail price of the sample, or samples, procured. In so far as it is practicable and the revenues provided by this act may suffice, it shall be the duty of the Department of Agriculture to cause annually to be analyzed at least one sample so taken of every commercial feeding stuff that is sold, offered or exposed for sale, or distributed in this State. (Id. § 7.)

79h. Regulations Governing Samples.—An official representative sample of each brand of commercial feeding stuff sold, offered or exposed for sale or distributed within this State shall be taken by the said Department of Agriculture, or its duly authorized agent in the presence, when practicable, of at least one witness. No action shall be maintained for a violation of the provisions of this act, based upon an analysis of a sample from less than five (5) separate original packages except that there be less than five (5) separate original packages in the lot, in which case portions for the official sample shall be taken from each original package; if the commercial feeding stuff is in bulk, portions shall be taken from not less than five (5) different places in the lot: Provided, that this does not exclude sampling in bulk when not exposed sufficiently to take portions from five (5) different places, in which case portions are to be taken from as many places as practicable. If the sample thus secured is larged than is required, it shall be mixed and quartered until a sample of sutiable size remains. All official samples shall be sealed for delivery to said Department of Agriculture, which shall cause them to be analyzed, and the result of such analysis, together with such additional information as the said Department of Agriculture, or its authorized agent may deem advisable, shall be promptly transmitted to the manufacturer or person responsible for the placing

of the commodity on the market, and shall be published in reports or bulletins from time to time. If the manufacturer or person responsible for placing upon the market any commercial feeding stuff so sampled be unable to secure a sample of the package or lot of commercial feeding stuff in question, he shall upon request to the Department of Agriculture, within ten (10) days from the date of the report of the analysis be furnished with a portion of the official sample referred to in this section. The methods of analysis used in the analysis of such official samples shall be the methods of the Association of Official Agricultural Chemists of North America in force at the time. (Id. § 8.)

79i. Violation—Penalty.—Any manufacturer, importer, jobber, firm, association, corporation, or person who shall obstruct, hinder or otherwise prevent or attempt to prevent the said Department of Agriculture or its authorized agent in the performance of its duty in connection with the provisions of this act; or who shall sell, offer, or expose for sale, or distribute in this state, or who shall take or receive from any firm, association, corporation, or person in this State any order for any commercial feeding stuff, as defined in section one (1) of this act, that is not labeled in accordance with the provisions of this act in any other way when delivered in this State by common carrier or otherwise, or who shall directly or indirectly contract for the sale of such commercial feeding stuff with any manufacturer, importer, jobber, firm, association, corporation, or person in this State; or which contains a smaller per centum of crude protein or crude fat or crude nitrogen-free extract, or a larger per centum of crude fiber than is certified to be contained therein; or without truly stating the specific name of each and every ingredient used in its manufacture as required by section three (3) of this act; or that has been adulterated with weed seeds, peanut shells, corn cob meal, oat hulls, oat clippings, flax plant by-products, foreign mineral matter, other foreign material or any other materials of less or of little or no feeding value, without plainly stating in the label hereinbefore described the kind and maximum percentage of each such adulterants mentioned in this section, shall be deemed guilty of a violation of the provisions of this act, and, upon conviction thereof, shall be fined not less than one hundred dollars ($100.00) for the first violation and not less than five hundred dollars ($500.00) for each subsequent violation. Any manufacturer, importer, jobber, firm, association, corporation, or person who shall mix or adulterate any feeding stuff with any substance or substances injurious to the health of live stock or poultry, shall be deemed guilty of a violation of the provisions of this act, and, in addition to the penalty provided in this section, the lot of feeding stuff shall be subject to seizure, condemnation, and sale as the court may direct. The proceeds of such sale shall be paid into the general school fund. The court may, in its discretion, release the feeding stuff so seized when the requirements of the provisions of this act have been complied with, and upon payment of all costs and expenses incurred by the State in any proceedings connected with such seizure. (Id. § 9.)

79j. Hearing by Department.—If it shall appear to the Department of Agriculture that any manufacturer, importer, jobber, firm, association, corporation or person has violated any of the provisions of this act, the said department shall cause notice to be given to the said manufacturer, importer, jobber, firm, association, corporation, or person that a hearing in relation thereto will be had at a date and place named in said notice. Whereupon the Department of Agriculture, or its authorized agent, shall hold a hearing and may take testimony under oath giving said manufacturer, importer, jobber, firm, association, corporation or person or their representative an opportunity to be heard in his or their defense under such rules and regulations as may be prescribed by the Department of Agriculture. In case any manufacturer, importer, jobber, firm, association, corporation or person shall fail to appear at the time and place designated in said notice then the Department of Agriculture or its authorized agent shall conduct a hearing the same as though the said manufacturer, importer, jobber, firm, association, corporation or person were present. If it be established by such hearing, either in the presence or absence of such manufacturer, importer, jobber, firm, association, corporation or person to the satisfaction of the said Department of Agriculture that prosecution is warranted the facts shall be certified to the proper prosecuting attorney and that officer furnished with an official report of the result of such hearing and a copy of the result of any analysis or other examination which may have a bearing on the case duly authenticated by the analyst or other officer making the examination, under the oath of such officer. Such prosecuting attorney shall thereupon proceed to file and prosecute such case. (Id. § 10.)

Grain.

79k. Sale of Carlots of Grain.—Carlots of grain that have been inspected by any licensed inspector, who has a license from the United States Department of Agriculture under the provisions of the Grain Standards Act, may be sold to be paid for basis shippers' weights, or basis destination weights or basis the official weights on the market where the grain is inspected, as agreed by the buyer and seller in the trade. (L. 1927, c. 8, § 1.)

79l. Reshipment.—Grain inspected by licensed inspectors as above mentioned may be diverted or re-shipped without having to be unloaded and weighed where inspected. (Id. § 2.)

79m. Deprivation of Diversion Right Prohibited.—No person or persons shall be deprived of this diversion right by any rule, regulation, by-laws or custom of any market, board of trade, chamber of commerce exchange, inspection department, or similar organization operating within the State of Nebraska. (Id. § 3.)

Meat—Meat Products.

80b.-80g. Repealed. (L. 1927, c. 12, Art. IX, § 1.)

80h. Rendering Establishments; Licenses.—It shall be unlawful for any person or persons, firm, or corporation to operate within the State any rendering establishment where carcasses of domestic animals, which are not intended for human consumption, and which are brought or delivered to said establishment, without having secured from the department a license or permit so to do. (L. 1927, c. 12, Art. VII, § 1.)*

80i. Permit.—Any person, persons, firm or corporation intending to operate within the State of Nebraska any such rendering establishment shall file with the Department of Agriculture an application for a license or permit to do so, subject to the provisions of this act, and the rules and regulations of the department. (Id. § 2.)

80j. Permit—Inspection—Fee.—Upon the receipt of said application the department shall cause an inspection to be made of any establishment for which license or permit is requested, including its equipment, vehicles and manner of the conduct of its business with reference and due regard to the dangers of disease transmission and dissemination. If said inspection fails to reveal any danger of disease transmission, the department shall issue the license or permit applied for upon payment of a fee of fifty dollars. Such license or permit shall remain valid for a period of one year from the date of issue or until sooner revoked for cause by the department. (Id. § 3.)

80k. Carcasses of Animals.—A rendering establishment duly licensed under the provisions of this act, is authorized to transport over any public highway the carcasses of domestic animals which have died of disease, subject to the following conditions and limitations:

1st. How Transported.—That for the purpose of such transportation the carcasses shall be placed in containers or vehicles which are constructed of, or lined with, impervious material, and which do not permit the escape of any liquid and which are covered in such a way that the contents be not accessible to flies or other insects.

2nd. Containers Disinfected.—That said containers and vehicles are disinfected, in a manner prescribed by the department, each time before leaving the establishment named in the license or permit.

3rd. Vehicle Disinfected.—That upon leaving the premises where any such carcass is found and before entering the public highway, the exterior of the vehicle transporting the same shall be disinfected in the manner prescribed by the department. (Id. § 4.)

80l. Receipt by Rendering Establishment.—It shall be unlawful for any such rendering establishment to receive or accept any such carcass of a diseased animal which has been transported to such establishment by any other person than the authorized agents and employees of such rendering establishment. (Id. § 5.)

80m. Public Stock Yards.—The provisions of this act shall not apply to rendering establishments dealing exclusively in carcasses of domestic animals from public stockyards where federal inspection is maintained. (Id. § 6.)

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*For penalty for violation of this and the following sections, see Nos. 146i-146j, post.

Sanitation.

See No. 80h et seq., ante.

PART III.

Special Drug Laws.*

Pharmacy, Poisons and Narcotics.

115-122. Repealed. (L. 1927, c. 167, § 135.)

122b. **Definitions.**—For the purpose of this and the following sections of this article the following definitions shall apply:

1. "Board of Examiners" shall mean one of the boards appointed by the Department of Public Welfare to give examinations to applicants for licenses.

2. "Licensed," when applied to any licensee in any of the professions named in section two, shall mean a person licensed under this article.

3. "Profession" shall mean and refer to any of the several groups named in section two hereof.

4. "Department" shall mean the Department of Public Welfare of the State of Nebraska.

5. Wherever the masculine gender is used it shall be construed to include the feminine; the singular number to include the plural when consistent with the intent of this act.

6. "Article" shall mean and refer to House Roll No. 551, Laws of Nebraska for 1927, as enacted, which, for convenience, shall be known as the "Uniform Licensure Law." (L. 1927, c. 167, § 1.)

122c. **Practice Without License; Injunctions.**—Any person engaging in the practice of any profession for which a license is required by this article without such license may be restrained by permanent injunction. (Id. § 63.)

122d. **False Certificate.**—Any person who shall file or attempt to file with the department any false or forged diploma or certificate or affidavit of identification or qualification shall be deemed guilty of forgery and upon conviction thereof shall be punished according to the penalties imposed in the statutes relating to that subject. (Id. § 64.)

122e. **Fraud in Procuring License; Penalty.**—Any person who shall present to the department a diploma or certificate of which he is not the rightful owner for the purpose of procuring a license or who shall falsely impersonate any one to whom a license has been issued by said department shall be deemed guilty of a fraud in attempting to procure a license and upon conviction thereof shall be fined in any sum not exceeding one thousand ($1,000.00) dollars or confined in the penitentiary for a period of from one to three years, or both, in the discretion of the court. (Id. § 65.)

122f. **General Penalties.**—Any person violating any of the provisions of this article, except as specific penalties are herein otherwise imposed shall, for the first offense, be fined any sum not less than twenty-five ($25.00) dollars nor more than one hundred ($100.00) dollars, or be imprisoned in the county jail not more than ninety (90) days.

Any person for a second violation of any of the provisions of this article wherein another specific penalty is not expressly imposed, shall upon being found guilty be fined not less than two hundred ($200.00) dollars nor more than five hundred ($500.00) dollars or be imprisoned in the county jail not more than six (6) months, or both, fine and imprisonment in the discretion of the court. (Id. § 66.)

122g. **Practice of Pharmacy; What Is.**—For the purpose of this article the following classes of persons shall be deemed to be engaged in the practice of pharmacy:

1. Persons who are engaged in the business of selling or offering or exposing for sale drugs and medicines at retail.

2. Persons who compound or dispense drugs and medicines, or fill the prescription of licensed physicians and surgeons, dentists or veterinarians.

3. Any person advertising "Drugs," "Drug Store," "Pharmacy," or "Apothecary," or any combination of such titles or any title or description of like import who is not

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*The sections included hereunder are part of the Uniform Licensure Law, which provides a uniform system for the examination and licensing of persons to practice dentistry, medicine, pharmacy, etc. Because of its length, only the provisions relating solely to pharmacy are included herein.

himself a licensed pharmacist or does not employ a licensed pharmacist in his place of business. (Id. § 120.)

122h. Same; Exceptions.—The preceding section shall not be construed to include the following classes:

1. Persons who assist in the sale of dispensing of drugs and medicines under the supervision of a licensed pharmacist.

2. Persons who sell, offer or expose for sale completely denatured alcohol or concentrated lye, insecticides and fungicides in original packages.

3. Persons who are licensed to practice medicine, dentistry, or veterinary medicine who dispense drugs and medicines as an incident to the practice of their profession.

4. Persons who sell, offer or expose for sale patent or proprietary medicines the sale of which is not in itself a violation of the law relating to intoxicating liquors.

5. Licensed doctors of medicine in any town or village of three hundred fifty (350) population or less, where there is no registered pharmacist and located ten (10) miles or more from any town or village having a licensed or registered pharmacist. (Id. § 121.)

122i. "Drugs and Medicines" Defined.—For the purposes of this article "drugs and medicines" shall include all substances and preparations for external or internal use recognized in the United States Pharmacopœia or National Formulary or any substance or mixture of substances intended to be used for the correction, mitigation or prevention of diseases of either man or animals. (Id. § 122.)

122j. Application for License; Requirements.—Every applicant for a license to practice pharmacy shall:

1. Present evidence that he is a graduate of a four year course in an accredited high school or its equivalent, as that term is herein defined, and in addition shall present evidence of possessing the qualifications enumerated in one of the following paragraphs:

a. Of having had three years of practical experience under a registered pharmacist.

b. The completion of two years' work in an accredited school or college of pharmacy and at least two years of practical experience as a clerk under the supervision of a licensed pharmacist.

c. The completion of three years' work in an accredited school or college of pharmacy and at least one year of practical experience as a clerk under the supervision of a licensed pharmacist.

d. The completion of four years' work in an accredited school or college of pharmacy.

2. Pass an examination prescribed by the Board of Examiners in the following subjects, and such other subjects as may be prescribed by the department from time to time upon the recommendation of the Board of Examiners in Pharmacy: pharmaceutical arithmetic, pharmacy, toxicology, materia medica, chemistry, practical. (Id. § 123.)

122k. Same.—After January 1, 1930, every candidate for a license to practice pharmacy shall:

1. Present evidence that he is a graduate of a four year course in an accredited high school or its equivalent, as that term is herein defined, and in addition shall present evidence of possessing the qualifications enumerated in one of the following paragraphs:

a. Of having completed one year's work in an accredited school or college of pharmacy and at least three years of practical experience as a clerk under the supervision of a licensed pharmacist.

b. Of having completed two years' work in an accredited school or college of pharmacy and at least two years of practical experience as a clerk under the supervision of a licensed pharmacist.

c. Of having completed four years' work in an accredited school or college of pharmacy and at least six (6) months of practical experience as a clerk under the supervision of a licensed pharmacist. The practical experience required under this subdivision may be secured while taking the course of a school of pharmacy and during vacation.

2. Pass an examination prescribed by the Board of Examiners covering the subjects named in the second paragraph of the preceding section. (Id. § 124.)

122l. College of Pharmacy; Required Course.—An accredited school or college of pharmacy shall be one approved by the department upon recommendation of the Board of Examiners. It shall be a school or college which maintains at least a two-year course in pharmacy, consisting of not less than thirty-six weeks of in-

struction each year, with a vacation of not less than two months intervening between each school year. The required course shall include a minimum of 1800 hours of instruction with not less than 800 hours in lectures and recitation, and not less than 900 hours of laboratory instruction. (Id. § 125.)

122m. Reciprocal Licenses.—Where a licensee from another State makes application to be admitted without examination to practice as has been hereinbefore provided and has satisfied the department that he has the qualifications herein required the said applicant shall be compelled to pass an examination in practical pharmacy before at least one member of its Board of Examiners. (Id. § 126.)

122n. Who May Fill Prescriptions.—No licensed pharmacist shall allow any one in his employ, who is not a licensed pharmacist, to fill the prescriptions of licensed physicians, dentists or veterinarians, unless the same is done under the supervision of a licensed pharmacist. (Id. § 127.)

131e. Repealed. (L. 1927, c. 167, § 135.)

Serum, Virus and Tuberculin.

132. **Regents of State University Shall Manufacture or Purchase and Sell Hog Cholera Serum.**—The regents of the University of Nebraska shall manufacture, or purchase, store, sell and distribute hog cholera serum and virus in sufficient quantity to supply the demand from swine growers, breeders, feeders or other residents of Nebraska as nearly as can be determined, and to accomplish said purpose said board of regents are hereby authorized and directed to provide sufficient cold storage facilities to meet the requirements of the provisions of this act.

There is hereby appropriated from the general fund in the State treasury, not otherwise appropriated, the sum of thirty thousand ($30,000.00) dollars, or as much thereof as may be necessary, for the use of said board of regents of the University of Nebraska in carrying out the purposes of this act. (C. S. 1922, § 6797, as amended L. 1927, c. 31.)

133-146. Repealed. (L. 1927, c. 12, Art. IX, § 1.)

146a. Hog Cholera Serum and Virus Manufacture and Sale.—No person shall manufacture, sell, distribute or transport into the State of Nebraska hog cholera serum or virus until the manufacturer of said serum has made application and obtained a permit from the Department of Agriculture and his brand or brands of serum or virus are registered with the department. (L. 1927, c. 12, Art. VI, § 1.)

146b. Permit to Sell—Bond.—If the department is satisfied that the applicant possesses the requisite skill and upon his furnishing a bond in the sum of five thousand ($5,000) dollars, to be approved by the department, it may issue to the applicant a permit to sell hog cholera serum or virus, within the State for a period of one calendar year, or part thereof. The department shall prescribe the standard of potency for hog cholera serum and virus: Provided, the state-owned serum plant shall not be required to furnish a bond for the manufacture or distribution of hog cholera serum or virus. The permit may at any time be changed, or it may be revoked for cause. (Id. § 2.)

146c. Conditions of Bond—Forfeit.—The bond of the applicant shall be conditioned that the applicant shall forfeit to the State of Nebraska the sum of one thousand ($1,000.00) dollars and in addition thereto the expense of collecting the same, whenever upon inspection by the department it shall be ascertained that any serum or virus, sold or used, or kept for sale or distribution or offered for sale by him, is below the standard of potency, prescribed by this article. (Id. § 3.)

146d. When Sale Unlawful.—It shall be unlawful for any person to sell, barter or exchange, carry, give away, ship or deliver for shipment, within the State of Nebraska any hog cholera serum which is impotent or contaminated with disease producing or other harmful bacteria or substances. It shall further be unlawful for any person or corporation to sell, barter or exchange, carry, give away, ship or deliver for shipment any hog cholera virus which is avirulent or contaminated with disease producing or other harmful bacteria or substances other than the filterable, ultra-microscopic virus of hog cholera. (Id. § 4.)

146e. Hog Cholera Serum; When Impotent.—Hog cholera serum shall be deemed to be impotent, when it fails to protect swine against hog cholera, which are susceptible thereto, injected in doses as recommended on the label of the container, for the weight of swine indicated thereon, against a dose of virulent hog cholera virus of not less than two cubic centimeters. (Id. § 5.)

146f. Hog Cholera Virus; When Avirulent.—Hog cholera virus shall be deemed to be avirulent when it fails to cause hog cholera in swine susceptible to said disease, when injected in doses of not more than two cubic centimeters. (Id. § 6.)

146g. Label on Container.—Each container of hog cholera serum shall have thereon a label showing the name of the manufacturer, the name of the contents, the date when its potency is regarded as uncertain and the doses recommended by the manufacturer as protective for swine of varying weights. (Id. § 7.)

146h. Hog Cholera Virus; Container to Bear Label.—Each container of hog cholera virus shall have thereon a label showing the name of the manufacturer, the name of the contents, the date when its virulence is regarded as uncertain and the doses recommended by the manufacturer. (Id. § 8.)

146i. Penalty.—Any person violating any of the provisions of this act is hereby deemed to be guilty of a misdemeanor and upon conviction thereof shall be fined in any sum not less than $50.00 nor more than $1,000.00 or by imprisonment in the county jail for a period of not less than thirty days nor more than one year, or both. (L. 1927, c. 12, Art. VIII, § 13.)

146j. Injunction.—The penal provisions of this act for the enforcement thereof shall not be exclusive, but the district courts of this State, in the exercise of their equity jurisdiction, shall have power, by injunction, to compel the observation of, and by that remedy enforce the provisions of this act and the rules and regulations established and promulgated by the department. (Id. § 14.)

PART IV.

Miscellaneous Laws.

Tobacco—Tobacco Products.

170. Tobacco and Cigarettes—Seller's License.—The term for which said license shall run shall be from the date of filing such application and paying such license fee to and including December 31st, of the calendar year in which application for such license is made, and the license fee for any person, partnership or corporation selling at retail shall be twenty-five ($25.00) dollars in cities of the metropolitan class, fifteen dollars ($15.00) in cities of the first class, and ten dollars ($10.00) in cities of all other classes and in towns and villages, and in locations outside of the limits of cities, towns and villages: Provided, that any person, partnership or corporation selling annually in the aggregate more than one hundred fifty thousand (150,000) cigars, packages of cigarettes, and packages of tobacco in any form, at wholesale, shall pay a license fee of one hundred ($100.00) dollars, if said combined annual sales amount to less than one hundred fifty thousand (150,000) cigars, packages of cigarettes and packages of tobacco, said annual license fee shall be fifteen ($15.00) dollars: Provided, however, that no wholesaler's license shall be issued in any year on a less basis than one hundred ($100.00) dollars per annum, unless the applicant for same shall file with such application a statement duly sworn to by himself, or if applicant is a partnership, by a member of the firm, or if a corporation, by an officer or manager thereof, that in the past such wholesaler's combined sales of cigars, packages of cigarettes, and packages of tobacco in every form have not exceeded in the aggregate 150,000 annually, and that such sales will not exceed said aggregate amount for the current year for which said license is to issue. Any person swearing falsely in such affidavit shall be guilty of perjury and upon conviction thereof shall be punished as provided by section 9701, Compiled Statutes of Nebraska, 1922, and such wholesaler's license shall be revoked until the full $100.00 license fee is paid.

Provided further, that if application for license is made after July 1st, of any calendar year, the fee shall be one-half of the fee provided in this section.

Provided further, that this act shall be effective against tobacco dealers whose licenses are in force or who should have procured licenses at the time this act becomes operative, only from the expiration of the term for which such licenses were or should have been issued. (C. S. 1922, § 9852, as amended L. 1927, c. 198.)

Weights and Measures.

201. Weights Per Barrel and Per Bushel.—Whenever any of the articles or commodities mentioned in this section shall be sold by the bushel, or fractional part thereof, and no special agreement shall be made in writing, the measure thereof shall be ascertained by avoirdupois weight, and shall be computed as follows:

Apples,	48 pounds	Onions,	57 pounds
Apples, dried,	24 pounds	Onion top sets,	28 pounds
Alfalfa seed,	60 pounds	Onion bottom sets,	32 pounds
Barley	28 pounds	Orchard grass seed,	14 pounds
Beans, green, unshelled,	56 pounds	Osage orange seed,	32 pounds
Beans, dried,	60 pounds	Parsnips,	50 pounds
Beans, Lima,	56 pounds	Peaches,	48 pounds
Beets,	56 pounds	Peaches, dried,	33 pounds
Blue grass seed,	18 pounds	Peanuts,	22 pounds
Bran,	20 pounds	Pears,	45 pounds
Bromus inermis,	14 pounds	Peas, green, unshelled,	50 pounds
Broom corn seed,	50 pounds	Peas, dried,	60 pounds
Buckwheat,	50 pounds	Plums,	48 pounds
Carrots,	50 pounds	Popcorn on the ear,	70 pounds
Caster beans, shelled,	50 pounds	Popcorn, shelled,	56 pounds
Charcoal,	20 pounds	Potatoes,	60 pounds
Cherries,	40 pounds	Quinces,	48 pounds
Clover seed,	60 pounds	Rape seed,	50 pounds
Coal,	80 pounds	Red top seed,	14 pounds
Coke,	40 pounds	Rutabaga,	60 pounds
Corn in ear, husked (field),	70 pounds	Rye,	56 pounds
Corn in ear, unhusked (field),	75 pounds	Rye grass seed,	22 pounds
Corn, shelled (field),	56 pounds	Salt,	80 pounds
Cornmeal,	48 pounds	Sand,	130 pounds
Cucumbers,	48 pounds	Shorts,	20 pounds
Emmer,	48 pounds	Sorghum saccharatum seed,	50 pounds
All root crops not specified above,	50 pounds	Spelt (emmer),	48 pounds
Grapes, with stems,	40 pounds	Sweet corn,	50 pounds
Hemp seed,	44 pounds	Sweet potatoes,	50 pounds
Hickory nuts, hulled,	50 pounds	Timothy seed,	45 pounds
Kaffir corn,	56 pounds	Tomatoes,	56 pounds
Lime,	80 pounds	Turnips,	55 pounds
Millet seed,	50 pounds	Walnuts, hulled,	50 pounds
Oats,	32 pounds	Wheat,	60 pounds
		All root crops not specified above,	50 pounds

The net weight per barrel or per hundred or divisible merchantable quantities shall be as follows and no packages other than these sizes shall be permitted for sale in the State of Nebraska: Wheat flour per barrel, 196 pounds; per half barrel, 98 pounds; per quarter barrel sack, 48 pounds; per one-eighth barrel sack, 24 pounds; and in smaller containers of 10 pounds, 5 pounds; rye flour, rye graham, wheat graham, whole wheat flour and cornmeal in packages of the following weights: one hundred pounds, fifty pounds, twenty-five pounds, ten pounds, and five pounds. Nothing in this article shall be construed to prohibit the sale in other sized packages of flour prepared for special purposes. (C. S. 1922, § 7582, as amended L. 1927, c. 7.)

NOTE: See also Nos. 79k-79m ante.

NEW HAMPSHIRE.

PART II.

Special Food Laws.

Apples.

20-36. Superseded. (L. 1927, c. 19.)

36a. Definition.—The term "closed" package when used in this chapter shall mean a barrel, box or other container, the contents of which cannot be sufficiently inspected without opening it. (Public Laws of 1926, c. 165, § 1, as added L. 1927, c. 19.)

36b. Standard Packages.—The standard barrel for apples shall be of the following dimensions when measured without distention of its parts: length of stave, twenty-eight and one-half inches; diameter of heads, seventeen and one-eighth inches; distance between heads, twenty-six inches; circumference of bulge, sixty-four inches, outside measurements; and the thickness of staves not greater than four-tenths of an inch: Provided, that any barrel of a different form having a capacity of seven thousand and fifty-six cubic inches shall be a standard barrel.

The standard bushel for apples shall be a container having a capacity of not less than one United States standard bushel or 2,150.42 cubic inches.

Containers for apples other than the standard barrel or bushel shall be marked in terms of cubical capacity or count. (Id. § 2.)

36c. Standard Grades.—The standard grades of apples when packed or repacked within the State shall be as follows:

"Standard Fancy" shall include only apples of one variety which are well matured specimens, handpicked, above medium color for the variety, normal shape, of good and reasonably uniform size, sound, free from dirt, disease, insect and fungous injury, bruises and any other defects except such as are necessarily caused in the operation of packing, and shall be packed properly in clean, strong packages.

"Standard A" shall include only apples of one variety which are well matured specimens, handpicked except for varieties exempted by regulations adopted under section 9, properly packed, of medium color for the variety, practically normal shape, sound, practically free from dirt, disease, insect and fungous injury, bruises and other defects, except such as are necessarily caused in the operation of packing.

"Standard B" shall include only apples of one variety, which are well matured, properly packed, not materially deformed, practically free from dirt, disease, insect and fungous injury or any other defect which materially injures the usefulness or keeping quality of the apple.

In order to allow for variations incident to commercial grading and handling not more than ten per cent, by weight, of the apples in any lot may be below the requirements of the grade with which the lot is branded.

Apples not conforming to the foregoing specifications of grade, or, if conforming, not branded in accordance therewith, shall be considered "Unclassified" and so branded. (Id. § 3.)

36d. Other Designations Forbidden.—The marks indicating the grade, as described in the preceding section, shall not be accompanied by any other designation of grade or brand which is inconsistent with the marks required by section 6. (Id. § 4.)

36e. Minimum Size; Term Defined, Etc.—The minimum size of all apples in all grades, including unclassified apples as defined in section 3, shall be marked upon the package, and shall be determined by taking the transverse diameter of the smallest fruit in the package at right angles to the stem and blossom ends. Minimum sizes shall be stated in variations of one-quarter of an inch, such as two inches, two and one-quarter inches, and so forth, in accordance with the facts. Minimum sizes may be designated by figures instead of words. The word "minimum" may be designated by using the abbreviation "min." (Id. § 5.)

36f. Certain Information to be Marked on Closed Packages.—Each closed package of apples packed or repacked within the State and intended for sale within or without the State shall be marked or branded at the time of packing, repacking or closing with a statement of the quantity of the contents, except as hereinafter provided, the name and address of the person by whose authority the apples were packed, the true name of the variety, and the grade and minimum size of the apples contained

therein, in accordance with sections 3 and 5, and the name of the State where they were grown. If the true name of the variety is not known to the packer or other person by whose authority the apples are packed, the statement shall include the words "variety unknown," and if the name of the State where the apples were grown is not known, this fact shall also be set forth in the statement. If apples are repacked, the package shall be marked "repacked," and shall bear the name and address of the person by whose authority it is repacked in place of that of the person by whose authority it was originally packed. (Id. § 6.)

36g. Size of Lettering.—The branding or marking of barrels under the provisions of this chapter shall be in block letters and figures not less than one-half inch in height. The Commissioner of Agriculture shall prescribe rules and regulations as to the lettering to be used in branding, or marking other packages. (Id. § 7.)

36h. Misbranded Apples—Term Defined.—For the purposes of this chapter apples packed in a closed package, unless branded and conforming to the official standards for the inspection of barreled apples promulgated by the Secretary of the United States Department of Agriculture, shall be deemed to be misbranded:

I. If the package fails to bear all statements required by section 6.

II. If the package bears any statement, design or device regarding such article or its contents which shall be false or misleading in any particular, or is falsely branded in any particular. (Id. § 8.)

36i. Administrative Authority.—The Commissioner of Agriculture shall make and may modify uniform rules and regulations for carrying out the provisions of this chapter. He shall, in person, or by his deputy or agent, have free access, ingress and egress at all reasonable hours to any place, building or vehicle in which apples are packed, stored, sold, offered or exposed for sale or held for transportation. He shall also have power, in person or by his deputy or agent, to open any box, barrel or other container, and may upon tendering the market price, take such container and its contents or samples therefrom. Said commissioner shall have general authority to administer and enforce the provisions of this chapter and the rules and regulations made hereunder, and to prosecute violations thereof. (Id. § 9.)

36j. Violations—Notice and Hearing.—When the commissioner becomes cognizant of the violation of any provision of this chapter he shall cause notice of such violation, together with a copy of the findings, to be given to the person or persons concerned. Persons so notified shall be given a hearing under rules and regulations prescribed by the commissioner. Notices of such hearing shall specify the date, hour and place of the hearing. Affidavits under oath may be received by the commissioner as evidence. (Id. § 10.)

36k. Penalties.—Whoever himself or by his servant or agent misbrands apples within the meaning of this chapter or packs, sells, distributes, offers or exposes for sale or distribution apples which are misbranded or apples in closed or open packages so packed that the faced or shown surface gives a false representation of the contents of such package, or otherwise packs, sells, distributes, offers or exposes for sale or distribution, apples in violation of any provision of this chapter, shall be fined for the first offense not exceeding fifty dollars and for a subsequent offense not exceeding two hundred dollars. Whoever violates any rule or regulation made by the commissioner under this chapter, or obstructs or hinders the commissioner or his deputy or agent in the performance of his duties hereunder, shall be fined not less than ten nor more than one hundred dollars. (Id. § 11.)

36l. Exemptions From Penalties.—No person shall be deemed to have violated any provision of this chapter if he can establish by satisfactory evidence that he acted in good faith solely as a distributor, and that he was not a party to the packing and grading of the apples in question, or if he can establish a guaranty signed by the person from whom he received such apples to the effect that the same are not misbranded within the meaning of this chapter, specifically designating this act. Such evidence or guaranty, to afford protection, shall contain the name and address of the person making the sale or shipment of such apples to said distributor, and in such a case such person shall be subject to the penalties to which the distributor would otherwise be liable under the provisions of this chapter. (Id. § 12.)

PART III.

Special Drug Laws.

Tuberculin.

264. Sale and Use of Vaccines—Label.—All vaccines and tuberculin sold, given away or used within this State shall bear a label stating the name and address of the person, firm or institution making it and the date of preparation. (Public Laws of 1926, c. 187, § 78, as amended L. 1927, c. 122.)

265. Report.—A person selling or giving away any vaccines or tuberculin shall report to the commissioner the amount of vaccines or tuberculin disposed of, the degree of strength, the name and address of the person to whom sold or given and the date of delivery. Such report shall include the address of, and be signed by, the person or firm making the report. (Id. § 79.)

266. Use.—A person buying or procuring any vaccines or tuberculin shall not use or dispose of it until assured in writing by the person from whom the vaccine or tuberculin is received that its delivery has been reported to the commissioner, unless he has reported its receipt to the commissioner with information required to be furnished by those who distribute vaccines or tuberculin. (Id. § 80.)

267. Record; Report.—The person buying or procuring any vaccines or tuberculin shall keep a correct record of the amount received, the amount used and the amount on hand; and shall report these facts whenever any vaccine or tuberculin is used, and if at any time, unused vaccine or tuberculin is not deemed fit or is not to be used, shall forward it to the commissioner with a statement showing his name and address, where and when such vaccine or tuberculin was procured, the amount procured at the time and the amount used. If the amount forwarded to the commissioner and the amount used do not equal the amount procured a statement shall be made as to the disposition of the remainder. (Id. § 81.)

268. Exception.—The provisions of this subdivision shall not apply to vaccines or tuberculin manufactured or issued by the Department of Agriculture of the United States Bureau of Animal Industry. (Id. § 82.)

PART IV.

Miscellaneous Laws.

Weights and Measures.

352. Inspectors.—There shall be not exceeding three inspectors of weights and measures, who shall be appointed by the commissioner, with the advice and consent of the Governor and council. Their annual salaries shall not exceed two thousand dollars each. (Public Laws of 1926, c. 161, § 3, as amended L. 1927, c. 132.)

NOTE: See also No. 36a et seq., ante.

NORTH CAROLINA.

PART II.

Special Food Laws.

Dairy Products—Substitutes for Dairy Products.

30aa. Notice to Owner of Suspected Animals—Quarantine.—When the State Veterinarian receives information, or has reason to believe that tuberculosis exists in any animal or animals, he shall promptly notify the owner or owners, and recommend that a tuberculin test be applied to said animals, that diseased animals shall be properly disposed of, and the premises disinfected under the supervision of the State Veterinarian or his authorized representative. Should the owner or owners fail or refuse to comply with the said recommendations of the State Veterinarian within ten days after said notice, then the State Veterinarian shall quarantine said animals on the premises of the owner or owners. Said animals shall not be removed from the premises where quarantined and milk or other dairy products from same shall not be sold or otherwise disposed of. Said quarantine shall remain in effect until the said recommendations of the State Veterinarian have been complied with, and the quarantine canceled by the State Veterinarian. (C. S. Supp. 1924, § 4895(g).)*

Feeding Stuffs.

48b. Rules to Enforce Quarantine.—Upon such proclamation being made, the Commissioner of Agriculture shall have power to make rules and regulations to make effective the proclamation and to stamp out such infectious or contagious diseases as may break out among the live stock in this State. (C. S. 1919, § 4873.)

48c. Violation of Proclamation or Rules.—Any person, firm, or corporation violating the terms of the proclamation of the Governor, or any rule or regulation made by the Commissioner of Agriculture in pursuance thereof, shall be guilty of a misdemeanor and fined or imprisoned in the discretion of the court. (Id. § 4874.)

Fish (Oysters, Etc.).†

50a. Regulations as to Fish, Fishing, and Fisheries Made by Board.—The Fisheries Commission Board is hereby authorized to regulate, prohibit or restrict in time, place, character or dimensions, the use of nets, appliances, apparatus or means employed in taking or killing fish; to regulate the seasons at which the various species of fish may be taken in the several waters of the State, and to prescribe the minimum sizes of fish which may be taken in the said several waters of the State, or which may be bought, sold or held in possession by any person, firm or corporation in the State; and to make such rules regulating the shipment and transportation of fish, oysters, clams, crabs, escallops and other water products as it may deem necessary; and all regulations, prohibitions, restrictions and prescriptions, after due publication, which shall be construed to be once a week for four consecutive weeks in some newspaper published in North Carolina, shall be of equal force and effect with the provisions of this act; and any person violating the provisions of this section shall be guilty of a misdemeanor, and upon conviction shall be fined or imprisoned, at the discretion of the court. (Cum. Sts. 1925, § 1878.)†

Watermelons.

See No. 251, post.

*For penalty see No. 176.

†The duties and powers to be exercised by the Fisheries Commission hereunder have been transferred to the Department of Conservation and Development by L. 1927, c. 57.

PART III.

Special Drug Laws.

Pharmacy, Poisons and Narcotics.

169a. **Dentists May Give Prescriptions.**—Legally licensed druggists of this State may fill prescriptions of legally licensed dentists of this State for any drug necessary for the practice of dentistry. (C. S. 1919, § 6646.)

PART IV.

Miscellaneous Laws.

Weights and Measures.

250. **County Standard-keeper.**—Standard-keepers shall be entitled to receive the following fees, and no other, namely: for examining and adjusting a pair of steelyards, twenty-five cents; every weight of half a pound and upwards, five cents; every set of weights below half a pound, including one piece of each denomination, five cents; for a yardstick, or other measure of cloth, five cents; every bushel, half-bushel, peck or other measure used in measuring grain, meal or salt, ten cents; each measure for liquors or wines, three cents,* and for extra work on bushel and half-bushel measures a sum not exceeding twenty-five cents in any one case; and for every surveyor's chain, fifty cents. (C. S. 1919, § 3914.)

251. **Carload Shipments of Watermelons Regulated; Violation of Regulations Misdemeanor.**—It shall be the duty of all common carriers to furnish the weights of all carload shipments of watermelons originating within the State to the shippers thereof within forty-eight hours after receipt of the same. Any common carrier violating the provisions of this section shall upon conviction be fined ten dollars for each offense. (Id. § 3529.)

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*Chapter 148 of the Public-Local Laws, Extra Session, 1924, which amends this section reads thus:

"Section 1. That section three thousand nine hundred fourteen of the Consolidated Statutes of North Carolina, one thousand nine hundred and nineteen, be and are hereby amended to read as follows: In the seventh line, and after the comma following the words 'three cents' and before the word 'and' in the aforesaid seventh line insert the following: 'For any measures or containers for any liquids, ice cream, merchandise, or any other articles not herein specified, the sum of three cents per gallon or less measure.' And in the ninth line and at the period at the end of the paragraph the following: 'This amendment shall apply only to the county of Rowan'."

OKLAHOMA.

PART II.

Special Food Laws.

Fruits, Vegetables, Etc.

73pp. State Market Commission—Farm Products.—The State Market Commission is hereby authorized to inspect at any time "farm products," when requested by any financially interested party, or when deemed necessary by the department, and to issue certificates showing the quality and condition of the said products at the time of inspection. All such certificates issued by the State Market Commission or the United States Department of Agriculture, or jointly by the State Market Commission and the United States Department of Agriculture, shall be receivable in all courts of Oklahoma, as prima facie evidence of the truth of the statements therein contained. (L. 1927, c. 61, § 1.)

73ppp. Same—Field Agents.—The five regular field agents in the State Market Commission shall, during their terms of employment as such field agents, hold an uncancelled, unrevoked license from the United States Department of Agriculture to inspect at least one or more farm products. (Id. § 2.)

OREGON.

PART II.

Special Food Laws.

Dairy Products——Substitutes for Dairy Products.

See No. 210c, post.

Flour.

See Nos. 451-452, post.

Fruits and Vegetables.

168a. County Inspector, When County Court May Appoint—Qualifications.—Upon a petition of not less than twenty-five resident fruit growers of any county of this State, the county court of said county shall appoint a county inspector whose duty it shall be to inspect orchards, nurseries, trees, shrubs, vines, fruits, vegetables, plants, packing houses, warehouses, storerooms, farms, and other places within said county; to visit and inspect the fruit drying and packing plants while such plants are in operation; to enforce such regulations as may be required by the State Board of Horticulture governing the handling, drying and packing of prunes, apples, loganberries or other fruits evaporated and packed for human consumption, and to enforce all laws of the State relating to such insect pests and such diseases as affect trees, vines, plants of any kind, or fruit or vegetables of any kind and all other horticultural laws, rules and regulations of the State; provided, however, that the inspector so to be appointed shall be recommended and certified to be competent by the Commissioner of the State Board of Horticulture of the district in which said county is situated, and said county inspector shall hold his office during the pleasure of said county court. . . . (Ore. Laws 1920, § 8856.)

NOTE: See also Nos. 448-450, post.

Grain.

See Nos. 448-452, post.

Meat—Meat Products.

210c. Unlawful to Sell Animal Affected With Contagious, Infectious or Communicable Diseases.—It shall be unlawful for any person, firm or corporation, agent or employee thereof, knowingly to sell, offer to sell, or in any manner to part with to another, any animal affected with any infectious, contagious or communicable disease or which has been exposed to such disease except for immediate slaughter in accordance with the meat inspection regulations of the United States Department of Agriculture, or to dispose of to another in any manner any animal that may be in quarantine until such time as the quarantine shall have been raised by the proper officer, or to dispose of the meat or milk of any animal that may be affected with such contagious, infectious or communicable disease for use as food or for other purposes except in such manner as shall be provided for by the State Live Stock Sanitary Board; provided, however, that nothing in this section shall be construed as interfering with the provisions of the State or national pure food or meat inspection laws, except that the milk from tuberculous cows may be sold under such regulations for its sterilization before use as food as the board may adopt. Any person, persons, firm or corporation, or their agents or employees, who shall violate any of the provisions of this section shall be guilty of a misdemeanor, and upon conviction shall be fined not less than $50 nor more than $250. (Ore. Laws 1920, § 9130.)

Water.

227d. Inspection of Watersheds, and Examinations of Water Supplies by State Board of Health.—As a check and guarantee of the faithful performance of the requirements laid down in sections 8460 to 8472,* inclusive, the State Board of Health shall make or have made by its authorized agents such inspections of watersheds and such chemical and bacteriological examinations of the public water supplies of the State as may be deemed necessary to insure their purity. Should such inspection or examination show conditions dangerous to the public health, the secretary of the said State Board of Health shall notify the mayor, the municipal health officer and the superintendent or manager of the waterworks at fault and demand the immediate correction of said dangerous conditions. (Ore. Laws 1920, § 8473.)

PART IV.

Miscellaneous Laws.

Weights and Measures.

448. Public Service Commission to Supervise Weighing, Storage, Etc., of Hay and Grain, and Management of Public and Terminal Warehouses.—The commission shall exercise general supervision over the handling, weighing, inspecting and storage of grain and hay, and the management of public and terminal warehouses. The commission may by resolution authorize the weighing, inspection and grading, upon request of any interested party of commodities of commerce other than grain or hay, such as grain or hay products, rice, beans, and other similar articles, nitrates and other fertilizers, sulphur, and other chemicals used in the arts, or in manufacturing, when same are received from or delivered to any rail or water carrier in the State in commercial transportation, and may authorize the certification of the weights and grades thereof. Fees for such service, sufficient to cover the cost thereof shall be fixed by the commission. Such commission shall investigate all complaints of fraud or injustice in the grain and hay trade, fix the charges of public and terminal warehouses, and make all necessary rules and regulations for carrying out and enforcing the provisions of this act, and of all laws of the State relating to this subject. (Ore. Laws 1920, § 6113.)†

449. Appointment of Deputy Inspectors, Samplers and Weighers—Salaries—Bond.—The Chief Inspector, with the approval of the commission, shall appoint such number of deputies, inspectors, samplers and weighers as may be necessary to properly and thoroughly inspect and weigh grain, hay, grain and hay products, potatoes, onions and other commodities designated herein or such as may hereafter be designated by resolution of the commission, received or shipped, and to carry out the provisions of this act. One of such inspectors in each of the cities as may be designated by the commission as inspection points, shall be styled chief deputy inspector. Such chief deputy inspectors shall be persons qualified by training and experience for the inspection of the particular commodities which they are required to inspect. The chief deputy inspectors shall each give a surety bond, the cost to be paid by the State, to the State of Oregon in the sum of $5,000, to be approved by the commission, conditioned upon the faithful discharge of their duties. Such chief deputies shall receive such salary per annum as the commission may determine and necessary traveling expenses. Each of the other inspectors, samplers and weighers shall give bond, the cost to be paid by the State, to the State of Oregon in the sum of $3,000, to be approved by the commission, conditioned upon the faithful discharge of his duties; the inspectors, samplers and weighers shall receive such salary per annum as the commission may determine. The chief deputy inspector, inspectors, samplers and weighers may be interchangeable. (Id. § 6115.)†

450. Fees for Inspection—Charge for Services Performed at Other Place Than Terminal.—The commission shall fix the fees for inspection, grading and weighing of grain, hay, grain and hay products, potatoes and opinions, and other commodities included in the provisions of this act, which fees shall be sufficient to cover the cost of such service. The fees for the inspection and weighing of grain and hay shall be a lien upon such grain and hay, and to be paid by the carrier transporting the same

*See No. 227a et seq.
†See Nos. 176n and 176r.

and treated by it as advanced charges. The commission shall so adjust the fees to be collected under this act as to meet the expenses necessary to carry out the provisions hereof, and may prescribe a different scale of fees for different localities. The commission may also prescribe a reasonable charge for services performed at places other than public terminal warehouses, in addition to the regular fees, when necessary to avoid rendering the service at a loss to the State. All moneys collected under the provisions of this act and all fines and penalties for violation thereof shall be paid into the State treasury. (Id. § 6124.)*

451. Miller Must Weigh Grain if Requested, Penalty for Refusal.—Every miller occupying and using a custom mill or grist mill shall be provided with scales and weights, or a vibrating steelyard, to weigh grain, flour, and meal, delivered at or taken from the mill, if required; and if he shall neglect to keep himself so provided, or shall refuse so to weigh grain, flour, or meal when required by any person delivering or taking away the same, he shall forfeit for each neglect or refusal not less than $1 nor more than $5 to the use of the common school fund. (Id. § 7684.)

452. Unmarked Sack or Cask, Miller Not Liable for Loss.—No miller, owner, or occupant of a mill, shall be liable for the loss of any sack or cask that is not marked with at least the initials of the Christian name and the whole of the surname of the owner. (Id. § 7689.)

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*See preceding footnote.

SOUTH CAROLINA.

PART I.

General Food and Drug Law.

Miscellaneous General Provisions.

6bb. Commission for Analysis of Food Products of State.—The president of the University of South Carolina, the president of Clemson College and the dean of the Medical College of the State of South Carolina, together with two (2) other members to be appointed by the Governor, be, and they are hereby constituted a commission to have exclusive charge of the analysis of all products grown or produced in this State used as food for human or animals. (Acts 1927, No. 152, § 1.)

6bbb. Organization; Assistants; Bulletins, Etc.—Immediately upon the appointment by the Governor of the two (2) members herein provided for, they with the other three (3) herein named, shall meet and organize for the purpose of carrying into effect the provisions of this act, and in doing so may select such chemists as they feel are best qualified to perform the duties required, and such other help as they deem necessary, and upon the analysis of all products herein provided for, they shall issue a bulletin setting forth an accurate analysis of all such products; such bulletin may be issued in circular form and also placed in one or more daily papers in the State, or issued in such manner as will give wide publicity to all commodities produced in this State. (Id. § 2.)

6bbbb. Powers for Making Analysis of Food Products.—The commission herein created shall have the right and privilege, and it is hereby invested with authority to use any State Laboratory of this State, and the equipments therein, for the purpose of carrying into full force and effect this act, and shall, if, in their judgment deem it necessary, use any funds available from any source for food analysis, in analyzing any of the food products provided for in carrying into effect the provisions of this act. (Id. § 3.)

PART II.

Special Food Laws.

Beverages.

6g. Soft Drinks; Record of Ingredients Required.— . . . Every person, firm or corporation engaged in the business of making, mixing or compounding any of the soft drinks enumerated in this act shall keep a distinct, legible and permanent record of all extracts, flavorings, sugar, syrup, and other ingredients, except water, received by him, or it, that may be useful for mixing, compounding soft drinks, and the said record shall be open at all times for inspection by the South Carolina Tax Commission or any of its duly authorized agents. That said record shall show the amount or quantity of each of said commodities received, the date of receipt thereof and the name of the person or corporation from whom the same was secured or received and the said record shall be open at all times for inspection by the South Carolina Tax Commission, or any of its duly authorized agents. . . . (Acts 1927, No. 73, § 12.)*

Watermelons.

86a. Certificate as to Grading of Watermelons in Car Lot Shipments—Contents—Disposal of Certificates—Bill of Lading.—The shippers of watermelons in car lots from any point within this State, before applying to any railroad, railway, common carrier, or agent thereof, for a bill of lading for any such shipment, shall first certify whether or not said watermelons contained in said shipment have been graded according to the standard of grades hereinafter provided, which certificate shall be made in writing on appropriate paper or cardboard, signed by the shipper in the presence of two disinterested witnesses and stating the variety, grade and number

*This section is taken from the soft drink tax law contained in the South Carolina Revenue Act for 1927.

of melons contained in said car, the date said melons were picked and the date loaded, or if not graded, shall so state, which certificate shall be securely nailed to the inside of said car near the door; and a duplicate of said certificate shall be furnished to carrier's agent; that the agent of the railroad, railway or other common carrier shall incorporate in its bill of lading the fact that said duplicate certificate had been delivered to him by the shipper certifying that said car contains melons of a certain grade or melons of no grade, according to representation made in the aforesaid certificate. (Acts 1927, No. 184, § 1.)

86b. Standard of Grading—Grading Optional.—All watermelons shipped in car lots from any point within this State as "graded melons" shall be graded according to the following standard, that is to say:

Grade 1 shall weigh not less than 44 pounds with car average of not less than 46 pounds.

Grade 2 shall weigh not less than 40 pounds with car average of not less than 42 pounds.

Grade 3 shall weigh not less than 36 pounds with car average of not less than 38 pounds.

Grade 4 shall weigh not less than 32 pounds with car average of not less than 34 pounds.

Grade 5 shall weigh not less than 28 pounds with car average of not less than 30 pounds.

Grade 6 shall weigh not less than 24 pounds with car average of not less than 26 pounds.

Grade 7 shall weigh not less than 20 pounds with car average of not less than 22 pounds.

Provided, that said melons of whatever grade shall have been picked from live vines of a merchantable quality, shall be ripe, free from rotten ends, free from necks and blisters: Provided, further, that the grading of watermelons, as aforesaid, shall be optional with the shippers. (Id. § 2.)

86c. Penalty for Violation of Act or False Certificate.—Any person or persons who shall ship, or undertake to ship, watermelons in car lots from any point within this State in violation of the provisions of this act, or who shall sign, or cause to be signed, any false certificate as to the grade and kind of melons shipped, as aforesaid, shall be deemed guilty of a misdemeanor and upon conviction shall be punished by fine or imprisonment, or both fine and imprisonment, in the discretion of the court. (Id. § 3.)

PART IV.

Miscellaneous Laws.

Weights and Measures.

See No. 86a et seq., ante.

TENNESSEE.

PART IV.

Miscellaneous Laws.

Tobacco—Tobacco Products.

345a. Definitions.—As used in this act "person" means and includes every individual, firm, association, joint stock company, syndicate and corporation.

The term "distributor" means and includes every person who engages in the business of receiving or importing cigars, cigarettes, manufactured tobacco and/or snuff and making the original sale or gift of the same, in this State.

The term "dealer" means and includes every person other than a distributor who engages in the business in this State of distributing and/or selling cigars, cigarettes, manufactured tobacco and/or snuff, within this State. (P. A. 1927, c. 2, § 1.)

345b. 10 Per Cent Privilege Tax.—Every person engaged in distributing and/or selling cigars, cigarettes, manufactured tobacco and snuff in this State, shall pay to the State, for the exclusive use of the State, a special privilege tax, in addition to all other taxes, in an amount equal to ten per centum of the intended retail sales price of each cigar, package of cigarettes, manufactured tobacco and/or snuff sold and/or given away by such distributor and/or dealer in this State. Such tax to be paid and the stamps hereinafter provided for affixed by the person having possession and ownership of such cigars, cigarettes, manufactured tobacco and/or snuff, after the same shall have come to rest in this State, and intended to be sold or given away in this State. Provided, nothing in this act shall be construed to require a distributor or dealer to fix the retail price, or construed to require any retailer to sell at any particular price; but the tax shall in no event be less than 10 per cent of the price at which the retail sale is made. Provided, further, that the words "intended retail sale price" in this section or elsewhere in this act, shall not include the special privilege tax, imposed in this act, it being the express intent of the Legislature that the special privilege tax, imposed in this act, shall be ten per centum of the retail sales price, exclusive of the special privilege tax and not to include the special privilege tax as a part of the retail sales price in imposing the same. (Id. § 2, as amended P. A. 1927, c. 77.)

345c. To Pay Tax by Affixing Stamps.—Such tax shall be paid by purchase from the Commissioner of Finance and Taxation of the State of Tennessee of stamps of such design and denomination as may be prescribed by said Commissioner of Finance and Taxation; and it shall be the duty of such distributor and/or dealer to affix to each package of cigars, cigarettes, manufactured tobacco and snuff, a stamp or stamps so purchased from and furnished by said Commissioner of Finance and Taxation, and which stamps so affixed shall evidence the payments of the tax imposed by this act; and such stamps shall be cancelled so soon as they shall be affixed to the package containing such cigars, cigarettes, manufactured tobacco and/or snuff, and no stamp of less than one-fifth of one cent shall be so affixed. (P. A. 1927, c. 2, § 3.)

345d. Penalty.—It shall be a misdemeanor for any person, distributor or dealer, as hereinabove defined, to sell or offer for sale, or display for sale, in this State, any package or parcel of cigars, cigarettes, manufactured tobacco and snuff without having affixed thereto or thereon the stamp or stamps required to be affixed thereto or thereon under the provisions of this act; and any such person, distributor or dealer, upon conviction of such misdemeanor, shall be fined in a sum not less than twenty-five ($25.00) dollars nor more than one thousand ($1,000.00) dollars for each offense; provided, that in each such case the fine imposed shall not be less than the retail price of the tobacco and so sold or offered for sale, or displayed for sale, in violation of the terms of this section. (Id. § 4, as amended P. A. 1927, c. 41, § 1.)

345e. Retail Price.—It shall be unlawful for any dealer to sell or offer to sell any cigars, cigarettes, manufactured tobacco or snuff, at a greater price than that upon which the affixed and cancelled stamp denotes the retail price to be: Provided, that said dealer may include in said retail price the value or price of the stamps affixed and cancelled on said cigars, cigarettes, manufactured tobacco and snuff the fraction of a cent required to make said retail price of same the next highest even number of cents; and provided, further, that no special privilege tax is imposed in

this act on said fraction of a cent; and the Commissioner of Finance and Taxation of the State of Tennessee is hereby required to have printed for sale and distribution to said distributor and/or dealer, stamps in the denomination or denominations of one-half of a cent, one cent, one and a half cents, two cents, two and one-half cents, three cents, three and one-half cents, five cents and ten cents, and he may also have printed for sale and distribution to said dealer and/or distributor stamps of such other denominations as he may deem necessary for the purpose of carrying into effect the provisions of this act. Any person violating this section shall be guilty of a misdemeanor, and be subject to a fine of not less than twenty-five ($25.00) dollars nor more than one hundred ($100.00) dollars for each offense. (P. A. 1927, c. 2, § 5, as amended P. A. 1927, c. 77, § 1.)

345f. Counterfeiting; Felony.—Any person who shall falsely and fraudulently make, forge, alter or counterfeit a stamp or stamps prescribed by the Commissioner of Finance and Taxation under the provisions of this act, or who shall cause or procure to be falsely or fraudulently made, forged, altered or counterfeited said stamps, or who shall knowingly and wilfully utter, publish, pass or tender as true, any false, altered, forged or counterfeited stamps prescribed under the provisions of this act shall be guilty of a felony, and, upon conviction therefor be punished by imprisonment in the State Penitentiary for not less than one year, nor more than ten years.

The grand juries of the State shall have, and are hereby given, inquisitorial power over the enforcement of the provisions of this act. All circuit and criminal judges shall give the same in their charges to the grand juries; and all sheriffs and other peace officers charged with the enforcement of the laws of the State are also required to enforce the provisions hereof; and all fines collected hereunder shall go to the State of Tennessee, to be, by the clerks when collected, transmitted to the Treasurer of the State, and shall constitute a part of the public funds of the State. (P. A. 1927, c. 2, § 6.)

345g. Expenses, How Defrayed; Refund on Stamps.—The administration of the provisions of this act shall be conducted by the Department of Finance and Taxation, and the expense of carrying out the provisions of this act, including the necessary clerical help and cost of stamps and incidental expenses, shall be defrayed out of the funds collected thereunder, and not to exceed two per cent of such collections, said expenses to be approved by the Commissioner of Finance and Taxation.

All of the tax collected under this act shall be applied to education, in the following manner: . . .

Provided, that the Department of Finance and Taxation is hereby authorized and empowered, and it shall be its duty to refund all sums paid for stamps which have been affixed to tobacco products hereinbefore enumerated, where such products have for any cause become unsalable or unmarketable. (Id. § 7, as amended P. A. 1927, c. 77, § 2.)

345h. Reports.—The Department of Finance and Taxation shall make a complete and itemized report to the Comptroller on or before the twenty-fifth day of each month covering receipts and expenditures under the provisions of this act during preceding month, and the Commissioner of Finance and Taxation shall at the same time remit to the Comptroller covering receipts less authorized expenditures. (P. A. 1927, c. 2, § 8.)

345i. Suspension and Revocation of License.—The license to sell tobacco and tobacco products of anyone who shall be convicted of a violation of any of the provisions of this act, and who shall thereafter be convicted of a violation committed after the first conviction, and who shall a third time be convicted for a violation committed after the second conviction, shall automatically be suspended for a period of six months, and if such license should expire during that period, he shall be ineligible to procure another license until after the expiration of six months from date of such third violation. It shall not be necessary upon such third conviction for the court or magistrate to render a decree of suspension but such suspension shall take effect automatically; nor shall the person so convicted have the right to procure a license in the name of another during such six months period. It shall be the duty of the court or magistrate, upon every conviction under this act, to make a written report thereof to the county court clerk, and the county court clerk shall preserve a record of such convictions, and upon a third conviction shall be bound to take whatever steps may be necessary or proper to enforce such suspension, including process of injunction in any court of competent jurisdiction, for which purpose he shall be entitled to the legal services of the district attorney-general and of the county attorney if there be one; or the Commissioner of Finance and Taxation upon the part of the State may institute such proceedings in any proper court. (P. A. 1927, c. 41, § 2.)

APPENDIX B.

CONTAINING CASES COLLATED SUBSEQUENT TO THE PREPARATION OF VOLUMES I, II AND III.

FEDERAL.

1. Federal Food and Drugs Act.

Beverages—Misbranding: United States v. Five Cases of a Liquid Food Known as "Hurdle Brand Holland Gin," 41 Wash. Law Rep. 783 (1913).

Flour—Adulteration: United States ex rel. Alsop Process Co. v. Wilson, 33 App. D. C. 472 (1909).

Milk—Jurisdiction of Police Court: Hartranft v. Mullowny, 42 Wash. Law Rep. 436 (1914); Same, 43 App. D. C. 44 (1915).

2. Civil Action to Recover Damages for Injury Alleged to Have Been Caused by Consumption or Use of Product.

Bottle: See Ottawa Bottle & Flint Glass Co. v. Gunther et al., 31 Fed. 208 (1887), dismissed in 140 U. S. 682, 11 S. Ct. 1021, 35 L. Ed. 595 (1890).

Dairy Cows: See Dorsey v. Watkins, 151 Fed. 340 (1907).

Druggist—Damages Not Recoverable for Injury to Business of Selling Misbranded Drugs: Proper v. John Bene & Sons, Inc., et al., 229 Fed. 863 (1924).

Eyewash: Valmas Drug Co. v. Smoots, 269 Fed. 356 (C. C. A.) (1920).

Food: Ketterer v. Armour & Co., 200 Fed. 322 (1912); Valeri v. Pullman Co., 218 Fed. 519 (1914); Ketterer v. Armour & Co., 247 Fed. 921, 160 C. C. A. 111, L. R. A. 1918 D, 798 (1917). See also: Baer Grocer Co. v. Barber Milling Co., 223 Fed. 969, 139 C. C. A. 449 (1915); Cudahy Packing Co. v. Narzisenfeld, 3 Fed. (2d) 567 (C. C. A.) (1924).

Hair Tonic—Explosion: Armour v. Wanamaker, 202 Fed. 423, 120 C. C. A. 529 (1913).

Ice: See Gage v. Carpenter et al., 107 Fed. 886, 47 C. C. A. 39 (1901).

Shaving Brush: S. H. Kress & Co. v. Lindsey et al., 262 Fed. 331, 13 A. L. R. 1170 (C. C. A.) (1919).

Shoe Blacking—Explosion: Wyman, Partridge & Co. v. Boston Blacking Co., 175 Fed. 834 (1909).

Soap—Explosion: International Mercantile Co. v. Fels et al., 170 Fed. 275, 95 C. C. A. 471 (1909), affirming Same, 164 Fed. 337 (1908).

Vaccine: Richards v. H. K. Mulford Co., 236 Fed. 677, 150 C. C. A. 9 (1916).

3. Miscellaneous.

Dentifrice—Action for Libel: Med-A-Dent Co. v. L. D. Caulk Co., 4 Fed. (2d) 126 (1925).

Gift Enterprise: Eastman et al. v. Armstrong-Byrd Music Co., 212 Fed. 662, 129 C. C. A. 198, 52 L. R. A. (N. S.) 108 (1914).

Live Stock Remedies—Action for Libel: Erick Bowman Remedy Co. v. Jensen Salsbery Laboratories, Inc., 17 Fed. (2d) 255 (C. C. A.) (1926).

Narcotic Import Act—Harrison Act: Vachuda v. United States, 21 Fed. (2d) 409 (C. C. A.) (1927).

Proprietary Medicine—Injunction Against Libel: *Willis v. O'Connell, 231 Fed. 1004 (1916).

Trading Stamps: Sperry & Hutchinson Co. v. Mechanics' Clothing Co., 128 Fed. 800 (1904); Sperry & Hutchinson Co. v. Brady et al., 134 Fed. 691 (1905); Sperry & Hutchinson Co. v. Temple, 137 Fed. 992 (1905); Sperry & Hutchinson Co. v. Benjamin et al., 221 Fed. 512 (1905); Sperry & Hutchinson Co. v. Louis Weber & Co., 161 Fed. 219 (1908); Sperry & Hutchinson Co. v. O'Neill-Adams Co., 185 Fed. 231, 107 C. C. A. 337 (1911); Sperry & Hutchinson Co. v. Pommer et al., 199 Fed. 309 (1912); Sperry & Hutchinson Co. v. Pommer et al., 199 Fed. 311 (1912); Sperry & Hutchinson Co. v. Associated Merchants Stamp Co., 208 Fed. 205 (1913); Sperry & Hutchinson Co. v. Pommer et al., 208 Fed. 804 (1913); Sperry & Hutchinson Co. v. Fenster et al., 219 Fed. 755 (1915).

Weights and Measures: United States v. Mescall, 215 U. S. 26, 30 S. Ct. 19, 54 L. Ed. 77 (1909), reversing Same, 164 Fed. 580 (1908).

ALABAMA.

1. Special Food Laws.

Milk: *Walker v. City of Birmingham et al., 112 So. 823 (1927).

2. Civil Action to Recover Damages for Injury Alleged to Have Been Caused by Consumption of Product.

Food: Jefferson Dairy Co. v. Williams, 112 So. 125 (1927); George's Restaurant v. Dukes, 113 So. 53 (1927).

ARIZONA.

1. Special Drug Laws.

Patent Medicines: *State v. Childs et al., 257 Pac. 366 (1927).
Pharmacy: See *Patent Medicines.*

ARKANSAS.

1. Special Food Laws.

Meat—License: *Trigg v. Dixon, 96 Ark. 199, 131 S. W. 695, Ann. Cas. 1912 B, 509 (1910).
Restaurant—License: City of Newport v. Young et al., 293 S. W. 711 (1927).
Restaurant—Regulation: *City of Fort Smith v. Gunter, 106 Ark. 371, 154 S. W. 181 (1913).

2. Special Drug Laws.

Itinerant Vendors: Williams v. State, 99 Ark. 149, 137 S. W. 927, Ann. Cas. 1913 A, 1056 (1911).

3. Civil Action to Recover Damages for Injury Alleged to Have Been Caused by Consumption of Product.

Feeding Stuffs: Hartgrove v. Southern Cotton Oil Co., 72 Ark. 31, 77 S. W. 908 (1903).

4. Miscellaneous.

Trade-Marks: Terry v. Cooper, 171 Ark. 722, 286 S. W. 806 (1926); Fee-Crayton Hardwood Lumber Co. et al. v. Fee-Crayton Hardwood Co., 171 Ark. 831, 286 S. W. 967 (1926).
Weights and Measures: *Wills v. Fort Smith, 70 Ark. 221, 66 S. W. 922 (1902).

CALIFORNIA.

1. Special Food Laws.

Fish: *Ex parte Makings, 247 Pac. 923 (1926); *Same, 253 Pac. 918 (1927).
Meat—Action for Libel: Mowry v. Raabe et al., 89 Cal. 606, 27 Pac. 157 (1891).

2. Special Drug Laws.

Narcotics: People v. Ford, 253 Pac. 966 (1927).

3. Civil Action to Recover Damages for Injury Alleged to Have Been Caused by Use of Product.

Container (Tree Spraying Solution)—Explosion: Cliff v. California Spray-Chemical Co., 257 Pac. 99 (1927).

4. Miscellaneous.

Trade-Marks: Sun-Maid Raisin Growers of California et al. v. Mosesian et al., 258 Pac. 630 (1927).

COLORADO.

1. Special Food Laws.

Libel of Food Dealers: Craig et al. v. Pueblo Press Pub. Co., 5 Colo. App. 208, 37 Pac. 945 (1894).

DELAWARE.

1. Civil Action to Recover Damages for Injury Alleged to Have Been Caused by Consumption of Product.

Food: Roseberry v. Wachter, 138 Atl. 273 (1925).

2. Miscellaneous.

Trade-Marks: Liberty Life Assur. Soc. v. Heralds of Liberty of Delaware, Inc., et al., 138 Atl. 634 (1927).

FLORIDA.

1. Special Food Laws.

Fish: *White v. Penton, 110 So. 533 (1926); White v. State, 113 So. 94 (1927).

GEORGIA.

1. Special Food Laws.

Meat—Slaughterhouse: City of Waycross v. Caulley, 163 Ga. 372, 136 S. E. 139 (1926).

Meat Market and Grocery—License: City Council of Augusta et al. v. Sanders, 138 S. E. 234 (1927).

Milk: Leontas v. City of Savannah, 138 S. E. 154 (1927).

2. Miscellaneous.

Trade-Marks: Industrial Inv. Co. v. Mitchell et al., 138 S. E. 908 (1927).

IDAHO.

1. Special Food Laws.

Farm Products—Potatoes—Standards: *Marshall et al. v. Department of Agriculture of Idaho et al., 258 Pac. 171 (1927).

2. Miscellaneous.

Weights and Measures: See case last cited.

ILLINOIS.

1. Special Food Laws.

Milk—Combination to Regulate Price: Ford et al. v. Chicago Milk Shippers' Association, 155 Ill. 166 (1895), reversing Chicago Milk Shippers' Association v. Ford et al., 46 Ill. App. 576 (1892).

INDIANA.

1. Special Food Laws.

Dairy Industry—Monopoly: State ex rel. Lesh v. Indiana Mfrs. of Dairy Products et al., 144 N. E. 423 (1924); Same, 198 Ind. 288, 153 N. E. 499 (1926).

IOWA.

1. Special Drug Laws.

Poisons: See Burk v. Creamery Package Manufacturing Co., 126 Iowa 730, 102 N. W. 793, 106 Am. St. Rep. 377 (1905).

2. Civil Action to Recover Damages for Injury Alleged to Have Been Caused by Consumption of Product.

Drugs (Sulphuric Acid): See *Poisons,* supra.

3. Miscellaneous.

Linseed Oil—Libel—Action on Inspector's Bond: Witte v. Weinstein et al., 115 Iowa 247, 88 N. W. 349 (1901).
Trade-Marks: Security Nat. Bank of Mason City v. Bagley et al., 210 N. W. 947 (1926).

KANSAS.

1. Special Food Laws.

Vinegar: See State v. Metzger, 121 Kan. 837 (1926).

2. Miscellaneous.

Cigarettes: *Little et al. v. Smith et al., 124 Kan. 237, 257 Pac. 959 (1927).

KENTUCKY.

1. Special Food Laws.

Beverages—Jamaica Ginger: Walker v. Commonwealth, 197 Ky. 266, 247 S. W. 7 (1923); Same, 202 Ky. 831, 261 S. W. 598 (1924); Hale v. Commonwealth, 206 Ky. 685, 268 S. W. 344 (1925); *Walker v. Commonwealth, 217 Ky. 123, 288 S. W. 1036 (1926); City of Pineville v. Davis, 220 Ky. 95, 294 S. W. 766 (1927).

2. Miscellaneous.

False Advertising: *Ware et al. v. Ammon, 212 Ky. 152, 278 S. W. 593 (1925).

LOUISIANA.

1. Special Food Laws.

Beverages—Cake Flavoring: State v. Hollingsworth, 113 So. 805 (1927).
Beverages—Jamaica Ginger: *State v. McCall, 162 La. 471, 110 So. 723 (1926).
Beverages—Pear Extract: State v. Boyd, 162 La. 531, 110 So. 744 (1926).

2. Miscellaneous.

Tobacco: *Lionel's Cigar Store et al. v. McFarland, 162 La. 956, 111 So. 341 (1927).

MARYLAND.

1. Special Food Laws.

Meat—Action for Libel: Blumhardt v. Rohr, 70 Md. 328, 17 Atl. 266 (1889).

2. Special Drug Laws.

Tooth Paste—Action for Slander: Hopkins Chemical Co. v. Read Drug & Chemical Co. of Baltimore City, 124 Md. 210, 92 Atl. 478 (1914).

MASSACHUSETTS.

1. Special Drug Laws.

Pharmacy: See Andreotalla v. Gaeta, 156 N. E. 731 (1927).

2. Civil Action to Recover Damages for Injury Alleged to Have Been Caused by Consumption or Use of Product.

Drugs: See *Pharmacy,* supra.
Drugs—Use of Unsterile Novocaine or Unsterilized Needle by Dentist: Traverse v. Wing, 152 N. E. 354 (1926); Same, 157 N. E. 581 (1927).
Food Containing Foreign Substance (Cantharides)—Assault and Battery: Commonwealth v. Stratton, 114 Mass. 303, 19 Am. Rep. 350 (1873).

3. Miscellaneous.

Trade-Marks: New England Confectionery Co. v. C. A. Briggs Co., 152 N. E. 712 (1926); John L. Whiting-J. J. Adams Co. v. Adams-White Brush Co. et al., 156 N. E. 880 (1927).

MICHIGAN.

1. Miscellaneous.

Gift Enterprise: Glover v. Malloska, 238 Mich. 216 (1927).

MINNESOTA.

1. Special Food Laws.

Meat—License: *City of St. Paul v. Laidler, 2 Minn. 190, 72 Am. Dec. 89 (1858).
Meat—Markets: See the case last cited.

2. Special Drug Laws.

Pharmacy: State v. Zotalis, 214 N. W. 766 (1927).

MISSISSIPPI.

1. Civil Action to Recover Damages for Injury Alleged to Have Been Caused by Consumption or Use of Product.

Bottle—Explosion: Wheeler v. Laurel Bottling Co., 111 Miss. 442, 71 So. 743 (1916).
Food: Coca-Cola Bottling Works v. Lyons, 111 So. 305 (1927).

2. Miscellaneous.

Gift Enterprise: R. J. Williams Furniture Co. et al. v. McComb Chamber of Commerce, 112 So. 579 (1927).

MISSOURI.

1. Special Food Laws.

Milk—Foreign Corporation Buying Milk in Missouri, to be Shipped to Another State to be Manufactured, is Engaged in a Local Business: State to Use of Monroe County v. Pioneer Creamery Co., 211 Mo. App. 116, 245 S. W. 361 (1922).
Milk—Formaldehyde an Ingredient—Adulteration—Civil Action: See Fantroy v. Schirmer, 296 S. W. 235 (1927).

2. Special Drug Laws.

Pharmacy: See Peters v. Enderle Drug Co., 294 S. W. 740 (1927).

3. Civil Action to Recover Damages for Injury Alleged to Have Been Caused by Consumption of Product.

Drugs: Allaire, Woodward & Co. v. Cole, 187 S. W. 816 (1916); Peters v. Enderle Drug Co., 294 S. W. 740 (1927).
Food: Fantroy v. Schirmer, 296 S. W. 235 (1927). See also Shank v. Lesich, 296 S. W. 224 (1927).

4. Miscellaneous.

Tobacco: See State v. Johnson, 118 Mo. 491, 24 S. W. 229 (1893).
Tobacco—Neither Food Nor Drug: State v. Ohmer, 34 Mo. App. 115 (1889).

MONTANA.

1. Miscellaneous.

Gift Enterprise: Marvin v. Sloan, 77 Mont. 174, 250 Pac. 443 (1926).

NEBRASKA.

1. Civil Action to Recover Damages for Injury Alleged to Have Been Caused by Consumption or Use of Product.

Bottle—Explosion: Omaha Bottling Co. v. Theiler, 59 Neb. 257, 80 N. W. 821, 80 Am. St. Rep. 673 (1899).

NEW HAMPSHIRE.

1. Civil Action to Recover Damages for Injury Alleged to Have Been Caused by Consumption or Use of Product.

Stove Polish: Cunningham v. C. R. Pease House Furnishing Co., 74 N. H. 435, 69 Atl. 120, 20 L. R. A. (N. S.) 236, 124 Am. St. Rep. 979 (1908).

NEW YORK.

1. Special Food Laws.

Milk—Permit to Sell—Mandamus to Vacate Order to Revoke: In re Morris, 128 Misc. 280, 219 N. Y. Supp. 143 (1926), affirmed without opinion in Same, 220 N. Y. Supp. 890 (1927).

2. Civil Action to Recover Damages for Injury Alleged to Have Been Caused by Consumption or Use of Product.

Food: Miller & Becker v. Scherder, 2 N. Y. 262 (1849). See also: George B. Ritchie & Co. v. Paul Puttnam, Inc., 220 App. Div. 676, 222 N. Y. Supp. 283 (1927).

Hair Dye: Karr v. Inecto, Inc., 220 App. Div. 621, 222 N. Y. Supp. 417 (1927).

3. Miscellaneous.

Trade-Marks: Charles S. Cash, Inc., v. Steinbook et al., 220 App. Div. 569, 222 N. Y. Supp. 61 (1927); Lerner Stores Corporation v. Lerner et al., 224 N. Y. Supp. 9 (1927); P. J. Tierney Sons, Inc. v. Tierney Bros., Inc., 224 N. Y. Supp. 144 (1927).

OHIO.

1. Miscellaneous.

Trade-Marks: Monitor Stove Co. v. The Williamson Heater Co. et al., 18 Ohio App. 352 (1923).

OKLAHOMA.

1. Special Food Laws.

Beverages—Jamaica Ginger: Hobbs v. City of Pawhuska, 17 Okla. Cr. 235, 187 Pac. 258 (1920); Williams v. State, 210 Pac. 315 (1922).

2. Miscellaneous.

Gift Enterprise: Nelson v. State, 256 Pac. 939 (1927).

OREGON.

1. Miscellaneous.

Gift Enterprise: National Thrift Association v. Crews, 116 Ore. 352, 241 Pac. 72, 41 A. L. R. 1481 (1925).
Trading Stamps: *Ex parte Hutchinson, 137 Fed. 950 (1905).

PENNSYLVANIA.

1. Special Food Laws.

Grocers—Mercantile License Tax: Cupp Grocery Co. v. City of Johnstown, 288 Pa. 43, 135 Atl. 610 (1927), affirming Same, 88 Pa. Super. Ct. 602 (1926).

2. Miscellaneous.

Trade-Marks: The North American Provision Co. v. Millar and Millar, 85 Pa. Super. Ct. 265 (1925), allocatur refused in Same, 85 Pa. Super. Ct. XXV (1925).
Weights and Measures: The Miantinomi, Fed. Cas. 9521 (1855).

SOUTH CAROLINA.

1. Special Food Laws.

Beverages—Extracts, Jamaica Ginger, Etc.: W. T. Raleigh Co. v. Johnson et al., 139 S. C. 318, 137 S. E. 820 (1927).
Milk—Libel of Dairyman: Miles v. Record Publishing Co., 134 S. C. 462, 133 S. E. 99, 45 A. L. R. 1112 (1926); Watkins v. Record Publishing Co., 134 S. C. 470, 133 S. E. 100 (1926).

SOUTH DAKOTA.

1. Special Drug Laws.

Pharmacy—Proprietary Medicines: *State v. Wood, 215 N. W. 487 (1927).

TENNESSEE.

1. Special Drug Laws.

Narcotics: See *State Board of Medical Examiners et al. v. Friedman, 150 Tenn. 152, 263 S. W. 75 (1923).
Pharmacy: *State v. Foutch, *State v. Lester, 295 S. W. 469 (1927).

TEXAS.

1. Special Food Laws.

Beverages—Jamaica Ginger: Ex parte Talyor, 296 S. W. 528 (1927).

2. Miscellaneous.

Trade-Marks: Glass v. Kottwitz, 297 S. W. 573 (1927).

WASHINGTON.

1. Special Food Laws.

Beverages—Jamaica Ginger: Woods v. City of Seattle et al., 270 Fed. 315 (1921).

2. Special Drug Laws.

Narcotics: State v. Young, 253 Pac. 637 (1927); State v. Taylor, 253 Pac. 796 (1927).

3. Miscellaneous.

Gift Enterprise: State v. Danz et al., 250 Pac. 37 (1926).
Trade-Marks: Union Trust Co. of Spokane et al. v. Quigley et al., 259 Pac. 28 (1927).
Trading Stamps: *Ex parte Hutchinson, 137 Fed. 949 (1904); *Salander v. City of Tacoma, 208 Fed. 427 (1913).

WISCONSIN.

1. Miscellaneous.

Gift Enterprise: City of Milwaukee v. Johnson, 213 N. W. 335 (1927).

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